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Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

HOUSE BILL 2709

AN ACT

AMENDING TITLE 41, CHAPTER 11, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-1685, 41-1686 AND 41-1687; RELATING TO PRIVATE PRISONS; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 41, chapter 11, article 8, Arizona Revised Statutes,
3 is amended by adding sections 41-1685, 41-1686 and 41-1687, to read:

4 41-1685. Foreign private prison commission

5 A. THE FOREIGN PRIVATE PRISON COMMISSION IS ESTABLISHED CONSISTING OF
6 SEVEN MEMBERS. THE GOVERNOR SHALL APPOINT THE MEMBERS, PURSUANT TO SECTION
7 38-211, WHO HAVE EXPERTISE IN THE FIELDS OF CORRECTIONS, LAW ENFORCEMENT,
8 IMMIGRATION LAW, INTERNATIONAL LAW AND INTERNATIONAL TRADE, AND THE DIRECTOR
9 OF THE ARIZONA-MEXICO COMMISSION WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE
10 OF THIS SECTION. MEMBERS SERVE FOUR YEAR TERMS.

11 B. MEMBERS OF THE COMMISSION ARE NOT ELIGIBLE TO RECEIVE COMPENSATION
12 BUT ARE ELIGIBLE TO RECEIVE REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38,
13 CHAPTER 4, ARTICLE 2.

14 C. THE COMMISSION SHALL BE RESPONSIBLE FOR THE OVERALL OPERATIONS AND
15 ADMINISTRATION OF PRIVATE PRISON FACILITIES THAT ARE LOCATED IN MEXICO AND
16 THAT HOUSE MEXICAN NATIONALS WHO HAVE BEEN CONVICTED OF ANY OFFENSE IN THIS
17 STATE.

18 41-1686. Private prison facility; Mexico; contracts

19 A. THE DEPARTMENT OF ADMINISTRATION, IN COOPERATION WITH THE FOREIGN
20 PRIVATE PRISON COMMISSION, SHALL ISSUE A REQUEST FOR PROPOSALS FOR THE
21 CONSTRUCTION AND OPERATION OF A PRIVATE PRISON FACILITY TO BE LOCATED IN
22 MEXICO AND TO HOUSE MEXICAN NATIONAL PRISONERS.

23 B. ON PUBLICATION, ANY REQUEST FOR PROPOSALS SHALL BE PROVIDED TO THE
24 JOINT LEGISLATIVE BUDGET COMMITTEE FOR ITS REVIEW.

25 C. TO BE CONSIDERED FOR AN AWARD OF A CONTRACT, THE PROPOSER MUST
26 DEMONSTRATE THAT IT HAS:

27 1. THE QUALIFICATIONS, OPERATIONS AND MANAGEMENT EXPERIENCE AND
28 EXPERIENCED PERSONNEL NECESSARY TO CARRY OUT THE TERMS OF THE CONTRACT.

29 2. THE ABILITY TO COMPLY WITH APPLICABLE CORRECTIONAL STANDARDS AND
30 ANY SPECIFIC COURT ORDER, IF REQUIRED.

31 3. A DEMONSTRATED HISTORY OF SUCCESSFUL OPERATION AND MANAGEMENT OF
32 OTHER SECURE FACILITIES.

33 D. THE PROPOSER SHALL AGREE THAT THIS STATE MAY CANCEL THE CONTRACT AT
34 ANY TIME AFTER THE FIRST YEAR OF OPERATION, WITHOUT PENALTY TO THIS STATE, ON
35 GIVING AT LEAST NINETY DAYS' WRITTEN NOTICE.

