

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
(NOT EXTENSION)**

Plaintiff, Alaska Building, Inc. (ABI), has moved for partial summary judgment declaring that that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency (LAA) and defendant 716 West Fourth Avenue LLC (716 LLC), titled "Extension of Lease and Lease Amendment No. 3" (LIO Lease), does not comply with AS 36.30.083(a) in that it does not extend a real property lease.

A. Overview

This Motion for Partial Summary Judgment is made because deciding whether the LIO Lease "extends a real property lease," as required under AS 6.30.083(a) is strictly a question of law and should be decided promptly so that the focus can be on the appropriate

remedy.¹ The reason why this should be decided promptly is the lessor, 716 LLC, is not likely to be able to pay back the rent it has improperly received. Thus, the longer it goes, the more money the State of Alaska will likely lose.

B. Summary Judgment Standard

Under Civil Rule 56(c), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law."

C. AS 36.30.083(a)

AS 36.30.083(a) provides:

(a) Notwithstanding any other provision of this chapter, the department, the Board of Regents of the University of Alaska, the legislative council, or the court system may extend a real property lease that is entered into under this chapter for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value.

(Emphasis added).

¹ AS 36.30.083(a) also requires that the rent be at least 10 percent below the market rental value, but that is a factual issue, unlikely to be resolvable on summary judgment.

D. Undisputed Facts

On September 19, 2013, defendant 716 West Fourth Avenue LLC (716 LLC) and defendant Legislative Affairs Agency (LAA) entered into an agreement on a sole source basis providing for:

- a. Demolition of the then existing Anchorage Legislative Information Office located at 716 West 4th Avenue in Anchorage, Alaska down to its foundation and steel frame,
- b. Demolition of the adjacent old Empress Theatre, located at 712 West 4th Avenue, occupied by the Anchor Pub at that time,
- c. Moving the existing Anchorage Legislative Information Office prior to the demolition of the old Legislative Information Office Building, and
- d. Construction of a new office building for lease as the new Anchorage Legislative Information Office.

(LIO Lease).²

The Anchorage Legislative Information Office moved out of its space for at least 13 months while the buildings were demolished and the new Anchorage Legislative Information Office was constructed.³

² Paragraphs 1 & 2 of Affidavit In Support Of Plaintiff's Motion For Partial Summary Judgment Re: Not Extension (Supporting Affidavit) and Exhibit 1 thereto.

³ Paragraphs 4 & 5 of Supporting Affidavit and pages 3 and 83 of Exhibit 1, thereto.

The following is a picture of the new Anchorage Legislative Information Office while under construction on April 20, 2014:⁴



⁴ Paragraph 3 of Supporting Affidavit.

The following is a picture of the part of the new Anchorage Legislative Office building being constructed on the site of the Old Empress Theatre, produced by defendant Criterion General, Inc., in its Initial Disclosures:



E. Argument

The argument is simple. Demolishing two buildings and constructing a new building where the two separate buildings once stood, while the tenant moves out for over a year is not a lease extension.

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Memorandum in Support of Motion for
Partial Summary Judgment Re: Not Extension

The first definition of "extension" in Blacks' Law Dictionary, 7th Ed., is "The continuation of the same contract for a specified period." The LIO Lease is not a continuation of the same contract.

In *Crystal Blue Granite Quarries, Inc. v. McLanahan*, 261 Ga. 267, 268 (Georgia 1991) the Court held, "A stipulation intended merely to lengthen the time upon terms and conditions stated in the lease is an extension." The LIO does not merely lengthen the time upon terms and conditions stated in the earlier lease.⁵

In *Brannen/Goddard Co. v. Sheffield, Inc.*, 240 Ga.App. 667, 669 (Georgia App. 1999), where a real estate commission was due for a lease extension, the Court reiterated that "a stipulation intended merely to lengthen the time upon terms and conditions stated in the lease is an extension" and that where the new lease covered both additional and different space and included terms drastically different from those in the original lease was not an extension. The LIO Lease contains drastically different terms than the lease it purports to extend, including adding space.

It seems clear that the LIO Lease does not comply with the plain enough meaning of AS 36.30.083(a) in the context of this case. Alaska's jurisprudence on consulting legislative history was recently summarized as follows in *Heller v. State, Dept. of Revenue*, 314 P.3d 69, 74 (Alaska 2013):

"The objective of statutory construction is to give effect to the intent of the legislature, with due regard for the meaning that the statutory language conveys to others." We give unambiguous statutory language its ordinary and common

⁵ Under AS 36.30.083(a) the rent term must be at least 10% below market.

meaning, but the "plain meaning" rule is not an exclusionary rule; we will look to legislative history as a guide to construing a statute's words. "The plainer the meaning of the statute, the more persuasive any legislative history to the contrary must be."

