

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11028 HOUSE STATE AFFAIRS

Kentucky Corrections Officers Association (KCOA) also represents some units. Overall, though, the number of organized private units is small.

Second, when a public and collectively bargained corrections facility goes private, the union may lose its representation status and it may be difficult to reorganize. The PCF facility in Appleton, Minnesota was represented by AFSCME when it was a public facility. Once it went private, the guard exclusion requirements of § 9(b)(3) precluded AFSCME or any other major union from representing the corrections officers.

Overall, the significance of privatizing or operating a private corrections facility in Minnesota would mean that the state could no longer guarantee that the workers would not strike. However, because of the significant difficulties facing private corrections officers in organizing under the NLRA, the chances of either a union forming or a strike occurring may be slim. Yet the successful formation of unions in other jurisdictions suggests that it may not be impossible for unions to form in private corrections facilities and if they do, the possibility of a strike when labor negotiations break down will increase.

### **MONITORING, COMPLIANCE, LICENSING, AND REPORTING ISSUES**

One of the most important issues facing states when contracting out for any service, including corrections, is the problem of monitoring a private vendor to ensure compliance with the terms of the contract and being able to take appropriate action if compliance is not forthcoming.

#### **Monitoring and Reporting**

The first issue in terms of monitoring is the scope of monitoring access the state will be permitted. Monitoring is important because it is the means by which the state ensures that private facilities and vendors are honoring the terms of the contract and operating according to any standards set up by the contract or state law.

The first issue is who will be the monitor, how will the state gain access, and under what conditions will the access occur? Second, what will be the scope of the access by the public or the press? Third, will documents produced by the private vendor be covered by the same freedom of information laws as similar documents produced by state institutions? Will the vendor be engaged in self-reporting of required information, or will the state independently gather information? About what type of events does the state wish to be notified? Does it wish to know about: all inmate incidents? Deaths? Disciplinary or use of force issues? Excessive medical care expenses? Finally, how frequent should the reporting occur? Daily? Periodically? Per incident? All of these are important issues speaking to the degree of oversight the state wishes to have versus the amount of discretion it wishes to give a private vendor.

Yet the bottom line question is does monitoring work and is it an effective tool to ensure compliance? The evidence here is mixed and the answer depends on whom one talks to and when.

## THE LEGAL AND POLITICAL DIMENSIONS OF PRIVATE PRISON

In Texas, monitoring is set up under a contract that provides for the state to have access at any time. Initial reviews of the operation of the private prisons labeled them a failure, at least according to the Texas Board of Criminal Justice (TBCJ) (Fair, May 1990). An internal audit of facilities run by CCA and Wackenhut indicated that while both companies had promised "first-class facilities," there were clear deficiencies in medical care, substance abuse programs, and education programs, as well as numerous reports of inmate abuse by inexperienced guards (Fair, May 1990). All indications were that the private prisons were failing to meet the terms of the contract. However, subsequent reports indicated that the vendors were willing to make changes in service delivery and the TBCJ indicated progress (Fair, June 1990). Whether permanent progress has been made in Texas remains a matter of contention.

In Florida, a private commission was set up to engage in monitoring. According to a 1996 report:

The Correctional Privatization Commission (CPC) utilizes an on-site monitor at each of the two private correctional facilities it contracts. The on-site monitors are employed by the CPC and submit monthly reports. In addition, CPC contracts for an independent annual monitoring of each of the facilities it contracts.

The contract monitoring instrument differs for the DC and CPC privatized facilities. For the DC facility, the monitor reviews adherence to the terms of the contract only. For the CPC facilities, the monitor reviews adherence to ACA standards (Florida Corrections Commission 1996).

In general, the 1996 report noted that the cost and quality of the services provided by the private vendor were satisfactory, although the report did note problems in assessing true per diem costs or in obtaining other satisfactory measures of performance.

Finally, in Ohio, CCA's Youngstown facility was to be monitored by the District of Columbia and this facility was not supposed to have close-custody inmates (Anon 1998). However, many problems have occurred in this facility, including allegations of the housing of maximum security inmates, deaths, beatings, and substandard conditions. Lawsuits have already been filed against CCA in relation to the operation of this facility, with more pending. Additionally, there are calls from Ohio's governor to terminate the contract with CCA to house inmates at this facility.

The lessons of the Texas, Florida, and Ohio facilities are twofold. On the one hand, monitoring may not be enough to ensure compliance. There is evidence that private vendors will do no more than what the state will contract for and then be willing to enforce. If there are no terms in the contract the service will not be provided and even if there are terms in the contract, unless enforced, there is no guarantee that the terms will be honored. The scope of services is directly tied to the willingness and ability of the state to monitor and push for contract compliance.

On the other hand, these examples demonstrate that monitoring can work. Monitoring can reveal deficiencies and when monitoring is coupled with state decisions to enforce, then the DOC can secure compliance with its requirements.

In terms of notification, there have also been problems in the past. The most famous example is when out-of-state inmates in a CCA Texas facility escaped and the state of Texas was not immediately notified. Similar allegations of lack of notification in regards to a change in inmate classification also are being made in connection with the CCA Youngstown facility. In these cases, the private vendor allegedly failed to provide notification of an event the state wanted to know about. Eventually in Texas, the law was rewritten to mandate notification. The outcome in Ohio is still unresolved today.

All this suggests that while monitoring is critical to the privatization process, it is not clear from the evidence that monitoring is enough. Private vendors have strong profit motives to cut financial corners and not provide expensive services. They also have the ability to hide many of these cuts in services from monitors. This means that a state needs clear language mandating the vendor's duties, a monitoring program that allows for the type of access and information gathering critical to assess compliance, and the enforcement tools and resolve to require vendors to honor the contract and obey the law.

### **Regulatory Capture**

One factor compromising the effectiveness of any monitoring program by the state is the problem of regulatory capture. Regulatory capture is a term political scientists use when parties who are supposed to be regulated by the government come to dominate or control the regulatory process (Lowi 1969; Lindblom 1977; Cigler 1991; Farber and Frickey 1991). Regulatory capture occurs when the close contact between the regulatory agency and the regulated industry make the former dependent upon the latter for technical knowledge, when they become sympathetic to the goals of the latter, or when personnel from the state leave to become employees of the regulated industry (political scientists refer to this as the "revolving door" phenomenon). Regulatory capture can also occur as a result of the interest group activity and lobbying of the regulated industry, influencing policy makers and causing the regulatory environment to become insulated from outside influence and biased in their favor as opposed to remaining neutral. This phenomenon is often referred to as the formation of "iron triangles."

Harding, who is sympathetic to the privatization of corrections, acknowledges the reality of regulatory capture when it comes to the monitoring of private prison vendors, labeling the recruitment of former regulators to work for the regulated industry as one of the single most important ways that capture occurs (Harding 1997: 33-4). In reviewing the problem of capture, Harding distinguishes two ways to set up monitoring: by statute or by contract (Harding 1997: 37-8). Statute-based monitoring is a compliance check system that is created by the legislature, defining the types of monitoring to occur, goals, objectives, and reporting mechanisms. With contract-based systems, the terms of the monitoring are determined by contract negotiations between the state and a specific vendor.

Texas is an example of contract-based monitoring while Florida is an example of statute-based monitoring (Harding 1997: 38). Florida law details the terms of monitoring in

## THE LEGAL AND POLITICAL DIMENSIONS OF PRIVATE PRISON

the contract while Texas law leaves the contract to define the scope and specifics of monitoring. Because the contract itself defines the scope of the monitoring, and the terms of the agreement will reflect the relative bargaining power of the state vis-a-vis the private parties, Harding describes the Texas contract-based monitoring program to be inferior to the Florida model and he advocates the latter as the preferred system for setting up a monitoring program.

However, even with a statute-based system, the problem of capture persists. So long as the distance or goals of the regulator and regulated industry are seen as close or identical, the state will not be able to engage in neutral monitoring. Harding points to the Tennessee prison system, quoting a state official as saying that the private prisons are "in the family of Tennessee prisons" as an example of how easy it is for a regulator not to view private prisons as distinct enough from the state to monitor in an impartial fashion (Harding 1997: 48). In fact, Harding even argues that perhaps the state itself cannot assign to the same department the regulation of prisons and the delivery of prison services. This is because the conflict of interest inherent in a system where a DOC regulates itself poses many regulatory capture-like problems. As an alternative, he proposes to set up a separate regulatory body to monitor and ensure compliance that is distinct from either the state or private corrections services agency (Harding 1997: 162-64).

Harding's concerns are real and his solutions deserve merit. Were the state of Minnesota to consider privatization as a policy option, it must confront the problem of regulatory capture as threatening the ability of the state to monitor. If the state wishes to set up a competitive model where public and private facilities compete against one another then the state should consider reorganizing the DOC to separate corrections regulation from service delivery. Short of that, several other recommendations to minimize capture should be considered.

First, the monitoring program should be statute-based. Currently, Minnesota has two types of monitoring regarding the PCF. There is the compliance monitoring to license the facility. This licensing inspection is part of the inspection process for all the corrections facilities in the state and it is mandated by state law. Second, there is the contract compliance monitoring for the PCF. The scope of this monitoring is defined by the contract the state has with CCA. At a minimum, the state needs to change the monitoring process of the contract to make it statute-based because it does not appear that the current process is adequate to meet the state's interests. For example, the state has been unable to get CCA to provide a drug rehabilitation program at PCF even though it is required by the contract.

A second recommendation for the state is that it should enact legislation that prevents the revolving door phenomenon, banning state officials from leaving office and taking a job with a private corrections vendor within eighteen months after leaving employment with the state. Many states and the federal government already have this type of broad-based revolving door legislation that applies not just to the corrections industry. Revolving door legislation will help lessen the connection between the regulated party and the regulated industry.

Third, the state may wish to consider rotating monitors to prevent the development of personal relationships that could influence the compliance inspection process.

Finally, the state needs to have real remedial options and enforcement tools it can employ to enforce compliance. As noted above, the state either does not have the tools or it is unwilling to use what tools it has to sanction or encourage compliance.

### **Contract Enforcement, Damages, and Remedies**

The success of any privatization program hinges on the ability of the contracting parties to enforce the contract. It is critical that the state of Minnesota be able to enforce breaches of a contract by a private party. Thus far, the record is mixed in terms of Minnesota's ability to enforce its existing contract and there are some questions regarding the overall ability and viability of relying simply upon contract remedies to ensure compliance.

One basic argument given in support of the privatization of corrections services is that if the state wants to secure specific goals it merely needs to negotiate them into the contract. There are several basic problems with that argument.

First, unless the basic terms of a contract are determined by statute, the contract negotiation process will define the terms of the contract, including the terms of inspection, standards to be met, etc. This opens up the possibility that there will be a lack of uniformity throughout the state as each contract defines potentially different terms of enforcement, remedy, etc.

A second problem in enforcement is that the state must articulate a contract that defines what to do in cases of noncompliance or breach. For example, a total failure by a vendor to honor a contract constitutes a breach of a contract and would probably merit cancellation of a contract. Yet what if the breach is only partial? The state needs to have tools at its disposal that define what constitutes a material versus minor breach and how these are handled. As noted above, the Oklahoma RFP and model contracts seek to do that, defining the grounds both of what constitutes contract violations and what remedies, including liquidated damages, are available.

Similarly, §§ G3.3 and G.3.5 of the Texas Model Contract provide for the withholding of or deductions from per diems if the inspector deems that there is a breach or partial breach of the contract or if the vendor is not complying with the contract. This option of withholding payments offers the state remedies for noncompliance that are more satisfactory and quicker than simply going to court.

Third, even if damages and an enforcement mechanism are articulated by statute or contract, the state must be willing to take steps to enforce the contract if breaches or violations occur. For example, Minnesota currently seems unwilling or unable to act to enforce its current contract with CCA for housing inmates at PCF, specifically in regards to the delivery of a drug rehabilitation program.

Fourth, while a contract is a contract, enforcement of these agreements is not a private issue but a matter for the judiciary to handle. No matter how clear a contract and how defined the remedies or damages clauses are, ultimately breaches of contract are legal issues for the courts to address. For example, the general rule of law is that determination of contract damages is a judicial matter and that liquidated damages clauses will not be enforced

by the courts unless damages could not be ascertained at the time of contract formation. What this means is that the courts may not necessarily go along with negotiated clauses specifying damages and they may or may not defer to contractual definitions regarding what constitutes a material versus minor breach, etc.

Finally, even if the terms of a contract are negotiated, parties may not always honor the terms or may sue to fight enforcement of the contract. For example, New Mexico had a contract with CCA for a women's corrections facility that included a clause giving the state the option to buy. When the state sought to exercise that option, CCA sued. Eventually the suit was settled, according to Nick D'Angelo, general counsel for the New Mexico Department of Corrections, with CCA agreeing to pay the state \$3.5 million and lowering its per diem in return for the state forgoing its option to purchase the facility. The point here is that just because terms are in a contract that does not mean that these terms will necessarily be enforced or obeyed.

Overall, Nick D'Angelo's advice is that at a minimum, the state must specify in clear and unambiguous language what it wants the vendor to provide and the state should avoid drafting hasty contracts.

### Licensing

One feature that appears to be unique to Minnesota in terms of regulating corrections facilities is that they must be licensed and inspected by the commissioner of corrections. Section 241.021 stipulates that the commissioner shall "inspect and license all correctional facilities throughout the state, whether public or private." Minn. Stat. § 241.021 subd. 1. This general power to license and inspect requires one inspection every two years, empowers the commissioner to issue rules to require any facility to meet minimum state standards, and permits the revocation of licenses of any institution that does not meet the promulgated minimum state standards (Minn. Stat. § 241.021 subds. 2 and 3).

The power of licensing institutions serves several important objectives. First, it gives the State additional leverage to inspect and monitor and to ensure that certain minimum standards are being met. Second, it provides another avenue to enforce corrections standards, using the licensing process and the threat of revocation to ensure compliance. Third, this licensing process, used in conjunction with contract monitoring, gives the State two different yet complementary enforcement tools to promote state corrections goals. Finally, a licensing system seems to act as a check on the creation of speculative prisons, that is, prisons built privately and then used to house inmates, all without the knowledge of the state (Swope 1998). Instead, the licensing prevents the state from being surprised by a new facility.

However, while the licensing of corrections facilities strengthens the regulatory arm of the State, it does not replace the need for enabling legislation, contract formation, and monitoring. In the case of licensing, this process applies to all corrections facilities in the state regardless of whether they house state inmates. In the case of contracts, these involve a private vendor housing state inmates and the contract interests that the state has in this situation with a private vendor are clearly different from that of a state acting as a general and neutral regulator. Hence, the state needs both licensing and the contracting process to address distinct legal and financial interests.

Finally, given that the state may be a regulator and a purchaser of corrections services, there may be some conflicts of interest in performing both roles. This means that the state needs to keep these two roles distinct, lest it confront due process challenges that it is illegally using the licensing process as a way to enforce contracts.

### **Conclusion**

Were Minnesota to consider privatization as a corrections policy option, it needs to make some decisions regarding monitoring, reporting, and enforcement. Its existing contract with CCA for PCF is deficient in that it does not guarantee the state full access to the PCF at any time for the purposes of inspection. Nor does the contract have language defining the conditions constituting breach of contract or remedial policies to follow to correct contract deficiencies. All of these problems hamper the effectiveness of the state-monitoring program.

At a minimum, the state should enact a statute defining the scope and requirements of monitoring. The statute should be used to guide specific contracts and the statute should guarantee state, press, and public access to a private facility equal to the access accorded to a public facility. The law should also define how monitoring should take place, with the state providing the monitor. In addition, the statute and the contract should specify conditions of breach and remedies, such as found in Oklahoma, and there should be a system that allows the state to withhold payments for noncompliance. There should also be detailed language regarding what the state wishes to be notified about and when. There must also be some mechanism to provide for an independent review of any self-reporting provided by the vendor to preclude the possibility of misrepresentation. Finally, the state should continue to use its licensing system as a means of regulating private prisons, but it must not rely solely on that licensing process to protect its interests when contracting for corrections services.

Yet the most important lesson of monitoring is enforcement. Enforcement or implementation oversight is the single most important variable influencing successful compliance. The current record of Minnesota DOC is mixed in terms of its willingness or ability to enforce the current CCA contract. Were Minnesota to expand its corrections privatization, the lesson from other states is that contracts with the private vendors are only as good as the enforcement mechanism.

### **PRIVATE PRISON OPERATOR LEGAL LIABILITY**

#### **42 U.S.C. § 1983 Lawsuits**

Any individual who operates under the "color of the law" to deprive an individual of her civil rights may be sued under 42 U.S.C. § 1983. In general state governments that operate correctional facilities cannot be sued under § 1983 because of sovereign immunity (Chaires and Lentz 1996). However, sovereign immunity is not an absolute protection from lawsuits.

The Supreme Court has ruled that state entities are liable for § 1983 violations in their own facilities, yet the Eleventh Amendment and the principle of sovereign immunity generally grants to state actors a qualified immunity from § 1983 suits for monetary damages

## THE LEGAL AND POLITICAL DIMENSIONS OF PRIVATE PRISON

brought against them as a result of their operating a prison. This means that, in general, state entities are not liable for monetary damages arising out of § 1983 suits, yet they and state actors or agents are subject to injunctive relief in these suits (*Edelman v. Jordan*, 415 U.S. 651 (1974)). In addition, while state actors are protected from monetary damages arising out of the performance of their official duties, they may be liable for damages when sued in their individual capacities (*Ex parte Young*, 209 U.S. 123 (1908)).

One question the privatization of corrections services raises is whether the principle of sovereign immunity similarly grants private corrections vendors qualified immunity from § 1983 suits. Until recently the answer to that question was speculative and much ink was spilled debating the policy and legal implications of shielding private prison operators from these types of suits (Robbins 1998; Carter 1998; Koenig 1998; Schaffer 1996). Moreover, in *Tinnen v. Corrections Corporation of America*, 1993 U.S. Dist. LEXIS 20309 (W.D. Tenn. Sept. 21, 1993), *Smith v. United States*, 850 F.Supp. 984 (M.D. Fla. 1994), and *Citrano v. Allen Correction Center*, 891 F.Supp. 312 (W.D. La. 1995), federal courts did hold that private corrections operators possessed qualified immunity from suits that paralleled the immunity enjoyed by states. These opinions suggested that private operators would be entitled to the same immunity benefits as states and, more importantly, that qualified immunity might translate into financial savings in terms of reduced insurance premiums.

However, in 1997, the Supreme Court ruled in *McKnight v. Richardson*, 117 S.Ct. 2100 (1997), that private prison operators did not enjoy a qualified immunity against § 1983 suits even though states would be entitled to such an immunity when they operated a corrections facility.

The Court declined to extend qualified liability to private corrections vendors for several reasons, but at the heart of their analysis was that the context of public versus the private administration and delivery of corrections services was different, such that a government needed the qualified immunity while private market participants did not.

The *McKnight* decision raised several important points with significant implications for the privatization of corrections services. First, the decision clearly established different liability standards for public versus private prisons. Suits arising out of publicly-operated prisons grant states a qualified immunity against lawsuits while private operators will not receive the same qualification. While states are not absolutely immune from § 1983 suits, in part because individual agents of the state may be named defendants in these suits and the state may be required to indemnify these parties for any litigation or damage awards, the *McKnight* decision definitely sets a precedent that private prison operators bear a liability that states do not.

Second, *McKnight* potentially changes the cost calculations regarding the operation of private prisons. While the justification for private corrections is that private vendors can deliver corrections services more efficiently at costs cheaper than offered by the state, these savings may be offset by the increased liability and legal costs associated with these vendors not receiving limited liability. More specifically, private vendors may face higher costs in terms of insurance premiums and judgments. Moreover, and this is purely speculative, juries may be more willing to award higher punitive damages against private vendors in § 1983 cases than they would have offered if the state were liable and could be sued. The basis for

## THE LEGAL AND POLITICAL DIMENSIONS OF PRIVATE PRISON

this claim is that citizens may be less concerned that taxpayers will be on the hook for the damage award when the suit is against a private party. Again, it is too soon to know if this claim will prove to be true, but nonetheless there is a potential that private vendors could be facing significant liability costs as compared to a state government.

