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HOUSE BILL NO. 83  
INTRODUCED BY BERGSAGEL  
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AND PROVIDING FOR THE REGULATION OF PRIVATE CORRECTIONAL FACILITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance to the department of corrections in adopting rules under [section 4]. It is the intent of the legislature that rules adopted by the department ensure public participation in the siting of a private correctional facility, ensure that the design and construction of a private correctional facility be reviewed and approved by the department of administration, and provide that the management and operation of a private correctional facility substantially conform with recognized correctional standards, such as the American correctional association standards.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Policy.** It is the policy of the state of Montana to encourage innovative methods to provide the correctional resources necessary to confine persons convicted of crimes. The state recognizes that there may be benefits to confining convicted persons in private correctional facilities operated consistently with public policy.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 5], the following definitions apply:

- (1) "Department" means the department of corrections provided for in 2-15-2301.
- (2) (a) "Private correctional facility" means a correctional facility that is either privately operated or privately owned and operated.
- (b) The term does not include a private detention center governed by Title 7, chapter 32, part 22.

NEW SECTION. **Section 3. Private correctional facilities -- confinable persons.** (1) An individual,



1 corporation, partnership, association, or other private organization or entity may not construct or operate  
2 a private correctional facility unless licensed by the department.

3 (2) A person convicted in another state may not be confined in a private correctional facility in this  
4 state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4.

5

6 **NEW SECTION. Section 4. License -- rules -- inspection.** (1) (a) The department shall grant  
7 a license to a private correctional facility determined by the department to conform to [sections 1 through  
8 5] and department rules.

9 (b) The department may grant a license to a nonconforming facility if the department determines  
10 that the facility is making satisfactory progress toward substantial conformity with [sections 1 through 5]  
11 and department rules and that the interests and well-being of the residents of this state and of the persons  
12 to be confined in the facility are protected.

13 (c) The department may not grant a license to a private correctional facility unless the department  
14 determines that the grant conforms to the long-range correctional goals of the department and state.

15 (d) The department may not grant a license to a private correctional facility until the facility has  
16 provided the department with an indemnity bond that indemnifies the state and that is acceptable to the  
17 department.

18 (2) The department shall adopt rules, including minimum standards, for the location, construction,  
19 operation, management, and physical condition of private correctional facilities and for the security, safety,  
20 health, treatment, and discipline of persons confined in them. The rules must provide for review and  
21 approval of facility design and construction by the department of administration.

22 (3) The department shall at least annually inspect each private correctional facility to determine  
23 compliance with [sections 1 through 5] and department rules.

24

25 **NEW SECTION. Section 5. Failure to comply with law -- action by department.** If the department  
26 determines at any time that a private correctional facility does not conform to [sections 1 through 5] and  
27 department rules, the department shall notify the chief executive officer and the governing board of the  
28 facility. The notice must state the deficiencies and order that they be remedied within a reasonable period  
29 of time. If the deficiencies are not remedied within that time, the department may hold a contested case  
30 hearing under Title 2, chapter 4, and if the department finds that suspension or revocation is warranted by

1 nonconformance with [sections 1 through 5] and department rules, the department may suspend or revoke  
2 the facility's license.

3

4 **NEW SECTION.** **Section 6. Codification instruction.** [Sections 1 through 5] are intended to be  
5 codified as a new part in Title 53, chapter 30.

6

7 **NEW SECTION.** **Section 7. Effective date.** [This act] is effective on passage and approval.

8

9

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0083, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing and providing for the regulation of private correctional facilities; and providing an immediate effective date.

ASSUMPTIONS:

1. One 500 bed private correctional facility will be operating in Montana beginning in fiscal year 1999.
2. Department of Corrections (DOC), Professional Services Division personnel will be required to adopt/develop the standards and administrative rules in compliance with this bill pursuant to section 4(2). This personnel would also make licensing determinations based on these standards; initially every 6 months; after a record of compliance, annually. It is estimated that this would require 1.00 FTE Security Specialist/Inspector (grade 15) and 1.00 Administrative Support (grade 8). The grade 15 position would be located at the facility.
3. Operating expenses are \$3,900 per FTE plus \$3,962 for computer equipment for each FTE in fiscal year 1998.
4. The cost of licensing/regulation for the grade 15 position would be paid by the contractor and is reflected in general fund revenue in the table below.
5. The Department of Administration (DOA) will have minimal involvement in the adoption of standards and will not be involved in annual inspections. The department will be involved in the approval of the design and construction of the private facilities but the fiscal impact is estimated to be minimal.
6. The new correctional facility will employ about 125.00 FTE at an average salary of \$23,500 per year. The 5% average state income tax rate for these employees will generate about \$147,000 general fund each year.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	2.00	2.00
Personal Services	54,933	54,933
Operating Expenses	7,800	7,800
Equipment	<u>7,924</u>	<u>0</u>
Total	70,657	62,733
 <u>Funding:</u>		
General Fund (01)	70,657	62,733
 <u>Revenues:</u>		
General Fund (01)	\$0	\$42,302
Payroll Income Taxes (01)	0	147,000
 <u>Net Fiscal Impact:</u> (01)	 (70,657)	 \$ 126,569

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

There would be an undetermined impact to the tax base and economy of a county and/or city where the private correctional facility was located.

TECHNICAL NOTES:

1. The bill requires the DOC to act in a regulatory capacity over the private facilities that they are also contracting with. The DOA would be assuming a regulatory function by approving the design and construction of the private facilities.
2. General powers and duties of DOA, 18-2-105, MCA, may need to be revised to include the duties and responsibilities created in this bill.

*Dave Lewis* 1-8-97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

ERNEST BERGSAGEL, PRIMARY SPONSOR DATE

Fiscal Note for HB0083, as introduced

**HB 83**

1 HOUSE BILL NO. 83

2 INTRODUCED BY BERGSAGEL

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AND PROVIDING FOR THE REGULATION OF  
6 PRIVATE CORRECTIONAL FACILITIES; SPECIFYING THE DEPARTMENT OF CORRECTIONS DUTIES AND  
7 RESPONSIBILITIES; SPECIFYING THE DUTIES NOT DELEGABLE TO A CONTRACTOR; SPECIFYING THE  
8 REQUIREMENTS OF REQUESTS FOR PROPOSALS; SPECIFYING CERTAIN REQUIREMENTS OF  
9 CONTRACTS; SPECIFYING CONTRACTOR RESPONSIBILITY FOR CERTAIN COSTS; PROVIDING FOR  
10 LICENSURE OF FACILITIES; SPECIFYING ACTION BY THE DEPARTMENT FOR CONTRACTOR FAILURE TO  
11 COMPLY WITH LAW OR TO RENEW CONTRACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
12 AN APPLICABILITY DATE."

13  
14 STATEMENT OF INTENT

15 A statement of intent is required for this bill to provide guidance to the department of corrections  
16 in adopting rules under [section 4]. It is the intent of the legislature that rules adopted by the department  
17 ensure public participation in the siting of a private correctional facility, ensure that the design and  
18 construction of a private correctional facility be reviewed and approved by the department of administration,  
19 and provide that the management and operation of a private correctional facility substantially conform with  
20 recognized correctional standards, such as the American correctional association standards.

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26 recognizes that there may be benefits to confining convicted persons in private correctional facilities  
27 operated consistently with public policy.

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30 definitions apply:

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2 (2) (a) "Private correctional facility" means a correctional facility that is either privately operated  
3 or privately owned and operated.

4 (b) The term does not include a private detention center governed by Title 7, chapter 32, part 22.

5

6 **NEW SECTION. Section 3. Private correctional facilities -- confinable persons.** ~~(1)~~ An individual,  
7 corporation, partnership, association, or other private organization or entity may not construct or operate  
8 a private correctional facility unless licensed by the department. **A LICENSE IS NONTRANSFERABLE.**

9 ~~(2) A person convicted in another state may not be confined in a private correctional facility in this~~  
10 ~~state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4.~~

11

12 **NEW SECTION. SECTION 4. DEPARTMENT DUTIES AND RESPONSIBILITIES -- RULEMAKING**  
13 **AUTHORITY. (1) (A) THE DEPARTMENT SHALL ADOPT RULES THAT REQUIRE THE PRIVATE**  
14 **CORRECTIONAL FACILITY TO BE AN ACCREDITED CORRECTIONAL FACILITY OR TO ACHIEVE**  
15 **ACCREDITATION WITHIN 3 YEARS FROM THE DATE THAT THE FACILITY BEGINS OPERATION.**

16 **(B) THE RULES MUST PROVIDE FOR REVIEW AND APPROVAL OF FACILITY DESIGN AND**  
17 **CONSTRUCTION BY THE DEPARTMENT OF ADMINISTRATION.**

18 **(2) THE DEPARTMENT SHALL AT LEAST ANNUALLY INSPECT EACH PRIVATE CORRECTIONAL**  
19 **FACILITY TO DETERMINE COMPLIANCE WITH [SECTIONS 1 THROUGH 13], REGULATIONS, CONTRACT**  
20 **REQUIREMENTS, AND DEPARTMENT RULES.**

21 **(3) THE DEPARTMENT SHALL PRESENT A BIENNIAL REPORT OF COMPLIANCE INSPECTIONS TO**  
22 **THE LEGISLATURE.**

23

24 **NEW SECTION. SECTION 5. REQUIREMENTS OF REQUEST FOR PROPOSALS. (1) THE REQUEST**  
25 **FOR PROPOSALS MUST INCLUDE AND IDENTIFY THE SERVICES REQUESTED AND REQUIRED AND**  
26 **OTHER INFORMATION, INCLUDING BUT NOT LIMITED TO:**

27 **(A) THE PHYSICAL PLANT, FACILITY, AND PERIMETER;**

28 **(I) THE FACILITY CAPACITY AND INMATE POPULATION, INCLUDING CLASSIFICATION LEVELS**  
29 **ACCEPTED;**

30 **(II) INMATE HOUSING; AND**

- 1           (III) SECURITY, SAFETY, AND EMERGENCY PROCEDURES.
- 2           (B) WHO IS RESPONSIBLE FOR TRANSPORTATION OF INMATES:
- 3           (I) AMONG FACILITIES;
- 4           (II) UPON AN INMATE'S RELEASE, INCLUDING DISCHARGE OR PAROLE;
- 5           (III) FOR COURT AND ADMINISTRATIVE PROCEEDINGS SUCH AS PAROLE HEARINGS AND
- 6 INMATE PARTICIPATION AS A WITNESS;
- 7           (IV) FOR MEDICAL TRANSPORTATION; AND
- 8           (V) SECURITY.
- 9           (C) ADMINISTRATION OF THE FACILITY, INCLUDING BUT NOT LIMITED TO:
- 10          (I) THE ORGANIZATIONAL STRUCTURE AND STAFFING; AND
- 11          (II) A POLICY AND PROCEDURES MANUAL ADDRESSING:
- 12          (A) INMATE DISCIPLINE;
- 13          (B) INCIDENT REPORTING;
- 14          (C) GRIEVANCE PROCEDURES;
- 15          (D) SEARCHES;
- 16          (E) DRUG TESTING;
- 17          (F) MONITORING OF FACILITY STANDARDS; AND
- 18          (G) THE RETENTION AND MAINTENANCE OF INMATE AND FACILITY RECORDS BY THE PRIVATE
- 19 CORRECTIONAL FACILITY.
- 20          (D) STAFFING ISSUES REGARDING:
- 21          (I) MANAGEMENT;
- 22          (II) SECURITY;
- 23          (III) ADMINISTRATIVE PERSONNEL;
- 24          (IV) QUALIFICATIONS AND REQUIREMENTS;
- 25          (V) TRAINING;
- 26          (VI) STAFF TO INMATE RATIOS;
- 27          (E) INMATE NEEDS SUCH AS FOOD, CLOTHING, SANITATION, HYGIENE, AND LAUNDRY;
- 28          (F) PROGRAMS AND SERVICES TO BE REQUIRED SUCH AS VOCATIONAL AND EDUCATIONAL
- 29 TRAINING, RELIGIOUS SERVICES OR CUSTOMS, COUNSELING, RECREATION, AND CANTEEN;
- 30          (G) MEDICAL, DENTAL, OPTICAL, PHARMACEUTICAL, PSYCHOLOGICAL, AND OTHER

1 MEDICAL-RELATED CARE;

2 (H) INSURANCE REQUIREMENTS;

3 (I) INDEMNIFICATION;

4 (J) PERFORMANCE BONDS;

5 (K) A REQUIREMENT THAT PROPOSERS PROVIDE EVIDENCE OR DOCUMENTATION  
 6 DEMONSTRATING AN ABILITY TO PROVIDE THE SERVICES; TO COMPLY WITH ACCEPTABLE SERVICES;  
 7 AND TO COMPLY WITH THE RULES, REGULATIONS, AND CONTRACT REQUIREMENTS;

8 (L) A REQUIREMENT THAT PROPOSERS PROVIDE DOCUMENTATION OF FINANCIAL STABILITY  
 9 OR SECURITY; AND

10 (M) MONITORING OF FACILITY OPERATIONS.

11 (2) THE DEPARTMENT MAY RELEASE SEPARATE REQUESTS FOR PROPOSALS OR CONTRACTS  
 12 FOR SPECIFIC SERVICES SUCH AS TRANSPORTATION OF INMATES AND MEDICAL, DENTAL, VISION,  
 13 AND SICK CALL SERVICES. EACH CONTRACT MUST INCLUDE A DETAILED EXPLANATION OF THE  
 14 SERVICES THAT MUST BE PROVIDED.

15 (3) THE DEPARTMENT SHALL MAINTAIN A LIST OF QUALIFIED APPLICANTS AND ALL  
 16 PROPOSAL RESPONSES. THE DEPARTMENT SHALL RETAIN ALL RECORDS RELATED TO THE  
 17 EVALUATION PROCESS AND THE AWARDING OF A CONTRACT.

18

19 NEW SECTION. Section 6. License —rules -- inspection. (1) ~~(a)~~ The department shall grant  
 20 a license to a private correctional facility determined by the department to conform to [sections 1 through  
 21 ~~5~~ 13] and department rules.

22 ~~(b) The department may grant a license to a nonconforming facility if the department determines~~  
 23 ~~that the facility is making satisfactory progress toward substantial conformity with [sections 1 through 5]~~  
 24 ~~and department rules and that the interests and well-being of the residents of this state and of the persons~~  
 25 ~~to be confined in the facility are protected.~~

26 (2) THE DEPARTMENT MAY GRANT A TEMPORARY LICENSE FOR 1 YEAR TO A FACILITY THAT  
 27 LOSES ACCREDITATION IF THE DEPARTMENT DETERMINES THAT THE FACILITY IS MAKING  
 28 SATISFACTORY PROGRESS TOWARD SUBSTANTIAL CONFORMITY WITH [SECTIONS 1 THROUGH 13],  
 29 AMERICAN CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND CONTRACT  
 30 REQUIREMENTS AND THAT THE INTERESTS AND WELL-BEING OF THE RESIDENTS OF THE STATE AND



1 OF THE PERSONS TO BE CONFINED IN THE FACILITY ARE PROTECTED. A TEMPORARY LICENSE MAY  
2 NOT BE RENEWED.

3 (3) EXCEPT AS PROVIDED IN SUBSECTION (2), THE DEPARTMENT MAY NOT GRANT A LICENSE  
4 UNLESS THE CONTRACTOR CONFORMS TO ALL STATE AND FEDERAL STATUTES, AMERICAN  
5 CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND OTHER REQUIREMENTS AS  
6 DEFINED IN ADMINISTRATIVE RULE.

7 ~~(e)~~(4) UPON REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE, THE LEGISLATIVE AUDIT  
8 DIVISION SHALL REVIEW EACH CONTRACT PRIOR TO EXECUTION TO DETERMINE IF THE CONTRACT  
9 ADDRESSES LEGISLATIVE INTENT AND INCLUDES THE REQUIREMENTS IMPOSED BY [SECTIONS 1  
10 THROUGH 13]. THE LEGISLATIVE AUDIT DIVISION SHALL PROVIDE THEIR FINDINGS TO THE  
11 DEPARTMENT. The department may not grant a license to a private correctional facility unless the  
12 department determines that the grant conforms to the long-range correctional goals of the department and  
13 state. THE DEPARTMENT SHALL TAKE INTO CONSIDERATION THE LEGISLATIVE AUDIT DIVISION  
14 FINDINGS IN ITS DETERMINATION.

