

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 80/2

9882 HOUSE JUDICIARY

SB

110

GARY WILKEN

SENATOR
Districts 29 & 30
West Fairbanks

Senate Standing Committees

Member: Finance
Member: Health, Education, &
Social Services (HESS)
Member: Legislative Budget & Audit
Member: State Affairs



During Session:
State Capitol Building
Juneau, Alaska 99801-1182
Tel: (907) 451-5501 (in Fbks area)
Tel: (907) 465-3709 (outside Fbks)
Fax: (907) 465-4714
Website: www.garywilken.com
E-Mail: Senator_Gary_Wilken@legis.state.ak.us

Interim:
1851 Fox Ave.
Fairbanks, Alaska 99701
Tel: (907) 451-5501
Fax: (907) 451-0438

CSSB 110 (RLS) am

"An Act relating to liability for the release of hazardous substances involving certain property acquired by a governmental entity; relating to making a determination as to when hazardous substance has occurred; relating to liability of a party other than the party responsible for the initial release of a hazardous substance; and providing for an effective date."

Sponsor Statement

This bill will assist municipalities in performing their statutory duty to enforce liens for delinquent real property taxes. Tax foreclosure is a mandatory process leading to the taking of a tax deed that places the title to a tax delinquent property in the municipality's name. Some properties with delinquent taxes are contaminated. Municipalities are concerned that they may be held liable for pre-existing contamination of foreclosed land with significant environmental remediation costs.

The federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) exempts by definition state and local governments who acquire property through "bankruptcy, foreclosure, tax delinquency, abandonment, or similar means." However, the state law which addresses liability for damage caused by the release of hazardous substances, AS 46.03.822, does not precisely mirror the federal law. SB 110 will amend AS 46.03.822 to ensure that federal and state laws are similar in this respect. The municipality may therefore have title to the contaminated property without involuntary exposure to cleanup.

Changes in the Senate also recognized the need to extend this courtesy to innocent third parties, which are not directly responsible for contaminating the property they have acquired. Subsection (m) clarifies state law to say that "a party, other than the party responsible for the initial release, who had no reason to know that a hazardous substance was disposed of on, in, or at the facility and who has acted responsibly upon discovering contamination...may not be held liable for the spread or migration of the hazardous substance except by an action of intentional misconduct or gross negligence."



Fairbanks North Star Borough

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1000

February 24, 1999

Senator Gary Wilken
State Capitol
Juneau, Alaska 99801

Dear Senator ^{Gary} Wilken:

The Fairbanks North Star Borough appreciates your consideration of legislation amending AS 46.03.822 to extend liability protection to the Borough in its tax foreclosure process. Without this legislation we are concerned that we may be held liable for pre-existing contamination on foreclosed land with significant environmental remediation costs.

Payment of taxes is the obligation of every property owner, regardless of the condition of their property. If one group of property owners avoids the payment of taxes because of the condition of their property, and no action is taken to collect the taxes due, that "shortfall" is placed on the shoulders of the other taxpayers.

In the Fairbanks North Star Borough, there are fourteen properties with delinquent taxes that may be contaminated, with a total assessed value of almost \$1.5 million dollars. Their taxes, penalties and interest due total \$503,688.67. Up until this past year, three of these properties contained active, ongoing commercial businesses. Avoidance of their property taxes appeared to give them an unfair competitive edge over their competitors. The borough has been concerned about taking these properties through tax foreclosure because of the risk of liability for any existing contamination. With the additional protection that this bill will provide, the borough will be able to complete the foreclosure process.

Passage of this legislation will allow us to enforce our tax collection obligations uniformly throughout the borough.

Thank you for your support.

Sincerely,

Hank Hove, Mayor



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907)588-1325, Fax (907)-483-5480

April 9, 1999

Senator Gary Wilken
State Capitol, Room 510
Juneau, Alaska 99801

Re: SB 110

Dear Senator Wilken:

The Alaska Municipal League supports passage of SB 110, "An act relating to liability involving certain property acquired by a governmental entity; and providing for an effective date."

This bill expands the technical definition of land acquired by a governmental entity to include land acquired by "bankruptcy, foreclosure, tax delinquency, and abandonment". It is consistent with Alaska Municipal League Policy Statement "Utilities and Environment" Section D.2. "Liability for Releases of Hazardous Substances".

While this is in large part a housekeeping bill to expand a definition to similar circumstances, it will be of significant protection to municipalities and taxpayers. Thank you for the opportunity to comment.

Sincerely,

Kevin Ritchie
Executive Director



MUNICIPALITY OF ANCHORAGE

MEMORANDUM

Real Estate Services

DATE: May 7, 1999

TO: Senator Wilkens

FROM: Gladys Wilson, Manager, Real Estate Services

A handwritten signature in cursive script, appearing to read "G. Wilson".

RE: SB 110: AN ACT RELATING TO LIABILITY INVOLVING CERTAIN PROPERTY
ACQUIRED BY A GOVERNMENTAL ENTITY AND PROVIDING FOR AN
EFFECTIVE DATE.

We support this legislation.



KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA • 99669-7599
BUSINESS (907) 262-4441 FAX (907) 262-1892

MIKE NAVARRE
MAYOR

May 6, 1999

Senator Gary Wilkens
FAX 465-4714

Re: CSSB 110 (RLS)

Dear Senator Wilkens:

The Kenai Peninsula Borough supports the Rules version of SB 110. This bill would save municipalities and taxpayers from incurring significant expenses and losing revenues associated with contaminated properties subject to tax foreclosure. It also would allow us to equally administer the statutory taxing authority among all our citizens.

Sincerely,

Mike Navarre
Mayor

KETCHIKAN GATEWAY BOROUGH

Office of the Borough Attorney • 344 Front Street • Ketchikan, Alaska 99901

Scott A. Brandt-Erichsen
Borough Attorney

(907) 228-6635

Fax: (907) 247-6625

May 6, 1999

Senator Gary Wilken
State Capitol, Room 510
Juneau, Alaska 99801-1182

Re: CSSB 110 (RLS)

Dear Senator Wilken:

I was contacted by Kenai Peninsula Borough Attorney Collette Thompson on May 6th, 1999, with respect to the reconsideration of CSSB 100 (RLS). Ms. Thompson indicated that the bill had passed the Senate, but that a request for reconsideration had been filed by Senator Taylor.

I have reviewed the bill and discussed the underlying policy objective with the Ketchikan Borough Manager. My recommendation to the Ketchikan Gateway Borough Manager is that Ketchikan support the bill as it provides an important protection to local taxpayers. She verbally concurred with my recommendation and authorized me to write a letter supporting the bill.

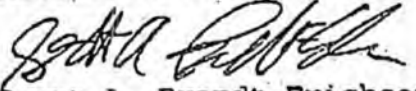
This issue was one of concern in the municipal attorney's office in Anchorage four or five years ago but to date has not effectively been dealt with. CSSB 110 (RLS) would assist municipalities by helping them avoid becoming unwitting "deep pockets" in the event that property to be foreclosed upon is later found to be contaminated.

The only improvement which I would suggest would be to define "involuntary." The issue I would see is if the provisions in AS 29.45.320(a) calling for "annual foreclosure unless otherwise provided by ordinance" would be sufficient to render a foreclosure voluntary. My preference would be that a foreclosure required to protect the public purse be considered involuntary.

By copy of this letter to Senator Taylor, I am requesting that he support the bill.

Sincerely,

KETCHIKAN GATEWAY BOROUGH


Scott A. Brandt-Erichsen
Borough Attorney

ss/l/bill.110

cc: Borough Manager
Senator Taylor
Representative Bill Williams

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agency. 60

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which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(4) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by the person, other than domestic sewage, or by any other party or entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

(b) In an action to recover damages or costs, a person otherwise liable under this section is relieved from liability under this section if the person proves

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) except as provided under AS 46.03.823(c) and 46.03.825(d), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act or omission of the third party and against the consequences of the act or omission; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an agent of a third party is in privity of contract with the person who is otherwise liable, if the third party or its agent and the person are parties to a land contract, deed, or other instrument transferring title or possession of the real property on which the facility in question is located, unless that property was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes that

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a governmental entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) the person is a corporation organized under 43 U.S.C. 1601 — 1629c (Alaska Native Claims Settlement Act) that acquired the facility under those sections;

(4) the person acquired the facility by inheritance or bequest; or

(5) the person is a state governmental entity and the state acquired the facility under Public Law 85 — 508 (Alaska Statehood Act).

(d) To establish that a person had no reason to know that the hazardous substance was disposed of on, in, or at the facility, as provided in (c)(1) of this section, the person must have undertaken, at the time of acquisition, all reasonable inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection a court shall take into account all relevant facts, including

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To	State of Alaska	From	Beith		
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Fax #	2267	Fax #			

5/12

AMENDMENT #1

adopted

OFFERED IN THE HOUSE

TO: CSSB 110(RLS) am

1 Page 2, line 19, following "entity":

2 Insert "A hazardous substance release shall be determined to have occurred as
3 provided in this section."

4 Page 2, line 21, following "leaching":

5 Insert "or migration"

6 Page 3, lines 4 - 10:

7 Delete all material.

8 Insert

9 "costs under this section, a person who acquires a facility and who, upon discovering
10 a release or threatened release on, in, or at the facility that occurred before acquisition
11 of the facility, who had no reason to know that a hazardous substance was disposed
12 of on, in, or at the facility, and who, upon discovering the release or threatened
13 release, acted in accordance with (b)(2) of this section to begin operations to contain
14 and clean up the hazardous substance, may not be held liable under this section unless
15 the person has caused or contributed to the release or threatened release of the
16 hazardous substance, in which case, the person is subject to liability under this section
17 in the same manner as any other person. For purposes of this subsection, "caused or
18 contributed to the release or threatened release of the hazardous substance"

19 (1) does not include the failure to prevent the passive leaching or
20 migration at or from a facility of a hazardous substance in the air, land, or water that
21 had first been released into the environment by a person other than the person that
22 acquired the facility;

23 (2) after the ownership or control of the facility has been acquired by

1 the person includes

2 (A) the spilling, leaking, pumping, pouring, emptying, injecting,
3 escaping, or dumping of a hazardous substance from barrels, tanks, containers,
4 or other closed receptacles; or

5 (B) the abandonment or discarding of barrels, tanks, containers,
6 or other closed receptacles containing a hazardous substance."

S B

1 2 3



Official Business


Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

MEMORANDUM

To: Representative Pete Kott
Chairman, House Judiciary Committee

From: Senator John Torgerson 

Re: Hearing Request for CSSB 123(FIN), "Relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure."

Date: March 20, 2000

I respectfully request that you schedule CSSB 123(FIN) for a hearing in the House Judiciary Committee. This bill is sponsored by the Senate Finance Committee and has recently been referred to your committee.

CSSB 123(FIN) amends Rule 82 in the Alaska Rules of Civil Procedure in reference to the apportionment of attorney's fees and attorney's fees for public interest litigants (PIL). Currently, the manner in which the courts award attorney's fees to a PIL is inequitable and not codified in statute or the rules of court. The courts receive their direction when dealing with these litigants from the Public Interest Litigant Doctrine, which is an exception to Rule 82 and a creation of the Alaska Supreme Court.

The bill before you would make public interest litigants subject to Court Rule 82 regarding judgements for attorney's fees and treat them equitably compared to other litigants. Additionally, CSSB 123(FIN) makes it mandatory for courts to apportion attorney's fees by issue in the event that a court finds exceptional circumstances exist to award enhanced attorney's fees above the provisions established in Rule 82(b).

I am prepared to provide you with additional information on this issue at your convenience. Thank you for your consideration of this request.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

CSSB 123(FIN) SPONSOR STATEMENT

CSSB 123(FIN) amends Rule 82 in the Alaska Rules of Civil Procedure in reference to the apportionment of attorney's fees and attorney's fees for public interest litigants (PIL). Currently, the manner in which the court awards attorney's fees to a PIL is inequitable. The court receives its direction when dealing with this class of litigant from the Public Interest Litigant Doctrine, which is an exception to Rule 82. This doctrine has been created by precedent set by the State Supreme Court and is not codified in statute or court rules.

