

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL 548

By: Senators Gibson, Nelson, Beebe, Howell,  
Wilson, Bearden, and Harriman

As engrossed 3-4-87

"AN ACT PROVIDING FOR COOPERATIVE ENDEAVORS AMONG THE STATE AND POLITICAL SUBDIVISIONS TO FINANCE, CONSTRUCT, ACQUIRE AND OPERATE PRISON FACILITIES, AND PROVIDING FOR THE PRIVATE MANAGEMENT OF SUCH PRISON FACILITIES AND OTHER MATTERS."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. TITLE. This Act shall be referred to and may be cited as the "Corrections Cooperative Endeavors and Private Management Act."

SECTION 2. LEGISLATIVE FINDINGS AND DETERMINATIONS. The General Assembly hereby finds that adequate and modern prison facilities are essential to the safety and welfare of the people of this State.

It is hereby legislatively determined that adequate and modern prison facilities need to be made available and that a feasible and economic way of financing, constructing, acquiring and operating the same is by authorizing cooperative endeavors and private management under the authority of this Act.

SECTION 3. DEFINITIONS. For the purposes of this Act, the following terms shall be defined as follows, unless the context otherwise requires:

(1) "Bond" or "Bonds" shall mean all bonds, notes, certificates or other instruments or evidences of indebtedness issued by the Arkansas Development Finance Authority to finance Prison Facilities.

(2) "Board" shall mean the Board of Corrections.

(3) "Correctional Services" shall mean the following functions, services and activities, when provided within a prison or otherwise:

A. Operation of facilities; including management, custody of inmates and providing security;

B. Food services, commissary, medical services, transportation,

sanitation or other ancillary services;

C. Development and implementation assistance for classification, management, information systems or other information system or services;

D. Education, training and jobs program; and

E. Counseling, special treatment programs, or other programs for special needs.

(4) "Department" shall mean the Arkansas Department of Corrections.

(5) "Director" shall mean the Director of the Arkansas Department of Corrections.

(6) "Governing Body" shall mean:

A. The city council or board of directors or comparable body for a city.

B. The town council or board of directors or comparable body for a town.

C. The quorum court for a county.

(7) "Local Facilities" shall mean those correctional facilities which are under the jurisdiction of a Political Subdivision.

(8) "Political Subdivision" shall mean a city of any class, a town or a county.

(9) "Prison" or "Facility" or "Prison Facility" shall mean any institution operated by or under authority of the Department or a Political Subdivision, a Sheriff or Chief of Police 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.

(10) "Prison Contractor" or "Contractor" means any entity entering a contractual agreement to provide any Correctional Services to inmates under the custody of the State or a Political Subdivision.

(11) "State" shall mean the State of Arkansas.

(12) "State Facilities" shall mean those correctional facilities which are under the jurisdiction of the Department of Corrections.

SECTION 4. REGIONAL CORRECTIONAL COMMISSIONS. Political Subdivisions

may individually, or in combination with each other, contract with the State through the Department or with Prison Contractors for the financing, acquisition, construction and operation of facilities for the housing of inmates.

(1) In the event two or more counties jointly enter into an agreement with the State or with a Prison Contractor, they shall form a Regional Corrections Commission which shall be composed of the county judge of each county or his designee. In the case of a Commission having an even number of parties, the appointed representatives of the parties to the Commission shall select an additional person, who is acceptable to all representatives to the Commission, to serve on the Commission. The members of the Commission shall serve terms of three (3) years duration, shall be eligible for reappointment and may be removed only for cause by the quorum court of the county which they represent. In the event of a vacancy other than by expiration of term, the vacancy shall be filled by the Governing Body of the county of the representative unable to complete his term.

(2) In the event that any city or town, with or without one or more counties, enters into an agreement with the State or with a Prison Contractor, the chief executive officer of each city or town or his designee, shall serve on the Commission. In the case of a Commission having an even number of parties, the appointed representatives of the parties to the Commission shall select an additional person, who is acceptable to all other members of the Commission, to serve on the Commission. The members of the Commission shall serve terms of three (3) years duration, shall be eligible for reappointment and may be removed only for cause by the Governing Body of the city, or town which they represent. In the event of a vacancy other than by expiration of term, the vacancy shall be filled by the governing body of the political subdivision of the representative unable to complete his term.

(3) In any contract for Correctional Services entered into pursuant to this Act by a Regional Corrections Commission, the Commission members shall submit to the Governing Body of each Political Subdivision for approval the following contract terms: The fee to be paid by each Political Subdivision, the minimum financial guarantees of each Political Subdivision and the method of billing.

#### SECTION 5. STATE AND LOCAL CORRECTIONS FACILITIES, PRIVATE CONTRACTS.

(1) The Department, any Regional Corrections Commission and any Political

Subdivision are hereby authorized to enter into contracts with each other and with Prison Contractors for the financing, acquiring, constructing and operating of Facilities.

(2) Any contract for the financing, acquiring, constructing or operating of Facilities between the Department and a Prison Contractor shall be approved by the Board subject to the advice and consent of the Legislative Council.

