

CS for EHB 1138

1 THE STATE SENATE
2 Tuesday, March 30, 1999

3 Committee Substitute for
4 ENGROSSED
5 House Bill No. 1138

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1138 - By:
7 HILLIARD of the House and STIPE and WEEDN of the Senate.

8 An Act relating to prisons and reformatories; amending 57
9 O.S. 1991, Sections 561, as last amended by Section 77,
10 Chapter 133, O.S.L. 1997, Section 78, Chapter 133, O.S.L.
11 1997, and 563.2, as last amended by Section 1, Chapter 149,
12 O.S.L. 1998 (57 O.S. Supp. 1998, Sections 561, 561.1 and
13 563.2), which relate to private prison contractor;
14 prohibiting private contractor from being included in
15 certain listing; providing exception; modifying language;
16 requiring assignment of inmates to be representative of
17 total population; requiring certain insurance coverage in
18 certain amounts; requiring certain notice; prohibiting
19 cancellation of insurance without notice; requiring
20 emergency plan filing, costs and response; requiring monitor
21 to enforce certain provisions; allowing liquidated damages;
22 setting certain penalty fees; providing for termination;
23 providing per diem cost to include certain items; removing
24 notice and response requirement in event of riot or other
25 disturbance; prohibiting use of private facility of certain
26 security level until state facility filled to certain
27 capacity; providing for codification; and declaring an
28 emergency.

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

30 SECTION 1. AMENDATORY 57 O.S. 1991, Section 561, as last
31 amended by Section 77, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1998,
32 Section 561), is amended to read as follows:

33 Section 561. A. The Department of Corrections is hereby
34 authorized to provide for incarceration, supervision, and

1 residential treatment at facilities other than those operated by the
2 Department of Corrections. Services offered for persons under the
3 custody or supervision of the Department are to include, but not be
4 limited to, housing, alcoholism or drug treatment, mental health
5 services, nursing home care, or halfway house placement. Such
6 services must meet standards prescribed and established by the State
7 Board of Corrections for implementing such a program, including but
8 not limited to standards concerning internal and perimeter security,
9 discipline of inmates, educational and vocational training programs,
10 employment of inmates, and proper food, clothing, housing, and
11 medical care. Such services must be contracted for in accordance
12 with Section 85.7 of Title 74 of the Oklahoma Statutes. Such
13 services, if provided by private prison contractors, shall be
14 contracted for as required by this section.

15 B. Subject to the requirements of this section and Section ~~78~~
16 561.1 of this ~~act~~ title, the Department of Corrections is hereby
17 authorized to provide for the construction or operation or both
18 construction and operation of correctional institutions of the
19 Department of Corrections by private prison contractors. Such
20 operation shall meet standards prescribed by the Board of
21 Corrections, including but not limited to, standards concerning
22 internal and perimeter security, discipline of inmates, educational
23 and vocational training programs, and proper food, clothing,

1 housing, transportation, and medical care. Such services shall be
2 contracted for in accordance with the provisions of Section ~~78~~ 561.1
3 of this ~~act~~ title and the provisions of this section.

4 C. A comprehensive file for all private prison contractors
5 interested in and capable of operating an institution within the
6 Department of Corrections or providing for the housing, care, and
7 control of inmates in a facility owned and operated by the
8 contractor shall be maintained by the Department. These files shall
9 include:

- 10 1. A completed application form;
- 11 2. A resume of the contractor's staff and capability;
- 12 3. A completed performance evaluation form for past projects on
13 which the contractor has provided private prison services;
- 14 4. A list of past contracts with this state;
- 15 5. A list of contracts to provide similar services to other
16 states or to the United States; and
- 17 6. The mailing address of each private prison contractor.