The court bases PIL status on four criteria; 1) the lawsuit implements strong public policies, 2) numerous people would benefit from the lawsuit's success, 3) only a private party could be expected to bring a lawsuit, and 4) the plaintiff must not have a significant economic interest in the outcome. If the criteria are satisfied, a prevailing PIL is awarded 100% of attorney's fees (as opposed to 30% for a prevailing civil litigant that goes to trial and 20% if a case does not go to trial) and a losing PIL is immune from paying the prevailing party's attorneys fees (as opposed to civil litigants).

CSSB 123(FIN) puts public interest litigants on a level playing field with civil litigants. Under current Court Rule 82, the court must award attorney's fees according to a specific calculation. As previously mentioned, public interest litigants are not covered under Rule 82, so the courts have a lot of latitude when awarding their attorney's fees. This often results in exorbitant costs to the state. CSSB 123(FIN) attempts to correct this oversight by directing the courts to award attorney's fees to and against public interest litigants in a more equitable manner.

CSSB 123(FIN) makes an additional amendment to Court Rule 82. This change requires the court to apportion attorney's fees for all lawyers when the court decides to increase the award amount. Right now, Rule 82 allows the court to award additional or enhanced attorney's fees in exceptional circumstances (i.e., needed a lot of attorneys, exceptionally lengthy trial, bad faith conduct, etc). Currently, an attorney can prevail on one issue and the losing party must pay the enhanced attorney's fees for every single issue the plaintiff brought before the court. CSSB 123(FIN) directs the court to apportion enhanced attorney's fees by prevailing issue to make it fair for all parties.

In summary, CSSB 123(FIN) recognizes public interest litigants by codifying them in Court Rule 82. It prevents the courts from awarding unacceptably high attorney's fees under the guise of the public interest litigant doctrine. And finally, it requires the court to apportion enhanced attorney's fees by prevailing issue, resulting in increased accountability and reducing the likelihood of abuse.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSSB 123(FIN)

Revision Date _____ Dept. Affected Alaska Court System
 Title Public Interest Litigants BRU Alaska Court System
 Component Trial Courts
 Sponsor Senate Finance Committee
 Requester Senate Finance Committee Component Serial No. 769

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
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	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost None

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 No fiscal impact anticipated.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 907-64-8265
 Agency: Alaska Court System Date/Time: 2/22/00 1:00 PM
 Approved by: Stephanie J. Cole, Administrative Director Date: 2/22/00
 Agency: Alaska Court System



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Rule 82. Attorney's Fees.

(a) Allowance to Prevailing Party. Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) Amount of Award.

(1) The court shall adhere to the following schedule in fixing the award of attorney's fees to a party recovering a money judgment in a case:

	Judgment and, Contested	Contested	Non-
	if awarded, With	Without	Contested
	Prejudgment	Trial	Trial
	Interest		

First \$ 25,000	20%	18%	10%
Next \$ 75,000	10%	8%	3%
Next \$400,000	10%	6%	2%
Over \$500,000	10%	2%	1%

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's reasonable actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

(3) The court may vary an attorney's fee award calculated under subparagraph (b)(1) or (2) of this rule if, upon consideration of the factors listed below, the court determines a variation is warranted:

- (A) the complexity of the litigation;
- (B) the length of trial;
- (C) the reasonableness of the attorneys' hourly rates and the number of hours expended;
- (D) the reasonableness of the number of attorneys used;
- (E) the attorneys' efforts to minimize fees;
- (F) the reasonableness of the claims and defenses pursued by each side;
- (G) vexatious or bad faith conduct;
- (H) the relationship between the amount of work performed and the significance of the matters at stake;
- (I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts;
- (J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and
- (K) other equitable factors deemed relevant.

If the court varies an award, the court shall explain the reasons for the variation.

(4) Upon entry of judgment by default, the plaintiff may recover an award calculated under subparagraph (b)(1) or its reasonable actual fees which were necessarily incurred, whichever is less. Actual fees include fees for legal work performed by an investigator, paralegal, or law clerk, as provided in subparagraph (b)(2).

interest, and by changing provisions relating to attorney fee awards. According to § 55 of the session law, the amendment to AS 09.30.065 applies "to all causes of action accruing on or after the effective date of this Act." However, the amendments to Civil Rule 68 adopted by paragraph 5 of this order are applicable to all cases filed on or after August 7, 1997. See paragraph 17 of this order.

Note: Chapter 94 SLA 1998 adopts AS 46.03.761, which allows the Department of Environmental Conservation to impose administrative penalties against an entity that fails to construct or operate a public water supply system in compliance with state law or a term or condition imposed by the department. According to section 5 of the act, subsection (j) of this statute has the effect of amending Civil Rules 79 and 82 by allowing the recovery of full reasonable attorney fees and costs in an action to collect administrative penalties assessed under AS 46.03.761.



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406 G Street Suite, 210
Anchorage, Alaska 99501
fax (907) 274-9493

Please sign our Guest Book

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Last Modified 7/14/1999



SB

130

1-LS0665\G
Ford
5/17/99

5/17 adopted

HOUSE CS FOR SENATE BILL NO. 130()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS PETE KELLY, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to immunity for sale or transfer of a firearm; relating to
2 administrative functions performed by and fees charge^d by the Department of
3 Public Safety for transfer of a firearm."

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

5 * Section 1. AS 09.65 is amended by adding a new section to read:

6 Sec. 09.65.260. Civil immunity related to the sale or transfer of a firearm.

7 (a) A person may not bring a civil action for damage or harm caused by an individual
8 for whom a federal firearm certificate was executed if the action arises from the
9 execution of the federal firearm certificate by a public official with the authority under
10 federal law to execute the certificate and the individual causing the damage or harm

11 (1) is the transferee of the firearm; and

12 (2) at the time the certificate is executed either

13 (A) has a permit to carry a concealed handgun issued under

14 AS 18.65.700; or

1 (B) meets the qualifications imposed under AS 18.65.705(1) -
2 (5) for obtaining a concealed handgun permit.

3 (b) In this section, "federal firearm certificate" means the certificate required
4 on a federal "Form 1 (Firearms)," "Form 4 (Firearms)," or "Form 5 (Firearms)."

5 * Sec. 2. AS 44.41.020(a) is amended to read:

6 (a) The Department of Public Safety shall administer functions relative to the
7 protection of life and property, including functions relating to transfer of a firearm.

8 The department may enter into agreements with nonprofit organizations and federal
9 and local government agencies to train personnel of those agencies in the protection
10 of life and property. The department may charge a reasonable fee for services
11 provided under a training agreement or for services relating to transfer of a firearm.

12 * Sec. 3. APPLICABILITY. AS 09.65.260, added by sec. 1 of this Act, applies to a civil
13 action that accrues on or after the effective date of this Act.

SENATE BILL NO. 130

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATOR PETE KELLY

Introduced: 4/1/99

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to immunity for sale or transfer of a firearm; relating to
2 administrative functions performed by and fees charged by the Department of
3 Public Safety for transfer of a firearm."

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

5 * Section 1. AS 09.65 is amended by adding a new section to read:

6 **Sec. 09.65.260. Civil immunity related to the sale or transfer of a firearm.**

7 A person may not bring a civil action if the action arises from the execution of the
8 certificate required on a federal "Form 1 (Firearms)," "Form 4 (Firearms)," or "Form 5
9 (Firearms)" by a public official with the authority under federal law to execute the
10 certificate for an individual who is to be a transferee of a firearm for damage or harm
11 caused by the individual for whom the certificate was executed.

12 * Sec. 2. AS 44.41.020(a) is amended to read:

13 (a) The Department of Public Safety shall administer functions relative to the
14 protection of life and property, including functions relating to transfer of a firearm.

1 The department may enter into agreements with nonprofit organizations and federal
2 and local government agencies to train personnel of those agencies in the protection
3 of life and property. The department may charge a reasonable fee for services
4 provided under a training agreement or for services relating to transfer of a firearm.

5 * Sec. 3. APPLICABILITY. AS 09.65.260, added by sec. 1 of this Act, applies to a civil
6 action that accrues on or after the effective date of this Act.



Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone (907) 343-4461

Office of the Ombudsman

5/14

June 26, 1998

James Rowe
PO Box 240445
Anchorage, AK 99524-0445

Dear Mr. Rowe:

On May 29, 1998 we received your letter of complaint regarding the refusal of the Anchorage Chief of Police to sign an ATF Form 4 you presented to him. In the letter you stated that you believed that the application process for your lawful acquisition of a restricted weapon was being thwarted by the Chief's policy of not signing any ATF Form 4s presented to him.

In researching this matter, I met with Police Chief Duane Udland; I spoke at length with the Alcohol, Tobacco, and Firearms chief in Anchorage, John Bobb; and I discussed the matter with one of our Municipal Attorneys. As a result of this research, I have been able to confirm the information that was already presented to you. There is no statutory requirement imposed by ATF that mandates that a local law enforcement chief must sign the form. The Municipal Attorney issued an opinion (subject line: "APD Refusal to Sign Form 4") to the previous Police Chief in July 1995 which advised him and any other appropriate municipal official not to sign the form due to potential liability. Both the current and previous Chiefs have adhered strictly to that policy. In addition, the Chief believes that since this is an ATF program, that agency should be responsible for doing the appropriate records/background checks to allow them to make a decision on whether to approve the request. Mr. Bobb confirmed that there is a problem with the process that most likely would require a change at the federal level.

In light of this information, it is my determination that Police Chief's policy regarding the ATF Form 4 is not unreasonable. If you have any further questions, please contact me at 343-4461.

Sincerely,

Alan D. Muise
Municipal Ombudsman

SB

141

AMENDMENT

#2

5/5

adopted

IN THE HOUSE

TO: HCS CS SB 141 (JUD)
Word Draft LS0827\K
5/5/99

Page 3, line 10, insert a new section to read

“Sec. 7. Section 4(c), ch.15, SLA 1998 is amended by adding:

(4) the agreement to lease must provide a fixed rate per each bed day, adjusted annually during the term of the lease according to an appropriate index. The fixed rate for the first year of the lease must include all capital and operating costs and may not exceed \$70 per each bed day.”

Renumber previous sections 7 and 8 accordingly.

5/5

Amendment #4

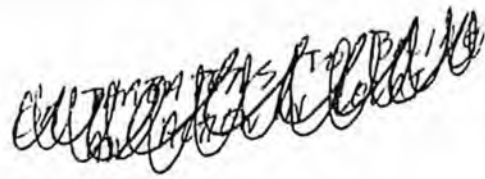
OFFERED IN THE HOUSE
TO: HCS CSSB 141 (L&C)

BY REPRESENTATIVE CROFT

Page 3, line ⁹17, following "section."

" AN ENTITY THAT

~~Insert "A contractor who brings an action in court to stop the procurement of a facility or operation on a design-build construction contract basis from being handled on a competitive basis may be awarded the contract only on a competitive basis."~~



WORK DRAFT

WORK DRAFT

WORK DRAFT

J-I.S0827K
Bannister/
5/5/99

5/5
admitted

HOUSE CS FOR CS FOR SENATE BILL NO. 141(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR LEMAN BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to construction contracts and subcontractors; relating to design-
2 build construction contracts; and providing for an effective date."

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

4 * Section 1. AS 36.30.115(b) is amended to read:

5 (b) A construction contractor or the [THE] apparent low bidder for a
6 construction contract may replace a listed subcontractor if the subcontractor

7 (1) fails to comply with AS 08.18;

8 (2) files for bankruptcy or becomes insolvent;

9 (3) fails to execute a contract with the construction contractor or
10 bidder involving performance of the work for which the subcontractor was listed and
11 the construction contractor or bidder acted in good faith;

12 (4) fails to obtain bonding;

13 (5) fails to obtain insurance acceptable to the state;

14 (6) fails to perform the contract with the construction contractor or

WORK DRAFT

WORK DRAFT

1-LS0827AK

1 bidder involving work for which the subcontractor was listed;

2 (7) must be substituted in order for the [PRIME] contractor to satisfy
3 required state and federal affirmative action requirements:

4 (8) refuses to agree or abide with the [BIDDER'S] labor agreement of
5 the construction contractor or bidder; or

6 (9) is determined by the procurement officer not to be a responsible
7 subcontractor.