Third, *McKnight* does not mean that states are off the hook in terms of § 1983 suits against private parties. In *West v. Adkins*, 487 U.S. 41 (1988), and in *Rendell-Baker v. Kohn*, 457 U.S. 830, 842 (1982), the Supreme Court held that a private actor is a state actor when the function being "performed has been traditionally the exclusive prerogative of the state." Yet state agents may still be named parties to the suit and in fact have been so named in three current cases. This means that states may not use private prisons to escape any legal responsibility they have as a result of the infringement of civil rights caused by private prison vendors. Hence, states cannot shield their liability by hiding behind a private operator (Gold 1996: 380; McDonald 1998: appendix 21; *Nelson v. Prison Health Service, Inc.*, 1997 WL 821531 (M.D.Fla. 1997)). If private vendors are less respectful or less likely to protect the rights of inmates than are state operators, then both the private vendor and the state may face increased exposure to § 1983 when the corrections system is privately as opposed to publicly owned and operated.

Finally, the potential increased operating and insurance costs surrounding the operation of private corrections facilities should force states to reevaluate the indemnification and insurance requirements in their contracts with private vendors. Current contracts may not have enough insurance requirements or may be lacking language that requires private vendors to indemnify the state fully for all the potential § 1983 expenses.

Overall, the denial of qualified liability to private corrections operators potentially exposes both the state and private operators to liabilities that the state as a prison operator does not face. How this will impact the efficiency and operating costs of private prisons is yet to be seen.

### Legal Liability of Private Corrections Operators

In addition to § 1983 liability, *McKnight* indicates that private vendors may also be responsible for other types of legal claims that states are not. A quick review reveals that the potential basis of claims is extensive.

#### 42 U.S.C. § 1985 Civil Rights Liability

Section 1985 addresses private discrimination by private parties. Passed as part of the 1871 Civil Rights Code, § 1985 was originally part of the "Klan Acts" and was aimed at preventing the Ku Klux Klan from discriminating against Blacks. Specifically, § 1985 provides that:

If two or more persons in any State or Territory conspire to prevent...for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or equal privileges and immunities under the laws...the party so injured or deprived may have an action for

## THE LEGAL AND POLITICAL DIMENSIONS OF PRIVATE PRISON

recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

The focus of § 1985 is on preventing two or more individuals from interfering with the rights of another. This means that the state itself is not liable for civil rights deprivations under this law. Even public officials acting in their official capacity as public officials are not liable (*Graves v. United States*, 961 F.Supp. 314 (D.D.C. 1997)). Hence, only when public officials or employees are acting as private individuals or parties is there any legal liability attached to the state via § 1985. This means that private prison operators, as private persons, may be part of a conspiracy to violate the civil rights of individual prisoners even though the same exposure does not attach to the state when it operates its own corrections facilities (Chaires and Lentz 1996).

To prove a § 1985 violation, a prisoner would need first to demonstrate a conspiracy between two or more persons in the private corrections facility. Here, policies adopted by the warden or any of her staff may be considered when looking to see if two or more people agreed to deprive someone of their civil rights. This agreement could also pertain to the case where guards conspire among themselves or when any of the different private parties so agree to engage in certain types of behavior. What type of behavior could result in a § 1985 violation?

Merely discriminating against prisoners *qua* prisoners is not enough. Courts have held that prisoners in themselves do not constitute a protected class (*Justice v. Coughlin*, 941 F.Supp. 1312 (N.D.N.Y. 1996); *Malsh v. Austin*, 901 F.Supp 757 (S.D.N.Y. 1995); *Lowe v. Carter*, 554 F.Supp. 831 (D.C.Mich. 1982)). Instead, a prisoner would need to show either that he was a member of a protected class, such as a specific race, national origin, or religion, or that a specific constitutionally-protected right was being infringed (for example, there was a First, Eighth, or Fourteenth Amendment civil rights deprivation). Were this demonstrated, along with an explicit or implicit agreement between two persons, then the private prison would be legally liable for the civil rights deprivation.

Hence, unlike a state prison operator, a private vendor faces unique § 1985 liabilities.

### Tort Liability

Another type of liability private prison operators face is for torts committed by the corrections facility, staff, and employees. Unlike the State of Minnesota, which generally enjoys limited tort liability immunity under state law (Minn. Stat. § 3.736), a private vendor would not be able to claim this immunity or limit on tort awards.

The implications of this tort liability are potentially enormous. Specifically, while the state of Minnesota can protect itself against liability for the torts committed by its staff, were an employee of a private corrections vendor to commit assault, battery, or any other tort against an inmate, that employee would be liable for the tort and the private vendor would similarly be liable under the doctrine of respondeat superior.

Hence, the potential for tort liability may potentially drive up the costs of operation of a private facility, imposing additional concerns for the state in terms of insurance requirements to be specified in the contract with the private vendor.

### **Compliance with other Federal and State Laws**

Operation of a private prison may also impose other legal liabilities upon a private vendor. For example, according to the recently decided Supreme Court decision, *Pennsylvania Department of Corrections v. Yeskey*, 118 U.S. 1952 (1998), private vendors and state operators of prisons must comply with a host of new requirements under the Americans with Disabilities Act. In addition, building codes and Occupational Safety and Health Administration (OSHA) requirements may impose specific legal requirements upon private vendors that the state does not face when it operates a facility. Perhaps the state of Minnesota could alter some of its laws to exempt or modify application of these laws when it comes to private prisons, but there are potentially many federal laws that could be applicable to private prison operators.

### **"Deliberate Indifference" and the Eighth Amendment**

One last potential legal dilemma facing the state of Minnesota and a private vendor grows out of the Eighth Amendment's cruel and unusual punishment clause. In *Farmer v. Brennan*, 114 S.Ct. 1970 (1994), the Court held that state prison officials, and presumably those acting under contract with the state, may be held liable for their deliberate indifference to prisoners' Eighth Amendment rights when they knowingly disregard a substantial risk of harm to the prisoner. This standard requires proof, either direct or circumstantial evidence, of an objective component of harm and a subjective component: that the state official or actor knew of the risk and failed to act or directly caused the harm. Under this ruling, the courts have held that a state may be liable for an Eighth Amendment violation if it deliberately refuses or neglects to provide medical care or other services to prisoners. Given this standard and earlier rulings such as *West v. Adkins*, 487 U.S. 41 (1988), a state that contracts out to a private vendor to provide corrections services could still remain liable under the Eighth Amendment if it knows of possible violations or abuses by the private vendor but fails to do anything about it.

Similarly, as noted earlier, a state can be held liable for actions of a private party if one can demonstrate "state action." To show that, a party would need to connect some non-neutral involvement between the government and the challenged activity. Specifically, if one can demonstrate that the state was sanctioning or encouraging the deprivation of civil rights of an inmate by a private corrections vendor, or even if the state turned a blind eye to this deprivation by a private vendor, then the state may also be liable for the civil rights deprivation.

The importance of the deliberate indifference and state action doctrines here is that a state such as Minnesota cannot necessarily insulate itself from legal liability by turning its facilities over to a private vendor. If the state remains heavily involved in the oversight of a private prison, one may be able to assert that the state involvement rises to the level of state action, thus implicating the state as a defendant to any suit. Conversely, if the state deliberately refuses to get involved as a way to escape liability, such deliberate indifference

## THE LEGAL AND POLITICAL DIMENSIONS OF PRIVATE PRISON

may still implicate the state under the Eighth Amendment. In either case, the state needs to strike a balance between too much and too little oversight, not only to address the scope of its liability, but also to balance the ability of the private contractor to be flexible enough to save operational costs versus the state's need to mandate standards to ensure that it has not unconstitutionally delegated away its constitutional responsibilities.

### Conclusion

Overall, private corrections vendors must bear all of the responsibilities of state prison operators but do not reap any of the legal benefits. One commentator stated concisely:

Private jail and prison operators are apparently subject to statutes fashioned to render state agencies liable for their misconduct, but ineligible for the benefits derived from statutes and common law doctrines that preclude or limit the liability of public bodies, such as state tort liability and the doctrine of sovereign immunity (Grant 1986: 135-6).

Private prison operators potentially face many legal issues and liabilities that states do not face when they operate corrections institutions themselves. The exact scope of this liability and how it will impact costs, operations, and program is not yet clear because cases such as *McKnight* have only recently made it clear that private prison operators do not enjoy qualified liability from civil rights claims. Hence, litigation is currently occurring that will determine how this liability plays out in court, and future litigation will no doubt also open up private prison operators to additional sources of liability that states do not confront.

### CONCLUSION

The legal issues surrounding the privatization of prison facilities are significant yet do not pose an insurmountable barrier should the state of Minnesota decide to pursue this option to deliver corrections services. This chapter reviewed what the state of Minnesota needs to consider or undertake were it to privatize some or all of its corrections facilities. Included in the conclusions and recommendations are:

- \$ The state of Minnesota presently does not have statutory authority to privatize its corrections services. This means that even the current contract with CCA to provide corrections services at the PCF may be illegal.
- \$ Because the state of Minnesota has not reserved for itself the final determination regarding the use of force or the imposition of discipline at the PCF, its current contract allowing for the private vendor to use force and discipline inmates may violate the federal or state constitutional clauses against the delegation of legislative or public authority to a private party.
- \$ If the state of Minnesota wishes to privatize corrections services, it needs to enact enabling legislation defining the goals of privatization, the powers to be delegated to the vendor, powers to be reserved to the state, the RFP process, and the general content of the contract with private vendors.

## THE LEGAL AND POLITICAL DIMENSIONS OF PRIVATE PRISON

- \$ The state enabling legislation needs to provide for the creation of a state model contract that would form the basis of all contracts with vendors.
- \$ Contracts with private vendors need to be very specific with regards to the delivery of services to be offered by the vendor.
- \$ Contracts with private vendors need to specify in detail the conditions for what constitutes a breach of contract, the remedies for breaches, and the possible liquidated damages or penalties in the event of a breach.
- \$ Contracts with private vendors need to specify in detail the insurance requirements to be met by these vendors and the contracts must indemnify the state against all claims arising out of the private operation of a corrections facility.
- \$ Contracts with private vendors must specify a process for the state to monitor compliance and to verify any services and reporting made by the private vendor to the state. Any monitoring program set up must guarantee the state access to the private facility and records without notice and at any time.
- \$ Contracts with private vendors must seek to avoid the problem of regulatory capture by preventing former state officials from assuming employment with a private corrections provider for 18 months following the termination of state employment.
- \$ Contracts with private vendors must specify a plan and procedure for the resumption of state control in the event of a strike, the inability of the vendor to perform the contract, or the termination of the contract.

In addition to the above recommendations, there are two additional concerns that need to be noted. First, were the state of Minnesota to privatize a corrections facility, the employees at this facility could strike and the state could not prevent this strike. Because the employees at the facility would no longer be state employees, they would be governed by federal law, and state legislation to preclude strikes would be federally preempted.

Second, the private operation of a corrections facility introduces a degree of legal liability that state operation does not face. The scope of this liability is potentially significant, leading perhaps to costs and expenses by a private party that would make its operation of a facility more expensive than state operation.

REFERENCES

- AFSCME. 1998. *Should Crime Pay? A Review of the Evidence*. Washington, D.C.: AFSCME.
- Anon. 1998. "Louisiana Seizes Youth Jail After Abuse Reports." *New York Times*, July 24: A10.
- Anon. 1998. "Four Ohio Prisoners Caught After Escape." *New York Times*, July 29: A11.
- Bates, Eric. 1998. "Private Prisons." *The Nation*, January 5, 1998: 11-18.
- Butterfield, Fox. 1998. "Profits at Juvenile Prisons Earned at a Chilling Cost." *New York Times*, July 15: A1.
- Butterfield, Fox. 1998. "U.S. Suing Louisiana on Prison Ills." *New York Times*, November 6: A14.
- Carter, Brett R. 1998. "Civil Rights" *Richardson v. McKnight: The Rise and Fall of Private Prison Guards' Qualified Immunity*. 28 *University of Memphis Law Review* 611-640.
- Chaires, Robert D. and Susan A. Lentz. 1996. "Some Legal Considerations in Prison Privatization." *Privatization and the Provision of Correctional Services: Context and Consequences*, pp. 31-61. Mays, Larry G. and Tara Gray. Cincinnati: Anderson Publishing Company.
- Cigler, Allan J. 1991. "Interest Groups." In William Crotty, ed., *Political Science: Looking to the Future*, v. 4. Evanston: Northwestern University Press.
- Crane, Richard. 1998. "Wanted: A Model Law for Regulating Privatization." *Correctional Law Reporter*, v. ix, no. 6: 83-92.
- DeLisser, Eleena. 1998. "Ohio's Governor May Press Closure of CCA-Run Jail." *Wall Street Journal*, July 29: A6.
- Department of Justice. 1998. *National Workshop on Privatization: Workshop Materials*. San Francisco, California.
- Dipiano, John G. 1995. "Private Prisons: Can They Work? Panopticon in the Twenty-First Century." 21 *New England Journal on Criminal and Civil Confinement* 171-202.
- Fair, Kathy. 1990. "State Board Calls Private Prisons Failure." *Houston Chronicle*, May 16: 1A.
- Fair, Kathy. 1990. "Turnaround in Private Prisons." *Houston Chronicle*, June 10: 1A.
- Farber, Daniel A. and Philip P. Frickey. 1991. *Law and Public Choice: A Critical Introduction*. Chicago: University of Chicago Press.

THE LEGAL AND POLITICAL DIMENSIONS OF PRIVATE PRISON

- Feeley, Malcolm M. & Edward L. Rubin. 1998. *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons*. New York: Cambridge University Press.
- Fleming, Joseph Z. 1998. "The Privatization Precedent Set by the Lord Chancellor in *Iolanthe*: An Analysis of *Walker v. McKnight*." 30 *The Urban Lawyer* 233-250.
- Florida Corrections Commission. 1996. *Annual Report: An Assessment of Florida's Privatization of State Prisons*.
- Gold, Martin E. 1996. "The Privatization of Prisons." 28 *The Urban Lawyer* 359-399.
- Gran, Judy S. 1986. "Prisons for Profit." 7 *Hamline Journal of Public Law and Policy* 123-141.
- Hadden, Douglas. "Wyatt Guards Organize." *The Times*.
- Harding, Richard W. 1997. *Private Prisons and Public Accountability*. New Brunswick: Transactions Publishers.
- Harvard Law Review*. 1997. "The Supreme Court's Leading Cases." 111 *Harvard Law Review* 390-400.
- Jaffe, Greg and Rick Brooks. 1998. "Hard Time: Violence at Prison Run by Corrections Corp. Irks Youngstown, Ohio." *Wall Street Journal*, August 5: A1.
- Jensen, Eric M. 1986. "The NLRA's Guard Exclusion: An Analysis of Section 9(b)(3)'s Legislative Intent and Modern-Day Applicability." 61 *Indiana Law Journal* 457-493.
- Koenig, Heidi. 1998. "*Richardson v. McKnight*: What does the Future of Qualified Immunity Hold for Nongovernmental Employees?" 58 *Public Administration Review* 8-9.
- Lifsher, Marc. 1998. "Busting into the Prison Business." *Wall Street Journal*, May 27: B10.
- Lindblom, Charles. 1977. *Politics and Markets*. New York: Basic Books.
- Lippke, Richard L. 1997. "Thinking About Private Prisons." *Criminal Justice Ethics*, Winter/Spring 1997: 26-38.
- Logan, Charles H. 1990. *Private Prisons: Cons and Pros*. New York: Oxford University Press.
- Lowi, Theodore. 1969. *The End of Liberalism*. New York: Norton.
- Mays, Larry G. and Tara Gray. 1996. *Privatization and the Provision of Correctional Services: Context and Consequences*. Cincinnati: Anderson Publishing Company.

THE LEGAL AND POLITICAL DIMENSIONS OF PRIVATE PRISON

McDonald, Douglas and Elizabeth Fournier, Malcom Russell-Einhorn and Stephen Crawford. 1998. *Private Prisons in the United States: An Assessment of Current Practice*. Cambridge: Abt Associates, Inc.

McGuinness. 1981. *Guard Unions and the Problem of Divided Loyalties*. Philadelphia: University of Pennsylvania Industrial Research Unit.

Minnesota Department of Administration. 1997. *An Evaluation of Minnesota's State Corrections Institutions*. St. Paul.

Minnesota Department of Corrections. 1997. *Contract Between State of Minnesota and Corrections Corporation of America*.

Park, Paula. 1998. "Two Dead in Ohio." *Washington City Paper*, vol. 18, no. 15, April 17-23: 22-28.

Ratliff, Warren L. 1997. "The Due Process Failure of America's Prison Privatization Statutes." 21 *Seton Hall Legislative Journal* 371-424.

Robbins, Ira P. 1987. "Privatization of Corrections: Defining the Issues." 40 *Vanderbilt Law Review* 813-888.

Robbins, Ira P. 1988. *The Legal Dimensions of Private Incarceration*. Chicago: American Bar Association.

Saavas, E.E. 1987. *Privatization: The Key to Better Government*. Chatham: Chatham House Publishers.

Schaffer, Robert G. 1996. "The Public Interest in Private Party Immunity: Extending Qualified Immunity From 42 U.S.C. § 1983 to Private Prisons." 45 *Duke Law Journal* 1049-1087.

Scheb, John M. II and David H. Folz. 1989. "Prisons, Profits, and Politics: The Tennessee Privatization Experiment." *Judicature*. August/September: 98-102.

Schlosser, Eric. 1998. "The Prison-Industrial Complex." *Atlantic Monthly*, December: 51-79.

Schultz, David. 1998. *The Politics of Civil Service Reform*. New York: Peter Lang Publishing, Inc.

Simon, Ellen. 1992. "Who's Minding the Rights of Inmates When Justice Goes to the Lowest Bidder?" *Human Rights*. Spring: 22-25.

State of Colorado. 1998. *West's Colorado Revised Statutes Annotated*. St. Paul: West Group.

State of Florida. 1998. *West's Florida Statutes Annotated*. St. Paul: West Group.

THE LEGAL AND POLITICAL DIMENSIONS OF PRIVATE PRISON

State of Louisiana. 1998. *West's Louisiana Statutes Annotated*. St Paul: West Group.

State of Minnesota. 1997. *State of Minnesota Department of Corrections Contract for Services with Corrections Corporation of America*.

State of Minnesota. 1996. *Minnesota Statutes*.

State of New Mexico. 1998. *New Mexico Statutes Annotated*. Charlottesville: Michie Law Publishers.

State of Oklahoma Department of Corrections. 1998. *Correctional Services Contract*. (February 13, 1998).

State of Oklahoma. 1998. *Oklahoma Statutes Annotated*. St. Paul: West Group.

State of Oklahoma. 1998. *A Request for Proposal by the State of Oklahoma Department of Corrections: Inmate Housing* (January 30, 1998).

State of Pennsylvania. 1998. *Purdon's Pennsylvania Statutes Annotated*. St. Paul: West Group.

Swope, Christopher. 1998. "The Inmate Bazaar" *Governing*. October: 18-22.

Texas Department of Criminal Justice. 1998. *Solicitation, Offer, and Award, Continued Award*. <[http://www.tdcj.state.tx.us/html/private\\_prisons\\_solicitation\\_1.html](http://www.tdcj.state.tx.us/html/private_prisons_solicitation_1.html)>.

United States Government Accounting Office. 1996. *Private and Public Prisons: Studies Comparing Operational Costs and Quality of Service*. Washington, D.C.: Government Printing Office.

Wessel, David and John Harwood. 1998. "Capitalism is Giddy with Triumph: Is it Possible to Overdo It?" *Wall Street Journal*, May 14: A1.

Yarden, David. 1994. Review of *Privatizing Corrections Institutions*. 21 *American Journal of Criminal Law* 325-334.

THE LEGAL AND POLITICAL DIMENSIONS OF PRIVATE PRISON

**Subject:** [Fwd: Additional info for tomorrow's hearing on HB 55]  
**Date:** Wed, 09 Apr 2003 13:19:00 -0800  
**From:** Bruce Weyhrauch <Representative\_Bruce\_Weyhrauch@Legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Ginny Austerman <Ginny\_Austerman@legis.state.ak.us>

bill file

---

**Subject:** Additional info for tomorrow's hearing on HB 55  
**Date:** Wed, 9 Apr 2003 13:50:00 -0500  
**From:** "Frank Smith" <fsmith@kanokla.net>  
**To:** <Representative\_Bruce\_Weyhrauch@legis.state.ak.us>  
**CC:** <Representative\_Nancy\_Dahlstrom@legis.state.ak.us>,  
<Representative\_Jim\_Holm@legis.state.ak.us>,  
<Representative\_Bob\_Lynn@legis.state.ak.us>,  
<Representative\_Paul\_Seaton@legis.state.ak.us>,  
<Representative\_Max\_Gruenberg@legis.state.ak.us>,  
"Ethan Berkowitz" <Representative\_Ethan\_Berkowitz@legis.state.ak.us>

Dear Representative Weyhrauch,

The sponsor of HB 55 requested at the last Committee hearing that my statements be verified. I sent some documentation to the Committee within a few days.