18 Any person or firm ~~wishing to be~~ desiring to contract with the
19 state as a private prison contractor may request at any time to be
20 included in the comprehensive file, and. A private prison
21 contractor who has previously contracted with this state or any
22 other state and whose contract was terminated for cause shall be
23 ineligible to be included on the list of private prison contractors,

1 unless the private prison contractor provides sufficient
2 documentation demonstrating any performance deficiencies have been
3 corrected to the satisfaction of the Department. The private prison
4 contractor shall be provided necessary forms within twenty (20) days
5 of the request and the Department shall add such contractor to the
6 list within twenty (20) days of receipt of a properly completed
7 application.

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

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

- 15 1. Description and scope of the project or projects;
- 16 2. Estimated time schedule for project;
- 17 3. Last date for submitting notice of interest in performing
18 services to the Director; and
- 19 4. Other pertinent data.

20 Private prison contractors desiring consideration shall meet the
21 requirements of this section and to be considered shall submit a
22 letter expressing interest in the project to the Department within
23 thirty (30) days of the postmark date of the letter of notification

1 mailed by the Department. Contractors shall file an updated
2 application form at the request of the Department.

3 E. The Department shall define the scope of a proposed project,
4 determine the various project components, phases and timetables, and
5 prepare detailed project descriptions to guide prospective
6 contractors. Before the Department awards a contract to a private
7 prison contractor, the plans shall be approved by the State Board of
8 Corrections.

9 F. The Department shall review the files of the private prison
10 contractors desiring consideration for the project. After
11 performing the analysis required by Section ~~78~~ 561.1 of this ~~act~~
12 title, the Department shall select no less than three and no more
13 than five contractors for more detailed consideration. In the event
14 interviews for more than one contract are being considered at the
15 same time, the number of contractors selected for more detailed
16 consideration should be at least twice the number of contracts
17 contemplated. This initial screening should consider the
18 requirements of the project, as well as the following factors to be
19 determined from the comprehensive file, and replies to inquiries to
20 former clients:

- 21 1. Specialized experience in the type of work contemplated;
- 22 2. Capacity of the contractor to accomplish the work in the
23 required time; ~~and~~

- 1 3. Past performance, from the performance evaluation form; and
2 4. Contracting history with the state or another state.

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

7 H. 1. The Department shall select the contractor whose
8 qualifications and project proposal most substantially meet the
9 criteria of the project description.

10 2. The Department shall execute the contract with the selected
11 contractor, which contract shall include a fair and reasonable fee.

12 3. The negotiated scope and fee shall be reported to the Board
13 for the approval of the award of the contract.

14 I. The Department of Central Services shall render assistance
15 to the Department of Corrections in implementing the contracting
16 procedures provided for in this section. The Department of Central
17 Services may have a representative at any meeting involving
18 negotiations of a contract between the Department and a private
19 prison contractor. ~~Before submission of the proposed contract to~~
20 ~~the Legislative and Executive Bond Oversight Commissions, and prior~~
21 Prior to the date as of which the proposed contract is executed by
22 the State Board of Corrections, the Attorney General and the
23 Director of the Department of Central Services shall review the

1 proposed final version of the contract. The Attorney General and
2 the Director of the Department of Central Services shall have a
3 period of fifteen (15) days from receipt of the proposed final
4 version of the contract to approve the contract and execute the
5 document. If either the Attorney General or the Director of the
6 Department of Central Services has objections to the proposed
7 contract, the objections shall be communicated in writing to the
8 Department of Corrections. The Department of Corrections shall take
9 appropriate action regarding the objections and shall resubmit the
10 proposed contract for additional review. The Attorney General and
11 the Department of Central Services shall have an additional fifteen-
12 day period to approve the proposed contract and to execute the
13 document. Failure of the Attorney General or the Director of the
14 Department of Central Services, respectively, to act within the
15 fifteen-day period shall constitute approval of the respective
16 official to the proposed final version of the contract. The
17 contract shall contain a separate signature block or line for
18 signature by the Attorney General and the Director of the Department
19 of Central Services. The contract shall contain a statement to be
20 executed by the Attorney General and the Director of the Department
21 of Central Services that each one of them, respectively, has
22 reviewed the proposed contract for compliance with the provisions of
23 this section and Section ~~78~~ 561.1 of this ~~act~~ title, and all other