8 * Sec. 2. AS 36.30.115 is amended by adding new subsections to read:

9 (f) In addition to the circumstances described in (b) of this section, a
10 construction contractor may request permission from the procurement officer to add
11 or replace a listed subcontractor. The request must be in writing, specifically detailing
12 the basis for the request, and include appropriate supporting documentation. The
13 procurement officer shall approve the request if the procurement officer determines in
14 writing that the requested addition or replacement is in the best interest of the state.

15 (g) The requirements of this section do not apply to a design-build construction
16 contract.

17 (h) In this section, "construction contractor" means a person who enters into
18 a construction contract with an agency.

19 * Sec. 3. AS 36.30.210(b) is amended to read:

20 (b) An offeror for a construction contract shall submit evidence of the offeror's
21 registration under AS 08.18. A request for sealed proposals for a construction
22 contract, except a design-build construction contract, must require the offeror, no
23 later than five working days after the proposal that is the most advantageous to the
24 state is identified, to list subcontractors the offeror proposes to use in the performance
25 of the construction contract. The list must include the information required under
26 AS 36.30.115(a). The provisions of AS 36.30.115(b) - (g) that apply to a
27 construction contractor or an apparent low bidder [AS 36.30.115(b) - (c)] apply
28 to offerors submitting competitive sealed proposals for construction contracts, except
29 design-build construction contracts.

30 * Sec. 4. AS 36.30.210 is amended by adding a new subsection to read:

31 (f) In this section, "construction contractor" has the meaning given in

WORK DRAFT

WORK DRAFT

1-LS0827AK

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AS 36.30.115.

* Sec. 5. AS 36.30.990 is amended by adding a new paragraph to read:

(23) "design-build construction contract" means a contract to provide construction in accordance with a design provided by the contractor.

* Sec. 6. Section 4, ch. 15, SLA 1998, is amended by adding a new subsection to read:

(d) The adoption by a municipality, when exercising its powers under AS 29.35.020(a), of an ordinance for procurement of a facility or operation on a design-build construction contract basis satisfies the procurement requirements under (b) of this section.

* Sec. 7. ADDITION OF SUBSECTION (d) TO SEC. 4, INTENT OF CH. 15, SLA 1998.

The intent of the amendment made by sec. 6 of this Act is to take advantage of the unique opportunity to use surplus military facilities on the road system that are becoming available through the United States Army's realignment of Fort Greely's mission, to prevent and ameliorate economic hardship in the Delta region occasioned by that realignment and the consequent reduction in forces and civilian employment at Fort Greely, and to relieve overcrowding of existing correctional facilities within the state and the extensive use of out-of-state correctional facilities to house Alaska inmates.

* Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

5/5

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

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

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

MEMORANDUM

May 5, 1999

SUBJECT: HCS CSSB 141(JLD) (Work Order No. 21-LS0827\K)

TO: Representative Pete Kort, Chair
House Judiciary Committee
Attn: Cory

FROM: *TB*
Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Deletion of former bill sec. 3 (amending AS 36.30.200(c)). It is not clear to me why former sec. 3 is being deleted. I believe that sec. 3 was only included as a drafting measure to make AS 36.30.200(c) consistent with needing a general definition for "design-build construction contract" for the other sections of the bill. By deleting sec. 3, AS 36.30.200(c) will remain as it is without change. Does this accomplish the committee's goals?
2. Addition of intent language for sec. 6. Sec. 7 now includes the intent language from sec. 4, ch 15, SLA 1998. I am not sure why this is helpful, since, by amending sec. 4, as sec. 7 does, sec. 7 will already tie in to that intent language. However, intent language that states the legislature's intent for the amendments made by sec. 7 would be a good addition.

If I may be of further assistance, please advise.

TLB:glc
99-236 glc

Attachment



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee on SB 141, dated 5/5/99
bill/ subject committee name

**PLEASE DELIVER TO HOUSE JUDICIARY
COMMITTEE MEMBERS IMMEDIATELY.**

5/5/99 10:29 AM

Attached are 9 pages containing 77 signatures of Delta Junction citizens who are urging you to pass SSB 141 with sec 7 intact out of committee and onto the floor. We thank you for the time and attention given to this matter that is very important to us and vital for our community.

Signed:

FRED E. WOOD

Testifier

PRISON PROPONENTS OF DELTA JUNCTION

Representing (Optional)

P.O. BOX 1342 DELTA JCT, AK. 99737

Address

907 (895-2045-H) (895-5038-W)

Phone No.

FROM : NORTHSTAR CENTER
Sole-sourcing provision for prison examined

PHONE NO. : 907 473 4957

May 05 1999 08:05AM P1

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Front Page

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Sole-sourcing provision for prison examined

Wednesday, May 05, 1999

By SEAN COCKERHAM
Staff Writer

A proposal that would give the state's blessing to Delta Junction's controversial decision to award a sole-source private prison contract was the subject of a six-hour Judiciary Committee hearing Tuesday.

Sixty-four people packed the Legislative Information Office in Delta Junction to listen via teleconference to the Juneau hearing.

Rep. Eric Croft, D-Anchorage, made a proposal at the end to eliminate the sole-sourcing provision, which another House committee had tacked on the end of a contracting bill.

But the tired Judiciary Committee members adjourned without discussing Croft's motion -- or passing the bill out of the committee. The committee did take out a clause which would have made the sole-sourcing provision retroactive.

Committee members who appeared receptive to the sole-sourcing provision said the retroactive clause was unimportant and served only to stir the blood of those who testified that the Legislature was trying to go back and make an illegal act legal.

Rep. Jeannette James, R-North Pole, said the retroactive clause was not vital because the bill simply clarifies that the city of Delta Junction already had the authority to offer a sole-source contract.

"So we make it perfectly clear," she said. "(Previous legislation) does allow it."

The legislation passed last year authorizing the state to house prisoners in Delta Junction requires the city to follow a process "similar" to the state procurement code -- which allows sole-sourcing under certain circumstances. "It seems to me the conditions warrant it," James said.

The Delta Junction City Council voted March 30 to bypass competitive bidding for the contract to build the private prison -- and operate it for the first five years.

The council had voted to accept a negotiated settlement giving the contract to Delta Corrections Group, a new company created by Allvest Inc. and parent company Cornell Corrections Inc.

Delta Junction city officials testified that the sole-sourcing was the only way to get the prison at Fort Greely built by the time the fort, a huge part of the local economy, largely shuts down in July 2001. The settlement also eliminated Allvest's threat of a lawsuit.

"Delta Junction is going to be in a world of hurt when Fort Greely closes," testified Delta Junction Councilman Rick Johnson.

During the last advisory vote -- before the decision to bypass competitive bidding -- city residents favored proceeding with the prison by a 188-118 margin, while those in the neighboring unorganized area were split 397-397.

FROM : NORTHTOWN CENTER

PHONE NO. : 907 474 4557

May. 05 1999 08:05PM PZ

http://www.newscorner.com/Webnewa/tblmainpg2/99-05-05_b1date05.asp?OPC--tblm

Most of the Delta-area residents who testified by teleconference Tuesday blasted the prison and the sole-sourcing.

A group of area residents have sued to stop the sole-sourcing, and one stated that the Legislature's actions will not stop the suit. There is also a petition circulating in Delta Junction calling for a vote to overturn the city council's sole-sourcing decision.

Representatives of two private prison companies -- including the company which currently houses Alaska prisoners in Arizona -- testified Tuesday they would be interested in bidding on the Delta prison.

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Alaska Administration
600 Barrow St., Suite 200
Anchorage, AK 99501
Phone: 907-274-6667
Fax: 907-222-7750

Delta Corrections Group LL

Fax

To: Representative Pete Kott From: KAREN MOORE FOR BILL WEIMER

Fax: 1-907-465-2819 Pages: 3 including cover

Phone: Date: 5/5/99 10:27:14 AM

Re: Article on Prison Sole-Sourcing CC:

Urgent For Review Please Comment Please Reply Please Recycle

● **Comments:**

Follows the article that appeared in today's Fairbanks Daily News Miner for your information.

Alaska

WORLDCLASS ADVENTURES

David A. Bridgna
Registered Guide, Pilot

1752 Shant Dalve
Fairbanks, AK 99709

Ph: 907-452-8680
Fax 907-452-6778

May 5, 1999

To: All House Judiciary Committee members

Re: Senate Bill 74

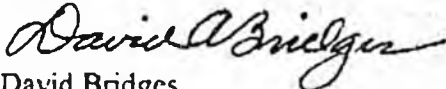
From: David A. Bridges

Dear members:

I wish to acknowledge my **strong support** of SB 74 and the amending of the prohibition on shooting wolves and other predators on the ~~same~~ day as airborne. Under the present law the Alaska Dept. of Fish and Game biologists are not allowed to control wolves according to approved game management plans, in areas where wolves are ~~decimating~~ game populations. They must have this freedom if they are to accomplish their jobs. Your **help** is needed to pass SB 74 and to eliminate the unworkable definition of "biological emergency" and to help our biologists manage all game in a sensible way.

Your help is greatly appreciated.

Very sincerely,


David Bridges

Urgent attention House Judiciary Committee:

May 5, 1999

We, the undersigned, are voters and citizens of the Delta community. We represent the majority that twice voted in support of a private prison at Fort Greely.

We are working people, business people, professionals, and the core of the Delta community. The people you heard with negative testimony yesterday do not represent us. Most of us have sent POMs, testimonials, e-mail, fax, and telephoned your offices. Don't be misled...we, the majority, support a private prison at Fort Greely. We support the agreement with the city.

We urge you to pass SSB 141 with sec. 7 intact out to the full House Today

Name	Occupation	Phone #
<i>George McAllen</i>	<i>business owner</i>	<i>907-895-4679</i>
<i>[Signature]</i>	<i>Meat cutter</i>	<i>907-895-4492</i>
<i>Edith G. Roe</i>	<i>Delta Meat & Sausage</i>	<i>907-895-4006</i>
<i>Joanne Pinkelman</i>	<i>Delta Meat & Sau. ?</i>	<i>907 895-4006</i>
<i>Ferry McAllen</i>	<i>Delta Concrete</i>	<i>9078954679</i>
✓		

Urgent attention House Judiciary Committee:

May 5, 1999

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We urge you to pass SSB 141 with sec. 7 intact out to the full House Today

Name	Occupation	Phone #
Joe	---
...	...	---
Sherry ...	hairdresser	895-4323
...	insulator	895-4377
...	...	---
Mindy ...	Food services	---
Sharon ...	store owner	895-4224
Michael ...	civil ser. employee	895-1946
...	...	895-4578
Stromie ...	civil service	895-1091
Charles A. ...	Personnel	895-4216
William J. ...	retired	895-4855

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Name	Occupation	Phone # (907)
Loretta Schooley	BUSINESS OWNER + SCHOOL BUS DRIVER	895-4550
Debra L. Hernal	Office Manager	895-4439
Joni Chapman	BUSINESS OWNER	895-4240
Elizabeth Purvick	Executive	895-1991
James S. S. S.	BUSINESS OWNER	895-4550
Wanda B...	Business owner	895-4474
Audrey H. Olen Hints	VETERINARY Ass +	895-4998
Nickie Zachgo	Bus Monitor	895-4447
Karen Lee	bus driver/clock	895-4266
Clara W. B...	Business Owner	895-5060
M.D. H...	BUS MECHANIC	895-6246

Urgent attention House Judiciary Committee:

May 5, 1999

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We urge you to pass SSB 141 with sec. 7 intact out to the full House Today

Name	Occupation	Phone #
SCOTT MCBRIE	COMMUNICATION EQUIPMENT equip. operator	895-4992
CYNTHY HILTON	School Bus Driver	895-4334
Edward Adams	Business owner	895-1052
ALLEN T. EDWARDS	Petro DISPERSED ENGINEER	895-1980
Rob Beard	Clerk	895-4297
Sail McBride	bookkeeper	895-4992
SCOTT DAVID C. DURHAM	BANK MANAGER	895-4691
STEPHEN L FIELDS	COMPUTER INSTRUCTOR	895-1950
Kathy Fields	Business owner	895-1950
Bridget Stanley	unemployed	895-1950
Berham Williams	witress	895-1950
James McBride	Home market Christian Advocate	895-4009
Joseph P. Potts	BUSINESS owner	895-4331
Joseph P. Potts	Business owner	895-4331
Walter Korman	Truck operator	895-4262

Urgent attention House Judiciary Committee:

May 5, 1999

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We urge you to pass SSB 141 with sec. 7 intact out to the full House Today

Name	Occupation	Phone #
Aud E Wood	Project Mgrs.	895-2045
Michelle J. J...	Food Svrce	895-4653 895-4313 HM
Brenda Pursey	Cashier @IGA Food Cache	895-4653 895-5000
Ron Hardman	Produce manager	895-4654
Bill Adams	Night Baker	895-4409
Alvin E. Wright	Truck driver	895-4010
John R. Rogers	State of AK Forestry	895-6203
James C. Harris	Retired Teacher	895-4333
Dud Z. ...	Business owner	895-1023
Janice Neison	Retired	895-4441
Ed Larson	IGA FOOD CACHE OWNER Polar Roller EXPRESS	895-4653
Debra	environmentalist	895-4289
Bob B...	PAINTER	895-4727
Wally Lund	Welder	895-6251
Jary Skelham	Truck driver	895-4373



SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189
Web Site: <http://www.akrepublicans.org/Leman.htm>

Session: State Capitol, Juneau, AK 99801 (907) 465-2095
Email: Senator_Loren_Leman@legis.state.ak.us

Analysis of Bill/Program Effects

1) Under this legislation, AS 36.30.115 is amended by adding new language that specifically excludes design/build projects from conformity with the subcontractor notification requirements prior to contract award.

