

Substitute for SENATE BILL No. 275

By Committee on Ways and Means

2-20

10 AN ACT concerning correctional facilities; relating to construction by
11 private companies[; **amending K.S.A. 2003 Supp. 75-52,129 and**
12 **repealing the existing section**].

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 **[New]** Section 1. This act may be referred to as the private contract
16 prison act.

17 **[New]** Sec. 2. Definitions. As used in the private contract prison act:

18 (a) "Private contract prison" means a correctional facility situated in
19 this state that is not owned by the state of Kansas or any subdivision
20 thereof or by the federal government or any subdivision thereof.

21 (b) "Private owner" means any corporation, partnership, limited li-
22 ability company, trust, person or other legal entity that engages in, or
23 proposes to engage in, the construction or ownership or both of a private
24 contract prison in this state.

25 (c) "Private operator" means any corporation, partnership, limited
26 liability company, person or other legal entity that engages in, or proposes
27 to engage in, the operation of a private contract prison in this state.

28 (d) "Private contractor" means a private owner or a private operator
29 or both.

30 (e) "Secretary" means the secretary of corrections.

31 (f) "Department" means the department of corrections.

32 (g) "Applicant" means a private contractor making application to the
33 department of corrections for a license as provided by this act.

34 (h) "Licensee" means a private contractor to which a valid license has
35 been issued by the department of corrections as provided by this act.

36 (i) "Private correctional officer" means a correctional officer as de-
37 fined by subsection (f) of K.S.A. 75-5202, and amendments thereto, ex-
38 cept that such officer is not an employee of the state of Kansas or any
39 subdivision thereof.

40 (j) "Non-Kansas inmate" means any inmate in the custody of any
41 jurisdiction other than the state of Kansas or any of its political
42 subdivisions.

43 (k) "Kansas inmate" means any inmate in the custody of the secretary

1 of corrections.

2 **[New]** Sec. 3. Except as authorized by K.S.A. 75-52,127 or 75-
3 52,133, and amendments thereto, no private contractor shall authorize,
4 construct, own or operate any private contract prison in this state for the
5 placement or confinement of inmates unless such private contractor pos-
6 sesses a valid license as provided by this act.

7 **[New]** Sec. 4. The secretary is hereby authorized to license, monitor
8 and regulate one or more private contractors meeting the requirements
9 of this act to construct, own or operate one or more private contract
10 prisons in this state.

11 **[New]** Sec. 5. The secretary shall not approve any application for a
12 license pursuant to this act unless the secretary has, after due diligence,
13 made the following findings:

14 (a) The applicant has the qualifications, experience and management
15 personnel necessary to design, construct, own or operate a private con-
16 tract prison in a manner that satisfies the requirements of this act;

17 (b) the applicant has the ability, if circumstances warrant, to expedite
18 the siting, design and construction of a private contract prison;

19 (c) the applicant has the ability to comply with applicable laws, court
20 orders and state and national correctional standards; and

21 (d) if Kansas inmates are being housed in the private contract prison,
22 the private operator has the ability to provide correctional services to the
23 state of Kansas at a cost that is no more than 90% of the department's
24 average per capita operating cost for the previous fiscal year for compa-
25 rable state correctional facilities and services.

26 **[New]** Sec. 6. Any license issued pursuant to this act shall require
27 as conditions of such license all of the following:

28 (a) All private correctional officers employed by the licensee must be
29 certified, at the licensee's expense, as having met the minimum qualifi-
30 cations and training requirements established for correctional officers by
31 the secretary;

32 (b) the design for any private contract prison constructed, owned or
33 operated by the licensee shall meet or exceed all requirements of the
34 association responsible for adopting national correctional standards as de-
35 termined by the secretary;

36 (c) the design for any private contract prison, including but not lim-
37 ited to siting, shall meet or exceed any standard established by the
38 secretary;

39 (d) the licensee shall at all times consult the secretary during the
40 design and construction of the private contract prison;

41 (e) the licensee shall indemnify the state and the secretary, including
42 their subdivisions, officials and agents, against any and all liability includ-
43 ing, but not limited to, any civil rights claims. The secretary shall require

1 proof of satisfactory insurance, the amount to be determined by the
2 secretary;

3 (f) the licensee shall seek, obtain and maintain accreditation by the
4 association responsible for adopting national correctional standards. In
5 addition, the licensee shall comply with the association's amendments to
6 the accreditation standards upon approval of such amendments by the
7 secretary;

8 (g) the licensee shall agree to abide by operations standards for cor-
9 rectional facilities adopted by the secretary;