I have received today the just-posted URLs for a settlement in which the federal government successfully sued Arkansas, substantially over the behavior of its contractor, Cornell Cos. I believe some of the many things that Cornell has been accused of include:

Not assuring that its educational program met IDEA guidelines.

Approximate year-long failure in filling a psychologist's position, despite far more accessible labor market than they would experience in Whittier.

Filling the psychologist's position at last with a practical nurse with forged psychologist's credentials. She testified in a court case as an "expert" and "treated" juvenile inmates.

Not assuring that adequate suicide prevention measures were in place, resulting in death.

Serious fire code violations.

Falsifying records involved in a death of a juvenile.

Gratuitously assaulting juvenile inmates.

Having assigned staff attend a meeting, rather than monitoring suicidal juveniles.

A staff member fired for allowing other youths to abuse a juvenile murdered his estranged wife, her companion and killed himself not long after leaving Alexander.

The URL for the settlement is:

[http://www.usdoj.gov/crt/split/documents/alexeyouth\\_sett.pdf](http://www.usdoj.gov/crt/split/documents/alexeyouth_sett.pdf)

The URL for the complaint is:

[http://www.usdoj.gov/crt/split/documents/alexeyouth\\_comp.pdf](http://www.usdoj.gov/crt/split/documents/alexeyouth_comp.pdf)

The question of where liability lies if Cornell abuses or neglects prisoners at Whittier is a thorny one which should be resolved before the matter is passed from Committee.

In testimony Cornell supporters have termed Alaska's contract with CCA for holding prisoners at Florence to be "successful." I began a table last

night with synopses of documents questioning such a notion. The original documentation is so extensive I could not finish it though I worked for many hours. I have attached numerous pages. I will fax it to the Committee when done, probably today.

The sponsor asked about the foundation for my statements about Cornell's New Morgan Academy and its closure. I previously sent a compendium of stories which included some of the horror stories about New Morgan, dozens of incidents of abuse, including repeated sexual abuse of female juveniles there, and the reasons for its closure.

Cornell bases much of its proposal on a supposed study "proving" that private prisons save money for states and deliver adequate services, one that was written by a student for the Harvard Law Review. The student has been a Reason Institute fellow and may still be. The "study" is not a study at all and it is not even a review of the literature. It is more commonly known as a note which would not be subject to the peer review involved in an actual research project. Another Reason Institute fellow co-authored a study which claimed that six escapes at CCA Youngstown (written prior to two murders) "...show why the private sector's role in prison management role in prison management and construction should expand." Youngstown was closed not long afterward and remains empty, leaving the city holding the bag for its infrastructure improvements and tax givebacks. URL at:  
<http://www.heartland.org/Article.com?artId=800>

We have yet to see an economic feasibility study on the Whittier proposal. An actual study done on Delta Junction indicated the project could not go forward profitably unless the contractor charged almost \$100/day. That was four years ago and despite the need to only convert, rather than build, prison buildings. The labor force in Delta is immensely larger than Whittier, which might have 6-10 potential employees amongst its residents. The previous supporters of this legislation, last session, maintained that Whittier deserved a chance at the prison as supposed economic development. A billion dollar proposal divided by 10 jobs would mean a subsidy of \$100,000,000.00 per job. This is in a community which has already received huge state grants including the \$60 million dollar one-way auto tunnel and millions in port improvements with a population, including women, children and retirees, of 182 residents.

I visited the state of Louisiana this past week. I was denied entrance to the extremely troubled juvenile facility at Tallulah because of what the Secretary of Juvenile Justice's office termed "extensive litigation" with "all kinds of people" at the place and was requested to postpone my visit. Two successive private operators have made an unbelievable mess of things there. The state finally assumed control, but is unable to close it because of the bond problem even though the state did not directly back or issue the bonds. Another facility at Jenasits is idle after horrendous abuse of juveniles by still another private national contractor. I will fax an article which shows that this troubled private prison has jeopardized the state's entire bond rating, which could cost the taxpayers hundreds of millions of dollars. Here is its URL:  
<http://capitolwatch.reallouisiana.com/html/B6580F65-D326-470E-9E68-9B26E920C49B.shtml>

Thank you again for your continuing interest in the facts regarding this bizarre proposal.

Sincerely,

Frank Smith

---

APR 14 2003



APR 14 2003

FAIRBANKS LEGISLATIVE INFORMATION OFFICE  
119 N. CUSHMAN ST. SUITE 101  
FAIRBANKS, AK 99701

WRITTEN TESTIMONY TRANSMITTAL SHEET

|               |  |                     |              |
|---------------|--|---------------------|--------------|
| TO:           | Representative Bruce Weyhrauch,<br>Chair | FROM:               | Fran/Fbx LIO |
| COMPANY:      | House State Affairs Committee            | DATE:               | 4/10/2003    |
| FAX NUMBER:   | 465-2273                                 |                     |              |
| PHONE NUMBER: | 465-4963                                 | FAXED ON:           |              |
| RE:           | Written Comments on HB 55                | TELECONFERENCED ON: | 04/10/2003   |

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

Enclosed, please find the originals of the written testimony for HB 55.  
Fran/Fbx LIO

PHONE: 452-4448  
FAX: 456-3346

**Subject: House Bill 55**

**Date:** Mon, 07 Apr 2003 22:01:36 -0800

**From:** William Hathaway <billandann@gci.net>

**To:** Fran Zarling <Fran\_Zarling@legis.state.ak.us>, Brad Wilson <brad@psea.net>, daniel\_colang@correct.state.ak.us

Please allow me a short note to explain why I think private prisons are not a good idea for Alaska. For the following reasons and many others I urge you to vote against private prisons.

1. Missouri is doing away with its private prisons because the liability paid to law suits is 600 times greater than that paid at State run prisons.

2. Texas is reducing or doing away with its private prison contracts after having to sent the Texas Rangers into several of them to restore order. Oklahoma is close behind.

3. Pennsylvania, Connecticut, and Wisconsin are suing and jailing the wardens at their private facilities for failing to adequately control contraband within their facilities.

4. Low pay, no benefits, and lack of training lead to rampant corruption and ineptitude at private prisons. Low pay and high turnover rates will, forever, prevent conditions from improving.

5. The rate of escapes from private prisons exceeds those of State run prisons by a factor of greater than ten. This is not providing the public with the protection it deserves.

6. On several well publicized occasions private prison companies have hired people who cannot pass a standard background check. Corrections Corporation of America reportedly hired a person in one state, as a substance abuse counsler who had a felony drug related warrant in another state.

7. The cost per bed per day listed on all of the Corrections Corporation of America contracts that I was able to find out about DOES NOT include two very important costs. Transportation and medical costs are still incurred by the State. If you ADD these two costs to the cost per bed per day listed on the contracts you will find that private prisons are NOT COST EFFECTIVE.

8. Ask any Alaskan prisoners returning from the private facility in Arizona. 8 out of 10 will tell horror stories about "renting a guard", rampant contraband, and legal violations that are covered up. Almost without exception they are happy to return to PROFESSIONALLY run State Prisons.

For anyone who doubts these statements please check out the following web sites. corrections.com, corrections chat, law enforcement chat, the corrections professional, and corrections forum.

Frank Smith  
390 S.E. 110 Ave.  
Bluff City, KS 67018-7630  
(620)967-4616  
[fsmith@kanokla.net](mailto:fsmith@kanokla.net)  
March 14, 2003

Representative Bruce Weyrauch  
Chairman, State Affairs Committee  
Room 102, State Capitol  
Juneau, AK 99801  
FAX: (907)465-2273

Dear Chairman Weyrauch,

Thank you for allowing me to testify yesterday afternoon. As I indicated in testimony, I am a volunteer citizen activist. No one has ever paid me for my contributions to the private prison question.

You asked if I provide written information about HB 55, and there was also a request to provide specifics of testimony about which there was objection by Rep. Hawker, I think. KTOO only had an audio stream on the hearing.

I'm also not sure which information if any, might have been objected to on my part. (Perhaps all?) I was not testifying from written notes so let me provide details as well as I can recall, off the top of my head.

I mentioned that this Whittier project has a price tag of \$1,000,000,000. Ms. Margo Knuth testifying as counsel for DOC last year put the figure at (\$985,000,000). Because of proposed contract modifications, inflation, etc., I'm sure this is now over a billion dollars. My comments about that were made because the Committee needs to be aware that it is essentially hearing from salesmen and they are going to present their product in the best possible light.

I agreed with Mako Hagerty's testimony, that prisons are a "failed experiment." While there is some subjectivity involved in this estimation, I did provide some specifics. Ms. Bowery testified on Tuesday and said the "savings" in the Tennessee system were but cents a day. I'd never heard of her before but her facts and opinions were quite accurate. I supplied the 38 cents per day figure in testimony following hers Tuesday, and which she testified to yesterday.

- I mentioned that Cornell's New Morgan Academy in Pennsylvania was closed, due to loss of contracts with sending agencies, because in part of chronic sexual abuse of juvenile wards. There is a plethora of stories from the Pennsylvania press documenting this, I would be happy to provide URLs.
- I suggested that you ask Mr. Wiebe about Cornell's non-renewal of the Santa Fe jail contract. The reason Cornell gave is that it was not financially rewarding, but

I'm not sure that was the prime factor. I understand that a scathing Grand Jury report may exist covering the difficulties.

- I mentioned that a contractor (a pair of brothers, I believe) built eight prisons and left the Texas municipalities bonding for them holding the bag. The state took them over in "distress sales" for about half the construction costs. I can research this and provide a URL if you'd like.
- I mentioned that contracting for private prisons has been failing since the 18<sup>th</sup> Century. In that context I mentioned former AK DOC Director Charles Campbell's exhaustively researched work on the issue, covering about 75 years. That book is "The Intolerable Hulks." Third edition (2001) is in paperback published by Fenestra books. ISBN 1-58736-068-3 Mr. Campbell has also been a federal prison warden and was the Cleary Monitor in Alaska.
- My own recent work on Native Americans in private prisons is in "Capitalist Punishment," by Clarity Press. It can be ordered from Amazon, Bookmasters, etc. It contains chapters by a number of international experts in the field. Here's a description <http://www.bookmasters.com/clarity/b00020.htm> I'd be happy to send my chapter to you in Acrobat or text format in an e-mail, or to fax it to you.
- I have approximately 150 pages of affidavits and statements from Alaska prisoners at CCA-Florence's CADC, mostly Natives, who allege that they were treated brutally in what might best be described as "guards' riots." I worked for years as an investigator and find those statements have internal validity and consistency. I am inclined to believe them, particularly as it appears they were written contemporaneously with the incidents and the inmates appear to have been separated and out of communication with each other, but their descriptions coincide to a great degree. I also spoke to a prisoner a few months ago who verified the description of the second incident. My wife and I had visited him three years ago at Florence. Though present, he was not involved in the second incident that happened after our visit (he was absent for the first). He indicated that part of the problems the prisoners were trying to peacefully resolve involved being fed food labeled "Not for human consumption," getting food served past its expiration date, and not receiving hot meals for which the State of Alaska had contracted. There were also complaints, as Sen. Hoffman related, about lack of Native cultural activities. I should mention that CCA considers this to be one of their "model" prisons.
- The closure of the CCA prison at Youngstown, Ohio has been widely covered in the popular press. I can provide article URLs or you can get them from Legislative Research, of course. I may have mentioned murders and escapes, which are the crucial issues regarding its failure, but the tax givebacks and infrastructure provided were also essentially wasted for the community.
- The closure of the Wackenhut juvenile prisons at Jena and Tallulah, Louisiana has also been widely covered in the popular press. Wackenhut has duplicated this miserable performance overseas, to the point where many immigrant children sewed their lips together in protest over the conditions that they endlessly were forced to endure. An Australian government minister resigned over the scandal.
- I think I mentioned that a city in Wyoming, population 9,000 and on the road system, turned down a prison siting on the grounds that it did not have sufficient

population to staff such a facility. I believe it was Rawlins. I'd be glad to find a URL for the story.

- The figure of 8 families on some sort of public assistance in Whittier was obtained from the Alaska Division of Public Assistance last year. I can provide the e-mail with the info if you'd like.
- The population figure for Whittier was U.S. Census Bureau data. Almost the entire Whittier population lives in the Buckner building. In the summertime, the vacancy rate is zero. I think there may be many, many more voters in Whittier than residents and I would be curious as to how many people receive PFDs at Whittier addresses. I wonder if people from Outside who tied their boats up there only in the summertime could be recipients.
- The CCA Crossroads prison at Shelby, Montana gave assurances that it would not import prisoners from other states upon which contingencies the legislature allowed its construction. Montana is experiencing a substantial decline in prisoner population due to accelerating releases because of budget pressures. It started pulling prisoners out of Crossroads and CCA is now lobbying vigorously to remove the exclusion. This creates serious problems not limited to what happens to imported convicts who commit a new crime while at Crossroads. Does Montana pay for prosecution imprisonment afterward? The Great Falls Tribune extensively covered this. One prisoner was recently murdered there by another.
- I may have mentioned contractor/tribal involvement with troubled corporations. I've heard and read that KNA is foundering, and they were involved in the Kenna and original Whittier proposals. I think Chugach, which was involved with the Delta project, also had considerable financial difficulties. There are many stories regarding KNA in the Peninsula Clarion, the Anchorage Daily News, and George Wright, who has been involved with ANB, KNA, etc. has been regularly in the press, including the Juneau Empire. He testified yesterday in support of SB 99, but I'm not sure if he was on yesterday's list for HB 55. Much of the fiscal problems relate to pull tabs and bingo licenses.
- I suggested asking Cornell and its consultant Mr. Prewitt about their roles in the lawsuit involving Delta Junction. I think it might be particularly germane to ask about former legislative influence that may have been used to get the City to settle what appeared to me to be a rather winnable case. This was referred to in an Anchorage Daily News story. I also suggested asking Mr. Wiebe about the suits involving the state of Utah and the municipality of Oxnard, California. The settlement of the Utah suit (for \$1.6 million, I think) is posted on the internet as are stories in Utah newspapers. The Oxnard settlement (\$1.1 million, I think) I obtained on a FOIA from the City of Oxnard and would be happy to provide it and background if I can dig them out from whatever pile I threw them in last year.
- I mentioned the Arkansas "professional" who was hired, after a long period of vacancy, to the treatment position in the Cornell's managed juvenile facility. This was covered in the state press and there was discussion in the Arkansas legislature about it. She had falsified her credentials, not for the first time. She even testified as an "expert" in court cases. I believe the corporation had warnings.

Please direct me to any other issue I may have missed in this response.

Regarding your request for additional written information to be put into testimony, I would add:

Whittier residents had the prison proposition put to them, I am told, as a way to get the tunnel (which the state put some \$60 million or so into, for one-way auto traffic) opened 24/7 and with reduced or no tolls. I think it presently costs \$15 per round trip. Mr. Butler denies my information about the petition. I understand that numerous opponents from Whittier wanted to testify yesterday but the high winds have interrupted their phone service.

I suggested facetiously last year that some residents might have considered hosting the world's largest bordello if it meant free tunnel passage.

Cornell claims a prison would "add value" to the tunnel. That's an interesting turn of phrase. I wouldn't think, that if someone took half the money in my wallet, that they were somehow "adding value" to it.

Although there is substantial pressure mounting against the prison proposal in Whittier, it is suppressed by community pressure that wants the state to absorb those additional tunnel costs. I was informed yesterday that a fiscal note has been recently attached to the tunnel opening 24/7. I didn't get the figure, but might be on the order of \$7 million per year. Local Whittier opposition was voiced in a Tuesday hearing on SB 65.

The proponents have claimed that comparing a public prison in Anchorage to a private one in Whittier is an "apples to apples" comparison. It is hardly that. The transportation for a theoretical workforce in Whittier would present substantial problems. The Seward Highway trip is often hazardous and lengthy; the tunnel passage involves long waits. I'm sure you must have driven this road when it was either icy, obstructed by snow or landslides or blocked by some octogenarian driving his Winnebago to Kenai 15 miles an hour below the speed limit with his left blinker on the whole way. In contrast, Mat-Su already has all the labor force (a 7% unemployment rate) and services available that a new facility would require. The highway to Sutton had considerable improvement three years ago.

I can't conceive that Cornell would pay the kind of wages it would take to attract competent staff to a Whittier facility. I would urge you to ask Cornell for the starting and average wages for their guards at all their facilities, nationwide. Cornell singles out the Y-K facility in Bethel to compare costs. But Bethel has DOC staff that puts in substantial overtime because the facility is too small. These professional correctional officers often have substantial time in pay grade and range, so their cost is higher. It is no more accurate to compare their average compensation against proposed Whittier salaries than it is to average all Wal-Mart employees by including the four family members who occupy numbers 7-10 on the current Forbes Magazines "10 Richest in the World" list.

Bethel officers spend much time escorting and processing inmates in this too-small facility. They receive a geographic differential, 38% I think, because of the higher cost of living there. Limitations in that posting include things like its isolation from mainstream Alaska and municipal water that appears to have been pumped directly from a hog wallow.

Cornell proponents have stated that they would draw their Whittier staff from "South Anchorage and Girdwood." Both of these areas are in the "high rent" district and I'd bet I could process all such applicants during an afternoon coffee break. The people who would need low paying jobs like this, who would be desperate enough to commute, have the least reliable transportation.

I should also note that being a correctional officer requires more than being given a badge and a set of keys. It takes a rare temperament, patience, courage and a great deal of common sense to perform this work professionally.

There has been testimony (I would refer you in particular to Charles Campbell's testimony before Senate Finance on 5/3 last year) received about the tenure of prison employees. According to the Corrections Yearbook, the most recent edition which The turnover rate for private prison guards is 54% a year, I think, compared to 14% in public prisons. You can't train novices for this difficult work and expect them to perform adequately with this kind of turnover. It would be like going into war in a platoon manned entirely by recruits fresh out of boot camp commanded by Lieutenants recently graduated from Officers' Candidate School. There would be no effective mentoring process. There would be little "screening out" of unsuitable employees on the job.

Yesterday Mr. Wiebe testified that the privates have an advantage because they can get rid of non-performing employees. It is my opinion, based on years of labor studies and managerial involvement, that there is virtually no difference in terminating the employment of state or private employees for the first six months to a year of tenure, depending on the State pay range.

Cornell maintains that it can have a facility on line more quickly than the DOC could itself. But the DOC would have available to it the same "cookie cutter" designs as the private sector. It could have the same contractors bidding. When Charles Campbell was DOC director he brought in the Sutton Medium facility on time and under budget.

I briefly looked at the David Reaume study that Cornell presented in support of its proposal. I've just received a couple of days ago. I tried to call him but did not get him home nor was there an answer by machine. I tried 10 rings once, then 6 rings the second time, just in case I'd misdialed. I have never differed before with Mr. Reaume's opinions and have particularly appreciated his opposing tax and budget discourses with Scott Goldsmith of UAA. Both men are both very persuasive. But Mr. Reaume begins with this caveat on page 2: "According to information provided by Cornell Companies..." This is the crux of the matter. Can such a study be based upon information supplied by a contractor that stands to make perhaps hundreds of millions in profits on the proposal?

On page 6, Mr. Reaume possibly mistakenly assumes that the profits from this venture in Whittier will remain in Alaska, when in fact they will go to stockholders and executives largely in Houston, Texas. His pay scale assumptions (p. 4) seem to be predicated on what is being paid in the public sector in Alaska as well as Cornell's representations to him. But this private industry has been referred to as "Kentucky Fried Prisons," with workers making comparable wages. This is not a career. Even in Florence, where because of worker shortages and contract provisions, the private prison operators have had to and were able to pay wages not much less than the public prisons (though the benefits are much less, I think) they've still made a mess. I refer you to the state of Hawaii's audit of CCA's Florence Detention Center. It found essentially that the prison was being run by its inmates. Female audit team members were excluded from that part of the site review because their safety within the prison could not be guaranteed by the contractor. Before and while Kenai was being debated I heard that Cornell was paying only \$8.50 per hour for halfway house staff, jobs not entirely dissimilar to that of guards. A letter writer to the Clarion referred to this figure as being presented in Cornell's recruiting in Fairbanks. According to SEC filings, I think, Cornell's executive compensation scale starts at \$636,000 per year. Watch those averages.

