EHB 2085

THE STATE SENATE
Monday, April 8, 2002

ENGROSSED

House Bill No. 2085

ENGROSSED HOUSE BILL NO. 2085 - By: KIRBY of the House and CRUTCHFIELD of the Senate.

An Act relating to prisons and reformatories; amending 57 O.S. 2001, Sections 502, 503 and 509, which relate to the Department of Corrections; modifying definitions; modifying provisions related to membership of the Board of Corrections; modifying list of penal institutions; amending 57 O.S. 2001, Section 561.1, which relates to private prison contractors; authorizing negotiated contracts; requiring per diem for subsequent years be included in proposals; and providing an effective date.

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

SECTION 1. AMENDATORY 57 O.S. 2001, Section 502, is amended to read as follows:

Section 502. As used in this title, unless the context otherwise requires:

~~(a)~~ 1. "Board" means the State Board of Corrections;

~~(b)~~ 2. "Department" means the Department of Corrections of this state;

~~(c)~~ 3. "Institutions" means the Oklahoma State Penitentiary located at McAlester, Oklahoma; the Oklahoma State Reformatory located at Granite, Oklahoma; the Lexington Assessment and Reception Center located at Lexington, Oklahoma; the Joseph Harp Correctional Center located at Lexington, Oklahoma; the Jackie Brannon

Correctional Center located at McAlester, Oklahoma; the Howard C. McLeod Correctional Center located at Farris, Oklahoma; the Mack H. Alford Correctional Center located at Stringtown, Oklahoma; the ~~Ouachita~~ Jim E. Hamilton Correctional Center located at Hodgen, Oklahoma; the Mabel Bassett Correctional Center located at Oklahoma City, Oklahoma; the R.B. "Dick" Conner Correctional Center located at Hominy, Oklahoma; the James Crabtree Correctional Center located at Helena, Oklahoma; the Jess Dunn Correctional Center located at Taft, Oklahoma; the John Lilley Correctional Center located at Boley, Oklahoma; the William S. Key Correctional Center located at Fort Supply, Oklahoma; the Dr. Eddie Walter Warrior Correctional Center located at Taft, Oklahoma; the Northeast Oklahoma Correctional Center located at Vinita, Oklahoma; the ~~Oklahoma City,~~ Clara Waters and Kate Barnard Community Corrections Centers located at Oklahoma City, Oklahoma; ~~the Tulsa Community Corrections Center located at Tulsa, Oklahoma;~~ the Community Corrections Centers located at Lawton, Enid, and Muskogee; the Charles E. "Bill" Johnson Correctional Center, located east of Alva, Oklahoma; and other facilities under the jurisdiction and control of the Department of Corrections or hereafter established by the Department of Corrections;

~~(d)~~ 4. "Director" means the Director of the Department of Corrections;

~~(e)~~ 5. "Halfway house" means a private facility for the placement of inmates in a community setting for the purpose of reintegrating into the community inmates who are nearing their release dates. The term shall not include private prisons~~.~~;

~~(f)~~ 6. "House arrest" means a program whereby persons committed to the Department of Corrections are authorized to be away from a correctional facility and are placed by the Department in a community for the purpose of reintegration of the person into society, pursuant to the provisions of Section 510.2 of this title; and

~~(g)~~ 7. "Private prison contractor" means:

~~(1)~~ a. a nongovernmental entity or public trust which, pursuant to a contract with the Department of Corrections, operates an institution within the Department, or provides for the housing, care, and control of inmates and performs other functions related to said responsibilities within a minimum or medium security level facility not owned by the Department but operated by the contractor~~;~~, or

~~(2)~~ b. a nongovernmental entity or public trust which, pursuant to a contract with the United States or another state, provides for the housing, care, and control of minimum or medium security inmates in the

custody of the United States or another state, and performs other functions related to said responsibilities within a facility owned or operated by the contractor.

SECTION 2. AMENDATORY 57 O.S. 2001, Section 503, is amended to read as follows:

Section 503. There is hereby created the State Board of Corrections which shall be the governing board of the Department of Corrections herein created. The Board shall consist of seven (7) members who shall be appointed by the Governor with the advice and consent of the Senate. One member shall be appointed from each of the ~~six~~ five congressional districts, and the ~~seventh member~~ other two members shall be appointed from the state at large. The terms of office of two members shall expire on March 15, 1969, and each six (6) years thereafter; the terms of two members shall expire on March 15, 1971, and each six (6) years thereafter; and the terms of three members shall expire on March 15, 1973, and each six (6) years thereafter. Not more than four members of the Board shall be of the same political party. Any member of the Board may be removed from office in the manner provided by law for the removal of officers not subject to impeachment. Vacancies on the Board shall be filled for the unexpired term.

SECTION 3. AMENDATORY 57 O.S. 2001, Section 509, is amended to read as follows:

Section 509. The Oklahoma State Penitentiary shall be located at McAlester in Pittsburg County, State of Oklahoma; and the Oklahoma State Reformatory shall be located at Granite in Greer County, State of Oklahoma; and the Lexington Assessment and Reception Center shall be located at Lexington in Cleveland County, State of Oklahoma; and the Jackie Brannon Correctional Center shall be located at McAlester in Pittsburg County, State of Oklahoma; and the Joseph Harp Correctional Center shall be located at Lexington in Cleveland County, State of Oklahoma; and the Howard C. McLeod Correctional Center shall be located at Farris in Atoka County, State of Oklahoma; and the Mack H. Alford Correctional Center shall be located at Stringtown in Atoka County, State of Oklahoma; and the Jim E. Hamilton Correctional Center shall be located at Hodgen in LeFlore County, State of Oklahoma; and the Mabel Bassett Correctional Center shall be located at Oklahoma City in Oklahoma County, State of Oklahoma; and the R.B. "Dick" Conner Correctional Center shall be located at Hominy in Osage County, State of Oklahoma; and the James Crabtree Correctional Center shall be located at Helena in Alfalfa County, State of Oklahoma; and the Jess Dunn Correctional Center shall be located at Taft in Muskogee County, State of Oklahoma; and the Northeast Oklahoma Correctional