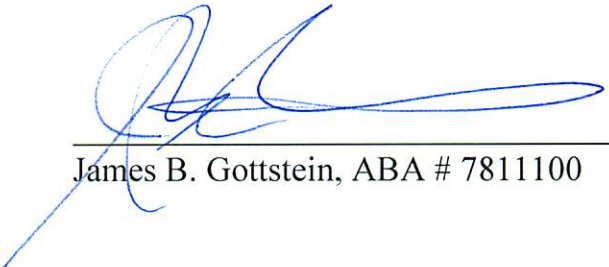
(footnotes omitted). In this case, the statutory language has a plain enough meaning, at least with respect to the facts in this case, and the legislative history seals the conclusion that the LIO Lease does not comply with AS 36.30.083(a).

Exhibit 1, is the legislative history that describes the rationale behind AS 36.30.083(a). The fundamental economic principle is that rental rates in new leases spread the costs of construction, including tenant improvements over the term of the lease (amortization) and that during a lease extension, the landlord does not have those costs and can and often will dramatically reduce the rent for an extension to reflect it having already recovered those costs. The LIO Lease does exactly the opposite. It does not extend the lease within the meaning of AS 36.30.083(a).

F. Conclusion

The LIO Lease does not "extend a real property lease" and therefore Plaintiff's Motion for Partial Summary Judgment to declare that the LIO Lease does not comply with AS 36.30.083(a) should be **GRANTED**.

Dated June 12, 2015.



James B. Gottstein, ABA # 7811100

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Memorandum in Support of Motion for
Partial Summary Judgment Re: Not Extension

Memorandum

Department of Administration
Office of the Commissioner

To: Representative Tom Anderson
Attention: Josh Applebee

Date: April 13, 2003

From: Kevin Jardell
Assistant Commissioner
Department of Administration

Phone: 465-2200

Subject: Lease Negotiations

Lease extensions under the current law (AS 36.30.083) require a minimum 15% discount from the current lease rate. DOA's proposed change would require a minimum 5% discount from a market rate.

In the past, DOA leases consisted of a constant rental rate throughout the life of the lease. This was unduly costly for the state, since initial construction and tenant improvements (TI) of office buildings are generally financed and amortized only over the initial lease period, not the optional renewal periods. The state was effectively paying multiple times for one-time costs.

Several years ago, DOA changed this practice by requiring lessors to identify up front construction and TI costs from ongoing rental rates and bid them separately. This generally results in declining costs in the option periods, because the rates for option periods no longer include amortized construction and TI costs. A net present value calculation is applied to ensure the state considers the time value of money when awarding leases.

Given this change, we can not expect to gain significant savings in the future under AS 36.30.083. For example:

A lease could be established at a market rate of \$2.20/sf (Class A, downtown Anchorage) for the initial 9 year period of a lease, dropping to \$0.98/sf for each of the two, five year renewal periods. It would be impossible to negotiate a 15% reduction to a lease rate of \$0.98/sf when the market rate for the space is \$2.20/sf.

As more and more older leases are replaced by those with the new cost model, the requirement of a minimum reduction of 15% below the current lease rate will effectively prevent us from achieving any negotiated savings.

KJ/aw

House Legal & Commerce HB 545 file 2004
Senate Judiciary
above

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 14, 2004
3:28 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 540

"An Act relating to workers' compensation insurance rates; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 545

"An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

- HEARD AND HELD

CS FOR SENATE BILL NO. 102(L&C) am(efd fld)

"An Act increasing the amount of revenue received by the state from charitable gaming activities, and relating to taxes on pull-tabs."

- TABLED

PREVIOUS COMMITTEE ACTION

BILL: HB 540

SHORT TITLE: WORKERS' COMPENSATION INSURANCE RATES

SPONSOR(S): LABOR & COMMERCE

that the timelines are a step backwards in the rate approval process. This year the division diligently tried to have rate approvals in sufficient time for employers to access the impacts of rate changes. This year the division was able to provide approximately two months advance notice. Under the scenario in the current legislation, rate approval couldn't occur until December 1, which she didn't believe was sufficient notice for employers to plan. Ms. Hall related that she doesn't intend to stop the legislation. Although the process is fine, it needs to work for all the stakeholders.

MS. HALL informed the committee that the division has a proposal that maintains the spirit of HB 540 in that it allows the hearings. However, the division's proposal does change the timeframes. She requested that the committee provide her the time to work on the proposal so that with the sponsor and the division can develop legislation that will work for everyone.

Number 0288

CRAIG NOOTTVEDT, Alaska National Insurance Company, stated that he is amenable to the proposal by Ms. Hall, although he has some concerns. He noted his agreement that Ms. Hall's proposal attempts to meet the change in the system. The hope is to have a day to work on this with Ms. Hall in order to negotiate a quality piece of legislation.

CHAIR ANDERSON announced that HB 540 would be held over in order for the parties to work on a compromise.

HB 545-STATE REAL PROPERTY LEASE EXTENSIONS

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 545, "An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

Number 0417

VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration, explained that currently the procurement code allows the [division] to negotiate extensions of office space leases for up to 10 years in exchange for rent reductions. This legislation would increase the state's ability to negotiate such by changing the current required threshold from a 10 to 15 percent reduction off the

existing lease rate to a 5 percent reduction from the current market rate for the area. Mr. Jones informed the committee that existing statutory restrictions on the negotiations have hampered [the division's] ability to negotiate lease extensions with the lessors. "The increase in the real estate market in Alaska combined with the way we structure our leases, often makes a 15 percent reduction from existing rental rates unattainable," he explained. Therefore, tying the reduced rate to a percentage of the current market is a more reasonable approach that he believes will allow the negotiation of reduced rates more frequently while avoiding the lengthy and expensive re-procurement process. Such an approach will avoid the costs and disruption of moving state offices and large numbers of state employees.

