SHORT TITLE: Private prisons; prohibiting the Department of Corrections from contracting with facilities not designed and constructed pursuant to contract; emergency.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 609 By: Douglass

AS INTRODUCED

An Act relating to private prisons; amending 57 O.S. 1991, Sections 561, as amended by Section 7, Chapter 319, O.S.L. 1992, 563, as last amended by Section 1, Chapter 213, O.S.L. 1994, 563.1, as amended by Section 2, Chapter 213, O.S.L. 1994, and 563.2, as last amended by Section 2, Chapter 203, O.S.L. 1993 (57 O.S. Supp. 1994, Sections 561, 563, 563.1 and 563.2), which relate to private prison contractors, creation of correctional facilities, location of correctional facilities and private prison facilities for medium and minimum security inmates; modifying language and reference; prohibiting the Department of Corrections from contracting with facilities not designed and constructed pursuant to contract; prohibiting private prison contractor from constructing or expanding facility without contract; restricting certain expansion for certain period; requiring private prison to meet design, construction and plan specifications pursuant to contracts; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 57 O.S. 1991, Section 561, as amended by Section 7, Chapter 319, O.S.L. 1992 (57 O.S. Supp. 1994, Section 561), is amended to read as follows:

Section 561. A. The Department of Corrections is hereby authorized to provide for incarceration, supervision, and residential treatment at facilities other than those operated by the Department of Corrections. Provided, however, the Department shall not be authorized to enter into a contract with any private prison facility for the incarceration of state inmates on and after the effective date of this act when the design and construction of the facility is not pursuant to a binding contract with the Department of Corrections pursuant to subsections C through J of this section, except this provision shall not apply to any private prison facility operating in this state on the effective date of this act or which becomes operational within six (6) months of the effective date of this act. Services offered for persons under the custody or supervision of the Department are to include, but not be limited to, incarceration, housing, alcoholism or drug treatment, mental health services, nursing home care, or halfway house placement. Such services must meet standards prescribed and established by the Board of Corrections for implementing such a program, including but not limited to standards concerning design and construction, internal and perimeter security, discipline of inmates, educational and vocational training programs, employment of inmates, and proper food, clothing, housing, and medical care. Such services must be contracted for in accordance with Section 85.7 of Title 74 of the Oklahoma Statutes. Such services, if provided by private prison contractors, shall be contracted for as provided in subsections C through J of this section.

B. The Department of Corrections is hereby authorized to provide for the operation of correctional institutions of the Department by private prison contractors. Such operation shall meet

standards prescribed by the Board of Corrections, including but not limited to, standards concerning internal and perimeter security, discipline of inmates, educational and vocational training programs, and proper food, clothing, housing, and medical care. Such services shall be contracted for in accordance with the provisions of subsections C through J of this section.

C. A comprehensive file for all private prison contractors interested in and capable of operating an institution within the Department or providing for the incarceration, housing, care, and control of inmates in a facility owned and operated by the contractor shall be maintained by the Department. These files shall include a completed application form, a resume of the contractor's staff and capability, a completed performance evaluation form for past projects on which the contractor has provided private prison services, a list of past contracts with this state, and a list of contracts to provide similar services to other states or to the United States.

The file shall include the mailing address of each private prison contractor.

Any person or firm wishing to be a private prison contractor may request at any time to be included in the comprehensive file, and shall be provided necessary forms within twenty (20) days of the request and the Department shall add such contractor to the list within twenty (20) days of receipt of a properly completed application.

The Department may solicit evaluation of work done by private prison contractors from members of the private sector, which evaluation shall be part of the comprehensive file.

D. If the Department intends to secure the services of a private prison contractor, all persons and firms included in the file shall be notified through the mail of such intent. Such notification shall contain the following information:

1. Description and scope of the project or projects;

2. Estimated time schedule for project;

3. Last date for submitting notice of interest in performing services to Director; ~~and~~

4. The design and construction specifications; and

5. Other pertinent data.

Private prison contractors desiring consideration shall meet the requirements of this section and to be considered shall submit a letter expressing interest in the project to the Department within thirty (30) days of the postmark date of the letter of notification mailed by the Department. Contractors shall file an updated application form at the request of the Department.

E. The Department shall define the scope of a proposed project, determine the various project components, phases and timetables, and prepare detailed project descriptions, and design and construction specifications to guide prospective contractors. Before the Department awards a contract to a private prison contractor, the plans for design and construction shall be approved by the Board.

