

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 116

By: Barrington of the Senate

and

Echols of the House

6
7
8
9 COMMITTEE SUBSTITUTE

10 An Act relating to prisons and reformatories;
11 amending 57 O.S. 2011, Sections 563.2 and 563.3,
12 which relate to private prison facilities; making
13 certain private prison facility requirements
14 inapplicable to contractors that house federal
15 inmates; and declaring an emergency.

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

17 SECTION 1. AMENDATORY 57 O.S. 2011, Section 563.2, is
18 amended to read as follows:

19 Section 563.2 A. Except as provided for in subsection B of
20 this section, a private prison contractor may contract with the
21 federal government or another state to provide for housing, care and
22 control of inmates, as provided in this section, who are in the
23 custody of the United States or another state, except for inmates
24 who have histories of escape from medium or maximum security level
correctional facilities for adults, who have a felony conviction for

1 rioting, who are sentenced to terms of incarceration for conviction
2 of a sex-related offense, or who are incarcerated with a sentence of
3 death, within a facility owned or operated by the private prison
4 contractor. Private prison contractors shall not provide for the
5 housing, care and control of detainees designated as enemy
6 combatants by the federal government, or who are under federal,
7 state or local investigation, charge, or conviction for crimes of
8 international terrorism or conspiracy to commit international
9 terrorism or acts of hostile aggression against the United States or
10 allies of the United States. Such private prison contractor may
11 perform other functions related to such responsibilities.

12 B. A private prison contractor operating a facility on January
13 1, 2004, at twenty-five percent (25%) or less capacity may contract
14 with the federal government or another state to provide for housing,
15 care and control of inmates provided the facility would be allowed
16 to house the same type of inmates if contracting with this state.

17 C. Any offense which would be a crime if committed within a
18 state correctional institution of this state shall be a crime if
19 committed in a facility owned or operated by a private prison
20 contractor.

21 D. A private prison contractor shall not employ any personnel
22 convicted of a felony if the person has been incarcerated in the
23 private prison facility for which an application for employment is
24 being considered; provided, a private prison contractor may employ

1 personnel convicted of drug-related felonies who have been
2 rehabilitated for programs for drug or other substance abuse
3 rehabilitation for inmates of the facility.

4 Any personnel of a facility owned or operated by a private
5 prison contractor, except any person convicted of a felony offense,
6 shall be authorized to carry and use firearms while in the
7 performance of their official duties only in the manner provided in
8 this subsection and only after completing training approved by the
9 Council on Law Enforcement Education and Training. The Council on
10 Law Enforcement Education and Training may charge a reasonable fee
11 for its cost of evaluating firearms training for private prison
12 personnel. Private prison personnel shall only be authorized to use
13 firearms for the following purposes:

14 1. To prevent escape from the facility or from custody while
15 being transported to or from the facility. As used in this
16 paragraph, "to prevent escape from the facility" means to prevent an
17 incarcerated individual from crossing the secure perimeter of the
18 facility; or

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

21 The Department of Corrections is authorized to provide training
22 to personnel of the private prison contractor, pursuant to contract.
23 The Department of Corrections shall charge a reasonable fee for the
24 training, not to exceed the cost of such training. The provisions

1 of this subsection shall not be construed to confer peace officer
2 status upon any employee of the private prison contractor or to
3 authorize the use of firearms, except as provided in this
4 subsection. All private prisons operating in this state shall
5 prepare a written emergency plan and mutual aid agreement between
6 the private prison facility and state and local law enforcement
7 agencies, including the Department of Corrections and the Department
8 of Public Safety. If an inmate escapes from the facility, or in the
9 event of any riot or other serious disturbance, personnel from the
10 facility immediately shall inform the Department of Corrections, the
11 Department of Public Safety, the county sheriff and, if the facility
12 is located within the boundaries of a municipality, the police
13 department of the municipality. The Department of Corrections shall
14 designate facilities operated by the Department to provide support
15 in the event of a riot, escape or other serious emergency.
16 Personnel from the facility shall inform the Department of
17 Corrections, pursuant to Department policy, if there is any
18 incident. The Department of Corrections is directed to respond on
19 behalf of public safety of this state. The private prison
20 contractor shall provide the Department of Corrections access to the
21 facility and secure facility space to establish a command post,
22 including provisions for telephone and fax access. Any emergency
23 response provided by any state or local law enforcement agency shall
24 be at the sole expense of the private prison contractor/operator.

1 Each responding agency shall submit a written invoice detailing
2 costs incurred which shall be paid within thirty (30) days of
3 receipt by the private prison contractor/operator.