15 ~~(d)~~(5) The department may not grant a license to a private correctional facility until the facility has  
16 provided the department with an indemnity bond that indemnifies the state and that is acceptable to the  
17 department.

18 (6) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
19 UNLESS THE FACILITY PROVIDES CLEAR EVIDENCE OF SUPPORT FROM THE RESIDENTS OF THE  
20 COUNTY IN WHICH THE FACILITY IS TO BE LOCATED.

21 (7) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
22 UNLESS THE FACILITY HAS PROMULGATED A POLICY TO PROVIDE REASONABLE ACCESS TO THE  
23 FACILITY BY REPRESENTATIVES OF THE PUBLIC MEDIA.

24 (8) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
25 UNLESS THE FACILITY HAS ENTERED INTO AN AGREEMENT WITH LOCAL AND STATE LAW  
26 ENFORCEMENT AUTHORITIES. THE PRIVATE CORRECTIONAL FACILITY MUST DEMONSTRATE AN  
27 ADEQUATE RESPONSE FOR THE MUTUAL AID, ASSISTANCE, AND NOTIFICATION IN THE EVENT OF AN  
28 ESCAPE, NATURAL OR HUMAN-CAUSED DISASTER, RIOT, OR OTHER ACT THAT MAY POTENTIALLY  
29 AFFECT PUBLIC SAFETY.

30 (9) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY

1 UNLESS THE LEGISLATURE HAS APPROPRIATED FUNDS FOR THE HOUSING OF STATE INMATES IN  
 2 PRIVATE CORRECTIONAL FACILITIES.

3 ~~(2) The department shall adopt rules, including minimum standards, for the location, construction,~~  
 4 ~~operation, management, and physical condition of private correctional facilities and for the security, safety,~~  
 5 ~~health, treatment, and discipline of persons confined in them. The rules must provide for review and~~  
 6 ~~approval of facility design and construction by the department of administration.~~

7 ~~(3)(10)~~ The department shall at least annually inspect each private correctional facility to determine  
 8 compliance with [sections 1 through ~~5~~ 13] and department rules.

9

10 **NEW SECTION. SECTION 7. LICENSURE LIMITATIONS -- SITING OF PRIVATE CORRECTIONAL**  
 11 **FACILITIES. (1) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL**  
 12 **FACILITY LOCATED WITHIN 2 MILES OF A PUBLIC OR NONPUBLIC SCHOOL, NOT INCLUDING A HOME**  
 13 **SCHOOL. HOWEVER, IF A PUBLIC OR NONPUBLIC SCHOOL IS ESTABLISHED AFTER A FACILITY HAS**  
 14 **BEEN APPROVED, THE DEPARTMENT MAY NOT PREVENT THE PRIVATE CORRECTIONAL FACILITY FROM**  
 15 **OPERATING BECAUSE OF THIS SUBSECTION (1).**

16 **(2) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY**  
 17 **UNLESS THERE HAS BEEN A PUBLIC HEARING IN THE COUNTY IN WHICH THE PRIVATE CORRECTIONAL**  
 18 **FACILITY IS TO BE LOCATED AND UNLESS THE COUNTY COMMISSIONERS APPROVE THE LOCATION**  
 19 **OF THE PRIVATE CORRECTIONAL FACILITY BY A MAJORITY VOTE.**

20 **(3) IF THE SITING OF A PRIVATE CORRECTIONAL FACILITY IS PROPOSED WITHIN 10 MILES OF**  
 21 **AN ADJACENT COUNTY OR IF THE DEPARTMENT DETERMINES THAT THERE ARE REASONABLE**  
 22 **EXPECTATIONS THAT THE SITING MAY HAVE AN IMPACT ON AN ADJACENT COUNTY, THE**  
 23 **DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY UNLESS THERE**  
 24 **HAS BEEN A PUBLIC HEARING IN THE ADJACENT COUNTY AND UNLESS THE COUNTY**  
 25 **COMMISSIONERS OF THE ADJACENT COUNTY APPROVE THE LOCATION OF THE PRIVATE**  
 26 **CORRECTIONAL FACILITY BY A MAJORITY VOTE.**

27

28 **NEW SECTION. SECTION 8. LICENSURE LIMITATIONS -- CONSTRUCTION REQUIREMENTS. (1)**  
 29 **THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY UNLESS THE**  
 30 **DESIGN MEETS LONG-TERM CORRECTIONAL NEEDS, GOALS, AND OBJECTIVES AS DETERMINED BY**

1 THE DEPARTMENT.

2 (2) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
 3 UNLESS THE FACILITY IS CONSTRUCTED IN ACCORDANCE WITH AMERICAN CORRECTIONAL  
 4 ASSOCIATION FACILITY CONSTRUCTION REQUIREMENTS. IN ADDITION, THE PRIVATE CORRECTIONAL  
 5 FACILITY MUST COMPLY WITH ANY OTHER LOCAL, STATE, OR FEDERAL LAWS OR REGULATIONS.

6 (3) THE DEPARTMENT MAY NOT GRANT A LICENSE UNLESS THE DEPARTMENT AND THE  
 7 DEPARTMENT OF ADMINISTRATION HAVE REVIEWED AND APPROVED THE DESIGN AND  
 8 CONSTRUCTION OF THE PRIVATE CORRECTIONAL FACILITY.

9

10 NEW SECTION. SECTION 9. CONTRACTS WITH PRIVATE CORRECTIONAL FACILITIES. (1) A  
 11 CONTRACT WITH A PRIVATE CORRECTIONAL FACILITY MUST BE AWARDED TO THE CONTRACTOR  
 12 WHO BEST MEETS THE NEEDS OF THE STATE AND THE DEPARTMENT AND DEMONSTRATES THE  
 13 CAPABILITY OF PROVIDING SERVICES REQUESTED.

14 (2) A CONTRACT MUST SPECIFY THE TYPE AND LEVEL OF SERVICES TO BE PROVIDED BY THE  
 15 CONTRACTOR. THE DEPARTMENT SHALL PLACE REQUIREMENTS IN THE CONTRACT THAT REQUIRE  
 16 THE PRIVATE CONTRACTOR TO ALLOW THE DEPARTMENT TO REVIEW AND APPROVE:

17 (A) CHOOSE THE CORRECTIONAL FACILITY TO WHICH AN INMATE IS INITIALLY OR  
 18 SUBSEQUENTLY ASSIGNED. A CONTRACTOR MAY REQUEST THE DEPARTMENT TO TRANSFER AN  
 19 INMATE TO A STATE FACILITY OR TO ANOTHER PRIVATE FACILITY.

20 (B) DEVELOP OR ADOPT DISCIPLINARY RULES THAT DIFFER FROM THE DISCIPLINARY RULES,  
 21 PENALTIES, AND POLICIES OF THE DEPARTMENT;

22 (C) MAKE A DECISION THAT AFFECTS THE SENTENCE IMPOSED ON AN INMATE OR THE TIME  
 23 SERVED BY AN INMATE;

24 (D) MAKE RECOMMENDATIONS TO THE BOARD OF PARDONS AND PAROLE WITH RESPECT TO  
 25 THE DENIAL OR GRANTING OF PAROLE OR RELEASE, EXCEPT TO SUBMIT REPORTS TO THE BOARD OF  
 26 PARDONS AND PAROLE AND TO RESPOND TO REQUESTS BY THE DEPARTMENT OR THE BOARD OF  
 27 PARDONS AND PAROLE;

28 (E) DEVELOP OR IMPLEMENT REQUIREMENTS THAT INMATES ENGAGE IN ANY TYPE OF WORK,  
 29 EXCEPT TO THE EXTENT THAT THOSE REQUIREMENTS ARE ACCEPTED BY THE DEPARTMENT;

30 (F) DETERMINE INMATE ELIGIBILITY FOR ANY FORM OF RELEASE FROM A CORRECTIONAL

1 FACILITY; OR

2 (G) DEVELOP OR USE A CLASSIFICATION SYSTEM OTHER THAN THE CLASSIFICATION SYSTEM  
3 USED BY THE DEPARTMENT.

4 (3) CONTRACTS MAY NOT EXCEED A TERM OF 30 YEARS AND MUST CONTAIN PROVISIONS  
5 FOR RENEGOTIATION AFTER 30 YEARS. THE PROVISIONS OF 18-3-104 AND 18-4-313 THAT LIMIT THE  
6 TERM OF A CONTRACT DO NOT APPLY TO A CONTRACT AUTHORIZED BY THIS SECTION.

7 (4) THE CONTRACT MUST SPECIFY THAT THE PRIVATE CORRECTIONAL FACILITY SHALL  
8 GRANT ACCESS TO THE LEGISLATIVE AUDIT DIVISION OR A PERSON CONTRACTING WITH THE  
9 LEGISLATIVE AUDIT DIVISION FOR COMPLIANCE AUDITING. THE CONTRACTOR SHALL PROVIDE  
10 ACCESS TO ALL AREAS OF THE FACILITY AND TO ALL RECORDS MAINTAINED ONSITE OR OFFSITE  
11 THAT PERTAIN TO ALL ASPECTS OF THE FACILITY, INCLUDING BUT NOT LIMITED TO OPERATION,  
12 FINANCIAL, AND INMATE RECORDS.

13

14 NEW SECTION. SECTION 10. CONTRACTOR COSTS RESPONSIBILITY. (1) THE PRIVATE  
15 CORRECTIONAL FACILITY IS RESPONSIBLE FOR ALL MONITORING COSTS INCURRED BY THE STATE.

16 (2) THE CONTRACTOR IS RESPONSIBLE FOR COSTS INCURRED BY THE STATE OR ANY  
17 POLITICAL SUBDIVISION FOR LEGAL COSTS RELATING TO ESCAPES, RIOTS OR DISTURBANCES, OR  
18 OTHER NATURAL OR HUMAN-CAUSED EVENTS THAT OCCUR AT THE FACILITY.

19 (3) THE CONTRACTOR IS RESPONSIBLE FOR ALL REASONABLE COSTS AND EXPENSES  
20 INCURRED BY THE STATE OR A POLITICAL SUBDIVISION BROUGHT BY OR ON BEHALF OF AN INMATE  
21 WHILE AN INMATE IS INCARCERATED AT A PRIVATE CORRECTIONAL FACILITY.

22

23 NEW SECTION. SECTION 11. QUALIFICATIONS OF CORRECTIONAL OFFICERS. (1)  
24 CORRECTIONAL OFFICERS MAY NOT BE EMPLOYED IF PREVIOUSLY CONVICTED OF A FELONY  
25 OFFENSE.

26 (2) A CORRECTIONAL OFFICER MAY NOT CARRY A FIREARM OR OTHER WEAPON IN THE  
27 PERFORMANCE OF THE CORRECTIONAL OFFICER'S DUTIES UNLESS THE CORRECTIONAL OFFICER HAS  
28 COMPLETED A DEPARTMENT-APPROVED WEAPONS TRAINING COURSE OR IS IN COMPLIANCE WITH  
29 STANDARDS DEVELOPED OR ADOPTED BY THE DEPARTMENT.

30

1           NEW SECTION. SECTION 12. RESTRICTIONS ON INMATE MOVEMENTS. AN INMATE MAY NOT  
2 LEAVE THE SECURE PREMISES OF A PRIVATE CORRECTIONAL FACILITY EXCEPT TO COMPLY WITH A  
3 COURT ORDER, TO RECEIVE MEDICAL CARE THAT IS NOT AVAILABLE AT THE PRIVATE CORRECTIONAL  
4 FACILITY, OR AS PART OF A WORK PROGRAM WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE  
5 DEPARTMENT. ANY MOVEMENT OF AN INMATE OUTSIDE OF THE SECURE PREMISES OF THE PRIVATE  
6 CORRECTIONAL FACILITY MUST BE IN COMPLIANCE WITH APPROVED POLICIES AND PROCEDURES  
7 ESTABLISHED BY THE DEPARTMENT.

8  
9           NEW SECTION. Section 13. Failure to comply with law -- action by department. (1) A  
10 CONTRACTOR SHALL REMAIN IN STRICT COMPLIANCE WITH [SECTIONS 1 THROUGH 13],  
11 ESTABLISHED AMERICAN CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND  
12 CONTRACT REQUIREMENTS.

13           (2) If the department determines at any time that a private correctional facility does not conform  
14 to [sections 1 through ~~5~~ 13] and department rules, the department shall notify the chief executive officer  
15 and the governing board of the facility. The notice must state the deficiencies and order that they be  
16 remedied within a ~~reasonable~~ SPECIFIED period of time NOT TO EXCEED 1 YEAR. If the deficiencies are  
17 not remedied within that time, the department may hold a contested case hearing under Title 2, chapter  
18 4, and if the department finds that suspension or revocation is warranted by nonconformance with [sections  
19 1 through ~~5~~ 13] and department rules, the department may suspend or revoke the facility's license.

20           (3) IF A PRIVATE CORRECTIONAL FACILITY FAILS TO COMPLY WITH [SECTIONS 1 THROUGH  
21 13], DEPARTMENT RULES, OR CONTRACT REQUIREMENTS WITHIN THE SPECIFIED TIME PERIOD, THE  
22 STATE MAY ASSUME CONTROL OF THE FACILITY FOR THE PURPOSE OF PROTECTING THE INMATES,  
23 FACILITY STAFF, OR THE PUBLIC. IF THE STATE ASSUMES CONTROL OF THE FACILITY, THE  
24 DEPARTMENT SHALL SUSPEND PAYMENT FOR ANY SERVICES, AND THE DEPARTMENT ASSUMES THE  
25 COSTS OF ASSUMING CONTROL.

26           (4) THE DEPARTMENT MAY ASSUME EMERGENCY CONTROL OF A PRIVATE CORRECTIONAL  
27 FACILITY IF SUBSTANTIAL VIOLATIONS EXIST THAT AFFECT THE LIFE, HEALTH, OR SAFETY OF THE  
28 INMATES, FACILITY EMPLOYEES, OR THE PUBLIC OR THAT OTHERWISE SUBSTANTIALLY IMPACT THE  
29 SECURITY OF THE PRIVATE CORRECTIONAL FACILITY.

30           (5) IN THE EVENT THAT A CONTRACTOR FAILS TO COMPLY WITH [SECTIONS 1 THROUGH 13],

1 DEPARTMENT RULE, OR CONTRACT REQUIREMENTS, THE STATE MAY RETAIN THE OPTION OF  
2 PURCHASING OR LEASING THE FACILITY.

3 (6) IF EITHER THE STATE OR THE CONTRACTOR FAILS TO RENEW A CONTRACT, THE STATE  
4 MAY RETAIN THE OPTION OF PURCHASING OR LEASING THE FACILITY.

5 (7) IF THE STATE RETAINS THE OPTION OF PURCHASING OR LEASING THE FACILITY UNDER  
6 SUBSECTIONS (5) AND (6) OF THIS SECTION, BECAUSE IT REQUIRES THE CREATION OF STATE DEBT,  
7 THE APPROPRIATION BILL THAT FUNDS THE PURCHASE OF SERVICES FROM THE FACILITY MUST BE  
8 TREATED IN THE SAME MANNER AS A BILL CREATING STATE DEBT AND REQUIRES A VOTE OF  
9 TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE FOR PASSAGE.

10

11 NEW SECTION. Section 14. Codification instruction. [Sections 1 through & 13] are intended to  
12 be codified as a new part in Title 53, chapter 30.

