

By: Murr

H.B. No. 4207

A BILL TO BE ENTITLED

AN ACT

relating to private vendors for correctional facilities and services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sec. 495.001. AUTHORITY TO CONTRACT. is amended to read as follows:

(a) The board may contract with a private vendor or with the commissioners court of a county for the financing, construction, ~~operation, or~~ or maintenance, ~~or management~~ of a secure correctional facility.

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

(1) hold not more than an average daily population of ~~1,150~~ 2,000 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 subchapter may be located on private land or on land owned by the state or a political subdivision of the state. The board may accept land donated for that purpose.

~~(d) The population requirements imposed by Subsection (b)(1) do not apply to a facility that is under construction or~~

1 ~~completed before April 14, 1987.~~

2 ~~(e)~~(d) The board shall give priority to entering contracts
3 under this subchapter that will provide the institutional division
4 with secure regionally based correctional facilities designed to
5 successfully reintegrate inmates into society through preparole,
6 prerelease, work release, and prison industries programs.

7 ~~(f)~~ (e) Notwithstanding Subsection (b)(1), a facility that
8 before December 1, 1991, was operated, maintained, and managed
9 under this subchapter by a ~~private vendor or~~ county may not hold
10 more than an average daily population of 500 inmates, unless the
11 commissioners court of the county in which the facility is located
12 expresses in a resolution on the subject that the limit on
13 population imposed by this subsection should not apply to the
14 facility.

15 (f) Any contract that is in existence between the state and
16 a private vendor for operation or management of a secure
17 correctional facility as of December 31, 2020, shall remain valid
18 until it expires on its own terms, without invoking any additional
19 renewal provisions.

20 Sec. 495.002. INMATES. The institutional division may
21 confine only minimum or medium security inmates in a facility
22 authorized by this subchapter. An inmate confined in a facility
23 authorized by this subchapter remains in the legal custody of the
24 institutional division .

25 Sec. 495.003. CONTRACT PROPOSALS; QUALIFICATIONS AND
26 STANDARDS. (a) The board may not award a contract under this
27 subchapter unless the board requests proposals and receives a

1 proposal that meets or exceeds, in addition to requirements
2 specified in the request for proposals, the requirements specified
3 in Subsections (b), (c), ~~and (d)~~.

4 (b) A person proposing to enter a contract with the board
5 under this subchapter must demonstrate:

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

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

10 (c) In addition to meeting the requirements specified in the
11 requests for proposals, a proposal must:

12 (1) provide for regular, on-site monitoring by the
13 institutional division;

14 (2) acknowledge that payment by the state is subject
15 to the availability of appropriations;

16 (3) provide for payment of a maximum amount per
17 biennium;

18 (4) offer a level and quality of programs at least
19 equal to those provided by state-operated facilities that house
20 similar types of inmates and at a cost that provides the state with
21 a savings of not less than 10 percent of the cost of housing inmates
22 in similar facilities and providing similar programs to those types
23 of inmates in state-operated facilities;

24 (5) permit the state to terminate the contract for
25 cause, including as cause the failure of the private vendor or
26 county to meet the conditions required by this subchapter and other
27 conditions required by the contract;

1 (6) provide that cost adjustments may be made only
2 once each fiscal year, to take effect at the beginning of the next
3 fiscal year;

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

7 (8) if the proposal includes construction of a
8 facility, contain a performance bond approved by the board that is
9 adequate and appropriate for the proposed contract;

10 (9) provide for assumption of liability by ~~the private~~
11 ~~vendor or~~ a county for all claims arising from the services
12 performed under the contract by the private vendor or county;

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

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

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

1 (13) contain comprehensive standards for conditions
2 of confinement.

3 (d) Before the commissioners court of a county proposes to
4 enter into a contract under this subchapter, the commissioners
5 court of the county must receive the written approval of the sheriff
6 of the county. A sheriff may not unreasonably withhold written
7 approval under this subsection. A correctional facility provided by
8 a county under this subchapter is subject to the same standards and
9 requirements as a correctional facility provided by a private
10 vendor.

