

CHAPTER 18

S.B. No. 251

AN ACT

relating to contracts with private enterprises for the financing, construction, operation, maintenance, and management of correctional facilities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 108, Revised Statutes, is amended by adding Article 6166g-2 to read as follows:

Art. 6166g-2. CONTRACTS WITH PRIVATE CORRECTIONAL FACILITIES

Sec. 1. (a) The Texas Board of Corrections may contract with private vendors or with commissioners courts of counties for the financing, construction, operation, maintenance, or management of secure correctional facilities.

(b) A facility operated, maintained, and managed under this article by a private vendor or county must:

(1) except as provided by Subsection (d) of this section, hold not more than an average daily population of 500 inmates;

(2) comply with federal constitutional standards and applicable court orders; and

(3) receive and retain, as an individual facility, accreditation from the American Correctional Association.

(c) A facility authorized by this article may be located on private land or on land owned by the state or a political subdivision of the state. The Texas Board of Corrections may accept land donated for that purpose.

(d) The population requirements imposed by Subsection (b)(1) of this section do not apply to a facility that is under construction or completed before the effective date of this article.

Sec. 2. The Texas Department of Corrections may confine only minimum or medium security inmates in a facility authorized by this article. An inmate confined in a facility authorized by this article remains in the legal custody of the Texas Department of Corrections.

Sec. 3. (a) The Texas Board of Corrections may not award a contract under this article unless the board requests proposals and receives a proposal that meets or exceeds, in addition to requirements specified in the request for proposals, the requirements specified in Subsections (b), (c), and (d) of this section.

(b) A party proposing to enter a contract with the Texas Board of Corrections under this article must demonstrate:

(1) the qualifications and the operations and management experience to carry out the terms of the contract; and

(2) the ability to comply with the standards of the American Correctional Association and with specific court orders.

(c) In addition to meeting the requirements specified in the requests for proposals, a proposal is not acceptable unless it:

(1) provides for regular, on-site monitoring by the Texas Department of Corrections;

(2) acknowledges that payment by the state is subject to the availability of appropriations;

(3) provides for payment of a maximum amount per biennium;

(4) offers a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates and at a cost that provides the state with a savings of not less than 10 percent of the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities, as determined by the Legislative Budget Board;

(5) permits the state to terminate the contract for cause, including as cause the failure of the private vendor or county to meet the conditions required by this article and other conditions required by the contract;

(6) provides that cost adjustments may be made only once each biennium, to take effect at the beginning of the next biennium;

(7) is for an initial contract term of not more than three years, with an option to renew for additional periods of two years;

(8) if the proposal includes construction of a facility, contains a performance bond approved by the Texas Board of Corrections that is adequate and appropriate for the proposed contract;

(9) provides for assumption of liability by the private vendor or county for all claims arising from the services performed under the contract by the private vendor or county;

(10) provides for an adequate plan of insurance for the private vendor or county and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights, arising from the services performed under the contract by the private vendor or county;

(11) provides for an adequate plan of insurance to protect the state against all claims arising from the services performed under the contract by the private vendor or county and to protect the state from actions by a third party against the private vendor or county, its officers, guards, employees, and agents as a result of the contract;

(12) provides plans for the purchase and assumption of operations by the state in the event of the bankruptcy of the private vendor or inability of the county to perform its duties under the contract; and

(13) contains comprehensive standards for conditions of confinement.

(d) Before the commissioners court of a county proposes to enter into a contract under this article, the commissioners court of the county must receive the written

approval of the sheriff of the county. A correctional facility provided by a county under this article is subject to the same standards and requirements as a correctional facility provided by a private vendor.

(e) A private vendor or county operating under a contract authorized by this article may not:

- (1) calculate inmate release and parole eligibility dates;
- (2) award good conduct time;
- (3) approve inmates for work, medical, or temporary furloughs or for preparole transfers; or
- (4) classify inmates or place inmates in less restrictive custody than the custody ordered by the department.

(f) In determining costs and cost savings under Subsection (c)(4) of this section, the Legislative Budget Board may consider any factor it determines is relevant, including additional costs to the state for providing the same service as a private vendor or county, indirect costs properly allocable to either the state or the private vendor or county, and continuing costs to the state directly associated with the contract.

Sec. 4. A private vendor operating under a contract authorized by this article is not entitled to claim sovereign immunity in a suit arising from the services performed under the contract by the private vendor or county. This section does not deprive the private vendor or the state of the benefit of any law limiting exposure to liability, setting a limit on damages, or establishing defenses to liability.

