

ASSEMBLY BILL

No. 2083

Introduced by Assembly Member Donnelly

February 23, 2012

An act to add Chapter 18 (commencing with Section 7450) to Title 7 of Part 3 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2083, as introduced, Donnelly. Foreign Private Prison Commission.

Existing law provides for the administration of the state correctional system by the Department of Corrections and Rehabilitation under the direction of the Secretary of the Department of Corrections and Rehabilitation. Existing law requires the department to prepare plans for, and construct facilities and renovations within its master plan for which funds have been appropriated by the Legislature.

This bill would establish the Foreign Private Prison Commission, which, in cooperation with the Department of Corrections and Rehabilitation, would be responsible for the operation and administration of private prison facilities that are located in Mexico to house foreign nationals who have been convicted of offenses committed in California. The bill would require the commission to conduct a cost comparison of executed privatization contracts every 5 years, and if the commission determines that the private prison facility costs are lower than costs of this state to provide the same services, would require ½ of the difference between the state's costs and the private prison's costs to be deposited into the Correctional Service Fund, which would be established by the bill. Moneys in the Correctional Service Fund would be available to

the department for purposes of implementing the provisions of the bill upon appropriation by the Legislature.

The bill would become operative only if, before July 1, 2017, the United States enters into a treaty with Mexico to allow the incarceration of inmates outside of the United States in private prisons.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 18 (commencing with Section 7450) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 18. FOREIGN PRIVATE PRISON COMMISSION

7450. (a) The Foreign Private Prison Commission is hereby established, consisting of ___ members, which shall include the Secretary of the Department of Corrections and Rehabilitation. The Governor shall appoint the remaining ____ members within 60 days after the effective date of this part. Members shall serve ____ year terms.

(b) Members of the commission are not eligible to receive compensation, but are eligible to receive reimbursement of expenses.

(c) The commission shall be responsible for the overall operations and administration of private prison facilities that are located in Mexico and that house foreign nationals who have been convicted of any offense in this state.

7451. (a) The Department of Corrections and Rehabilitation, in cooperation with the Foreign Private Prison Commission, shall issue a request for proposals for the construction and operation of a private prison facility to be located in Mexico and to house foreign national prisoners.

(b) On publication, any request for proposals shall be provided to the Joint Legislative Budget Committee for its review.

(c) To be considered for an award of a contract, the proposer shall demonstrate that it has all of the following:

(1) The qualifications, operations, management experience, and experienced personnel necessary to carry out the terms of the contract.

1 (2) The ability to comply with applicable correctional standards
2 and any specific court order, if required.

3 (3) A demonstrated history of successful operation and
4 management of other secure facilities.

5 (d) The proposer shall agree that this state may cancel the
6 contract at any time after the first year of operation, without penalty
7 to this state, on giving at least 90 days written notice.

8 (e) A contract may provide for annual contract price or cost
9 adjustments, except that any adjustments may be made only once
10 each year effective on the anniversary of the effective date of the
11 contract. If any adjustment is made pursuant to the terms of the
12 contract, it shall be applied to the total payments made to the
13 contractor for the previous contract year and shall not exceed the
14 percent of change in the average consumer price index as published
15 by the United States Department of Labor, Bureau of Labor
16 Statistics between that figure for the latest calendar year and the
17 next previous calendar year.

18 (f) Any price or cost adjustments to a contract different than
19 those authorized in subdivision (e) may be made only if the
20 Legislature specifically authorizes the adjustments and appropriates
21 moneys for that purpose, if required.

22 (g) An award of a contract shall not be made unless an
23 acceptable proposal is received pursuant to any request for
24 proposals. For the purposes of this subdivision "acceptable
25 proposal" means a proposal that substantially meets all of the
26 requirements or conditions set forth in this part and that meets all
27 of the requirements in the request for proposals.

28 (h) A proposal shall not be accepted unless the proposal offers
29 cost savings to this state. Cost savings shall be determined based
30 upon the standard cost comparison model for privatization
31 established by the foreign private prison commission.

32 (i) A proposal shall not be accepted unless the proposal offers
33 a level and quality of services that are at least functionally
34 equivalent to those that would be provided by this state.

35 (j) A contract to provide correctional services as described in
36 this section may be for an initial period of not more than 10 years.