36 E. A CONTRACT MAY PROVIDE FOR ANNUAL CONTRACT PRICE OR COST
37 ADJUSTMENTS, EXCEPT THAT ANY ADJUSTMENTS MAY BE MADE ONLY ONCE EACH YEAR
38 EFFECTIVE ON THE ANNIVERSARY OF THE EFFECTIVE DATE OF THE CONTRACT. IF ANY
39 ADJUSTMENT IS MADE PURSUANT TO THE TERMS OF THE CONTRACT, IT SHALL BE APPLIED
40 TO THE TOTAL PAYMENTS MADE TO THE CONTRACTOR FOR THE PREVIOUS CONTRACT YEAR
41 AND SHALL NOT EXCEED THE PER CENT OF CHANGE IN THE AVERAGE CONSUMER PRICE
42 INDEX AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR
43 STATISTICS BETWEEN THAT FIGURE FOR THE LATEST CALENDAR YEAR AND THE NEXT
44 PREVIOUS CALENDAR YEAR.

45 F. ANY PRICE OR COST ADJUSTMENTS TO A CONTRACT DIFFERENT THAN THOSE
46 AUTHORIZED IN SUBSECTION E OF THIS SECTION MAY BE MADE ONLY IF THE

1 LEGISLATURE SPECIFICALLY AUTHORIZES THE ADJUSTMENTS AND APPROPRIATES MONIES
2 FOR THAT PURPOSE, IF REQUIRED.

3 G. AN AWARD OF A CONTRACT SHALL NOT BE MADE UNLESS AN ACCEPTABLE
4 PROPOSAL IS RECEIVED PURSUANT TO ANY REQUEST FOR PROPOSALS. FOR THE PURPOSES
5 OF THIS SUBSECTION, "ACCEPTABLE PROPOSAL" MEANS A PROPOSAL THAT SUBSTANTIALLY
6 MEETS ALL OF THE REQUIREMENTS OR CONDITIONS SET FORTH IN THIS SECTION AND
7 THAT MEETS ALL OF THE REQUIREMENTS IN THE REQUEST FOR PROPOSALS.

8 H. A PROPOSAL SHALL NOT BE ACCEPTED UNLESS THE PROPOSAL OFFERS COST
9 SAVINGS TO THIS STATE. COST SAVINGS SHALL BE DETERMINED BASED ON THE
10 STANDARD COST COMPARISON MODEL FOR PRIVATIZATION ESTABLISHED BY THE FOREIGN
11 PRIVATE PRISON COMMISSION.

12 I. A PROPOSAL SHALL NOT BE ACCEPTED UNLESS THE PROPOSAL OFFERS A LEVEL
13 AND QUALITY OF SERVICES THAT ARE AT LEAST FUNCTIONALLY EQUAL TO THOSE THAT
14 WOULD BE PROVIDED BY THIS STATE.

15 J. NOTWITHSTANDING SECTION 41-2546, A CONTRACT TO PROVIDE CORRECTIONAL
16 SERVICES AS DESCRIBED IN THIS SECTION MAY BE FOR AN INITIAL PERIOD OF NOT
17 MORE THAN TEN YEARS.

18 K. THE INITIAL CONTRACT MAY INCLUDE AN OPTION TO RENEW FOR TWO
19 SUBSEQUENT RENEWAL PERIODS OF NOT MORE THAN FIVE YEARS EACH.

20 L. THE PERFORMANCE OF THE CONTRACTOR SHALL BE COMPARED TO THE
21 PERFORMANCE OF THIS STATE IN OPERATING SIMILAR FACILITIES, AS PROVIDED IN
22 THIS SECTION. THE FOREIGN PRIVATE PRISON COMMISSION SHALL CONDUCT A BIENNIAL
23 COMPARISON OF THE SERVICES PROVIDED BY THE PRIVATE PRISON CONTRACTOR FOR THE
24 PURPOSE OF COMPARING PRIVATE VERSUS PUBLIC PROVISION OF SERVICES. THE
25 COMPARISON OF SERVICES SHALL BE BASED ON PROFESSIONAL CORRECTIONAL STANDARDS
26 INCORPORATED INTO THE CONTRACT AND SHALL BE USED FOR THE PURPOSE OF
27 DETERMINING IF THE PRIVATE PRISON CONTRACTOR IS PROVIDING AT LEAST THE SAME
28 QUALITY OF SERVICES AS THIS STATE AT A LOWER COST OR IF THE CONTRACTOR IS
29 PROVIDING SERVICES SUPERIOR IN QUALITY TO THOSE PROVIDED BY THIS STATE AT
30 ESSENTIALLY THE SAME COST. IN CONDUCTING THE COMPARISON OF SERVICES, THE
31 COMMISSION SHALL CONSIDER:

- 32 1. SECURITY.
- 33 2. INMATE MANAGEMENT AND CONTROL.
- 34 3. INMATE PROGRAMS AND SERVICES.
- 35 4. FACILITY SAFETY AND SANITATION.
- 36 5. ADMINISTRATION.
- 37 6. FOOD SERVICE.
- 38 7. PERSONNEL PRACTICES AND TRAINING.
- 39 8. INMATE HEALTH SERVICES.
- 40 9. INMATE DISCIPLINE.

41 10. OTHER MATTERS RELATING TO SERVICES AS DETERMINED BY THE FOREIGN
42 PRIVATE PRISON COMMISSION.

43 M. THE FOREIGN PRIVATE PRISON COMMISSION SHALL CONDUCT A COST
44 COMPARISON OF EXECUTED PRIVATIZATION CONTRACTS ONCE EVERY FIVE YEARS FOR EACH
45 CONTRACT. IF THE COMMISSION DETERMINES THAT THE PRIVATE PRISON FACILITY
46 COSTS ARE LOWER THAN THE COSTS OF THIS STATE TO PROVIDE THE SAME SERVICES,

1 ONE-HALF OF THE DIFFERENCE BETWEEN THE STATE'S COSTS AND THE PRIVATE PRISON'S
2 COSTS SHALL BE DEPOSITED IN THE STATE GENERAL FUND AND THE REMAINING ONE-HALF
3 OF THE MONIES SHALL BE DEPOSITED IN THE CORRECTIONAL SERVICE OFFICER SALARY
4 FUND ESTABLISHED BY SECTION 41-1687.

5 N. THE FOREIGN PRIVATE PRISON COMMISSION SHALL PROVIDE THE MOST RECENT
6 SERVICE COMPARISON AND COST COMPARISON UNDER SUBSECTIONS L AND M OF THIS
7 SECTION TO THE JOINT LEGISLATIVE BUDGET COMMITTEE FOR ITS REVIEW.

8 O. A CONTRACT FOR PROVIDING CORRECTIONAL SERVICES TO MEXICAN NATIONALS
9 IN A MEXICAN PRIVATE PRISON FACILITY SHALL NOT BE ENTERED INTO UNLESS THE
10 FOLLOWING REQUIREMENTS ARE MET:

11 1. THE PRIVATE PRISON CONTRACTOR PROVIDES AUDITED FINANCIAL STATEMENTS
12 FOR THE PREVIOUS FIVE YEARS, OR FOR EACH OF THE YEARS THE CONTRACTOR HAS BEEN
13 IN OPERATION, IF FEWER THAN FIVE YEARS, AND PROVIDES OTHER FINANCIAL
14 INFORMATION AS REQUESTED.

15 2. THE PRIVATE PRISON CONTRACTOR PROVIDES AN ADEQUATE PLAN OF
16 INSURANCE, SPECIFICALLY INCLUDING COVERAGE OR INSURANCE FOR CIVIL RIGHTS
17 CLAIMS AND LIABILITIES AS APPROVED BY THE RISK MANAGEMENT DIVISION OF THE
18 DEPARTMENT OF ADMINISTRATION.

19 P. THE SOVEREIGN IMMUNITY OF THIS STATE DOES NOT APPLY TO THE PRIVATE
20 PRISON CONTRACTOR. NEITHER THE CONTRACTOR NOR THE INSURER OF THE CONTRACTOR
21 MAY PLEAD THE DEFENSE OF SOVEREIGN IMMUNITY IN ANY ACTION ARISING OUT OF THE
22 PERFORMANCE OF THE CONTRACT.