13

14 NEW SECTION. SECTION 15. APPLICABILITY. (1) [THIS ACT] APPLIES TO PROCEEDINGS  
15 BEGUN OR CONTRACTS RENEWED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

16 (2) [SECTION 7] DOES NOT APPLY TO A PRIVATE CORRECTIONAL FACILITY THAT HAS BEEN  
17 ESTABLISHED OR PROPOSED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

18

19 NEW SECTION. Section 16. Effective date. [This act] is effective on passage and approval.

20

-END-

## 1 HOUSE BILL NO. 83

2 INTRODUCED BY BERGSAGEL

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AND PROVIDING FOR THE REGULATION OF  
6 PRIVATE CORRECTIONAL FACILITIES; SPECIFYING THE DEPARTMENT OF CORRECTIONS DUTIES AND  
7 RESPONSIBILITIES; SPECIFYING THE DUTIES NOT DELEGABLE TO A CONTRACTOR; SPECIFYING THE  
8 REQUIREMENTS OF REQUESTS FOR PROPOSALS; SPECIFYING CERTAIN REQUIREMENTS OF  
9 CONTRACTS; SPECIFYING CONTRACTOR RESPONSIBILITY FOR CERTAIN COSTS; PROVIDING FOR  
10 LICENSURE OF FACILITIES; SPECIFYING ACTION BY THE DEPARTMENT FOR CONTRACTOR FAILURE TO  
11 COMPLY WITH LAW OR TO RENEW CONTRACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
12 AN APPLICABILITY DATE."

13  
14 STATEMENT OF INTENT

15 A statement of intent is required for this bill to provide guidance to the department of corrections  
16 in adopting rules under [section 4]. It is the intent of the legislature that rules adopted by the department  
17 ensure public participation in the siting of a private correctional facility, ensure that the design and  
18 construction of a private correctional facility be reviewed and approved by the department of administration,  
19 and provide that the management and operation of a private correctional facility substantially conform with  
20 recognized correctional standards, such as the American correctional association standards.

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23  
24 NEW SECTION. Section 1. Policy. It is the policy of the state of Montana to encourage innovative  
25 methods to provide the correctional resources necessary to confine persons convicted of crimes. The state  
26 recognizes that there may be benefits to confining convicted persons in private correctional facilities  
27 operated consistently with public policy.

28  
29 NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~5~~ 13], the following  
30 definitions apply:

1 (1) "Department" means the department of corrections provided for in 2-15-2301.

2 (2) (a) "Private correctional facility" means a correctional facility that is either privately operated  
3 or privately owned and operated.

4 (b) The term does not include a private detention center governed by Title 7, chapter 32, part 22.

5

6 **NEW SECTION. Section 3. Private correctional facilities -- confinable persons.** ~~(1)~~ An  
7 individual, corporation, partnership, association, or other private organization or entity may not construct  
8 or operate a private correctional facility unless licensed by the department. A LICENSE IS  
9 NONTRANSFERABLE.

10 ~~(2) A person convicted in another state may not be confined in a private correctional facility in this~~  
11 ~~state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4.~~

12 (2) A PERSON CONVICTED IN ANOTHER STATE MAY NOT BE CONFINED IN A PRIVATE  
13 CORRECTIONAL FACILITY IN THIS STATE UNLESS THE CONFINEMENT IS UNDER AND GOVERNED BY  
14 TITLE 46, CHAPTER 19, PART 3 OR 4.

15

16 **NEW SECTION. SECTION 4. DEPARTMENT DUTIES AND RESPONSIBILITIES -- RULEMAKING**  
17 **AUTHORITY.** (1) (A) THE DEPARTMENT SHALL ADOPT RULES THAT REQUIRE THE PRIVATE  
18 CORRECTIONAL FACILITY TO BE AN ACCREDITED CORRECTIONAL FACILITY OR TO ACHIEVE  
19 ACCREDITATION WITHIN 3 YEARS FROM THE DATE THAT THE FACILITY BEGINS OPERATION.

20 (B) THE RULES MUST PROVIDE FOR REVIEW AND APPROVAL OF FACILITY DESIGN AND  
21 CONSTRUCTION BY THE DEPARTMENT OF ADMINISTRATION.

22 (2) THE DEPARTMENT SHALL AT LEAST ANNUALLY INSPECT EACH PRIVATE CORRECTIONAL  
23 FACILITY TO DETERMINE COMPLIANCE WITH [SECTIONS 1 THROUGH 13], REGULATIONS, CONTRACT  
24 REQUIREMENTS, AND DEPARTMENT RULES.

25 (3) THE DEPARTMENT SHALL PRESENT A BIENNIAL REPORT OF COMPLIANCE INSPECTIONS TO  
26 THE LEGISLATURE.

27

28 **NEW SECTION. SECTION 5. REQUIREMENTS OF REQUEST FOR PROPOSALS.** (1) THE REQUEST  
29 FOR PROPOSALS MUST INCLUDE AND IDENTIFY THE SERVICES REQUESTED AND REQUIRED AND  
30 OTHER INFORMATION, INCLUDING BUT NOT LIMITED TO:



- 1           (A) THE PHYSICAL PLANT, FACILITY, AND PERIMETER;
- 2           (I) THE FACILITY CAPACITY AND INMATE POPULATION, INCLUDING CLASSIFICATION LEVELS
- 3 ACCEPTED;
- 4           (II) INMATE HOUSING; AND
- 5           (III) SECURITY, SAFETY, AND EMERGENCY PROCEDURES.
- 6           (B) WHO IS RESPONSIBLE FOR TRANSPORTATION OF INMATES:
- 7           (I) AMONG FACILITIES;
- 8           (II) UPON AN INMATE'S RELEASE, INCLUDING DISCHARGE OR PAROLE;
- 9           (III) FOR COURT AND ADMINISTRATIVE PROCEEDINGS SUCH AS PAROLE HEARINGS AND
- 10 INMATE PARTICIPATION AS A WITNESS;
- 11           (IV) FOR MEDICAL TRANSPORTATION; AND
- 12           (V) SECURITY.
- 13           (C) ADMINISTRATION OF THE FACILITY, INCLUDING BUT NOT LIMITED TO:
- 14           (I) THE ORGANIZATIONAL STRUCTURE AND STAFFING; AND
- 15           (II) A POLICY AND PROCEDURES MANUAL ADDRESSING:
- 16           (A) INMATE DISCIPLINE;
- 17           (B) INCIDENT REPORTING;
- 18           (C) GRIEVANCE PROCEDURES;
- 19           (D) SEARCHES;
- 20           (E) DRUG TESTING;
- 21           (F) MONITORING OF FACILITY STANDARDS; AND
- 22           (G) THE RETENTION AND MAINTENANCE OF INMATE AND FACILITY RECORDS BY THE PRIVATE
- 23 CORRECTIONAL FACILITY.
- 24           (D) STAFFING ISSUES REGARDING:
- 25           (I) MANAGEMENT;
- 26           (II) SECURITY;
- 27           (III) ADMINISTRATIVE PERSONNEL;
- 28           (IV) QUALIFICATIONS AND REQUIREMENTS;
- 29           (V) TRAINING;
- 30           (VI) STAFF TO INMATE RATIOS;

1 (E) INMATE NEEDS SUCH AS FOOD, CLOTHING, SANITATION, HYGIENE, AND LAUNDRY;

2 (F) PROGRAMS AND SERVICES TO BE REQUIRED SUCH AS VOCATIONAL AND EDUCATIONAL  
 3 TRAINING, RELIGIOUS SERVICES OR CUSTOMS, COUNSELING, RECREATION, AND CANTEEN;

4 (G) MEDICAL, DENTAL, OPTICAL, PHARMACEUTICAL, PSYCHOLOGICAL, AND OTHER  
 5 MEDICAL-RELATED CARE;

6 (H) INSURANCE REQUIREMENTS;

7 (I) INDEMNIFICATION;

8 (J) PERFORMANCE BONDS;

9 (K) A REQUIREMENT THAT PROPOSERS PROVIDE EVIDENCE OR DOCUMENTATION  
 10 DEMONSTRATING AN ABILITY TO PROVIDE THE SERVICES; TO COMPLY WITH ACCEPTABLE SERVICES;  
 11 AND TO COMPLY WITH THE RULES, REGULATIONS, AND CONTRACT REQUIREMENTS;

12 (L) A REQUIREMENT THAT PROPOSERS PROVIDE DOCUMENTATION OF FINANCIAL STABILITY  
 13 OR SECURITY; AND

14 (M) MONITORING OF FACILITY OPERATIONS.

15 (2) THE DEPARTMENT MAY RELEASE SEPARATE REQUESTS FOR PROPOSALS OR CONTRACTS  
 16 FOR SPECIFIC SERVICES SUCH AS TRANSPORTATION OF INMATES AND MEDICAL, DENTAL, VISION,  
 17 AND SICK CALL SERVICES. EACH CONTRACT MUST INCLUDE A DETAILED EXPLANATION OF THE  
 18 SERVICES THAT MUST BE PROVIDED.

19 (3) THE DEPARTMENT SHALL MAINTAIN A LIST OF QUALIFIED APPLICANTS AND ALL  
 20 PROPOSAL RESPONSES. THE DEPARTMENT SHALL RETAIN ALL RECORDS RELATED TO THE  
 21 EVALUATION PROCESS AND THE AWARDING OF A CONTRACT.

22  
 23 NEW SECTION. Section 6. License -- rules -- inspection. (1) ~~to~~ The department shall grant  
 24 a license to a private correctional facility determined by the department to conform to [sections 1 through  
 25 ~~§ 13~~] and department rules.

26 ~~(b) The department may grant a license to a nonconforming facility if the department determines~~  
 27 ~~that the facility is making satisfactory progress toward substantial conformity with [sections 1 through 5]~~  
 28 ~~and department rules and that the interests and well-being of the residents of this state and of the persons~~  
 29 ~~to be confined in the facility are protected.~~

30 (2) THE DEPARTMENT MAY GRANT A TEMPORARY LICENSE FOR 1 YEAR TO A FACILITY THAT

1 LOSES ACCREDITATION IF THE DEPARTMENT DETERMINES THAT THE FACILITY IS MAKING  
2 SATISFACTORY PROGRESS TOWARD SUBSTANTIAL CONFORMITY WITH [SECTIONS 1 THROUGH 13],  
3 AMERICAN CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND CONTRACT  
4 REQUIREMENTS AND THAT THE INTERESTS AND WELL-BEING OF THE RESIDENTS OF THE STATE AND  
5 OF THE PERSONS TO BE CONFINED IN THE FACILITY ARE PROTECTED. A TEMPORARY LICENSE MAY  
6 NOT BE RENEWED.

7 (3) EXCEPT AS PROVIDED IN SUBSECTION (2), THE DEPARTMENT MAY NOT GRANT A LICENSE  
8 UNLESS THE CONTRACTOR CONFORMS TO ALL STATE AND FEDERAL STATUTES, AMERICAN  
9 CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND OTHER REQUIREMENTS AS  
10 DEFINED IN ADMINISTRATIVE RULE.

11 ~~(e)~~(4) UPON REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE, THE LEGISLATIVE AUDIT  
12 DIVISION SHALL REVIEW EACH CONTRACT PRIOR TO EXECUTION TO DETERMINE IF THE CONTRACT  
13 ADDRESSES LEGISLATIVE INTENT AND INCLUDES THE REQUIREMENTS IMPOSED BY [SECTIONS 1  
14 THROUGH 13]. THE LEGISLATIVE AUDIT DIVISION SHALL PROVIDE THEIR FINDINGS TO THE  
15 DEPARTMENT. The department may not grant a license to a private correctional facility unless the  
16 department determines that the grant conforms to the long-range correctional goals of the department and  
17 state. THE DEPARTMENT SHALL TAKE INTO CONSIDERATION THE LEGISLATIVE AUDIT DIVISION  
18 FINDINGS IN ITS DETERMINATION.

19 ~~(d)~~(5) The department may not grant a license to a private correctional facility until the facility has  
20 provided the department with an indemnity bond that indemnifies the state and that is acceptable to the  
21 department.

22 (6) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
23 UNLESS THE FACILITY PROVIDES CLEAR EVIDENCE OF SUPPORT FROM THE RESIDENTS OF THE  
24 COUNTY IN WHICH THE FACILITY IS TO BE LOCATED.

25 (7) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
26 UNLESS THE FACILITY HAS PROMULGATED A POLICY TO PROVIDE REASONABLE ACCESS TO THE  
27 FACILITY BY REPRESENTATIVES OF THE PUBLIC MEDIA.

28 (8) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
29 UNLESS THE FACILITY HAS ENTERED INTO AN AGREEMENT WITH LOCAL AND STATE LAW  
30 ENFORCEMENT AUTHORITIES. THE PRIVATE CORRECTIONAL FACILITY MUST DEMONSTRATE AN

1 ADEQUATE RESPONSE FOR THE MUTUAL AID, ASSISTANCE, AND NOTIFICATION IN THE EVENT OF AN  
 2 ESCAPE, NATURAL OR HUMAN-CAUSED DISASTER, RIOT, OR OTHER ACT THAT MAY POTENTIALLY  
 3 AFFECT PUBLIC SAFETY.

4 (9) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
 5 UNLESS THE LEGISLATURE HAS APPROPRIATED FUNDS FOR THE HOUSING OF STATE INMATES IN  
 6 PRIVATE CORRECTIONAL FACILITIES.

7 ~~(2) The department shall adopt rules, including minimum standards, for the location, construction,~~  
 8 ~~operation, management, and physical condition of private correctional facilities and for the security, safety,~~  
 9 ~~health, treatment, and discipline of persons confined in them. The rules must provide for review and~~  
 10 ~~approval of facility design and construction by the department of administration.~~

11 ~~(3)(10)~~ The department shall at least annually inspect each private correctional facility to determine  
 12 compliance with [sections 1 through ~~5~~ 13] and department rules.

13  
 14 NEW SECTION. SECTION 7. LICENSURE LIMITATIONS -- SITING OF PRIVATE CORRECTIONAL  
 15 FACILITIES. (1) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL  
 16 FACILITY LOCATED WITHIN 2 MILES OF A PUBLIC OR NONPUBLIC SCHOOL, NOT INCLUDING A HOME  
 17 SCHOOL. HOWEVER, IF A PUBLIC OR NONPUBLIC SCHOOL IS ESTABLISHED AFTER A FACILITY HAS  
 18 BEEN APPROVED, THE DEPARTMENT MAY NOT PREVENT THE PRIVATE CORRECTIONAL FACILITY FROM  
 19 OPERATING BECAUSE OF THIS SUBSECTION (1).

20 (2) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
 21 UNLESS THERE HAS BEEN A PUBLIC HEARING IN THE COUNTY IN WHICH THE PRIVATE CORRECTIONAL  
 22 FACILITY IS TO BE LOCATED AND UNLESS THE COUNTY COMMISSIONERS APPROVE THE LOCATION  
 23 OF THE PRIVATE CORRECTIONAL FACILITY BY A MAJORITY VOTE. IF THE PROPOSED FACILITY IS TO  
 24 BE LOCATED WITHIN THE LIMITS OF A MUNICIPALITY, THE DEPARTMENT MAY NOT GRANT A LICENSE  
 25 TO A PRIVATE CORRECTIONAL FACILITY UNLESS THERE HAS BEEN A PUBLIC HEARING IN THE  
 26 MUNICIPALITY AND THE LOCAL GOVERNING BODY APPROVES THE LOCATION OF THE PRIVATE  
 27 CORRECTIONAL FACILITY BY A MAJORITY VOTE.

28 (3) IF THE SITING OF A PRIVATE CORRECTIONAL FACILITY IS PROPOSED WITHIN 10 MILES OF  
 29 AN ADJACENT COUNTY OR IF THE DEPARTMENT DETERMINES THAT THERE ARE REASONABLE  
 30 EXPECTATIONS THAT THE SITING MAY HAVE AN IMPACT ON AN ADJACENT COUNTY, THE

1 DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY UNLESS THERE  
2 HAS BEEN A PUBLIC HEARING IN THE ADJACENT COUNTY AND UNLESS THE COUNTY  
3 COMMISSIONERS OF THE ADJACENT COUNTY APPROVE THE LOCATION OF THE PRIVATE  
4 CORRECTIONAL FACILITY BY A MAJORITY VOTE.

5  
6 NEW SECTION. SECTION 8. LICENSURE LIMITATIONS -- CONSTRUCTION REQUIREMENTS. (1)  
7 THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY UNLESS THE  
8 DESIGN MEETS LONG-TERM CORRECTIONAL NEEDS, GOALS, AND OBJECTIVES AS DETERMINED BY  
9 THE DEPARTMENT.