37 (k) The initial contract may include an option to renew for two
38 subsequent renewal periods of not more than five years each.

39 (l) The performance of the contractor shall be compared to the
40 performance of this state in operating similar facilities, as provided

1 in this subdivision. The Foreign Private Prison Commission shall
2 conduct a biennial comparison of the services provided by the
3 private prison contractor for the purpose of comparing private
4 versus public provision of services. The comparison of services
5 shall be based on professional correctional standards incorporated
6 into the contract and shall be used for the purpose of determining
7 if the private prison contractor is providing at least the same quality
8 of services as this state at a lower cost or if the contractor is
9 providing services superior in quality to those provided by this
10 state at essentially the same cost. In conducting the comparison of
11 services, the commission shall consider:

- 12 (1) Security.
- 13 (2) Inmate management and control.
- 14 (3) Inmate programs and services.
- 15 (4) Facility safety and sanitation.
- 16 (5) Administration.
- 17 (6) Food service.
- 18 (7) Personnel practices and training.
- 19 (8) Inmate health services.
- 20 (9) Inmate discipline.
- 21 (10) Other matters relating to services as determined by the
22 Foreign Private Prison Commission.

23 (m) The Foreign Private Prison Commission shall conduct a
24 cost comparison of executed privatization contracts once every
25 five years for each contract. If the commission determines that the
26 private prison facility costs are lower than the costs of this state
27 to provide the same services, one-half of the difference between
28 the state's costs and the private prison's costs shall be deposited
29 in the state General Fund and the remaining one-half of the moneys
30 shall be deposited in the Correctional Service Fund established
31 pursuant to Section 7452.

32 (n) The Foreign Private Prison Commission shall provide the
33 most recent service comparison and cost comparison under
34 subdivisions (l) and (m) to the Joint Legislative Budget Committee
35 for its review.

36 (o) A contract for providing correctional services to foreign
37 nationals in a Mexican private prison facility shall not be entered
38 into unless the following requirements are met:

- 39 (1) The private prison contractor provides audited financial
40 statements for the previous five years, or for each of the years the

1 contractor has been in operation, if fewer than five years, and
2 provides other financial information as requested.

3 (2) The private prison contractor provides an adequate plan of
4 insurance, specifically including coverage or insurance for civil
5 rights claims and liabilities as approved by the risk management
6 division of the Department of General Services.

7 (p) The sovereign immunity of this state does not apply to the
8 private prison contractor. Neither the contractor nor the insurer of
9 the contractor may plead the defense of sovereign immunity in
10 any action arising out of the performance of the contract.

11 (q) A contract for correctional services shall not authorize, allow,
12 or imply a delegation of authority or responsibility to a private
13 prison contractor for any of the following:

14 (1) Developing and implementing procedures for calculating
15 inmate release dates.

16 (2) Developing and implementing procedures for calculating
17 and awarding sentence credits.

18 (3) Approving the type of work inmates may perform and the
19 wages or sentence credits that may be given to inmates engaging
20 in the work.

21 (4) Granting, denying, or revoking sentence credits, placing an
22 inmate under less restrictive custody or more restrictive custody
23 or taking any disciplinary actions.

24 (r) The contract shall require that all prisoners be fingerprinted
25 daily.

26 7452. (a) The Correctional Service Fund is hereby established
27 in the State Treasury, which shall consist of moneys deposited
28 pursuant to subdivision (m) of Section 7451. Upon appropriation
29 by the Legislature, moneys in the fund shall be available for
30 expenditure by the department for purposes of implementing the
31 provisions of this chapter.

32 (b) Moneys provided from the fund shall supplement, not
33 supplant, existing moneys for the following:

34 (1) Vocational training.

35 (2) Rehabilitation.

36 (3) Parole services.

37 7453. (a) This chapter shall not become operative unless,
38 before July 1, 2017, the United States agrees to amend the United
39 States-Mexico Treaty on the Execution of Penal Sentencing, or
40 adopts a new treaty with Mexico relating to penal sentencing, to

- 1 allow for the incarceration of inmates outside of the United States
- 2 in private prisons.
- 3 (b) The Attorney General shall notify, in writing, the Governor,
- 4 the Secretary of the Department of Corrections and Rehabilitation,
- 5 the Secretary of the Senate, and the Chief Clerk of the Assembly
- 6 of the date on which the conditions are met.