

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2688

By Representatives Knox and Otto

1-23

10 AN ACT concerning correctional facilities; relating to construction by
11 private companies; amending K.S.A. 2005 Supp. 75-52,129 and re-
12 pealing 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 lia-
22 bility 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 75-52,133,
3 and amendments thereto, no private contractor shall authorize, construct,
4 own or operate any private contract prison in this state for the placement
5 or confinement of inmates unless such private contractor possesses a valid
6 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 as
27 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 and as are required of state correctional officers;

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 con-
35 sistent with the American correctional association standards as deter-
36 mined by the secretary;

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

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

42 (e) the licensee shall indemnify the state and the secretary, including
43 their subdivisions, officials and agents, against any and all liability includ-

- 1 ing, but not limited to, any civil rights claims. The secretary shall require
2 proof of satisfactory insurance, the amount to be determined by the
3 secretary;
- 4 (f) the licensee shall seek, obtain and maintain accreditation by the
5 American correctional association and the national commission on cor-
6 rectional health care. In addition, the licensee shall comply with those
7 associations' amendments to the accreditation standards upon approval
8 of such amendments by the secretary. The secretary shall not unreason-
9 ably withhold approval so as to facilitate compliance with required stan-
10 dards by the licensee;
- 11 (g) the licensee shall agree to abide by operations standards for cor-
12 rectional facilities as adopted by the secretary;
- 13 (h) if Kansas inmates are being housed in the private contract prison,
14 the licensee shall be responsible for the range of dental, medical and
15 psychological services and diet, education and work programs at least
16 equal to those services and programs provided by the secretary at com-
17 parable state correctional facilities. The work and education programs
18 shall be designed to reduce recidivism;
- 19 (i) the secretary shall monitor all private contract prisons and the
20 secretary and the department shall have unrestricted access to all private
21 contract prisons for that purpose. The licensee shall bear the costs of
22 monitoring the facility;
- 23 (j) if the department contracts to house Kansas inmates at the li-
24 censee's private contract prison, the licensee shall incarcerate all inmates
25 assigned to the private contract prison by the department and as specified
26 by the contract and may not reject inmates assigned to it by the depart-
27 ment. The department shall have the right of first refusal to any space in
28 the licensee's private contract prison, whether or not such space is oc-
29 cupied by non-Kansas inmates. The department may not exceed the max-
30 imum occupancy designated in the contract for the private contract
31 prison;
- 32 (k) the licensee may not benefit financially from the labor of inmates
33 except that inmates housed in any private contract prison operated by the
34 licensee in this state may be given job assignments that assist in the op-
35 eration and maintenance of the facility, including but not limited to jan-
36 itorial or food service, or constitute work crews for the state or nearby
37 communities if the inmates have the appropriate custody designation;
- 38 (l) if the licensee enters into a contract to house non-Kansas inmates,
39 the licensee must require as a condition of that contract that each such
40 inmate to be released from custody must be released in the sending state;
- 41 (m) whenever any non-Kansas inmate is proposed to be brought into
42 this state for the purpose of being incarcerated at a private contract
43 prison, all records regarding each such inmate, including, but not limited

1 to, custody records, facility history records, disciplinary records and med-
2 ical and mental health records, shall be reviewed by the department prior
3 to such inmate being transported into this state. The cost of such review
4 shall be borne by the licensee through the administration of the licensing
5 fee pursuant to section 21, and amendments thereto. The secretary shall
6 have authority to refuse to allow any non-Kansas inmate to be transported
7 to or incarcerated in any private contract prison;

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

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

12 New Sec. 7. No license issued pursuant to this act shall be construed
13 as authorizing, allowing or delegating authority to the licensee to:

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

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

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

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

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

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

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

43 New Sec. 8. (a) No private contract prison shall house inmates until:

1 (1) The private operator has submitted to the secretary, and the sec-
2 retary has approved, a plan for the secretary to assume temporary control
3 and operation of the private contract prison in the event the private op-
4 erator becomes unable to meet the requirements of this act;

