

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 845

By: Johnson, Constance

4  
5 AS INTRODUCED

6 An Act relating to corrections; amending 57 O.S.  
7 2001, Sections 563.2, as last amended by Section 1,  
8 Chapter 476, O.S.L. 2006 and 563.3, as last amended  
9 by Section 11, Chapter 294, O.S.L. 2006 (57 O.S.  
10 Supp. 2006, Sections 563.2 and 563.3), which relate  
11 to private prison facilities; requiring private  
12 prison contractors to accept Oklahoma inmates in  
13 state of emergency; requiring certain fee for  
14 monitoring; authorizing declaration of certain state  
15 of emergency by Legislature and Governor; determining  
16 certain bed capacity; defining state of emergency;  
17 construing effect of certain inmate placements;  
18 requiring written notification; setting time to  
19 accept certain inmates; establishing procedure for  
20 certain per diem rate; creating certain committee for  
21 certain purpose; providing membership; directing  
22 certain preemption; setting penalty for failure to  
23 accept certain inmates; establishing certain  
24 registration fee; setting amount of certain fee;  
directing payment and deposit to certain fund;  
providing for interest; creating the Prison  
Management Revolving Fund; directing deposit;  
authorizing expenditure by Office of the Courts for  
certain purpose; providing for codification;  
providing an effective date; and declaring an  
emergency.

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

22 SECTION 1. AMENDATORY 57 O.S. 2001, Section 563.2, as  
23 last amended by Section 1, Chapter 476, O.S.L. 2006 (57 O.S. Supp.  
24 2006, Section 563.2), is amended to read as follows:

1 Section 563.2 A. Except as provided for in subsection B of  
2 this section, a private prison contractor may contract with the  
3 federal government or another state to provide for housing, care and  
4 control of minimum or medium security level inmates, as provided in  
5 this section, who are in the custody of the United States or another  
6 state, who do not have histories of escape from medium or maximum  
7 security level correctional facilities for adults, who do not have  
8 histories of rioting, and who are sentenced to terms of  
9 incarceration for conviction of a felony, other than a felony that  
10 would be a capital offense if committed in this state or a sex-  
11 related offense, or who are sentenced to federal or state facilities  
12 for conviction of a misdemeanor, other than a sex-related offense,  
13 or who are under arrest or detained for federal felony or  
14 misdemeanor violations, or detained for a violation of immigration  
15 laws, within a facility owned or operated by the private prison  
16 contractor. Provided, incarceration for misdemeanors shall be  
17 allowed only pursuant to subsection E of this section. Such private  
18 prison contractor may perform other functions related to such  
19 responsibilities.

20 B. A private prison contractor operating a facility ~~on January~~  
21 ~~1, 2004, at twenty five percent (25%) or less capacity may contract~~  
22 ~~with the federal government or another state to provide for housing,~~  
23 ~~care and control of minimum or medium security level inmates~~  
24 ~~provided the facility would be allowed to house the same type of~~

1 ~~inmates if contracting with this state~~ on the effective date of this  
2 act shall be required to accept Oklahoma inmates at an established  
3 per diem rate whenever the Governor of this state declares a state  
4 of prison overcrowding emergency as provided in this act.

5 C. Any offense which would be a crime if committed within a  
6 state correctional institution of this state shall be a crime if  
7 committed in a facility owned or operated by a private prison  
8 contractor.

9 D. A private prison contractor shall not employ any personnel  
10 convicted of a felony if the person has been incarcerated in the  
11 private prison facility for which an application for employment is  
12 being considered; provided, a private prison contractor may employ  
13 personnel convicted of drug-related felonies who have been  
14 rehabilitated for programs for drug or other substance abuse  
15 rehabilitation for inmates of the facility.