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

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

22 G. A private prison contractor may allow minimum security
23 inmate labor to be used in public works projects provided all of the
24 following conditions are satisfied:

1 1. The public works project must be in and for the county where
2 the private prison is located or a county adjacent to the county
3 where the private prison is located, or in and for a municipality in
4 the county where the private prison is located or an adjacent
5 county;

6 2. The private prison contractor has developed security
7 procedures which will ensure the safety of the public and the
8 Department of Corrections has approved such procedures;

9 3. The public works project has been authorized by the
10 Department of Corrections and the county or municipal authorities
11 where the public works project is located;

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

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

23 H. A private prison contractor housing federal inmates or
24 inmates of another state shall be responsible for the reimbursement

1 of all reasonable costs and expenses incurred by this state or a
2 political subdivision of this state for legal actions brought in
3 this state by or on behalf of any federal inmate or inmate of
4 another state while incarcerated in the facility, including court
5 costs, sheriff mileage fees, witness fees, district attorney
6 expenses, expenses of the office of Attorney General, indigent or
7 public defender fees and costs, judicial expenses, court reporter
8 expenses and any other costs, fees, or expenses associated with the
9 proceedings or actions.

10 I. A private prison contractor shall not house inmates from
11 this state with federal inmates or inmates from another state,
12 unless segregated or otherwise housed in such a manner as to satisfy
13 the Director of the Department of Corrections.

14 J. The State of Oklahoma shall not assume jurisdiction or
15 custody of any federal inmate or inmate from another state housed in
16 a facility owned or operated by a private prison contractor. Such
17 inmates from another state shall at all times be subject to the
18 jurisdiction of that state and federal inmates shall at all times be
19 subject to federal jurisdiction. This state shall not be liable for
20 loss resulting from the acts of such inmates nor shall this state be
21 liable for any injuries to the inmates.

22 K. Prior to contracting for the housing of any federal inmate
23 or inmate from another state, the private prison contractor shall
24 give the Department of Corrections first right to contract for

1 placement of inmates under the custody of the Department of
2 Corrections in the available capacity of the private prison
3 facility.

4 L. Prior to housing maximum security inmates in the custody of
5 the United States or another state, the private prison contractor
6 shall receive authorization from the Department of Corrections to
7 house maximum security inmates at the facility. Authorization
8 granted by the Department of Corrections shall be based on facility
9 design and physical plant security requirements consistent with
10 standards established by the American Correctional Association or
11 the physical plant security requirements of the Department at
12 Department-operated maximum security facilities. Upon request by a
13 private prison contractor for all or a part of a facility to be
14 granted authorization to house maximum security inmates, the
15 Department shall complete an assessment within thirty (30) days.
16 The assessment shall either result in authorization being granted to
17 the private prison contractor or shall provide detailed requirements
18 that shall be met by the facility in order for authorization to be
19 granted.

20 M. At least ten (10) business days prior to the transfer of
21 inmates who are in the custody of the United States or another state
22 to a private prison facility operating in the State of Oklahoma, the
23 private prison contractor shall provide the Department of
24 Corrections with the following information:

- 1 1. The number of inmates to be transferred;
- 2 2. The name of each inmate to be transferred;
- 3 3. The date of transfer of the inmate;
- 4 4. The security level of each inmate to be transferred, as
- 5 determined by the sentencing state;
- 6 5. The facility to which the inmate shall be transferred; and
- 7 6. The criminal history and institutional behavioral record for
- 8 each inmate.

9 The information provided pursuant to this subsection shall not
10 be public record until the transfer of the inmate is complete. The
11 records shall thereafter be made public only to the extent required
12 by state law.

13 N. The Department of Corrections shall have thirty (30) days
14 after receipt of the information required in accordance with
15 subsection M of this section to determine whether an inmate
16 transferred to a private prison facility is compliant with the
17 conditions of subsection A or B of this section. If the Department
18 determines that an inmate housed at a private prison facility is not
19 compliant with the conditions provided for in subsection A or B of
20 this section, the Department shall notify the private prison
21 contractor. Notification by the Department shall include the name
22 of the inmate and reason why the inmate does not qualify to be
23 housed at the facility to which the inmate has been transferred or
24 housed within the State of Oklahoma. The private prison contractor

1 shall either provide supplemental information verifying compliance
2 with subsection A or B of this section, or shall transfer the inmate
3 out of the State of Oklahoma within thirty (30) days of receiving
4 said notification from the Department. Failure of the Department to
5 review the inmate information provided pursuant to subsection M of
6 this section shall not prevent the transfer of inmates into the
7 State of Oklahoma for housing at a private prison facility.

8 O. The provisions of subsections A, D, M and N of this section
9 shall not apply to a private prison contractor that has a direct
10 contract with the Federal Bureau of Prisons of the United States
11 Department of Justice for a facility that houses federal inmates and
12 is monitored on-site by federal agency staff.

13 SECTION 2. AMENDATORY 57 O.S. 2011, Section 563.3, is
14 amended to read as follows:

15 Section 563.3 A. All private prison contractors and vendors
16 operating in Oklahoma shall provide construction plans to the
17 Department of Corrections for approval prior to commencement of
18 construction of any new physical plant or addition to existing
19 facilities. Approval shall be based on applicable American
20 Correctional Association construction standards. Any private prison
21 contractor or vendor that fails to comply with the requirements of
22 this subsection shall be penalized according to the provisions of
23 subsection E of this section.