One of the substantial costs of Alaskan corrections in the past decade has been for halfway houses run by Cornell. I have long heard that increases in these contracts, including budget modifications, has been vastly higher than what might be required by inflation or cost of living increases. I don't have those figures but I would urge you to get them from DOC and look at the alleged escalations.

I have further heard that after years of capitulation to the contractor's demands, Governor Murkowski's DOC held the line in Nome and a requested massive increase was finally resolved at a far lower level for huge savings to the taxpayer. Again, I don't have the figures so this is hearsay, but you could request them from DOC.

With respect to the Reaume study, let me once again direct you to his figures (p. 5). I thought I heard in testimony today that the prison will have a staff to inmate ratio of six-to-one. But Reaume uses figures of 300 hundred jobs and 1,200 prisoners, or a ratio of four-to-one. This apparent discrepancy needs to be resolved.

On page 6, Reaume states that he has not estimate any "Whittier-specific" impacts. I would contrast his study with the intensive Delta Junction economic feasibility study that is over 50 pages long with 150 pages or more of addenda. I can supply these two you if you like. In that proposed siting, even with the contractor getting the facility essentially for free and with the conversion costs being bonded by the City of Delta Junction, they couldn't make a go of it for the price that Cornell says it can accommodate in Whittier. Someone needs to explain this apparent contradiction. Reaume also implies that the staffing of this prison would come from "...Anchorage and nearby communities." But unless the contractor paid wages that would induce qualified people to commute to Whittier, which is most unlikely, I can't imagine that this facility could be staffed. The state DOC is unable to fill its staffing needs despite paying much higher wages.

Mr. Reaume indicates (p.8) that social workers could be hired at a median wage rate of \$15.38 per hour. But DFYS can't hire nearly enough social workers though it pays much more than that, because it's such a difficult job and private employers pay so much higher. The legislature has heard substantial testimony regarding that, over the years. Working in a prison is far more stressful than working in an Anchorage or Juneau office, so I have problems with his hypothesis.

As long as I'm writing about studies, Cornell has brought up Sasha Volokh's article in the Harvard Law Review. That wasn't a "study" at all, but a very selective review of the literature by a very biased author, in my estimation. He was affiliated for years with the Reason Institute in Los Angeles that never found a privatization proposal it didn't like. I had interesting correspondence with him last year (which you're welcome to) because, for instance, he used work of thoroughly and notoriously discredited "research" authors such as Charles Thomas who resigned from his tenured position at the University of Florida after disclosure of his receipt of millions in CCA stock.

Ironically, authors who he quoted extensively such as Judith Greene, who evaluated every Alaskan inmates' file perhaps 25 years ago on a state contract, disagreed wholeheartedly with Volokh's conclusions.

As far as building Alaska's next prison, I think it is unquestionable that the state needs to bring prisoners back from CCA Arizona. Although I heard a story said to have originated from Alaska private prison proponents last year that I was "...working for CCA," I think even less of them than I do of Cornell.

I opposed Mr. Prewitt's shipping of Alaskans to CCA Arizona nine years ago. I don't even think that shipping our inmates to public facilities (which was discussed in SB 65 testimony on Tuesday) would have ever been a good idea. The distance from family and support systems virtually guarantees recidivism. A California CDC study that I supplied to Alaska DOC employees in 1992 found that prisoners receiving visits from three or more people during the final year of their incarceration in a remote facility had one-sixth the recidivism rate of those who received none. The public facilities that have taken in prisoners from other states, such as the notorious prisons at Brazoria, Texas and Wallens Ridge, Virginia, were simply awful, perhaps a direct result of interjecting the profit motive into corrections. I possess a half-hour "training" videotape made at Brazoria where a combination of public deputies and private guards resemble storm troopers at full flight with real victims being chewed by real dogs.

While the expansion in Lyda Greene's SB 65 is certainly justified in Bethel and Fairbanks, I would hope that the size of the new prison proposed at the Sutton (Palmer) site could be scaled back. The legislature and the bureaucracy need to examine why so many people are being held for so long, and come back so often. In many other states, short term and non-violent prisoners are being disgorged at an astounding rate, with legislatures and governors desperately trying to make up budget shortfalls.

I heard from the Kansas House minority leader and a majority finance committee member called me to discuss at length a current bill dealing with this matter a few days ago. Today I got a call from a majority Senator. All agreed with me that these measures are upon us and support passage. Given the cushion Alaska has in Arizona, however unsavory it might be, Alaska has within its power the freedom to undertake course corrections to solve the budgetary constraints, while providing the public protection it is tasked to do and making efforts to address the societal problems and cultural discordance we are experiencing that contribute to our high incarceration rate.

So it seems the Legislature's responsibility to, in this age of fatal fiscal diseases, examine the history of those with whom it might jump into bed. I particularly would urge you to read excellent stories in the Anchorage Daily News by Tom Kizzia on 5/6/02 and to a Wall Street Journal reporter Joseph Hallinan article on 5/1/02. Mr. Hallinan is a widely respected author in the field of incarceration. Amanda Coyne in the Anchorage Press contributed another quality piece in its 5/9/02 edition. I can send you any or all of those.

I can also provide you with a floppy disc or CD containing a massive compilation of Cornell's and CCA's problems.

I hope that this testimony fills some of the needs for the facts that you are trying to assemble. I hope that the bill does not pass out of committee, as the many previous versions occupied the legislature far beyond any possible utility.

Sincerely yours,

  
Frank Smith

**Subject: House, Senate Committees debate prison bills**

**Date:** Fri, 14 Mar 2003 12:08:25 -0900

**From:** Dee Hubbard <chubbard@alaska.net>

**To:** undisclosed-recipients::

Lawmakers rumble over prison cost

DEBATE: House panel wrestles with which financial figures to believe.

By Sean Cockerham Anchorage Daily News

(Published: March 14, 2003)

<http://www.adn.com/alaska/story/2767217p-2815878c.html>

Juneau -- Backers of a proposed 1,200-bed private prison in Whittier are attacking the Corrections Department argument that a state-run prison in the Matanuska-Susitna Valley would be cheaper.

"It can be done at significantly less cost than the government can provide the same services," Rep. Mike Hawker, R-Anchorage, told a House panel Thursday.

Hawker is sponsoring the House version of the Whittier private prison bill.

He contradicted earlier assertions by state Corrections officials that the private prison would cost \$94 per prisoner per day, compared with \$110 for a state-run prison of the same size outside Sutton.

"The question is whose figures do you believe," said Sen. Gary Stevens, R-Kodiak, chairman of the Senate State Affairs Committee.

His committee on Thursday moved the Senate versions of both the Mat-Su and the Whittier prison bills on to the Finance Committee to sort it out.

Lawmakers agree that Alaska, which now houses hundreds of its inmates in a private prison in Arizona, has a serious and growing prison overcrowding problem. But the state faces deep budget cuts, and some legislators, including Stevens, question whether the time is right to build either prison.

The proposed Mat-Su and Whittier prisons would be twice as big as Alaska's largest existing prison, Spring Creek Correctional Facility in Seward.

Gov. Frank Murkowski has endorsed the bill calling for the state-run prison in Mat-Su. He opposed private prisons during his campaign, and his commissioner of corrections, Marc Antrim, has said he believes prisons ought to be run by the state rather than for profit.

Antrim testified last month that the state's costs under the Whittier private prison bill would be an estimated \$127.25 a prisoner a day. The proposal for a state-run prison would cost \$110.39, he said.

Those numbers struck right at the heart of the arguments from private prison backers, who claim it would be cheaper than a government operation because of lower wages and benefits for prison workers and other efficiencies.

But Hawker and Texas-based Cornell Companies, the private prison firm pushing the Whittier project, said that the state's figures are bunk.

On Thursday Hawker told the House State Affairs Committee that the Whittier bill, House Bill 55, requires that the private prison not cost the state more than \$94 per prisoner per day.

The discrepancy between the state's figures and Hawker's boil down to whether his numbers include other costs of running a prison, such as medical expenses for prisoners and inmate programs. Hawker insists that such expenses are included in the \$94.

Antrim doubts such expenses could realistically be met in Whittier for \$94 a day.

The House versions of both the Whittier and Mat-Su bills also authorize expansion of the overcrowded state-run regional prisons in Fairbanks and Bethel.

The Whittier bill also would expand Spring Creek, while the Mat-Su bill would use federal funds to add space for 200 pretrial federal prisoners in Anchorage.

Under both the bills, local governments would bond for the construction costs. The state would then contract with the municipalities for prison operations. Under Cornell's plan, it would run the prison for Whittier.

The state's costs would run from \$40 million to more than \$50 million a year, for a new prison.

The cheapest option would be to leave the Alaska prisoners in Arizona, state figures say. But persistent objections are raised that having the prisoners thousands of miles from their homes is bad for rehabilitation, and that the state's money is being exported.

Private prison proposals have won favor in the Legislature in the past, but have been killed by local opposition in South Anchorage, Delta Junction and Kenai.

Hawker, the Anchorage lawmaker whose district includes Whittier and parts of South Anchorage, said most registered voters in Whittier support the private prison.

Last year the Whittier prison proposal, pushed by Cornell in partnership with Anchorage construction giant Veco, passed the House but died in the Senate.

Frank Prewitt, a former state Corrections chief who is now a Cornell consultant lobbying for the Whittier private prison, said Thursday that its doors could be open in two years, faster than the Mat-Su prison. And, with the state's inmate population steadily growing, there will be room for both prisons over the long term, he said.

Reporter Sean Cockerham can be reached at [scockerham@adn.com](mailto:scockerham@adn.com) or 1-907-586-1531

#### ON THE WEB

For more about the Alaska Legislature, including easy ways to contact lawmakers, go to [adn.com/legislature](http://adn.com/legislature).

# Representative Mike Hawker

## Alaska State Legislature



**Session:**

State Capitol  
Juneau, AK 99801  
907 465-4949 direct  
800 478-4950 toll free  
907 465-4979 fax

**Interim:**

716 W 4<sup>th</sup> Avenue  
Anchorage, AK 99501  
907 269-0244 office  
907 69-0248 fax

**Member:**

House Finance Committee  
Legislative Budget  
& Audit Committee

**House District 32:**

Eagle River  
Anchorage  
Rainbow  
Indian  
Bird  
Girdwood  
Portage  
Whittier  
Sunrise  
Hope

## Memorandum

**To:** Representative Bruce Weyrauch, Chair  
House State Affairs Committee

**From:** Representative Mike Hawker

**Date:** 3/5/2003

**Re:** House Bill 55-Correctional Facilities

A handwritten signature in black ink, appearing to read "M. Hawker", written over the "From:" field.

---

I request House Bill 55 "An Act expressing legislative intent regarding privately operated correctional facility space and services; relating to the development and financing of privately operated correctional facility space and services; authorizing the Department of Corrections to enter into an agreement for the confinement and care of prisoners in privately operated correctional facility space; authorizing the Department of Corrections to enter into agreements with municipalities to expand existing correctional facilities; and providing for an effective date." be scheduled for a hearing at the earliest possible convenience in the House State Affairs committee.

Attached to this memo are the sponsor statement, sectional analysis, pertinent statutes, and background material. Anchorage will be the only teleconference sight, unless we receive more information or requests.

If you have any questions, please contact Sara Wright of my staff at 465-6899.

Thank you for your time and consideration.

**Subject: A little history of HB 498, article and response on HB 55**

**Date:** Sun, 2 Feb 2003 15:24:50 -0900

**From:** Dee Hubbard <chubbard@alaska.net>

**To:** undisclosed-recipients;;

If you don't remember what happened last year with HB 498 (Whittier private prison), Rep. Croft offered a sweeping amendment that would have changed the whole focus of HB 498. The number of private beds would have decreased from 1,000 to 250. Public beds would have been added to Fairbanks (100), Mat-Su (250), Seward (150) and the City of Kenai (250). Bethel would still have gotten 96 beds. It would have unbundled the projects. As the bill was written, none of the State projects could be started, until the Whittier project had begun construction. The Croft amendment would have allowed all projects to start at the same time. The public prison daily bed rate less certain administrative costs would be set a \$79/bed/day, ten dollars LESS than the bed rate for Cornell as stated in the bill (\$89-\$91/day/bed).

When the Croft amendment came up for a vote, there was a tie - 18 yes to 18 no. Rep. Wilson changed her vote from yes to no. that made the final vote 17 yes to 19 no, and the amendment failed. Rep. Wilson continued to vote with Cornell on the rest of the amendments, final passage and reconsideration.

Senator Taylor never got the chance to have a floor vote on HB 498, as the bill never got out of Senate Rules. However, he, Sen. Cowdery and Sen. Therriault did vote to move the bill out of Senate Judiciary. All three of them signed No Recommendation on the bill report.

The following article comes from today's Juneau Empire. The letter following it is a response from Frank Smith.

d

Southeast lawmakers unite to boost region's strength  
Region has half the number of seats it had in the Legislature at the time of statehood

By TIMOTHY INKLEBARGER

JUNEAU EMPIRE 2003

February 2, 2003

[http://juneauempire.com/stories/020203/sta\\_lawmaker.shtml?p](http://juneauempire.com/stories/020203/sta_lawmaker.shtml?p)

A newly formed bipartisan caucus of Southeast lawmakers will focus on areas of mutual concern such as transportation, fishing, timber and education, said chairwoman Rep. Peggy Wilson of Wrangell.

The eight state lawmakers from Southeast held their first organizational meeting Wednesday.

"We may represent different parties, but our districts face many of the same challenges, issues and concerns," Wilson said in a prepared statement. "As a united force we will have a stronger voice in the legislative process."

A declining population in Southeast since statehood has meant a drop in representation in the Legislature.

Wilson said in the last two years, her hometown of Wrangell has dropped from 2,400 residents to 2,100.

The state recently released figures that show the Southeast population declining from 73,082 in the April 2000 census to an estimated 71,972 on July 1, 2002.

The region's population had risen just 0.6 percent from 1990 to 2000, and then declined by 0.7 percent from 2000 to 2002. In that period, 2,315 more people moved away than moved in to the area, and 1,205 more babies were born than people died.

"The main reason that we pulled together like this is because the population of Southeast is getting smaller but none of our problems are going away," she said.

Republican Sen. Robin Taylor, also of Wrangell, said Southeast's influence has been cut in half since statehood in 1959.

Southeast lawmakers then controlled a quarter of the Senate and House, with 10 representatives and five senators, Taylor said. Today the region is represented by just over half that, with three senators and five representatives.

Taylor said the region's political clout also has been diminished because Southeast is divided politically. Four members of the Southeast delegation are Democrats, and four are Republicans.

Democrats include Sen. Kim Elton and Rep. Beth Kerttula, both of Juneau, Rep. Albert Kookesh of Angoon, and Sen. Georgianna Lincoln of Rampart.

Republicans include Wilson and Taylor, Rep. Bruce Weyhrauch of Juneau and Rep. Bill Williams of Saxman.

Elton said resource issues are of interest to the entire delegation, adding that lawmakers would work together on topics for which they can reach a consensus.

"... I think we're all smart enough to know that we don't dissipate our energy by arguing and focusing on what pushes us apart," Elton said.

Although the caucus didn't get into many specific issues at its first meeting, Elton said members did discuss a bill offered last session by Wasilla Republican Sen. Lyda Green to expand prisons.

Green's Senate Bill 231 would have added prison beds to correctional facilities in Juneau, Fairbanks, Ketchikan, the Matanuska-Susitna Borough, Bethel, the Kenai Peninsula and Seward. Juneau's Lemon Creek Correctional Center would have gained 64 beds, but the bill never made it to a floor vote in the Senate or House.

Elton said it is uncertain if a different version of the bill this session will include new beds for prisons in Juneau and Ketchikan.

"That's an issue that ought to unify the Southeast caucus," Elton said.

But Taylor, who prefers private prisons to public ones, said it would make less sense to add to existing prisons than to build a new one or have a private prison company do it.

Wilson said the caucus plans to meet twice a month throughout the session.

The caucus also plans to hold teleconferenced meetings to get comments from constituents.

- Timothy Inklebarger can be reached at [timothyi@juneauempire.com](mailto:timothyi@juneauempire.com).


February 2, 2003

Dear Empire Editor,

It is no surprise that Robin Taylor and Peggy Wilson are once again trying to build a billion dollar boondoggle in Whittier. From the APOC site, one sees these legislators owe a substantial part of their campaign funds to executives and their relatives from Cornell Corrections and Veco, the proposed builders of the immensely overpriced, useless and unstaffable 1,200 bed private prison. Last year Representative Wilson also supported the building of a private Veco-Cornell prison in her home town of Wrangell, but local voters turned it down 72%-28%. Taylor has been on the Veco payroll for years as shown by his conflict of interest reports. In 2002 he brought an ordinance before the Wrangell Council to build such a prison. But prior to the introduction of "his" ordinance (since he is also on a substantial retainer as Wrangell's City Attorney), the exact same document was brought to the City Council of Whittier, Wrangell's competitor. It was delivered to them by Cornell vice-president, attorney Frank Prewitt, perhaps the true author, unless it was written in the Houston, Texas Cornell Headquarters. Prewitt urged the Whittier City Manager to act quickly to "win" the "wired" "... horse race," for siting of the prison. If Senator Taylor actually did write the Wrangell ordinance, sharing it with Cornell and Whittier would seem to be a violation of Bar Association ethics. When will the Empire ask these legislators the appropriate questions? Will George Wright, the disgraced bingo and pull tab operator, once again get his client, the Alaska Native Brotherhood, to provide a "beads and feathers" cover for this current attempted raid on the state treasury, now that the former front group, Kenai Native Association, has been virtually bankrupted by its association with Wright?