16 Any personnel of a facility owned or operated by a private  
17 prison contractor, except any person convicted of a felony offense,  
18 shall be authorized to carry and use firearms while in the  
19 performance of their official duties only in the manner provided in  
20 this subsection and only after completing training approved by the  
21 Council on Law Enforcement Education and Training. The Council on  
22 Law Enforcement Education and Training may charge a reasonable fee  
23 for its cost of evaluating firearms training for private prison  
24

1 personnel. Private prison personnel shall only be authorized to use  
2 firearms for the following purposes:

3 1. To prevent escape from the facility or from custody while  
4 being transported to or from the facility. As used in this  
5 paragraph, "to prevent escape from the facility" means to prevent an  
6 incarcerated individual from crossing the secure perimeter of the  
7 facility; or

8 2. To prevent an act which would cause death or serious bodily  
9 injury to any person.

10 The Department of Corrections is authorized to provide training  
11 to personnel of the private prison contractor, pursuant to contract.  
12 The Department of Corrections shall charge a reasonable fee for the  
13 training, not to exceed the cost of such training. The provisions  
14 of this subsection shall not be construed to confer peace officer  
15 status upon any employee of the private prison contractor or to  
16 authorize the use of firearms, except as provided in this  
17 subsection. All private prisons operating in this state shall  
18 prepare a written emergency plan and mutual aid agreement between  
19 the private prison facility and state and local law enforcement  
20 agencies, including the Department of Corrections and the Department  
21 of Public Safety. If an inmate escapes from the facility, or in the  
22 event of any riot or other serious disturbance, personnel from the  
23 facility immediately shall inform the Department of Corrections, the  
24 Department of Public Safety, the county sheriff and, if the facility

1 is located within the boundaries of a municipality, the police  
2 department of the municipality. The Department of Corrections shall  
3 designate facilities operated by the Department to provide support  
4 in the event of a riot, escape or other serious emergency.  
5 Personnel from the facility shall inform the Department of  
6 Corrections, pursuant to Department policy, if there is any  
7 incident. The Department of Corrections is directed to respond on  
8 behalf of public safety of this state. The private prison  
9 contractor shall provide the Department of Corrections access to the  
10 facility and secure facility space to establish a command post,  
11 including provisions for telephone and fax access. Any emergency  
12 response provided by any state or local law enforcement agency shall  
13 be at the sole expense of the private prison contractor/operator.  
14 Each responding agency shall submit a written invoice detailing  
15 costs incurred which shall be paid within thirty (30) days of  
16 receipt by the private prison contractor/operator.

17 E. A private prison contractor housing federal inmates or  
18 inmates of another state shall not accept:

19 1. Any inmate who would be incarcerated in the facility for  
20 conviction of a misdemeanor, unless such incarceration in the  
21 facility is consistent with American Correctional Association  
22 requirements relating to the incarceration of inmates convicted of  
23 more serious offenses; or

24 2. Any maximum security level inmate.

1 F. If an inmate is to be released or discharged from  
2 incarceration, is released or discharged by any court order, is to  
3 be placed on probation, is paroled, or if the federal government or  
4 sending state requests transfer or the return of the inmate, the  
5 private prison contractor immediately shall transfer or return the  
6 inmate to the sending state which has legal authority over the  
7 sentence or, in the case of federal inmates, to the closest federal  
8 prison or to the federal authority of the state in which federal  
9 custody over the inmate originated.

10 G. A private prison contractor housing federal inmates from  
11 jurisdictions other than Oklahoma, or inmates sentenced pursuant to  
12 the legal authority of another state, shall not allow any such  
13 inmate to leave the premises of the facility, except to comply with  
14 an order to appear in a court of competent jurisdiction, to receive  
15 medical care not available at the facility, to work as provided in  
16 subsection H of this section, or to return or be transferred to  
17 another state as provided by the provisions of subsection F of this  
18 section.