10 (h) if Kansas inmates are being housed in the private contract prison,
11 the licensee shall be responsible for the range of dental, medical and
12 psychological services and diet, education and work programs at least
13 equal to those services and programs provided by the secretary at com-
14 parable state correctional facilities. The work and education programs
15 shall be designed to reduce recidivism;

16 (i) the secretary shall monitor all private contract prisons and the
17 secretary shall have unrestricted access to all private contract prisons for
18 that purpose. The licensee shall bear the costs of monitoring the facility;

19 (j) if the department contracts to house Kansas inmates at the li-
20 censee's private contract prison, the licensee shall incarcerate all inmates
21 assigned to the private contract prison by the department and as specified
22 by the contract and may not reject inmates assigned to it by the depart-
23 ment. The department shall have the right of first refusal to any space in
24 the licensee's private contract prison, whether or not such space is oc-
25 cupied by non-Kansas inmates. The department may not exceed the max-
26 imum occupancy designated in the contract for the private contract
27 prison;

28 (k) the licensee may not benefit financially from the labor of inmates
29 except that inmates housed in any private contract prison operated by the
30 licensee in this state may be given job assignments that assist in the op-
31 eration and maintenance of the facility, including but not limited to jan-
32 itorial or food service, or constitute work crews for the state or nearby
33 communities if the inmates have the appropriate custody designation;

34 (l) if the licensee enters into a contract to house non-Kansas inmates,
35 the licensee must require as a condition of that contract that each such
36 inmate to be released from custody must be released in the sending state;

37 (m) whenever any non-Kansas inmate is proposed to be brought into
38 this state for the purpose of being incarcerated at a private contract
39 prison, all records regarding each such inmate, including but not limited
40 to custody records, facility history records, disciplinary records, and med-
41 ical and mental health records, shall be reviewed by the department prior
42 to such inmate being transported into this state. The cost of such review
43 shall be borne by the licensee. The department shall determine custody

1 classification levels for each such non-Kansas inmate pursuant to the de-
2 partment's custody classification system. The secretary shall have author-
3 ity to refuse to allow any non-Kansas inmate to be transported to or
4 incarcerated in any private contract prison;

5 (n) the licensee shall be subject to review by the legislative division
6 of post audit; and

7 (o) any other provision the secretary considers necessary and appro-
8 priate for carrying out the purpose of this act.

9 **[New]** Sec. 7. No license issued pursuant to this act shall be con-
10 strued as authorizing, allowing or delegating authority to the licensee to:

11 (a) With regard to Kansas inmates being housed at a private contract
12 prison, reject any inmate appropriately classified by the Kansas custody
13 classification system for the custody level or levels of the private facility;

14 (b) with regard to Kansas inmates who are being housed at a private
15 contract prison, develop or adopt disciplinary rules or penalties that differ
16 from the disciplinary rules and penalties that apply to inmates housed in
17 correctional facilities operated by the secretary. With regard to non-Kan-
18 sas inmates, the licensee may develop or adopt disciplinary rules or pen-
19 alties consistent with the requirements of the sending entity provided that
20 the secretary shall retain authority to approve or reject any such rules or
21 penalties;

22 (c) make a final determination on a disciplinary action that affects the
23 liberty of an inmate. The licensee may remove an inmate from the general
24 prison population during an emergency, before final resolution of a dis-
25 ciplinary hearing in response to an inmate's request for assigned housing
26 in protective custody or when otherwise necessary to maintain order and
27 security of the private contract prison;

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

31 (e) make recommendations to the Kansas parole board with respect
32 to the denial or granting of parole or release except the licensee may
33 submit written reports to the Kansas parole board and shall respond to
34 any written request for information by the Kansas parole board;

35 (f) develop and implement requirements that inmates engage in any
36 type of work not previously authorized in this act, except to the extent
37 that those requirements are accepted by the department; and

38 (g) determine inmate eligibility for any form of release from a cor-
39 rectional facility including any private contract prison.

40 **[New]** Sec. 8. (a) No private contract prison shall house inmates
41 until:

42 (1) The private operator has submitted to the secretary, and the sec-
43 retary has approved, a plan for the secretary to assume temporary control

1 and operation of the private contract prison in the event the private op-
2 erator becomes unable to meet the requirements of this act;

3 (2) each private contractor, whether a private owner or a private op-
4 erator, or both, involved in the private contract prison has submitted to
5 the secretary, and the secretary has approved, a plan for the temporary
6 assumption of operations and purchase of the private contract prison by
7 the secretary in the event of bankruptcy or the financial insolvency of any
8 such private contractor; and

9 (3) the private operator has submitted to the secretary, and the sec-
10 retary has approved, a plan to address emergencies including, but not
11 limited to, inmate disturbances, employee work stoppages, employee
12 strikes, escapes, natural disaster threats, bomb threats, riots, hunger
13 strikes, taking of hostages, fires, explosions, evacuations, hazardous ma-
14 terial spills or other serious events. The plan shall comply with applicable
15 national correctional standards. The plan shall identify how the state shall
16 recover its costs for such assumptions of operation or other interventions.