MR. JONES turned attention to a chart, which illustrated that lease costs consist of several elements, including lessor profit, ongoing lessor costs, and the upfront construction and tenant improvement costs. He explained that the upfront construction and tenant improvement costs are generally financed and amortized over the initial firm term period of a lease. The lessor is afforded an opportunity to bid a different price during the option periods of a lease. Generally, there is a dramatic decrease in prices after the initial firm period is over. A rate below the already-reduced option year cost is often unattainable [to the division] as opposed to a percentage below a market rate, which many more lessors are willing to negotiate. Mr. Jones said that the more often these submarket rates can be negotiated and avoid the costs of re-procurement and moving expenses the more the state saves. Mr. Jones mentioned that HB 545 would also allow extensions for other nonlease contracts.

Number 0652

REPRESENTATIVE ROKEBERG commented that the changes in the market have driven the need for some modification to this successful program. He inquired as to the methodology that would be used in order to establish the prevailing market rates.

MR. JONES answered that in the large metropolitan area of Anchorage there are independent third-party market watch services available. However, the difficulty is in regard to the rural areas for which the bill isn't specific. Mr. Jones related that the intent is to develop as many "comps" as available in order to determine what the market would be in that

area. In some cases, [the state] is the only lessor in an area, which means that [the state] may set the market.

REPRESENTATIVE ROKEBERG pointed out that in area such as Anchorage one can utilize a broker's opinion of value (BOV) as opposed to an appraisal done by a licensed real estate appraiser, which is the more costly of the two. However, he acknowledged that an appraisal by a licensed real estate appraiser lessens the ability for any mischief. Representative Rokeberg said that he was concerned with regard to accomplishing a baseline. A 5 percent reduction isn't a large margin, he noted. The existing statute is clear because there is a baseline of the existing rental rate. However, he recognized that the market conditions in an up market don't allow for "those types of things typically" unless the landlord has the "sunk" costs recovered or amortized costs of the tenant improvement allowances. "Presumably, there would be an incentive of an existing landlord to bargain for a reduced rate if he has recovered those costs. Is that not the case sometimes," he asked.

MR. JONES confirmed that is the case sometimes. However, in a market such as the current one 15 percent below an existing rate is often impossible because [the division and the lessors] feel the existing law is too restrictive.

Number 0868

REPRESENTATIVE ROKEBERG informed the committee that part of the reason for the aforementioned is the Little Davis-Bacon Act, which requires any refitting to be done under the prevailing wage laws. Therefore, the costs to the landlord are increased such that it's above the prevailing market rate. Representative Rokeberg asked whether the communications or "CAT 5" type wiring requirements have any impact on the space acquisition costs.

MR. JONES acknowledged that [the communications requirements] are a substantial cost. However, he opined that it seems to be turning into an industry standard.

REPRESENTATIVE ROKEBERG highlighted that recently the legislature renewed its lease at the Anchorage Legislative Information Office. In that case, the legislature agreed to capitalize and pay for the costs [for refitting]. He recalled that the original performer for the bid was about \$180,000, which, after going out to bid, was lowered to about \$125,000. The aforementioned was merely the cost for rewiring.

Representative Rokeberg reiterated his discomfort with the way in which the prevailing market rate is established when dynamics are present that provide the incumbent landlord a significant advantage.

MR. JONES, in response to Chair Anderson, said that he could work on addressing Representative Rokeberg's concerns.

REPRESENTATIVE ROKEBERG turned attention to Section 1(a)(2) of the legislation. He questioned why the [state] would want to extend a contract for goods or services up to a maximum of five years "if a minimum cost savings of at least 5 percent can be achieved on the price of goods or services established in the contract." He further questioned why the aforementioned would be chosen rather than go out in the market and re-bid it.

MR. JONES specified that the [language in Section 1(a)(2)] was included as an additional tool, and he didn't anticipate widespread use of it. Mr. Jones related that [the division] is in the process of brainstorming with regard to developing ideas to reduce the costs of goods and services as well as the leases. From a procurement standpoint, the first option is always to go out and obtain competition in the market place. The approach under discussion would probably only be used when it is felt that the open market would result in higher costs. Mr. Jones said that since [the division] doesn't have experience in the approach [laid out in Section 1(a)(2)], he could only relate that the ability to negotiate leases will be used much more often than the ability to negotiate procurement contracts.

REPRESENTATIVE ROKEBERG asked if the typical contract for goods or services is five years for procurement of materials and services.

MR. JONES said that often there are long-term contracts for items such as copiers and fax machines or office supplies. However, those are shorter contracts and less frequent than are the leasing contracts.

