

SESSION OF 2006

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2688

As Amended by House Committee on
Appropriations

Brief*

HB 2688 would enact the Private Contract Prison law. This bill would provide for the authorization, construction, license, and operation of a private prison by a private contractor under the oversight of the Secretary of Corrections. This bill would allow the Secretary to authorize, license, monitor and regulate one or more private contractors who construct, own or operate one or more private prisons in the state. The Secretary could suspend or revoke a license for failure to obtain or maintain accreditation or failure to comply with any requirements of this Private Contract Prison law. The Department of Corrections would not be obligated to house inmates at any private contract prison in the state. The bill would require private prisons in the state to:

- Seek, obtain, and maintain accreditation by the American Correctional Association and the National Commission on Correctional Health Care;
- Abide by operations standards for correctional facilities adopted by the Secretary;
- Indemnify the state and the Secretary against any and all liability including, but not limited to, any civil rights claims. The Secretary would require proof of satisfactory insurance and the Secretary would determine the amount of the insurance.
- Be responsible for dental, medical and psychological services and diet, education and work programs at least equal to those services and programs provided by the Secretary at comparable state correctional activities if Kansas inmates are being housed in the private contract prison; and
- Incarcerate all inmates assigned to the private contract prison by

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

the Department and may not reject inmates assigned to it by the Department.

The private contract prison would not be authorized, allowed or delegated authority to:

- Make a decision that affects the sentence imposed upon or the time serve by an inmate;
- Make recommendations to the Kansas Parole Board with respect to denial or granting of parole or release except the licensee may submit written reports to the Kansas Parole Board; and
- Determine inmate eligibility for any form of release from a correctional facility including any private contract prison.

The private operator will submit and the Secretary of Correction shall approve a plan to address emergencies and the private operator shall be liable for all expenses incurred by the state and its subdivisions in responding to any emergency or serious event. If an emergency occurs involving noncompliance or violation of the requirements of the bill and presents a serious threat to the safety, health or security of the inmates, employees or the public, the Secretary could without prior notice, temporarily assume operation and control of the private contract prison.

The private owner would reimburse Kansas state agencies or political subdivisions of the state for all costs incurred with respect to the investigation, prosecution, detention, criminal defense or appellate litigation of a Kansas or non-Kansas inmate charged with a crime committed within the private contract prison or a non-Kansas inmate who escapes and allegedly commits criminal conduct.

The state would not be required to purchase or lease any private contract prison beds, assume responsibility for the operation of any private contract prison or to assume costs in the event the private operator becomes unable to meet the requirements of the bill. If the state chooses it could assume responsibility upon approval by the Legislature.

If the private owner intends to sell, transfer or otherwise alienate title to a private contract prison, the Secretary would be given first notice and the state would have the right of first refusal to lease or purchase the private contract prison at fair market value, although the state would not be required to purchase or lease the private contract

prison.

No private contract prison would be constructed, owned or operated in any county unless the county commission has received written notice of approval from the sheriff of such county and the Secretary of Corrections. The board would be required to adopt a resolution placing on the ballot the question and that it be approved by a majority of the qualified voters in the county.

Except for land donation, no direct incentives, such as property tax abatement, industrial revenue bonds, tax increment financing, or utility cost reductions, shall be offered by the county to the private contractor.

The bill also would create in the state treasury the Corrections Licensing Fee Fund, for depositing of licensing application fees, monitoring fees and any other fees authorized by the bill. The Fund would be utilized to pay costs associated with the implementation and enforcement of the bill. The Secretary would establish rules and regulations prescribing the fees necessary for the implementation and enforcement of the bill.

The Secretary of Corrections would give first consideration to Kansas cities and counties when attempting to place any inmate classified as medium or higher custody in facilities other than correctional facilities owned and operated by the Department of Corrections including private contract prisons.

Background

HB 2688 was supported by Representative Forest Knox. Also testifying in support of the bill were Sunflower Solutions: A Private Prison Task Force; and a representative of the Attorney General's Office. Written testimony was provided from the Kansas County and District Attorneys Association, Ray Allen and Associates and Chris Kollman (private citizen). Testifying from a neutral position on the bill was the Secretary of Corrections. Testifying in opposition to the bill was a representative of the Kansas Catholic Conference.

The House Committee on Appropriations amended the bill to include that the private owner would reimburse the state for all costs incurred relating to the investigation, prosecution, detention, criminal defense or appellate litigation of a Kansas or non-Kansas inmate charged with a crime within the private contract prison or a non-

Kansas inmate who escapes and allegedly commits criminal crimes.

The fiscal note on the original bill prepared by the Division of Budget indicates that any fiscal effect of the bill would be for monitoring and case management personnel. The Department of Corrections would recover those costs from the private prison contractor through licensing fees. If the Department chooses to utilize the private prison for housing a portion of the state's inmate population, additional expenditures from the State General Fund would be required. However, the bill does not require the state to purchase any beds from the contractor.