

Approved

Date

2-5-91

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 ~~a.m.~~/p.m. on January 24, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Sebelius, and Snowbarger who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee: (Re: HB 2003)

Senator Edward Reilley
Representative Bill Bryant
Representative Carl Holmes
Chuck Simmons, Department of Corrections
Jonathan Small, Washington County Citizens for Sound Economic
Progress
Arthur Yaussi, private citizen from rural Horton, Kansas

The Chairman called for continuation of hearing of HB 2003.

Senator Edward Reilley appeared before the committee to give background of HB 2003. Sen. Reilley noted the primary concern of the bill is dealing with liability and the proliferation of a variety of prisons being built throughout the State; that HB 2003 would extend the prohibition permanently, which was the intent of the 1990 Legislature; that the interim committee recommendation was that Kansas should not look at private prisons for at least the time being; that he neither supports nor opposes HB 2003 but would encourage an escape mechanism in the bill via the Department of Corrections or some other appropriate body to monitor cost, etc.; that long-range vision is needed.

Representative Bill Bryant appeared before the committee and commented regarding his work with the interim committee on the private prison issue. Rep. Bryant said he is neither a proponent nor opponent but has concerns; some degree of privatization does occur in 36 other states but in Kansas the request has been for private facilities to operate independently of local or state interests; that liability may be controlled by other sources than local interests e.g. bond holders; that incentive to do a good job exists for private entities; that ACA standards must be met; that cooperation between states would be required; that if a moratorium is extended it should not be made permanent, but time should be allowed for a study; that little progress has been made in correctional facilities; that new, innovative ideas with less cost are needed.

A committee member asked if a referendum would be held in Representative Bryant's county if a private prison issue came up. Representative Bryant said a vote would be in order.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
 room 313-S Statehouse, at 3:30 ~~x~~m./p.m. on January 24, 1991

Representative Carl Holmes appeared to explain his involvement with the private prison issue as chairman of a sub-committee in the House Local Government Committee in the 1990 Session; that last year numerous hearings were held on HB 2835; the House Judiciary Committee was involved; that the local vote issue is complex, e.g. who should be included in the vote; that property tax exemptions were discussed; that ACA standards were discussed; that civil rights and bankruptcy issues were concerns; that liabilities of bond holders and contract costs and provisions were discussed; that HB 2003 is the result of all the deliberation and he feels comfortable with it; that he would leave the issue open to change.

Chuck Simmons, Department of Corrections, appeared to comment on HB 2003. Mr. Simmons distributed memo, dated January 24, 1991, to the committee (Attachment # 1) and stated the DOC position has been consistent on the issue of private prisons; that the DOC neither supports nor opposes private prisons; that the public policy of the Department is set out in the attachment regarding protection of public safety, protection of the public from liability, and the appropriate operation of the facilities; that any regional prison authority should be required to post a surely bond; that the DOC responsibility should be defined.

A committee member asked if the supply of correctional people in Kansas is adequate. Mr. Simmons affirmed. A committee member asked if other states with private prisons encounter similar problems. Mr. Simmons stated this is a new area without many models to look at. A committee member asked if the State would have authority to build and operate a prison and, if so, would the DOC have a monopoly.

Jonathan Small, Washington Citizens for Sound Economic Progress appeared in support of HB 2003. Mr. Small noted the issue had been thoroughly reviewed by the interim committee; that the bill contains a safety-valve; i.e. the Legislature, that if the bill is passed favorably, cities and counties wanting to build private prisons will have to come back to the State with a sound plan; that Washington County has opposed the private prison concept for three years; that HB 2003 helps assure that a complex issue is handled right.

A committee member asked why it does not serve the same purpose to extend the moratorium rather than make it permanent. Mr. Small said permanence is needed so that the issue does not continue to reappear requiring testimony from opponents and to hire lobbyists. Mr. Small noted that the city had voted for a prison and Washington County had no voice in the matter.

The Chairman asked if Mr. Small agrees that HB 2003 is the moratorium which can be lifted at any time by the Legislature. He affirmed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S Statehouse, at 3:30 ~~xxx~~ p.m. on January 24, 1991

Arthur Yaussi, a private citizen of rural Horton, Kansas, appeared in support of HB 2003. Mr. Yaussi said when a state prison was defeated, Horton in Kansas Incorporated, attempted to build a private prison; that the group was from Florida and promoted the prison for economic development; that many of the promoters were short-term residents of Horton; that a permanent moratorium is desirable so that opponents do not have to reappear time after time for testimony.

The hearing on HB 2003 was closed.

Representative Smith moved that HB 2003 be passed.
Representative Carmody seconded the motion.

Representative Vancrum made a substitute motion to put "c" back into the bill and would make the moratorium expire on July 1, 1993. Representative Lawrence seconded the motion.

A committee member pointed out that there needs to be a shift of burden from the city/county residents to the private prison promoters who should furnish guidelines to the State Legislature for consideration.

The Chairman called for a vote on the substitute motion to extend the moratorium for two years. The motion failed.

Discussion followed on the original motion.

The original motion carried.