2) Under this legislation, AS 36.30.115 is amended by adding new subsections that will specifically allow for the state to add or replace a subcontractor when found in the best interest to so do.

There will be certain administrative and procedural advantages realized by this legislation relative to the design/build method of procurement/contracting and subcontractor addition or replacement. This legislation will not change or decrease the original intent of the law in either respect nor will there be any adverse budgetary impacts.

3) The Association of General Contractors supports these changes.



SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189
Web Site: <http://www.akrepublicans.org/Leman.htm>

Session: State Capitol, Juneau, AK 99301 (907) 465-2095
Email: Senator_Loren_Leman@legis.state.ak.us

Sponsor Statement for SB141

"An Act relating to construction contracts and subcontractors; relating to design-build construction contracts; and providing for an effective date."

Background/Legislative Intent

This bill was introduced on behalf of the Department of Transportation and Public Facilities and is intended to accomplish two things:

- 1) Excludes Design/Build contracts from the requirement to list subcontractors within five days after award of the contract

Currently, AS 36.30.115 gives direction on listing and replacing subcontractors, and penalties that may apply when a bidder violates provisions of this statute. AS 36.30.115 was enacted in 1986 with the purpose of encouraging and stimulating competition, giving a fair and equal opportunity to all prospective subcontract vendors, assuring that all qualifying vendors have the opportunity to bid, and providing a deterrent to the practice of bid shopping.

The problem with AS 36.30.115 is the five-day contractor notice requirement that states:

- (a) *Within five working days after the identification of the apparent low bidder for a construction contract, the apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the performance of the construction contract.*

The statute negates the ability to do design/build procurements and comply with the law at the same time.

The operating framework of design/build contracting is different from that of all other types of construction contracts. The contractor often does not know who his subcontractor(s) will be until he is well into the design and/or construction process - certainly past the five-day notification requirement.

The legislation changes the restrictive statutory language allowing design/build contracting without subcontractor selection notification as a condition of contract award.

2) Provides for the addition or replacement of a subcontractor when found to be in the state's best interest

In certain circumstances, during the performance of a construction contract, it may be necessary to add or delete a subcontractor from the contract. The state needs specific authority to take such action, when shown to be in the state's best interest.

When a contract must be expanded or decreased due to changed conditions, the state's project manager may need to have the ability to add or release a subcontractor under the contract. Without the statutory authority to make these subcontractor additions or deletions, the contractor would be in violation of the law if they took this action, even if the state supported the change.

Under this legislation, the requirement of having each such request submitted and approved in writing before such action is taken preserves the integrity of the procurement/contract process.

5/4

ASHBURN AND MASON

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A PROFESSIONAL CORPORATION

1130 WEST SIXTH AVENUE, SUITE 100
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DONNA J. McCREADY
A. WILLIAM SAUPE
KIRSTEN TINGLUM

April 27, 1999

Honorable Norman Rokeburg
Chair
House Labor and Commerce Committee
Legislature of the State of Alaska
Pouch V
Juneau, Alaska 99811

APR 30 1999

Re: Draft HCS CSSB 141 (L&C)

Dear Representative Rokeburg,

You have requested a review of the question set forth in Theresa Bannister's memorandum dated April 27, 1999, on whether the amendment violates the prohibition set forth in Article II, section 19 of the Alaska Constitution against local or special legislation.

Before discussing the applicable legal tests, it is important to review the intent behind chapter 15, SLA 1998, which is amended by this provision. Section 1 discusses a general intent to reduce the population in state prisons, and also addresses the Cleary decision.

Section 4, however, provides the specific intent of the act as it pertains to Fort Greely. These include:

1. "To take advantage of the unique opportunity to use surplus military facilities on the road system that are becoming available through the United States Army's realignment of Fort Greely's mission..."
2. "to prevent and ameliorate economic hardship in the Delta region occasioned by that realignment..."
3. "to relieve overcrowding of existing facilities within the state and the extensive use of out of state correctional facilities to house Alaska inmates..."

These set forth an intent to provide economic redevelopment relief to a specific area by using the unique opportunity of using the abandoned buildings left after the realignment of a military base. At the same time, it applies to a matter of statewide concern because seizing this unique opportunity will have a positive impact on the State by returning prisoners to custody within the state.

Baxley v. State, 958 P.2d 422 (Alaska 1998) provides guidance to this question of how to apply the

Hon. Norman Rokeburg
April 27, 1999
page 2

special and local legislation rule to this enactment. There, the legislation in question amended certain Northstar oil production leases. The court focused on the unique characteristics of the Northstar Unit and held that the legislative finding that the amendment would encourage and provide for the development of state resources for the benefit of the people was sufficient to avoid it being deemed special legislation.

Those standards apply here. Certainly the realignment of Fort Greely on July 2001 and the accompanying economic impact of the closure absent the project is a unique matter. The fact that the prison will also help address the return of prisoners to Alaska for incarceration is a matter of statewide concern.

The standard of review by the court is whether the legislative goals and means used to advance the legislation bears a "fair and substantial relationship" to legitimate goals. *Baxley*, 958 P.2d at 430. Certainly, allowing the City to proceed with its project under its ordinance to meet the economic redevelopment goals originally set forth in chapter 15 SLA 1998, to avail the state of the resources uniquely available under the realignment of Fort Greely, and to allow the return of prisoners to the state are all legitimate state goals. The method of the amendment, to essentially ratify the action of Delta Junction in achieving these goals bear a fair and substantial relationship to those goals.

Thus the application of Article II, Section 19 of the Alaska Constitution to this amendment should not result in a finding that it constitutes impermissible local or special legislation.

Please call if I can be of further assistance.

Very truly yours,

ASHBURN & MASON, P.C.



Donald W. McClintock

DWM

LEGAL SERVICES

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

5/4

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

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

MEMORANDUM

May 4, 1999

SUBJECT: HCS CSSB 141(L&C) (Work Order No. 21-LS0827M)

TO: Representative Pete Kott, Chair
House Judiciary Committee
Attn: Cory Winchell

FROM: *TB*
Theresa Bannister
Legislative Counsel

You have asked for an opinion on two issues for the bill described above. This memo responds to that request.

1. Does sec. 7 of the bill present a single subject problem? Art. II, sec. 13 of the Alaska Constitution provides:

Every bill shall be confined to one subject....The subject of each bill shall be expressed in the title.

Therefore, there are two separate, but related, aspects of this issue: the single-subject requirement and the expression requirement.

The title of HCS CSSB 141(L&C) reads:

An Act relating to construction contracts and subcontractors; relating to design-build construction contracts; and providing for an effective date.

The sections of the bill that are under examination are secs. 7 and 8. The primary section to be examined is sec. 7, because sec. 8 only operates to make sec. 7 retroactive. Sec. 7 reads:

* Sec. 7. Section 4, ch. 15, SLA 1998, is amended by adding a new subsection to read:

(d) The adoption by a municipality, when exercising its powers under AS 29.35.020(a), of an ordinance for procurement of a facility or operation on a design-build construction contract basis satisfies the procurement requirements under (b) of this section.

Representative Pete Kott
May 4, 1999
Page 2

It has been argued that altering the procurement requirements for a prison operations contract does not fall within the same general idea as a bill relating to construction contracts. The court's standard is that the

act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

Gellert v. State, 522 P.2d 1120, 1123 (Alaska 1974). The Supreme Court has held that the purpose of this constitutional provision is to guard against legislative log-rolling and the attendant danger of "inadvertence, stealth and fraud in legislation." Gellert, supra at 1122, quoting from Suber v. Alaska State Bond Committee, 414 P.2d 546, 557 (Alaska 1966).

The single-subject rule has been broadly construed by the court, to the extent that the court has expressed misgivings about the construction possibly rendering the rule meaningless. See Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173, 1180-1183 (Alaska 1985) and State v. First National Bank of Anchorage, 660 P.2d 406, 414-415 (Alaska 1982). However, without this broad construction, "statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactments and their interrelationships." Gellert, supra at 1122, and quoted by Galbraith v. State, 693 P.2d 880, 886 (Alaska App. 1985). The court appears reluctant to impose a stricter standard. See Yute Air Alaska, Inc., supra at 1180-1181.

The single subject of the bill expressed in its title would probably reduce down to "contracts." All provisions of the bill relate in some significant way to contracts. The provisions of the bill also all relate to procurement and to governmental agencies. There are two parts to the bill. Sections 1 through 6 of the bill relate specifically to the disclosures required of state contractors about their subcontractors. Sections 7 and 8 of the bill relate to the procurement approach to be taken by a municipality in a particular situation. (Section 9 of the bill gives the entire bill an immediate effective date.) However, the two parts of the bill are not otherwise related.

Sec. 7 establishes that procurement on a design-build construction contract basis satisfies the procurement requirements of sec. 4(b), ch 15, SLA 1998. Sec. 4(b) requires that the city procure an operator for the correctional facility. It is not stated in sec. 7 how procuring on a construction contract basis will satisfy this requirement. However, the single-subject rule does not require that the provision in the bill be clear or easily applicable. The two parts of the bill do have a degree of logical relationship because they are both related to contract procurement by governmental agencies. The court has held that a title relating to "land" was sufficient; at issue there was an act containing disparate sections which were unrelated to each other except that they all concerned land; the court held that the title did not violate the single-subject rule, although it had misgivings. State v. First National Bank of Anchorage, 660 P.2d. 406, 414-415 (Alaska 1982). The Yute court, supra at 1180, stated that "water resources" and "state taxation" have been held to be "appropriate vessels for the diverse

Representative Pete Kott
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cargo with which they had been loaded." North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545-546 (Alaska 1978) (state taxation); and Gellert v. State, 522 P.2d 1120, 1122-1123 (Alaska 1974) ("water resources"). Although the court has expressed its misgivings, and to that extent the court's action is uncertain, under the current precedents I believe that secs. 7 and 8 of the bill may be sufficiently related that the court would hold that all of the provisions of this bill relate to a single subject.

With regard to the expression of the subject in title required by art. II, sec. 18, the title of the bill may violate the expression requirement because the title does not seem to notify interested parties that an operations contract is involved in sec. 7.