1 applicable provisions of law and that the contract conforms with
2 those requirements. Neither the private prison contractor nor the
3 State Board of Corrections shall execute the contract until the
4 document has been executed by the Attorney General and the Director
5 of the Department of Central Services as required by this subsection
6 unless the approval of the respective official has been made as a
7 result of failure to take action within the fifteen-day period
8 prescribed by this subsection.

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

16 K. Contracts awarded to private prison contractors pursuant to
17 the provisions of this section shall be entered into for a period
18 specified in each contract, subject to availability of funds
19 annually appropriated by the Legislature for that purpose. No
20 contract awarded pursuant to this section shall provide for the
21 encumbrance of funds beyond the amount available for a fiscal year.

1 L. No contract authorized by the provisions of this section
2 shall be awarded until the private prison contractor demonstrates to
3 the satisfaction of the State Board of Corrections:

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

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

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

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

12 5. That, in the case of a contractor who will be providing the
13 services in a nondepartmental facility operated by said contractor,
14 the contractor shall be able to meet accreditation standards and
15 receive accreditation, as required by the terms of the contract
16 pursuant to subsection B of Section ~~78~~ 561.1 of this ~~act~~ title.

17 M. Prisoners to be assigned to the private prison facility
18 shall be representative of the total prison population in a security
19 level or class, except as contracted otherwise.

20 N. 1. No contract authorized by the provisions of this section
21 shall be awarded until the private prison contractor demonstrates to
22 the satisfaction of the State Board of Corrections that the
23 contractor can obtain insurance ~~or provide self-insurance to:~~

1 ~~1.~~ Indemnify indemnify the state against possible lawsuits
2 arising from the operation of prison facilities by the contractor,
3 and

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

6 ~~N.~~ 2. To comply with the provisions of this subsection, the
7 contractor shall obtain:

8 a. Workers' Compensation Insurance as provided in Section
9 61 of Title 85 of the Oklahoma Statutes,

10 b. Comprehensive General Liability Coverage, Medical and
11 Dental Malpractice/Professional Liability Coverage for
12 all professional health providers, attorneys,
13 counselors, psychologists and social workers in an
14 amount not less than One Million Dollars
15 (\$1,000,000.00) for each occurrence with an annual
16 aggregate of Four Million Dollars (\$4,000,000.00) with
17 a total umbrella liability of Six Million Dollars
18 (\$6,000,000.00),

19 c. Civil Rights Violation Liability Insurance for all
20 claims brought by any person based in whole or part on
21 any violations of the United States or Oklahoma
22 Constitutions, federal or state laws, including 42
23 U.S.C. 1983 actions or tort-based equivalents. Such

- 1 insurance coverage shall include an unlimited defense
2 coverage for attorney fees, costs and related
3 expenses,
- 4 d. a products/completed operation coverage policy with an
5 annual aggregate amount of One Million Dollars
6 (\$1,000,000.00),
- 7 e. automobile and other motorized vehicle liability
8 insurance in an amount not less than One Million
9 Dollars (\$1,000,000.00) per accident, claim or
10 occurrence,
- 11 f. business interruption insurance in the amount of Seven
12 Million Dollars (\$7,000,000.00) to cover any break in
13 contracting service by the private prison contractor,
- 14 g. fire insurance, with uniform Standard Extended
15 Coverage Endorsement including damage, destruction
16 hazard insurance, vandalism, and malicious mischief,
17 riot, and
- 18 h. insurrection insurance coverage in an amount equal to
19 the replacement value of the facility.

