

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1006**

Introduced by McGill, 26.

Read first time January 21, 2014

Committee:

A BILL

1 FOR AN ACT relating to public contracts; to amend section 47-803,  
2 Reissue Revised Statutes of Nebraska; to prohibit state  
3 agencies from entering into contracts that include  
4 certain provisions; to harmonize provisions; and to  
5 repeal the original section.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. (1) No state agency as defined in section  
2 73-502 may enter into a contract with a private person or entity that  
3 (a) guarantees payment for services not provided, (b) unduly  
4 restricts the state agency from taking actions in the public  
5 interest, or (c) unfairly places the burden of risk under the  
6 contract on taxpayers.

7           (2) Contract provisions prohibited by this section  
8 include, but are not limited to:

9           (a) Provisions that guarantee a certain occupancy rate  
10 for private prisons or any other contracted facility;

11           (b) Provisions that prohibit a state agency from  
12 maintaining, improving, or building public infrastructure; and

13           (c) Provisions that penalize a state agency if a  
14 contractor loses revenue as a result of natural or manmade  
15 emergencies.

16           Sec. 2. Section 47-803, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           47-803 (1) The Department of Correctional Services shall  
19 develop criteria for the process by which a contractor for the  
20 construction or operation, or both, of a private prison is to be  
21 awarded a contract. The criteria shall be subject to approval by the  
22 Director of Correctional Services. The criteria for selection of a  
23 site for a proposed facility to be constructed or operated, or both,  
24 by a private prison contractor shall include, but shall not be  
25 limited to, the availability of medical services, support services,

1 and transportation services and the availability of potential  
2 employees who would be qualified to perform required functions at a  
3 state correctional facility.

4 (2) Any contract between the department and a private  
5 prison contractor pursuant to which the private prison contractor  
6 provides for the housing, care, and control of inmates in a  
7 nondepartmental facility operated by the private prison contractor  
8 shall comply with section 1 of this act and shall contain, in  
9 addition to other provisions, the following terms and conditions:

10 (a) Requiring the private prison contractor to provide  
11 such services in a facility which meets accreditation standards  
12 established by the American Correctional Association;

13 (b) Requiring the contractor to receive and maintain  
14 accreditation for the facility from the American Correctional  
15 Association within two years after commencement of operations of the  
16 facility;

17 (c) Requiring the Department of Correctional Services to  
18 determine where the facility is to be located and to obtain written  
19 authorization from the appropriate municipality or the county board  
20 of the county in which the facility is to be located; and

21 (d) Granting the department the option at the beginning  
22 of each fiscal year, pursuant to an agreement, to purchase any such  
23 facility, with or without inventory or other personal property, at a  
24 predetermined price which shall be negotiated and included in a  
25 schedule or a formula to be contained in the original agreement.

1           (3) A private prison contractor proposing to enter a  
2 contract with the department for construction or operation, or both,  
3 of a correctional facility pursuant to this section shall  
4 demonstrate:

5           (a) The qualifications and the operations and management  
6 experience to carry out the terms of the contract; and

7           (b) The ability to comply with the standards of the  
8 American Correctional Association and with specific court orders.

9           (4) In addition to meeting the requirements specified in  
10 the request for proposals, a proposal for the construction and  
11 operation of a correctional facility shall:

12           (a) Provide for regular, onsite monitoring by the  
13 department;

14           (b) Acknowledge that payment by the state is subject to  
15 the availability of appropriations;

16           (c) Provide for payment of a maximum amount per fiscal  
17 year;

18           (d) Provide for meeting performance criteria or be  
19 subject to penalties;

20           (e) Demonstrate a cost benefit to the State of Nebraska  
21 when compared to the level and quality of programs provided by state  
22 correctional facilities that have similar types of inmates at an  
23 operational cost not more than the cost of housing inmates in similar  
24 facilities and providing similar programs to those types of inmates  
25 in state-operated facilities. The department shall be responsible for

1 determining the costs and benefits of the proposal;

2 (f) Permit the state to terminate the contract for cause;

3 (g) Contain a per diem operational cost per inmate for  
4 the initial year of operations;

5 (h) Subject to appropriations, provide that cost  
6 adjustments may be made only once each fiscal year, to take effect at  
7 the beginning of the next fiscal year using as the maximum percentage  
8 increase, if any, an increase not to exceed the previous year's  
9 Consumer Price Index for All Urban Consumers as prepared by the  
10 United States Department of Labor, Bureau of Labor Statistics;

11 (i) Have an initial contract term of not more than two  
12 years, with an option to renew;

13 (j) If the proposal includes construction of a facility,  
14 contain necessary bonds and performance conditions approved by the  
15 department that are adequate and appropriate for the proposed  
16 contract;

17 (k) Provide for assumption of liability by the private  
18 prison contractor for all claims arising from the services performed  
19 under the contract by the private prison contractor;

20 (l) Provide for an adequate plan of insurance for the  
21 private prison contractor and its officers, employees, and agents  
22 against all claims, including claims based on violations of civil  
23 rights arising from the services performed under the contract by the  
24 private prison contractor;

25 (m) Provide for an adequate plan of insurance to protect

1 the state against all claims arising from the services performed  
2 under the contract by the private prison contractor and to protect  
3 the state from actions by a third party against the private prison  
4 contractor, its officers, employees, and agents as a result of the  
5 contract;

6 (n) Provide plans for the purchase and assumption of  
7 operations by the state in the event of the bankruptcy of the private  
8 prison contractor; and

9 (o) Contain comprehensive standards for conditions of  
10 confinement.

11 (5) At the end of each fiscal year, the department shall  
12 determine the average daily cost per inmate for the operational costs  
13 at each major category of correctional facility. There shall be a  
14 separate computation of the average daily rate for medium security,  
15 minimum security, and community corrections facilities.

16 (6) If no proposals conform to the established criteria,  
17 the department shall prepare an additional request for proposals. The  
18 department shall evaluate the proposals within thirty days after  
19 receipt from the prospective private prison contractors. The  
20 department shall specifically determine whether a proposal meets the  
21 requirements of subdivision (4)(e) of this section by comparing the  
22 daily rate for housing and care of inmates pursuant to any proposed  
23 contract with a private prison contractor to the daily rate for  
24 housing and care of inmates at the comparable type of facility  
25 operated by the department. The department shall evaluate proposals

1 taking into account any direct or indirect costs that would continue  
2 to be paid by the department, including, but not limited to,  
3 transportation, records management, discipline, general  
4 administration, management of inmate trust funds, and major medical  
5 coverage. Such costs shall be added to the proposed per diem of the  
6 private prison contractor when comparing the total per diem costs of  
7 facilities operated by the state.

8 (7) If the department proposes to enter into a contract  
9 for the construction or the operation, or both, of a private prison,  
10 the department shall compare both the capital costs and the operating  
11 costs for the facility to the imputed capital costs and the projected  
12 operating costs of a comparable facility constructed and operated by  
13 the department.

14 (8) A selection committee shall be established and shall  
15 deliver to the Director of Correctional Services a list containing  
16 the top three qualified prospective private prison contractors  
17 identified pursuant to this section together with the information  
18 reviewed and analyzed by the department during analysis of the  
19 proposals as required by this section. The director shall evaluate  
20 the information provided and shall make a final decision selecting  
21 the contractor within thirty days after receipt of the list and the  
22 information.

23 (9) Any contract subject to this section entered into by  
24 the Department of Correctional Services shall be subject to the  
25 approval of the Governor.

1                   Sec. 3. Original section 47-803, Reissue Revised Statutes  
2 of Nebraska, is repealed.