10 (2) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
11 UNLESS THE FACILITY IS CONSTRUCTED IN ACCORDANCE WITH AMERICAN CORRECTIONAL  
12 ASSOCIATION FACILITY CONSTRUCTION REQUIREMENTS. IN ADDITION, THE PRIVATE CORRECTIONAL  
13 FACILITY MUST COMPLY WITH ANY OTHER LOCAL, STATE, OR FEDERAL LAWS OR REGULATIONS.

14 (3) THE DEPARTMENT MAY NOT GRANT A LICENSE UNLESS THE DEPARTMENT AND THE  
15 DEPARTMENT OF ADMINISTRATION HAVE REVIEWED AND APPROVED THE DESIGN AND  
16 CONSTRUCTION OF THE PRIVATE CORRECTIONAL FACILITY.

17  
18 NEW SECTION. SECTION 9. CONTRACTS WITH PRIVATE CORRECTIONAL FACILITIES. (1) A  
19 CONTRACT WITH A PRIVATE CORRECTIONAL FACILITY MUST BE AWARDED TO THE CONTRACTOR  
20 WHO BEST MEETS THE NEEDS OF THE STATE AND THE DEPARTMENT AND DEMONSTRATES THE  
21 CAPABILITY OF PROVIDING SERVICES REQUESTED.

22 (2) A CONTRACT MUST SPECIFY THE TYPE AND LEVEL OF SERVICES TO BE PROVIDED BY THE  
23 CONTRACTOR. THE DEPARTMENT SHALL PLACE REQUIREMENTS IN THE CONTRACT THAT REQUIRE  
24 THE PRIVATE CONTRACTOR TO ALLOW THE DEPARTMENT TO REVIEW AND APPROVE:

25 (A) CHOOSE THE CORRECTIONAL FACILITY TO WHICH AN INMATE IS INITIALLY OR  
26 SUBSEQUENTLY ASSIGNED. A CONTRACTOR MAY REQUEST THE DEPARTMENT TO TRANSFER AN  
27 INMATE TO A STATE FACILITY OR TO ANOTHER PRIVATE FACILITY.

28 (B) DEVELOP OR ADOPT DISCIPLINARY RULES THAT DIFFER FROM THE DISCIPLINARY RULES,  
29 PENALTIES, AND POLICIES OF THE DEPARTMENT;

30 (C) MAKE A DECISION THAT AFFECTS THE SENTENCE IMPOSED ON AN INMATE OR THE TIME

1 SERVED BY AN INMATE;

2 (D) MAKE RECOMMENDATIONS TO THE BOARD OF PARDONS AND PAROLE WITH RESPECT TO  
 3 THE DENIAL OR GRANTING OF PAROLE OR RELEASE, EXCEPT TO SUBMIT REPORTS TO THE BOARD OF  
 4 PARDONS AND PAROLE AND TO RESPOND TO REQUESTS BY THE DEPARTMENT OR THE BOARD OF  
 5 PARDONS AND PAROLE;

6 (E) DEVELOP OR IMPLEMENT REQUIREMENTS THAT INMATES ENGAGE IN ANY TYPE OF WORK,  
 7 EXCEPT TO THE EXTENT THAT THOSE REQUIREMENTS ARE ACCEPTED BY THE DEPARTMENT;

8 (F) DETERMINE INMATE ELIGIBILITY FOR ANY FORM OF RELEASE FROM A CORRECTIONAL  
 9 FACILITY; OR

10 (G) DEVELOP OR USE A CLASSIFICATION SYSTEM OTHER THAN THE CLASSIFICATION SYSTEM  
 11 USED BY THE DEPARTMENT AN INMATE CLASSIFICATION SYSTEM BASED ON A VALIDATED  
 12 OBJECTIVE CLASSIFICATION SYSTEM.

13 (3) CONTRACTS MAY NOT EXCEED A TERM OF 30 YEARS AND MUST CONTAIN PROVISIONS  
 14 FOR RENEGOTIATION AFTER 30 YEARS. THE PROVISIONS OF 18-3-104 AND 18-4-313 THAT LIMIT THE  
 15 TERM OF A CONTRACT DO NOT APPLY TO A CONTRACT AUTHORIZED BY THIS SECTION.

16 (4) THE CONTRACT MUST SPECIFY THAT THE PRIVATE CORRECTIONAL FACILITY SHALL  
 17 GRANT ACCESS TO THE LEGISLATIVE AUDIT DIVISION OR A PERSON CONTRACTING WITH THE  
 18 LEGISLATIVE AUDIT DIVISION FOR COMPLIANCE AUDITING. THE CONTRACTOR SHALL PROVIDE  
 19 ACCESS TO ALL AREAS OF THE FACILITY AND TO ALL RECORDS MAINTAINED ONSITE OR OFFSITE  
 20 THAT PERTAIN TO ALL ASPECTS OF THE FACILITY, INCLUDING BUT NOT LIMITED TO OPERATION,  
 21 FINANCIAL, AND INMATE RECORDS.

22

23 NEW SECTION. SECTION 10. CONTRACTOR COSTS RESPONSIBILITY. (1) THE PRIVATE  
 24 CORRECTIONAL FACILITY IS RESPONSIBLE FOR ALL MONITORING COSTS INCURRED BY THE STATE.

25 (2) THE CONTRACTOR IS RESPONSIBLE FOR COSTS INCURRED BY THE STATE OR ANY  
 26 POLITICAL SUBDIVISION FOR LEGAL COSTS RELATING TO ESCAPES, RIOTS OR DISTURBANCES, OR  
 27 OTHER NATURAL OR HUMAN-CAUSED EVENTS THAT OCCUR AT THE FACILITY.

28 (3) THE CONTRACTOR IS RESPONSIBLE FOR ALL REASONABLE COSTS AND EXPENSES  
 29 INCURRED BY THE STATE OR A POLITICAL SUBDIVISION BROUGHT BY OR ON BEHALF OF AN INMATE  
 30 WHILE AN INMATE IS INCARCERATED AT A PRIVATE CORRECTIONAL FACILITY.

1           NEW SECTION. SECTION 11. QUALIFICATIONS OF CORRECTIONAL OFFICERS. (1)  
2 CORRECTIONAL OFFICERS MAY NOT BE EMPLOYED IF PREVIOUSLY CONVICTED OF A FELONY  
3 OFFENSE.

4           (2) A CORRECTIONAL OFFICER MAY NOT CARRY A FIREARM OR OTHER WEAPON IN THE  
5 PERFORMANCE OF THE CORRECTIONAL OFFICER'S DUTIES UNLESS THE CORRECTIONAL OFFICER HAS  
6 COMPLETED A DEPARTMENT-APPROVED WEAPONS TRAINING COURSE OR IS IN COMPLIANCE WITH  
7 STANDARDS DEVELOPED OR ADOPTED BY THE DEPARTMENT.

8  
9           NEW SECTION. SECTION 12. RESTRICTIONS ON INMATE MOVEMENTS. AN INMATE MAY NOT  
10 LEAVE THE SECURE PREMISES OF A PRIVATE CORRECTIONAL FACILITY EXCEPT TO COMPLY WITH A  
11 COURT ORDER, TO RECEIVE MEDICAL CARE THAT IS NOT AVAILABLE AT THE PRIVATE CORRECTIONAL  
12 FACILITY, OR AS PART OF A WORK PROGRAM WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE  
13 DEPARTMENT. ANY MOVEMENT OF AN INMATE OUTSIDE OF THE SECURE PREMISES OF THE PRIVATE  
14 CORRECTIONAL FACILITY MUST BE IN COMPLIANCE WITH APPROVED POLICIES AND PROCEDURES  
15 ESTABLISHED BY THE DEPARTMENT.

16  
17           NEW SECTION. Section 13. Failure to comply with law -- action by department. (1) A  
18 CONTRACTOR SHALL REMAIN IN STRICT COMPLIANCE WITH [SECTIONS 1 THROUGH 13],  
19 ESTABLISHED AMERICAN CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND  
20 CONTRACT REQUIREMENTS.

21           (2) If the department determines at any time that a private correctional facility does not conform  
22 to [sections 1 through § 13] and department rules, the department shall notify the chief executive officer  
23 and the governing board of the facility. The notice must state the deficiencies and order that they be  
24 remedied within a reasonable SPECIFIED period of time NOT TO EXCEED 1 YEAR. If the deficiencies are  
25 not remedied within that time, the department may hold a contested case hearing under Title 2, chapter  
26 4, and if the department finds that suspension or revocation is warranted by nonconformance with [sections  
27 1 through § 13] and department rules, the department may suspend or revoke the facility's license.

28           (3) IF A PRIVATE CORRECTIONAL FACILITY FAILS TO COMPLY WITH [SECTIONS 1 THROUGH  
29 13], DEPARTMENT RULES, OR CONTRACT REQUIREMENTS WITHIN THE SPECIFIED TIME PERIOD, THE  
30 STATE MAY ASSUME CONTROL OF THE FACILITY FOR THE PURPOSE OF PROTECTING THE INMATES,

1 FACILITY STAFF, OR THE PUBLIC. IF THE STATE ASSUMES CONTROL OF THE FACILITY, THE  
2 DEPARTMENT SHALL SUSPEND PAYMENT FOR ANY SERVICES, AND THE DEPARTMENT ASSUMES THE  
3 COSTS OF ASSUMING CONTROL.

4 (4) THE DEPARTMENT MAY ASSUME EMERGENCY CONTROL OF A PRIVATE CORRECTIONAL  
5 FACILITY IF SUBSTANTIAL VIOLATIONS EXIST THAT AFFECT THE LIFE, HEALTH, OR SAFETY OF THE  
6 INMATES, FACILITY EMPLOYEES, OR THE PUBLIC OR THAT OTHERWISE SUBSTANTIALLY IMPACT THE  
7 SECURITY OF THE PRIVATE CORRECTIONAL FACILITY.

8 (5) IN THE EVENT THAT A CONTRACTOR FAILS TO COMPLY WITH [SECTIONS 1 THROUGH 13],  
9 DEPARTMENT RULE, OR CONTRACT REQUIREMENTS, THE STATE MAY RETAIN THE OPTION OF  
10 PURCHASING OR LEASING THE FACILITY.

11 (6) IF EITHER THE STATE OR THE CONTRACTOR FAILS TO RENEW A CONTRACT, THE STATE  
12 MAY RETAIN THE OPTION OF PURCHASING OR LEASING THE FACILITY.

13 (7) IF THE STATE RETAINS THE OPTION OF PURCHASING OR LEASING THE FACILITY UNDER  
14 SUBSECTIONS (5) AND (6) OF THIS SECTION, BECAUSE IT REQUIRES THE CREATION OF STATE DEBT,  
15 THE APPROPRIATION BILL THAT FUNDS THE PURCHASE OF SERVICES FROM THE FACILITY MUST BE  
16 TREATED IN THE SAME MANNER AS A BILL CREATING STATE DEBT AND REQUIRES A VOTE OF  
17 TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE FOR PASSAGE.

18  
19 NEW SECTION. Section 14. Codification instruction. [Sections 1 through ~~6~~ 13] are intended to  
20 be codified as a new part in Title 53, chapter 30.

21  
22 NEW SECTION. SECTION 15. APPLICABILITY. (1) [THIS ACT] APPLIES TO PROCEEDINGS  
23 BEGUN OR CONTRACTS RENEWED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

24 (2) [SECTION 7] DOES NOT APPLY TO A PRIVATE CORRECTIONAL FACILITY THAT HAS BEEN  
25 ESTABLISHED OR PROPOSED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

26  
27 NEW SECTION. Section 16. Effective date. [This act] is effective on passage and approval.

28 -END-



HOUSE BILL NO. 83

INTRODUCED BY BERGSAGEL

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AND PROVIDING FOR THE REGULATION OF PRIVATE CORRECTIONAL FACILITIES; SPECIFYING THE DEPARTMENT OF CORRECTIONS DUTIES AND RESPONSIBILITIES; SPECIFYING THE DUTIES NOT DELEGABLE TO A CONTRACTOR; SPECIFYING THE REQUIREMENTS OF REQUESTS FOR PROPOSALS; SPECIFYING CERTAIN REQUIREMENTS OF CONTRACTS; SPECIFYING CONTRACTOR RESPONSIBILITY FOR CERTAIN COSTS; PROVIDING FOR LICENSURE OF FACILITIES; SPECIFYING ACTION BY THE DEPARTMENT FOR CONTRACTOR FAILURE TO COMPLY WITH LAW OR TO RENEW CONTRACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance to the department of corrections in adopting rules under [section 4]. It is the intent of the legislature that rules adopted by the department ensure public participation in the siting of a private correctional facility, ensure that the design and construction of a private correctional facility be reviewed and approved by the department of administration, and provide that the management and operation of a private correctional facility substantially conform with recognized correctional standards, such as the American correctional association standards.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Policy.** It is the policy of the state of Montana to encourage innovative methods to provide the correctional resources necessary to confine persons convicted of crimes. The state recognizes that there may be benefits to confining convicted persons in private correctional facilities operated consistently with public policy.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through & 13], the following definitions apply:

1 (1) "Department" means the department of corrections provided for in 2-15-2301.

2 (2) (a) "Private correctional facility" means a correctional facility that is either privately operated  
3 or privately owned and operated.

4 (b) The term does not include a private detention center governed by Title 7, chapter 32, part 22.

5

6 **NEW SECTION. Section 3. Private correctional facilities -- confinable persons.** ~~(1)~~(1) An  
7 individual, corporation, partnership, association, or other private organization or entity may not construct  
8 or operate a private correctional facility unless licensed by the department. A LICENSE IS  
9 NONTRANSFERABLE.

10 ~~(2) A person convicted in another state may not be confined in a private correctional facility in this~~  
11 ~~state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4.~~

12 (2) A PERSON CONVICTED IN ANOTHER STATE MAY NOT BE CONFINED IN A PRIVATE  
13 CORRECTIONAL FACILITY IN THIS STATE UNLESS THE CONFINEMENT IS UNDER AND GOVERNED BY  
14 TITLE 46, CHAPTER 19, PART 3 OR 4.

15

16 **NEW SECTION. SECTION 4. DEPARTMENT DUTIES AND RESPONSIBILITIES -- RULEMAKING**  
17 **AUTHORITY.** (1) (A) THE DEPARTMENT SHALL ADOPT RULES THAT REQUIRE THE PRIVATE  
18 CORRECTIONAL FACILITY TO BE AN ACCREDITED CORRECTIONAL FACILITY OR TO ACHIEVE  
19 ACCREDITATION WITHIN 3 YEARS FROM THE DATE THAT THE FACILITY BEGINS OPERATION.

20 (B) THE RULES MUST PROVIDE FOR REVIEW AND APPROVAL OF FACILITY DESIGN AND  
21 CONSTRUCTION BY THE DEPARTMENT OF ADMINISTRATION.

22 (2) THE DEPARTMENT SHALL AT LEAST ANNUALLY INSPECT EACH PRIVATE CORRECTIONAL  
23 FACILITY TO DETERMINE COMPLIANCE WITH [SECTIONS 1 THROUGH 13], REGULATIONS, CONTRACT  
24 REQUIREMENTS, AND DEPARTMENT RULES.

25 (3) THE DEPARTMENT SHALL PRESENT A BIENNIAL REPORT OF COMPLIANCE INSPECTIONS TO  
26 THE LEGISLATURE.