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

11 (3) the private operator has submitted to the secretary, and the sec-
12 retary has approved, a plan to address emergencies including, but not
13 limited to, inmate disturbances, employee work stoppages, employee
14 strikes, escapes, natural disaster threats, bomb threats, riots, hunger
15 strikes, taking of hostages, fires, explosions, evacuations, hazardous ma-
16 terial spills or other serious events. The plan shall comply with applicable
17 national correctional standards. The plan shall identify how the state shall
18 recover its costs for such assumptions of operation or other interventions.
19 The private operator shall be liable for all expenses incurred by the state
20 and its subdivisions in responding to any emergency or serious event.
21 Such expenses shall be consistent with the department's policies and pro-
22 cedures concerning such emergency or serious event; **and**

23 **(4) the private owner shall reimburse Kansas state agencies or**
24 **political subdivisions of the state for all costs incurred by such en-**
25 **tities with respect to the investigation, prosecution, detention,**
26 **criminal defense or appellate litigation, without regard to whether**
27 **conviction is obtained, of a Kansas or non-Kansas inmate charged**
28 **with a crime resulting from criminal conduct allegedly committed**
29 **within the private contract prison, or a non-Kansas inmate who**
30 **escapes and allegedly commits criminal conduct.**

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

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

41 New Sec. 9. The secretary may suspend or revoke a license for cause,
42 including, but not limited to, failure to obtain or maintain facility accred-
43 itation or failure to comply with any requirement of this act, after written

1 notice of material deficiencies and after 60 workdays have been provided
2 to the contractor to submit a plan of action to correct the material
3 deficiencies.

4 New Sec. 10. If, as determined by the secretary, an emergency oc-
5 curs involving the noncompliance with or violation of the requirements
6 of this act and presents a serious threat to the safety, health or security
7 of the inmates, employees or the public, the secretary may require im-
8 mediate or timely corrective action or may, without prior notice, tem-
9 porarily assume operation and control of the private contract prison.
10 Nothing in this section shall be construed to require the state to assume
11 responsibility for the operation of private contract prisons or for costs
12 associated with events described in this section. If the state chooses, it
13 may assume responsibility upon approval by the legislature through the
14 enactment of legislation.

15 New Sec. 11. If a private owner intends to sell, convey, transfer, do-
16 nate, trade, barter or otherwise alienate title to a private contract prison,
17 the private owner shall first give notice of such intent to the secretary.
18 The state shall have the right of first refusal to lease or purchase such
19 private contract prison at fair market value, although the state shall not
20 be required to do so. Except as provided in this section, a private contract
21 prison may be transferred only to an entity that is licensed as required by
22 this act.

23 New Sec. 12. Each private operator shall require applicants for em-
24 ployment at a private contract prison to submit a set of fingerprints to
25 the Kansas bureau of investigation for a criminal background check. The
26 Kansas bureau of investigation may accept fingerprints of individuals who
27 apply for employment at a private contract prison and who shall be subject
28 to background checks. For the purpose of conducting background checks,
29 to the extent provided for by federal law, the Kansas bureau of investi-
30 gation may exchange with the secretary criminal history records, whether
31 state, multi-state or federal, of individuals who apply for employment at
32 a private contract prison.

33 New Sec. 13. This act shall not apply to the contracts between cities
34 and counties and the secretary under which the city or county agrees to
35 house the backlog of inmates as provided by K.S.A. 75-52,128 and 75-
36 52,129, and amendments thereto, which contracts shall be governed by
37 such.

38 New Sec. 14. Any private operator licensed under this act shall col-
39 lect and maintain data with respect to all Kansas and non-Kansas inmates
40 housed by the private contractor, in a fashion compatible with Kansas
41 department of corrections practices and procedures for inmate data col-
42 lection and maintenance, as specified by the secretary.

43 New Sec. 15. (a) Any county that meets the requirements of this

1 section may contract with a private contractor to develop and construct,
2 own or operate a private contract prison in such county.

3 (b) No private contract prison shall be constructed, owned or oper-
4 ated pursuant to this act in any county unless the county commission has
5 received written notice of approval from the sheriff of such county and
6 the secretary of corrections. Upon receipt of such notice, the board shall
7 adopt a resolution placing on the ballot the question in subsection (c).
8 No private prison shall be constructed pursuant to this section until the
9 question has been submitted to and approved by a majority of the qual-
10 ified voters of the county voting at an election thereon. Such election
11 shall be called and held in the manner provided by the general bond law.

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

15 (d) Except for land donation, no direct incentives, such as property
16 tax abatement, industrial revenue bonds, tax increment financing or utility
17 cost reductions, shall be offered by the county to the private contractor
18 wishing to construct, own or operate a private contract prison in such
19 county.