Sec. 5. The Texas Board of Corrections may not convert a facility into a correctional facility operated by a private vendor or by a county if, before the effective date of this article, the facility is:

- (1) operated as a correctional facility by the board; or
- (2) being constructed by the board for use as a correctional facility.

Sec. 6. (a) If a contract is entered into under this article, the Sunset Advisory Commission shall deliver a report required by this section to the regular session of the 72nd Legislature in January 1991. The report must contain an analysis of the cost to the state for services provided under the contract and an analysis of the quality of services provided under the contract and must compare the cost and quality of services provided under the contract with the cost and quality of similar services provided by the state. The report must specifically state whether the services provided under the contract are superior, essentially equal, or inferior to similar services provided by the state, if the state provides those services. If the commission determines that changes in law are necessary to improve the manner in which the Texas Board of Corrections enters into contracts for the financing, construction, operation, maintenance, or management of secure correctional facilities, the commission shall recommend to the legislature that those changes be made.

(b) In making the report required by this section, the Sunset Advisory Commission shall consider, in addition to other factors it determines are significant, the following:

- (1) the type of inmates in the facility;
- (2) whether the facility meets professional standards required by this article;
- (3) the extent to which the vendor or county complies with the terms of the contract;
- (4) the extent to which the private vendor or county complies with the terms of this article;
- (5) the level of training provided to the staff of the facility;
- (6) the number and nature of inmate complaints against the staff of the facility;
- (7) the number of escapes and attempted escapes from the facility; and
- (8) the wages and benefits provided to the staff of the facility in comparison to wages and benefits provided to state employees performing comparable tasks.

(c) *The Sunset Advisory Commission may exercise all powers granted to the commission for the performance of its statutory duties in preparing a report required by this section.*

(d) *This section expires September 1, 1991.*

SECTION 2. Section 1, Chapter 21, Acts of the 55th Legislature, Regular Session, 1957 (Article 6184m, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. It shall be unlawful for any person to furnish, attempt to furnish, or assist in furnishing to any inmate of a city or county jail or of the Texas Department of Corrections any alcoholic beverage, controlled substance, or dangerous drug except from the prescription of a physician. It shall also be unlawful for any person to take, attempt to take, or assist in taking any of the aforementioned articles into a city or county jail, *into a correctional facility authorized by Article 5115d, Revised Statutes, or Article 6166g-2, Revised Statutes,* or into the confines of property belonging to the Texas Department of Corrections which is occupied or used by prisoners except for delivery to a jail, *correctional facility,* or prison warehouse or pharmacy or to a physician.

SECTION 3. Subsection (a), Section 22.02, Penal Code, is amended to read as follows:

(a) A person commits an offense if the person commits assault as defined in Section 22.01 of this code and the person:

- (1) causes serious bodily injury to another, including the person's spouse;
- (2) threatens with a deadly weapon or causes bodily injury to a peace officer or a jailer or guard employed at a municipal or county jail, ~~[or]~~ by the Texas Department of Corrections, *or by a correctional facility authorized by Article 5115d, Revised Statutes, or Article 6166g-2, Revised Statutes,* when the person knows or has been informed the person assaulted is a peace officer, jailer, or guard:
 - (A) while the peace officer, jailer, or guard is lawfully discharging an official duty; or
 - (B) in retaliation for or on account of an exercise of official power or performance of an official duty as a peace officer, jailer, or guard; or
- (3) causes bodily injury to a participant in a court proceeding when the person knows or has been informed the person assaulted is a participant in a court proceeding:
 - (A) while the injured person is lawfully discharging an official duty; or
 - (B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding; or
- (4) uses a deadly weapon.

SECTION 4. Subsection (a), Section 22.03, Penal Code, is amended to read as follows:

(a) A person commits an offense if, with a deadly weapon, he intentionally or knowingly causes serious bodily injury:

- (1) to a peace officer or a jailer or guard employed at a municipal or county jail, ~~[or]~~ by the Texas Department of Corrections, *or by a correctional facility authorized by Article 5115d, Revised Statutes, or Article 6166g-2, Revised Statutes,* where he knows or has been informed the person assaulted is a peace officer, jailer, or guard:
 - (A) while the peace officer, jailer, or guard is acting in the lawful discharge of an official duty; or
 - (B) in retaliation for or on account of an exercise of official power or performance of an official duty as a peace officer, jailer, or guard; or
- (2) to a participant in a court proceeding when he knows or has been informed that the person assaulted is a participant in a court proceeding:
 - (A) while the injured person is in the lawful discharge of official duty; or
 - (B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding.