REPRESENTATIVE ROKEBERG said that he did agree with the department with regard to the lease premise. However, he maintained his concern with the other option that must show only a 5 percent cost savings because of the substantial opportunity for mischief.

MR. JONES said that it's not the intent to do mischief. Furthermore, 5 percent was utilized as a reasonable starting

point and [the division] isn't married to it. In fact, the contract for goods or services is the lesser part of this legislation. If the committee is uncomfortable with the 5 percent in Section 1(a)(2), the [division] is amenable to increasing the percentage or removing it altogether.

Number 1216

REPRESENTATIVE ROKEBERG, with regard to the leasing contract, inquired as to reallocation costs and other costs that would be incurred. He also asked if there are any examples that illustrate the 5 percent may have saved the [department] money.

MR. JONES informed the committee that moving costs are generally estimated at \$1 per foot. Tenant improvements and upfront construction are generally substantial for a large-size lease. There are also telephone relocations and CAT-5 cables are expensive. He said he could provide the committee with specific numbers later. Furthermore, the disruption of a relocation is difficult to quantify. He noted that there are other things, such as the changes required for letterhead, business cards, and signage, that generate costs. With regard to the 5 percent, Mr. Jones reiterated that it's just an idea and [the division] has no particular plans for it. In virtually every aspect of the business in General Services, the division has attempted to develop ways to cut costs.

Number 1350

REPRESENTATIVE ROKEBERG noted that HB 545 has a House Judiciary Standing Committee referral. Although there are some savings to be had with this legislation, he requested that the administration develop a tighter definition with regard to establishing the prevailing market rates. He further requested that the administration review the concept embodied in Section 1(a)(2) in order to develop a better argument for its need.

MR. JONES said that he would have the aforementioned done by Friday.

CHAIR ANDERSON announced that HB 545 would be held over.

SB 102-CHARITABLE GAMING REVENUE/TAXES

CHAIR ANDERSON announced that the final order of business would be CS FOR SENATE BILL NO. 102(L&C) am(efd fld), "An Act increasing the amount of revenue received by the state from

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 16, 2004
3:40 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Occupational Safety and Health Review Board

Thor R. Christianson - Sitka, Alaska

- CONFIRMATION(S) ADVANCED

Personnel Board

Laura Plenart - Ketchikan

- CONFIRMATION(S) ADVANCED

State Board of Registration for Architects, Engineers, and Land Surveyors

Clifford E. Baker - Kenai
Boyd J. Brownfield - Anchorage
Richard A. Hughes - Fairbanks
Kenneth D. Maynard - Anchorage

- CONFIRMATION(S) ADVANCED

Alaska Labor Relations Agency

Gary P. Bader - Anchorage

- CONFIRMATION(S) HELD

Dennis S. Niedermeyer - Eagle River

- CONFIRMATION(S) ADVANCED

James S. Spalding - Anchorage

- CONFIRMATION(S) HELD

HOUSE BILL NO. 539

"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."

- MOVED CSHB 539(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 545

"An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

- MOVED CSHB 545(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 540

"An Act relating to workers' compensation insurance rates; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 148

"An Act instructing the State Board of Registration for Architects, Engineers, and Land Surveyors to adopt minimum technical standards relating to the practice of surveying."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 539

SHORT TITLE: UNIV. STUDENT PRACTICUM LIABILITY/WAGES

REPRESENTATIVE GUTTENBERG said he wasn't sure of the effect of such a conceptual amendment. Therefore, he indicated his preference for [forwarding] the legislation without the conceptual amendment. He pointed out that students in practicum situations are often in high risk situations and should be afforded some coverage whether from the [host] employer or the practicum [program] itself.

REPRESENTATIVE ROKEBERG questioned why an employer would host a practicum student, if the employer would face an increased rate [in workers' compensation].

CHAIR ANDERSON inquired as to Mr. Kelly's preference in regard to forwarding the legislation to the next committee of referral or adopting the conceptual amendment.

MR. KELLY related that the university would prefer the [conceptual] amendment as described earlier. However, discussions had led to [Section 3 of the original legislation] being eliminated in Version D. He said he would rather return to discussions with organized labor before reinserting [Section 3 of the original legislation]. Mr. Kelly also agreed with Representative Rokeberg's earlier mention regarding time growing short. Mr. Kelly committed to the committee that he would get back with it regarding the language and if it's a problem, the university will have to go without the legislation this year.

Number 0950

REPRESENTATIVE DAHLSTROM moved to report CSHB 539, Version 23-LS1837\D, Craver, 4/16/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 539(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 545-STATE REAL PROPERTY LEASE EXTENSIONS

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 545, "An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

Number 0890

VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration, reminded the committee

that at the last hearing Representative Rokeberg mentioned some concerns, which have been addressed [in the proposed committee substitute (CS)]. The first concern was the vague nature of establishing a market rate for which to base a reduction in rent. The aforementioned concern is addressed on page 1, lines 10-12, which read: "The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value." With regard to the section addressing the extension of contracts for goods or services, that section has been removed [in the proposed CS] and its title. Therefore, the proposed CS deals strictly with extensions of real estate or office space leases.

