

## SENATE BILL No. 275

By Committee on Ways and Means

3-27

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AN ACT concerning correctional facilities; relating to construction by private companies.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. This act shall be referred to as the private contract prison act.

Sec. 2. (a) The secretary of corrections is hereby authorized to enter into a contract with a private corporation, limited liability company, or other legal entity meeting the requirements of this act for the purpose of authorizing such private corporation, limited liability company, or other legal entity to construct and operate a private contract prison in this state.

(b) Before entering into any contract authorized by this act, the secretary may issue a request for proposals. Any such request for proposals shall be issued pursuant to rules and regulations adopted by the secretary.

Sec. 3. The secretary shall not enter into any contract pursuant to this act unless the secretary has, after due diligence, made the following findings: (a) The intended contractor has the qualifications, experience and management personnel necessary to carry out the terms of the contract.

(b) the intended contractor has the ability to expedite the siting, design and construction of a private contract prison;

(c) the intended contractor has the ability to comply with applicable laws, court orders and national correctional standards;

(d) the intended contractor has the ability to provide correctional services to the state of Kansas at a cost that is less than the cost if the state itself provided similar correctional services at a state-owned prison.

Sec. 4. Any contract entered into pursuant to this act shall, at a minimum, contain provisions providing for all of the following:

(a) The contractor shall provide a level and quality of programs at the private contract prison that are at least equal to programs provided at a correctional facility operated by the department of corrections that houses similar types of inmates and must be at a cost that provides the state with a substantial savings;

(b) all private correctional officers employed by the contractor must be certified, at the private vendor's expense, as having met the minimum

1 qualifications established for correctional officers;

2 (c) the design for the private contract prison shall meet or exceed all  
3 requirements of the association responsible for adopting national correc-  
4 tional standards. In addition, the design, including, but not limited to,  
5 siting, shall meet or exceed any standard established by the secretary;

6 (d) the contractor shall agree that the secretary shall at all times be  
7 consulted during the design and construction of the private contract  
8 prison;

9 (e) the contractor shall agree to indemnify the state and the secretary,  
10 including their subdivisions, officials and agents, against any and all lia-  
11 bility including, but not limited to, any civil rights claims. The secretary  
12 shall require proof of satisfactory insurance, the amount to be determined  
13 by the secretary;

14 (f) the contractor shall seek, obtain and maintain accreditation by the  
15 association responsible for adopting national correctional standards. In  
16 addition, the contractor shall comply with the association's amendments  
17 to the accreditation standards upon approval of the amendments by the  
18 secretary;

19 (g) the proposed private contract prisons and the management plans  
20 for inmates shall meet applicable national correctional standards and the  
21 requirements of applicable court orders and state law including, but not  
22 limited to, the provisions of this act;

23 (h) the contractor shall agree to abide by operations standards for  
24 correctional facilities adopted by the secretary of corrections;

25 (i) the contractor shall be responsible for a range of dental, medical  
26 and psychological services and diet, education and work programs at least  
27 equal to those services and programs provided by the secretary at com-  
28 parable state correctional facilities. The work and education programs  
29 shall be designed to reduce recidivism;

30 (j) the secretary shall monitor all private contract prisons. The con-  
31 tractor shall bear the costs of monitoring the facility;

32 (k) a contract entered into under this act does not accord third-party  
33 beneficiary status to any inmate or to any member of the general public;

34 (l) the contractor shall incarcerate all inmates assigned to the private  
35 contract prison by the department of corrections and as specified by the  
36 contract. The department may not exceed the maximum occupancy des-  
37 ignated for the facility in the contract;

38 (m) the contractor may not benefit financially from the labor of  
39 inmates;

40 (n) if the contractor enters into a contract with any entity to house in  
41 this state inmates convicted of offenses committed against the laws of  
42 another state, the contractor must require as a condition of that contract  
43 that each inmate to be released from custody must be released in the

1 sending state;

2 (o) the contractor shall agree to be amenable to review by the legis-  
3 lative division of post audit; and

4 (p) any other provision the secretary considers necessary and appro-  
5 priate for carrying out the purposes of this act.