20 3. Where applicable, all insurance policies required under this
21 section shall name the state, or sending state if other than this
22 state, as an additional insured or loss payee which shall be
23 entitled to all notices under the insurance policies. All such

1 policies shall contain the following provision: "The coverage
2 provided herein shall not be cancelled, reduced or allowed to lapse
3 unless and until the state has received at least thirty (30) days'
4 notice and exercised its option to advance or pay the premium to
5 continue the coverage for such time as will protect the safety of
6 the public". Such advancement shall constitute a claim by the state
7 against the private prison contractor as a secured creditor with the
8 highest priority of any other creditor.

9 4. The private prison contractor shall notify the state prior
10 to the anniversary date of each policy required in this subsection
11 of any changes of insurance providers, rates or changes or reduction
12 of any coverage or amounts of coverage. Nothing in this subsection
13 shall prevent the private prison contractor from providing
14 additional coverage amounts or additional insurance at their sole
15 expense.

16 0. A private prison contractor shall not be bound by state laws
17 or other legislative enactments governing the appointment,
18 qualifications, duties, salaries, or benefits of wardens,
19 superintendents, or other correctional employees, except that any
20 personnel authorized to carry and use firearms shall comply with the
21 certification standards required by the provisions of Section 3311
22 of Title 70 of the Oklahoma Statutes and be authorized to use
23 firearms only to prevent a felony, to prevent escape from custody,

1 or to prevent an act which would cause death or serious bodily
2 injury to the personnel or to another person.

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

6 ~~P.~~ Q. All private prison contractors shall have an emergency
7 plan that includes a management process for escapes, riots, or other
8 serious disturbances or correctional emergencies, including acts of
9 nature, which involve the destruction of property or pose imminent
10 threat of harm to any person or the public safety. The emergency
11 plan shall be filed with the Department of Corrections, the sheriff
12 of the county in which the private prison facility is located, the
13 chief law enforcement officer of the municipality, if the private
14 prison facility is located within the boundaries of a municipality,
15 and the Cabinet Secretary of Safety and Security. The Department of
16 Corrections may respond on behalf of inmates of this state as
17 directed by the Cabinet Secretary of Safety and Security. Any
18 emergency response provided by any state or local law enforcement
19 agency shall be at the sole expense of the private prison
20 contractor/operator. Each responding agency shall submit a written
21 invoice detailing costs incurred which shall be paid within thirty
22 (30) days of receipt by the private prison contractor/operator.

1 R. The Director or ~~his~~ designee shall monitor the performance
2 of the ~~contractor~~ private prison contractor/operator and enforce the
3 terms and provisions of the contract. The Department of Corrections
4 may contract for the provision of liquidated damages in such amounts
5 as to assure the performance of the contract terms. Any penalties
6 assessed may be appealed to the Director or designee in an
7 administrative law proceeding. Any penalties assessed shall be not
8 less than Fifty Dollars (\$50.00) per day per violation and not to
9 exceed Three Hundred Dollars (\$300.00) per day per violation until
10 each violation is remedied to the satisfaction of the Department.
11 Continued or repeated violations of the contract provisions shall be
12 grounds for termination of the contract.

13 SECTION 2. AMENDATORY Section 78, Chapter 133, O.S.L.
14 1997 (57 O.S. Supp. 1998, Section 561.1), is amended to read as
15 follows:

16 Section 561.1 A. Prior to entering into a contract with any
17 private prison contractor for construction or operation, or both, of
18 a correctional facility, the ~~Oklahoma~~ Department of Corrections
19 shall establish a process for requesting proposals from such
20 contractors. The Department of Corrections shall develop criteria
21 for the process by which a contractor for the construction or
22 operation, or both, of a private prison is to be awarded a contract.
23 The criteria shall be subject to approval by the State Board of

1 Corrections. The criteria for selection of a site for a proposed
2 facility to be constructed or operated, or both, by a private
3 contractor shall include, but shall not be limited to, the
4 availability of medical services, support services, transportation
5 services and the availability of potential employees who would be
6 qualified to perform required functions at a state correctional
7 facility.