Number 0815

REPRESENTATIVE ROKEBERG moved to adopt CSHB 545, Version 23-LSGH2150\D, Bannister, 4/15/04, as the working document. There being no objection, Version D was before the committee.

REPRESENTATIVE ROKEBERG noted that [Version D] no longer includes the "brother-in-law section". He also noted that Version D references the court system on page 1, line 7, which the drafter indicated may be a separation of powers issue [because] the legislature has granted to the judicial branch the ability to have its own procurement code. He related that he has checked with the judicial branch, which has related its support of this legislation and lack of concern with regard to the possible separation of powers issue.

REPRESENTATIVE ROKEBERG said he has only one remaining concern, which is the [cost savings] of 5 percent below the market rental value of the real property. The aforementioned is the trigger of the statute. Representative Rokeberg recalled that the original statute allows an extension [when there are cost savings of] 10 percent and [the lessor] agrees to make modifications to comply with the Americans with Disabilities Act of 1990 (ADA) or [when there are cost savings of] 15 percent below the current rate in the lease without ADA. He explained that the change [encompassed in Version D] reflects fundamentally higher market values and the prevailing rates at the time, and therefore has universal applicability. By going to the 5 percent at a higher barrier, it seems that it would be appropriate to have a 10 percent [barrier] in order to prevent potential mischief.

CHAIR ANDERSON passed the gavel to Vice Chair Gatto.

MR. JONES agreed, but noted that leases that aren't ADA compliant would be an exception. Therefore, it would generally be [a cost savings of] 15 percent, which he viewed as too high. He opined the importance of the rate being tied to a reduction of the market value rather than the existing rates paid. It was thought that 5 percent is reasonable. "But that in itself, isn't as critical as tying it to the market rate," he stated.

REPRESENTATIVE ROKEBERG agreed. He posed a situation, what he indicated to be a typical situation, in which there is a \$.02 per square foot rental rate. In such a situation, 5 percent would only be \$.10 per square foot. Representative Rokeberg asked if Mr. Jones felt that 10 percent along with the market rate barrier would be workable.

MR. JONES responded that 10 percent would be better than the current statute.

REPRESENTATIVE ROKEBERG pointed out that this would allow the department to move forward with a sole source type contract, and he expressed the need to avoid the appearance of any noncompetitive type of acquisition or continuation of lease.

MR. JONES said that 10 percent seems fully reasonable and achievable.

Number 0465

REPRESENTATIVE ROKEBERG moved that the committee adopt the following amendment:

Page 1, line 9;
Delete "five"
Insert "ten"

REPRESENTATIVE CRAWFORD objected for discussion purposes. Representative Crawford said that if the market continues as it is, it would seem to make sense. However, if the market becomes "over built" and demand falls to the level of the 1980s, he questioned what would happen with a 10-year lease. He asked if in such a situation, any negotiation could happen [when the market changes].

REPRESENTATIVE ROKEBERG pointed out that the legislation specifies "up to ten years", and therefore one could have a one-year lease and this would still work. He explained:

What we're doing here is going away from looking at the ... baseline number, currently is the current lease value. What we're doing is changing to the market value. So, that would allow you to go into the market For example, ... if you were renting space for \$1.00 a foot and the market was now \$2.00 a foot, under the current statute you couldn't stay there because the guy couldn't afford to lower your rent. That means you have to go out and rebid it so ... you know you're going to end up paying the \$2.00 and you couldn't extend where you were, even for \$1.10 because of the current statute. This would allow you to renew it at anywhere below that market rate, at least 10 percent below it and stay where you're at so that you could gain the savings. So it's a much better standard.

REPRESENTATIVE ROKEBERG, in further response to Representative Crawford, related that in a down market the differential would be "squeezed" because the prevailing rate would be declining. However, the percentage wouldn't go down with it. He opined that typically in commercial real estate quotations of valuations will occur rather than specifics. "It's actually going to require the department to get a specific, single quote now," he stated. "I think you need to have enough of a distinction to grant you the sole source capability ...," he opined.

Number 0229

REPRESENTATIVE CRAWFORD removed his objection. [The conceptual amendment was treated as adopted.]

VICE CHAIR GATTO asked if the "real estate broker's opinion of the rental value" and "an appraisal of the rental value" are considered of equal value.

REPRESENTATIVE ROKEBERG, speaking as a real estate broker, replied yes, and added that real estate brokers are a lot cheaper. In a major commercial building, to obtain a full appraisal could be extremely expensive and not necessarily appropriate. "Having a broker's opinion of value ... would be more consistent with testing and providing a defensible prevailing market rate for the purposes of the statute," he said.

REPRESENTATIVE LYNN, as an associate broker, agreed with Representative Rokeberg.

VICE CHAIR GATTO surmised that although the language [on page 1, lines 10-12] allows either, it seems there will be a conflict later regarding who will insist on the more expensive appraisal.

REPRESENTATIVE ROKEBERG remarked that with a 30,000 square foot facility with a five- to ten-year deal, it might warrant an appraisal due to the scope and dollar amount of the project. The intention of the CS, he opined, is to provide the department flexibility to call for a broker's opinion versus an appraisal depending upon the scope of the project.