17 (b) The secretary may from time to time require the private contrac-
18 tor to review, revise or update any plan required by this section. The
19 private contractor shall comply promptly with any request by the secretary
20 pursuant to this subsection, and failure by any private contractor to do so
21 within a reasonable period of time shall constitute cause for suspension
22 of such private contractor's license.

23 (c) Nothing in this section shall be construed to require the state to
24 purchase or lease any private contract prison or to assume responsibility
25 for the operation of any private contract prison or to assume costs asso-
26 ciated with events described in this section.

27 **[New]** Sec. 9. The secretary may suspend or revoke a license for
28 cause, including, but not limited to, failure to obtain or maintain facility
29 accreditation or failure to comply with any requirement of this act, after
30 written notice of material deficiencies and after 60 workdays have been
31 provided to the contractor to correct the material deficiencies.

32 **[New]** Sec. 10. If, as determined by the secretary, an emergency
33 occurs involving the noncompliance with or violation of the requirements
34 of this act and presents a serious threat to the safety, health or security
35 of the inmates, employees or the public, the secretary may, without prior
36 notice, temporarily assume operation and control of the private contract
37 prison. Nothing in this section shall be construed to require the state to
38 assume responsibility for the operation of private contract prisons or for
39 costs associated with events described in this section. If the state chooses,
40 it may assume responsibility upon approval by the legislature through the
41 enactment of legislation.

42 **[New]** Sec. 11. If a private owner intends to sell, convey, transfer,
43 donate, trade, barter or otherwise alienate title to a private contract

1 prison, the private owner shall first give notice of such intent to the sec-
2 retary. The state shall have the right of first refusal to lease or purchase
3 such private contract prison at fair market value, although the state shall
4 not be required to do so. Except as provided in this section, a private
5 contract prison may be transferred only to an entity that is licensed as
6 required by this act.

7 **[New]** Sec. 12. Each private operator shall require applicants for
8 employment at a private contract prison to submit a set of fingerprints to
9 the Kansas bureau of investigation for a criminal background check. The
10 Kansas bureau of investigation may accept fingerprints of individuals who
11 apply for employment at a private contract prison and who shall be subject
12 to background checks. For the purpose of conducting background checks,
13 to the extent provided for by federal law, the Kansas bureau of investi-
14 gation may exchange with the secretary criminal history records, whether
15 state, multi-state or federal, of individuals who apply for employment at
16 a private contract prison.

17 **[New]** Sec. 13. This act shall not apply to the contracts between
18 cities and counties and the secretary under which the city or county agrees
19 to house the backlog of inmates as provided by K.S.A. 75-52,128 and 75-
20 52,129, and amendments thereto, which contracts shall be governed by
21 such.

22 **[New]** Sec. 14. Any private operator licensed under this act shall
23 collect and maintain data with respect to all Kansas and non-Kansas in-
24 mates housed by the private contractor, in a fashion compatible with
25 Kansas department of corrections practices and procedures for inmate
26 data collection and maintenance, as specified by the secretary.

27 **[New]** Sec. 15. (a) Any county that meets the requirements of this
28 section may contract with a private contractor to develop and construct,
29 own or operate a private contract prison in such county.

30 (b) No private contract prison shall be constructed, owned or oper-
31 ated pursuant to this act in any county unless the county commission, by
32 resolution, has first placed on a primary or general election ballot the
33 question in subsection (c) and such question has been approved by a
34 majority of qualified voters who cast ballots in such election.

35 (c) The form of the question described in subsection (b) shall be:
36 “Shall construction and operation of a private contract prison, pursuant
37 to the Private Contract Prison Act, be allowed in _____ County?”

38 (d) If the proposed site for the private contract prison is within one
39 mile of the border of any county that adjoins the county in which the
40 private contract prison would be situated, then such private contract
41 prison shall not be constructed, owned or operated pursuant to this act
42 unless such adjoining county has conducted an election meeting the
43 requirements of subsections (b) and (c).

1 (e) Except for land donation, no direct incentives, such as property
2 tax abatement, industrial revenue bonds, tax increment financing or utility
3 cost reductions, shall be offered by the county to the private contractor
4 wishing to construct, own or operate a private contract prison in such
5 county.

6 (f) At the discretion of the parties, the contract may allow for the
7 leasing of the private contract prison by the private owner to the county
8 or to the state.