Sincerely,

Frank Smith  
390 S.E. 110 Ave.  
Bluff City, KS 67018  
(620)967-4616

|  |   |
|--|---|
|  Wrangell RFQ to Whittier.bmp | <b>Name:</b> Wrangell RFQ to Whittier.bmp<br><b>Type:</b> Bitmap Image (image/bmp)<br><b>Encoding:</b> base64 |
|--|---|

SSHB55 Line Item Detail

| FY06          |            |  | Medical   |   |           | Administration  |           |                             | Inmate Programs |  |         | Statewide Direct Costs  |        |          | Reimbursed Gratuities |  |  |
|---------------|------------|--|-----------|---|-----------|---|-----------|-----------------------------|-----------------|--|---------|---|--------|----------|-----------------------|--|--|
| Line Item     | Amount     | Comments                                     | Amount    | Comments  | Amount    | Comments  | Amount    | Comments                    | Amount          | Comments   | Amount  | Comments  | Amount | Comments |                       |  |  |
| PS            |            |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Travel        |            |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Contractual   |            |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Supplies      |            |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Equipment     |            |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Gratuities    |            |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| TOTAL         | \$0.0      |  | \$0.0     |   | \$0.0     |   | \$0.0     |                             | \$0.0           |  | \$0.0   |   | \$0.0  |          |                       |  |  |
| FY07          |            |  | Medical   |   |           | Administration  |           |                             | Inmate Programs |  |         | Statewide Direct Costs  |        |          | Reimbursed Gratuities |  |  |
| Line Item     | Amount     | Comments                                     | Amount    | Comments  | Amount    | Comments  | Amount    | Comments                    | Amount          | Comments   | Amount  | Comments  | Amount | Comments |                       |  |  |
| PS            | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Travel        | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Contractual   | \$20,586.0 | \$94.00 per day cost includes capital costs  | \$2,901.8 | Hospitalization & Other Professional Medical/Dental/Lab & Ophthalmology Contracts | \$972.4   | DOA DP Chargebacks & Other DOA Chargebacks - some small contracts | \$792.8   | Education & Other Contracts | \$2,299.5       | Broad assumptions made for distribution of costs to several various components that provide direct services - line items could fluctuate drastically. Costs by line item pending distribution. | \$344.4 | Gratuities for inmates are the responsibility of the State. Currently the state reimburses Arizona for these costs. |        |          |                       |  |  |
| Supplies      | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Equipment     | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Gratuities    | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Miscellaneous | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| TOTAL         | \$20,586.0 |  | \$2,901.8 |   | \$972.4   |   | \$792.8   |                             | \$2,299.5       |  | \$344.4 | Gratuities are estimated @ 85% working inmates at an estimated \$1.85 an hour for 365 days per year.                |        |          |                       |  |  |
| FY08          |            |  | Medical   |   |           | Administration  |           |                             | Inmate Programs |  |         | Statewide Direct Costs  |        |          | Reimbursed Gratuities |  |  |
| Line Item     | Amount     | Comments                                     | Amount    | Comments  | Amount    | Comments  | Amount    | Comments                    | Amount          | Comments   | Amount  | Comments  | Amount | Comments |                       |  |  |
| PS            | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Travel        | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Contractual   | \$41,172.0 | \$94.00 per day cost includes capital costs. | \$5,803.5 | Hospitalization & Other Professional Medical/Dental/Lab & Ophthalmology Contracts | \$1,944.7 | DOA DP Chargebacks & Other DOA Chargebacks - some small contracts | \$1,585.6 | Education & Other Contracts | \$4,599.0       | Broad assumptions made for distribution of costs to several various components that provide direct services - line items could fluctuate drastically. Costs by line item pending distribution. | \$688.8 | Gratuities for inmates are the responsibility of the State. Currently the state reimburses Arizona for these costs. |        |          |                       |  |  |
| Supplies      | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Equipment     | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Gratuities    | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Miscellaneous | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| TOTAL         | \$41,172.0 |  | \$5,803.5 |   | \$1,944.7 |   | \$1,585.6 |                             | \$4,599.0       |  | \$688.8 | Gratuities are estimated @ 85% working inmates at an estimated \$1.85 an hour for 365 days per year.                |        |          |                       |  |  |
| FY09          |            |  | Medical   |   |           | Administration  |           |                             | Inmate Programs |  |         | Statewide Direct Costs  |        |          | Reimbursed Gratuities |  |  |
| Line Item     | Amount     | Comments                                     | Amount    | Comments  | Amount    | Comments  | Amount    | Comments                    | Amount          | Comments   | Amount  | Comments  | Amount | Comments |                       |  |  |
| PS            | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Travel        | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Contractual   | \$41,172.0 | \$94.00 per day cost includes capital costs. | \$5,803.5 | Hospitalization & Other Professional Medical/Dental/Lab & Ophthalmology Contracts | \$1,944.7 | DOA DP Chargebacks & Other DOA Chargebacks - some small contracts | \$1,585.6 | Education & Other Contracts | \$4,599.0       | Broad assumptions made for distribution of costs to several various components that provide direct services - line items could fluctuate drastically. Costs by line item pending distribution. | \$688.8 | Gratuities for inmates are the responsibility of the State. Currently the state reimburses Arizona for these costs. |        |          |                       |  |  |
| Supplies      | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Equipment     | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Gratuities    | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| Miscellaneous | \$0.0      |  |           |   |           |   |           |                             |                 |  |         |   |        |          |                       |  |  |
| TOTAL         | \$41,172.0 |  | \$5,803.5 |   | \$1,944.7 |   | \$1,585.6 |                             | \$4,599.0       |  | \$688.8 | Gratuities are estimated @ 85% working inmates at an estimated \$1.85 an hour for 365 days per year.                |        |          |                       |  |  |

\$55,793,600 divided by 1,200 beds divided by 365 days = \$127.39 per manday

|   |  |              |                                |
|---|--|--------------|--------------------------------|
| Operations  | \$94 x 1200 beds x 365 days =              | \$41,172,000 | Based on SSHB55                |
| Medical   | \$13.25 x 1200 beds x 365 days =           | \$5,803,500  | removed personal service costs |
| Administrative  | \$4.44 x 1200 beds x 365 days =            | \$1,944,720  | costs will be the same         |
| Programs  | \$3.62 x 1200 beds x 365 days =            | \$1,585,190  | removed personal service costs |
| State Dir Costs   | \$10.50 x 1200 beds x 365 days =           | \$4,599,000  | costs will be the same         |
| Gratuities  | 85% of 1200 x \$1.85 per hour x 365 days = | \$688,755    | costs will be the same         |
| \$125.81 Per Bed x 1200 beds x 365 days = Total Daily Cost of |  | \$55,793,535 |                                |



*Independent  
Analysis*

# HB55 / SB99

## THE WHITTIER PRISON

### A Government / Private Sector Partnership

Background

In 1995, all fifteen of Alaska's regional prisons and jails were operating at emergency levels of overcrowding. The State was held in contempt of court, fined over two million dollars and ordered to reduce the inmate population. To provide *temporary* relief, the Department of Corrections entered into a contract to house up to 1200 Alaska prisoners in a two-thousand bed, privately owned and operated prison in Arizona.

The Arizona private prison contract is a model government/private sector partnership. Alaskan corrections officials have testified that the contractor has delivered safe and humane prison services that meet or exceed the standards of the State of Alaska, at one half the cost of comparable in-state prison services.

Public Policy

While exporting Alaskan prisoners to Arizona was a necessary, "stopgap" measure to relieve in-state prison overcrowding, it is poor long-term public policy.

From an economic perspective, over the past eight years Alaska has poured more than 100 million dollars into the Arizona economy, funding hundreds of Arizona jobs and supporting the bottom line of a corporation that doesn't even do business in Alaska.

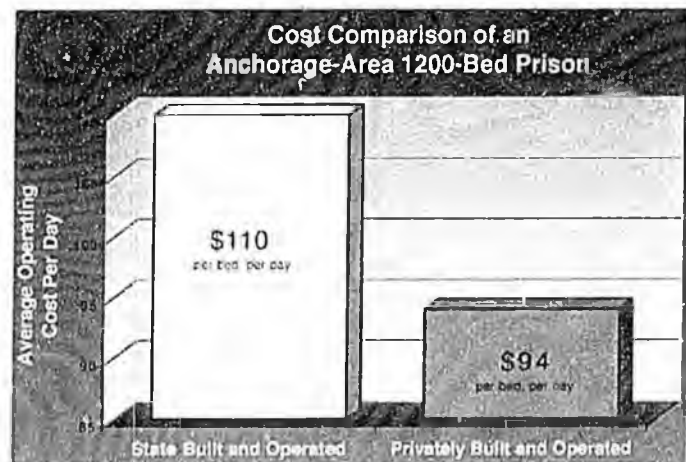
From a social perspective, confining prisoners (38% of whom are Alaskan Native) three thousand miles from family and support systems has a dampening effect upon rehabilitation, family cohesion and prisoner morale.

The Challenges

**COST:** If exporting Alaskan prisoners to other states is poor public policy, why is the Arizona contract in its eighth year? Answer: Under the Department of Corrections' historical operational structure and personnel policies it simply costs too much to build and operate a state correctional facility.<sup>1</sup> Alaska's daily cost, per inmate, in Arizona is \$64.83, without travel, major medical and State contract administration.

In Alaska, the statewide average cost of care, per day, per inmate is \$113.31 *without capital debt service.*

In current dollars, the Alaska Department of Corrections estimates that the combined capital and operating cost of the 1200-bed SB 65 medium security prison is over \$110 per bed and can be completed in four to five years. The total combined capital and operating cost for the 1200-bed HB 55 Whittier Prison is \$94 per day per bed<sup>2</sup> and can be completed in two years.



<sup>1</sup> Legislative Packet: Alaska Projected Bed Demand & Cost Analysis, Sec. 1

<sup>2</sup> *ibid.*

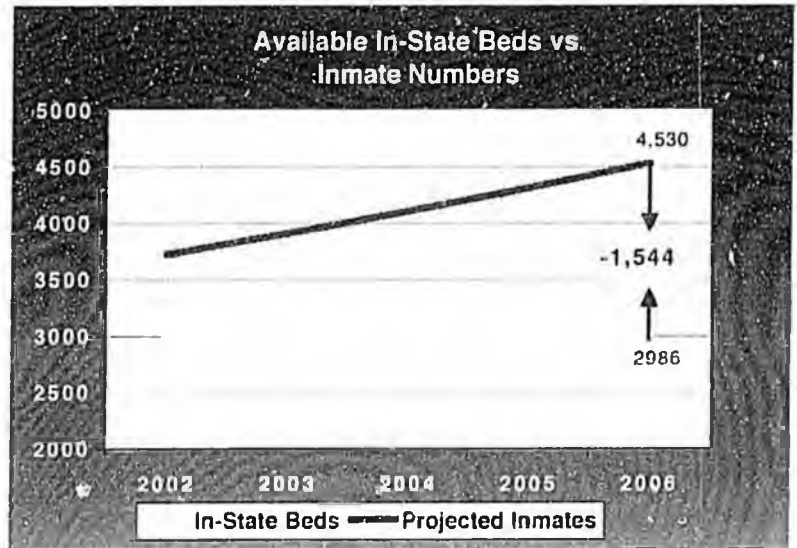
## HB 55: A Government / Private Sector Partnership

### The Challenges – Continued

**INEFFICIENCY:** Jails are meant to hold prisoners from arrest until sentencing. The mission of a jail is safe, secure confinement... no frills, no programs, just confinement. After sentencing, long-term prisoners (usually felons) should be transferred to central prisons that capture the efficiency and cost savings of economy of scale, and provide meaningful access to rehabilitation resources. Only prisoners with short sentences should remain in local jails.

The Department of Corrections' regional correctional facilities are multi-purpose facilities that house prison and jail services under one roof. Duplicating prison and jail services throughout the State is expensive, inefficient and ineffective.

**GROWTH:** The State currently houses 640 sentenced Alaskan prisoners in Arizona. The remaining sentenced and pre-trial prisoners occupy every available bed, in every available facility in Alaska, and the inmate population continues to grow by 200 prisoners, per year. *By 2006, the State of Alaska will be short 1,544 prison and jail beds and more than 200 halfway house beds.*<sup>3</sup>



### The Solution

*HB 55: An Act Authorizing the Department of Corrections to enter into an agreement with the City of Whittier for the care and confinement of 1200 prisoners in a government-owned, privately built and managed prison, and authorizing the expansion of existing correction facilities where justified and necessary.*

The Whittier prison plan is a logical and cost effective plan to return Alaska prisoners from Arizona and to provide relief for regional jail overcrowding. In combination with the strategic expansion of existing State facilities, long-term sentenced offenders can be moved out of regional facilities and the Alaska inmate population can be safely and efficiently managed for another five years.<sup>4</sup>

<sup>3</sup> Legislative Packet: Alaska Projected Bed Demand & Cost Analysis, Sec. 2

<sup>4</sup> *ibid.*

# HB 55: A Government / Private Sector Partnership

## What are the Benefits of the Whittier Plan?

### BENEFITS TO THE STATE

---

- The State makes no capital lease payments to the City of Whittier. The cost for construction is paid from the per-diem rate for operations.
- Minimizes financial risk to the State by having one firm responsible for design, construction and, for the first five years, operations.
- Diminishes State legal liability for overcrowding in existing State prisons and regional jails.
- Proximity to Anchorage, as compared with proximity to Arizona, will lower prisoner transportation and monitoring costs.
- Proximity to Anchorage ensures the State's lowest personnel and contractual services costs.
- Requiring the operating contract to be re-bid after five years ensures that the State receives the best value.
- Establishes a government owned, privately managed cost comparison to State-owned and managed prisons that will stimulate State cost containment.
- Adds value to the \$90 million Anton Anderson Tunnel (Whittier's railroad-vehicle tunnel).
- Proximity to Anchorage and local deep-water port ensures lower construction material costs.
- Returns Arizona prisoners closer to Alaska support systems. Provides enhanced opportunity for rehabilitation of all Alaska prisoners returned from Arizona.
- Supports Governor Murkowski's plan of increased infrastructure development within the state in order to stimulate economic development.
- A new facility will be designed to be operationally efficient, reducing long-term operating costs.

### BENEFITS TO THE ANCHORAGE AREA

---

- Purchase of materials, goods and services associated with Construction of a 1200 bed prison will boost the economy.
- Creates at least 325 Davis-Bacon construction jobs for 1.25 years.
- Adds at least 228 indirect construction related jobs for 1.25 years.
- Increase of 300 direct, permanent prison jobs for Whittier and Anchorage-area residents.
- Adds a minimum of 200 permanent indirect jobs to the Anchorage/Whittier area.
- Alaska will no longer be supporting Arizona's economy. The Whittier Plan returns at least \$18 million per year to the Alaska economy, with an economic multiplier effect that benefits all Alaskans.
- Provides an anchor tenant industry to an Alaskan community with limited opportunity for economic development.



## HB 55: A Government / Private Sector Partnership

### The Whittier Advantage

#### Community Support

- Whittier conducted an exhaustive public process gathering 80% registered voter approval (through public hearings and public petition process) before passing enabling ordinances and procuring prison development services.

#### State Procurement Process Satisfied

- Whittier retained the law firm of Perkins Coie to design and administer a competitive Request for Proposals, patterned after the State procurement process. The process was independently reviewed by procurement expert, and former Assistant Attorney General, Susan Burke, who testified before the Legislature that the process satisfied State competitive bid requirements.

#### Proximity to Anchorage

- The location, 40 miles from Anchorage, ensures lowest cost and most abundant personnel pool.
- Abundant staff housing is available in South Anchorage, Bird Creek, Indian, Girdwood (15 minute commute) and Whittier.
- Proximity to Anchorage ensures optimal access to least costly and most abundant health care, counseling, job training, facility maintenance and other resources and services necessary for safe, and effective prison management.

#### Site Already Identified

- The City of Whittier has identified a prison site at the head of Passage Canal that is owned by the Alaska Railroad Corporation and is leased by the City. The site is served by a reliable utility grid, including Chugach Electric and Enstar Natural Gas. Domestic and emergency water needs are abundant on-site resources.
- Preliminary assessments find the site environmentally clean and without risk of avalanche or flood danger.

### Financing

---

Under the Whittier plan, the City will finance construction through the sale of tax-exempt revenue bonds. The bonds will be secured by an intergovernmental agreement between the City and the State to lease prison beds for a period of twenty-five years. At the end of that time, the title of the prison could transfer to the State. The operating contract for the Whittier prison will be put out to competitive bid after the first five-year term. This approach protects the State and ensures that Alaska receives the most cost-effective services. The capital costs for the Whittier prison will be paid as a portion of the daily per-bed rate from the leased beds. *There will be no direct capital cost to the state.*

---

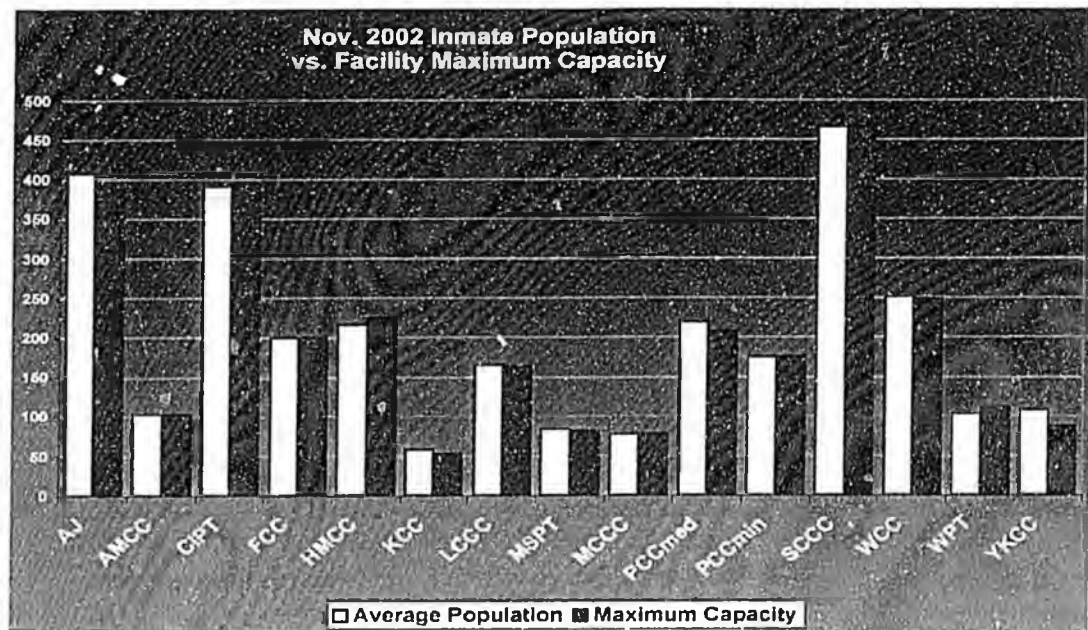
*Financing costs for construction will be paid through the per-diem rate established by contract. This protects the State from construction cost over runs.*

---

## HB 55: A Government / Private Sector Partnership

### Action Is Needed

Even with 700 prisoners housed in Arizona and the addition of 284 beds at the new Anchorage Jail, Alaska's 15 Corrections Facilities are operating at or above maximum capacity. Maximum capacity includes all of the beds currently available. When a prison or jail is operating over maximum capacity, it means that inmates are being housed in locations not intended for that purpose. This could include putting three prisoners in a cell intended for two, placing cots in the gym or even using infirmary beds. The chart below shows that in November of 2002, the average inmate population exceeded maximum capacity in eight facilities. Two facilities exceeded emergency capacity. Four of the facilities were full and only three facilities had any beds available (25 total). The Department of Corrections' projections show that the inmate population will increase by 200 prisoners per year. The Legislature must act soon to mitigate the anticipated overcrowding.

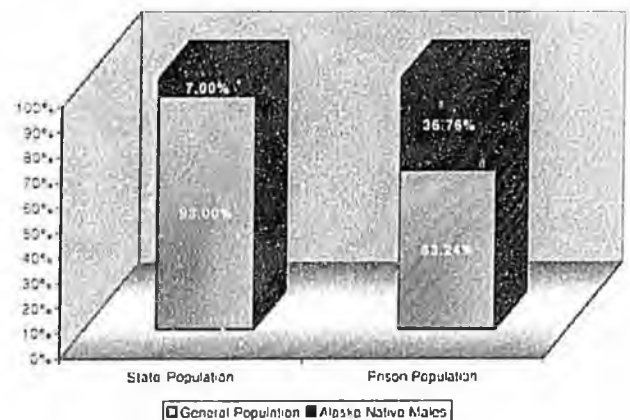


### Alaska Native Concerns

Male Alaska Natives make up only seven percent of the general population in Alaska, yet a staggering thirty-seven percent of Alaska's prison population is Alaskan Native men. Over three hundred Alaskan Native prisoners (many from the most remote regions of the State) are housed in Arizona, far from the support systems necessary for rehabilitation.

The majority of Alaskan Native offenders do not have criminal personalities and do not respond to conventional correctional programs. The centerpiece of the Whittier Prison Plan is Cornell Companies' commitment to exceed the minimum program standards of the State by developing new programs specifically designed to reduce the recidivism rate of Alaskan Native Offenders.

**State and Prison Population Comparison**  
Alaska Native Male Inmates vs. Overall Population



# HB 55: A Government / Private Sector Partnership

## The Operator

Cornell Companies of Alaska will operate the Whittier prison for the first five-year term of the contract with the State. Cornell currently employs more than 300 Alaskans at community correctional centers located in Anchorage, Fairbanks, Nome and Bethel. The firm is also one of the top three private corrections companies in the United States, and the only company that offers a continuum of juvenile and adult correctional services.

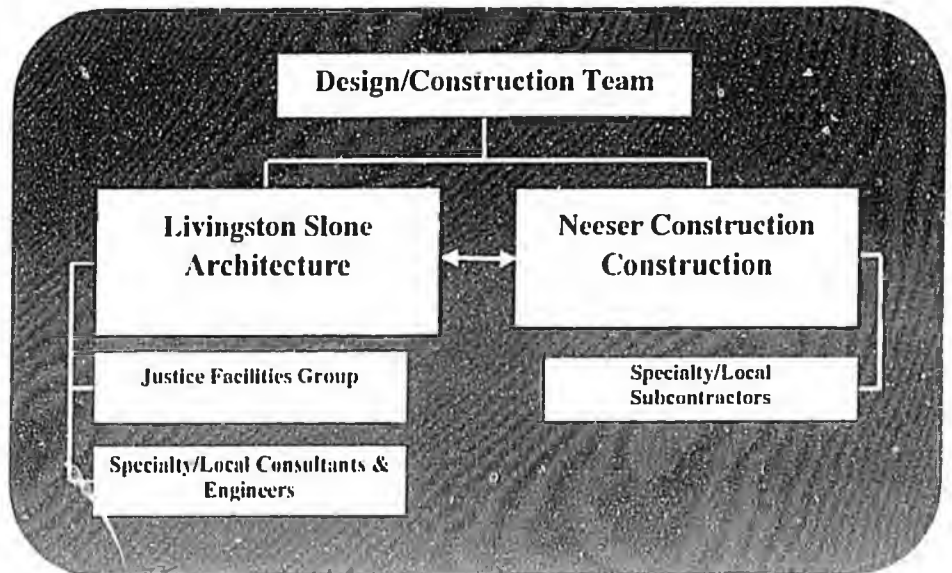
At present, Cornell operates 72 facilities, in 13 states and the District of Columbia, and has a service capacity of 15,000 prison, jail, pre-release and treatment beds. Cornell understands the need for a cost-effective corrections solution for Alaska and they will work with the City and State managers to ensure that the Whittier prison meets the State's needs.