8 B. Any contract between the Department of Corrections and a
9 private prison contractor, whereby the contractor provides for the
10 housing, care, and control of inmates in a nondepartmental facility
11 operated by the contractor, shall contain the following provisions,
12 in addition to other provisions, terms and conditions:

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

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

20 3. Requiring the contractor to obtain written authorization
21 from the governing board of any municipality in which the facility
22 is to be located, or if the facility is not to be located within a
23 municipality, written authorization from the board of county

1 commissioners of the county in which the facility is to be located;
2 and

3 4. Granting the Department the option at the beginning of each
4 fiscal year pursuant to an agreement, to purchase any such facility,
5 with or without inventory or other personal property, at a
6 predetermined price, which shall be negotiated and included in a
7 schedule or a formula to be contained in the original agreement.
8 ~~Such agreements relating~~ This option shall apply to a correctional
9 ~~facility~~ facilities, the construction of which was financed, in
10 whole or in majority part, or is to be financed, in whole or in
11 majority part, by obligations issued from ~~a local~~ any governmental
12 entity, the repayment of which is to be made in whole or in part
13 from rentals from the State of Oklahoma or the Department of
14 Corrections~~.~~ Under these circumstances as described, the option
15 shall be submitted to the Oklahoma Bond Oversight Commissions as
16 provided in subsection I of this section.

17 C. A contractor proposing to enter a contract with the
18 Department of Corrections for construction or operation, or both, of
19 a correctional facility pursuant to this section must demonstrate:

20 1. The qualifications and the operations and management
21 experience to carry out the terms of the contract; and

22 2. The ability to comply with the standards of the American
23 Correctional Association and with specific court orders.

1 D. In addition to meeting the requirements specified in the
2 requests for proposals, a proposal for the construction and
3 operation of a correctional facility must:

4 1. Provide for regular, on-site monitoring by the Department of
5 Corrections;

6 2. Acknowledge that payment by the state is subject to the
7 availability of appropriations;

8 3. Provide for payment of a maximum amount per fiscal year;

9 4. Demonstrate a cost benefit to the State of Oklahoma when
10 compared to the level and quality of programs provided by state-
11 operated facilities that have similar types of inmates at an
12 operational cost not more than the cost of housing inmates in
13 similar facilities and providing similar programs to those types of
14 inmates in state-operated facilities. The Department of Corrections
15 shall be responsible for determining the cost/benefit of the
16 proposal;

17 5. Permit the state to terminate the contract for cause;

18 6. Contain a per diem operational cost per inmate for ~~the~~
19 initial each year of operations which shall include, but not be
20 limited to, costs for medical expenses as per the request for
21 proposal published by the Department for the contracting process,
22 all inmate transportation to and from the facility for any reason,
23 and such other costs as may be agreed to between the parties or

1 required by the request for proposal including any additional
2 services to be provided by the private prison contractor;

3 7. Subject to appropriations, provide that cost adjustments may
4 be made only once each fiscal year, to take effect at the beginning
5 of the next fiscal year using as the maximum percentage increase, if
6 any, an increase amount not to exceed the previous year's increase
7 in the Consumer Price Index for All Urban Consumers (CPI-U) as
8 prepared by the United States Bureau of Labor Statistics;

9 8. Have an initial contract term of not more than one (1) year,
10 with an option to renew for additional periods not to exceed twenty
11 (20) years;

12 9. If the proposal includes construction of a facility, contain
13 a performance bond approved by the Department that is adequate and
14 appropriate for the proposed contract;

15 10. Provide for assumption of liability by the private vendor
16 for all claims arising from the services performed under the
17 contract by the private vendor;

18 11. Provide for ~~an~~ adequate ~~plan of~~ insurance coverage for the
19 private vendor and its officers, guards, employees, and agents
20 against all claims, including claims based on violations of civil
21 rights arising from the services performed under the contract by the
22 private vendor;

1 12. Provide for ~~an~~ adequate ~~plan of~~ insurance coverage to
2 protect the state against all claims arising from the services
3 performed under the contract by the private vendor and to protect
4 the state from actions by a third party against the private vendor,
5 its ~~officer~~ officers, guards, employees, and agents as a result of
6 the contract;

7 13. Provide plans for the purchase and assumption of operations
8 by the state in the event of the bankruptcy of the private vendor;
9 and

10 14. Contain comprehensive standards for conditions of
11 confinement.