VICE CHAIR GATTO surmised that whether the market goes up or down, the existing value will be relied upon when there is a lease extension.

REPRESENTATIVE ROKEBERG replied yes and likened it to the price of oil going up and down.

TAPE 04-44, SIDE A

VICE CHAIR GATTO further surmised that whether [the market] goes up or down, the ability to extend the lease is based on the existing value. He asked if this legislation guarantees the right to extend the lease.

REPRESENTATIVE ROKEBERG explained that the legislation allows the Department of Administration to enter into negotiations and an agreement for a lease extension with existing premises if a bargain can be made below the prevailing market rate. In further response to Vice Chair Gatto, Representative Rokeberg confirmed that he would like [the bargain] to be at least 10 percent [below the prevailing market rate] otherwise it would need to go out to market. He noted that there is a danger with sole sourcing, and therefore the incentive needs to be sufficient enough to avoid it.

VICE CHAIR GATTO recalled from a prior hearing that moving expenses, rewiring, equipment replacement, and down time are all significant issues [to consider] for a lease extension.

Number 0142

REPRESENTATIVE ROKEBERG related that under the current procurement provisions, unless the standard is met, [a lease extension] would have to go out to bid.

MR. JONES informed the committee that he just received a call from the director of Libraries informing him that the facility [lease] in Anchorage is due to expire. The current cost of \$1.25 is being offered under an extension while the prevailing market rate is around \$2.00 not to mention the costs encountered in a move.

Number 0199

REPRESENTATIVE DAHLSTROM moved to report CSHB 545, Version GH2150\D, Bannister, 4/15/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 545(L&C) was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:20 p.m.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 23, 2004
2:12 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Jim Holm

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 309(JUD) am
"An Act relating to testing the blood of prisoners and those in custody for bloodborne pathogens."

- MOVED HCS CSSB 309(JUD) OUT OF COMMITTEE

CONFIRMATION HEARING

Board of Governors of the Alaska Bar

Joseph N. Faulhaber - Fairbanks

- CONFIRMATION ADVANCED

HOUSE BILL NO. 551

"An Act relating to the issuance of teacher certificates to and revocation of teacher certificates of persons convicted of felony drug offenses and to the issuance of limited teacher certificates to persons convicted of certain crimes involving a minor and felony drug offenses."

- MOVED CSHB 551(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 545

"An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for

certain state contracts for goods and services; and providing for an effective date."

- MOVED CSHB 545(L&C) OUT OF COMMITTEE

SENATE BILL NO. 316

"An Act relating to motor vehicle safety belt violations."

- BILL HEARING POSTPONED

PREVIOUS COMMITTEE ACTION

BILL: SB 309

SHORT TITLE: BLOOD PATHOGENS TESTING OF PRISONERS

SPONSOR(S): SENATOR(S) WAGONER

02/09/04	(S)	READ THE FIRST TIME - REFERRALS
02/09/04	(S)	STA, JUD
03/04/04	(S)	STA AT 3:30 PM BELTZ 211
03/04/04	(S)	Moved SB 309 Out of Committee
03/04/04	(S)	MINUTE(STA)
03/05/04	(S)	STA RPT 3DP
03/05/04	(S)	DP: STEVENS G, COWDERY, STEDMAN
03/17/04	(S)	JUD RPT CS 4DP SAME TITLE
03/17/04	(S)	DP: SEEKINS, FRENCH, OGAN, THERRIAULT
03/17/04	(S)	JUD AT 8:00 AM BUTROVICH 205
03/17/04	(S)	Moved CSSB 309(JUD) Out of Committee
03/17/04	(S)	MINUTE(JUD)
03/22/04	(S)	TRANSMITTED TO (H)
03/22/04	(S)	VERSION: CSSB 309(JUD) AM
03/24/04	(H)	READ THE FIRST TIME - REFERRALS
03/24/04	(H)	STA, JUD
04/08/04	(H)	STA AT 8:00 AM CAPITOL 102
04/08/04	(H)	Heard & Held
04/08/04	(H)	MINUTE(STA)
04/15/04	(H)	STA AT 8:00 AM CAPITOL 102
04/15/04	(H)	Moved HCS CSSB 309(STA) Out of Committee
04/15/04	(H)	MINUTE(STA)
04/19/04	(H)	STA RPT HCS(STA) 3DP 2NR
04/19/04	(H)	DP: SEATON, LYNN, HOLM; NR: COGHILL,
04/19/04	(H)	WEYHRAUCH
04/23/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 551

SHORT TITLE: DRUG FELONY DISQUALIFIES TEACHER

SPONSOR(S): JUDICIARY

MR. OLDAKER, in response to comments, clarified that the PTPC is considering adding felony possession of a controlled substance to the list of conduct that is considered moral turpitude.

REPRESENTATIVE GARA relayed that some members of the legislature are reluctant to make possession, even felony possession, cause for precluding someone from teaching later on in life.

MR. OLDAKER agreed to keep that in mind. At the request of Representative Gruenberg, on an unrelated topic, Mr. Oldaker mentioned some changes to the PTPC's rules of operation that he'd like to see instituted.