## Cornell's Seven Key Principles

1. *People Security*
2. *Program Security*
3. *Accountability/Responsibility/High Expectations*
4. *Role Modeling*
5. *Teamwork/Communication*
6. *Dignity and Respect*
7. *Cleanliness/Environment of Care*

## Design/Builder

The design and construction team for the Whittier Prison is Livingston Slone Inc., and Neeser Construction, Inc. Both firms are long-time Alaska companies and both are dedicated to assisting the State in finding more cost-effective solutions for correctional facilities. Each firm has participated in the design and construction of many of Alaska's largest public projects, including the new Anchorage Jail, the Elmendorf Mall and the Alaska SeaLife Center.



# **HB 55: A Government / Private Sector Partnership**

## **Notes**

---

HB

60

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeberg/>



INTERIM  
716 WEST 4TH AVENUE, SUITE 300  
ANCHORAGE, AK 99501  
PHONE (907) 269-0117  
FAX (907) 269-0119

SESSION  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE (907) 465-4968  
FAX (907) 465-2040

## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### SPONSOR STATEMENT FOR HB 60

BY: Representative Norman Rokeberg

### Title: An Act relating to construction of a legislative hall

HB 60 creates fair and equitable competition for the construction of a new legislative hall for Alaska.

This legislation permits the Alaska Legislative Council to develop specifications and solicit proposals for a new legislative hall. The bill allows proposals from borough or unified municipalities with at least 30,000 residents, which would include Anchorage, Matanuska-Susitna, Fairbanks, Fairbanks North Star Borough, Juneau, and Kenai Peninsula Borough.

The current capitol building was finished in 1931. While efforts have been made to update the building, there is only so much that can be done to address its major problems. These problems include: corridors which do not meet the current fire and safety building codes; limited ingress and egress for the disabled; lack of amenities such as parking and a public lounge; antiquated heating and ventilation systems; inadequate wiring for electrical and telecommunication services; and insufficient office, chamber, and committee space. The capitol building has outlived its usefulness as a legislative hall, and it is time to have a modern, functional building.

Upon making a selection, the Legislative council will be responsible for carrying out the terms of the proposal, and for the operation and maintenance of the building. The rent would be set at \$1 per year. The new building will be completed and ready for occupancy by June 30, 2006.

HB 60 will provide Alaskans with an up-to-date, accessible, and safe legislative hall - a distinguished symbol of our government and a structure that Alaskans can be proud of.

I would urge your support of this legislation.

ED1: 02/24/03

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeberg/>



INTERIM:  
716 WEST 4TH AVENUE, SUITE 300  
ANCHORAGE, AK 99501  
PHONE: (907) 269-0117  
FAX: (907) 269-0119

SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-4968  
FAX: (907) 465-2040

## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### SECTIONAL ANALYSIS FOR HB 60 BY: Representative Norman Rokeberg

**Title: An Act relating to construction of a legislative hall**

Section 1: Findings

Section 2: Specifications for Legislative Hall. Directs Legislative Council to develop specifications by December 15, 2003 for construction of new legislative hall. Sets forth that specifications must include at least the following space:

- Private office for each legislator and legislator's staff
- Larger private offices for Speaker of House and Senate President
- Chamber for each body with electronic voting boards and other appropriate equipment and galleries to accommodate 150 people in addition to media
- Private lounge for legislators, on same floor as chambers, with cooking facilities
- 18 committee rooms, with space for committee staff, 11 committee members, and at least 75 public members
- Office suites for Governor, Lt. Governor, and Commissioners for their use when they visit legislative hall
- One courtroom and adequate offices for judicial officers of the Supreme Court and staff
- One photocopy service room on each floor
- Public lounge and restaurant
- Rooms for security staff, documents, and supplies
- Office space for each agency of legislative branch that Council determines should be located with the legislature
- Office space for Senate Secretary and House Clerk

- Print Shop
- Maintenance Shop
- Media office
- Area adequate for electronic technology and telecommunications equipment and cabling
- Rotunda or atrium for public meetings, celebrations and events
- Facilities for display of Alaska historical exhibits and artifacts

Parking must also be addressed and must include at least the following:

- Covered parking for 75 vehicles on site of legislative hall
- Parking for at least 300 vehicles on site or adjacent to hall
- Covered walkways from parking areas to hall
- Parking area for an additional 150 vehicles near hall
- Total parking space must equal or exceed amount in Uniform Building Code current on date specifications are complete

Section 3: Proposals for Legislative Hall. May be submitted by boroughs or unified municipalities with a population of at least 30,000.

- Must include details regarding financing of project and terms on which hall will be made available to legislature
- Lease payments by legislature may not be in excess of \$1
- Hall must be completed before June 30, 2006

Proposal evaluation shall also consider:

- Availability of basic utility service
- Adequate airport access
- Adequate road or weekly winter ferry service
- Adequate health, education and social service facilities
- Adequate housing opportunities

Section 4: Selection of a Proposal. Council must select or reject all proposals by June 30, 2004. If proposal selected, Council will enter into contracts, leases, etc. If proposal includes a site wholly or partially on state land, Council shall take all actions to arrange for transfer of land to municipality at no cost. AS 36.30.020 and AS 35.05.010 do not apply to this Act.

Section 5: Transition. The first regular session of 25<sup>th</sup> Legislature and all thereafter shall convene in hall. The Revisor shall propose legislation making all changes to statutes necessary to conform to this section.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES



COPY

820 Glacier Avenue • Juneau, Alaska 99801  
Telephone (907) 586-5322  
Fax (907) 586-8323

April 9, 1998

Mr. Don Johnston, Maintenance  
Legislative Affairs Agency  
State Capitol Building - Room 12  
Juneau, Alaska 99801-1182

Dear Don:

Attached is the fire inspection report you requested on the State Capitol Building. This report was prepared by both the Fire Marshal and the Building Official of the City and Borough of Juneau.

After carefully reviewing the report, it appears to me that the majority of items needing attention are of a house keeping nature with a minimum cost associated to them. (For example, adding a flammable liquid storage cabinet in the workshop area, providing a portable fire extinguisher in the kitchen area, documenting various test reports on existing systems throughout the building, etc.).

The one item needing the most consideration involves the building corridors because some of them are also part of the exit system. In this regard, you have eighteen months to develop a plan to bring the corridors up to compliance.

As I understand it, you accompanied Fire Marshal Curtis Jones on the inspection so the above mentioned items probably don't come as a surprise.

If there is anything else we can do to be of assistance, please call me or Curtis.

Respectfully,

CAPITAL CITY FIRE RESCUE

Michael L. Doyle  
Fire Chief

MD:djb

c: Curtis Jones, CBJ Fire Marshal  
Chris Roust, CBJ Building Official  
Dave Palmer, City Manager



820 Glacier Avenue • Juneau, Alaska 99801  
Telephone (907) 586-5322  
Fax (907) 586-8323

April 9, 1998

Mr. Don Johnston, Maintenance  
Legislative Affairs Agency  
State Capitol Building  
Room 12  
Juneau, Alaska 99801-1182

Dear Don:

Thank you for your assistance during the February 19, 1998, fire inspection of the State Capitol Building by Juneau Fire Marshal Curtis Jones. This appears to have been the first request for such an inspection of the Capitol since the State Fire Marshal deferred enforcement of the building and fire codes to the City and Borough of Juneau in 1982.

The codes sections cited below are from the 1994 editions of the Uniform Fire Code (UFC) and the Uniform Building Code (UBC).

- 1) **WORKSHOP:** Fire rated door separating the workshop from the boiler room must be provided with an automatic closing device. The door shall remain in the closed position unless held open by an approved holding device which will allow the door to close upon activation of the fire alarm system (UFC 1112).
- 2) **PAINT LOCKER:** If flammable or combustible liquids are used in the workshop area, no storage is allowed in this room outside an approved Flammable Liquid Storage Locker. This area is classified as Hazard Occupancy. The exit door from the paint spray room must swing in the direction of exit travel. Please provide Explosive Proof Construction data for the concealed exhaust fan (UFC 7902.5.9).
- 3) **ELEVATOR / MAIN STAIRWAY:** Please provide a copy of the test report by an individual or company holding a valid permit as required (IJAAC 50.035) showing that elevator recall and stairway doors close upon activation of the fire alarm system (UFC Appendix I-A 3).
- 4) **KITCHEN:** Provide a portable fire extinguisher with a minimum of 40 BC rating. This extinguisher must be mounted no more than five feet in height from the top of the extinguisher and within 30 travel feet from the stove (UFC 1006.2.7 & UFC Standard 10-1).
- 5) **GENERAL STORAGE:** Throughout the building, reduce storage height to at least two feet below ceiling. Exception: when storage is against a wall (UFC 1103.3.2.2).

- 6) **EMERGENCY POWER SUPPLY SYSTEM:** Please provide a copy of the biannual maintenance test report for the emergency power supply system (UFC Standard 5.6) (NFPA 110-6.3).
- 7) **FIRE ALARM SYSTEM:** Please provide a copy of the annual fire alarm test report. Test report must include the name of the company or individual and their valid permit number as required by State Fire Marshal (13 AAC 50-035) (UFC1001.4 & CBJ Title 19.09.010(b)(13)).
- 8) **STANDPIPE SYSTEM:** Please provide a copy of the five year standpipe test report for the interior and exterior systems. Report must include the name of the company or individual and their valid permit number as required by State Fire Marshal (13 AAC 50-035) (UFC101.4 & CBJ Title 19.09.010(b)(17)).
- 9) **CORRIDOR WIDTH:** The required width of the corridors shall be unobstructed. Exit travel through an intervening room may be allowed provided the exit door meets the required minimum width, has no locking devices, and has smoke detectors that are connected to the fire alarm system located on each side of the door (UFC Appendix I-A 2.3 & UBC Appendix 3407.3).
- 10) **GUARDRAILS:** The fire escape guardrails installed under building permit 9442 issued in September of 1973 appear to not have been inspected for building code compliance. The 1970 Uniform Building Code, which was in effect at the time, in section 1714 called for 42" high guardrails on the fire escape landings and stairs with intermediate rails spaced such that an object 9" in diameter could not pass through. Current codes call for no more than 4" spacing between intermediate rails. The existing guardrails do not meet either the 1970 or current codes.
- 11) **CORRIDORS:** The Uniform Building Code and Uniform Fire Code sections dealing with Life Safety in Existing Non-High Rise Buildings contain requirements for corridors which are a part of an exit system serving an occupant load of 30 or more in an office building. Such corridor walls and ceilings shall have not less than one hour fire resistive construction, doors shall be 20 minute fire rated with self closers and smoke gaskets, and transoms shall have ¼ hour rated fixed glazing (UFC Appendix I-A 2.3 & UBC Appendix 3407.3).

City records show that the Capitol was built in 1929 which was two years after the first edition of the Uniform Building Code was written and long before it was adopted in Alaska. The 1927 edition of the UBC did not require fire protection of corridors in new buildings and the UBC did not have a requirement for fire protection of corridors in existing non-high rise buildings until the 1982 edition. The concept of a fire protected corridor, free from smoke, allowing safe exiting of the occupants of a building during a fire is now a fundamental life safety requirement of building and fire codes throughout the world.

The requirement for such fire ratings may be eliminated if an approved automatic sprinkler system is installed throughout the building. There may be other options to allow this building to retain its historic character with approval of the building official. Examples include covering door panels less than 1 3/8 inches thick with wood-trimmed sheet rock and installing fixed ¼ hour fire rated windows behind frosted glass door windows in doors or transoms.

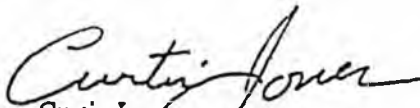
We have attached some information concerning the preservation of historic building components from the Uniform Code for Building Conservation as well as Appendix Section 3407.3 from the Uniform Building Code concerning corridor protection.

Items 1 through 9 must be addressed immediately and should be completed within 21 days of receipt of this report.

Within 18 months of receipt of this report, plans for compliance with items 10 and 11 shall be submitted and approved by CBJ Building Department and within 18 months thereafter the work shall be completed.

If you have any questions concerning this report and the code requirements stated herein, please call Curtis Jones at 789-2052 or Chris Roust at 586-5230.

Sincerely,



Curtis Jones  
Fire Marshal  
Capital City Fire/Rescue



Chris Roust  
Building Official  
City and Borough of Juneau



820 Glacier Avenue • Juneau, Alaska 99801  
Telephone (907) 586-5322  
Fax (907) 586-8323

January 23, 2003

Mr. Don Johnston  
Legislative Affairs Agency  
State Capital Building, Room 12  
Juneau, AK. 99801-1182

Mr. Johnston:

Thank you for your time meeting with me today and discussing the 1998 Fire Inspection completed by Fire Marshal Curtis Jones. I am pleased to see the progress that has been made to your facility. The emergency fire escape upgrades that were completed in November of 2002 are well within the current code standards.

The office off the Committee Room near the emergency fire escape has chairs and tables that encroach upon the egress path. These must be removed from that area immediately. IFC 1003.2.8

All reports are current and on file in your office as required. The fire alarm, stand pipe, elevator, and emergency power were all in order.

You have installed the fire rated door and several paint lockers in the work shop area, as requested.

The kitchen area has a current hood inspection report and all of the fire extinguishers are current with the annual inspections.

A copy of your Emergency Action Plan is on file at the Fire Department.

The issue of the corridors is still a concern, reference 1998 fire inspection report. The Fire Department requests a written plan on how you intend on complying with the Fire Code minimum requirements for existing buildings, within 60 days of this letter.

On April 9, 1998, you were allowed 18 months to submit an approved written plan to the Building Department on how the building is going to be brought into compliance and 18 months to complete the work required. Neither the Building Department nor the Fire Department have received the requested plans.

RECEIVED

MAR 14 2003

Legislative Affairs Agency  
Maintenance

We discussed several options including sprinklers for the building, or bringing the corridor into compliance with fire rated doors, windows and elevator shaft. This building has not been analyzed for compliance with the existing building provisions of the 2000 International Fire and Building Codes as adopted by the State of Alaska. We have verified that the corridors are out of compliance with these codes but it may be that other factors are lacking as well. We recommend that your office obtain the services of a design professional to perform a code analysis and offer you alternatives for compliance. It may be that a sprinkler system is required for the building and that a sprinkler system may eliminate several of the other corridor requirements as well as help the building retain its historic appeal.

If you have questions concerning the 1998 fire report or code requirements, please contact Chris Roust at the Building Department or myself.

Respectfully,



Richard Etheridge  
Fire Prevention Officer

CC: John MacKinnon, CBJ City Manager.  
Mike Doyle, CCF/R Fire Chief.  
Chris Roust. CBJ Building Department.

RECEIVED

MAR 14 2003

Legislative Affairs Agency  
Maintenance



820 Glacier Avenue • Juneau, Alaska 99801  
Telephone (907) 586-5322  
Fax (907) 586-8323

January 23, 2003

Mr. Don Johnston  
Legislative Affairs Agency  
State Capital Building, Room 12  
Juneau, AK. 99801-1182

Mr. Johnston,

After reviewing your request reference the blocking or removal of doors within the Capital Building. The fire department is requesting that the number of exits into the corridor and exits from the buildings not be altered.

1001.2 of the 2000 edition of the International Fire Code, which was adopted by the State of Alaska states:

*It shall be unlawful to alter the building or structure in a manner that will reduce the number of exits or the capacity of the means of egress to less than required by this code.*

The fire department regrets any inconvenience that this may cause, but public safety must remain our main priority.

Respectfully,

Richard Etheridge  
Fire Prevention Officer

CC: Mike Doyle, CCF/R Fire Chief  
Chris Roust, CBJ Building Department

RECEIVED  
MAR 14 2003  
Legislative Affairs Agency  
Maintenance

## Professional Whale Watching & wildlife adventures



### Charter fishing & flightseeing

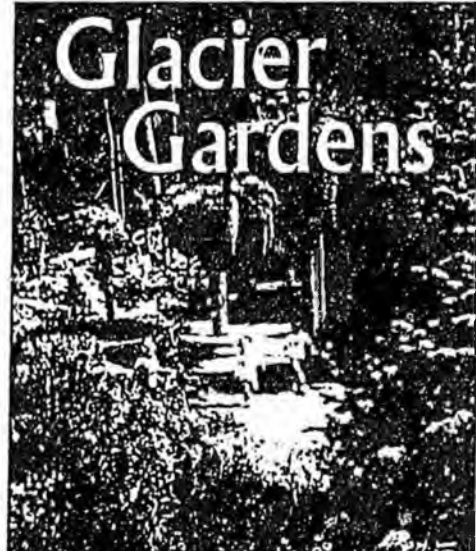
Leave the crowds behind  
and enjoy Juneau's most recommended  
whale watch tour

### Orca Enterprises

Across from the Tram

P.O. Box 35431, Juneau, AK-99803  
TOLL FREE 1-888-733-6722 • (907) 789-6801  
e-mail: whales@ptl.alaska.net  
www.alaskawhalewatching.com

## Glacier Gardens



### RAIN FOREST ADVENTURE

Beautiful  
gardens  
Spectacular  
Overlooks

Guided Tours Aboard Our  
Covered Shuttles



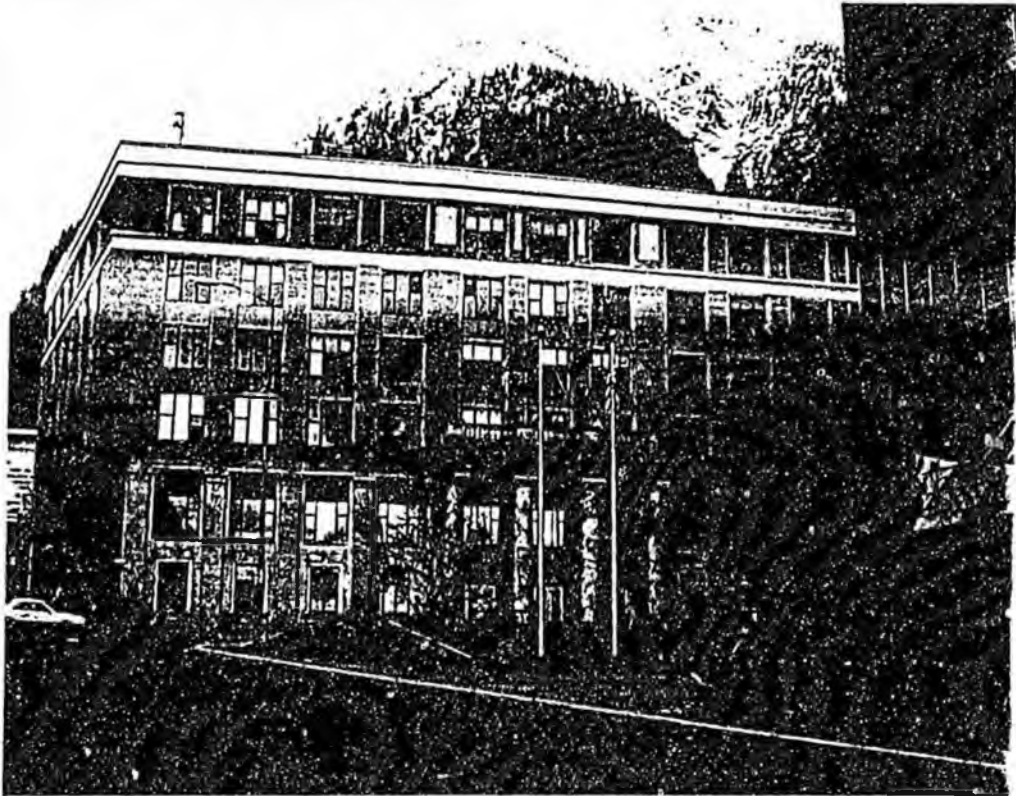
# Past & Present

Alaska's Capitol in Juneau, Alaska's capitol, had its seventieth birthday last winter without cake, candles or any special observance. Back in January 1931 it had just been completed as the Federal and Territorial Building and offices, both federal and territorial, were moving in.