As stated above, the general purpose of art. II, sec. 13 is "to prevent the inclusion of incongruous and unrelated matters in the same bill in order to get support for it which the several subjects might not separately command, and to guard against inadvertence, stealth and fraud in legislation." Suber, supra at 557. The Suber court examined whether the title was deceptive or misleading. Suber, supra at 557. More specifically, with regard to the expression requirement, the "purpose of the requirement is to prevent surreptitious introduction of legislation not indicated by the title." State v. First National Bank of Anchorage, 660 P.2d 406, 415n.19 (Alaska 1982). In First National Bank, the court stated, in response to a claim that the title did not adequately express its subject matter, that since "we have concluded that 'land' constitutes one subject, we believe that the requirement that the title express that subject is also satisfied." First National Bank, supra at 415n.19.

The title of this bill states that the bill relates to construction contracts. All of the provisions of the bill facially relate to construction contracts. Sec. 7 provides that procurement on a design-build construction contract basis satisfies the procurement requirements of sec. 4(b), ch 15, SLA 1998. In sec. 7, the construction contract basis is central to the language of sec. 7. The title does not describe how any of the sections deal with construction contracts or otherwise provide much information about the bill. However, this limited title approach does not appear to present a problem. As mentioned above, in First National Bank, the use of "An act relating to land" was acceptable. First National Bank, supra at 415n.19. Since sec. 7 of the bill relates to construction contracts, it is not hidden. The First National Bank court stated that, even with a title as broad as "land," anyone interested in any of the particulars of the bill would be advised by this title to look to the body of the law. First National Bank, supra at 415n.19. Although the title does not provide much information about the contents of the bill, I do not believe that under current court decisions the title is required to provide much information. An examination of the bill would indicate the application of sec. 7.

However, the title does not indicate the relationship between sec. 7 and the "operator" language and requirement of sec. 4(b), ch 15, SLA 1998. The awkward relationship between sec. 7 and the "operator" language and requirement is a problem. The relationship with sec. 4(b) is relevant to an evaluation of whether the title satisfies the expression requirement because if the construction contract has an operational basis (to operate the correctional facility), then "construction contract" in the title may be considered misleading because "construction contract" does not normally connote an operations contract. In addition, sec.

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Page 4

7 itself indicates use of a design-build contract to procure an operation, which may also prove misleading for the same reason. If the title is misleading in this way it may fail the expression requirement because it doesn't provide reasonable notice of the contents of the bill.

In Suber, the court stated that when "construing such a provision, the court will disregard mere verbal inaccuracies, resolve doubts in favor of validity, and hold that in order to warrant the setting aside of enactments for failure to comply, the violation must be substantial and plain." Suber, supra at 557, quoting Griffin v. Sheldon, 78 F.Supp. 466, 11 Alaska 607, 615-616, 469-70 (D.Alaska 1948), rev'd on other grounds 174 F.2d 382, 12 Alaska 329 (9th Cir. 1949). Although not clear in Suber, by referring to Griffin, the phrase, "such a provision," appears to refer to both the single subject and expression requirements of art. II, sec. 13.

In conclusion, although the bill appears to have a single subject, it may violate the expression requirement of art. II, sec. 13, because the title may be considered misleading due to the language of sec. 7 itself or when sec. 7 is read in conjunction with sec. 4(b). However, as discussed above, the court has been reluctant to find a violation of art. II, sec. 13, and I do not know whether the court would consider this problem to be substantial and plain enough to constitute a violation of the expression requirement.

2. Is sec. 7 of the bill local or special legislation? Art. II, sec. 19, of the state constitution reads:

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

The court evaluates challenges under this provision according to the test applied to nonsuspect classifications in equal protection cases. State v. Lewis, 559 P.2d 630, 643 (Alaska 1977). Thus, when the legislature has singled out an area or group, the court examines the legislative goals and the means used to advance them. If the legislation bears a "fair and substantial relationship" to legitimate purposes, the bill will not be invalid because of incidental local or private advantages. Legislation need not operate evenly in all parts of the state to avoid being classified as local or special. Lewis, 559 P.2d at 643. This is the minimum level of equal protection scrutiny in Alaska. This test was recently used to uphold amendment of net profit share provisions of state oil and gas leases. Baxley v. State, 958 P.2d 422, 430-431 (Alaska 1998). In Baxley the court did not discuss the fair and substantial test to any significant degree, but appeared to base its holding on the finding that a legitimate governmental purpose was involved and that the situation was unique. Baxley, supra at 430-431.

The purpose of sec. 7 of the bill is to allow Delta Junction to use a specific procurement approach for the procurement required for the use of Fort Greely facilities for the operation of a state correctional institution under sec. 4(b), ch 15, SLA 1998. Section 7 is facially general and does not raise local and special issues by its wording. The local and special issue

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in sec. 7 arises primarily due to its connection with sec. 4(b) and, secondarily, due to the nature of its procurement modification. Although it can be argued that an examination of the actual content and application of the ordinance authorized by sec. 7 may raise a local and special issue by itself if the ordinance appears to avoid general competition for the operating contract, I believe that it is more likely that the local and special issue for sec. 7 will be examined in the full context of the approach, as amended by sec. 7, for establishing a correctional facility for state prisoners in the Fort Greely facilities. The actual procurement approach to be used by Delta Junction may be considered peripheral to the general approach taken to establish the correctional facility.

The establishment of the correctional facility under sec. 4, ch 15, SLA 1998, as amended by sec. 7, does appear to address a matter of statewide concern. The ultimate goal is to use surplus military facilities on the road system that are becoming available through the United States Army's realignment of Fort Greely's mission to relieve the overcrowding of existing correctional facilities within the state and to ameliorate the extensive use of out-of-state correctional facilities to house Alaska inmates. The reason that the court rejected the borough creation legislation in Abrams was because it determined that the act did not have any statewide interest or impact. Abrams v. State, 534 P.2d 91, 94 (Alaska 1975). In this situation, the use of the correctional facility to house state prisoners affects the state generally because the prisoners may come from any part of the state and because the facility is handling a responsibility of the state's Department of Corrections.

The situation being addressed by sec. 4, as amended by sec. 7, also appears to have unique features. The facilities are available at Fort Greely because of federal action to realign Fort Greely. Although at least one other military facility in the state has also been affected by federal action, the facilities at Fort Greely are on the state's road system, which makes them feasible for use in this situation. These factors may support a finding that the situation is unique and one that calls for a special approach that will accommodate this particular situation. Therefore, to that extent the amendment of sec. 4(b) by sec. 7 has at least an arguable basis for uniqueness under the Baxley approach.

It is difficult to determine whether the approach taken by sec. 4 as amended by sec. 7 constitutes a fair and substantial relationship to the statewide purposes. The court would examine all of the facts of the situation before reaching its decision, and I do not have all of the facts available. Since the approach proposed will achieve the statewide purposes, the approach under secs. 4 and 7 does seem to have a direct and substantial relationship with the goal. Whether this is sufficient is not clear. It is not clear whether the approach taken by sec. 7 would be considered a significant change to what is authorized by sec. 4(b). Sec. 4(b) directs that the operator contract be obtained through a process similar to the procedures established in AS 36.30 (State Procurement Code), and AS 36.30.300 provides for the use of single ("sole") source procurement under certain circumstances. However, if a court were to determine from the legislative history of sec. 4, ch. 15, SLA 1998 that the legislature intended the municipality to use a competitive process, a sole source approach would be considered a significant change. To the extent the ordinance authorized by sec. 7 uses a specific, e.g. sole source, approach to achieving the goal, then it is possible that the court

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would examine whether using that approach constitutes a fair and substantial relationship to achieving the end goal (establishment of the correctional facility). If the court examines sec. 7 for that purpose, the court will determine whether not using competition in the procurement is essential to handling the situation for some particular reason based on the facts of the situation. If the use of a sole source approach is not required by the situation, the court may view it as having little relationship to achievement of the statewide purpose.

The relationship between sec. 7 and the "operator" language and requirement of sec. 4(b) is not clear or direct. The language of sec. 7 states that the procurement of a facility (presumably a Fort Greely facility) or an operation (presumably the operation of the correctional facility) would be on a "design-build construction contract basis." Although the sec. 7 amendment does not appear on its face to be consistent with the "operation" requirement of sec. 4(b), it is possible for the operational contract to be procured on a design-build construction contract basis where the operation of the facility is an essential ingredient of the construction contract. If so, then the new authority in sec. 7 arguably might be considered to facilitate the achievement of the correctional facility envisioned by sec. 4. The actual application of sec. 7 under the specific facts of the situation will be necessary to establish how sec. 7 works.

Sec. 4 arguably appears to address a matter of statewide concern, the establishment of a correctional facility. It is possible that the Fort Greely correctional facility situation might be considered a unique situation that may not be appropriate for general legislation. Although possible, I don't believe that sec. 7 would be separated from sec. 4 when evaluating whether there is a fair and substantial relationship with the establishment of the correctional facility. Whether the approach taken by sec. 4, as amended by sec. 7 of the bill, would be considered to bear a fair and substantial relationship to the establishment of the facility depends on the entire factual situation. Since I do not know all of the facts of this situation, I cannot predict whether this part of the test can be met.

If I may be of further assistance, please advise.

TLB:glc;jr:lmb
99-064.lmb

Wagon
BY
1/29

SETTLEMENT AGREEMENT

Comes now, the City of Delta Junction (City), Allvest, Inc. (Allvest), and Delta Corrections Group, LLC (Contractor) and agree to the following terms and conditions.

*... ONLY HALF WAY
HONEST,
AND NOT ALWAYS
IM GOOD STANDING.*

A. RECITALS.

1. Allvest, Inc. ("Allvest") is an Alaska corporation in good standing and is or has been a provider of correctional services in Alaska and Washington.
2. The City of Delta Junction ("City") is a second-class municipality organized under the laws of the State of Alaska.
3. Delta Corrections Group, LLC ("Contractor") is an Alaska limited liability corporation with the capability to undertake the construction and operation of a prison facility at Fort Greely. It is being formed as a result of this Agreement to undertake the performances called for in this Agreement. Its members are Cornell Corrections, Inc. (or its Alaska affiliate) and Allvest, Inc. Although Contractor is not a party to the dispute between the City and Allvest, by its signature, Contractor agrees to undertake the performances called for in this Agreement.
4. Although the City and Allvest do not agree on the essential question of whether the March 13, 1998, Agreement between Allvest and the Delta Greely Community Coalition is enforceable against the City, they do agree that litigation would be expensive, and even if the City were successful, could delay the project or possibly even result in its loss. Further, there exist, in addition to these considerations, significant facts that make it in the best interests of the community to proceed with the project on a sole source basis, which Delta Corrections Group, LLC is willing to undertake, and provided Allvest relinquish its claims under the March 13, 1998 Coalition/Allvest Agreement.

*WHAT FACTS
TO OVERRIDE
A COMPETITIVE BID?*

For these and other reasons, the parties hereby agree as follows:

B. AGREEMENT TERMS.

1. The Project.
 - a. Prior to or simultaneous with its entry into this Agreement, the City has determined that there exist substantial and independent facts to justify a sole source procurement for the initial construction and operation of the prison. Pursuant to those findings, the City agrees to enter into a sole source procurement with Contractor, pursuant to findings adopted by the City, for the design,

*WHAT FACTS
TO JUSTIFY SOLE
SOURCE?
GONNA BE SHITTY!*

construction and operation of a prison at Fort Greely (Contract). The Contractor shall be responsible for the design, development, and construction of a minimum 800 bed (or up to 1,050 beds) medium security prison; plus operation of the prison for five years from Initial Occupancy. "Initial Occupancy" for the purpose of this term will begin the date the prison first houses inmates. Subject to the financing provisions set forth in section B.1.c., the Contractor shall bear the expense and shall be solely responsible for the direction and completion of all prison program design, architectural design, engineering, construction management, materials procurement and expediting, hazardous material remediation, demolition, construction and other direct and incidental effort necessary to provide a prison meeting the requirements of an Inter-governmental Agreement with the State of Alaska as contemplated by ch. 15, SLA 1998 (hereinafter IGA).

