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HOUSE BILL NO. 1042

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Militia, Police and Public Safety)

(Patron Prior to Substitute—Delegate Saxman)

House Amendments in [] — February 12, 2004

A *BILL to amend and reenact § 53.1-262 of the Code of Virginia, relating to state correctional facilities; private contracts.*

Be it enacted by the General Assembly of Virginia:

1. That § 53.1-262 of the Code of Virginia is amended and reenacted as follows:

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

The Director, subject to any applicable regulations which 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, leasing, management or operation of prison facilities, or any combination of those services, subject to the 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 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 facilities, may be entered into for a period of up to thirty years, subject to the requirements for annual appropriation of funds by the Commonwealth.

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

a. Provide for internal and perimeter security to protect the public, employees and inmates;

b. Provide inmates with work or training opportunities while incarcerated; however, the contractor shall not benefit financially from the labor of inmates;

c. Impose discipline on inmates only in accordance with applicable regulations; and

d. Provide proper food, clothing, housing and medical care for inmates.

4. No contract for correctional services shall be entered into 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 Commonwealth and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a prison contractor or the Commonwealth of the benefits of any law limiting exposure to liability or setting a limit on damages.

5. ~~No~~ A contract for correctional services shall be executed by the Director ~~nor shall any funds be expended for the contract unless if:~~

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

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 the Department to similar types of inmates; and

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

6. A site proposed by a contractor for the construction of a prison facility shall not be subject to the

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60 approval procedure set forth in § 53.1-19. However, no contract for the construction and operation of a
61 private correctional facility shall be entered into nor shall any funds be expended for the contract unless
62 the local governing body, by duly adopted resolution, consents to the siting and construction of such
63 facility within the boundaries of the locality.

64 **2. That on and after July 1, 2004, no new prison financing, site selection, acquisition, construction,**
65 **or maintenance, leasing, management or operation of any new prison facility shall be commenced**
66 **unless based upon [a written analysis of such components being performed by] contract under**
67 **the Correctional Private Management Act (§ 53.1-261 et seq.) [or the Public-Private Education**
68 **Facilities and Infrastructure Act (§ 56-575.1 et seq.)] of the Code of Virginia.**