

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 2039

By: Corn

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5  
6 AS INTRODUCED

7 An Act relating to corrections; directing separate  
8 contracts with private prison contractors after  
9 certain date for certain purposes; requiring  
10 competitive bid process for certain contracts;  
11 allowing long-term leases; authorizing remainder  
12 interests under certain conditions; prohibiting  
13 certain refinance or expansion under long-term lease;  
14 providing exception; construing certain provisions;  
15 requiring certain contract provisions; stating  
16 contract clauses; requiring private prison contracts  
17 be uniform; construing authority for inspection at  
18 any time; providing authority for liquidated damages;  
19 setting maximum amount for damages; directing the  
20 Department of Corrections to centralize contract  
21 monitoring; directing Contract Monitoring Unit to  
22 report to Associate Director of Administrative  
23 Services; restricting expansion and construction of  
24 private prison facilities without certain approval  
and authority; allowing completion of existing  
construction; stating certain right to require  
design-build facilities after certain date;  
prohibiting speculative building; requiring private  
prison contractors to secure certain bid or have  
certain contract before construction; requiring  
certain comparable per diem rate; providing for  
codification; providing an effective date; and  
declaring an emergency.

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23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:  
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1           SECTION 1.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 563.5 of Title 57, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. On and after the effective date of this act, the Department  
5 of Corrections shall contract separately for private prison building  
6 or bed space, and facility management or operations; provided, the  
7 state contracts for a substantial portion of the private  
8 correctional facility, or the private prison facility is a design-  
9 build for this state pursuant to competitive bid process or other  
10 authority.

11           B. The state hereby authorizes the Department of Corrections to  
12 develop a competitive bidding process for design build private  
13 prisons and to enter into long-term contracts not exceeding fifty  
14 (50) years for design-build private prisons, subject to annual  
15 appropriations and renewals for the same maximum term allowed by  
16 this provision.

17           C. If the Department of Corrections leases a substantial  
18 portion of any private prison correctional facility, the lease may  
19 have provisions for a remainder interest upon retirement of the  
20 original bond or debt from this state's lease payments and  
21 contributions. A remainder interest will allow this state to own  
22 the prison facility after continual long-term lease payments;  
23 provided, during the term of any long-term lease with this state,  
24 the private prison contractor shall be prohibited from refinancing

1 the original debt which was in existence at the time of initially  
2 contracting with this state nor shall the private prison contractor  
3 be authorized to expand such facility without an additional design-  
4 build contract with this state. This provision shall be mainly used  
5 for design-build private facilities to be constructed after the  
6 effective date of this act, but may apply to any private prison  
7 contract where this state leases a substantial portion of the  
8 private prison facility under a continuing long-term lease with  
9 intent to retire a private or public debt or bonds.

10 SECTION 2. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 563.6 of Title 57, unless there  
12 is created a duplication in numbering, reads as follows:

13 A. On and after the effective date of this act, all contracts  
14 with private prison contractors for the care, housing, and  
15 maintenance of this state's inmates shall have at least paragraphs 1  
16 and 2 of this section in the contract, and may have one or more of  
17 the other provisions:

18 1. A prohibition to cancellation of such contract for  
19 convenience by the private prison contractor; and

20 2. A liquidated damages provisions clearly specifying the  
21 ability of this state or the Department of Corrections to assess  
22 dollar damage amounts for certain acts or omissions of the private  
23 prison contractor; or  
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1           3. A right of first refusal of this state to purchase or  
2 otherwise acquire the private facility before such facility is  
3 closed, converted to another use, sold, transferred, or otherwise  
4 offered to any other entity for any purpose;

5           4. A long-term lease provision allowing continual leases by  
6 this state up to fifty (50) years, subject to annual appropriations  
7 and renewals for the same maximum period; provided, the long-term  
8 per diem rate shall be fully negotiated and agreed at the time of  
9 contracting;

10          5. A lease purchase option clause granting the Department of  
11 Corrections the exclusive right at any time to purchase the private  
12 prison facility; provided, all terms and conditions of the lease  
13 purchase shall be clearly specified at the time of contracting;

14          6. A remainder interest clause to allow this state to acquire  
15 the private prison facility at the conclusion of any specified  
16 period of time and for a specified price; provided, all terms and  
17 conditions of the remainder interests shall be clearly specified at  
18 the time of contracting; or

19          7. A reversionary interest clause to allow this state to  
20 acquire the private prison facility either at the conclusion of any  
21 specified period of time for a specified price to acquire the  
22 private prison facility, or to acquire the private prison facility  
23 should the facility stop being used as a prison or become vacant or  
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1 without contractual agreements from another state or the federal  
2 prison system.

3 B. All private prison contracts shall be uniform and use  
4 standardized language and form. Each contract shall be monitored by  
5 standardized methods of inspection, review, and on-sight  
6 observations. Nothing in any contract or operating procedure shall  
7 operate to prohibit the Department of Corrections from conducting  
8 any inspection, search, investigation, or visitation of any private  
9 prison facility at any time.

10 C. On and after the effective date of this act, the Department  
11 of Corrections, and this state, shall have authority to assess  
12 liquidated damages against any private prison contactor who breaches  
13 a contract or fails or refuses to timely provide services required  
14 by law or according to any policy or rule established by the  
15 Department of Corrections. The maximum damages shall not exceed the  
16 total daily accrued income from all existing contracts having  
17 authority to house inmates in such private prison facility.

18 SECTION 3. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 563.7 of Title 57, unless there  
20 is created a duplication in numbering, reads as follows:

21 The Department is hereby directed to centralize and consolidate  
22 all monitoring services and functions relating to private prison  
23 contracts including all private prison institutions and half-way  
24 houses or any other housing or placement contracts for inmates in

1 the custody of the Department of Corrections. The Contract  
2 Monitoring Unit shall report directly to the Associate Director of  
3 Administrative Services within the Department.

4 SECTION 4. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 563.8 of Title 57, unless there  
6 is created a duplication in numbering, reads as follows:

7 On and after the effective date of this act, no private prison  
8 facility currently constructed and operating in this state shall be  
9 authorized to build, construct or expand such facility without  
10 approval by the State of Oklahoma and a signed contract from this  
11 state. Any construction in progress on the effective date of this  
12 act shall be allowed to be completed. This state, having needs for  
13 prison facilities for Oklahoma inmates, has the right to require  
14 every private prison facility to be a design-build correctional  
15 facility according to the needs, requirements and standards set by  
16 this state. No speculative private prison building or expansions  
17 shall be allowed. Every private prison contractor shall first  
18 secure a design-build bid, with approval of the State Board of  
19 Corrections, or a contract providing care, housing, and maintenance  
20 for Oklahoma inmates, before constructing a prison in this state.

21 SECTION 5. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 563.9 of Title 57, unless there  
23 is created a duplication in numbering, reads as follows:

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1 The per diem rate for any private prison beds contracting with  
2 the Department of Corrections shall be competitive to other private  
3 prison rates and comparable to what this state could offer in a  
4 state-operated facility.

5 SECTION 6. This act shall become effective July 1, 2008.

6 SECTION 7. 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.

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