

MEMORANDUM

State of Alaska

Department of Law

TO: Hon. Annette Kreitzer
Commissioner
Department of Administration

DATE: March 2, 2007

FILE NO.: 663-06-0136

Mike Buller
Deputy Executive Director
Alaska Housing Finance Corp.

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SUBJECT: Mat-Su Prison
Financing

FROM: Michael A. Barnhill
Assistant Attorney General
Labor and State Affairs Section

You have asked for our view of section 5(b)(1), ch. 160, SLA 2004 ("SB 65"). This section provides:

"the average capital cost for all beds may not exceed \$135,000 a bed for (a)(1), (2), (4), and (5) of this section and \$155,000 a bed for (a)(3) of this section, adjusted for inflation each year at a rate equal to the percentage increase in the Consumer Price Index for urban wage earners and clerical workers for Anchorage, Alaska, during the previous calendar year as determined by the Bureau of Labor Statistics, United States Department of Labor."

Specifically you have asked whether an estimate of increases to the CPI may be made in calculating the total allowable cost of the project under SB 65. This estimate must be made now in order for the Mat-Su Borough to issue bonds and for the Department of Administration to enter into a lease-purchase agreement with the Borough in order to secure payment for such bonds.

We understand that estimates of inflation are routinely made in any financed construction project. We believe that the legislature understood this when it considered this provision of SB 65. Accordingly, we believe a reasonable projection of changes to the CPI through the anticipated completion of the project was contemplated by the legislature and is therefore permissible.

Hon. Annette Kreitzer, Commissioner
Michael Buller, Deputy Executive Director
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This reasonable estimate of the CPI may be incorporated into the lease-purchase agreement between the Department of Administration and the Borough. This lease-purchase agreement will be a binding agreement on the State of Alaska. As we have previously opined, however, the obligations created by lease-purchase agreements are subject to annual appropriation by the legislature. 1979 Inf. Op. 1 (March 7; J 66 524-79). Accordingly, it is advisable that the lease-purchase agreement should explicitly provide that payments are subject to annual appropriation. See also AS36.30.085(c)(2) (lease payments are subject to annual appropriation).

MAB:ajh