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HOUSE BILL NO. 2377

Offered January 20, 1997

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 53.1 an article numbered 1.2, consisting of sections numbered 53.1-71.10 through 53.1-71.15, relating to private operation of local jail facilities.

 Patron—Abbitt

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 53.1 an article numbered 1.2, consisting of sections numbered 53.1-71.10 through 53.1-71.15, as follows:

*Article 1.2.**Private Operation of Local Jail Facilities.*

§ 53.1-71.10. Private construction, operation, etc., of local jail facility.

A. Any county with a population of no less than 12,500 and no more than 12,800 may contract with a private entity for the financing, site selection, acquisition, construction, maintenance, leasing, management, or operation of a local jail facility.

B. Any project authorized pursuant to subsection A of this section shall be subject to the requirements and limitations set out below:

1. Contracts entered into under the terms of this article shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which 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 jail management projects;

c. Evidence of past performance of similar contracts; 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 article, 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 facilities, may be entered into for a period of up to thirty years, subject to the requirements for expenditure of funds by the local governing bodies.

3. No contract for correctional services shall be entered into which would adversely affect the tax-exempt status of obligations issued or to be issued to finance the facility, and unless the following requirements are met:

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

b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the county and public officials from all claims and losses incurred as a result of the contract. The indemnification plan shall include liability insurance in limits of not less than five million dollars. Nothing herein is intended to deprive a local jail facility contractor or the county of the benefits of any law limiting exposure to liability or setting a limit on damages.

4. No contract for correctional services shall be executed unless:

a. The proposed contract has been reviewed and approved by the Board;

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

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

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

§ 53.1-71.11. Authority of security employees.

Security employees of a local jail facility contractor shall be allowed to use force and shall exercise their powers and authority only while on the grounds of a local jail facility under the supervision of the

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60 local jail facility contractor, while transporting inmates, and while pursuing escapees from such
61 facilities until such time that the pursuit of the escapees is assumed by state or local law-enforcement
62 agencies. All provisions of law pertaining to custodians of inmates or jail guards or officers shall apply
63 to contractors' security employees.

64 § 53.1-71.12. Application of certain criminal laws to contractor-operated facilities.

65 All provisions of law establishing penalties for offenses committed against custodians of inmates or
66 jail guards or officers shall apply *mutatis mutandis* to offenses committed by or with regard to inmates
67 assigned to facilities or programs for which a local jail facility contractor is providing correctional
68 services.

69 § 53.1-71.13. Powers and duties not delegable to contractor.

70 The local authority issuing the contract shall retain the authority and responsibility for the rules and
71 procedures as they apply to the treatment of prisoners, and no contract for correctional services shall
72 authorize, allow, or imply a delegation of authority or responsibility to a local jail facility contractor for
73 any of the following:

- 74 1. Developing and implementing procedures for calculating inmate release dates;
- 75 2. Developing and implementing procedures for calculating and awarding sentence credits;
- 76 3. Approving inmates for furlough and work release;
- 77 4. Approving the type of work inmates may perform and the wages or sentence credits which may be
78 given the inmates engaging in such work;
- 79 5. Granting, denying, or revoking sentence credits;
- 80 6. Classifying inmates or placing inmates in less restrictive custody or more restrictive custody;
- 81 7. Transferring an inmate; however, the contractor may make written recommendations regarding the
82 transfer of an inmate or inmates;
- 83 8. Formulating rules of inmate behavior, violations of which may subject inmates to sanctions;
84 however, the contractor may propose such rules for review and adoption, rejection, or modification as
85 otherwise provided by law or regulation; and
- 86 9. Disciplining inmates in any manner which requires a discretionary application of rules of inmate
87 behavior or a discretionary imposition of a sanction for violations of such rules.

88 § 53.1-71.14. Board to promulgate regulations.

89 The Board shall make, adopt and promulgate regulations governing the following aspects of private
90 management and operation of local jail facilities:

- 91 1. Minimum standards for the construction, equipment, administration and operation of the facilities;
92 however, the standards shall be at least as stringent as those established for other local correctional
93 facilities;
- 94 2. Contingency plans for operation of a contractor-operated facility in the event of a termination of
95 the contract;
- 96 3. Use of deadly and nondeadly force by local jail facility contractors' security personnel;
- 97 4. Methods of monitoring a contractor-operated facility by an appropriate state or local
98 governmental entity or entities;
- 99 5. Public access to a contractor-operated facility; and
- 100 6. Such other regulations as may be necessary to carry out the provisions of this article.

101 § 53.1-71.15. State reimbursement to localities.

102 A. Reimbursement to the county for the cost of construction shall be made pursuant to Article 3
103 (§ 53.1-80 et seq.) of Chapter 3 of Title 53.1.

104 B. The manner of state payment to the localities for the care and custody costs at the facility of
105 persons accused or convicted of any offense against the laws of the Commonwealth shall be as provided
106 in the general appropriation act. Such payments shall include only the reasonable costs of guarding and
107 providing necessary housing, maintenance, administration, food, clothing, medicine and medical
108 attention for such prisoners. However, in no event shall the payment to the county, when calculated on
109 a per diem per prisoner basis, exceed the total cost ordinarily paid by the Commonwealth to a locality
110 for prisoner care and custody expenses, when calculated on a per diem per prisoner basis.

111 **2. That an emergency exists and this act is in force from its passage.**