Number 1737

REPRESENTATIVE GRUENBERG moved to report HB 551, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 551(JUD) was reported from the House Judiciary Standing Committee.

HB 545 - STATE LEASE AND CONTRACT EXTENSIONS

Number 1750

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 545, "An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date." [Before the committee was CSHB 545(L&C).]

Number 1765

VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration (DOA), said that the state's procurement code currently allows the state to negotiate extensions of real estate leases for up to 10 years in exchange for rent reductions. House Bill 545 would increase the state's ability to negotiate lease extensions by changing the requirement threshold from a 10-15 percent reduction in existing lease rates to a 10 percent reduction in the current market rate. Existing statutory restrictions on these negotiations have hampered the state's ability to negotiate lease extensions, he opined, and relayed that the increase in the real estate market in Alaska combined with the way the state structures its

leases often makes it so that a 10-15 percent reduction in existing lease rates is unattainable.

MR. JONES posited that tying the reduced rates to a percentage below the current market is a more reasonable approach, adding, "we believe [it] will allow us to negotiate successfully more often, and the more frequently we're able to do that, the more we can avoid the lengthy, costly re-procurement process, not to mention the cost and disruption of moving large numbers of state offices and state employees as well as the disruption to the public." Referring to a chart, he said that a substantial part of lease costs are for tenant improvements and upfront construction. These costs are typically financed and amortized by lessors over the initial term of a lease, and oftentimes the lessor will offer the state dramatically lower priced lease rates for renewal periods.

MR. JONES said that in those cases, at the end of initial lease periods, there is already a reduced rate, and so attempting to negotiate an additional 15 percent reduction as is required by current law is often unachievable. He added that the DOA feels that this bill would remedy that situation, would change that requirement from a 10-15 percent reduction of the already reduced rate to a 10 percent reduction of market rate, and market rate, as defined in CSHB 545(L&C), would be established either by an assessment of value or a real estate appraisal of rental value.

MR. JONES, in response to a question, said that CSHB 545(L&C) now contains a definition of market rate, stipulates a minimum cost savings of 10 percent, and only applies to office space or real estate leases.

Number 1932

CHAIR McGUIRE, after ascertaining that no one else wished to testify, close public testimony on HB 545.

REPRESENTATIVE GARA remarked:

The bill is fine. It just seems to me, whenever you get in the procurement code, you end up having to write down rules of logic instead of letting people just exercise logic. And so the rule of logic we've come up with is, if the state thinks that they'd actually just save money by not moving, that's not good enough unless they would save 10 percent. Is

that the way the bill reads? I mean, [do] you actually have to save 10 percent or else you have to move?

MR. JONES replied, "You would need to achieve a rental rate of at least 10 percent below market value if you want to avoid moving." If the bill passes, the state could negotiate a rental rate that would be a guaranteed 10 percent below market value and the state could avoid costly moving expenses. If the bill doesn't pass, the state would have to pay moving expenses plus possibly have to pay market rate at a new location. He opined that passage of the bill is a tool that will make the state more efficient and allow it to reduce costs.

REPRESENTATIVE GARA offered his belief that even if the state can't achieve the minimum cost savings of 10 percent below market value, it could still save something by not having to move and go through the whole request for proposals (RFP) process; therefore, perhaps the state should not limit itself to a 10 percent minimum.

MR. JONES, in response, relayed that he agrees with Representative Gara's point, adding, "If I could, I'd use my discretion in every matter, but in the last committee it was decided that ... 5 percent really wasn't enough to avoid the open competitive process that would otherwise be there, so ... it was increased to 10 percent." He noted that moving costs are typically around "\$1 a foot" and are not included in calculating the minimum cost savings.

Number 2059

REPRESENTATIVE SAMUELS moved to report CSHB 545(L&C) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 545(L&C) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 2062

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:30 p.m.

MINUTES
SENATE FINANCE COMMITTEE
May 07, 2004
8:44 AM

TAPES

SFC-04 # 110, Side A
SFC 04 # 110, Side B

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 8:44 AM.

PRESENT

Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Fred Dyson
Senator Ben Stevens
Senator Lyman Hoffman
Senator Donny Olson

Also Attending: REPRESENTATIVE BUD FATE; JAMES ARMSTRONG, Staff to Representative Bill Williams; TOMAS BOUTIN, Deputy Commissioner, Department of Revenue; GREG O'CLARAY, Commissioner, Department of Labor and Workforce Development; JIM POUND, Staff to Representative Bud Fate; SUSAN BURKE, Attorney representing Magazine Publishers of America; SUE STANCLIFF, Staff to Representative Pete Kott; DEBBIE BUMP, Division of Finance, Department of Administration; JOHN MAIN, Staff to Representative Pete Kott; PHELAN STRAUBE, Staff to Senator Ben Stevens; VERN JONES, Chief Procurement Officer, Department of Administration

Attending via Teleconference: From Offnet Sites: PAT LADNER, Alaska Aerospace Development Corporation; LINDA WILSON, Deputy Director, Public Defender Agency, Department of Administration; LINDA WILSON, Deputy Director, Alaska Public Defender Agency, Department of Administration

SUMMARY INFORMATION

HB 422-BUDGET RESERVE FUND INVESTMENT

The Committee heard from the sponsor, the Department of Revenue and the bill was held for further consideration.