F. The Department shall review the files of the private prison contractors desiring consideration for the project, and shall select no less than three and no more than five contractors for more detailed consideration. In the event interviews for more than one contract are being considered at the same time, the number of contractors selected for more detailed consideration should be at least twice the number of contracts contemplated. This initial screening should consider the requirements of the project, as well as the following factors to be determined from the comprehensive file, and replies to inquiries to former clients:

1. Specialized experience in the type of work contemplated;

2. Capacity of the contractor to accomplish the work in the required time; ~~and~~

3. Past performance, from the performance evaluation form; and

4. Expertise in design and construction of prison facilities.

G. A full report of the evaluation procedures and recommendations of the Department shall be prepared by the Department and submitted to the Board for the independent review of the entire process.

H. The Department shall select the contractor whose qualifications and project proposal most substantially meet the criteria of the project design and description. The Department shall negotiate the contract with the selected contractor, which contract shall include a fair and reasonable fee. The negotiated scope and fee shall be reported to the Board for the approval of the award of the contract. The contract shall be sent to the Department of Central Services for approval or disapproval. If the Department of Central Services disapproves the contract or the Department and the selected contractor cannot reach an agreement, the Department may either renegotiate with the selected contractor or begin negotiations with the next-choice contractor. Should the Department be unable to negotiate a satisfactory contract with any of the three selected contractors, the Department shall select additional contractors in order of their competency and qualifications and shall continue negotiations in accordance with the provisions of this section until an agreement is reached.

I. Should there be an inadequate expression of interest in the project, the Director and the Board shall confer to add additional private prison contractors for consideration which are known to be appropriate for the project.

J. The Department of Central Services shall render assistance to the Department of Corrections in implementing the contracting procedures provided for in this section. The Department of Central Services may have a representative at any meeting involving negotiations of a contract between the Department and a private prison contractor.

K. The Director of Central Services is authorized to lease real property and improvements thereon to a private prison contractor in conjunction with a contract for private management of a state correctional institution located or to be built on the property. Said lease may be entered into for one (1) year periods, renewable at the sole option of the State of Oklahoma, but not to exceed a cumulative period of fifty (50) years.

L. Contracts awarded to private prison contractors pursuant to the provisions of this section shall be entered into for a period of one (1) year, subject to renewal at the option of the State of Oklahoma for a cumulative period not to exceed fifty (50) years.

M. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Board of Corrections:

1. That the contractor possesses the necessary qualifications and experience to provide the services specified in the contract;

2. That the contractor can provide the necessary qualified personnel to implement the terms of the contract;

3. That the financial condition of the contractor is such that the terms of the contract can be fulfilled;

4. That the contractor has the ability to comply with applicable court orders and corrections standards; and

5. That, in the case of a contractor who will be providing the services in a nondepartmental facility operated by said contractor, the contractor shall be able to meet accreditation standards and receive accreditation, as required by the terms of the contract pursuant to subsection R of this section.

N. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Board that the contractor can obtain insurance or provide self-insurance to:

1. Indemnify the state against possible lawsuits arising from the operation of prison facilities by the contractor; and

2. Compensate the state for any property damage or expenses incurred due to the operation of prison facilities.

O. A private prison contractor shall not be bound by state laws or other legislative enactments governing the appointment, qualifications, duties, salaries, or benefits of wardens, superintendents, or other correctional employees, except that any personnel authorized to carry and use firearms shall comply with the certification standards required by the provisions of Section 3311 of Title 70 of the Oklahoma Statutes and be authorized to use firearms only to prevent a felony, to prevent escape from custody, or to prevent an act which would cause death or serious bodily injury to the personnel or to another person.

P. Any offense which would be a crime if committed within a state correctional institution also shall be a crime if committed in an institution or facility operated by a private prison contractor.

Q. The Director or his designee shall monitor the performance of the contractor.

R. Any contract between the Department and a private prison contractor, whereby the contractor provides for the incarceration, housing, care, and control of inmates in a nondepartmental facility operated by the contractor, shall contain, in addition to other provisions, terms and conditions:

1. Requiring the contractor to provide said services in a facility which meets accreditation standards established by the American Corrections Association;

2. Requiring the contractor to receive accreditation for said facility from the American Corrections Association, within three (3) years of commencement of operations of the facility;

3. Requiring the contractor to obtain written authorization from the governing board of any municipality in which the facility

is to be located, or if the facility is not to be located within a municipality, written authorization from the board of county commissioners of the county in which the facility is to be located; and

4. Granting the Department the option at the beginning of each fiscal year to purchase or lease, at a predetermined price, any such facility.