24

1 B. A private prison contractor which does not have a contract
2 with the Department of Corrections, but which houses federal inmates
3 or inmates of another state, within two (2) months of commencing
4 operations and thereafter as required by the Department of
5 Corrections, shall:

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

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

23 3. Furnish to the Department of Corrections satisfactory proof
24 that the private prison contractor has obtained insurance or is

1 self-insured, in such a manner and in such an amount as the Director
2 of the Department of Corrections, after consulting with the Risk
3 Management Administration, may deem necessary and adequate to
4 reimburse this state or a political subdivision of this state, for
5 expenses arising from any incident which occurs at said prison or
6 which requires intervention by this state or a political subdivision
7 of this state. Such insurance, in addition, shall be in an amount
8 sufficient to indemnify this state and its officers and employees,
9 for any liability or other loss, including property damage,
10 judgments, costs, attorney fees or other expenses arising from the
11 operation of the facility, and such facility shall in any event and
12 regardless of the amount of insurance available indemnify and hold
13 harmless this state and its officers and employees, for any and all
14 acts of prison inmates, and/or all officers, employees and
15 stockholders of such private prison contractor for any liability
16 arising out of acts of said inmates, officers, employees and
17 stockholders of such private prison contractor in relation to the
18 operation of the facility. The insurance required by this paragraph
19 shall not provide coverage for more than one facility. If the
20 private prison contractor owns or operates more than one facility,
21 separate insurance coverage shall be obtained or provided for each
22 facility;

23 4. Obtain written authorization from the governing board of any
24 municipality in which the facility is to be located, or if the

1 facility is not to be located within a municipality, written
2 authorization from the board of county commissioners of the county
3 in which the facility is to be located; and

4 5. Ensure every employee or prospective employee of the private
5 prison contractor has submitted through the Department of
6 Corrections a national criminal history records check, as defined by
7 Section 150.9 of Title 74 of the Oklahoma Statutes. The private
8 prison contractor is hereby authorized to reimburse employees for
9 the cost of the search. The record required by this paragraph shall
10 include the name of the person, whether or not said person has been
11 convicted of any felony offense, a list of any felony convictions,
12 and the dates of such convictions. The search records from national
13 criminal history records checks shall be maintained by the
14 Department of Corrections. The Department of Corrections shall not
15 disseminate any national criminal history records information to a
16 private entity.

17 C. A private prison contractor which does not have a contract
18 with the Department of Corrections, but which houses federal inmates
19 or inmates of another state shall attain accreditation by the
20 American Correctional Association within three (3) years of
21 commencing operation of the facility and thereafter shall maintain
22 such accreditation.

23 D. The Department of Corrections shall monitor the performance
24 of the private prison contractor and the continued compliance of the

1 private prison contractor with the provisions of this section and
2 Section 563.2 of this title. If at any time after commencing
3 operations, a private prison contractor, that is subject to the
4 provisions of subsection B of this section, fails to comply with any
5 of said provisions, the Director of the Department of Corrections
6 may order the facility to cease operations. If a private prison
7 contractor fails to attain or maintain the accreditation required by
8 subsection C of this section, the Director of the Department of
9 Corrections shall order the facility to take corrective action
10 pursuant to the Department of Corrections monitoring plan and, if
11 corrective action is not pursued with due diligence, shall order the
12 facility to cease operations. This order may be enforced by
13 injunction issued by a district court of this state.

14 E. If the requirements provided for in this section are not
15 followed, the Director may recommend that the State Board of
16 Corrections assess the private prison contractor at least one-half
17 (1/2) the per diem rate up to but not to exceed the full per diem
18 rate paid by the jurisdiction or jurisdictions to the private prison
19 contractor for the period of time a violation of subsection A of
20 this section continues and is not corrected with due diligence or
21 when the Department of Corrections has identified other physical
22 plant security deficiencies based on American Correctional
23 Association standards and such deficiencies continue and are not
24 corrected with due diligence. The penalty provided for in this

1 subsection shall not preclude the Director from ordering the
2 facility to cease operations.

3 F. The Department of Corrections may charge the private prison
4 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 B of this section. The fee shall not exceed the cost
8 incurred in performing the monitoring.

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

11 H. 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 I. The provisions of subsections B through H of this section
15 shall not apply to a private prison contractor that has a direct
16 contract with the Federal Bureau of Prisons of the United States
17 Department of Justice for a facility that houses federal inmates and
18 is monitored on-site by federal agency staff.

19 SECTION 3. It being immediately necessary for the preservation
20 of the public peace, health and safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.

23

24 55-1-7352 JM 04/08/15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24