12 E. As of the end of each fiscal year, the Department of
13 Corrections shall determine the average daily cost per inmate for
14 the operational costs at each major category of correctional
15 facility. There shall be a separate computation of the average
16 daily rate for maximum security, medium security, minimum security
17 and work center facilities. The Department of Corrections shall
18 present the daily rate computations to the State Board of
19 Corrections. The State Board of Corrections, after appropriate
20 review and analysis, shall adopt as a final action of the Board, at
21 its regularly scheduled meeting in the month of August, an average
22 daily rate per inmate by facility category for the immediately
23 preceding fiscal year.

1 F. If no proposals conform to the established criteria, the
2 Department shall prepare an additional request for proposals. The
3 Department of Corrections shall evaluate the proposals within thirty
4 (30) days of receipt from the prospective contractor. The
5 Department of Corrections shall specifically determine whether a
6 proposal meets the requirements of paragraph 4 of subsection D of
7 this section by comparing the daily rate for housing and care of
8 inmates pursuant to any proposed contract with a private contractor
9 to the daily rate for housing and care of inmates at the comparable
10 type of facility operated by the Department of Corrections using the
11 information provided pursuant to paragraph 6 of subsection D of this
12 section. The Department shall evaluate proposals taking into
13 account any direct or indirect costs that would continue to be paid
14 by the Department of Corrections including, but not limited to,
15 transportation, records management, discipline, general
16 administration, management of inmate trust funds, and major medical
17 coverage. Such costs shall be added to the proposed per diem of the
18 private vendor when comparing the total per diem costs of the state
19 operating facilities.

20 G. If the Department of Corrections proposes to enter into a
21 contract for the construction or the operation, or both, of a
22 private prison, the Department shall compare both the capital costs
23 and the operating costs for the facility to the imputed capital

1 costs and the projected operating costs of a comparable facility
2 constructed and operated by the Department of Corrections.

3 H. The Department of Corrections shall deliver to the State
4 Board of Corrections the top three qualified prospective private
5 prison contractors identified pursuant to this section and pursuant
6 to Section 561 of ~~Title 57 of the Oklahoma Statutes~~ this title
7 together with the information reviewed and analyzed by the
8 Department of Corrections during analysis of the proposals as
9 required by this section. The State Board of Corrections shall
10 evaluate the information provided and shall make a final decision
11 selecting the contractor within fifteen (15) days of receipt of the
12 information.

13 I. Any contract subject to the provisions of this section
14 entered into by the State Board of Corrections shall be subject to
15 the approval of the Legislative and Executive Bond Oversight
16 Commissions in the same manner as provided by law for the review of
17 issuance of obligations by State Governmental Entities as prescribed
18 by Section 695.8 of Title 62 of the Oklahoma Statutes.

19 J. Before submission of the proposed contract to the
20 Legislative and Executive Bond Oversight Commissions, and prior to
21 the date as of which the proposed contract is executed by the State
22 Board of Corrections, the Attorney General and the Director of the
23 Department of Central Services shall review the proposed final