- b. The City will be the owner and hold title to the prison. The City will apply for a Economic Development Conveyance ("EDC") for transfer of the property identified in this Agreement for the project, and will seek interim leases in furtherance of conveyance ("LIFC") for such property pending transfer.
- c. The construction of the prison and the other performances under this Agreement will be financed under a revenue bond to be issued by the City and secured by the revenue stream created by the IGA. The parties agree that they both have incurred substantial expenses in the development of this project, will continue to incur additional expenses during the design, development, and construction of the prison and agree to cooperate with each other to recoup those expenses (other than lobbying expenses, if any) under the bond financing consistent with the requirements of the tax exempt status of the bonds, and applicable law. The Contractor shall bear the responsibility for developing and managing the project budget to be financed by the bond. To the extent permitted by applicable law and revenue bond requirements, the revenue stream under the IGA will be used first to satisfy bond debt, and the balance to be remitted directly to the Contractor as its compensation and expense reimbursement, which shall be subject to a security interest in favor of the City to secure the payments to it called for in section B.3. The City and the Contractor shall cooperate in structuring the relationships contemplated by this Agreement to the requirements imposed for the revenue bonds.

How much Bond

3
How much for Compensation

2. The Lease.

- a. In return for the consideration set forth in Section B.3., the City will lease to the Contractor, the Fort Greely cantonment area as defined in Exhibit A, for a term to allow construction of the prison, and related support buildings and to allow for operation of the prison for five years from Initial Occupancy. The City is responsible for acquiring title to the property subject to lease. The City will apply for an EDC of all of the properties subject to lease, or whose title will be transferred to Contractor, and pending conveyance, will pursue securing from the Army, Base Realignment and Closure leases in furtherance of conveyance for the

- No. 11

properties so that the parties can begin the various performances called for under this Agreement. The parties will each cooperate and use their best efforts to effect these transfers and leases, and to allow Contractor access to the areas subject to lease to begin construction. To assist in the conveyances intended under this section, the Contractor shall perform the surveys required for the property described in Exhibit A and the property to be conveyed to the Contractor under Exhibit B.

- b. Both parties agree to undertake their best efforts to urge the Department of Army to continue its responsibility for snow removal and street maintenance of the realigned Fort Greely. In any event, Contractor shall be responsible for snow removal and street maintenance in the cantonment area and the areas servicing the cantonment area. Contractor shall identify locations where it desires to locate its snow storage for snow removal from the cantonment area as well as the housing area. The City will either arrange for the Army to provide, or will add to this lease area(s) identified by Contractor that are reasonably adjacent to the leased area and housing area for snow storage.
- c. Contractor will be responsible for the cost of utilities reasonably necessary to serve the prison and related support buildings from the first to occur of an EDC or a LIFC. It is understood that, as between the City and the Contractor, the Contractor will bear the responsibility of service and maintenance of such utilities as a part of the cost of utilities. The City and Contractor will cooperate in any reasonable request to Contractor's redesign of the buildings or utility improvements that will have the effect of lowering the cost of providing utilities to the prison. The City and Contractor will cooperate in the efforts by the other to bring lower cost utilities to the prison, and/or community.
- d. The City will use its best efforts to work with the Army to have the Army identify an area and allow the use of such area for a disposal area for hazardous materials generated as part of the construction of the prison. In the event that is unsuccessful, then the City will make an area available to Contractor, which shall be developed at the Contractor's expense, for such purposes, reasonably contiguous to the leased cantonment area, and consistent with applicable law. That disposal area may be the landfill described in section 6.a. Any such disposal area shall be operated by the Contractor in compliance with all applicable laws.
- e. In addition to the lands and improvements identified in Exhibit A, or described by function in this Agreement, the City agrees to cooperate with the Contractor to allow it to lease without additional consideration additional land or buildings for the following purposes:

- (i) properties used for core functions, including fire, sewer and other utilities, safety and related prison security purposes;

AM OPEN
DOOR- HAZARD to
S. Hart.

WHY NO MONEY?
WHY NOT? FOR IT?
Let them pay

NO →

(ii) land for new buildings, constructed to replace buildings selected in Exhibit A, where those old buildings proved insufficient or inadequate for the intended use to be exercised within one year of execution of the IGA; or

NO, NO,
NO!!!

(iii) in the case of land and improvements in support of prison operations which are related to maintenance, prison operations, or safety, and which have been selected by other persons who have a priority or right, for a period of one year commencing at the date of Final Ft. Greely Realignment, the LRA. Contractor shall have a right of first refusal, to be exercised within thirty (30) days of written notice that the specific property or improvements are available released by the prior claimant.

The Contractor shall also have the right to purchase at fair market value such additional lands and improvements as reasonably necessary to support prison operations and to provide the amenities set forth in this Agreement.

f. The City agrees that it will select the vacant land to the south and east of the prison (as defined in Exhibit A), to the extent necessary, consistent with good correctional practices, for the expansion of the prison, and retain it for future expansion of the prison. Such land will not be put to other uses so long as the prison is still in operation by Contractor. Any expansion of the prison to this area is subject to City approval, but otherwise is subject to this Agreement.

NO
OPEN BOOK
w/o options

3. Ground Lease Rent.

a. As an initial payment of ground lease rent, Contractor shall pay to the City the amount of \$500,000, in eight quarterly installments. The first installment shall be due within 5 business days of adoption of this Agreement by the City council, including any time where reconsideration can be noticed. Once a total of \$250,000 has been paid, no further installments will be due until the IGA between the State of Alaska and the City of Delta Junction is signed that is reasonably satisfactory to all parties. Subsequent installments shall be due each quarter, thereafter, or if a quarter has passed since the last payment, then five (5) business days after the IGA is signed, and each quarter, thereafter, until paid in full.

b. Additional ground lease rent shall be due upon operation of the prison. Beginning upon the Initial Occupancy Date, the Contractor shall pay, on a quarterly basis and in arrears, 5% of the per diem rate for beds paid for under the IGA. On an annual basis, however, this payment shall not exceed \$1,022,000.00 (the "Cap"). The amount of the Cap shall increase on an annual basis: (i) by the rate of any consumer price increase received under the IGA and (ii) by 5% of the per diem rate received for all beds served under the IGA in excess of 1,050 beds (but without double counting any CPI increase).

NO +
E.N. ...

WHY
A CAP?

NOTE NO AVAILABLE
BEDS BUT ONLY
THOSE SERVED

↑
COMMIT TO
BEYOND THIS!!!

c. Any expansion of the prison beyond its initial constructed capacity (approximately 1,050 beds) shall require the City's prior approval.

THIS IS MAX →

WHY NOT?

OPEN BOOK →

d. The City will not levy any other fees or charges upon Contractor for any of the other lands, or property conveyed, or leased, or services provided in connection with the prison other than what is set forth in this Agreement, except the City shall be entitled to pass through to the Contractor the direct expenses incurred by the City to provide such land, leases or services as a result of unforeseen expenses not addressed in this Agreement.

e. The financial terms of this Agreement, including Contractor's maintenance obligations of the infrastructure outside of the prison, are subject to be reopened and renegotiated in the event Fort Greely is annexed by a governmental unit that exercises the power to levy real estate taxes on the Contractor's prison operation or sales taxes on the proceeds of the IGA or this contract or similar taxes, which would affect the financial cost of performance. The goal of the re-opener would be to adjust payments and reflect the impact of the tax on the cost of operation to reasonably preserve the intent of this Agreement.

4. Indemnity and Allocation of Risk of Operation.

a. Contractor agrees to indemnify, hold harmless, and defend the City from liability to other persons from any claims or actions that may be asserted or filed that arise or relate to this agreement, the resulting sole source procurement, or the IGA. This includes claims from potential bidders' and citizens' suits. For the purpose of this section, "City" includes individual city council members and city officers. In the event the resolution of a lawsuit results in a finding that the contract with the City is void then Allvest and or Contractor may participate as a bidder in any subsequent procurement. The City will use its best efforts to cause such procurement to be put out to bid within sixty days. All of Contractor's work product shall remain Contractor's sole property, and the City shall cooperate in protecting such work product. If the project is stopped because of a finding of voidness, certain improvements may have been undertaken which cannot be returned to Contractor. Under the terms of any subsequent procurement, the successful bidder will be required to reimburse Contractor for all benefits conferred and work done on the project which cannot be returned and for which compensation is allowable under Alaska law, and the indirect costs and related overhead incurred in such efforts, including but not limited to the payments made to the City in section 3. Contractor shall be required to provide an accounting of matters it maintains are subject to reimbursement in a timely manner so as not to delay the procurement process.

WHY?

NO!!

NO!!

NO!!

Now you know FOR SURE ALLVest is buying out the City Council!!!

b. The Contract between the City and Contractor shall provide that Contractor will indemnify, hold harmless and defend the City from all liability and casualty losses arising from Contractor's construction and operation of the prison. Contractor will arrange for payment and performance bonds during construction of the prison.

IS THIS ENOUGH? WHY NOT \$5,000,000?

- c. Contractor will carry Comprehensive General Liability insurance with a minimum coverage of \$1,000,000, Worker's Compensation insurance in statutory limits, Professional/Employer's Liability insurance minimum coverage of \$1,000,000 per occurrence for bodily injury, and during operation, Excess Liability insurance of \$9,000,000. The City shall be named as additional insured and notification shall be supplied 10 days prior to any cancellation. This insurance is to be carried by one or more insurance companies authorized to transact business in Alaska. Contractor shall furnish the City with certificates of all insurance required by this Agreement.
- d. In the event a lawsuit is filed against the City arising from this Agreement, the sole source procurement, or the findings by the City that justify the sole source procurement or the IGA, the Contractor shall reimburse the City for the reasonable cost of its independent attorney's fees incurred in conducting a joint defense. The City agrees the Contractor may take the lead in such litigation and shall coordinate defenses to avoid duplication of effort as is reasonably possible.

WHY A JOINT DEFENSE

5. Fort Greely Housing.

- a. The City agrees to transfer fee title to Contractor all housing units described in Exhibit B made available by the Army for disposal by the City as LRA. In the event Contractor requires the use of the housing before title can transfer, the City agrees to cooperate to seek LIFCs of the property pending transfer of title. The City agrees that housing to be conveyed to and retained by the City or reconveyed to other third parties under Exhibit B may not be used as housing for prison employees for the five year period following Initial Occupancy. ~~for~~ The buildings identified in Exhibit B for lease by the City to the Contractor shall be leased at fair rental value and to the Contractor's employees only.
- b. As consideration for the purchase, Contractor agrees to pay the amount of \$2 million dollars, payable at closing and passage of title, and adjusted pro rata if less than all units close at one time. If less than all of the housing described can be conveyed to the Contractor, the price to be paid will be pro rated appropriately.
- c. Contractor agrees to cooperate with the City in making housing available for use by the Base Missile Command Group should that reuse of Fort Greely develop in the future.
- d. The Contractor will expend the funds necessary to survey the units to be conveyed to it to assist in the conveyance. All units, including those transferred

KEEP THE HOUSING

NO, NO NO!!!
WHY NOT?
THIS IS DUMB!!!
THIS IS A GOOD REASON FOR A COMPETITIVE BID!!!

THIS JUST PROVES THAT THE IDEA IS NOT GOOD

on a site identified by the City. These efforts will begin this legislative session upon completion of the IGA.

*ANOTHER
BUY OFF OF
THE CITY!!!*

f. The Contractor shall direct and undertake a 3000 square foot (plus or minus 5%) expansion of the City Hall, on plans to be agreed upon mutually, with an estimated cost not to exceed \$450,000. The improvements shall not begin before an IGA is signed by the state and construction shall take place when the construction of the prison begins, but shall proceed diligently until completed.

The Contractor shall use its best efforts to purchase the needs of the prison for food and agricultural products from those available in the City of Delta Junction or within a 50 mile radius of the Fort Greely gate.

h. Contractor shall request that the project construction contractor, to the extent consistent with a sound project and project budget, use local subcontractors and laborers on the construction of the prison project.

i. The City, at its further discretion, may establish a Development Fund from the proceeds from the purchase of the housing units. If a Development Fund is established, Contractor agrees to provide consulting assistance during the pendency and duration of the construction phase of the project to solicit grants for such fund.