27

28 **NEW SECTION. SECTION 5. REQUIREMENTS OF REQUEST FOR PROPOSALS.** (1) THE REQUEST  
29 FOR PROPOSALS MUST INCLUDE AND IDENTIFY THE SERVICES REQUESTED AND REQUIRED AND  
30 OTHER INFORMATION, INCLUDING BUT NOT LIMITED TO:

- 1           (A) THE PHYSICAL PLANT, FACILITY, AND PERIMETER;  
2           (I) THE FACILITY CAPACITY AND INMATE POPULATION, INCLUDING CLASSIFICATION LEVELS  
3 ACCEPTED;  
4           (II) INMATE HOUSING; AND  
5           (III) SECURITY, SAFETY, AND EMERGENCY PROCEDURES.  
6           (B) WHO IS RESPONSIBLE FOR TRANSPORTATION OF INMATES:  
7           (I) AMONG FACILITIES;  
8           (II) UPON AN INMATE'S RELEASE, INCLUDING DISCHARGE OR PAROLE;  
9           (III) FOR COURT AND ADMINISTRATIVE PROCEEDINGS SUCH AS PAROLE HEARINGS AND  
10 INMATE PARTICIPATION AS A WITNESS;  
11           (IV) FOR MEDICAL TRANSPORTATION; AND  
12           (V) SECURITY.  
13           (C) ADMINISTRATION OF THE FACILITY, INCLUDING BUT NOT LIMITED TO:  
14           (I) THE ORGANIZATIONAL STRUCTURE AND STAFFING; AND  
15           (II) A POLICY AND PROCEDURES MANUAL ADDRESSING:  
16           (A) INMATE DISCIPLINE;  
17           (B) INCIDENT REPORTING;  
18           (C) GRIEVANCE PROCEDURES;  
19           (D) SEARCHES;  
20           (E) DRUG TESTING;  
21           (F) MONITORING OF FACILITY STANDARDS; AND  
22           (G) THE RETENTION AND MAINTENANCE OF INMATE AND FACILITY RECORDS BY THE PRIVATE  
23 CORRECTIONAL FACILITY.  
24           (D) STAFFING ISSUES REGARDING:  
25           (I) MANAGEMENT;  
26           (II) SECURITY;  
27           (III) ADMINISTRATIVE PERSONNEL;  
28           (IV) QUALIFICATIONS AND REQUIREMENTS;  
29           (V) TRAINING;  
30           (VI) STAFF TO INMATE RATIOS;

- 1           (E) INMATE NEEDS SUCH AS FOOD, CLOTHING, SANITATION, HYGIENE, AND LAUNDRY;
- 2           (F) PROGRAMS AND SERVICES TO BE REQUIRED SUCH AS VOCATIONAL AND EDUCATIONAL  
 3 TRAINING, RELIGIOUS SERVICES OR CUSTOMS, COUNSELING, RECREATION, AND CANTEEN;
- 4           (G) MEDICAL, DENTAL, OPTICAL, PHARMACEUTICAL, PSYCHOLOGICAL, AND OTHER  
 5 MEDICAL-RELATED CARE;
- 6           (H) INSURANCE REQUIREMENTS;
- 7           (I) INDEMNIFICATION;
- 8           (J) PERFORMANCE BONDS;
- 9           (K) A REQUIREMENT THAT PROPOSERS PROVIDE EVIDENCE OR DOCUMENTATION  
 10 DEMONSTRATING AN ABILITY TO PROVIDE THE SERVICES; TO COMPLY WITH ACCEPTABLE SERVICES;  
 11 AND TO COMPLY WITH THE RULES, REGULATIONS, AND CONTRACT REQUIREMENTS;
- 12           (L) A REQUIREMENT THAT PROPOSERS PROVIDE DOCUMENTATION OF FINANCIAL STABILITY  
 13 OR SECURITY; AND
- 14           (M) MONITORING OF FACILITY OPERATIONS.
- 15           (2) THE DEPARTMENT MAY RELEASE SEPARATE REQUESTS FOR PROPOSALS OR CONTRACTS  
 16 FOR SPECIFIC SERVICES SUCH AS TRANSPORTATION OF INMATES AND MEDICAL, DENTAL, VISION,  
 17 AND SICK CALL SERVICES. EACH CONTRACT MUST INCLUDE A DETAILED EXPLANATION OF THE  
 18 SERVICES THAT MUST BE PROVIDED.
- 19           (3) THE DEPARTMENT SHALL MAINTAIN A LIST OF QUALIFIED APPLICANTS AND ALL  
 20 PROPOSAL RESPONSES. THE DEPARTMENT SHALL RETAIN ALL RECORDS RELATED TO THE  
 21 EVALUATION PROCESS AND THE AWARDING OF A CONTRACT.
- 22
- 23           NEW SECTION. Section 6. License —rules -- inspection.   (1) ~~(a)~~ The department shall grant  
 24 a license to a private correctional facility determined by the department to conform to [sections 1 through  
 25 ~~5~~ 13] and department rules.
- 26           ~~(b) The department may grant a license to a nonconforming facility if the department determines~~  
 27 ~~that the facility is making satisfactory progress toward substantial conformity with [sections 1 through 5]~~  
 28 ~~and department rules and that the interests and well-being of the residents of this state and of the persons~~  
 29 ~~to be confined in the facility are protected.~~
- 30           (2) THE DEPARTMENT MAY GRANT A TEMPORARY LICENSE FOR 1 YEAR TO A FACILITY THAT

1 LOSES ACCREDITATION IF THE DEPARTMENT DETERMINES THAT THE FACILITY IS MAKING  
2 SATISFACTORY PROGRESS TOWARD SUBSTANTIAL CONFORMITY WITH [SECTIONS 1 THROUGH 13],  
3 AMERICAN CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND CONTRACT  
4 REQUIREMENTS AND THAT THE INTERESTS AND WELL-BEING OF THE RESIDENTS OF THE STATE AND  
5 OF THE PERSONS TO BE CONFINED IN THE FACILITY ARE PROTECTED. A TEMPORARY LICENSE MAY  
6 NOT BE RENEWED.

7 (3) EXCEPT AS PROVIDED IN SUBSECTION (2), THE DEPARTMENT MAY NOT GRANT A LICENSE  
8 UNLESS THE CONTRACTOR CONFORMS TO ALL STATE AND FEDERAL STATUTES, AMERICAN  
9 CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND OTHER REQUIREMENTS AS  
10 DEFINED IN ADMINISTRATIVE RULE.

11 ~~(c)(4) UPON REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE, THE LEGISLATIVE AUDIT~~  
12 ~~DIVISION SHALL REVIEW EACH CONTRACT PRIOR TO EXECUTION TO DETERMINE IF THE CONTRACT~~  
13 ~~ADDRESSES LEGISLATIVE INTENT AND INCLUDES THE REQUIREMENTS IMPOSED BY [SECTIONS 1~~  
14 ~~THROUGH 13]. THE LEGISLATIVE AUDIT DIVISION SHALL PROVIDE THEIR FINDINGS TO THE~~  
15 ~~DEPARTMENT.~~ The department may not grant a license to a private correctional facility unless the  
16 department determines that the grant conforms to the long-range correctional goals of the department and  
17 state. ~~THE DEPARTMENT SHALL TAKE INTO CONSIDERATION THE LEGISLATIVE AUDIT DIVISION~~  
18 ~~FINDINGS IN ITS DETERMINATION.~~

19 ~~(d)(5)~~ The department may not grant a license to a private correctional facility until the facility has  
20 provided the department with an indemnity bond that indemnifies the state and that is acceptable to the  
21 department.

22 (6) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
23 UNLESS THE FACILITY PROVIDES CLEAR EVIDENCE OF SUPPORT FROM THE RESIDENTS OF THE  
24 COUNTY IN WHICH THE FACILITY IS TO BE LOCATED.

25 (7) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
26 UNLESS THE FACILITY HAS PROMULGATED A POLICY TO PROVIDE REASONABLE ACCESS TO THE  
27 FACILITY BY REPRESENTATIVES OF THE PUBLIC MEDIA.

28 (8) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
29 UNLESS THE FACILITY HAS ENTERED INTO AN AGREEMENT WITH LOCAL AND STATE LAW  
30 ENFORCEMENT AUTHORITIES. THE PRIVATE CORRECTIONAL FACILITY MUST DEMONSTRATE AN

1 ADEQUATE RESPONSE FOR THE MUTUAL AID, ASSISTANCE, AND NOTIFICATION IN THE EVENT OF AN  
2 ESCAPE, NATURAL OR HUMAN-CAUSED DISASTER, RIOT, OR OTHER ACT THAT MAY POTENTIALLY  
3 AFFECT PUBLIC SAFETY.

4 (9) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
5 UNLESS THE LEGISLATURE HAS APPROPRIATED FUNDS FOR THE HOUSING OF STATE INMATES IN  
6 PRIVATE CORRECTIONAL FACILITIES.

7 ~~(2) The department shall adopt rules, including minimum standards, for the location, construction,~~  
8 ~~operation, management, and physical condition of private correctional facilities and for the security, safety,~~  
9 ~~health, treatment, and discipline of persons confined in them. The rules must provide for review and~~  
10 ~~approval of facility design and construction by the department of administration.~~

11 ~~(3)(10)~~ The department shall at least annually inspect each private correctional facility to determine  
12 compliance with [sections 1 through ~~5~~ 13] and department rules.

13

14 **NEW SECTION. SECTION 7. LICENSURE LIMITATIONS -- SITING OF PRIVATE CORRECTIONAL**  
15 **FACILITIES. (1) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL**  
16 **FACILITY LOCATED WITHIN 2 MILES OF A PUBLIC OR NONPUBLIC SCHOOL, NOT INCLUDING A HOME**  
17 **SCHOOL. HOWEVER, IF A PUBLIC OR NONPUBLIC SCHOOL IS ESTABLISHED AFTER A FACILITY HAS**  
18 **BEEN APPROVED, THE DEPARTMENT MAY NOT PREVENT THE PRIVATE CORRECTIONAL FACILITY FROM**  
19 **OPERATING BECAUSE OF THIS SUBSECTION (1).**

20 (2) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
21 UNLESS THERE HAS BEEN A PUBLIC HEARING IN THE COUNTY IN WHICH THE PRIVATE CORRECTIONAL  
22 FACILITY IS TO BE LOCATED AND UNLESS THE COUNTY COMMISSIONERS APPROVE THE LOCATION  
23 OF THE PRIVATE CORRECTIONAL FACILITY BY A MAJORITY VOTE. IF THE PROPOSED FACILITY IS TO  
24 BE LOCATED WITHIN THE LIMITS OF A MUNICIPALITY, THE DEPARTMENT MAY NOT GRANT A LICENSE  
25 TO A PRIVATE CORRECTIONAL FACILITY UNLESS THERE HAS BEEN A PUBLIC HEARING IN THE  
26 MUNICIPALITY AND THE LOCAL GOVERNING BODY APPROVES THE LOCATION OF THE PRIVATE  
27 CORRECTIONAL FACILITY BY A MAJORITY VOTE.

28 (3) IF THE SITING OF A PRIVATE CORRECTIONAL FACILITY IS PROPOSED WITHIN 10 MILES OF  
29 AN ADJACENT COUNTY OR IF THE DEPARTMENT DETERMINES THAT THERE ARE REASONABLE  
30 EXPECTATIONS THAT THE SITING MAY HAVE AN IMPACT ON AN ADJACENT COUNTY, THE

1 DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY UNLESS THERE  
2 HAS BEEN A PUBLIC HEARING IN THE ADJACENT COUNTY AND UNLESS THE COUNTY  
3 COMMISSIONERS OF THE ADJACENT COUNTY APPROVE THE LOCATION OF THE PRIVATE  
4 CORRECTIONAL FACILITY BY A MAJORITY VOTE.

5  
6 NEW SECTION. SECTION 8. LICENSURE LIMITATIONS -- CONSTRUCTION REQUIREMENTS. (1)  
7 THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY UNLESS THE  
8 DESIGN MEETS LONG-TERM CORRECTIONAL NEEDS, GOALS, AND OBJECTIVES AS DETERMINED BY  
9 THE DEPARTMENT.

10 (2) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
11 UNLESS THE FACILITY IS CONSTRUCTED IN ACCORDANCE WITH AMERICAN CORRECTIONAL  
12 ASSOCIATION FACILITY CONSTRUCTION REQUIREMENTS. IN ADDITION, THE PRIVATE CORRECTIONAL  
13 FACILITY MUST COMPLY WITH ANY OTHER LOCAL, STATE, OR FEDERAL LAWS OR REGULATIONS.

14 (3) THE DEPARTMENT MAY NOT GRANT A LICENSE UNLESS THE DEPARTMENT AND THE  
15 DEPARTMENT OF ADMINISTRATION HAVE REVIEWED AND APPROVED THE DESIGN AND  
16 CONSTRUCTION OF THE PRIVATE CORRECTIONAL FACILITY.

17  
18 NEW SECTION. SECTION 9. CONTRACTS WITH PRIVATE CORRECTIONAL FACILITIES. (1) A  
19 CONTRACT WITH A PRIVATE CORRECTIONAL FACILITY MUST BE AWARDED TO THE CONTRACTOR  
20 WHO BEST MEETS THE NEEDS OF THE STATE AND THE DEPARTMENT AND DEMONSTRATES THE  
21 CAPABILITY OF PROVIDING SERVICES REQUESTED.

22 (2) A CONTRACT MUST SPECIFY THE TYPE AND LEVEL OF SERVICES TO BE PROVIDED BY THE  
23 CONTRACTOR. THE DEPARTMENT SHALL PLACE REQUIREMENTS IN THE CONTRACT THAT REQUIRE  
24 THE PRIVATE CONTRACTOR TO ALLOW THE DEPARTMENT TO REVIEW AND APPROVE:

25 (A) CHOOSE THE CORRECTIONAL FACILITY TO WHICH AN INMATE IS INITIALLY OR  
26 SUBSEQUENTLY ASSIGNED. A CONTRACTOR MAY REQUEST THE DEPARTMENT TO TRANSFER AN  
27 INMATE TO A STATE FACILITY OR TO ANOTHER PRIVATE FACILITY.

28 (B) DEVELOP OR ADOPT DISCIPLINARY RULES THAT DIFFER FROM THE DISCIPLINARY RULES,  
29 PENALTIES, AND POLICIES OF THE DEPARTMENT;

30 (C) MAKE A DECISION THAT AFFECTS THE SENTENCE IMPOSED ON AN INMATE OR THE TIME

1 SERVED BY AN INMATE;

2 (D) MAKE RECOMMENDATIONS TO THE BOARD OF PARDONS AND PAROLE WITH RESPECT TO  
3 THE DENIAL OR GRANTING OF PAROLE OR RELEASE, EXCEPT TO SUBMIT REPORTS TO THE BOARD OF  
4 PARDONS AND PAROLE AND TO RESPOND TO REQUESTS BY THE DEPARTMENT OR THE BOARD OF  
5 PARDONS AND PAROLE;

6 (E) DEVELOP OR IMPLEMENT REQUIREMENTS THAT INMATES ENGAGE IN ANY TYPE OF WORK,  
7 EXCEPT TO THE EXTENT THAT THOSE REQUIREMENTS ARE ACCEPTED BY THE DEPARTMENT;

8 (F) DETERMINE INMATE ELIGIBILITY FOR ANY FORM OF RELEASE FROM A CORRECTIONAL  
9 FACILITY; OR

10 (G) DEVELOP OR USE ~~A CLASSIFICATION SYSTEM OTHER THAN THE CLASSIFICATION SYSTEM~~  
11 ~~USED BY THE DEPARTMENT~~ AN INMATE CLASSIFICATION SYSTEM BASED ON A VALIDATED  
12 OBJECTIVE CLASSIFICATION SYSTEM.

13 (3) CONTRACTS MAY NOT EXCEED A TERM OF 30 YEARS AND MUST CONTAIN PROVISIONS  
14 FOR RENEGOTIATION AFTER 30 YEARS. THE PROVISIONS OF 18-3-104 AND 18-4-313 THAT LIMIT THE  
15 TERM OF A CONTRACT DO NOT APPLY TO A CONTRACT AUTHORIZED BY THIS SECTION.

16 (4) THE CONTRACT MUST SPECIFY THAT THE PRIVATE CORRECTIONAL FACILITY SHALL  
17 GRANT ACCESS TO THE LEGISLATIVE AUDIT DIVISION OR A PERSON CONTRACTING WITH THE  
18 LEGISLATIVE AUDIT DIVISION FOR COMPLIANCE AUDITING. THE CONTRACTOR SHALL PROVIDE  
19 ACCESS TO ALL AREAS OF THE FACILITY AND TO ALL RECORDS MAINTAINED ONSITE OR OFFSITE  
20 THAT PERTAIN TO ALL ASPECTS OF THE FACILITY, INCLUDING BUT NOT LIMITED TO OPERATION,  
21 FINANCIAL, AND INMATE RECORDS.

22  
23 NEW SECTION. SECTION 10. CONTRACTOR COSTS RESPONSIBILITY. (1) THE PRIVATE  
24 CORRECTIONAL FACILITY IS RESPONSIBLE FOR ALL MONITORING COSTS INCURRED BY THE STATE.

