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HOUSE BILL NO. 2629

Offered January 10, 2019

A BILL to amend and reenact §§ 53.1-261, 53.1-262, 53.1-264, 53.1-265, and 53.1-266 of the Code of Virginia and to repeal § 53.1-263 of the Code of Virginia, relating to Corrections Private Management Act; unauthorized private contracts; management or operation of prison facilities prohibited.

Patrons—Guzman, Hope, Kory, Levine, Roem and Simon

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-261, 53.1-262, 53.1-264, 53.1-265, and 53.1-266 of the Code of Virginia are amended and reenacted as follows:

CHAPTER 15.

CORRECTIONS PRIVATE MANAGEMENT SERVICES ACT.

§ 53.1-261. Definitions.

As used in this chapter, unless the context requires otherwise or it is otherwise provided a different meaning:

"Correctional services" means the following functions, services, and activities when provided within a prison or otherwise:

1. Operation of facilities, including management, custody of inmates and provision of security;
2. Food services, commissary, medical services, transportation, sanitation, or other ancillary services;
2. Development and implementation assistance for classification, management information systems, or other information systems or services;
3. Education, training, and employment programs;
4. Recreational, religious, and other activities; and
5. Counseling, special treatment programs, or other programs for special needs.

"Prison" or "facility" or "prison facility" means any institution operated by or under authority of the Department and shall include, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means, any physical betterment or improvement related to the housing of inmates or any preliminary plans, studies, or surveys relative thereto; land or rights to land; and any furnishings, machines, vehicles, apparatus, or equipment for use in connection with any prison facility.

"Prison contractor" or "contractor" means any entity, including a local government, entering into or offering or proposing to enter into a contractual agreement to provide any correctional services to inmates under the custody of the Commonwealth or federal inmates under the custody of the prison contractor, while in the Commonwealth of Virginia.

§ 53.1-262. State correctional facilities; private contracts.

The Director, subject to any applicable regulations which that may be promulgated by the Board pursuant to § 53.1-266 and subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), is hereby authorized to enter into contracts with prison contractors for the financing, site selection, acquisition, construction, maintenance, or leasing, management or operation of prison facilities, or any combination of those services, subject to the following requirements and limitations set out below:

1. Contracts entered into under the terms of this chapter shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which that meets all the requirements in the request for proposals. However, no contract for correctional services may be entered into unless the private contractor demonstrates that it has:

- a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;
- b. The financial resources to provide indemnification for liability arising from prison management projects;
- c. Evidence of past performance of similar contracts, which shall include the experience of persons in management with such entity and may include the experience of the parent of such entity; and
- d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and correctional standards.

2. Contracts awarded under the provisions of this chapter, including contracts for the provision of correctional services or for the lease or use of public lands or buildings for use in the operation of

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59 facilities, may be entered into for a period of up to ~~thirty~~ 30 years, subject to the requirements for
60 annual appropriation of funds by the Commonwealth.

61 3. Contracts awarded under the provisions of this chapter shall, at a minimum, comply with the
62 following:

- 63 a. Provide for internal and perimeter security to protect the public, employees, and inmates;
- 64 b. Provide inmates with work or training opportunities while incarcerated; however, the contractor
65 shall not benefit financially from the labor of inmates;
- 66 c. Impose discipline on inmates only in accordance with applicable regulations; and
- 67 d. Provide proper food, clothing, housing, and medical care for inmates.

68 4. No contract for correctional services shall be entered into unless the following requirements are
69 met:

70 a. The contractor provides audited financial statements for the previous five years or for each of the
71 years the contractor has been in operation; if fewer than five years; and provides other financial
72 information as requested; and

73 b. The contractor provides an adequate plan of indemnification, specifically including indemnity for
74 civil rights claims. The indemnification plan shall be adequate to protect the Commonwealth and public
75 officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to
76 deprive a prison contractor or the Commonwealth of the benefits of any law limiting exposure to
77 liability or setting a limit on damages.

78 5. No contract for correctional services shall be executed by the Director nor shall any funds be
79 expended for the contract unless:

80 a. The proposed contract complies with any applicable regulations ~~which~~ *that* may be promulgated by
81 the Board pursuant to § 53.1-266;

82 b. An appropriation for the services to be provided under the contract has been expressly approved as
83 is otherwise provided by law;

84 c. The correctional services proposed by the contract are of at least the same quality as those
85 routinely provided by the Department to similar types of inmates; and

86 d. An evaluation of the proposed contract demonstrates a cost benefit to the Commonwealth when
87 compared to alternative means of providing the services through governmental agencies.

88 6. A site proposed by a contractor for the construction of a prison facility shall not be subject to the
89 approval procedure set forth in § 53.1-19. However, no contract for the construction ~~and operation~~ of a
90 ~~private~~ correctional facility shall be entered into nor shall any funds be expended for the contract unless
91 the local governing body, by duly adopted resolution, consents to the siting and construction of such
92 facility within the boundaries of the locality.

93 7. *No contract for correctional services shall be entered into for the operation of prison facilities,*
94 *including management, custody of inmates, and provision of security.*

95 **§ 53.1-264. Application of certain criminal law to facilities receiving correctional services by**
96 **prison contractors.**

97 All provisions of law establishing penalties for offenses committed against custodians of inmates,
98 correctional officers, prison guards, or jail officers shall apply mutatis mutandis to offenses committed
99 by or with regard to inmates assigned to facilities or programs ~~for which~~ *where* a prison contractor is
100 providing correctional services.

101 **§ 53.1-265. Powers and duties not delegable to contractor.**

102 No contract for correctional services shall authorize, allow, or imply a delegation of authority or
103 responsibility of the Director to a prison contractor for any of the following:

104 1. Developing and implementing procedures for calculating inmate release and parole eligibility
105 dates;

106 2. Developing and implementing procedures for calculating and awarding sentence credits;

107 3. Approving inmates for furlough and work release;

108 4. Approving the type of work inmates may perform and the wages or sentence credits ~~which~~ *that*
109 may be given the inmates engaging in such work;

110 5. Granting, denying, or revoking sentence credits;

111 6. Classifying inmates or placing inmates in less restrictive custody or more restrictive custody;

112 7. Transferring an inmate; however, the contractor may make written recommendations regarding the
113 transfer of an inmate or inmates;

114 8. Formulating rules of inmate behavior, violations of which may subject inmates to sanctions;
115 however, the contractor may propose such rules to the Director for his review and adoption, rejection, or
116 modification as otherwise provided by law or regulation; ~~and~~

117 9. Disciplining inmates in any manner ~~which~~ *that* requires a discretionary application of rules of
118 inmate behavior or a discretionary imposition of a sanction for violations of such rules; *and*

119 10. *Operating a prison facility, including management, custody of inmates, and provision of security.*

120 **§ 53.1-266. Board shall promulgate regulations.**

The Board shall make, adopt, and promulgate regulations governing the following aspects of private management and operation of prison facilities:

1. Contingency plans for state operation of a contractor-operated facility in the event of a termination of the contract; *and*

2. Use of deadly and nondeadly force by prison contractors' security personnel;

3. Methods of monitoring a contractor-operated facility by the Department or the Board;

4. Public access to a contractor-operated facility; and

5. Such other regulations as may be necessary to carry out the provisions of this chapter.

2. That § 53.1-263 of the Code of Virginia is repealed.

3. The Department of Corrections shall have the Lawrenceville Correctional Center in compliance with the provisions of this act by July 1, 2020.