

3 Senate Bill No. 686
4 As Amended

5 SENATE BILL NO. 686 - By: CORN of the Senate and CASE of the House.

6 [corrections - requesting proposal from contractors -
7 calculation of inmate incarceration costs - effective date -
8 emergency]

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

10 SECTION 1. AMENDATORY 57 O.S. 2001, Section 561.1, as
11 last amended by Section 47, Chapter 3, O.S.L. 2003 (57 O.S. Supp.
12 2004, Section 561.1), is amended to read as follows:

13 Section 561.1 A. Prior to entering into a contract with any
14 private prison contractor for construction or operation, or both, of
15 a correctional facility, the Department of Corrections shall
16 establish a process for requesting proposals or negotiated contracts
17 from such contractors. The Department of Corrections shall develop
18 criteria for the process by which a contractor for the construction
19 or operation, or both, of a private prison is to be awarded a
20 contract. The criteria shall be subject to approval by the Board of
21 Corrections. The criteria for selection of a site for a proposed
22 facility to be constructed or operated, or both, by a private
23 contractor shall include, but shall not be limited to, the
24 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~~ Legislative and Executive Bond Oversight Commissions as
9 provided in subsection I of this section.

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

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

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

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

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

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

- 1 3. Provide for payment of a maximum amount per fiscal year;
- 2 4. Demonstrate a cost benefit to the State of Oklahoma when
3 compared to the level and quality of programs provided by state-
4 operated facilities that have similar types of inmates at an
5 operational cost not more than the cost of housing inmates in
6 similar facilities and providing similar programs to those types of
7 inmates in state-operated facilities. The Department of Corrections
8 shall be responsible for determining the cost/benefit of the
9 proposal;
- 10 5. Permit the state to terminate the contract for cause;
- 11 6. Contain a proposed per diem operational cost per inmate for
12 the initial year and subsequent years of operations;
- 13 7. Subject to appropriations, provide that cost adjustments may
14 be made only once each fiscal year, to take effect at the beginning
15 of the next fiscal year using as the maximum percentage increase, if
16 any, an increase not to exceed the previous year's Consumer Price
17 Index for All Urban Consumers (CPI-U) as prepared by the United
18 States Bureau of Labor Statistics;
- 19 8. Have an initial contract term of not more than one (1) year,
20 with an option to renew for additional periods not to exceed twenty
21 (20) years;

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

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

7 11. Provide for an adequate plan of insurance for the private
8 vendor and its officers, guards, employees, and agents against all
9 claims, including claims based on violations of civil rights arising
10 from the services performed under the contract by the private
11 vendor;

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

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

20 14. Contain comprehensive standards for conditions of
21 confinement.

22 E. ~~As of the end~~ At the beginning of each fiscal year the
23 Department of Corrections shall determine the budgeted average daily

1 cost per inmate at each major category of correctional facility.
2 There shall be a separate computation of the budgeted average daily
3 cost for maximum security, medium security, minimum security, and
4 community facilities. This information may be presented to the
5 Board of Corrections for informational purposes. After the close of
6 each fiscal year, the Department of Corrections shall determine the
7 actual average daily cost per inmate for the operational costs at
8 each major category of correctional facility. ~~There shall be a~~
9 ~~separate computation of the average daily rate for maximum security,~~
10 ~~medium security, minimum security and work center facilities.~~ The
11 Department of Corrections shall present ~~the daily rate computations~~
12 to the Board of Corrections. ~~The Board of Corrections,~~ at its
13 January meeting the comparative data on budgeted daily cost verses
14 actual daily cost and after appropriate review and analysis, the
15 Board shall adopt as a final action of the Board, ~~at its regularly~~
16 ~~scheduled meeting in the month of August,~~ an actual average daily
17 ~~rate~~ cost per inmate by facility category for the immediately
18 preceding fiscal year.

19 F. If a request for proposal process is utilized and no
20 proposals conform to the established criteria, the Department of
21 Corrections shall prepare an additional request for proposals. The
22 Department of Corrections shall evaluate the proposals within thirty
23 (30) days of receipt from the prospective contractor. The

1 Department of Corrections shall specifically determine whether a
2 proposal meets the requirements of paragraph 4 of subsection D of
3 this section by comparing the daily rate for housing and care of
4 inmates pursuant to any proposed contract with a private contractor
5 to the daily rate for housing and care of inmates at the comparable
6 type of facility operated by the Department of Corrections using the
7 information provided pursuant to paragraph 6 of subsection D of this
8 section. The Department of Corrections shall evaluate proposals
9 taking into account any direct or indirect costs that would continue
10 to be paid by the Department of Corrections including, but not
11 limited to, transportation, records management, discipline, general
12 administration, management of inmate trust funds, and major medical
13 coverage. Such costs shall be added to the proposed per diem of the
14 private vendor when comparing the total per diem costs of the state
15 operating facilities.

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

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

10 I. Any contract subject to the provisions of this section
11 entered into by the Board of Corrections shall be subject to the
12 approval of the Legislative and Executive Bond Oversight Commissions
13 in the same manner as provided by law for the review of issuance of
14 obligations by State Governmental Entities as prescribed by Section
15 695.8 of Title 62 of the Oklahoma Statutes.

16 J. Before submission of the proposed contract to the
17 Legislative and Executive Bond Oversight Commissions, and prior to
18 the date as of which the proposed contract is executed by the Board
19 of Corrections, the Attorney General and the Director of the
20 Department of Central Services shall review the proposed final
21 version of the contract. The Attorney General and the Director of
22 the Department of Central Services shall have a period of fifteen
23 (15) days from receipt of the proposed final version of the contract

1 to approve the contract and execute the document. If either the
2 Attorney General or the Director of the Department of Central
3 Services has objections to the proposed contract, the objections
4 shall be communicated in writing to the Department of Corrections.
5 The Department of Corrections shall take appropriate action
6 regarding the objections and shall resubmit the proposed contract
7 for additional review. The Attorney General and the Department of
8 Central Services shall have an additional fifteen-day period to
9 approve the proposed contract and to execute the document. Failure
10 of the Attorney General or the Director of the Department of Central
11 Services, respectively, to act within the fifteen-day period shall
12 constitute approval of the respective official to the proposed final
13 version of the contract. The contract shall contain a separate
14 signature block or line for signature by the Attorney General and
15 the Department of Central Services. The contract shall contain a
16 statement to be executed by the Attorney General and the Director of
17 the Department of Central Services that each one of them,
18 respectively, has reviewed the proposed contract for compliance with
19 the provisions of this section and Section 561 of this title, and
20 all other applicable provisions of law and that the contract
21 conforms with those requirements. Neither the private prison
22 contractor nor the Board of Corrections shall execute the contract
23 until the document has been executed by the Attorney General and the

1 Director of the Department of Central Services as required by this
2 subsection unless the approval of the respective official has been
3 made as a result of failure to take action within the fifteen-day
4 period prescribed by this subsection.

5 SECTION 2. This act shall become effective July 1, 2005.

6 SECTION 3. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

10 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-23-05 - DO
11 PASS, As Amended and Coauthored.