HB 559-STEP PROGRAM CONTINUANCE

The Committee heard from the Department of Labor and Workforce Development and the bill was reported from Committee.

HB 15-SOLICITATIONS/CONSUMER PROTECTION

The Committee heard from the Sponsor, adopted one amendment, and reported the committee substitute from Committee.

HB 494-ELECTRONIC PAYMENT FOR STATE BUSINESS

The Committee heard from the bill's sponsor, adopted three amendments, and reported the bill from Committee.

HB 514-CHILD SUPPORT ENFORCEMENT/ CRIMES

The Committee heard from the sponsor and the Public Defender Agency. A committee substitute was adopted and reported from Committee.

SB 366-STATE SALES TAX

The Committee heard from the sponsor, adopted a committee substitute, and reported that bill from Committee.

HB 545-STATE REAL PROPERTY LEASE EXTENSIONS

The Committee heard from the Department of Administration and reported the bill from Committee.

SB 308-DOMESTIC VIOLENCE PROTECTIVE ORDERS

This bill was scheduled but not heard.

HB 56-UNFAIR TRADE PRACTICES ATTY FEES/COSTS

This bill was scheduled but not heard.

HB 341-DIVE FISHERY MANAGEMENT ASSESSMENT

This bill was scheduled but not heard.

HB 342-DRIVING UNDER INFLUENCE/ALCOHOL OFFENSES

This bill was scheduled but not heard.

(3) at least four percent but less than five percent, the department shall remit the amount that would have been collected in the municipality if the sales and use levy tax had been five percent.

(4) five percent or more, the department shall round up to the next whole number and remit the amount that would have been collected in the municipality if the sales and use tax levy had been that whole number; for example, if a municipality levied a sales and use tax at the rate of five percent, the department shall remit the amount that would have been collected under a six percent levy.

Senator B. Stevens stated that, "in reality, one-third of the revenue collected by the State would be returned back to the community." He noted that those communities that do not collect a sales tax would not receive a percentage.

Senator Olson asked whether exemptions might apply to the rental and sale of real estate as related to language in Section 29, subsection (d) on page ten, line 16 that reads as follows.

(d) The maximum tax on a single sale, lease, or rental is \$60.

Senator B. Stevens responded that the sale, rental, lease, or construction of real property are exempt from the sales tax in communities of less than 500 residents.

Senator Hoffman asked for further clarification of this matter by asking in regards to the taxes on a five-year home lease agreement.

Senator B. Stevens declared that it would be exempt from the tax.

Senator Bunde moved to report the committee substitute from Committee with individual recommendations and accompanying "pending" fiscal note.

There being no objection, CS SB 366 (FIN) was REPORTED from Committee with an indeterminate fiscal note, dated May 7, 2004, from the Department of Revenue.

#hb545

CS FOR HOUSE BILL NO. 545(L&C)

"An Act relating to time extensions under the State Procurement Code for real property leases; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated that this bill, CS HB 545(L&C), Version 23-GH2150\H, is sponsored by the House Rules Committee by Request of the Governor, and would allow a State agency to negotiate a lease agreement for ten years provided that there be a minimum cost savings of ten percent below the market rental value.

VERN JONES, Chief Procurement Officer, Department of Administration, stated that the current State procurement code allows the State to negotiate extensions for real estate leases for up to ten years in exchange for rent reductions. He noted that this bill "would increase the State's ability to negotiate lease extensions by changing the requiring threshold from a ten to fifteen percent reduction off of the existing lease rate, as the current law requires, to a ten percent reduction from the current market rate." He stated that the current statutory regulations have negatively impacted the Department's ability to negotiate lease extensions with landlords, as, he attested, the State's real estate market combined with the way the State's lease agreements are structured, often makes the 15 percent reduction from the current lease rates "unobtainable."

Mr. Jones stated "that tying the lease rate to a percentage of the current market rate would be a more reasonable approach" that would allow the State "to negotiate reduced rates more frequently and avoid the lengthy and expensive re-procurement process, not to mention the cost and disruption" of moving States offices and employees.

Mr. Jones detailed the current lease process, including improvement options, and concluded that this bill would allow the State to reduce its overall leasing expenses.

Co-Chair Wilken asked whether this legislation is a new approach or is modeled after that of other states.

Mr. Jones responded that this legislation "is just making a small adjustment to a tool" that is already in place. He noted that other states often exempt real estate leases from their procurement code similar to a business or brokerage model. He estimated that while approximately half of the states have similar lease procedures to the State, the proposed provision is unique.

Senator Dyson moved to report the bill from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, CS HB 545(L&C) was REPORTED from Committee with zero fiscal note #1, dated February 25, 2004 from the Department of Administration.

RECESS TO THE CALL OF THE CHAIR 10:05 AM / 5:11 PM
#

ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 05:11 PM.