19 H. A private prison contractor may allow minimum security  
20 inmate labor to be used in public works projects provided all of the  
21 following conditions are satisfied:

22 1. The public works project must be in and for the county where  
23 the private prison is located or a county adjacent to the county  
24 where the private prison is located, or in and for a municipality in

1 the county where the private prison is located or an adjacent  
2 county;

3 2. The private prison contractor has developed security  
4 procedures which will ensure the safety of the public and the  
5 Department of Corrections has approved such procedures;

6 3. The public works project has been authorized by the  
7 Department of Corrections and the county or municipal authorities  
8 where the public works project is located;

9 4. The private prison contractor has procured and has in force  
10 and effect a policy of liability insurance which will provide  
11 coverage in an amount determined by the Department of Corrections  
12 for any loss resulting from the acts or omissions of inmates  
13 participating in such project or employees of the private prison  
14 contractor and for any injuries occurring to the inmates or  
15 employees; and

16 5. The use of federal inmates for public works projects will be  
17 in strict compliance with the provisions of Section 4002 of Title 18  
18 of the United States Code and any other applicable provisions of  
19 federal law.

20 I. A private prison contractor housing federal inmates or  
21 inmates of another state shall be responsible for the reimbursement  
22 of all reasonable costs and expenses incurred by this state or a  
23 political subdivision of this state for legal actions brought in  
24 this state by or on behalf of any federal inmate or inmate of

1 another state while incarcerated in the facility, including court  
2 costs, sheriff mileage fees, witness fees, district attorney  
3 expenses, expenses of the office of Attorney General, indigent or  
4 public defender fees and costs, judicial expenses, court reporter  
5 expenses and any other costs, fees, or expenses associated with the  
6 proceedings or actions.

7 J. As used in this section, unless federal custody status is  
8 specified, security level restrictions shall refer to the security  
9 levels applicable to inmates in institutions within the Department  
10 of Corrections, as determined by policy of the Department of  
11 Corrections, unless the Department of Corrections approves more  
12 restrictive levels of security as prescribed by the private prison  
13 contractor. Private prison contractors housing federal inmates or  
14 inmates of another state shall be bound by such security level  
15 classifications.

16 K. A private prison contractor shall not house inmates from  
17 this state with federal inmates or inmates from another state,  
18 unless segregated or otherwise housed in such a manner as to satisfy  
19 the Director of the Department of Corrections.

20 L. The State of Oklahoma shall not assume jurisdiction or  
21 custody of any federal inmate or inmate from another state housed in  
22 a facility owned or operated by a private prison contractor. Such  
23 inmates from another state shall at all times be subject to the  
24 jurisdiction of that state and federal inmates shall at all times be

1 subject to federal jurisdiction. This state shall not be liable for  
2 loss resulting from the acts of such inmates nor shall this state be  
3 liable for any injuries to the inmates.

4 SECTION 2. AMENDATORY 57 O.S. 2001, Section 563.3, as  
5 last amended by Section 11, Chapter 294, O.S.L. 2006 (57 O.S. Supp.  
6 2006, Section 563.3), is amended to read as follows:

7 Section 563.3 A. A private prison contractor which does not  
8 have a contract with the Department of Corrections, but which houses  
9 federal inmates or inmates of another state, within two (2) months  
10 of commencing operations and thereafter as required by the  
11 Department of Corrections, shall:

12 1. Obtain from the Department of Corrections approval of all  
13 emergency response plans and the internal and perimeter security of  
14 the facility of the private prison contractor. All emergency plans  
15 for the private prison facility shall be approved by the Department  
16 of Corrections annually on July 1 and within thirty (30) days of any  
17 subsequent change or modification to any plan. Such approval shall  
18 be given only if the Director of the Department of Corrections  
19 determines that the security and emergency response plan are  
20 adequate to protect the public;

21 2. Show, to the satisfaction of the Department of Corrections,  
22 that adequate food, housing and medical care shall be available for  
23 inmates, that the facility will have the necessary qualified  
24 personnel to operate the facility, that the financial condition of

1 the private prison contractor is such that the facility can be  
2 operated adequately, and that the facility has the ability to comply  
3 with applicable court orders and American Correctional Association  
4 standards;

