

THE HOUSE OF REPRESENTATIVES
Monday, February 16, 2009

House Bill No. 1773

HOUSE BILL NO. 1773 - By: ROAN of the House and RICE of the Senate.

An Act relating to prisons and reformatories; amending 57 O.S. 2001, Section 563.3, as last amended by Section 1, Chapter 147, O.S.L. 2008 (57 O.S. Supp. 2008, Section 563.3), which relates to contract requirements for private prison contractors; directing private prison contractors and vendors to provide certain documentation to the Department of Corrections for approval; providing penalties for noncompliance; and providing an effective date.

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

1 SECTION 1. AMENDATORY 57 O.S. 2001, Section 563.3, as last amended by
2 Section 1, Chapter 147, O.S.L. 2008 (57 O.S. Supp. 2008, Section 563.3), is amended to
3 read as follows:
4 Section 563.3 A. All private prison contractors and vendors operating in Oklahoma
5 shall provide construction plans and facility staffing patterns to the Department of
6 Corrections for approval prior to commencement of construction of any new physical
7 plant or addition to existing facilities. Any private prison contractor or vendor that fails
8 to comply with the requirements of this subsection shall be penalized according to the
9 provisions of subsection E of this section.
10 B. A private prison contractor which does not have a contract with the Department
11 of Corrections, but which houses federal inmates or inmates of another state, within two

1 (2) months of commencing operations and thereafter as required by the Department of
2 Corrections, shall:

3 1. Obtain from the Department of Corrections approval of all emergency response
4 plans and the internal and perimeter security of the facility of the private prison
5 contractor. All emergency plans for the private prison facility shall be approved by the
6 Department of Corrections annually on July 1 and within thirty (30) days of any
7 subsequent change or modification to any plan. Such approval shall be given only if the
8 Director of the Department of Corrections determines that the security and emergency
9 response plan are adequate to protect the public;

10 2. Show, to the satisfaction of the Department of Corrections, that adequate food,
11 housing and medical care shall be available for inmates, that the facility will have the
12 necessary qualified personnel to operate the facility, that the financial condition of the
13 private prison contractor is such that the facility can be operated adequately, and that
14 the facility has the ability to comply with applicable court orders and American
15 Correctional Association standards;

16 3. Furnish to the Department of Corrections satisfactory proof that the private
17 prison contractor has obtained insurance or is self-insured, in such a manner and in such
18 an amount as the Director of the Department of Corrections, after consulting with the
19 Risk Management Administration, may deem necessary and adequate to reimburse this
20 state or a political subdivision of this state, for expenses arising from any incident which
21 occurs at said prison or which requires intervention by this state or a political
22 subdivision of this state. Such insurance, in addition, shall be in an amount sufficient to

1 indemnify this state and its officers and employees, for any liability or other loss,
2 including property damage, judgments, costs, attorney fees or other expenses arising
3 from the operation of the facility, and such facility shall in any event and regardless of
4 the amount of insurance available indemnify and hold harmless this state and its officers
5 and employees, for any and all acts of prison inmates, and/or all officers, employees and
6 stockholders of such private prison contractor for any liability arising out of acts of said
7 inmates, officers, employees and stockholders of such private prison contractor in
8 relation to the operation of the facility. The insurance required by this paragraph shall
9 not provide coverage for more than one facility. If the private prison contractor owns or
10 operates more than one facility, separate insurance coverage shall be obtained or
11 provided for each facility;

12 4. Obtain written authorization from the governing board of any municipality in
13 which the facility is to be located, or if the facility is not to be located within a
14 municipality, written authorization from the board of county commissioners of the county
15 in which the facility is to be located; and

16 5. Ensure every employee or prospective employee of the private prison contractor
17 has submitted through the Department of Corrections a national criminal history records
18 check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes. The private
19 prison contractor is hereby authorized to reimburse employees for the cost of the search.
20 The record required by this paragraph shall include the name of the person, whether or
21 not said person has been convicted of any felony offense, a list of any felony convictions,
22 and the dates of such convictions. The search records from national criminal history

1 records checks shall be maintained by the Department of Corrections. The Department
2 of Corrections shall not disseminate any national criminal history records information to
3 a private entity.

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

9 ~~C.~~ D. The Department of Corrections shall monitor the performance of the private
10 prison contractor and the continued compliance of the private prison contractor with the
11 provisions of ~~subsections A and B~~ of this section and Section 563.2 of this title. If at any
12 time after commencing operations, a private prison contractor, that is subject to the
13 provisions of subsection ~~A~~ B of this section, fails to comply with any of said provisions,
14 the Director of the Department of Corrections may order the facility to cease operations.
15 If a private prison contractor fails to attain or maintain the accreditation required by
16 subsection ~~B~~ C of this section, the Director of the Department of Corrections shall order
17 the facility to take corrective action pursuant to the Department of Corrections
18 monitoring plan and, if corrective action is not pursued with due diligence, shall order
19 the facility to cease operations. This order may be enforced by injunction issued by a
20 district court of this state.

21 E. If the requirements provided for in this section are not followed, the Director
22 may recommend that the State Board of Corrections assess the private prison contractor

1 at least one-half (1/2) the per diem rate up to but not to exceed the full per diem rate paid
2 by the jurisdiction or jurisdictions to the private prison contractor for the period of time
3 the violations, inmate conditions or service deficiencies continue and are not corrected
4 with due diligence. This would not preclude the Director from pursuing ordering the
5 facility to cease operations.

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

11 E. G. The Department of Corrections shall promulgate and adopt rules for the
12 implementation of this section.

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

16 SECTION 2. This act shall become effective November 1, 2009.

17 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 02-12-09 - DO
18 PASS, As Coauthored.