

3 Senate Bill No. 1951
4 As Amended

5 SENATE BILL NO. 1951 - By: CORN of the Senate and BRANNON of the
6 House.

7 [corrections - private prison contractors - reversionary
8 interest -
9 emergency]

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

11 SECTION 1. AMENDATORY 57 O.S. 2001, Section 561.1, as
12 last amended by Section 47, Chapter 3, O.S.L. 2003 (57 O.S. Supp.
13 2005, Section 561.1), is amended to read as follows:

14 Section 561.1 A. Prior to entering into a contract with any
15 private prison contractor for construction or operation, or both, of
16 a correctional facility, the Department of Corrections shall
17 establish a process for requesting proposals or negotiated contracts
18 from such contractors. The Department of Corrections shall develop
19 criteria for the process by which a contractor for the construction
20 or operation, or both, of a private prison is to be awarded a
21 contract. The criteria shall be subject to approval by the Board of
22 Corrections. The criteria for selection of a site for a proposed
23 facility to be constructed or operated, or both, by a private
24 contractor shall include, but shall not be limited to, the
25 availability of medical services, support services, transportation

1 services and the availability of potential employees who would be
2 qualified to perform required functions at a state correctional
3 facility.

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

9 1. Requiring the contractor to provide said services in a
10 facility which meets accreditation standards established by the
11 American Corrections Association;

12 2. Requiring the contractor to receive accreditation for said
13 facility from the American Corrections Association, within three (3)
14 years of commencement of operations of the facility;

15 3. Requiring the contractor to obtain written authorization
16 from the governing board of any municipality in which the facility
17 is to be located, or if the facility is not to be located within a
18 municipality, written authorization from the board of county
19 commissioners of the county in which the facility is to be located;
20 and

21 4. Granting the Department the option at the beginning of each
22 fiscal year pursuant to an agreement, to purchase any such facility,
23 with or without inventory or other personal property, at a

1 predetermined price, which shall be negotiated and included in a
2 schedule or a formula to be contained in the original agreement.
3 Such agreements relating to a correctional facility, the
4 construction of which was financed or is to be financed by
5 obligations issued from a local governmental entity the repayment of
6 which is to be made in whole or in part from rentals from the State
7 of Oklahoma or the Department of Corrections, shall be submitted to
8 the Oklahoma Bond Oversight Commissions as provided in subsection I
9 of this section. Every contract and agreement for payment of state
10 funds for bed space within a private prison facility shall have a
11 written provision detailing and authorizing this state to possess a
12 reversionary interest in the real property whereby title to the real
13 property reverts back to this state in consideration for retiring
14 the original debt obligations. In addition, every contract and
15 agreement shall provide a written buyout clause authorizing this
16 state to buy the real property based upon the original debt
17 obligations outstanding at any time the real property is refinanced,
18 abandoned or discontinues to be used as a private prison facility in
19 this state or fails to be operated by a qualified private prison
20 contractor. Every private prison contractor operating in this state
21 shall be required to provide this state a written right of first
22 refusal giving this state the right to purchase the real property

1 whenever it is offered for sale before the property is offered for
2 sale to any other entity.

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

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

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

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

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

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

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

18 4. Demonstrate a cost benefit to the State of Oklahoma when
19 compared to the level and quality of programs provided by state-
20 operated facilities that have similar types of inmates at an
21 operational cost not more than the cost of housing inmates in
22 similar facilities and providing similar programs to those types of
23 inmates in state-operated facilities. The Department of Corrections

1 shall be responsible for determining the cost/benefit of the
2 proposal;

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

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

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

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

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

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

21 11. Provide for an adequate plan of insurance for the private
22 vendor and its officers, guards, employees, and agents against all
23 claims, including claims based on violations of civil rights arising

1 from the services performed under the contract by the private
2 vendor;

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

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

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

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

1 inmate by facility category for the immediately preceding fiscal
2 year.

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

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

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

16 I. Any contract subject to the provisions of this section
17 entered into by the Board of Corrections shall be subject to the
18 approval of the Legislative and Executive Bond Oversight Commissions
19 in the same manner as provided by law for the review of issuance of
20 obligations by State Governmental Entities as prescribed by Section
21 695.8 of Title 62 of the Oklahoma Statutes.

22 J. Before submission of the proposed contract to the
23 Legislative and Executive Bond Oversight Commissions, and prior to

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

1 respectively, has reviewed the proposed contract for compliance with
2 the provisions of this section and Section 561 of this title, and
3 all other applicable provisions of law and that the contract
4 conforms with those requirements. Neither the private prison
5 contractor nor the Board of Corrections shall execute the contract
6 until the document has been executed by the Attorney General and the
7 Director of the Department of Central Services as required by this
8 subsection unless the approval of the respective official has been
9 made as a result of failure to take action within the fifteen-day
10 period prescribed by this subsection.

11 SECTION 2. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-22-06 - DO
16 PASS, As Amended and Coauthored.