1 version of the contract. The Attorney General and the Director of
2 the Department of Central Services shall have a period of fifteen
3 (15) days from receipt of the proposed final version of the contract
4 to approve the contract and execute the document. If either the
5 Attorney General or the Director of the Department of Central
6 Services has objections to the proposed contract, the objections
7 shall be communicated in writing to the Department of Corrections.
8 The Department of Corrections shall take appropriate action
9 regarding the objections and shall resubmit the proposed contract
10 for additional review. The Attorney General and the Director of the
11 Department of Central Services shall have an additional fifteen-day
12 period to approve the proposed contract and to execute the document.
13 Failure of the Attorney General or the Director of the Department of
14 Central Services, respectively, to act within the fifteen-day period
15 shall constitute approval of the respective official to the proposed
16 final version of the contract. The contract shall contain a
17 separate signature block or line for signature by the Attorney
18 General and the Director of the Department of Central Services. The
19 contract shall contain a statement to be executed by the Attorney
20 General and the Director of the Department of Central Services that
21 each one of them, respectively, has reviewed the proposed contract
22 for compliance with the provisions of this section and Section ~~77~~
23 561 of this ~~act~~ title, and all other applicable provisions of law

1 and that the contract conforms with those requirements. Neither the
2 private prison contractor nor the State Board of Corrections shall
3 execute the contract until the document has been executed by the
4 Attorney General and the Director of the Department of Central
5 Services as required by this subsection unless the approval of the
6 respective official has been made as a result of failure to take
7 action within the fifteen-day period prescribed by this subsection.

8 SECTION 3. AMENDATORY 57 O.S. 1991, Section 563.2, as
9 last amended by Section 1, Chapter 149, O.S.L. 1998 (57 O.S. Supp.
10 1998, Section 563.2), is amended to read as follows:

11 Section 563.2 A. A private prison contractor may contract with
12 the federal government or another state to provide for housing, care
13 and control of minimum or medium security level inmates, as provided
14 by subsection H of this section, who are in the custody of the
15 United States or another state, who do not have histories of escape
16 or riot, and who are sentenced to terms of incarceration for
17 conviction of a felony, other than a felony that would be a capital
18 offense if committed in this state or a sex-related offense, or who
19 are sentenced to federal or state facilities for conviction of a
20 misdemeanor, other than a sex-related offense, within a facility
21 owned or operated by the private prison contractor. Provided,
22 incarceration for misdemeanors shall be allowed only pursuant to

1 subsection D of this section. Such private prison contractor may
2 perform other functions related to said responsibilities.

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

7 C. A private prison contractor shall not employ any personnel
8 convicted of a felony if the person has been incarcerated in the
9 private prison facility for which an application for employment is
10 being considered; provided, a private prison contractor may employ
11 personnel convicted of drug-related felonies who have been
12 rehabilitated for programs for drug or other substance abuse
13 rehabilitation for inmates of the facility.

14 Any personnel of a facility owned or operated by a private
15 prison contractor, except any person convicted of a felony offense,
16 shall be authorized to carry and use firearms while in the
17 performance of their official duties only in the manner provided in
18 this subsection and only after completing training approved or
19 provided by the Department of Corrections. Such personnel shall
20 only be authorized to use firearms for the following purposes:

21 1. To prevent escape from the facility or from custody while
22 being transported to or from the facility. As used in this
23 paragraph, "to prevent escape from the facility" shall mean to

1 prevent an incarcerated individual from crossing the secure
2 perimeter of the facility; or

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

5 The Department of Corrections is authorized to provide training
6 to personnel of the private prison contractor, pursuant to contract.
7 The Department of Corrections shall charge a reasonable fee for the
8 training, not to exceed the cost of such training. The provisions
9 of this subsection shall not be construed to confer peace officer
10 status upon any employee of the private prison contractor or to
11 authorize the use of firearms, except as provided in this
12 subsection.