25 (2) THE CONTRACTOR IS RESPONSIBLE FOR COSTS INCURRED BY THE STATE OR ANY  
26 POLITICAL SUBDIVISION FOR LEGAL COSTS RELATING TO ESCAPES, RIOTS OR DISTURBANCES, OR  
27 OTHER NATURAL OR HUMAN-CAUSED EVENTS THAT OCCUR AT THE FACILITY.

28 (3) THE CONTRACTOR IS RESPONSIBLE FOR ALL REASONABLE COSTS AND EXPENSES  
29 INCURRED BY THE STATE OR A POLITICAL SUBDIVISION BROUGHT BY OR ON BEHALF OF AN INMATE  
30 WHILE AN INMATE IS INCARCERATED AT A PRIVATE CORRECTIONAL FACILITY.



1           NEW SECTION. SECTION 11. QUALIFICATIONS OF CORRECTIONAL OFFICERS. (1)  
2 CORRECTIONAL OFFICERS MAY NOT BE EMPLOYED IF PREVIOUSLY CONVICTED OF A FELONY  
3 OFFENSE.

4           (2) A CORRECTIONAL OFFICER MAY NOT CARRY A FIREARM OR OTHER WEAPON IN THE  
5 PERFORMANCE OF THE CORRECTIONAL OFFICER'S DUTIES UNLESS THE CORRECTIONAL OFFICER HAS  
6 COMPLETED A DEPARTMENT-APPROVED WEAPONS TRAINING COURSE OR IS IN COMPLIANCE WITH  
7 STANDARDS DEVELOPED OR ADOPTED BY THE DEPARTMENT.

8  
9           NEW SECTION. SECTION 12. RESTRICTIONS ON INMATE MOVEMENTS. AN INMATE MAY NOT  
10 LEAVE THE SECURE PREMISES OF A PRIVATE CORRECTIONAL FACILITY EXCEPT TO COMPLY WITH A  
11 COURT ORDER, TO RECEIVE MEDICAL CARE THAT IS NOT AVAILABLE AT THE PRIVATE CORRECTIONAL  
12 FACILITY, OR AS PART OF A WORK PROGRAM WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE  
13 DEPARTMENT. ANY MOVEMENT OF AN INMATE OUTSIDE OF THE SECURE PREMISES OF THE PRIVATE  
14 CORRECTIONAL FACILITY MUST BE IN COMPLIANCE WITH APPROVED POLICIES AND PROCEDURES  
15 ESTABLISHED BY THE DEPARTMENT.

16  
17           NEW SECTION. Section 13. Failure to comply with law -- action by department. (1) A  
18 CONTRACTOR SHALL REMAIN IN STRICT COMPLIANCE WITH [SECTIONS 1 THROUGH 13],  
19 ESTABLISHED AMERICAN CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND  
20 CONTRACT REQUIREMENTS.

21           (2) If the department determines at any time that a private correctional facility does not conform  
22 to [sections 1 through § 13] and department rules, the department shall notify the chief executive officer  
23 and the governing board of the facility. The notice must state the deficiencies and order that they be  
24 remedied within a reasonable SPECIFIED period of time NOT TO EXCEED 1 YEAR. If the deficiencies are  
25 not remedied within that time, the department may hold a contested case hearing under Title 2, chapter  
26 4, and if the department finds that suspension or revocation is warranted by nonconformance with [sections  
27 1 through § 13] and department rules, the department may suspend or revoke the facility's license.

28           (3) IF A PRIVATE CORRECTIONAL FACILITY FAILS TO COMPLY WITH [SECTIONS 1 THROUGH  
29 13], DEPARTMENT RULES, OR CONTRACT REQUIREMENTS WITHIN THE SPECIFIED TIME PERIOD, THE  
30 STATE MAY ASSUME CONTROL OF THE FACILITY FOR THE PURPOSE OF PROTECTING THE INMATES.

1 FACILITY STAFF, OR THE PUBLIC. IF THE STATE ASSUMES CONTROL OF THE FACILITY, THE  
2 DEPARTMENT SHALL SUSPEND PAYMENT FOR ANY SERVICES, AND THE DEPARTMENT ASSUMES THE  
3 COSTS OF ASSUMING CONTROL.

4 (4) THE DEPARTMENT MAY ASSUME EMERGENCY CONTROL OF A PRIVATE CORRECTIONAL  
5 FACILITY IF SUBSTANTIAL VIOLATIONS EXIST THAT AFFECT THE LIFE, HEALTH, OR SAFETY OF THE  
6 INMATES, FACILITY EMPLOYEES, OR THE PUBLIC OR THAT OTHERWISE SUBSTANTIALLY IMPACT THE  
7 SECURITY OF THE PRIVATE CORRECTIONAL FACILITY.

8 (5) IN THE EVENT THAT A CONTRACTOR FAILS TO COMPLY WITH [SECTIONS 1 THROUGH 13],  
9 DEPARTMENT RULE, OR CONTRACT REQUIREMENTS, THE STATE MAY RETAIN THE OPTION OF  
10 PURCHASING OR LEASING THE FACILITY.

11 (6) IF EITHER THE STATE OR THE CONTRACTOR FAILS TO RENEW A CONTRACT, THE STATE  
12 MAY RETAIN THE OPTION OF PURCHASING OR LEASING THE FACILITY.

13 (7) IF THE STATE RETAINS THE OPTION OF PURCHASING OR LEASING THE FACILITY UNDER  
14 SUBSECTIONS (5) AND (6) OF THIS SECTION, BECAUSE IT REQUIRES THE CREATION OF STATE DEBT,  
15 THE APPROPRIATION BILL THAT FUNDS THE PURCHASE OF SERVICES FROM THE FACILITY MUST BE  
16 TREATED IN THE SAME MANNER AS A BILL CREATING STATE DEBT AND REQUIRES A VOTE OF  
17 TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE FOR PASSAGE.

18

19 NEW SECTION. Section 14. Codification instruction. [Sections 1 through & 13] are intended to  
20 be codified as a new part in Title 53, chapter 30.

21

22 NEW SECTION. SECTION 15. APPLICABILITY. (1) [THIS ACT] APPLIES TO PROCEEDINGS  
23 BEGUN OR CONTRACTS RENEWED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

24 (2) [SECTION 7] DOES NOT APPLY TO A PRIVATE CORRECTIONAL FACILITY THAT HAS BEEN  
25 ESTABLISHED OR PROPOSED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

26

27 NEW SECTION. Section 16. Effective date. [This act] is effective on passage and approval.

28

-END-

HOUSE BILL NO. 83

INTRODUCED BY BERGSAGEL

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AND PROVIDING FOR THE REGULATION OF PRIVATE CORRECTIONAL FACILITIES; SPECIFYING THE DEPARTMENT OF CORRECTIONS DUTIES AND RESPONSIBILITIES; SPECIFYING THE DUTIES NOT DELEGABLE TO A CONTRACTOR; SPECIFYING THE REQUIREMENTS OF REQUESTS FOR PROPOSALS; SPECIFYING CERTAIN REQUIREMENTS OF CONTRACTS; SPECIFYING CONTRACTOR RESPONSIBILITY FOR CERTAIN COSTS; PROVIDING FOR LICENSURE OF FACILITIES; SPECIFYING ACTION BY THE DEPARTMENT FOR CONTRACTOR FAILURE TO COMPLY WITH LAW OR TO RENEW CONTRACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance to the department of corrections in adopting rules under [section 4]. It is the intent of the legislature that rules adopted by the department ensure public participation in the siting of a private correctional facility, ensure that the design and construction of a private correctional facility be reviewed and approved by the department of administration, and provide that the management and operation of a private correctional facility substantially conform with recognized correctional standards, such as the American correctional association standards.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Policy.** It is the policy of the state of Montana to encourage innovative methods to provide the correctional resources necessary to confine persons convicted of crimes. The state recognizes that there may be benefits to confining convicted persons in private correctional facilities operated consistently with public policy.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through ~~6~~ 13], the following definitions apply:

1 (1) "Department" means the department of corrections provided for in 2-15-2301.

2 (2) (a) "Private correctional facility" means a correctional facility that is either privately operated  
3 or privately owned and operated. THE TERM INCLUDES A REGIONAL CORRECTIONAL FACILITY AS  
4 DEFINED IN 53-30-503.

5 (b) The term does not include a private detention center OR A REGIONAL JAIL governed by Title  
6 7, chapter 32, part 22.

7

8 NEW SECTION. Section 3. Private correctional facilities -- confinable persons. ~~(1)~~(1) An  
9 individual, corporation, partnership, association, or other private organization or entity may not construct  
10 or operate a private correctional facility unless licensed by the department. A LICENSE IS  
11 NONTRANSFERABLE.

12 ~~(2) A person convicted in another state may not be confined in a private correctional facility in this~~  
13 ~~state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4.~~

14 (2) A PERSON CONVICTED IN ANOTHER STATE MAY NOT BE CONFINED IN THE PORTION OF  
15 A PRIVATE CORRECTIONAL FACILITY IN THIS STATE THAT IS USED FOR THE INCARCERATION OF  
16 CONVICTED FELONS FOR A TERM OF OVER 1 YEAR UNLESS THE CONFINEMENT IS UNDER AND  
17 GOVERNED BY TITLE 46, CHAPTER 19, PART 3 OR 4.

18

19 NEW SECTION. SECTION 4. DEPARTMENT DUTIES AND RESPONSIBILITIES -- RULEMAKING  
20 AUTHORITY. (1) (A) THE DEPARTMENT SHALL ADOPT RULES THAT REQUIRE THE PRIVATE  
21 CORRECTIONAL FACILITY TO BE AN ACCREDITED CORRECTIONAL FACILITY OR TO ACHIEVE  
22 ACCREDITATION WITHIN 3 YEARS FROM THE DATE THAT THE FACILITY BEGINS OPERATION.

23 (B) THE RULES MUST PROVIDE FOR REVIEW AND APPROVAL OF FACILITY DESIGN AND  
24 CONSTRUCTION BY THE DEPARTMENT OF ADMINISTRATION.

25 (2) THE DEPARTMENT SHALL AT LEAST ANNUALLY INSPECT EACH PRIVATE CORRECTIONAL  
26 FACILITY TO DETERMINE COMPLIANCE WITH [SECTIONS 1 THROUGH 13], REGULATIONS, CONTRACT  
27 REQUIREMENTS, AND DEPARTMENT RULES.

28 (3) THE DEPARTMENT SHALL PRESENT A BIENNIAL REPORT OF COMPLIANCE INSPECTIONS TO  
29 THE LEGISLATURE.

30

1           NEW SECTION. SECTION 5. REQUIREMENTS OF REQUEST FOR PROPOSALS. (1) THE REQUEST  
2 FOR PROPOSALS MUST INCLUDE AND IDENTIFY THE SERVICES REQUESTED AND REQUIRED AND  
3 OTHER INFORMATION, INCLUDING BUT NOT LIMITED TO:  
4           (A) THE PHYSICAL PLANT, FACILITY, AND PERIMETER;  
5           (I) THE FACILITY CAPACITY AND INMATE POPULATION, INCLUDING CLASSIFICATION LEVELS  
6 ACCEPTED;  
7           (II) INMATE HOUSING; AND  
8           (III) SECURITY, SAFETY, AND EMERGENCY PROCEDURES.  
9           (B) WHO IS RESPONSIBLE FOR TRANSPORTATION OF INMATES:  
10           (I) AMONG FACILITIES;  
11           (II) UPON AN INMATE'S RELEASE, INCLUDING DISCHARGE OR PAROLE;  
12           (III) FOR COURT AND ADMINISTRATIVE PROCEEDINGS SUCH AS PAROLE HEARINGS AND  
13 INMATE PARTICIPATION AS A WITNESS;  
14           (IV) FOR MEDICAL TRANSPORTATION; AND  
15           (V) SECURITY.  
16           (C) ADMINISTRATION OF THE FACILITY, INCLUDING BUT NOT LIMITED TO:  
17           (I) THE ORGANIZATIONAL STRUCTURE AND STAFFING; AND  
18           (II) A POLICY AND PROCEDURES MANUAL ADDRESSING:  
19           (A) INMATE DISCIPLINE;  
20           (B) INCIDENT REPORTING;  
21           (C) GRIEVANCE PROCEDURES;  
22           (D) SEARCHES;  
23           (E) DRUG TESTING;  
24           (F) MONITORING OF FACILITY STANDARDS; AND  
25           (G) THE RETENTION AND MAINTENANCE OF INMATE AND FACILITY RECORDS BY THE PRIVATE  
26 CORRECTIONAL FACILITY.  
27           (D) STAFFING ISSUES REGARDING:  
28           (I) MANAGEMENT;  
29           (II) SECURITY;  
30           (III) ADMINISTRATIVE PERSONNEL;

- 1           (IV) QUALIFICATIONS AND REQUIREMENTS;
- 2           (V) TRAINING;
- 3           (VI) STAFF TO INMATE RATIOS;
- 4           (E) INMATE NEEDS SUCH AS FOOD, CLOTHING, SANITATION, HYGIENE, AND LAUNDRY;
- 5           (F) PROGRAMS AND SERVICES TO BE REQUIRED SUCH AS VOCATIONAL AND EDUCATIONAL
- 6 TRAINING, RELIGIOUS SERVICES OR CUSTOMS, COUNSELING, RECREATION, AND CANTEEN;
- 7           (G) MEDICAL, DENTAL, OPTICAL, PHARMACEUTICAL, PSYCHOLOGICAL, AND OTHER
- 8 MEDICAL-RELATED CARE;
- 9           (H) INSURANCE REQUIREMENTS;
- 10          (I) INDEMNIFICATION;
- 11          (J) PERFORMANCE BONDS;
- 12          (K) A REQUIREMENT THAT PROPOSERS PROVIDE EVIDENCE OR DOCUMENTATION
- 13 DEMONSTRATING AN ABILITY TO PROVIDE THE SERVICES; TO COMPLY WITH ACCEPTABLE SERVICES;
- 14 AND TO COMPLY WITH THE RULES, REGULATIONS, AND CONTRACT REQUIREMENTS;
- 15          (L) A REQUIREMENT THAT PROPOSERS PROVIDE DOCUMENTATION OF FINANCIAL STABILITY
- 16 OR SECURITY; AND
- 17          (M) MONITORING OF FACILITY OPERATIONS.
- 18          (2) THE DEPARTMENT MAY RELEASE SEPARATE REQUESTS FOR PROPOSALS OR CONTRACTS
- 19 FOR SPECIFIC SERVICES SUCH AS TRANSPORTATION OF INMATES AND MEDICAL, DENTAL, VISION,
- 20 AND SICK CALL SERVICES. EACH CONTRACT MUST INCLUDE A DETAILED EXPLANATION OF THE
- 21 SERVICES THAT MUST BE PROVIDED.
- 22          (3) THE DEPARTMENT SHALL MAINTAIN A LIST OF QUALIFIED APPLICANTS AND ALL
- 23 PROPOSAL RESPONSES. THE DEPARTMENT SHALL RETAIN ALL RECORDS RELATED TO THE
- 24 EVALUATION PROCESS AND THE AWARDING OF A CONTRACT.

25

26           **NEW SECTION. Section 6. License --rules -- inspection.**   (1) ~~(a)~~ The department shall grant

27 a license to a private correctional facility determined by the department to conform to [sections 1 through

28 ~~§ 13]~~ and department rules.

29           ~~(b) The department may grant a license to a nonconforming facility if the department determines~~

30 ~~that the facility is making satisfactory progress toward substantial conformity with [sections 1 through 5]~~

1 ~~and department rules and that the interests and well being of the residents of this state and of the persons~~  
2 ~~to be confined in the facility are protected.~~

3 (2) THE DEPARTMENT MAY GRANT A TEMPORARY LICENSE FOR 1 YEAR TO A FACILITY THAT  
4 LOSES ACCREDITATION IF THE DEPARTMENT DETERMINES THAT THE FACILITY IS MAKING  
5 SATISFACTORY PROGRESS TOWARD SUBSTANTIAL CONFORMITY WITH [SECTIONS 1 THROUGH 13],  
6 AMERICAN CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND CONTRACT  
7 REQUIREMENTS AND THAT THE INTERESTS AND WELL-BEING OF THE RESIDENTS OF THE STATE AND  
8 OF THE PERSONS TO BE CONFINED IN THE FACILITY ARE PROTECTED. A TEMPORARY LICENSE MAY  
9 NOT BE RENEWED.