5 3. Furnish to the Department of Corrections satisfactory proof  
6 that the private prison contractor has obtained insurance or is  
7 self-insured, in such a manner and in such an amount as the Director  
8 of the Department of Corrections, after consulting with the Risk  
9 Management Administration, may deem necessary and adequate to  
10 reimburse this state or a political subdivision of this state, for  
11 expenses arising from any incident which occurs at said prison or  
12 which requires intervention by this state or a political subdivision  
13 of this state. Such insurance, in addition, shall be in an amount  
14 sufficient to indemnify this state and its officers and employees,  
15 for any liability or other loss, including property damage,  
16 judgments, costs, attorney fees or other expenses arising from the  
17 operation of the facility, and such facility shall in any event and  
18 regardless of the amount of insurance available indemnify and hold  
19 harmless this state and its officers and employees, for any and all  
20 acts of prison inmates, and/or all officers, employees and  
21 stockholders of such private prison contractor for any liability  
22 arising out of acts of said inmates, officers, employees and  
23 stockholders of such private prison contractor in relation to the  
24 operation of the facility. The insurance required by this paragraph

1 shall not provide coverage for more than one facility. If the  
2 private prison contractor owns or operates more than one facility,  
3 separate insurance coverage shall be obtained or provided for each  
4 facility;

5 4. Obtain written authorization from the governing board of any  
6 municipality in which the facility is to be located, or if the  
7 facility is not to be located within a municipality, written  
8 authorization from the board of county commissioners of the county  
9 in which the facility is to be located; and

10 5. Require and obtain a felony record search of fingerprints of  
11 every employee or prospective employee of the private prison  
12 contractor. The search shall be based on fingerprints and shall be  
13 conducted either by the Federal Bureau of Investigation or the  
14 Oklahoma State Bureau of Investigation. If the search is conducted  
15 by the Oklahoma State Bureau of Investigation, the Bureau shall  
16 require the person to pay a search fee not to exceed Fifty Dollars  
17 (\$50.00) or the cost of the search, whichever is the lesser amount.  
18 The fees shall be deposited in the OSBI Revolving Fund. The private  
19 prison contractor is hereby authorized to reimburse employees for  
20 the cost of the search. The Oklahoma State Bureau of Investigation  
21 may contact the Federal Bureau of Investigation as regards the  
22 information requested, to obtain any felony convictions of the  
23 person involved. The record required by this paragraph shall  
24 include the name of the person, whether or not said person has been

1 convicted of any felony offense, a list of any felony convictions,  
2 and the dates of such convictions. The search records of each  
3 employee shall be maintained by the contractor for as long as the  
4 employee works for the contractor. The records shall be subject to  
5 inspection by the Department of Corrections.

6 B. A private prison contractor which does not have a contract  
7 with the Department of Corrections, but which houses federal inmates  
8 or inmates of another state shall attain accreditation by the  
9 American Correctional Association within three (3) years of  
10 commencing operation of the facility and thereafter shall maintain  
11 such accreditation.

12 C. The Department of Corrections shall monitor the performance  
13 of the private prison contractor and the continued compliance of the  
14 private prison contractor with the provisions of subsections A and B  
15 of this section. If at any time after commencing operations, a  
16 private prison contractor, that is subject to the provisions of  
17 subsection A of this section, fails to comply with any of ~~said~~ the  
18 provisions, the Director of the Department of Corrections may order  
19 the facility to cease operations. If a private prison contractor  
20 fails to attain or maintain the accreditation required by subsection  
21 B of this section, the Director of the Department of Corrections  
22 shall order the facility to take corrective action pursuant to the  
23 Department of Corrections monitoring plan and, if corrective action  
24 is not pursued with due diligence, shall order the facility to cease

1 operations. This order may be enforced by injunction issued by a  
2 district court of this state.

3 D. The Department of Corrections ~~may~~ shall charge the private  
4 prison contractor a reasonable fee for any services provided by the  
5 Department staff to include, but not limited to, the costs of  
6 monitoring compliance with the provisions of paragraphs 1 and 2 of  
7 subsection A of this section. The fee shall not exceed the cost  
8 incurred in performing the monitoring.

9 E. The Department of Corrections shall promulgate and adopt  
10 rules for the implementation of this section.

11 F. All fees collected by the Department of Corrections pursuant  
12 to this section shall be deposited with the State Treasurer to the  
13 credit of the Department of Corrections Revolving Fund.