9 **[New]** Sec. 16. No contract for site construction between the county
10 and the private contractor authorized by this act shall enter into force
11 until reviewed and approved by the attorney general, as to form and legal
12 sufficiency, and the secretary, as to determination of the best interests of
13 the state of Kansas. In determining whether to approve or disapprove any
14 such contract, the secretary shall consider whether the addition of the
15 proposed prison space, including the proposed custody designations for
16 the proposed private contract prison, would be beneficial to the manage-
17 ment of the state corrections system.

18 **[New]** Sec. 17. A contract entered into under this act does not ac-
19 cord third-party beneficiary status to any inmate or to any member of the
20 general public.

21 **[New]** Sec. 18. In the event any provision of any contract authorized
22 by this act conflicts with any provision of any license issued pursuant to
23 this act, the provision of the license shall supersede the provision of the
24 contract. In the event any provision of any contract authorized by this act
25 conflicts with any provision of this act, the provision of this act shall su-
26 percede the provision of the contract.

27 **[New]** Sec. 19. Nothing in this act shall be construed as requiring
28 the department of corrections to place Kansas inmates in any private
29 facility constructed, owned or operated pursuant to this act. Placement
30 of Kansas inmates in such private facility shall be at the discretion of the
31 secretary based on department needs and the best interest of the state
32 and shall only be pursuant to contract between the secretary and the
33 private operator.

34 **[New]** Sec. 20. Not later than December 1 of each year, beginning
35 with the 2004 fiscal year, the secretary shall submit a report to the speaker
36 of the house of representatives and the president of the senate concerning
37 the status of contracts in effect and licenses issued, and with respect to
38 completed prisons, the effectiveness of each private contract prison op-
39 erated pursuant to this act.

40 **[New]** Sec. 21. There is hereby created in the state treasury the cor-
41 rections licensing fee fund. All moneys collected by the secretary from
42 licensing application fees shall be remitted to the state treasurer in ac-
43 cordance with the provisions of K.S.A. 75-4215, and amendments thereto.

1 Upon receipt of each such remittance, the state treasurer shall deposit
2 the entire amount in the state treasury to the credit of the corrections
3 licensing fee fund. All the moneys collected and deposited pursuant to
4 this subsection shall be used solely for payment of inspection costs asso-
5 ciated with licensing. The secretary shall establish rules and regulations
6 to set license fees, not to exceed \$150,000 per applicant.

7 ***[Sec. 22. K.S.A. 2003 Supp. 75-52,129 is hereby amended to***
8 ***read as follows: 75-52,129. (a) The secretary of corrections is***
9 ***hereby authorized to negotiate and enter into contracts with Kansas***
10 ***cities and counties for the placement of inmates, who are classified***
11 ***as medium custody or any higher custody or security classification,***
12 ***in facilities owned and operated by the cities and counties. If the***
13 ***secretary of corrections proposes to place any inmates classified as***
14 ***medium custody or any higher custody classification for confine-***
15 ***ment in facilities other than correctional or other institutions or***
16 ***facilities owned and operated by the department of corrections or***
17 ***any other state agency, the secretary of corrections shall give first***
18 ***consideration to entering into contracts with Kansas cities and***
19 ***counties under this section before attempting to place any such in-***
20 ***mate for confinement at any private contract prison, as defined in sec-***
21 ***tion 2, and amendments thereto, or any location outside the state of***
22 ***Kansas if the facilities to be provided under such contracts are sub-***
23 ***stantially equal to private contract prisons or facilities at locations***
24 ***outside the state of Kansas and if arrangements can be made in a***
25 ***timely manner. Except as provided in subsection (b), the provisions***
26 ***of this section and any contract or preliminary letter of commitment***
27 ***entered into pursuant to this section shall not apply to any minimum***
28 ***custody or community custody status inmates, or any other custody***
29 ***or security classification lower than medium custody, or to any in-***
30 ***mate who may be placed in a work release or prerelease program,***
31 ***center or facility by the secretary of corrections, who is eligible for***
32 ***parole or who is placed pursuant to the interstate corrections com-***
33 ***pact. Contracts entered into pursuant to this section shall not be***
34 ***subject to competitive bid requirements under K.S.A. 75-3739 and***
35 ***amendments thereto.***

36 ***[(b) The secretary shall not enter into any contract as provided***
37 ***in subsection (a) with any city or county of this state for the place-***
38 ***ment of inmates that does not provide that such city or county shall***
39 ***provide and maintain appropriate and recognized standards of***
40 ***safety, health and security.***

41 ***[Sec. 23. K.S.A. 2003 Supp. 75-52,129 is hereby repealed.]***

42 Sec. ~~22~~ [24]. This act shall take effect and be in force from and after
43 its publication in the statute book.