

By: Stick

H.B. No. 2190

A BILL TO BE ENTITLED

1 AN ACT

2 relating to contracts between the Texas Board of Criminal Justice  
3 and commissioners courts or private vendors for certain facilities.

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

5 SECTION 1. Sections 495.001(b) and (e), Government Code,  
6 are amended to read as follows:

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

9 (1) [~~hold not more than an average daily population of~~  
10 ~~1,000 inmates;~~

11 [~~(2)~~] comply with federal constitutional standards  
12 and applicable court orders; and

13 (2) [~~(3)~~] receive and retain, as an individual  
14 facility, accreditation from the American Correctional  
15 Association.

16 (e) The board shall give priority to entering contracts  
17 under this subchapter that will provide the institutional division  
18 with secure regionally based [~~correctional~~] facilities designed to  
19 successfully reintegrate inmates into society through preparole,  
20 prerelease, work release, and prison industries programs.

21 SECTION 2. Sections 495.003(c) and (d), Government Code,  
22 are amended to read as follows:

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

1 (1) provide for regular, on-site monitoring [~~by the~~  
2 ~~institutional division~~];

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

5 (3) provide for payment of a maximum amount per  
6 biennium;

7 (4) offer a level and quality of programs at least  
8 equal to those provided by state-operated facilities that house  
9 similar types of inmates and at a cost that provides the state with,  
10 after factoring in annual inflation adjustments and other cost  
11 escalation adjustments, a savings of not less than 10 percent of the  
12 cost of housing inmates in similar facilities and providing similar  
13 programs to those types of inmates in state-operated facilities;

14 (5) permit the state to terminate the contract for  
15 cause, including as cause the failure of the private vendor or  
16 county to meet the conditions required by this subchapter and other  
17 conditions required by the contract;

18 (6) [~~provide that cost adjustments may be made only~~  
19 ~~once each fiscal year, to take effect at the beginning of the next~~  
20 ~~fiscal year,~~

21 [~~(7)~~] have an initial contract term of not more than  
22 five [~~three~~] years, with an option to renew for additional periods  
23 of two years;

24 (7) [~~(8)~~] if the proposal includes construction of a  
25 facility, contain a performance bond approved by the board that is  
26 adequate and appropriate for the proposed contract;

27 (8) [~~(9)~~] provide for assumption of liability by the

1 private vendor or county for all claims arising from the services  
2 performed under the contract by the private vendor or county;

3 (9) [~~(10)~~] provide for an adequate plan of insurance  
4 for the private vendor or county and its officers, guards,  
5 employees, and agents against all claims, including claims based on  
6 violations of civil rights arising from the services performed  
7 under the contract by the private vendor or county;

8 (10) [~~(11)~~] provide for an adequate plan of insurance  
9 to protect the state against all claims arising from the services  
10 performed under the contract by the private vendor or county and to  
11 protect the state from actions by a third party against the private  
12 vendor or county, its officers, guards, employees, and agents as a  
13 result of the contract;

14 (11) [~~(12)~~] provide plans for the purchase and  
15 assumption of operations by the state in the event of the bankruptcy  
16 of the private vendor or inability of the county to perform its  
17 duties under the contract; and

18 (12) [~~(13)~~] contain comprehensive standards for  
19 conditions of confinement.

20 (d) Before [~~the commissioners court of~~] a county enters  
21 [~~proposes to enter~~] into a contract under this subchapter, the  
22 commissioners court of the county must approve the contract by vote  
23 [~~receive the written approval of the sheriff of the county. A~~  
24 ~~sheriff may not unreasonably withhold written approval under this~~  
25 ~~subsection~~]. A correctional facility provided by a county under  
26 this subchapter is subject to the same standards and requirements  
27 as a correctional facility provided by a private vendor.

1 SECTION 3. Subchapter A, Chapter 495, Government Code, is  
2 amended by adding Section 495.0031 to read as follows:

3 Sec. 495.0031. PARITY IN CONTRACT TERMS. The board shall  
4 ensure that any contract with a commissioners court or private  
5 vendor imposes the same obligations, notices, and termination  
6 provisions on each party to the contract.

7 SECTION 4. Section 495.008, Government Code, is amended by  
8 amending Subsection (b) and adding Subsection (g) to read as  
9 follows:

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

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

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

18 (3) a provision that if a review determines that a  
19 vendor is not in compliance with the contract, the department,  
20 unless the department is also not in compliance with the contract,  
21 may require that the vendor's per diem compensation be withheld  
22 until the vendor meets contract requirements or the vendor is  
23 replaced;

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

27 (5) a provision under which the state is indemnified

1 for costs of litigation and for any damages in lawsuits alleging  
2 that the health, safety, or welfare of an inmate or releasee in a  
3 contract facility is not protected.

4 (g) The department may not include in a contract a minimum  
5 acceptable standard of performance that exceeds the standard of  
6 performance achieved by the department in facilities operated by  
7 the department.

8 SECTION 5. Sections 495.001(f), 495.006, and 495.007,  
9 Government Code, are repealed.

10 SECTION 6. The change in law made by this Act applies only  
11 to a contract entered into by the Texas Board of Criminal Justice  
12 and a commissioners court or private vendor on or after the  
13 effective date of this Act. A contract entered into before the  
14 effective date of this Act is covered by the law in effect when the  
15 contract was entered into, and the former law is continued in effect  
16 for this purpose.

17 SECTION 7. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2003.