6 Sec. 5. A contract executed pursuant to this act shall not be con-  
7 strued as authorizing, allowing or delegating authority to the contractor  
8 to:

9 (a) Choose the correctional facility to which an inmate is initially as-  
10 signed or subsequently transferred. The contractor may request, in writ-  
11 ing, that an inmate be transferred to a facility operated by the department.  
12 The secretary of corrections and the contractor shall develop and imple-  
13 ment a cooperative agreement for transferring inmates between a cor-  
14 rectional facility operated by the secretary of corrections and a private  
15 contract prison. The secretary of corrections and the contractor must  
16 comply with the cooperative agreement;

17 (b) develop or adopt disciplinary rules or penalties that differ from  
18 the disciplinary rules and penalties that apply to inmates housed in cor-  
19 rectional facilities operated by the secretary of corrections;

20 (c) make a final determination on a disciplinary action that affects the  
21 liberty of an inmate. The contractor may remove an inmate from the  
22 general prison population during an emergency, before final resolution  
23 of a disciplinary hearing or in response to an inmate's request for assigned  
24 housing in protective custody;

25 (d) make a decision that affects the sentence imposed upon or the  
26 time served by an inmate, including a decision to award, deny or forfeit  
27 earned time;

28 (e) make recommendations to the state board of parole with respect  
29 to the denial or granting of parole or release; however, the contractor  
30 may submit written reports to the state board of parole and shall respond  
31 to any written request by the state board of parole for information;

32 (f) develop and implement requirements that inmates engage in any  
33 type of work, except to the extent that those requirements are accepted  
34 by the department; and

35 (g) determine inmate eligibility for any form of release from a cor-  
36 rectional facility.

37 Sec. 6. A contractor shall submit a detailed plan for the secretary to  
38 assume temporary responsibility for a private contract prison when the  
39 contract between the state and the contractor terminates. The state,  
40 through the secretary of corrections, may terminate the contract for  
41 cause, including but not limited to failure to obtain or maintain facility  
42 accreditation, after written notice of material deficiencies and after 60  
43 workdays have been provided to the contractor to correct the material

1 deficiencies. If any event occurs involving the noncompliance with or  
2 violation of contract terms and presents a serious threat to the safety,  
3 health or security of the inmates, employees or the public, the secretary  
4 of corrections may temporarily assume responsibility for the private con-  
5 tract prison. In addition, a contractor shall submit a plan for the temporary  
6 assumption of operations and purchase of a private contract prison by the  
7 secretary in the event of bankruptcy or the financial insolvency of the  
8 contractor. The contractor shall provide an emergency plan to address  
9 inmate disturbances, employee work stoppages, strikes or other serious  
10 events. The plan shall comply with applicable national correctional stan-  
11 dards. Nothing in this section shall be construed to require the state to  
12 assume the responsibility for the operation of private contract prisons and  
13 costs associated with contractual termination described in this section. If  
14 the state chooses, it may assume responsibility upon approval by the leg-  
15 islature through the enactment of legislation.

16 Sec. 7. The contractor shall require applicants for employment at a  
17 private contract prison to submit a set of fingerprints to the Kansas bureau  
18 of investigation for a criminal background check. The Kansas bureau of  
19 investigation may accept fingerprints of individuals who apply for em-  
20 ployment at a private correctional facility and who shall be subject to  
21 background checks. For the purpose of conducting background checks,  
22 to the extent provided for by federal law, the Kansas bureau of investi-  
23 gation may exchange with the secretary, state, multistate and federal crim-  
24 inal history records of individuals who apply for employment at a private  
25 contract prison.

26 Sec. 8. This act shall not apply to the contracts between cities and  
27 counties and the secretary of corrections under which the city or county  
28 agrees to house the backlog of inmates as provided by K.S.A. 75-52,128  
29 and 75-52,129, and amendments thereto, which contracts shall be gov-  
30 erned by such.

31 Sec. 9. Inmates incarcerated in a private contract prison are in the  
32 legal custody of the department of corrections.

33 Sec. 10. (a) No private contract prison shall be constructed or op-  
34 erated pursuant to this act in any county unless the county commission,  
35 by resolution, has first placed on a general election ballot the question in  
36 paragraph (b) and such question has been approved by a majority of  
37 qualified voters who cast ballots in such general election.

38 (b) The form of the question described in paragraph (a) shall be:  
39 “Shall construction and operation of a private contract prison, pursuant  
40 to the Private Contract Prison Act, be allowed in \_\_\_\_\_ County?”

41 Sec. 11. Not later than December 1 of each year, beginning with the  
42 2004 fiscal year, the secretary shall submit a report to the speaker of the  
43 House of Representatives and the president of the Senate concerning the

1 status of contracts in effect, and with respect to completed prisons, the  
2 effectiveness of each private contract prison operated pursuant to this act.

3 Sec. 12. This act shall take effect and be in force from and after its  
4 publication in the statute book.

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