13 D. All private prison contractors shall have an emergency plan
14 that includes a management process for escapes, riots, or other
15 serious disturbances or correctional emergencies, including acts of
16 nature, which involve the destruction of property or pose imminent
17 threat or harm to any person or the public safety. The emergency
18 plan shall be filed with the Department of Corrections, the sheriff
19 of the county in which the private prison facility is located, the
20 chief law enforcement officer of the municipality if the private
21 prison facility is located within the boundaries of a municipality
22 and the Cabinet Secretary of Safety and Security. If an inmate
23 escapes from the facility, or in the event of any riot or other

1 serious disturbance, personnel from the facility immediately shall
2 inform the Department of Public Safety, the county sheriff and, if
3 the facility is located within the boundaries of a municipality, the
4 police department of the municipality. ~~If fifty percent (50%) or~~
5 ~~more of the population of the facility are inmates from this state,~~
6 ~~the personnel from the facility immediately shall inform the~~
7 ~~Department of Corrections if there is any riot or other serious~~
8 ~~disturbance, whether or not involving any inmates from this state,~~
9 ~~or if an inmate from this state escapes. The Department of~~
10 ~~Corrections is directed to respond on behalf of inmates of this~~
11 ~~state.~~ Any emergency response provided by any state or local law
12 enforcement agency shall be at the sole expense of the private
13 prison contractor/operator. Each responding agency shall submit a
14 written invoice detailing costs incurred which shall be paid within
15 thirty (30) days of receipt by the private prison
16 contractor/operator.

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

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

1 2. Any maximum security level inmate.

2 ~~E.~~ F. If an inmate is to be released or discharged from
3 incarceration, is released or discharged by any court order, is to
4 be placed on probation, is paroled, or if the federal government or
5 sending state requests transfer or the return of the inmate, the
6 private prison contractor immediately shall transfer or return the
7 inmate to the sending state which has legal authority over the
8 sentence or, in the case of federal inmates, to the closest federal
9 prison or to the federal authority of the state in which federal
10 custody over the inmate originated.

11 ~~F.~~ G. A private prison contractor housing federal inmates from
12 jurisdictions other than Oklahoma, or inmates sentenced pursuant to
13 the legal authority of another state, shall not allow any such
14 inmate to leave the premises of the facility, except to comply with
15 an order to appear in a court of competent jurisdiction, to receive
16 medical care not available at the facility, to work as provided in
17 subsection ~~G.~~ H. of this section, or to return or be transferred to
18 another state as provided by the provisions of subsection E of this
19 section.

20 ~~G.~~ H. A private prison contractor may allow minimum security
21 inmate labor to be used in public works projects provided all of the
22 following conditions are satisfied:

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

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

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

12 4. The private prison contractor has procured and has in force
13 and effect a policy of liability insurance which will provide
14 coverage in an amount determined by the Department of Corrections
15 for any loss resulting from the acts or omissions of inmates
16 participating in said project or employees of the private prison
17 contractor and for any injuries occurring to said inmates or
18 employees; and

19 5. The use of federal inmates for public works projects will be
20 in strict compliance with the provisions of Section 4002 of Title 18
21 of the United States Code and any other applicable provisions of
22 federal law.

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

12 ~~F.~~ J. As used in this section, unless federal custody status is
13 specified, security level restrictions shall refer to the security
14 levels applicable to inmates in institutions within the Department
15 of Corrections, as determined by policy of the Department of
16 Corrections, unless the Department of Corrections approves more
17 restrictive levels of security as prescribed by the private prison
18 contractor. Private prison contractors housing federal inmates or
19 inmates of another state shall be bound by such security level
20 classifications.

21 ~~G.~~ K. A private prison contractor shall not house inmates from
22 this state with federal inmates or inmates from another state,

1 unless segregated or otherwise housed in such a manner as to satisfy
2 the Director of the Department of Corrections.

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

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 561a of Title 57, unless there
13 is created a duplication in numbering, reads as follows:

14 No inmates will be incarcerated in a medium security level
15 private correctional facility until state-operated facilities of
16 that same security level are filled to operational capacity.

17 SECTION 5. This act shall become effective July 1, 1999.

18 SECTION 6. It being immediately necessary for the preservation
19 of the public peace, health and safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

22 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-24-99 - DO
23 PASS, As Amended and Coauthored.