10 (3) EXCEPT AS PROVIDED IN SUBSECTION (2), THE DEPARTMENT MAY NOT GRANT A LICENSE  
11 UNLESS THE CONTRACTOR CONFORMS TO ALL STATE AND FEDERAL STATUTES, AMERICAN  
12 CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND OTHER REQUIREMENTS AS  
13 DEFINED IN ADMINISTRATIVE RULE.

14 ~~(c)(4) UPON REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE, THE LEGISLATIVE AUDIT~~  
15 ~~DIVISION SHALL REVIEW EACH CONTRACT PRIOR TO EXECUTION TO DETERMINE IF THE CONTRACT~~  
16 ~~ADDRESSES LEGISLATIVE INTENT AND INCLUDES THE REQUIREMENTS IMPOSED BY [SECTIONS 1~~  
17 ~~THROUGH 13]. THE LEGISLATIVE AUDIT DIVISION SHALL PROVIDE THEIR FINDINGS TO THE~~  
18 ~~DEPARTMENT.~~ The department may not grant a license to a private correctional facility unless the  
19 department determines that the grant conforms to the long-range correctional goals of the department and  
20 state. ~~THE DEPARTMENT SHALL TAKE INTO CONSIDERATION THE LEGISLATIVE AUDIT DIVISION~~  
21 ~~FINDINGS IN ITS DETERMINATION.~~

22 ~~(d)(5)~~ The department may not grant a license to a private correctional facility until the facility has  
23 provided the department with an indemnity bond that indemnifies the state and that is acceptable to the  
24 department.

25 (6) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
26 UNLESS THE FACILITY PROVIDES CLEAR EVIDENCE OF SUPPORT FROM THE RESIDENTS OF THE  
27 COUNTY IN WHICH THE FACILITY IS TO BE LOCATED.

28 (7) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
29 UNLESS THE FACILITY HAS PROMULGATED A POLICY TO PROVIDE REASONABLE ACCESS TO THE  
30 FACILITY BY REPRESENTATIVES OF THE PUBLIC MEDIA.

1           (8) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
2 UNLESS THE FACILITY HAS ENTERED INTO AN AGREEMENT WITH LOCAL AND STATE LAW  
3 ENFORCEMENT AUTHORITIES. THE PRIVATE CORRECTIONAL FACILITY MUST DEMONSTRATE AN  
4 ADEQUATE RESPONSE FOR THE MUTUAL AID, ASSISTANCE, AND NOTIFICATION IN THE EVENT OF AN  
5 ESCAPE, NATURAL OR HUMAN-CAUSED DISASTER, RIOT, OR OTHER ACT THAT MAY POTENTIALLY  
6 AFFECT PUBLIC SAFETY.

7           (9) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
8 UNLESS THE LEGISLATURE HAS APPROPRIATED FUNDS FOR THE HOUSING OF STATE INMATES IN  
9 PRIVATE CORRECTIONAL FACILITIES.

10           ~~(2) The department shall adopt rules, including minimum standards, for the location, construction,~~  
11 ~~operation, management, and physical condition of private correctional facilities and for the security, safety,~~  
12 ~~health, treatment, and discipline of persons confined in them. The rules must provide for review and~~  
13 ~~approval of facility design and construction by the department of administration.~~

14           ~~(3)~~(10) The department shall at least annually inspect each private correctional facility to determine  
15 compliance with [sections 1 through ~~6~~ 13] and department rules.  
16

17           **NEW SECTION. SECTION 7. LICENSURE LIMITATIONS -- SITING OF PRIVATE CORRECTIONAL**  
18 **FACILITIES. (1) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL**  
19 **FACILITY LOCATED WITHIN 2 MILES OF A PUBLIC OR NONPUBLIC SCHOOL, NOT INCLUDING A HOME**  
20 **SCHOOL. HOWEVER, IF A PUBLIC OR NONPUBLIC SCHOOL IS ESTABLISHED AFTER A FACILITY HAS**  
21 **BEEN APPROVED, THE DEPARTMENT MAY NOT PREVENT THE PRIVATE CORRECTIONAL FACILITY FROM**  
22 **OPERATING BECAUSE OF THIS SUBSECTION (1).**

23           (2) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
24 UNLESS THERE HAS BEEN A PUBLIC HEARING IN THE COUNTY IN WHICH THE PRIVATE CORRECTIONAL  
25 FACILITY IS TO BE LOCATED AND UNLESS THE COUNTY COMMISSIONERS APPROVE THE LOCATION  
26 OF THE PRIVATE CORRECTIONAL FACILITY BY A MAJORITY VOTE. IF THE PROPOSED FACILITY IS TO  
27 BE LOCATED WITHIN THE LIMITS OF A MUNICIPALITY, THE DEPARTMENT MAY NOT GRANT A LICENSE  
28 TO A PRIVATE CORRECTIONAL FACILITY UNLESS THERE HAS BEEN A PUBLIC HEARING IN THE  
29 MUNICIPALITY AND THE LOCAL GOVERNING BODY APPROVES THE LOCATION OF THE PRIVATE  
30 CORRECTIONAL FACILITY BY A MAJORITY VOTE.



1           (3) IF THE SITING OF A PRIVATE CORRECTIONAL FACILITY IS PROPOSED WITHIN 10 MILES OF  
2 AN ADJACENT COUNTY OR IF THE DEPARTMENT DETERMINES THAT THERE ARE REASONABLE  
3 EXPECTATIONS THAT THE SITING MAY HAVE AN IMPACT ON AN ADJACENT COUNTY, THE  
4 DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY UNLESS THERE  
5 HAS BEEN A PUBLIC HEARING IN THE ADJACENT COUNTY AND UNLESS THE COUNTY  
6 COMMISSIONERS OF THE ADJACENT COUNTY APPROVE THE LOCATION OF THE PRIVATE  
7 CORRECTIONAL FACILITY BY A MAJORITY VOTE.

8  
9           **NEW SECTION. SECTION 8. LICENSURE LIMITATIONS -- CONSTRUCTION REQUIREMENTS.** (1)  
10 THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY UNLESS THE  
11 DESIGN MEETS LONG-TERM CORRECTIONAL NEEDS, GOALS, AND OBJECTIVES AS DETERMINED BY  
12 THE DEPARTMENT.

13           (2) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
14 UNLESS THE FACILITY IS CONSTRUCTED IN ACCORDANCE WITH AMERICAN CORRECTIONAL  
15 ASSOCIATION FACILITY CONSTRUCTION REQUIREMENTS. IN ADDITION, THE PRIVATE CORRECTIONAL  
16 FACILITY MUST COMPLY WITH ANY OTHER LOCAL, STATE, OR FEDERAL LAWS OR REGULATIONS.

17           (3) THE DEPARTMENT MAY NOT GRANT A LICENSE UNLESS THE DEPARTMENT AND THE  
18 DEPARTMENT OF ADMINISTRATION HAVE REVIEWED AND APPROVED THE DESIGN AND  
19 CONSTRUCTION OF THE PRIVATE CORRECTIONAL FACILITY.

20  
21           **NEW SECTION. SECTION 9. CONTRACTS WITH PRIVATE CORRECTIONAL FACILITIES.** (1) A  
22 CONTRACT WITH A PRIVATE CORRECTIONAL FACILITY MUST BE AWARDED TO THE CONTRACTOR  
23 WHO BEST MEETS THE NEEDS OF THE STATE AND THE DEPARTMENT AND DEMONSTRATES THE  
24 CAPABILITY OF PROVIDING SERVICES REQUESTED.

25           (2) A CONTRACT MUST SPECIFY THE TYPE AND LEVEL OF SERVICES TO BE PROVIDED BY THE  
26 CONTRACTOR. THE DEPARTMENT SHALL PLACE REQUIREMENTS IN THE CONTRACT THAT REQUIRE  
27 THE PRIVATE CONTRACTOR TO ALLOW THE DEPARTMENT TO REVIEW AND APPROVE:

28           (A) CHOOSE THE CORRECTIONAL FACILITY TO WHICH AN INMATE IS INITIALLY OR  
29 SUBSEQUENTLY ASSIGNED. A CONTRACTOR MAY REQUEST THE DEPARTMENT TO TRANSFER AN  
30 INMATE TO A STATE FACILITY OR TO ANOTHER PRIVATE FACILITY.

1           (B) DEVELOP OR ADOPT DISCIPLINARY RULES THAT DIFFER FROM THE DISCIPLINARY RULES,  
 2 PENALTIES, AND POLICIES OF THE DEPARTMENT;

3           (C) MAKE A DECISION THAT AFFECTS THE SENTENCE IMPOSED ON AN INMATE OR THE TIME  
 4 SERVED BY AN INMATE;

5           (D) MAKE RECOMMENDATIONS TO THE BOARD OF PARDONS AND PAROLE WITH RESPECT TO  
 6 THE DENIAL OR GRANTING OF PAROLE OR RELEASE, EXCEPT TO SUBMIT REPORTS TO THE BOARD OF  
 7 PARDONS AND PAROLE AND TO RESPOND TO REQUESTS BY THE DEPARTMENT OR THE BOARD OF  
 8 PARDONS AND PAROLE;

9           (E) DEVELOP OR IMPLEMENT REQUIREMENTS THAT INMATES ENGAGE IN ANY TYPE OF WORK,  
 10 EXCEPT TO THE EXTENT THAT THOSE REQUIREMENTS ARE ACCEPTED BY THE DEPARTMENT;

11           (F) DETERMINE INMATE ELIGIBILITY FOR ANY FORM OF RELEASE FROM A CORRECTIONAL  
 12 FACILITY; OR

13           (G) DEVELOP OR USE A CLASSIFICATION SYSTEM OTHER THAN THE CLASSIFICATION SYSTEM  
 14 USED BY THE DEPARTMENT AN INMATE CLASSIFICATION SYSTEM BASED ON A VALIDATED  
 15 OBJECTIVE CLASSIFICATION SYSTEM.

16           (3) CONTRACTS MAY NOT EXCEED A TERM OF 30 YEARS AND MUST CONTAIN PROVISIONS  
 17 FOR RENEGOTIATION AFTER 30 YEARS. THE PROVISIONS OF 18-3-104 AND 18-4-313 THAT LIMIT THE  
 18 TERM OF A CONTRACT DO NOT APPLY TO A CONTRACT AUTHORIZED BY THIS SECTION.

19           (4) THE CONTRACT MUST SPECIFY THAT THE PRIVATE CORRECTIONAL FACILITY SHALL  
 20 GRANT ACCESS TO THE LEGISLATIVE AUDIT DIVISION OR A PERSON CONTRACTING WITH THE  
 21 LEGISLATIVE AUDIT DIVISION FOR COMPLIANCE AUDITING. THE CONTRACTOR SHALL PROVIDE  
 22 ACCESS TO ALL AREAS OF THE FACILITY AND TO ALL RECORDS MAINTAINED ONSITE OR OFFSITE  
 23 THAT PERTAIN TO ALL ASPECTS OF THE FACILITY, INCLUDING BUT NOT LIMITED TO OPERATION,  
 24 FINANCIAL, AND INMATE RECORDS.

25  
 26           NEW SECTION. SECTION 10. CONTRACTOR COSTS RESPONSIBILITY. (1) THE PRIVATE  
 27 CORRECTIONAL FACILITY IS RESPONSIBLE FOR ALL MONITORING COSTS INCURRED BY THE STATE.

28           (2) THE CONTRACTOR IS RESPONSIBLE FOR COSTS INCURRED BY THE STATE OR ANY  
 29 POLITICAL SUBDIVISION FOR LEGAL COSTS RELATING TO ESCAPES, RIOTS OR DISTURBANCES, OR  
 30 OTHER NATURAL OR HUMAN-CAUSED EVENTS THAT OCCUR AT THE FACILITY.

1           (3) THE CONTRACTOR IS RESPONSIBLE FOR ALL REASONABLE COSTS AND EXPENSES  
2 INCURRED BY THE STATE OR A POLITICAL SUBDIVISION BROUGHT BY OR ON BEHALF OF AN INMATE  
3 WHILE AN INMATE IS INCARCERATED AT A PRIVATE CORRECTIONAL FACILITY.

4  
5           NEW SECTION. SECTION 11. QUALIFICATIONS OF CORRECTIONAL OFFICERS. (1)  
6 CORRECTIONAL OFFICERS MAY NOT BE EMPLOYED IF PREVIOUSLY CONVICTED OF A FELONY  
7 OFFENSE.

8           (2) A CORRECTIONAL OFFICER MAY NOT CARRY A FIREARM OR OTHER WEAPON IN THE  
9 PERFORMANCE OF THE CORRECTIONAL OFFICER'S DUTIES UNLESS THE CORRECTIONAL OFFICER HAS  
10 COMPLETED A DEPARTMENT-APPROVED WEAPONS TRAINING COURSE OR IS IN COMPLIANCE WITH  
11 STANDARDS DEVELOPED OR ADOPTED BY THE DEPARTMENT.

12  
13           NEW SECTION. SECTION 12. RESTRICTIONS ON INMATE MOVEMENTS. AN INMATE MAY NOT  
14 LEAVE THE SECURE PREMISES OF A PRIVATE CORRECTIONAL FACILITY EXCEPT TO COMPLY WITH A  
15 COURT ORDER, TO RECEIVE MEDICAL CARE THAT IS NOT AVAILABLE AT THE PRIVATE CORRECTIONAL  
16 FACILITY, OR AS PART OF A WORK PROGRAM WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE  
17 DEPARTMENT. ANY MOVEMENT OF AN INMATE OUTSIDE OF THE SECURE PREMISES OF THE PRIVATE  
18 CORRECTIONAL FACILITY MUST BE IN COMPLIANCE WITH APPROVED POLICIES AND PROCEDURES  
19 ESTABLISHED BY THE DEPARTMENT.

20  
21           NEW SECTION. Section 13. Failure to comply with law -- action by department. (1) A  
22 CONTRACTOR SHALL REMAIN IN STRICT COMPLIANCE WITH [SECTIONS 1 THROUGH 13],  
23 ESTABLISHED AMERICAN CORRECTIONAL ASSOCIATION GUIDELINES, DEPARTMENT RULES, AND  
24 CONTRACT REQUIREMENTS.

25           (2) If the department determines at any time that a private correctional facility does not conform  
26 to [sections 1 through & 13] and department rules, the department shall notify the chief executive officer  
27 and the governing board of the facility. The notice must state the deficiencies and order that they be  
28 remedied within a ~~reasonable~~ SPECIFIED period of time NOT TO EXCEED 1 YEAR. If the deficiencies are  
29 not remedied within that time, the department may hold a contested case hearing under Title 2, chapter  
30 4, and if the department finds that suspension or revocation is warranted by nonconformance with [sections

1 1 through & 13] and department rules, the department may suspend or revoke the facility's license.

2 (3) IF A PRIVATE CORRECTIONAL FACILITY FAILS TO COMPLY WITH [SECTIONS 1 THROUGH  
 3 13], DEPARTMENT RULES, OR CONTRACT REQUIREMENTS WITHIN THE SPECIFIED TIME PERIOD, THE  
 4 STATE MAY ASSUME CONTROL OF THE FACILITY FOR THE PURPOSE OF PROTECTING THE INMATES,  
 5 FACILITY STAFF, OR THE PUBLIC. IF THE STATE ASSUMES CONTROL OF THE FACILITY, THE  
 6 DEPARTMENT SHALL SUSPEND PAYMENT FOR ANY SERVICES, AND THE DEPARTMENT ASSUMES THE  
 7 COSTS OF ASSUMING CONTROL.

8 (4) THE DEPARTMENT MAY ASSUME EMERGENCY CONTROL OF A PRIVATE CORRECTIONAL  
 9 FACILITY IF SUBSTANTIAL VIOLATIONS EXIST THAT AFFECT THE LIFE, HEALTH, OR SAFETY OF THE  
 10 INMATES, FACILITY EMPLOYEES, OR THE PUBLIC OR THAT OTHERWISE SUBSTANTIALLY IMPACT THE  
 11 SECURITY OF THE PRIVATE CORRECTIONAL FACILITY.