14 G. A private prison contractor operating a facility in this  
15 state on the effective date of this act shall be required to accept  
16 Oklahoma inmates at an established per diem rate whenever the  
17 Governor of this state declares a prison overcrowding emergency as  
18 provided in this act.

19 SECTION 3. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 563.4 of Title 57, unless there  
21 is created a duplication in numbering, reads as follows:

22 A. The Governor may declare a state prison overcrowding  
23 emergency by executive order. A state of prison overcrowding  
24 emergency exists whenever the state prison population exceeds state-

1 owned bed capacity by twenty-five percent (25%) or more of capacity.  
2 For purposes of calculating state-owned bed capacity, no private  
3 contract bed space may be included. Whenever the overcrowding is  
4 reduced to less than twenty-five percent (25%) above state-owned bed  
5 space capacity, the state of emergency shall be canceled. Any  
6 inmates housed in private prison facilities at the conclusion of a  
7 state of emergency shall remain there until otherwise determined by  
8 the Department of Corrections. Any private prison bed space  
9 established in this state and not utilized by this state may be  
10 contacted for by the federal government or another state  
11 jurisdiction.

12 B. Upon a declaration of a state of prison overcrowding  
13 emergency by executive order, all private prisons contractors in  
14 this state shall be notified to begin accepting Oklahoma inmates.  
15 The notification shall allow a maximum of thirty (30) days for a  
16 private facility to accept Oklahoma inmates.

17 C. The per diem rate for a state of prison overcrowding  
18 emergency shall be negotiated and established each fiscal year by  
19 July 15 in advance of the need for any declaration of emergency by  
20 an eleven (11) member committee composed of three representatives of  
21 private prison contractors operating in this state, the Director of  
22 the Department of Public Safety, the Director of the Department of  
23 Corrections, three members of the Senate and three members of the  
24

1 House of Representatives. During a state of emergency the per diem  
2 rate shall not be changed.

3 D. Private prison contractors are required to accept Oklahoma  
4 inmates who shall preempt all other inmates from other jurisdictions  
5 in a declared state of emergency. Any private prison contractor  
6 failing to accept Oklahoma inmates at the established pre diem rate  
7 during a declared state of emergency shall be fined One Hundred  
8 Thousand Dollars (\$100,000.00).

9 SECTION 4. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 563.5 of Title 57, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. Every private prison contractor operating a facility in this  
13 state with more than one hundred beds on the effective date of this  
14 act shall be subject to an annual registration fee based upon that  
15 facility's total designed bed capacity. The fee shall be five  
16 percent (5%) per day of the average daily per diem rate based upon  
17 all contracts with the federal government and any state  
18 jurisdictions other than Oklahoma, times three hundred sixty-five  
19 (365) days, times the total capacity of the facility. The  
20 registration fee shall be payable quarterly by each private prison  
21 contractor to the Oklahoma State Treasurer for deposit into the  
22 Prison Management Revolving Fund. Any late payments shall be  
23 assessed interest at twelve percent (12%) per annum.

24

1 B. There is hereby created in the Office of the State Treasurer  
2 a revolving fund for the Office of the Courts to be designated the  
3 "Prison Management Revolving Fund". The fund shall be a continuing  
4 fund, not subject to fiscal year limitations, and shall consist of  
5 all moneys accruing and deposited to the fund from the registration  
6 fee of private prison contractors as provider in subsection A of  
7 this section, and other sources of income. All monies accruing to  
8 the credit of the fund are hereby appropriated and may be budgeted  
9 and expended by the Office of the Courts for outpatient substance  
10 abuse treatment of persons subject to alternatives to incarceration  
11 and not subject to incarceration, split sentence, community  
12 sentence, drug court treatment programs, or parole. Expenditures  
13 from the fund shall be made upon warrants issued by the State  
14 Treasurer against claims filed as prescribed by law with the  
15 Director of State Finance for approval and payment.

16 SECTION 5. This act shall become effective July 1, 2007.

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

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