SECTION 2. AMENDATORY 57 O.S. 1991, Section 563, as last amended by Section 1, Chapter 213, O.S.L. 1994 (57 O.S. Supp. 1994, Section 563), is amended to read as follows:

Section 563. A. Before any correctional facility other than an inmate work center as authorized in subsection B of this section or an inmate drug offender work camp as authorized in subsection C of this section, whether within the Department of Corrections or within any other state agency, may be created or any construction performed which may significantly increase, extend or expand the present facility, such creation or construction shall be approved by the Legislature. Correctional facilities owned or operated by private prison contractors shall not be deemed to be within the Department of Corrections or other state agency; provided, however, on and after the effective date of this act, no private prison contractor shall create, construct or expand any prison facility without a binding contract for the total capacity of such facility's creation, construction or expansion. Any existing private prison facility or any facility completed within six (6) months of the effective date of this act without a binding contract with the federal government or another state government for the total capacity of the facility shall be allowed to solicit a contract with the federal government or another state government, but shall not be allowed alterations, renovations or expansion to the facility until the facility has remained at capacity for five (5) years.

B. The Department of Corrections is hereby authorized to establish inmate work centers, not to exceed one hundred (100) inmates, in locations where a need for labor to conduct public work projects is determined. The Department shall select the inmate work center locations based on objective comparisons of interested communities in accordance with procedures and criteria established by the Department of Corrections. The procedures, selection criteria and decision case analysis shall be made available to the public upon request.

C. The Department of Corrections is hereby authorized to establish inmate drug offender work camps, not to exceed three hundred inmates, in locations determined by the Department of Corrections. The Department shall select the inmate drug offender work camp locations based on objective comparisons of interested communities in accordance with procedures and criteria established by the Department of Corrections. The procedures, selection criteria and decision case analysis shall be made available to the public upon request.

D. No state, county or municipal correctional facility including any inmate work center, inmate drug offender work camp, inmate halfway house, inmate transitional living center and any other place where state, county or municipal inmates are housed shall be located within one thousand (1,000) feet of any public or private elementary or secondary school nor within two thousand five hundred (2,500) feet of any state training school. The provisions of this subsection shall not apply to any inmate work center, inmate drug offender work camp, inmate halfway house, inmate transitional living center and any other place where state, county or municipal inmates are housed established prior to ~~the effective date of this act~~ May 20, 1994.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 563.1, as amended by Section 2, Chapter 213, O.S.L. 1994 (57 O.S. Supp. 1994, Section 563.1), is amended to read as follows:

Section 563.1 The location of any prison facility which is not operated by the Department of Corrections, a county, or a city shall be subject to the nondiscriminatory zoning ordinances of the town or city in which located, and the location of such facility is specifically prohibited within one (1) mile of any public or private elementary or secondary school. Provided, that if any public or private elementary or secondary school shall be established within the prohibited distance from any such facility after such facility has been in use as a prison facility, this shall not be a bar to the continued use of the facility as a prison so long as it remains in continuous use as a prison. Provided further, the provisions of this section shall not apply to any prison facility established within the prohibited distance from a private elementary or secondary school prior to ~~the effective date of this act~~ May 20, 1994, or within the prohibited distance from a public elementary or secondary school prior to July 1, 1987. The distance indicated in this section shall be measured from the nearest property line of the school to the nearest property line of the prison facility.

Prior to the establishment of any prison facility which is not operated by the Department of Corrections, a private prison contractor shall obtain written authorization to establish the facility from the governing body of any municipality in which such a facility is to be located, or if the facility is not to be located within the incorporated limits of a municipality, from the board of county commissioners of the county in which the facility is to be located. Said authorization shall be submitted to the Board of Corrections before any contract between the Department of Corrections and the private prison contractor ~~is~~ may be awarded.

SECTION 4. AMENDATORY 57 O.S. 1991, Section 563.2, as last amended by Section 2, Chapter 203, O.S.L. 1993 (57 O.S. Supp. 1994, Section 563.2), is amended to read as follows:

Section 563.2 A. A private prison contractor may contract with the federal government or another state to provide for incarceration, housing, care and control of minimum or medium security level inmates, as provided by subsection H of this section, who are in the custody of the United States or another state, who do not have histories of escape, and who are sentenced to terms of incarceration for conviction of a felony, other than a felony that would be a capital offense if committed in this state or a sex-related offense, or who are sentenced to federal or state facilities for conviction of a misdemeanor, other than a sex-related offense, within a facility owned or operated by the private prison contractor. Provided, incarceration for misdemeanors shall be allowed only pursuant to subsection D of this section. Such private prison contractor may perform other functions related to said responsibilities. No private prison contractor shall create, construct or expand any private prison facility on and after the effective date of this act without first securing a binding contract with the federal government or another state government for the total capacity of the facility. Every private prison facility constructed in this state shall be required to meet the design, construction and plan specifications of a binding contract except for existing facilities or facilities completed within six (6) months of the effective date of this act.

