STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 1073

By: Taylor, Wilt, Nance, Roan and Walker of the House

and

Dunlap of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to prisons and reformatories; amending 57 O.S. 1991, Section 52, which relates to requirement of sheriff to provide food, clothing and cost of medical care for inmates; providing exception; amending 57 O.S. 1991, Section 561, as last amended by Section 77, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 2000, Section 561), which relates to private prison contracts; establishing priorities; authorizing negotiated rate; authorizing suspension of assessments; and providing an effective date.

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

SECTION 1. AMENDATORY 57 O.S. 1991, Section 52, is amended to read as follows:

Section 52. It shall be the duty of the sheriff of each county to provide bed clothing, washing, board and medical care when required, and all necessities for the comfort and welfare of prisoners as specified by the standards promulgated pursuant to Section 192 of Title 74 of the Oklahoma Statutes and ~~he~~ the sheriff shall be allowed such compensation for services required by the provisions of Sections 41 through 64 of this title, as may be prescribed by the county commissioners. All purchases made pursuant to the provisions of this section shall be made pursuant to the purchasing procedures specified in Sections 1500 through 1505 of Title 19 of the Oklahoma Statutes, including the use of blanket purchase orders as provided for in Section 310.8 of Title 62 of the

Oklahoma Statutes. A county or a municipality shall not be responsible for the costs of medical care for a prisoner when the need for the medical care is a direct result of the reckless, illegal or unauthorized actions of the prisoner.

SECTION 2. AMENDATORY 57 O.S. 1991, Section 561, as last amended by Section 77, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 2000, 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. These services shall be contracted for as follows:

1. First priority shall be renewal of private prison contracts for up to the number of beds contracted for on June 30, 2001;

2. Second priority shall be any Oklahoma county, city or town with beds currently available; and

3. Third priority shall be private prison contractors.

Any contracts entered into with counties, cities or towns shall be at a negotiated rate per bed per day, up to the number of beds required to service any new or outstanding debt issued solely for the construction or renovation of a jail. Counties, cities or towns with outstanding debt for jail construction or renovation shall suspend any levies or assessments designated for such debt service when debt service requirements are met for the year by the Department of Corrections contracts. Beds in excess of the debt service requirement shall be at a negotiated rate per day. Total contracted beds per county, city or town shall not exceed forty percent (40%) of the legal capacity of the jail. Services offered for persons under the custody or supervision of the Department are to include, but not be limited to, 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 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 required by this section.

B. Subject to the requirements of this section and Section ~~78~~ 561.1 of this ~~act~~ title, the Department of Corrections is hereby authorized to provide for the construction or operation or both construction and operation of correctional institutions of the Department of Corrections 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, transportation, and medical care. Such services shall be contracted for in accordance with the provisions of Section ~~78~~ 561.1 of this ~~act~~ title and the provisions of this section.

C. A comprehensive file for all private prison contractors interested in and capable of operating an institution within the Department of Corrections or providing for the 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:

1. A completed application form;

2. A resume of the contractor's staff and capability;

3. A completed performance evaluation form for past projects on which the contractor has provided private prison services;

4. A list of past contracts with this state;

5. A list of contracts to provide similar services to other states or to the United States; and

6. 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 the Director; and

4. 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 to guide prospective contractors. Before the Department awards a contract to a private

prison contractor, the plans shall be approved by the Board of Corrections.

F. The Department shall review the files of the private prison contractors desiring consideration for the project. After performing the analysis required by Section ~~78~~ 561.1 of this ~~act~~ title, the Department 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.

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

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

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

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

I. 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. Before submission of the proposed contract to the Legislative and Executive Bond Oversight Commissions, and prior to the date as of which the proposed contract is executed by the Board of Corrections, the Attorney General and the Director of the Department of Central Services shall review the proposed final version of the contract. The Attorney General and the Director of the Department of Central Services shall have a period of fifteen (15) days from receipt of the proposed final version of the contract to approve the contract and execute the document. If either the Attorney General or the Director of the Department of Central Services has objections to the proposed contract, the objections shall be communicated in writing to the Department of Corrections. The Department of Corrections shall take appropriate action regarding the objections and shall resubmit the proposed contract for additional review. The Attorney General and the Department of Central Services shall have an additional fifteen-day period to approve the proposed contract and to execute the document. Failure of the Attorney General or the Director of the Department of Central Services, respectively, to act within the fifteen-day period shall constitute approval of the respective official to the proposed final version of the contract. The contract shall contain a separate signature block or line for signature by the Attorney General and the Department of Central Services. The contract shall contain a statement to be executed by the Attorney General and the Director of the Department of Central Services that each one of them, respectively, has reviewed the proposed contract for compliance with the provisions of this section and Section ~~78~~ 561.1 of this ~~act~~ title, and all other applicable provisions of law and that the contract conforms with those requirements. Neither the private prison contractor nor the Board of Corrections shall execute the

contract until the document has been executed by the Attorney General and the Director of the Department of Central Services as required by this subsection unless the approval of the respective official has been made as a result of failure to take action within the fifteen-day period prescribed by this subsection.

J. 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.

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

L. 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 B of Section ~~78~~ 561.1 of this ~~act~~ title.

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 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.

N. 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.

O. 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.

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

SECTION 3. This act shall become effective November 1, 2001.

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