(3) Contracts entered into under the terms of this Act shall be negotiated with the firm found most qualified. 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 the contract;
- B. The financial strength and ability to provide indemnification for liability arising from large prison management projects;
- C. Evidence of past performance of similar contracts and;
- D. The ability to comply with applicable court orders and correctional standards.

(4) Contracts awarded under the provisions of this Section, 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 State or Local Facilities, may be entered into for a period of up to twenty (20) years, subject to the requirement for annual appropriation of funds by each Political Subdivision and subject to the requirement of biennial appropriations by the State.

(5) Contracts awarded under the provisions of this Section 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 rules and procedures.
- D. Provide proper food, clothing, housing and medical care for inmates.

(6) 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 (5) years or for each of the years the contractor has been in operation, if fewer than five (5) 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 State, Political Subdivision(s) and public officials, including sheriffs and chiefs of police from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a Prison Contractor, the State, or a Political Subdivision of the benefits of any law limiting exposure to liability or setting a limit on damages.

SECTION 6. USE OF FORCE, POLICE POWERS. (1) Security employees of a Prison Contractor shall be allowed to use force and shall be licensed pursuant to Ark. Stat. Ann. §71-2122 and shall exercise their powers and authority only:

A. While on the grounds of an institution under the supervision of the Prison Contractor;

B. While transporting inmates;

C. While pursuing escapees from such institution.

SECTION 7. APPLICATION OF CERTAIN CRIMINAL LAW TO CONTRACTOR-OPERATED FACILITIES. The provisions of Ark. Stat. Ann. §§41-2801 through 41-2857, shall apply to offenses committed by or with regard to inmates assigned to facilities or programs for which a Prison Contractor is providing Correctional Services.

SECTION 8. POWERS AND DUTIES NOT DELEGABLE TO CONTRACTOR. No contract for Correctional Services shall authorize, allow or imply a delegation of authority or responsibility of the Director or the Sheriff of any county or the Police Chief of any city or town to a Prison Contractor for any of the following:

(1) Developing and implementing procedures for calculating inmate release and parole eligibility dates;

- (2) Developing and implementing procedures for calculating and awarding sentence credits;
- (3) Approving inmates for furlough and work release;
- (4) Approving the type of work inmates may perform, and the wages or sentence credits which may be given the inmates engaging in such work; and
- (5) Granting, denying, or revoking sentence credits.

SECTION 9. AUTHORITY TO CONTRACT WITH ARKANSAS DEVELOPMENT FINANCE AUTHORITY. (a) The Board and any Regional Corrections Commission are hereby authorized and empowered to cooperate and contract with the Arkansas Development Finance Authority to provide for the payment of the principal of, premium, if any, interest on, and trustee's and paying agent's fees in connection with bonds issued to finance the acquisition, construction and operation of Prison Facilities authorized under this Act, to be secured by a lien on and pledge of one or more of the following: (1) all revenues derived from payments to be made by the Department for the housing of prisoners; (2) all revenues derived from payments to be made by Political Subdivisions for the housing of prisoners; (3) any other revenues authorized by the Arkansas General Assembly or the governing body of any Political Subdivision. Any documents relating to such pledges shall state that the pledge is subject to annual appropriation by the Governing Body or biennial appropriation of the General Assembly, respectively. It shall not be necessary to the perfection of the lien and pledge for such purposes that the Trustee in connection with such bond issue or the holders of the bonds take possession of the collateral security.

(b) In addition to any other approved method of financing, counties may utilize the provision of Ark. Stat. Ann. §46-431 et seq., as a permissible means of financing correctional facilities to be used pursuant to the contracts entered into under the provisions of this Act.

SECTION 10. HIRING PREFERENCE. (1) State and Political Subdivision employees whose employment becomes subject to a contract with a private Prison Contractor shall be given a hiring preference for available positions for which they qualify, by the Contractor.

SECTION 11. MISCELLANEOUS. (1) All laws and parts of laws in conflict

herewith are hereby repealed to the extent of such conflict.

(2) The provisions of this Act are hereby declared to be severable. If any provision of this Act should be declared to be invalid or to be inapplicable to any person or circumstance, such determination shall not affect the validity or applicability of the other provisions of this Act.

SECTION 12. LIBERAL CONSTRUCTION - APPLICABILITY OF OTHER ACTS. This Act shall be liberally construed to accomplish the intent and purposes thereof and shall be the sole authority required for the accomplishment of such purposes. To this end, it shall not be necessary to comply with general provisions of other laws dealing with public commodities and public facilities, their acquisition, construction, leasing, encumbering or disposition, provided that the Board and the Regional Corrections Commission shall comply with Section 5 of this Act. The enumeration of any object, purpose, power, manner, method and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things.

SECTION 13. EMERGENCY. The General Assembly hereby finds and declares that adequate and modern facilities are essential to the safety and welfare of the people of this State; and that adequate and modern facilities need to be made available and that the most feasible and least expensive way of financing and acquiring the same is by authorizing cooperative endeavors and private management under the authority of this Act. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall be effective upon its passage and approval.