B. Any offense which would be a crime if committed within a state correctional institution of this state shall be a crime if committed in a facility owned or operated by a private prison contractor.

C. A private prison contractor shall not employ any personnel convicted of a felony.

Any personnel of a facility owned or operated by a private prison contractor shall be authorized to carry and use firearms only in the manner provided in this subsection and only after completing training approved or provided by the Department of Corrections. Such personnel shall only be authorized to use firearms for the following purposes:

1. To prevent escape from the facility or from custody while being transported to or from the facility. As used in this paragraph, "to prevent escape from the facility" shall mean to prevent an incarcerated individual from crossing the secure perimeter of the facility; or

2. To prevent an act which would cause death or serious bodily injury to any person.

The Department of Corrections is authorized to provide training to personnel of the private prison contractor, pursuant to contract. The Department of Corrections shall charge a reasonable fee for the training, not to exceed the cost of such training. The provisions of this subsection shall not be construed to confer peace officer status upon any employee of the private prison contractor or to authorize the use of firearms, except as provided in this subsection. If an inmate escapes from the facility, personnel from the facility immediately shall inform the Department of Public Safety, the county sheriff and, if the facility is located within the boundaries of a municipality, the police department of the municipality.

D. A private prison contractor housing federal inmates or inmates of another state shall not accept:

1. Any inmate who would be incarcerated in the facility for conviction of a misdemeanor, unless such incarceration in the facility is consistent with American Correctional Association requirements relating to the incarceration of inmates convicted of more serious offenses; or

2. Any maximum security level inmate.

E. If an inmate is to be released from incarceration, is released by court order, is to be placed on probation, is paroled, or if the federal government or sending state requests transfer or the return of the inmate, the private prison contractor immediately shall transfer or return the inmate to that state or in the case of federal prisons to the closest federal prison.

F. A private prison contractor housing federal inmates from jurisdictions other than Oklahoma, or inmates of another state shall not discharge any such inmate from custody nor allow any such inmate to leave the premises of the facility, except to comply with an order to appear in a court of competent jurisdiction, to receive medical care not available at the facility, to work as provided in subsection G of this section, or to comply with the provisions of subsection E of this section.

G. A private prison contractor may allow federal inmates who are placed in "out" custody or "community" custody status to be employed in public works projects provided all of the following conditions are satisfied:

1. The public works project must be in and for the county where the private prison is located or a county adjacent to the county where the private prison is located, or in and for a municipality in the county where the private prison is located or an adjacent county;

2. The private prison contractor has developed security procedures which will ensure the safety of the public and the Department of Corrections has approved such procedures;

3. The public works project has been authorized by Department of Corrections and the county or municipal authorities where the public works project is located;

4. The private prison contractor has procured and has in force and effect a policy of liability insurance which will provide

coverage in an amount determined by the Department of Corrections for any loss resulting from the acts or omissions of inmates participating in said project or employees of the private prison contractor and for any injuries occurring to said inmates or employees; and

5. The use of such inmates will be in strict compliance with the provisions of Section 4002 of Title 18 of the United States Code and any other applicable provisions of federal law.

H. A private prison contractor housing federal inmates or inmates of another state shall be responsible for the reimbursement of all reasonable costs and expenses incurred by this state or a political subdivision of this state for legal actions brought in this state by or on behalf of any federal inmate or inmate of another state while incarcerated in the facility, including court costs, sheriff's mileage fees, witness fees, district attorney expenses, expenses of the office of Attorney General, indigent or public defender fees and costs, judicial expenses, court reporter expenses and any other costs, fees, or expenses associated with the proceedings or actions.

I. As used in this section, unless federal custody status is specified, security level restrictions shall refer to the security levels applicable to inmates in institutions within the Department of Corrections, as determined by policy of the Department of Corrections, unless the Department of Corrections approves more restrictive levels of security as prescribed by the private prison contractor. Private prison contractors housing federal inmates or inmates of another state shall be bound by such security level classifications.

J. A private prison contractor shall not house inmates from this state with federal inmates or inmates from another state, unless segregated or otherwise housed in such a manner as to satisfy the Director of the Department of Corrections.

K. The State of Oklahoma shall not assume jurisdiction or custody of any federal inmate or inmate from another state housed in a facility owned or operated by a private prison contractor. Such inmates from another state shall at all times be subject to the jurisdiction of that state and federal inmates shall at all times be subject to federal jurisdiction. This state shall not be liable for loss resulting from the acts of said inmates nor shall this state be liable for any injuries to said inmates.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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