23 Q. A CONTRACT FOR CORRECTIONAL SERVICES SHALL NOT AUTHORIZE, ALLOW OR
24 IMPLY A DELEGATION OF AUTHORITY OR RESPONSIBILITY TO A PRIVATE PRISON
25 CONTRACTOR FOR ANY OF THE FOLLOWING:

26 1. DEVELOPING AND IMPLEMENTING PROCEDURES FOR CALCULATING INMATE
27 RELEASE DATES.

28 2. DEVELOPING AND IMPLEMENTING PROCEDURES FOR CALCULATING AND AWARDED
29 SENTENCE CREDITS.

30 3. APPROVING THE TYPE OF WORK INMATES MAY PERFORM AND THE WAGES OR
31 SENTENCE CREDITS THAT MAY BE GIVEN TO INMATES ENGAGING IN THE WORK.

32 4. GRANTING, DENYING OR REVOKING SENTENCE CREDITS, PLACING AN INMATE
33 UNDER LESS RESTRICTIVE CUSTODY OR MORE RESTRICTIVE CUSTODY OR TAKING ANY
34 DISCIPLINARY ACTIONS.

35 R. THE CONTRACT SHALL REQUIRE THAT ALL PRISONERS BE FINGERPRINTED
36 PERIODICALLY.

37 41-1687. Correctional service officer salary fund

38 THE CORRECTIONAL SERVICE OFFICER SALARY FUND IS ESTABLISHED CONSISTING
39 OF MONIES DEPOSITED PURSUANT TO SECTION 41-1686, SUBSECTION M. THE STATE
40 DEPARTMENT OF CORRECTIONS SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE
41 SUBJECT TO LEGISLATIVE APPROPRIATION AND SHALL BE USED FOR CORRECTIONAL
42 OFFICER SALARIES. MONIES PROVIDED FROM THE FUND SHALL SUPPLEMENT, NOT
43 SUPPLANT, EXISTING MONIES.

44 Sec. 2. Joint legislative study committee on private prisons
45 located in Mexico

1 A. The joint legislative study committee on private prisons located in
2 Mexico is established consisting of the following members:

3 1. Two members of the senate who are appointed by the president of the
4 senate and who are members of different political parties.

5 2. Two members of the house of representatives who are appointed by
6 the speaker of the house of representatives and who are members of different
7 political parties.

8 3. The director of the Arizona-Mexico commission in the governor's
9 office or the director's designee.

10 4. The director of the Arizona department of administration or the
11 director's designee.

12 5. The director of the Arizona department of corrections or the
13 director's designee.

14 6. The director of the office of homeland security or the director's
15 designee.

16 7. One member who is an expert in international law and who is
17 appointed by the governor.

18 8. One member who is a victims rights advocate and who is appointed by
19 the governor.

20 9. One member who is a prosecutor and who is appointed by the
21 president of the senate.

22 10. One member who is a public defender attorney and who is appointed
23 by the speaker of the house of representatives.

24 B. The committee shall review issues relating to the construction and
25 operation of a private prison facility to be located in Mexico to house
26 foreign national prisoners.

27 C. The committee shall make recommendations regarding the committee's
28 findings.

29 D. The committee shall submit a written report regarding the
30 committee's activities and recommendations annually on or before December 31
31 to the governor, the president of the senate and the speaker of the house of
32 representatives and provide a copy of this report to the secretary of state
33 and the director of the Arizona state library, archives and public records.

34 Sec. 3. Delayed repeal

35 Section 2 of this act, relating to the joint legislative study
36 committee on private prisons located in Mexico, is repealed from and after
37 September 30, 2007.

1 Sec. 4. Conditional enactment

2 A. Sections 41-1685, 41-1686 and 41-1687, Arizona Revised Statutes, as
3 added by this act, do not become effective unless on or before June 30, 2010
4 the United States amends the Treaty Between The United States of America and
5 The United Mexican States on the Execution of Penal Sentencing, or adopts a
6 new treaty with Mexico relating to penal sentencing, to allow for the
7 incarceration of inmates outside of the United States in private prisons.
8 B. The attorney general shall notify in writing the director of the
9 Arizona legislative council of the date on which the condition is met or if
10 the condition is not met.