Center shall be located at Vinita in Craig County, State of Oklahoma; and the John Lilley Correctional Center shall be located at Boley in Okfuskee County, State of Oklahoma; and the William S. Key Correctional Center shall be located at Fort Supply in Woodward County, State of Oklahoma; and the Dr. Eddie Walter Warrior Correctional Center shall be located at Taft in Muskogee County, State of Oklahoma; and the ~~Oklahoma City,~~ Clara Waters and Kate Barnard Community Corrections Centers shall be located at Oklahoma City in Oklahoma County, State of Oklahoma; ~~and the Tulsa Community Corrections Center shall be located at Tulsa in Tulsa County, State of Oklahoma;~~ and the Muskogee Community Corrections Center shall be located at Muskogee in Muskogee County, State of Oklahoma; and the Lawton Community Corrections Center shall be located at Lawton in Comanche County, State of Oklahoma; and the Enid Community Corrections Center shall be located at Enid in Garfield County, State of Oklahoma; the Charles E. "Bill" Johnson Correctional Center shall be located east of Alva in Woods County, State of Oklahoma; and said institutions and community corrections centers are hereby established within the Department. Said Department shall be the legal successor of and, except as otherwise provided in the Oklahoma Corrections Act of 1967, Section 501 et seq. of this title, shall have the powers and duties vested by law in the Department of Central Services in all matters relating to penal institutions,

heretofore or hereafter established by the Department, which institutions and community corrections centers shall be under the administrative direction and control of the Department.

SECTION 4. AMENDATORY 57 O.S. 2001, Section 561.1, is amended to read as follows:

Section 561.1 A. Prior to entering into a contract with any private prison contractor for construction or operation, or both, of a correctional facility, the Oklahoma Department of Corrections shall establish a process for requesting proposals <u>or negotiated contracts</u> from such contractors. The Department of Corrections shall develop criteria for the process by which a contractor for the construction or operation, or both, of a private prison is to be awarded a contract. The criteria shall be subject to approval by the Board of Corrections. The criteria for selection of a site for a proposed facility to be constructed or operated, or both, by a private contractor shall include, but shall not be limited to, the availability of medical services, support services, transportation services and the availability of potential employees who would be qualified to perform required functions at a state correctional facility.

B. Any contract between the Department of Corrections and a private prison contractor, whereby the contractor provides for the 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 pursuant to an agreement, to purchase any such facility, with or without inventory or other personal property, at a predetermined price, which shall be negotiated and included in a schedule or a formula to be contained in the original agreement. Such agreements relating to a correctional facility, the construction of which was financed or is to be financed by obligations issued from a local governmental entity the repayment of which is to be made in whole or in part from rentals from the State

of Oklahoma or the Department of Corrections, shall be submitted to the Oklahoma Bond Oversight Commissions as provided in subsection I of this section.

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

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

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

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

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

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

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

4. Demonstrate a cost benefit to the State of Oklahoma when compared to the level and quality of programs provided by state operated facilities that have similar types of inmates at an operational cost not more than the cost of housing inmates in similar facilities and providing similar programs to those types of

1 inmates in state-operated facilities. The Department of Corrections
2 shall be responsible for determining the cost/benefit of the
3 proposal;
4 5. Permit the state to terminate the contract for cause;
5 6. Contain a proposed per diem operational cost per inmate for
6 the initial year and subsequent years of operations;
7 7. Subject to appropriations, provide that cost adjustments may
8 be made only once each fiscal year, to take effect at the beginning
9 of the next fiscal year using as the maximum percentage increase, if
10 any, an increase not to exceed the previous year's Consumer Price
11 Index for All Urban Consumers (CPI-U) as prepared by the United
12 States Bureau of Labor Statistics;
13 8. Have an initial contract term of not more than one (1) year,
14 with an option to renew for additional periods not to exceed twenty
15 (20) years;
16 9. If the proposal includes construction of a facility, contain
17 a performance bond approved by the Department that is adequate and
18 appropriate for the proposed contract;
19 10. Provide for assumption of liability by the private vendor
20 for all claims arising from the services performed under the
21 contract by the private vendor;
22 11. Provide for an adequate plan of insurance for the private
23 vendor and its officers, guards, employees, and agents against all

claims, including claims based on violations of civil rights arising from the services performed under the contract by the private vendor;

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

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

14. Contain comprehensive standards for conditions of confinement.

E. As of the end of each fiscal year, the Department of Corrections shall determine the average daily cost per inmate for the operational costs at each major category of correctional facility. There shall be a separate computation of the average daily rate for maximum security, medium security, minimum security and work center facilities. The Department of Corrections shall present the daily rate computations to the Board of Corrections. The Board of Corrections, after appropriate review and analysis, shall adopt as a final action of the Board, at its regularly scheduled meeting in the month of August, an average daily rate per

inmate by facility category for the immediately preceding fiscal year.

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

G. If the Department of Corrections proposes to enter into a contract for the construction or the operation, or both, of a private prison, the Department shall compare both the capital costs and the operating costs for the facility to the imputed capital costs and the projected operating costs of a comparable facility constructed and operated by the Department of Corrections.

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

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

J. 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 ~~77~~ 561 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.

SECTION 5. This act shall become effective November 1, 2002.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-3-02 - DO PASS.