ENGROSSED SENATE
BILL NO. 1951

By: Corn of the Senate

and

Brannon of the House

[corrections – private prison contractors –

reversionary interest –

emergency]

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

SECTION 1. AMENDATORY 57 O.S. 2001, Section 561.1, as last amended by Section 47, Chapter 3, O.S.L. 2003 (57 O.S. Supp. 2005, 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 Department of Corrections shall establish a process for requesting proposals or negotiated contracts 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. Every contract and agreement for payment of state funds for bed space within a private prison facility shall have a written provision detailing and authorizing this state to possess a reversionary interest in the real property whereby title to the real property reverts back to this state in consideration for retiring the original debt obligations. In addition, every contract and agreement shall provide a written buyout clause authorizing this

state to buy the real property based upon the original debt obligations outstanding at any time the real property is refinanced, abandoned or discontinues to be used as a private prison facility in this state or fails to be operated by a qualified private prison contractor. Every private prison contractor operating in this state shall be required to provide this state a written right of first refusal giving this state the right to purchase the real property whenever it is offered for sale before the property is offered for sale to any other entity.

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 inmates in state-operated facilities. The Department of Corrections shall be responsible for determining the cost/benefit of the proposal;

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

6. Contain a proposed per diem operational cost per inmate for the initial year and subsequent years of operations;

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

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

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

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

11. Provide for an adequate plan of insurance for the private 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 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 561 of this 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 2. 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 6th day of March, 2006.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2006.

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Presiding Officer of the House
of Representatives