It so happened that I was beginning my first paid newspaper job just then, on *Stroller's Weekly*, a paper now

lobby from Seward Street. Also a much-visited section was the Territorial Library and Museum on the west side.

The two legislative chambers were in the east wing of the second floor, with the chambers for the eight members of the Senate at the front, the larger chambers for the sixteen members of the House at the north end of that wing. But as the legislature was in session only



defunct. The occupation of the building provided several news stories, but seventy years have brought many changes in the building.

The ground floor, back then, was occupied by the Alaska Communications System, a branch of the Army Signal Corps, on the east side of the building. The west side held the U.S. Customs Service, the boiler room and some storage rooms.

The part of the building most visited by the general public was the U.S. Post Office which occupied the entire east wing of the first floor. There was a separate entrance to the Post Office

for 60 days every other year; the rooms of that wing were mostly vacant at first, then occupied between sessions in later years by other branches of government.

The offices of the Governor and Secretary of Alaska (since renamed Lieutenant Governor) and their staffs occupied the east wing of the third floor. Until statehood, they were federal officials, appointed by the President. The top floor, the fifth, was also all federal, occupied by the Department of Justice: the District Court, Clerk of the Court, U.S. Marshal, U.S. Attorney, U. S. Commissioner, and their staffs.

Scattered through the remainder of

it

By Bob DeArmond

the building were almost all the government offices then in Juneau, federal and territorial. Among the federal offices were the Forest Service, Bureau of Fisheries, Alaska Game Commission, Alaska Road Commission (then still a part of the Army), Bureau of Public Roads, Geological Survey, Treasury Disbursing Officer, Weather Service, and perhaps others. There were few territorial offices back then: Treasurer, Attorney General, Commissioner of Education, Auditor, Highway Engineer.

I visited the building frequently that year and my memory is of many vacant rooms. Perhaps twenty per cent of them were empty. Currently, in 2001, two programs have been proposed in the Legislature: 1) Evict the Governor and Lieutenant Governor and their staffs so the legislature can occupy the empty building; 2) Move the legislature to Matanuska or some such place. If both proposals are enacted the building will be as empty as it was when I first saw it in January 1931. Keep your fingers crossed!

**The Names of Our Towns:** Angoon has been the official name of this town on the west side of Admiralty Island since the U.S. census of 1880 which found 420 people there, but the name's origin is uncertain. Soon after 1880 many of the people moved a short distance to Killisnoo where a plant had been built to produce whale oil, then herring oil. Angoon stands at the entrance of Kootznahoo Inlet and that was the name by which, with various spellings, the town was originally called. That name, according to the *Orth Dictionary of Alaska Place Names*, is derived from "the Tlingit word 'Khutz-n hu.' meaning 'bear fort.'" Despite the 1880 census use of Angoon, the Sitka newspaper, *The Alaskan*, continued to use Kootznahoo at least until 1900. Angoon got a post office in 1928. After the Killisnoo plant closed, most of the people moved back to Angoon and the Killisnoo post office was moved there in 1930. Our latest census figures give a population of 572, up 1 from ten years ago. ■

[www.alaskansoutheaster.com](http://www.alaskansoutheaster.com)



**Rick Breseman:**  
**Candidate-Sealaska**

**Experience:**

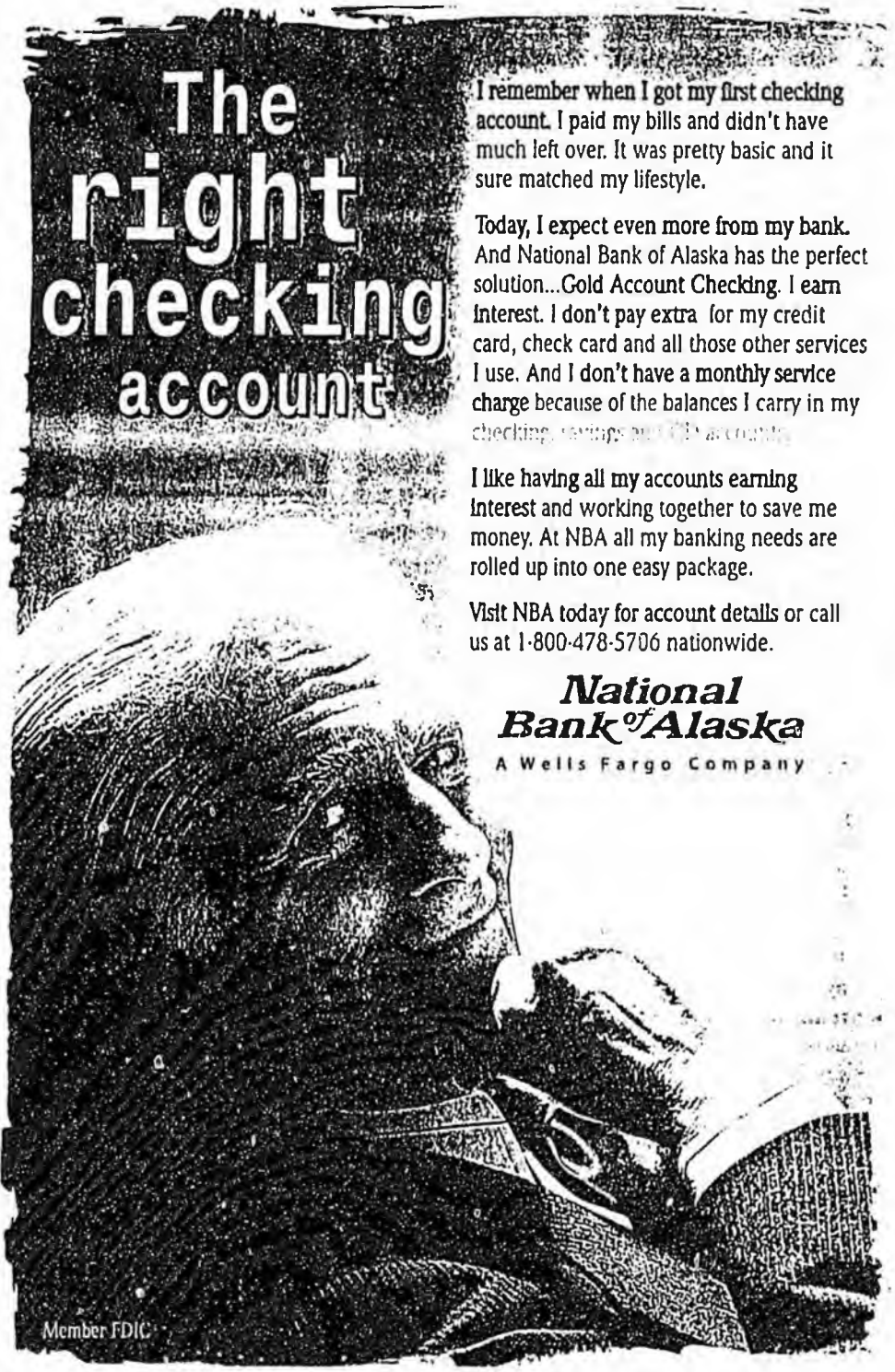
- 20 years Alaska based/Internationally focused.
- Senior management positions at Afognak Native Corporation, Halk Corporation, Sealaska Timber Corporation.
- Development of export markets: Japan, Korea, India, Taiwan, Canada, Peoples Republic of China.

**Education:**

- Executive Masters Degree & Bachelor's Degree, Business Administration with concentration in International Business & Marketing.

Email: [breseman@msn.com](mailto:breseman@msn.com) • [www.hww.com/breseman](http://www.hww.com/breseman)

*Capability • Integrity*



**The right checking account**

I remember when I got my first checking account. I paid my bills and didn't have much left over. It was pretty basic and it sure matched my lifestyle.

Today, I expect even more from my bank. And National Bank of Alaska has the perfect solution...Gold Account Checking. I earn interest. I don't pay extra for my credit card, check card and all those other services I use. And I don't have a monthly service charge because of the balances I carry in my checking, savings and CD accounts.

I like having all my accounts earning interest and working together to save me money. At NBA all my banking needs are rolled up into one easy package.

Visit NBA today for account details or call us at 1-800-478-5706 nationwide.

**National Bank of Alaska**  
A Wells Fargo Company

Member FDIC

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeberg/>



INTERIM:  
716 WEST 4TH AVENUE, SUITE 300  
ANCHORAGE, AK 99501  
PHONE: (907) 269-0117  
FAX: (907) 269-0119

SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-4968  
FAX: (907) 465-2040

## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### Memorandum

To: Representative Weyrauch, Chairperson  
House State Affairs Committee

From: Representative Norman Rokeberg

Date: April 8, 2004

Re: HB 60

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

---

Please schedule a House State Affairs Committee Meeting for HB 60. I have attached the requisite information, including:

- 1) Current version of the bill
- 2) Sponsor Statement
- 3) Sectional Analysis
- 4) Supporting Information

Contact my office if you have any questions. Thank you.

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeberg/>



INTERIM:  
716 WEST 4TH AVENUE, SUITE 300  
ANCHORAGE, AK 99501  
PHONE: (907) 269-0117  
FAX: (907) 269-0119

SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-4968  
FAX: (907) 465-2040

## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### Sponsor Statement

#### HB 60

HB 60 is the vehicle by which the Alaska State Legislature will move to a legislative hall that is befitting for a Legislature in the 21<sup>st</sup> century. Alaska's legislative hall should symbolize the spirit and meaning of Alaska. Alaskans should take pride in a building that reflects our diversity, unity, history, and vision of the future.

Specifically, HB 60 allows boroughs or unified municipalities with at least 30,000 residents to make bids to build a new Capitol Building in their community. The boroughs or unified municipalities able to make the bid would include Juneau, Matanuska-Susitna, Fairbanks, Fairbanks North Star Borough, Kenai Peninsula Borough, and Anchorage.

The current Capitol Building was built in 1931. Alaska was still a territory, governed by the 10<sup>th</sup> Territorial Legislature, which was comprised of a total of 24 legislators. The issues facing the great State of Alaska have matured and developed since this time, and our State Legislature has grown to rise up and meet these issues. However, the building in which we work to promote Alaska's interests, where the public comes to see Alaskan history made, remains the building of 1931. Many of the problems with having an antiquated building cannot be rectified with patchwork remedies. These problems include a lack of access to disabled Alaskans (many of whom are veterans), insufficient space for our legislators and legislative committees, corridors which do not meet safety requirements, a lack of amenities to serve the public (including gallery seating and a public lounge), as well as the constant need to update obsolete electrical, heating, and communications systems.

Upon accepting the borough's or unified municipality's bid, the legislative counsel will be responsible for carrying out the terms of the proposal, and for the operation and maintenance of the building. Rent would be \$1 per year. The new building will be completed and ready for occupancy by 2008.

HB 60 will provide Alaskans with a functional, beautiful, accessible, and safe legislative hall—a distinguished symbol of our government and a structure of which Alaskans can be proud.

For these reasons, I urge you to support HB 60.

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeberg/>



INTERIM:  
716 WEST 4TH AVENUE, SUITE 300  
ANCHORAGE, AK 99501  
PHONE: (907) 269-0117  
FAX: (907) 269-0119

SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-4968  
FAX: (907) 465-2040

## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### Sectional Analysis HB 60

#### Sec 1. Findings

- a. Capitol building houses the Governor, Lieutenant Governor, and the Legislature.
- b. Corridors were found in violation of fire codes in 1998, and we have been unable to keep them at code. In addition, modern office buildings require fire protection corridors, which our capitol building cannot support.
- c. Items of concern are, corridor length, space, access, lack of amenities, chamber space, committee space, electrical and telecommunication services, heating and ventilation.
- d. The building has outlived its usefulness.

Sec 2. a. Alaska legislative counsel shall develop specifications for the new hall that will be made available by December 15, 2003. The building must first meet all fire codes, ADA requirements. The building must correct each of the issues listed in Sec1 (c).

- (1) An office for each legislator and their staff
- (2) A chamber for each body of the legislature, with voting boards
- (3) A legislative lounge
- (4) 18 committee rooms
- (5) A suite office space for the governor and his staff
- (6) One Courtroom for the Supreme Court and staff
- (7) One photocopy room for each floor
- (8) A public lounge
- (9) Rooms for security, supply, and documents
- (10) Office space deemed appropriate by the legislature
- (11) Office space for the senate secretary and the chief clerk
- (12) A print shop
- (13) A maintenance shop
- (14) A media office
- (15) An adequate area for media
- (16) An atrium or rotunda for events
- (17) Displays for Alaska historical exhibits and artifacts
- (18) A documents room

- (19) A press room
- (20) Adequate restrooms on each floor
- b. specifications must include parking, including
  - (1) covered parking for at least 75 vehicles
  - (2) parking for at least 300 adjacent to the building
  - (3) covered walkways
  - (4) parking for an additional 150 spaces near the site

c. Total parking provided must equal or exceed the amount specified by code

Sec 3. Upon completing specifications the legislature shall solicit proposals. In deciding what proposal to accept the legislature shall consider whether the community has (1) adequate utilities (2) airport access (3) road or ferry access and (4) has adequate health, education, and social services facilities and adequate housing opportunities.

Sec 4. Contract procedures under AS 36.30.020 do not apply to this selection.

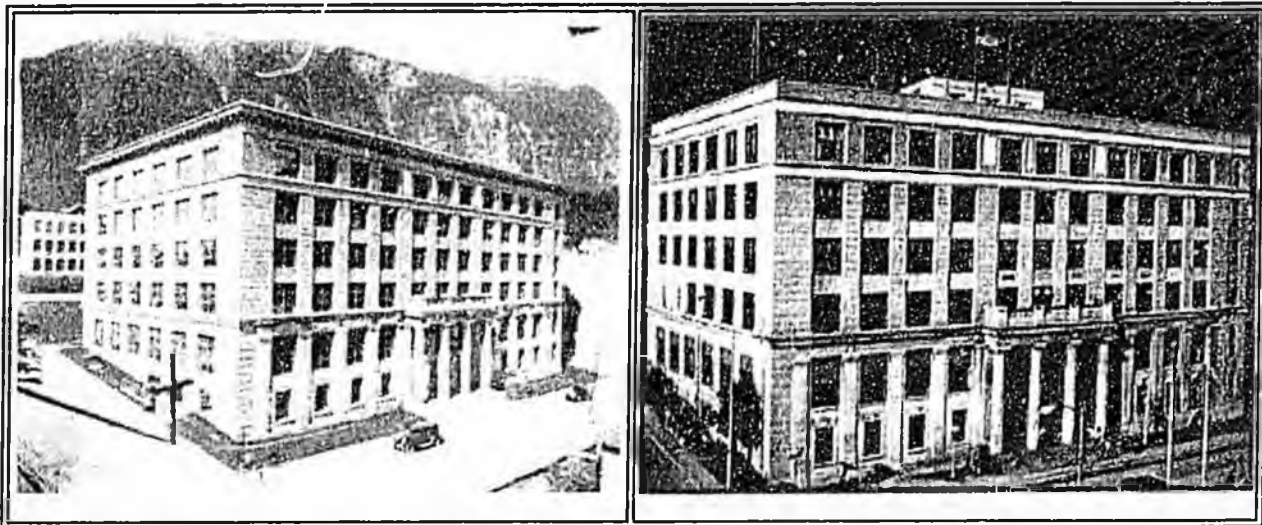
Sec 5. If a hall is constructed under this act, the legislature shall convene in this hall during the next session and every session, thereafter.



## Alaska's Capitol

Welcome to Alaska's capitol! Originally completed in 1931, the building served as the territorial capitol housing the legislature, governor, the post office, courts, and numerous other federal and territorial agencies. Today our capitol contains the offices of the state legislature, governor, and lieutenant governor.

[Capitol Tour Video \(Download 45.7 MB File\)](#) Download to your desktop and play with Windows Media Player.



Congress authorized and made an initial appropriation for the building in 1911, but construction did not begin until 1929. There were many reasons for the delay, including the cessation of all public works of this type caused by World War I. One early delay was the refusal of the federal government to pay the owners' asking price for some of the lots on the site. This was overcome by local citizens and businesses who contributed money to purchase the necessary lots and deed them to the government.

Architects in the U.S. Treasury Department prepared plans for the building, and the construction contract was awarded to N.P. Severin Company of Chicago. Ground was broken by territorial governor George A. Parks on September 18, 1929. Construction is brick faced reinforced concrete. The lower facade is faced with limestone. The limestone and marble used in the four columns of the portico and in the lobby were quarried on Prince of Wales Island in southeast Alaska. In front of the building is a replica of the Liberty Bell, given to Alaska in 1950. A similar bell was given to every state as part of a promotional campaign for U.S. Savings Bonds.

Awaiting construction of the capitol, the territorial legislature, beginning with its first session in 1913, met in rented buildings around Juneau. The territorial governor was also in rented quarters when the capitol opened in 1931. When Alaska became a state in 1959,

**the building became the property of the state under provisions of the Alaska Statehood Act.**

**In the lobby are two clay fired sculptures by Joan Bugbee Jackson. The scenes "Harvest of the Sea" and "Harvest of the Land" depict hunting and fishing in the 1930's and took approximately nine months to complete. Other carvings depict principal sources of income for the state: oil and gas, fishing and fish processing, wood products, minerals, tourism, hunting and trapping. Also on the ground floor is the documents office, which distributes bills and other official publications during the legislative session. The remainder of the ground floor consists of legislators' offices and meeting rooms, as does the first floor.**

**The legislative chambers have always been on the second floor, although not exactly where they are now. The original Senate chambers were in the rooms currently used as offices for the House Speaker and majority caucus. These rooms were restored in 1979. Much of the furniture is from the territorial period, and the hand stenciled ceiling dates from the time of construction.**

**The entire third floor is occupied by the governor and lieutenant governor. In the main hall is the "Hall of Governors" containing pictures of all territorial and state governors.**

**Until 1993 the fourth floor housed the Attorney General's offices. Today the entire fourth floor is used by the Legislature for offices and meeting rooms.**

**The Senate Finance Committee room is located on the fifth floor in what was once the federal district court room. This room has also been restored and the wooden benches are those that were used in the original court room.**

**Alaska's Capitol has served as the symbol and seat of government for over 60 years, and continues today to be a working Capitol.**

**Send questions and comments to [Webmaster](#). This page last updated 10/24/02**

# Legislative Research Services

Alaska State Legislature  
Legislative Affairs Agency  
Division of Legal & Research Services



130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196  
Phone: (907) 465-3991  
Fax: (907) 463-3351

June 5, 1997

## MEMORANDUM

TO:

FROM: Maria Gladziszewski *MG*  
Legislative Analyst/Manager

RE: **Brief History of Efforts to Move Alaska's Capital, 1960-1997**  
Research Request 97.062

You asked for an overview of the capital move issue in Alaska. Below is a chronological summary of major events in the history of the issue. Attached is a table listing all the measures that have been put to voters since statehood regarding the capital move. Also attached is another history, written January 1983, with additional details on events between 1960 and 1982.

### 1959--Delegates to Constitutional Convention Sidestep Issue

Delegates to the constitutional convention sidestepped the contentious issue of the capital location through the compromise of Article XV, Section 20, declaring Juneau the capital of the state but placing this wording in the "transitional" article of the constitution.

### 1960--Voters Reject Capital Move Initiative

Initiative No. 1 on the 1960 general election ballot provided that "the capital of the state of Alaska shall be moved on or before January 1, 1965, to a location within the Cook Inlet-Rail Belt area, exact site to be selected by a committee of five appointed by the Governor. . . ."

The initiative was defeated 23,972 (56 percent) to 18,865 (44 percent).

June 5, 1997  
Page 2

### **1962--Voters Reject Capital Move Initiative**

Initiative No. 1 on the 1962 general election ballot proposed the following:

. . . the Capital of Alaska be relocated in Western Alaska, to a site not within 30 miles of Anchorage. A committee of senior senators from each senatorial district shall select not more than three locations, consisting of not less than 6,400 acres of state lands. . . . From the locations selected the site shall be chosen by plurality vote of the people. The Legislature shall immediately thereafter provide for planning and construction of necessary state facilities. Movement of the capital shall begin before June 1, 1968.