11 (e) The Legislative Budget Board determines the costs and
12 cost savings under Subsection (c)(4) and may consider any relevant
13 factor, including additional costs to the state for providing the
14 same service as a ~~private vendor or~~ county, indirect costs properly
15 allocable to either the state or ~~the private vendor or~~ county, and
16 continuing costs to the state directly associated with the
17 contract.

18 Sec. 495.004. LIMITATION ON AUTHORITY OVER INMATES. A
19 ~~private vendor or~~ county operating under a contract authorized by
20 this subchapter may not:

21 (1) compute inmate release and parole eligibility
22 dates;

23 (2) award good conduct time;

24 (3) approve an inmate for work, medical, or temporary
25 furlough or for preparole transfer; or

26 (4) classify an inmate or place an inmate in less
27 restrictive custody than the custody ordered by the institutional

1 division.

2 ~~Sec. 495.005. CIVIL LIABILITY. A private vendor operating~~
3 ~~under a contract authorized by this subchapter may not claim~~
4 ~~sovereign immunity in a suit arising from the services performed~~
5 ~~under the contract by the private vendor or county. This section~~
6 ~~does not deprive the private vendor or the state of the benefit of~~
7 ~~any law limiting exposure to liability, setting a limit on damages,~~
8 ~~or establishing a defense to liability.~~

9 ~~Sec. 495.006. CONVERSION OF FACILITY. The board may not~~
10 ~~convert a facility into a correctional facility operated by a~~
11 ~~private vendor or by a county if, before April 14, 1987, the~~
12 ~~facility is:~~

13 ~~(1) operated as a correctional facility by the board;~~

14 ~~or~~

15 ~~(2) being constructed by the board for use as a~~
16 ~~correctional facility.~~

17 Sec. 495.007. LIMITATION. The board may not enter into
18 contracts under this subchapter for more than ~~5,580~~ 8,000 beds.

19 Sec. 495.008. AUDITING AND MONITORING CONTRACTS. (a) The
20 department shall develop a comprehensive methodology for enhanced
21 auditing and monitoring of all facilities operated under contract
22 with the department that house inmates of the department and
23 releasees under the supervision of the department. To achieve this
24 objective, the department shall first review existing auditing,
25 monitoring, and oversight capabilities of the department to
26 determine what further procedures and resources are necessary to
27 achieve this goal.

1 (b) The department shall ensure that all new and renewed
2 contracts described by Subsection (a) include:

3 (1) a provision that the department or a designee of
4 the department may conduct periodic contract compliance reviews,
5 without advance notice, to monitor vendor performance;

6 (2) minimum acceptable standards of performance
7 prescribed by the department that include provisions regarding the
8 health, safety, and welfare of inmates and releasees;

9 (3) a provision that if a review determines that a
10 ~~vendor~~ county is not in compliance with the contract, the
11 department may require that the county's ~~vendor's~~ per diem
12 compensation be withheld until the county ~~vendor~~ meets contract
13 requirements or the vendor is replaced;

14 (4) a provision requiring a vendor not in compliance
15 with the contract to implement a plan of corrective action approved
16 by the department; and

17 (5) a provision under which the state is indemnified
18 for costs of litigation and for any damages in lawsuits alleging
19 that the health, safety, or welfare of an inmate or releasee in a
20 contract facility is not protected.

21 (c) The department shall complete at least one enhanced
22 audit for each facility described by Subsection (a), ~~without regard~~
23 ~~to whether the facility is operated by a public or private vendor.~~
24 The enhanced audit must include an enhanced contract compliance
25 review of any vendors hired by a community supervision and
26 corrections department to operate a facility.

27 (d) The department, in conjunction with an advisory

1 committee composed of state officials ~~and private officials from~~
2 ~~within the industry,~~ shall adopt rules to implement the
3 requirements of this section.

4 (e) The department shall develop an appeals process,
5 incorporated by reference into all new and renewed contracts, under
6 which a county ~~vendor~~ may appeal any imposed sanction under the
7 contract, with the appeals process including the right to a formal
8 hearing and a right to a final determination by the board.

9 SECTION 2. This Act takes effect September 1, 2021.