7. Other Terms and Conditions.

a. Effective at the date of this Agreement, subject to any reconsideration, the City, Allvest and Contractor release each other from any and all claims that arise from the terms and conditions of the March 13, 1998, Coalition/Allvest Agreement, including claims for cost and attorney's fees and consequential injury. Each party acknowledges that promises and the consideration paid in settlement is in compromise of disputed claims and do not constitute admissions of liability by any of the undersigned parties. The rights of the parties shall be determined by this Agreement and not any preceding agreements, rights, or understandings. The City shall cooperate in securing a separate waiver from the Coalition of any claim to separately enforce the terms and conditions of the March 13, 1998, Coalition/Allvest Agreement.

*THE CITY
WOULD WIN ANY
LAW SUIT!!!*

b. Subject to the requirements of HB 53 and the IGA, the membership of the Contractor may be assigned, without the City's prior consent, so long as the Contractor remains a comparable or larger prison management company of similar or greater experience.

*Authorizations
to sell out
to another
PRISON*

c. The parties recognize that they may have to revisit and modify provisions of this Agreement to meet requirements of the State of Alaska, the IGA, and the requirements for tax exempt municipal revenue bond financing of the construction of the prison. The parties agree to negotiate such revisions in good faith,

preserving to each to the greatest extent practicable, the economic benefits of this Agreement to each party.

d. The City acknowledges that the passage of the ordinance approving this settlement agreement will have the effect of repealing by implication specific provisions of the City of Delta Junction Code that govern the process by which the City procures services, disposes of real and personal property and leases land, and other provisions necessarily inconsistent with the procedures and performances called for in this Agreement. The City agrees, that it will, by subsequent ordinance, explicitly clarify the extent of its repeal by implication of these other ordinances.

e. Each performance here is conditioned upon the cooperation and consent of the Army to these transactions. In the event such consent is withheld, the parties shall adjust their performances to preserve as best as possible the benefits and obligations of this Agreement keeping in mind that the goal of the Agreement is the creation of a functioning prison following the realignment of Fort Greely.

City will cooperate with the Contractor to allow the Contractor to select that personal property associated with buildings to be conveyed to the Contractor under Exhibit A and Exhibit B which is available for selection under applicable law through the reuse process, that is reasonably necessary to prison operations or the housing units which Contractor will take under this Agreement. In addition, and subject to applicable federal law, Contractor shall have priority rights to select all personal property reasonably necessary to the prison operations, or associated with the housing units purchased.

g. City agrees that it will use its best efforts to negotiate an IGA for the prison by May 1, 1999. ~~The City and Contractor shall establish a joint working team to establish the negotiating strategy and insure timely completion of the IGA.~~

h. The City and Contractor generally covenant to use their best efforts to support the successful completion of the prison and its operation and to cooperate with each other to accomplish these common goals.

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

j. This Agreement and the covenants and agreements of the parties shall be binding upon and inure to their successors and assigns.

k. In the event any clause, term or condition of this Agreement shall be determined to be illegal or unenforceable under any applicable governmental laws, orders, rules or regulations, this Agreement shall remain in full force and effect as to all other terms, conditions and provisions.

NO -
IF THE ARMY SAYS
NO - WE SHOULD HAVE
COMPLETE FREEDOM TO
DO AS WE PLEASE!!
A GIVE ARMY
OF 1 TO 2 MILLION
DOLLARS WORTH
OF PROPERTY FOR
NOTHING!!

W/1/3
SIGN
YOUR
LIFE
AWAY
COVER
ALL

COVER
ALL

- l. This Agreement may be executed by the parties in one or more counterparts.
- m. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Alaska.
- n. The headings used in this Agreement are inserted for convenience and are not to be considered in the construction of the provisions of this Agreement. This Agreement constitutes the entire agreement of the parties and may be amended or modified only in writing signed by both parties, and all prior agreements or understandings between the parties, either oral or written, are superseded by this Agreement.

*N.Y.O,
NO. 12)
Must Be
Orally
Done
Agreement*

DATED: _____

CITY OF DELTA JUNCTION

Roy Gilbertson, Mayor

ATTEST:

Pamela Ellis, City Clerk

DATED: _____

ALLVEST, INC.

William C. Weimar
Chief Executive Officer

DATED: _____

DELTA CORRECTIONS GROUP, LLC

By: _____
Title: _____

Additions/Clarifications to Exhibit A:

Basic footprint

Building 804

30 acres to the south and east of the basic footprint

Land necessary for snow storage

Leasehold necessary for land for the Landfill described in section 6.a

Training Facility

Exhibit B

Other Buildings and Improvements

To Be Conveyed to Contractor:

2 4 8 8 8 6 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8
805, 806, 808, 809, 810, 812, 813, 814, 816, 817, 818, 825, 826, 827, 829, 830, 831, 833, 834,
835, 854, 855, 856, 862, 863, 864, 875, 876, 877, 887, 888, 889, 895, 896
3 8

In the event that the prior selection of 850, 851 and 852 is not used for its stated purposes by the date of Final Ft. Greely Realignment, then 850, 851 and 852.

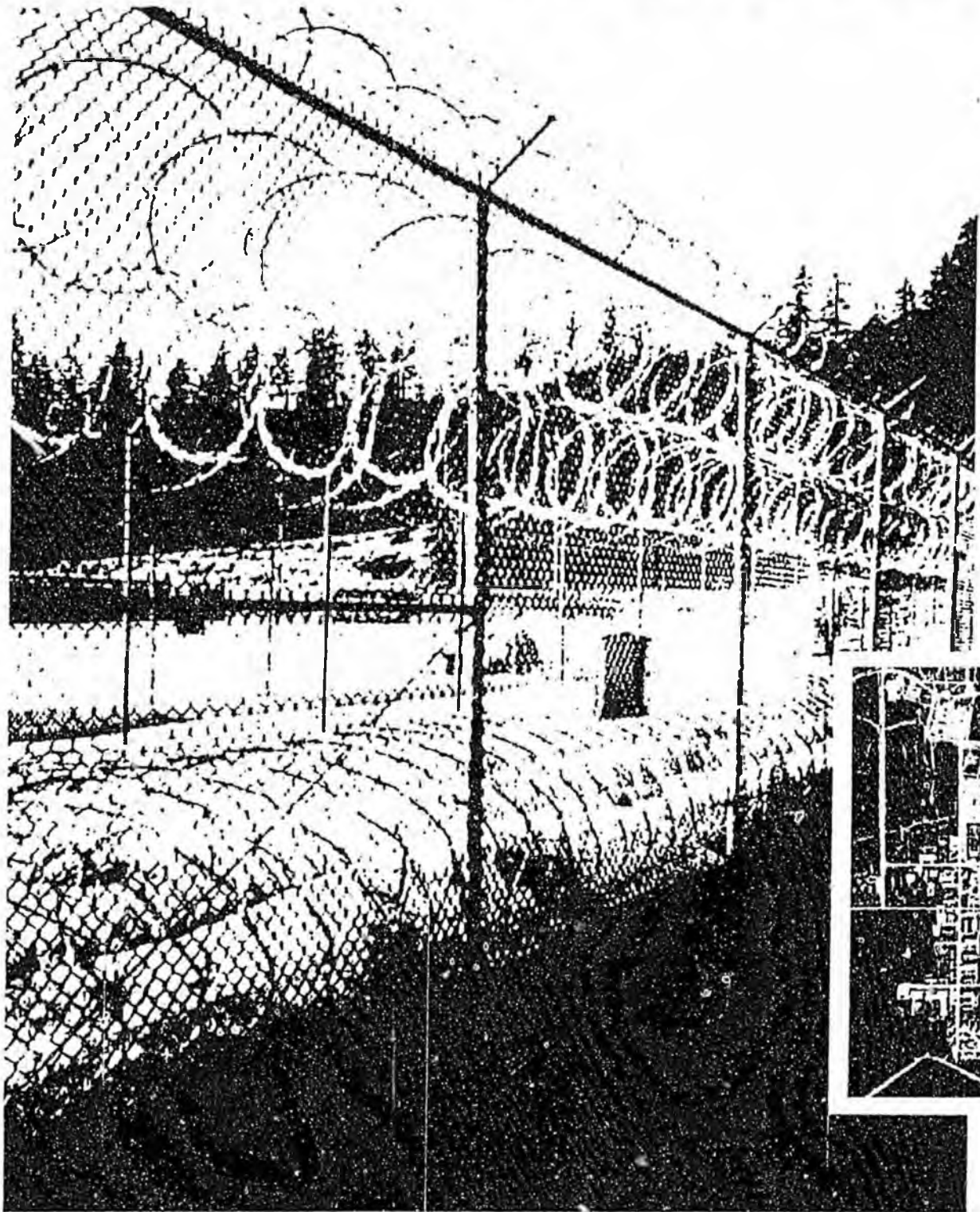
To Be Retained by City without obligation of lease to the Contractor:

All buildings in 900 series
Two duplexes in the 700 series

To Be Retained by the City Subject to a Lease Option to the Contractor at Fair Rental Value: why?

700 series, two single family residences
700 series, three duplexes

802 - 2
820 - 8
821 - 8
822 - 8



**DELTA JUNCTION/
FORT GREELY
PRISON
FEASIBILITY
WORKBOOK**

CONSULTANT TEAM

PROGRAM MANAGEMENT:
RISE ALASKA
830 H STREET
SUITE 101
ANCHORAGE, AK 99501

ARCHITECTURAL:
ECU HYER INC. ARCHITECTS
101 WEST BENSIO I
SUITE 101
ANCHORAGE, AK 99503

FINANCIAL:
HUDSON AIPF, LLC
730 FIFTH AVENUE
NEW YORK, NY 10019



JANUARY 1999

Delta Junction/Fort Greely Prison Feasibility Workbook

Purpose of this Workbook:

- Respond to 1998 legislative House Bill 53.
- Outline the history and context of the proposed private prison project at Fort Greely.
- Document the study effort and the Delta Junction community discussions to respond to the question "What would it take to successfully operate a private prison at Fort Greely?"
- Test feasibility based on the governor's five evaluation criteria: safety; best correctional practices; compatibility with statewide and regional corrections needs; community participation and capacity; cost-effectiveness.
- Serve as an informational briefing in support of the decision-making process of 1) the Department of Corrections and other State agencies; 2) the community and City of Delta Junction; 3) the legislature; and 4) other interested parties.

Delta Junction/Fort Greely Prison Feasibility Workbook

COMPATIBILITY WITH STATEWIDE AND REGIONAL CORRECTIONS NEEDS – Mission

In partnership with the citizens of Alaska, protect the public from repeat offender crime by using the best correctional practices available to provide a continuum of appropriate, humane, safe and cost effective confinement, supervision and rehabilitation services. The Department will carry out its responsibility while respecting the rights of victims and recognizing the dignity inherent in all human beings. (DOC Mission Statement)

The Department of Corrections is challenged to respond to the overcrowding of the State's prisons and regional jails. Additional prison accommodations that could be provided through the portion of House Bill 53 relating to the use of Fort Greely would reduce the State's prison crowding.

Since 1987, Alaska's prison population has grown by 45.5 per cent. In 1997 alone the growth rate was one of the highest in the nation. According to the Bureau of Justice Statistics, Alaska had a sentenced (incarcerated) prison population of 4,220 at the end of 1997.

The total number of prisoners under the jurisdiction of federal or state adult correctional authorities was 1,244,554 at year-end 1997.

Nationally, the rate of incarceration in prisons at year-end 1997 was 445 sentenced prisoners per 100,000 residents up from 292 in 1990. . . . The Alaska rate of incarceration was 420 per 100,000...

Prisons generally require reserve capacity to operate efficiently. Dormitories and cells need to be maintained and repaired periodically, special housing is needed for protective custody and disciplinary cases, and space may be needed to cope with emergencies....

"Prisoners in 1997: The State and Federal Picture." *Alaska Justice Forum*

Delta Junction/Fort Greely Prison Feasibility Workbook

COMPATIBILITY WITH STATEWIDE AND REGIONAL CORRECTIONS NEEDS – Legal Compliance

Correctional systems are dynamic and evolving institutions continually searching for better methods to serve and protect the public. They are also highly controlled and regulated through constitutional provisions, statutory laws, published standards, and long established practices. The proposed correctional facility at Fort Greely must meet all applicable laws and codes.