The Chairman appointed a sub-committee to study the SRS issue of termination of parental rights, along with a Senate sub-committee pursuant to a request by Senator Winter as received by the SRS Task Force. The House sub-committee appointees are: Representative Everhart, Chairperson; Representative Macy; and Representative Scott.

The meeting adjourned at 4:55 P.M. The next meeting of the committee is scheduled for Monday, January 28, 1991, at 3:30 p.m. in room 313-S.

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY

Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Joan Finney
Governor

Steven J. Davies, Ph.D.
Secretary

Date: January 24, 1991
To: House Committee on Judiciary
From: Steven J. Davies, Ph.D.
Secretary of Corrections
Subject: House Bill 2003

SD

House Bill No. 2003 would prohibit cities, counties, and private entities from operating correctional facilities for confining inmates from another state until a public policy was developed. This prohibition would be accomplished by removing the July 1, 1991, expiration date on the prohibition. This date was established last session when the issue of private prisons and regional prisons was considered.

The Department has testified concerning this legislation on several occasions. In doing so we have stated that the Department neither opposes nor supports private prisons or regional prisons. However, I have stated that a public policy regarding such facilities should be in place, and that specific areas should be addressed in any such policy. In addition, the role of the Department of Corrections in the operation and oversight of such facilities should be clearly determined prior to the establishment of any of these facilities.

Any public policy regarding an issue such as corrections must first address the paramount concern of public safety. The safety and wellbeing of the citizenry of this state must always be our primary responsibility in the development and implementation of correctional facilities and programs. As a means of meeting this responsibility, reasonable measures to provide assurances that the facilities are being operated in a responsible and professional manner should be included in the guidelines for privately or municipally operated facilities.

The protection of the general public from the risk of liability resulting from the operation of privately or municipally operated correctional facilities should also be a primary consideration in

HJUD
1/24/91
ATTACHMENT #1

the development of a public policy in this area. A number of provisions to limit the exposure of the state to liability were suggested by the Department of Corrections during hearings last session.

In addition to addressing the state's liability exposure, measures to allow the state to recover expenses resulting from oversight activities and other involvement in privately or municipally operated correctional facilities should be considered. It is my position that the general public should not be expected to assume financial burdens resulting from the operation of such facilities.

Some of the measures suggested by the Department of Corrections in hearings last session on this issue included:

- A requirement that such correctional facilities be operated in conformance with standards of the American Correctional Association and that audits to determine compliance with these standards be conducted on an annual basis. All contracts for the placement of inmates at such correctional facilities must require conformance with ACA standards.
- A requirement that the state and any local unit of government be reimbursed for court costs and jury fees resulting from the prosecution of an out-of-state inmate who is convicted of a felony committed while confined in a facility operated by a private entity or a municipality and is sentenced to the custody of the secretary of corrections. The amount of the reimbursement should be the per diem cost of incarcerating an inmate in a Kansas facility as calculated by the Department of Corrections.
- A requirement that the state be reimbursed for the reasonable costs incurred by the state in responding to any emergency situation whether the response is initiated by the state or is requested by the entity operating the correctional facility.
- A requirement that the state be reimbursed for the reasonable expenses incurred by state agencies in monitoring pursuant to K.S.A. 75-5228, the correctional facility.
- A provision that the State of Kansas and the Department of Corrections will not be held liable for the design, construction, and operation of such a correctional facility.
- The entity operating the correctional facility should be required to purchase a surety bond or other financial assurance to provide security for all reimbursable costs to the

State of Kansas or local units of government. The form and amount of the bond should be determined by the state.

- The entity operating the correctional facility should be required to maintain in effect at all times liability insurance policies regarding all operational aspects of the facility.
- The entity operating the correctional facility should be required to provide for the indemnification of the state for all legal actions resulting from the operation of the facility. This should extend to any judgments against state officials resulting from such operations as well as all legal expenses incurred by the state in defending itself from such actions.
- A procedure should be in place to specify what will occur in the event that an entity operates a facility in violation of any statutory requirements or in an unconstitutional manner. This should include a provision for the return of any inmates to the sending state within a specific time period.

The provisions set forth above are viewed by the Department of Corrections as being important to any public policy regarding the private prison issue. There may well be additional guidelines, restrictions, or protections which should be considered. In suggesting the need for these provisions, it is not my intent to kill the private prison concept. However, I do not believe the state should venture into this area without taking reasonable and responsible measures to protect the public's interests.

In considering the role of the Department of Corrections, I feel I must again point out that the Department does not now have the personnel and resources to undertake a significant participation in the planning and monitoring of such a facility. The review and approval of plans takes literally thousands of manhours and is a continuing process through the construction of the facility. I do not now have the time, personnel, or resources to undertake this additional task. In previous legislation on this issue there is a provision that the plans for a facility operated by a regional prison authority will be developed in "full consultation with and approval of the secretary of corrections of the state of Kansas." The inclusion of such a provision in any public policy on this issue would have to be made with the full recognition that it will require additional staff and resources for the Department of Corrections.

House Committee on Judiciary
H.B. 2003
Page 4
January 24, 1991

As I have said before, I do not oppose the regional prison authority or private prison concept. I do believe, however, that the state should not venture into this area without taking reasonable and responsible measures to protect the public safety and interest.

SJD:CES/pa