

ENROLLED SENATE
BILL NO. 115

By: Leftwich of the Senate

and

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An Act relating to counties and county officers; amending 19 O.S. 1991, Section 744, which relates to use of private prison contractors; authorizing certain contracts upon recommendation by County Jail Trust Authority; permitting contracts to be for certain time period; requiring specified person to report on implementation of certain contract; providing for certain immunity for board of county commissioners, county sheriff and County Jail Trust Authority; stating that certain contract contain specified provisions; requiring certain notice of termination of contract; prohibiting impairment of certain contracts; providing exception; amending Section 2, Chapter 237, O.S.L. 1994 (19 O.S. Supp. 2000, Section 904.2), which relates to board of directors for County Jail Trust Authority; modifying membership of County Jail Trust Authority; inserting gender-neutral language; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 19 O.S. 1991, Section 744, is amended to read as follows:

Section 744. A. ~~Each~~ Upon the recommendation of the County Jail Trust Authority formed pursuant to Section 904.1 of this title, the board of county commissioners is hereby authorized to of each county may enter into contracts with private contractors for the management and operation of any jail owned by the county or for the incarceration of inmates in jail facilities owned and operated by private contractors. Such services shall meet any standards prescribed and established for county jails, including but not limited to standards concerning internal and perimeter security, discipline of inmates, employment of inmates, and proper food, clothing, housing, and medical care. ~~Said~~ The contracts ~~shall~~ may be ~~entered into~~ for a period not to exceed fifty (50) years subject to annual appropriations by the county excise board. ~~Said~~ The contracts shall be valid for a fiscal year only if the county excise board provides an appropriation for the contract for that fiscal year.

B. A comprehensive file for all private contractors interested in and capable of managing or operating a county jail or incarcerating inmates in a facility owned and operated by the contractor shall be maintained by the county. These files shall include a completed application form, a resume of the contractor's staff and capability, completed performance evaluation form for past projects on which the contractor has provided jail services to the county, a list of past contracts with the county, and a list of contracts to provide similar services to other political subdivisions of this state or other states.

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

Any contractor may request at any time to be included in the comprehensive file, and shall be so included within twenty (20) days of the request.

The ~~county~~ board of county commissioners may solicit evaluation of work done by contractors from the state, other political subdivisions, or members of the private sector, which evaluation shall be part of the comprehensive file.

C. The ~~county~~ board of county commissioners 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.

D. If the county intends to secure the services of private contractors, all contractors 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 cost and time schedule for project;
3. Funds available, including federal, state or other participation;
4. Last date for submitting notice of interest in performing services to the board of county commissioners; and
5. Other pertinent data.

Private 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 board of county commissioners within thirty (30) days of the postmark date of the letter of notification mailed by the board. Contractors shall have on file an application form not over twelve (12) months old.

E. The board shall review the files of the private contractors desiring consideration for the project, and shall select no ~~less~~ fewer than three and no more than five contractors for more detailed consideration. This initial screening should consider the requirements of the project and the bid received, as well as the

following factors to be determined from the 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.

The board shall award the contract to the contractor whose qualifications and project proposal most substantially meet the criteria of the project description.

F. The board shall negotiate the contract with the selected contractor, which contract shall include a fair and reasonable fee. If the board and the first-choice contractor cannot reach an agreement, their negotiations shall be terminated and negotiations with the second-choice contractor shall commence. If the board and the second-choice contractor cannot reach an agreement, their negotiations shall be terminated and negotiations with the third-choice contractor shall commence. If the board and the third-choice contractor cannot reach an agreement, then all negotiations shall be terminated. Should the board be unable to negotiate a satisfactory contract with any of the three selected contractors, the board 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.

G. Should there be an inadequate expression of interest in the project, the board of county commissioners shall confer to add additional contractors for consideration which are known to be appropriate for the project.

H. No contract authorized by the provisions of this section shall be awarded until the private contractor demonstrates to the satisfaction of the board of county commissioners:

1. That the contractor has the necessary qualifications and experience to provide the services specified in the contract;
2. That the contractor has 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 ability of the contractor to obtain insurance or provide self-insurance to:
 - a. indemnify the county against possible lawsuits arising from the operation of jail facilities by the contractor, and

- b. compensate the county for any property damage or expenses incurred due to the operation of jail facilities; and

5. That the contractor has the ability to comply with applicable court orders and jail standards.

I. The sheriff of the county or a person designated by the board of county commissioners shall monitor and report to the board of county commissioners on the implementation of the contract. The board of county commissioners, the county sheriff and the County Jail Trust Authority shall be immune from liability for the acts or omissions of the private contractor.

J. A private contractor, in implementing a contract pursuant to the provisions of this section, shall not be bound by state laws or other legislative enactments which govern the appointment, qualifications, duties, salaries or benefits of jailers or other employees of the jail facilities, 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 the commission of 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.

K. A county is authorized to lease real property and improvements thereon to a private contractor in conjunction with a contract for private management of a jail facility located or to be built on the property. ~~Said~~ The lease may be entered into for periods up to fifty (50) years.

L. Any contract between a county and a private contractor, whereby the contractor provides for the housing, care, and control of inmates in a facility owned and operated by the contractor, shall contain provisions granting the county the option at the beginning of each fiscal year to purchase, at a predetermined price any such facility.

M. Any contract between a county and a private prison contractor for jail management or housing shall contain provisions granting the county the right to terminate such contract for cause upon giving a sixty-day written notice.

N. The provisions of this section shall not impair any contract between a County Jail Trust Authority and a private contractor for the management and operation of any county jail entered into prior to November 1, 2001, or the renewal, extension, or continuation of such contract. Despite any provision to the contrary in this section, each County Jail Trust Authority which has entered into a contract with a private contractor for the management and operation of any county jail prior to November 1, 2001, may enter into an additional contract or contracts with a private contractor for the management and operation of its county jail. Each contract may be for a period not to exceed fifty (50) years, and the services pursuant to each contract shall meet any standards prescribed and established for county jails, including, but not limited to,

standards concerning internal and perimeter security, discipline of inmates, employment of inmates, and proper food, clothing, housing and medical care.

SECTION 2. AMENDATORY Section 2, Chapter 237, O.S.L. 1994 (19 O.S. Supp. 2000, Section 904.2), is amended to read as follows:

Section 904.2 A. The directors of the Authority so created shall consist of five (5) members and include the ~~chairman~~ chairperson of the board of county commissioners, the county sheriff ~~and three appointed members who are,~~ one member appointed by the presiding district court judge, one member appointed by the board of county commissioners, and one member appointed by the county sheriff. The appointed members shall be residents of the county and who are shall not be elected officials. ~~Each of the county commissioners shall appoint one of the three appointed members.~~

B. The county sheriff shall serve as ~~chairman~~ chairperson of the board of directors. The board of directors of the Authority shall appoint a clerk and a treasurer. The board of directors shall fix the term and duties of the clerk and treasurer. The ~~chairman~~ chairperson and members of the board shall serve without compensation. The treasurer shall give an official bond, in an amount fixed with sureties approved by the board of directors, conditioned upon faithful accounting for all money pertaining to the Authority and coming into ~~his~~ the hands of the treasurer.

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

SECTION 4. 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.

Passed the Senate the 25th day of April, 2001.

Presiding Officer of the Senate

Passed the House of Representatives the 18th day of April, 2001.

Presiding Officer of the House
of Representatives