Due to the reuse of existing buildings that were not constructed in compliance with building codes or prison standards, and the remoteness of the site, a prison at Fort Greely will likely not meet many correctional standards and practices. This will require mitigation in terms of bringing the facility up to code, as well as perimeter fencing, surveillance technology, staffing and training.

Compliance with binding laws and governing codes will likely have a significant cost impact in the development of prison infrastructure and management policies and issues. The following table lists some of the many laws, codes or governance documents which must be considered and incorporated into the new facility.

Law/Code or Governance	Mandatory	Best Practice	Cost Implication		
			Yes	No	Uncertain
HB 53	•		•		
BRAC/ILRA	•				•
MOU/RFP for Private Prison	•		•		
Clery Settlement	•		•		
ACA Guidelines		•	•		
Uniform Building Codes	•		•		
EPA Standards	•		•		
ADOC Policies	•	•	•		
ADA Standards	•		•		

Delta Junction/Fort Greely Prison Feasibility Workbook.

COMPATIBILITY WITH STATEWIDE AND REGIONAL CORRECTIONS NEEDS – Population Management Plan

Alaska operates a unified prison/jail system. In all but five states, local governments are responsible for the cost and care of pre-trial felons and all misdemeanants, while state government assumes responsibility only for convicted felons. But in Alaska the state is responsible for the care and custody of all criminal offenders. This unified state system subjects Alaska's corrections populations to more variables than most state governments confront. Population management also is more complex—and expensive—due to Alaska's huge land mass and the geographic isolation of many communities.

The objectives of the State's population management plan are as follows:

- Reduce the number of low-risk offenders entering jails and prisons.
- Increase the number of low-risk offenders exiting jails and prisons.
- Expand bedspace capacity in regional correctional institutions.

Approximately 900 Alaskan prisoners are currently being held in facilities outside of the State. Recent forecasts suggest that Alaska's prison and jail populations will increase 4-8% each year, creating a need for 200 to 300 new beds each year. By year-end 2002 or early 2003, the staff will have 800 or more medium-security male prisoners who could be housed at Fort Greely.

Currently, prison and jail facilities exist in Nome, Fairbanks, Palmer, Bethel, Anchorage, Kenai, Seward, Juneau, Sutton, and Ketchikan. These locations offer population centers with a broad range of community services and utilities, including Alaska State Courts, medical facilities, law enforcement, educational opportunities, and the basic community infrastructure elements of sewer, water, and electricity. In addition, these regional centers provide opportunities for community service, institution/industry jobs and family visits, which are critical to enhance community integration and the capacity for economic self-sufficiency.

Delta Junction/Fort Greely Prison Feasibility Workbook

COMPATIBILITY WITH STATEWIDE AND REGIONAL CORRECTIONS NEEDS – Population Management Plan *(continued)*

State statute dictates that prisoners must be released to the point of arrest. Providing for prisoner release will likely result in prerelease transfer to a lower security institution or community residential center. Wherever the release activity occurs, in-custody prisoner transfer from Fort Greely to Fairbanks will be necessary. This transfer of sentenced prisoners will likely require additional holding cells in Fairbanks, presumably at the Fairbanks Correctional Center.

The Delta Junction/Fort Greely site does not supplement or enhance DOC's regional approach to facility siting. The proximity to Fairbanks (100 miles) and the lack of significant regional population, infrastructure, and services weigh against the site as a regional hub.

Summary: While compliance with state and federal laws could be achieved, the military facilities, remote site, small population and limited resources mean that best corrections practices and policies cannot be met. Mitigation to provide a satisfactory level of service to the State of Alaska will require a larger, more highly trained staff, progressive prisoner programs, importing professional staff, perimeter fencing and surveillance technology, and vigorous compliance monitoring by the State.

GARY A. ZIPKIN
LOUIS R. VEENMAN
JAMES D. LINXWILER
JAMES D. DEWITT
JOSEPH J. PERKINS, JR.
GEORGE R. LYLE
MICHAEL S. MCLAUGHLIN
GREGORY G. RILVEY
SUSAN M. WEST
BARBARA F. FULLMER
JOAN E. ROHLT
MICHAEL K. NAVE
NELLEENE A. BOOTHBY
KARI C. KRISTIANSEN
ROGER P. J. BELMAN

LAW OFFICES OF
Guess & Rudd
P.C.

100 CUSHMAN STREET
SUITE 500
FAIRBANKS, ALASKA 99701-4850
TELEPHONE (907) 462-8080
FACSIMILE (907) 462-7015

510 L STREET
SEVENTH FLOOR
ANCHORAGE, ALASKA 99501-1084
TELEPHONE (907) 793-2200
FACSIMILE (907) 793-2299
W. LUGENE QUEBB 1932-1976
JOSEPH RUDD 1833-1878
FRANCIS E. SMITH, JR. 1841-1891

May 4, 1999

VIA FACSIMILE
(907) 465-2819

Pete Kott
Chair House Judiciary Committee
State Capital, Room 204
Juneau, Alaska 99801-1182

Re: Senate Bill 141
Time line developed by Richard J. Crane
Our File No. 11025.001

Dear Chairman Kott:

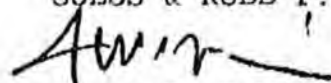
As requested by the House Judiciary Committee during my testimony on behalf of the City of Delta Junction, please find enclosed the chronology developed by the City's consultant, Richard J. Crane, showing his estimate of the time required to obtain a contract through a competitive request for proposal process.

Representative Greene asked when the City received Crane's timeline. Could you please advise him for me that the time line was received at my office on February 24, 1999 via facsimile.

If there is other information or assistance I can furnish to the Committee please do not hesitate to ask.

Sincerely yours,

GUESS & RUDD P.C.


James D. DeWitt

JDD/jsw

Encl: as stated
cc: Mayor Roy Gilbertson (w/o encl.)
Brian Rogers
David Rogers

DELTA JUNCTION PROJECT TIMETABLE

- February 22 - March 5 RC to prepare initial draft of RFP
- March 8 - March 29 Alaska DOC and Guess & Rudd to resolve policy issues raised by initial draft
- April 1 - April 18 RC to prepare second draft of RFP
- April 19 - May 17 Guess & Rudd, DOC and DJ to review RFP
- May 20 - June 1 RC to make final revisions and forward camera-ready copy of RFP to Guess & Rudd
- June 10 Release of RFP (RC to provide list of private corrections companies)
- June 11 - August 10 Preparation of proposals by vendors
- June 10 - June 30 RC to prepare evaluation instruments
- July 1 - July 23 G&R, DJ, and DOC to review and refine evaluation instruments
- June 15 - June 30 DJ and DOC to select evaluation team
- July 26 - August 6 Training of evaluators
- August 10 - Sept. 20 Evaluation of proposals
- _____ Oral presentations/site visits --- to be decided
- Sept. 24 Announcement of selection
- Sept. 27 - August 28 Negotiation of contracts:
 - Lease of facility to DOC
 - Development contract with selected contractor
 - Management contract with selected contractor

Journal Text

5/4



04/27/98 House Journal Page 3266

HB 53

The following letter, dated April 24, 1998, was received:

04/27/98 House Journal Page 3267

HB 53

"Dear Speaker Phillips:

On this date I have signed the following bill and am transmitting the engrossed and enrolled copies to the Lieutenant Governor's Office for permanent filing:

SENATE CS FOR CS FOR HOUSE BILL NO. 53(FIN) am S

"An Act expressing legislative intent without the force of law concerning correctional facility space and the Cleary v. Smith case; adding, as a general power of municipalities, the power to provide for, and enter into agreements concerning the confinement and care of prisoners; relating to authorizing the Department of Corrections to enter into agreements to lease facilities for the confinement and care of prisoners with the City of Delta Junction and with the Municipality of Anchorage; and providing for an effective date."

Chapter No. 15, SLA 1998

[Effective Date: April 25, 1998]

This bill addresses three different issues of importance to the Department of Corrections in Alaska. First, it expresses the Legislature's intent to work with the department to reduce the population in state prisons to the emergency capacities established by the court in the class action suit Cleary v. Smith, 3AN-S81-5274 Civ. Indeed, the Legislature has funded the acquisition of more halfway house beds, more contract prison beds out of state, and other reasonable and cost-effective alternative means of confinement. As a result of this, the State of Alaska has been able to stop incurring fines for violations of the court's order in Cleary, for the first time since 1994.

Second, this bill authorizes the state to enter into a lease agreement with the Municipality of Anchorage for a new 400-bed jail facility. The bill specifies that capital costs may not exceed \$56,000,000 and that the location selected for the facility must be within one mile of courthouse in Anchorage or within one mile of the Cook Inlet Pretrial Facility.

04/27/98 House Journal Page 3268

HB 53

The third part of this bill authorizes the state to enter into an agreement with the City of Delta Junction to lease space within a correctional facility on the realigned Fort Greely military reservation. The lease, if entered into, must be for a minimum of twenty years and provide a minimum of 300 medium security prison beds. The City of Delta Junction is required by the bill to use a process similar to that established in the state procurement code to enter into an agreement with a private third-party contractor for the operation of the correctional facility. A letter of intent accompanying the bill specifies that the cost per prisoner per day, inclusive of capital expenses, is not to exceed \$70.

As we stated time and again during this legislative session, proposals for the expansion of our jail and prison facilities in Alaska must be measured on the basis of:

- * Safety,
- * Comprehensively meeting statewide and regional needs,
- * Consistency with best correctional practices,
- * Involving community participation (government to government), and
- * Cost effectiveness.

This legislation represents a good first step toward meeting our state's needs, but it is by no means complete or comprehensive. Our prison and jail plan, which we have presented to the Legislature, calls for expansions of our current system at Bethel, Sutton, Palmer, Fairbanks, Kenai, Juneau and Barrow. This session I submitted legislation authorizing the first phase of the plan for the most pressing expansion needs in Bethel and Sutton in addition to the Anchorage jail replacement. Only the Anchorage jail has been addressed in this legislation. This legislation is also incomplete with respect to addressing the terms of the leases and the process to be followed by the parties. In signing this bill, I am committing the state to fill in these blanks with provisions that embody the principles of good government.

04/27/98
HB 53

House Journal

Page 3269

For the new Anchorage jail, this means reaching consensus on the terms of the lease, joint approval over the design and construction of the facility, resolution of issues surrounding the cost of care for municipal prisoners, and participation by the state in the financing process for the project.

For a prison at Fort Greely, this means many of the same things, but also a commitment to a government-to-government relationship between the state and the City of Delta Junction on the ownership, construction and operation of the proposed facility. The transactions

contemplated by this legislation are extremely complex -- the State of Alaska is to enter into an agreement with a small community for the care and custody of at least 800 prisoners at a converted army post; the City of Delta Junction is to arrange for the conversion of the post into the largest prison in the state and then select an operator for the pri

There are several critical components necessary to move forward on this project. One is the necessity for Delta Junction to obtain ownership of the land and facility for as long as it is used for prison purposes. Additionally, it is not clear who is to build the prison. The state is not authorized to build it and neither the City nor the re-use organizations have the capability to undertake such a project. Thus, considerable state oversight would be required of any private contractor building a prison to ensure a safe, adequate, cost-effective facility. As the state's lease payments will undoubtedly be used in the financing of construction, the state must also be involved in various parts of the financing to protect its lease interests. The city will also need to use an open and fair competitive process to select the operator of the prison.

The state recognizes the tremendous hardship imposed on Delta Junction by the closure of the Fort Greely post and the state is committed to working with Delta Junction for an effective re-use plan for the post. At the same time, the costs of operating a prison at Fort Greely must be fiscally responsible.

04/27/98

House Journal

Page 3270

HB 53

This legislation represents an important first step toward solving our prison and jail overcrowding crisis. However, if we are to finally and fully resolve our corrections problems, we must continue to work together over the next several years to build more prison and jail beds, find alternatives to incarceration where appropriate, and most importantly, address the early childhood and educational factors that we know lead to future inmate populations.

Sincerely,
/s/
Tony Knowles
Governor"

Bill Root:

[Return to BASIS Main Menu\(20th Legislature\)](#)

BASIS Last Updated 12/31/98