SECTION 5. Subsection (a), Section 39.021, Penal Code, is amended to read as follows:

(a) A jailer or guard employed at a municipal or county jail, [or] by the Texas Department of Corrections, or by a correctional facility authorized by Article 5115d, Revised Statutes, or Article 6166g-2, Revised Statutes, or a peace officer commits an offense if he:

(1) intentionally subjects a person in custody to bodily injury knowing his conduct is unlawful;

(2) willfully denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful.

SECTION 6. Article 5115d, Revised Statutes, is amended by adding Subsections (c) through (i) to read as follows:

(c) *The commissioners court of a county may contract with a private vendor to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a jail, detention center, work camp, or related facility.*

(d) *The commissioners court of a county must consult with and receive the written approval of the sheriff of the county before contracting with a vendor for the operation, maintenance, or management of a facility described by Subsection (c) of this article.*

(e) *A contract entered into under this article must:*

(1) *require the private vendor to operate the facility in compliance with minimum standards of construction, equipment, maintenance, and operation of jails promulgated by the Commission on Jail Standards and receive and retain a certification of compliance from the commission;*

(2) *provide for regular, on-site monitoring by the sheriff;*

(3) *if the contract includes construction, contain a performance bond approved by the commissioners court that is adequate and appropriate for the proposed contract;*

(4) *provide for assumption of liability by the private vendor for all claims arising from the services performed under the contract by the private vendor;*

(5) *provide for an adequate plan of insurance for the private vendor and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights, arising from the services performed under the contract by the private vendor;*

(6) *provide for a plan for the purchase and assumption of operations by the county in the event of the bankruptcy of the private vendor;*

(7) *provide for an adequate plan of insurance to protect the county against all claims arising from the services performed under the contract by the private vendor and to protect the county from actions by a third party against the private vendor, its officers, guards, employees, and agents as a result of the contract; and*

(8) *contain comprehensive standards for conditions of confinement.*

(f) *A private vendor operating under a contract authorized by this article is not entitled to claim sovereign immunity in a suit arising from the services performed under the contract by the private vendor. However, nothing herein is intended to deprive the private vendor or the county of any benefits of any law limiting exposure to liability, setting a limit on damages, or establishing defenses to liability.*

(g) *A facility authorized by this article must be designed, constructed, operated, and maintained to hold not more than an average daily population of 500 inmates.*

(h) *The commissioners court of a county may not convert a facility into a correctional facility operated by a private vendor if, before the effective date of this article, the facility is:*

(1) *operated as a correctional facility by the county; or*

(2) *being constructed by the county for use as a correctional facility.*

(i) *The requirements imposed by Subsection (e) and Subsection (g) of this section do not apply to a facility that is under construction or completed before the effective date of this section.*

SECTION 7. Article 42.18, Code of Criminal Procedure, as added by Chapter 427, Acts of the 69th Legislature, Regular Session, 1985, is amended by adding Section 35 to read as follows:

Sec. 35. The Board of Pardons and Paroles and the Texas Department of Corrections are authorized to enter into interagency contracts for the placement of offenders in secure correctional facilities authorized by Article 6166g-2, Revised Statutes.

SECTION 8. Article I, General Appropriations Act for Fiscal Year 1987 (Chapter 13, Acts of the 69th Legislature, 3rd Called Session, 1986) is amended by adding to the Department of Corrections at p. I-67 the following:

49. The Texas Board of Corrections is authorized to contract with private vendors or commissioners courts of counties for the financing, construction, operation, maintenance, or management of secure correctional facilities to house no more than 2,000 inmates. In determining the mission of each facility, the board shall consider requiring any vendor to provide prerelease programming, including employment counseling, drug and alcohol counseling, and family counseling.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on February 19, 1987, by the following vote: Yeas 23, Nays 2; March 17, 1987, Senate refused to concur in House amendments and requested appointment of Conference Committee; April 2, 1987, Conferees discharged by unanimous consent; April 2, 1987, Senate concurred in House amendments by the following vote: Yeas 22, Nays 0. Passed the House, with amendments, on March 10, 1987, by the following vote: Yeas 122, Nays 19, two present not voting.

Approved April 14, 1987.

Effective April 14, 1987.