20 (e) At the discretion of the parties, the contract may allow for the
21 leasing of the private contract prison by the private owner to the county
22 or to the state.

23 New Sec. 16. No contract for site construction between the county
24 and the private contractor authorized by this act shall enter into force
25 until reviewed and approved by the attorney general, as to form and legal
26 sufficiency, and the secretary, as to the determination of the best interests
27 of the state of Kansas.

28 New Sec. 17. A contract entered into under this act does not accord
29 third-party beneficiary status to any inmate or to any member of the
30 general public.

31 New Sec. 18. In the event any provision of any contract authorized
32 by this act conflicts with any provision of any license issued pursuant to
33 this act, the provision of the license shall supersede the provision of the
34 contract. In the event any provision of any contract authorized by this act
35 conflicts with any provision of this act, the provision of this act shall su-
36 persede the provision of the contract.

37 New Sec. 19. Nothing in this act shall be construed as requiring the
38 department of corrections to place Kansas inmates in any private facility
39 constructed, owned or operated pursuant to this act. Placement of Kansas
40 inmates in such private facility shall be at the discretion of the secretary
41 based on department needs and the best interest of the state and shall
42 only be pursuant to contract between the secretary and the private
43 operator.

1 New Sec. 20. Not later than December 1 of each year, beginning
2 with the 2006 fiscal year, the secretary shall submit a report to the speaker
3 of the house of representatives and the president of the senate concerning
4 the status of contracts in effect and licenses issued, and with respect to
5 completed prisons, the effectiveness of each private contract prison op-
6 erated pursuant to this act.

7 New Sec. 21. There is hereby created in the state treasury the cor-
8 rections licensing fee fund. All moneys collected by the secretary from
9 licensing application fees, monitoring fees, and any other fees authorized
10 by this act shall be remitted to the state treasurer in accordance with the
11 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
12 each such remittance, the state treasurer shall deposit the entire amount
13 in the state treasury to the credit of the corrections licensing fee fund.
14 All the moneys collected and deposited pursuant to this subsection shall
15 be used solely for payment of the costs associated with the implementa-
16 tion and enforcement of this act. The secretary shall establish rules and
17 regulations prescribing the fees necessary for the implementation and
18 enforcement of this act.

19 Sec. 22. K.S.A. 2005 Supp. 75-52,129 is hereby amended to read as
20 follows: 75-52,129. (a) The secretary of corrections is hereby authorized
21 to negotiate and enter into contracts with Kansas cities and counties for
22 the placement of inmates, who are classified as medium custody or any
23 higher custody or security classification, in facilities owned and operated
24 by the cities and counties. If the secretary of corrections proposes to place
25 any inmates classified as medium custody or any higher custody classifi-
26 cation for confinement in facilities other than correctional or other insti-
27 tutions or facilities owned and operated by the department of corrections
28 or any other state agency, the secretary of corrections shall give first con-
29 sideration to entering into contracts with Kansas cities and counties under
30 this section before attempting to place any such inmate for confinement
31 at any *private contract prison, as defined in section 2, and amendments*
32 *thereto, or any* location outside the state of Kansas if the facilities to be
33 provided under such contracts are substantially equal to *private contract*
34 *prisons or* facilities at locations outside the state of Kansas and if arrange-
35 ments can be made in a timely manner. Except as provided in subsection
36 (b), the provisions of this section and any contract or preliminary letter
37 of commitment entered into pursuant to this section shall not apply to
38 any minimum custody or community custody status inmates, or any other
39 custody or security classification lower than medium custody, or to any
40 inmate who may be placed in a work release or prerelease program, cen-
41 ter or facility by the secretary of corrections, who is eligible for parole or
42 who is placed pursuant to the interstate corrections compact. Contracts
43 entered into pursuant to this section shall not be subject to competitive

1 bid requirements under K.S.A. 75-3739 and amendments thereto.

2 (b) The secretary shall not enter into any contract as provided in
3 subsection (a) with any city or county of this state for the placement of
4 inmates that does not provide that such city or county shall provide and
5 maintain appropriate and recognized standards of safety, health and
6 security.

7 Sec. 23. K.S.A. 2005 Supp. 75-52,129 is hereby repealed.

8 Sec. 24. This act shall take effect and be in force from and after its
9 publication in the statute book.