Opponents sued to block the initiative from the ballot on the grounds that the location of the capital was a constitutional matter and the constitution could not be amended by way of an initiative. The Alaska Supreme Court ruled that matters treated in Article XV were not a permanent part of the constitution and could be changed by statute; thus, they could be changed by initiative (*Starr v. Hagglund*, 374 P.2d 316, 1962).

The initiative failed by a vote of 32,325 (55 percent) to 26,542 (45 percent).

### **1974--Voters Adopt Capital Move Initiative**

Initiative No. 1 on the 1974 primary ballot proposed to relocate the capital to a site outside a radius of 30 miles from Anchorage or Fairbanks. Three potential sites were to be nominated by a nine-person site selection committee, and the voters were to make the final selection. The contending sites were to have 100 square miles of contiguous land owned by the state or land that could be acquired by the state at no cost. The move was to commence no later than October 1, 1980.

The initiative was adopted by the voters 46,659 (57 percent) to 35,683 (43 percent).

### **1976--Voters Select Willow as Site of New State Capital**

In accordance with the 1974 initiative, a capital site selection committee was formed. After a year of study, the committee proposed Willow, Larson Lake and Mount Yenlo as the three sites. These choices went before the voters at the 1976 general election; the Willow site was chosen by a majority vote of 53 percent.

Mount Yenlo, Larson Lake, and Willow received 16,169, 33,170, and 56,210 votes, respectively.

June 5, 1997  
Page 3

### **1977--Legislature Creates the New Capital Site Planning Commission**

In 1977, the legislature adopted a capital planning statute that created a nine-member New Capital Site Planning Commission (Ch 67, SLA 1977). The commission was directed to prepare a detailed development plan for a city of 30,000 residents, cost estimates, and a financial plan. The commission estimated the cost of moving the capital at about \$3.5 billion and recommended that \$966 million in bonds be authorized for the project through its completion in 1994.

### **1978--Voters Reject \$966 Bond Authorization; Adopt FRANK Initiative**

At the fall general election of 1978, the voters rejected by a wide margin--88,783 (74 percent) to 31,491 (26 percent)--the \$966 bond authorization recommended by the commission. At the same election, the voters adopted by a vote of 69,414 (56 percent) to 55,253 (44 percent) Ballot Proposition No. 3, known as the FRANK initiative (spearheaded by the Fairbanks-based Frustrated, Responsible Alaskans Needing Knowledge), which provided that money could be authorized to relocate the capital only after a majority of voters casting ballots in a statewide election approved a bond proposition that identified "all bondable costs" of the capital relocation. A February 1978 opinion of the Alaska Attorney General had interpreted the phrase "all bondable costs" to include all costs associated with the move that *could* be bonded, whether or not alternative financing methods were used.

The FRANK initiative brought capital move planning to a halt for two years (the period during which the legislature may not repeal an initiative).

### **1981--Legislature Reconstitutes New Capital Site Planning Commission**

By the terms of Chapter 54, SLA 1981 (which "repealed and reenacted" the FRANK initiative), a reconstituted capital site planning commission was charged with the task of developing plans for construction and cost estimates for all aspects of the move, including the indemnification of Juneau residents. The 1981 law provided the following:

. . . state money may be spent to relocate the state capital from its present location to the new capital site at Willow only after a majority of those voting on the proposition at the 1982 general election have approved a ballot proposition that includes the total cost to the state of providing for completion of relocation of a functional state capital . . . .

The measure also provided that if the ballot proposition was rejected by a majority of the voters, then all laws relating to capital relocation would be repealed. The commission completed its work

June 5, 1997

Page 4

in August, 1982. It scaled down the cost of the project from the first commission's estimate of \$3.5 billion to a new estimate of \$2.8 billion.

#### **1982--Voters Reject Ballot Proposition to Relocate Capital to Willow**

Ballot Measure No. 8 on the 1982 general election ballot read as follows:

Considering the cost, revenue and population estimates set out below, may the State of Alaska spend the money necessary (estimated to total \$2,843,147,000) to accomplish relocation of a functional state capital from Juneau to the new capital site at Willow?

The measure was defeated 102,083 (53 percent) to 91,249 (47 percent).

#### **1994--Voters Reject Moving the Capital to Wasilla; Adopt FRANK Initiative**

At the general election of 1994, voters rejected Ballot Measure Number 3, a proposal to change the state capital to Wasilla as of January 1, 1997, by a 55 to 45 percent margin. At the same election, the voters adopted by a vote of 119,089 (64 percent) to 66,157 (36 percent) Ballot Proposition No. 5, a revival of the FRANK initiative (spearheaded by the Fairbanks-based Fiscally Responsible Alaskans Needing Knowledge), with the following provision:

State money may be expended to relocate physically the capital or the legislature from the present location only after a majority of those voting in a statewide election have approved a bond issue that includes all bondable costs to the State of the relocation of a functional state legislature or capital to the new site over a 12-year period following such approval.<sup>1</sup>

\* \* \* \* \*

I hope this information is helpful to you. If you have additional questions or need more information, please do not hesitate to contact us.

Attachments

---

<sup>1</sup>See Alaska Statutes 44.06.050 - 44.06.060.

| DATE      | Question   | FOR  |            | AGAINST        |            |
|-----------|--|--|------------|----------------|------------|
|           |  | Votes  | Percentage | Votes          | Percentage |
| 9-Aug-60  | <i>Ballot Initiative:</i><br>Relocate the State Capital  | 18,865   | 44%        | <b>23,972</b>  | <b>56%</b> |
| 6-Nov-62  | <i>Ballot Initiative:</i><br>Relocate the State Capital  | 26,542   | 45%        | <b>32,325</b>  | <b>55%</b> |
| 27-Aug-74 | <i>Ballot Initiative:</i><br>Relocate & Construct<br>Capital   | <b>46,659</b>  | <b>57%</b> | 35,683         | 43%        |
| 2-Nov-76  | <i>Ballot Measure:</i><br>Capital Site Selection   | Larson Lake: 33,170<br>Mount Yenlo: 16,169<br>Willow: 56,219 |            |                |            |
| 7-Nov-78  | <i>Bonding Proposition:</i><br>New State Capital<br>Construction Bonds--<br>\$966,000,000                                | 31,491   | 26%        | <b>58,783</b>  | <b>74%</b> |
| 7-Nov-78  | <i>Ballot Initiative:</i><br>Full Bondable Costs of<br>Relocating the Capital<br>[FRANK Initiative]                      | <b>69,414</b>  | <b>56%</b> | 55,253         | 44%        |
| 2-Nov-82  | <i>Ballot Proposition:</i><br>Relocation of State<br>Capitol   | 91,249   | 47%        | <b>102,083</b> | <b>53%</b> |
| 8-Nov-94  | <i>Ballot Initiative:</i><br>Relating to Changing the<br>Capital to Wasilla  | 96,398   | 45%        | <b>116,277</b> | <b>55%</b> |
| 8-Nov-94  | <i>Ballot Initiative:</i><br>Relating to Voters Right to<br>Know the Cost of Moving<br>the Capital [FRANK<br>Initiative] | <b>119,089</b>   | <b>64%</b> | 66,157         | 36%        |

**SOURCES:**

State of Alaska Official Election Pamphlets; and  
Alaska Division of Elections at <http://www.gov.state.ak.us/lsgov/elections/inihist.htm>

HB

64



# ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA  
STATE CAPITOL  
JUNEAU, ALASKA  
99801-1182

(907) 465-3744  
FAX (907) 465-2273

February 20, 2003

TO: Legislative Legal

FROM: House State Affairs Committee  
Ginny Austerman, Committee Aide

A handwritten signature in cursive script, appearing to read "Ginny Austerman".

SUBJECT: Amendment for HB 64

Offered at House State Affairs today by Rep. Gruenberg:

on page 3 line 20 insert after the word maintained

or the payee is domiciled in

This bill passed out of the Committee today, as amended.

# Alaska House of Representatives

Richard Foster  
P.O. Box 1630  
Nome, AK 99762  
907-443-5036  
Fax 907-443-2162



During Session  
State Capitol Rm. 410  
Juneau, AK 99801-1182  
907-465-3789  
Fax 907-465-3242

**Majority Whip**

**House Bill 64**

**“An Act relating to court approval of the purchase of structured settlements.”**

## **Sponsor’s Statement**

House Bill 64 was introduced to address a concern brought forward by some of the states trial lawyers.

Apparently firms have been contacting recipients of structure settlements and offering to buy those settlements for a small portion of their value. When a person living in a village is contacted, they may not fully understand the implications of the purchase and realize what they are giving up in terms of long-term benefit versus a quick cash payoff.

This act would allow the reassignment of a structured settlement only after it had been approved by the courts and outlines the considerations that must be made before such a transfer is approved.

The specific provisions of the bill are outlined in the analysis provided by Legislative Legal Services.

# LEGAL SERVICES

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 28, 2003

**SUBJECT:** Sectional Summary of HB 64

**TO:** Representative Richard Foster

**FROM:** Gerald P. Luckhaupt *JERRY*  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill creates AS 09.68.200 which provides that structured settlements may not be transferred without court approval of the transfer. The court may not approve a transfer unless

- the structured settlement arose from an action filed in Alaska or which could have been filed in Alaska or the payee of the structured settlement is domiciled in Alaska;
- the transfer complies with state and federal law;
- the transferee has provided a disclosure statement to the payee as required by proposed AS 09.68.200(a)(3);
- the transfer is in the best interests of the payee and the payee's dependents;
- the payee has received independent professional advice regarding the transfer;
- notice has been provided to the payer (the annuity issuer and obligor);
- choice of law forum that complies with proposed AS 09.68.200(a)(7) is included in the transfer agreement;
- transferee must indemnify the annuity issuer and obligor for all liability and costs.

Creates AS 09.68.210 which provides the procedure for approval of a transfer of a structured settlement.

Creates AS 09.68.220 which provides that the provisions of AS 09.68.200 - 09.68.230 may not be waived nor may a penalty be charged the payee if the proposed transfer does not meet the requirements of AS 09.68.200 - 09.68.230.

Creates AS 09.68.230 which provides definitions.

GPL:med  
03-067.med

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 64(STA)  
 (H) Publish Date: 2/24/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Purchase of Structured Settlements BRU Banking, Securities & Corporations (115)  
 Component Banking, Securities & Corporations  
 Sponsor Representative Foster  
 Requester House State Affairs Component No. 1233

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

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

| OPERATING EXPENDITURES | FY 2004    | FY 2005    | FY 2006    | FY 2007    | FY 2008    | FY 2009    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|   |            |            |            |            |            |            |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   |            |            |            |            |            |            |
| 1003 GF Match                           |            |            |            |            |            |            |
| 1004 GF                                 |            |            |            |            |            |            |
| 1005 GF/Program Receipts                |            |            |            |            |            |            |
| 1037 GF/Mental Health                   |            |            |            |            |            |            |
| Other (Specify Type--Do not abbreviate) |            |            |            |            |            |            |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2003) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

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

The proposed legislation would regulate the purchase of structured settlements. This legislation does not impact the operations of this division.

Prepared by: Terry Lutz, Acting Director Phone 907-465-2521  
 Division Banking, Securities & Corporations Date/Time 2/10/03 2:35 PM  
 Approved by: Edgar Blatchford, Commissioner Date 2/10/2003  
 Agency Department of Community & Economic Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSHB 64(JUD)  
 (H) Publish Date: 3/10/2003

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Structured Settlements BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Representative Foster  
 Requester House Judiciary Component No. 768

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

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

| OPERATING EXPENDITURES | FY 2004    | FY 2005    | FY 2006    | FY 2007    | FY 2008    | FY 2009    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE (Thousands of Dollars)**

|   |            |            |            |            |            |            |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   |            |            |            |            |            |            |
| 1003 GF Match                           |            |            |            |            |            |            |
| 1004 GF                                 |            |            |            |            |            |            |
| 1005 GF/Program Receipts                |            |            |            |            |            |            |
| 1037 GF/Mental Health                   |            |            |            |            |            |            |
| Other (Specify Type--Do not abbreviate) |            |            |            |            |            |            |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

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

The Alaska Court System does not anticipate any fiscal impact by the passage of HB 64.

Prepared by: Doug Wooliver, Administrative Attorney Phone \_\_\_\_\_  
 Division: Alaska Court System Date/Time 3/10/03 10:53 AM  
 Approved by: Stephanie Cole, Administrative Director Date 3/10/2003  
 Agency: Alaska Court System

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: CSHB 64(JUD)  
 (H) Publish Date: 3/10/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
 Title: Purchase of Structured Settlements BRU: Workers' Compensation  
 Component: Workers' Compensation  
 Sponsor: Representative Foster  
 Requester: House JJD Component Number: 344

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

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

| OPERATING EXPENDITURES | FY 2004    | FY 2005    | FY 2006    | FY 2007    | FY 2008    | FY 2009    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  |            |            |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1037 GF/Mental Health    |            |            |            |            |            |            |
| Other (Specify Type)     |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2003) cost: None

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

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

This bill will require workers compensation claimants who are receiving benefits through periodic payments either through a standard claim or a structured settlement, make an application to the court for approval of transfer of these payments. The Division of Workers' Compensation does not anticipate a fiscal impact as a result of this bill.

Prepared by: Paul Grossi, Director Phone: 465-2790  
 Division: Workers' Compensation Date/Time: 2/27/03 10:11 AM  
 Approved by: Greg O'Claray, Commissioner Date: 02/27/03  
 Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

49 USC 40101  
note.

~~“(3) AIRLINE-RELATED DEPOSIT.—For purposes of this subsection, the term ‘airline-related deposit’ means any deposit of taxes imposed by subchapter C of chapter 33 of such Code (relating to transportation tax).”~~

~~“(b) EFFECTIVE DATE.—This amendment made by this section shall take effect as if included in section 301 of the Air Transportation Safety and System Stabilization Act (Public Law 107-42).~~

~~SEC. 115. TREATMENT OF CERTAIN STRUCTURED SETTLEMENT PAYMENTS.~~

~~“(1) IN GENERAL.—Subtitle E is amended by adding at the end the following new chapter:~~

~~“CHAPTER 55—STRUCTURED SETTLEMENT FACTORING TRANSACTIONS~~

~~“Sec. 5891. Structured settlement factoring transactions.~~

~~“SEC. 5891. STRUCTURED SETTLEMENT FACTORING TRANSACTIONS.~~

~~“(a) IMPOSITION OF TAX.—There is hereby imposed on any person who acquires directly or indirectly structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount as determined under subsection (c)(4) with respect to such factoring transaction.~~

~~“(b) EXCEPTION FOR CERTAIN APPROVED TRANSACTIONS.—~~

~~“(1) IN GENERAL.—The tax under subsection (a) shall not apply in the case of a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance in a qualified order.~~

~~“(2) QUALIFIED ORDER.—For purposes of this section, the term ‘qualified order’ means a final order, judgment, or decree which—~~

~~“(A) finds that the transfer described in paragraph (1)—~~

~~“(i) does not contravene any Federal or State statute or the order of any court or responsible administrative authority, and~~

~~“(ii) is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents, and~~

~~“(B) is issued—~~

~~“(i) under the authority of an applicable State statute by an applicable State court, or~~

~~“(ii) by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.~~

~~“(3) APPLICABLE STATE STATUTE.—For purposes of this section, the term ‘applicable State statute’ means a statute providing for the entry of an order, judgment, or decree described in paragraph (2)(A) which is enacted by—~~

~~“(A) the State in which the payee of the structured settlement is domiciled, or~~

~~“(B) if there is no statute described in subparagraph (A), the State in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding~~

asset for the structured settlement is domiciled or has its principal place of business.

"(4) APPLICABLE STATE COURT.—For purposes of this section—

"(A) IN GENERAL.—The term 'applicable State court' means, with respect to any applicable State statute, a court of the State which enacted such statute.

"(B) SPECIAL RULE.—In the case of an applicable State statute described in paragraph (3)(B), such term also includes a court of the State in which the payee of the structured settlement is domiciled.

"(5) QUALIFIED ORDER DISPOSITIVE.—A qualified order shall be treated as dispositive for purposes of the exception under this subsection.

"(c) DEFINITIONS.—For purposes of this section—

"(1) STRUCTURED SETTLEMENT.—The term 'structured settlement' means an arrangement—

"(A) which is established by—

"(i) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2), or

"(ii) agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1), and

"(B) under which the periodic payments are—

"(i) of the character described in subparagraphs (A) and (B) of section 130(c)(2), and

"(ii) payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

"(2) STRUCTURED SETTLEMENT PAYMENT RIGHTS.—The term 'structured settlement payment rights' means rights to receive payments under a structured settlement.

"(3) STRUCTURED SETTLEMENT FACTORING TRANSACTION.—

"(A) IN GENERAL.—The term 'structured settlement factoring transaction' means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

"(B) EXCEPTION.—Such term shall not include—

"(i) the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights, or

"(ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

"(4) FACTORING DISCOUNT.—The term 'factoring discount' means an amount equal to the excess of—

"(A) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over

"(B) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

"(5) RESPONSIBLE ADMINISTRATIVE AUTHORITY.—The term 'responsible administrative authority' means the administrative authority which had jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

"(6) STATE.—The term 'State' includes the Commonwealth of Puerto Rico and any possession of the United States.

"(d) COORDINATION WITH OTHER PROVISIONS.—

"(1) IN GENERAL.—If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

"(2) NO WITHHOLDING OF TAX.—The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction."

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end the following new item:

"Chapter 55. Structured settlement factoring transactions."

(c) EFFECTIVE DATES.—

Applicability.

(1) IN GENERAL.—The amendments made by this section (other than the provisions of section 5891(d) of the Internal Revenue Code of 1986, as added by this section) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into on or after the 30th day following the date of the enactment of this Act.

Applicability.

(2) CLARIFICATION OF EXISTING LAW.—Section 5891(d) of such Code (as so added) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into before, on, or after such 30th day.

(3) TRANSITION RULE.—In the case of a structured settlement factoring transaction entered into during the period beginning on the 30th day following the date of the enactment of this Act and ending on July 1, 2002, no tax shall be imposed under section 5891(a) of such Code if—

(A) the structured settlement payee is domiciled in a State (or possession of the United States) which has not enacted a statute providing that the structured settlement factoring transaction is ineffective unless the transaction has been approved by an order, judgment, or decree of a court (or where applicable, a responsible administrative authority) which finds that such transaction—

(i) does not contravene any Federal or State statute or the order of any court (or responsible administrative authority); and

(ii) is in the best interest of the structured settlement payee or is appropriate in light of a hardship faced by the payee; and

(B) the person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction the amounts and due dates of the payments to be transferred, the aggregate amount to be transferred, the consideration to be received by the structured settlement payee for the transferred payments, the discounted present value of the transferred payments (including the present value as determined in the manner described in section 7520 of such Code), and the expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction.

**SEC. 116. PERSONAL EXEMPTION DEDUCTION FOR CERTAIN DISABILITY TRUSTS.**

(a) **IN GENERAL.**—Subsection (b) of section 642 (relating to deduction for personal exemption) is amended to read as follows: 26 USC 642.

“(b) **DEDUCTION FOR PERSONAL EXEMPTION.**—

“(1) **ESTATES.**—An estate shall be allowed a deduction of \$600.

“(2) **TRUSTS.**—

“(A) **IN GENERAL.**—Except as otherwise provided in this paragraph, a trust shall be allowed a deduction of \$100.

“(B) **TRUSTS DISTRIBUTING INCOME CURRENTLY.**—A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of \$300.

“(C) **DISABILITY TRUSTS.**—

“(i) **IN GENERAL.**—A qualified disability trust shall be allowed a deduction equal to the exemption amount under section 151(d), determined—

“(I) by treating such trust as an individual described in section 151(d)(3)(C)(iii), and

“(II) by applying section 67(e) (without the reference to section 642(b)) for purposes of determining the adjusted gross income of the trust.

“(ii) **QUALIFIED DISABILITY TRUST.**—For purposes of clause (i), the term ‘qualified disability trust’ means any trust if—

“(I) such trust is a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act (42 U.S.C. 1396p), and

“(II) all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act, 42 U.S.C. 1382c(a)(3)) for some portion of such year.