12 (5) IN THE EVENT THAT A CONTRACTOR FAILS TO COMPLY WITH [SECTIONS 1 THROUGH 13],  
 13 DEPARTMENT RULE, OR CONTRACT REQUIREMENTS, THE STATE MAY RETAIN THE OPTION OF  
 14 PURCHASING OR LEASING THE FACILITY.

15 (6) IF EITHER THE STATE OR THE CONTRACTOR FAILS TO RENEW A CONTRACT, THE STATE  
 16 MAY RETAIN THE OPTION OF PURCHASING OR LEASING THE FACILITY.

17 (7) IF THE STATE RETAINS THE OPTION OF PURCHASING OR LEASING THE FACILITY UNDER  
 18 SUBSECTIONS (5) AND (6) OF THIS SECTION, BECAUSE IT REQUIRES THE CREATION OF STATE DEBT,  
 19 THE APPROPRIATION BILL THAT FUNDS THE PURCHASE OF SERVICES FROM THE FACILITY MUST BE  
 20 TREATED IN THE SAME MANNER AS A BILL CREATING STATE DEBT AND REQUIRES A VOTE OF  
 21 TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE FOR PASSAGE.

22  
 23 NEW SECTION. Section 14. Codification instruction. [Sections 1 through & 13] are intended to  
 24 be codified as a new part in Title 53, chapter 30.

25  
 26 NEW SECTION. SECTION 15. APPLICABILITY. (1) [THIS ACT] APPLIES TO PROCEEDINGS  
 27 BEGUN OR CONTRACTS RENEWED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

28 (2) [SECTION 7] DOES NOT APPLY TO A PRIVATE CORRECTIONAL FACILITY THAT HAS BEEN  
 29 ESTABLISHED OR PROPOSED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

30





## FREE CONFERENCE COMMITTEE

on House Bill 83  
Report No. 1, April 16, 1997

Page 1 of 8

Mr. Speaker and Mr. President:

We, your Conference Committee met and considered **House Bill 83** (reference copy -- salmon) and recommend that **House Bill 83** be amended as follows:

1. Page 1, line 20.  
Following: the second "standards"  
Insert: "and national commission on correctional health care standards"
2. Page 1, line 29.  
Strike: "13"  
Strike: "11"
3. Page 2, line 3.  
Following: "FACILITY"  
Insert: ", "
4. Page 2, line 4.  
Following: "53-30-503"  
Insert: ", if privately operated or privately owned and operated"
5. Page 2, lines 20 through 22.  
Following: "ADOPT" on line 20  
Insert: "administrative"  
Following: "RULES" on line 20  
Strike: the remainder of line 20 through "OPERATION." on line 22  
Insert: "that include the minimum applicable standards for the siting, construction, operation, and physical condition of a private correctional facility and for the security, safety, health, treatment, and discipline of persons confined in a private correctional facility.  
(b) The administrative rules must require that a private correctional facility conform to applicable American correctional association and national commission on correctional health care standards for the facility and achieve accreditation from the American correctional association and national commission on

ADOPT

REJECT

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HB 83

correctional health care within 3 years from the date the facility begins operation."

Renumber: subsequent subsection

6. Page 2, line 23.

Following: "THE"

Insert: "administrative"

7. Page 2.

Following: line 24

Insert: "(2) Within 90 days of [the effective date of this act] and on a biennial basis, the department shall publish a description of the long-range correctional needs, objectives, and goals of the department and the state."

Renumber: subsequent subsections

8. Page 2, line 26.

Strike: "13"

Insert: "11"

Strike: "REGULATIONS."

Insert: "applicable American correctional association and national commission on correctional health care standards, department rules, and"

9. Page 2, line 27.

Following: "REQUIREMENTS"

Strike: remainder of line 27 through "RULES"

10. Page 3, line 1.

Following: "(1)"

Insert: "Prior to contracting for services with a private correctional facility, the department shall publish a request for proposals. The request for proposals must include a description of the long-range correctional needs, objectives, and goals of the department and the state.  
(2)"

Renumber: subsequent subsections

11. Page 3, line 4.

Strike: "i"

Insert: ", including:"

12. Page 3, line 15.

Following: "(V)"

Insert: "for"

13. Page 4, line 2.  
Following: ":"  
Insert: "and"

14. Page 4, line 11.  
Following: "(J)"  
Insert: "a"  
Strike: "BONDS"

Insert: "bond that is sufficient to protect the state from damages upon default or nonperformance and that may not exceed the biennial amount of the compensation to be paid to the contractor"

15. Page 4, line 28.  
Strike: "13"  
Insert: "11"

16. Page 5, line 5.  
Strike: "13"  
Insert: "11"

17. Page 5.  
Following: line 5  
Insert: "applicable"

18. Page 5, line 6.  
Strike: "GUIDELINES"  
Insert: "and national commission on correctional health care standards as determined by the department by administrative rule"

19. Page 5, line 11.  
Following: "STATUTES,"  
Insert: "applicable"

20. Page 5, line 12.  
Strike: "GUIDELINES"  
Insert: "and national commission on correctional health care standards as determined by the department by administrative rule"

21. Page 5, line 13.  
Following: "RULE."  
Insert: "During the initial 3-year period of a contract, a private correctional facility is not required to be accredited by the American correctional association or the national commission on correctional health care in order to be granted a license by the department."



22. Page 5, line 19.

Strike: "grant"

Insert: "facility"

Following: "correctional"

Insert: "needs, objectives, and"

23. Page 5, line 22.

Following: "until the"

Insert: "owner or operator of the"

24. Page 5, line 23.

Strike: "an indemnity bond"

Insert: "proof of indemnity insurance"

Following: the first "that"

Insert: "appropriately"

25. Page 5, lines 26 and 27.

Strike: "PROVIDES" on line 26 through "LOCATED"

Insert: "is constructed in accordance with American correctional association facility construction requirements. In addition, the private correctional facility shall comply with any other applicable local, state, or federal laws or regulations"

26. Page 6, line 3.

Strike: "MUST"

Insert: "shall"

27. Page 6, line 5.

Following: "ESCAPE,"

Insert: "riot or disturbance,"

Strike: "disaster, riot"

Insert: "event"

28. Page 6, line 15.

Strike: "13"

Insert: "11"

29. Page 6, line 19.

Strike: "2 MILES"

Insert: "1 mile"

30. Page 7, line 1.

Strike: "10"

Insert: "7 1/2"

31. Page 7, line 3.

Following: "HAVE"

Strike: "AN"

Insert: "a significant"

32. Page 7, lines 5 through 7.

Following: "UNLESS THE"

Strike: the remainder of line 5 through "VOTE" on line 7

Insert: "concerns of the adjacent county have been considered"

33. Page 7, lines 9 through 19.

Strike: section 8 in its entirety

Re-number: subsequent sections

34. Page 7, line 21.

Following: "WITH"

Insert: "owners or operators of"

Following: "FACILITIES."

Insert: "(1) Upon request of the legislative audit committee, the legislative audit division shall review the procedures by which a contract was awarded and shall review each contract prior to execution to determine if the contract includes the requirements provided in [sections 1 through 11]."

Re-number: subsequent subsections

35. Page 7, line 22.

Following: "WITH"

Insert: "an owner or operator of"

36. Page 7, lines 26 and 27.

Following: "CONTRACTOR."

Strike: the remainder of line 26 through "DEPARTMENT TO" on line 27

Insert: "The contract must provide that a private contractor may not"

37. Page 7, line 30.

Following: "PRIVATE"

Insert: "correctional"

38. Page 8, line 13.

Strike: "DEVELOP OR"

39. Page 8, lines 14 and 15.

Strike: "BASED" on line 14 through "SYSTEM" on line 15

Insert: "unless it is approved by the department"

40. Page 8, lines 26 and 27.

Strike: subsection (1) in its entirety  
Renumber: subsequent subsections

41. Page 8, line 29.

Following: "SUBDIVISION"  
Insert: "of the state"

42. Page 8, line 30.

Following: "FACILITY"  
Insert: "because of the contractor's negligence, errors,  
omissions, intentional acts, or failure to comply with the  
terms of the contract"

43. Page 9, line 2.

Following: "SUBDIVISION"  
Insert: "of the state for defense of causes of action"  
Following: "INMATE"  
Insert: "that accrue"

44. Page 9.

Following: line 3  
Insert: " (3) The provisions of [sections 1 through 11] are not  
intended to create a private or public cause of action for  
any person, partnership, corporation, or other entity,  
including any inmate housed within any private correctional  
facility or any inmate housed within the state of Montana."

45. Page 9, line 5 through line 11.

Strike: section 11 in its entirety  
Renumber: subsequent sections

46. Page 9, line 22.

Strike: "13"  
Insert: "11"

47. Page 9, line 23.

Following: "ESTABLISHED"  
Insert: "applicable"  
Strike: "GUIDELINES"  
Insert: "and national commission on correctional health care  
standards as determined by the department by administrative  
rule"

48. Page 9, line 26.

Strike: "13] and"  
Insert: "11], applicable American correctional association and  
national commission on correctional health care standards,"

Following: "rules,"  
Insert: "and contract requirements,"

49. Page 9, line 27.  
Strike: "governing board of the"  
Insert: "owner or operator, or both, of the private correctional"

50. Page 10, line 1.  
Strike: "13] and"  
Insert: "11], applicable American correctional association and  
national commission on correctional health care standards,"  
Following: "rules,"  
Insert: "and contract requirements,"

51. Page 10, line 3.  
Strike: "13]"  
Insert: "11], applicable American correctional association and  
national commission on correctional health care standards"

52. Page 10, line 12.  
Strike: "13]"  
Insert: "11], applicable American correctional association and  
national commission on correctional health care standards"

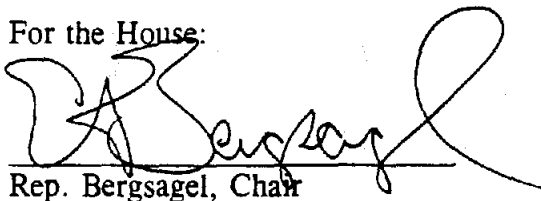
53. Page 10, line 13.  
Strike: "RULE"  
Insert: "rules"

54. Page 10, line 23.  
Strike: "13"  
Insert: "11"

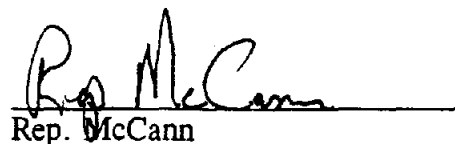
55. Page 10, line 29.  
Strike: "OR PROPOSED"

And this Conference Committee report be adopted.

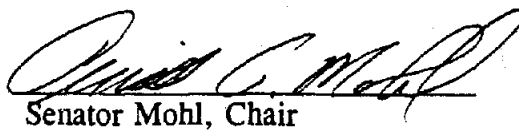
For the House:

  
Rep. Bergsagel, Chair

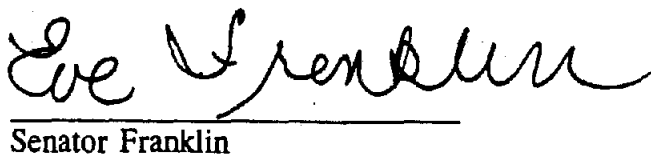
  
Rep. Vick

  
Rep. McCann

For the Senate:

  
Senator Mohl, Chair

  
Senator Beck

  
Senator Franklin

## 1 HOUSE BILL NO. 83

2 INTRODUCED BY BERGSAGEL

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AND PROVIDING FOR THE REGULATION OF  
 6 PRIVATE CORRECTIONAL FACILITIES; SPECIFYING THE DEPARTMENT OF CORRECTIONS DUTIES AND  
 7 RESPONSIBILITIES; SPECIFYING THE DUTIES NOT DELEGABLE TO A CONTRACTOR; SPECIFYING THE  
 8 REQUIREMENTS OF REQUESTS FOR PROPOSALS; SPECIFYING CERTAIN REQUIREMENTS OF  
 9 CONTRACTS; SPECIFYING CONTRACTOR RESPONSIBILITY FOR CERTAIN COSTS; PROVIDING FOR  
 10 LICENSURE OF FACILITIES; SPECIFYING ACTION BY THE DEPARTMENT FOR CONTRACTOR FAILURE TO  
 11 COMPLY WITH LAW OR TO RENEW CONTRACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
 12 AN APPLICABILITY DATE."

## 14 STATEMENT OF INTENT

15 A statement of intent is required for this bill to provide guidance to the department of corrections  
 16 in adopting rules under [section 4]. It is the intent of the legislature that rules adopted by the department  
 17 ensure public participation in the siting of a private correctional facility, ensure that the design and  
 18 construction of a private correctional facility be reviewed and approved by the department of administration,  
 19 and provide that the management and operation of a private correctional facility substantially conform with  
 20 recognized correctional standards, such as the American correctional association standards AND NATIONAL  
 21 COMMISSION ON CORRECTIONAL HEALTH CARE STANDARDS.

22  
 23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24  
 25 NEW SECTION. Section 1. Policy. It is the policy of the state of Montana to encourage innovative  
 26 methods to provide the correctional resources necessary to confine persons convicted of crimes. The state  
 27 recognizes that there may be benefits to confining convicted persons in private correctional facilities  
 28 operated consistently with public policy.

29  
 30 NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~5-13~~ 11], the following

1 definitions apply:

2 (1) "Department" means the department of corrections provided for in 2-15-2301.

3 (2) (a) "Private correctional facility" means a correctional facility that is either privately operated  
4 or privately owned and operated. THE TERM INCLUDES A REGIONAL CORRECTIONAL FACILITY, AS  
5 DEFINED IN 53-30-503, IF PRIVATELY OPERATED OR PRIVATELY OWNED AND OPERATED.

6 (b) The term does not include a private detention center OR A REGIONAL JAIL governed by Title  
7 7, chapter 32, part 22.

8

9 NEW SECTION. Section 3. Private correctional facilities -- confinable persons. ~~(1)(1)~~ An  
10 individual, corporation, partnership, association, or other private organization or entity may not construct  
11 or operate a private correctional facility unless licensed by the department. A LICENSE IS  
12 NONTRANSFERABLE.

13 ~~(2) A person convicted in another state may not be confined in a private correctional facility in this~~  
14 ~~state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4.~~

15 (2) A PERSON CONVICTED IN ANOTHER STATE MAY NOT BE CONFINED IN THE PORTION OF  
16 A PRIVATE CORRECTIONAL FACILITY IN THIS STATE THAT IS USED FOR THE INCARCERATION OF  
17 CONVICTED FELONS FOR A TERM OF OVER 1 YEAR UNLESS THE CONFINEMENT IS UNDER AND  
18 GOVERNED BY TITLE 46, CHAPTER 19, PART 3 OR 4.

19

20 NEW SECTION. SECTION 4. DEPARTMENT DUTIES AND RESPONSIBILITIES -- RULEMAKING  
21 AUTHORITY. (1) (A) THE DEPARTMENT SHALL ADOPT ADMINISTRATIVE RULES THAT REQUIRE THE  
22 PRIVATE CORRECTIONAL FACILITY TO BE AN ACCREDITED CORRECTIONAL FACILITY OR TO ACHIEVE  
23 ACCREDITATION WITHIN 3 YEARS FROM THE DATE THAT THE FACILITY BEGINS OPERATION. THAT  
24 INCLUDE THE MINIMUM APPLICABLE STANDARDS FOR THE SITING, CONSTRUCTION, OPERATION, AND  
25 PHYSICAL CONDITION OF A PRIVATE CORRECTIONAL FACILITY AND FOR THE SECURITY, SAFETY,  
26 HEALTH, TREATMENT, AND DISCIPLINE OF PERSONS CONFINED IN A PRIVATE CORRECTIONAL  
27 FACILITY.

28 (B) THE ADMINISTRATIVE RULES MUST REQUIRE THAT A PRIVATE CORRECTIONAL FACILITY  
29 CONFORM TO APPLICABLE AMERICAN CORRECTIONAL ASSOCIATION AND NATIONAL COMMISSION  
30 ON CORRECTIONAL HEALTH CARE STANDARDS FOR THE FACILITY AND ACHIEVE ACCREDITATION

1 FROM THE AMERICAN CORRECTIONAL ASSOCIATION AND NATIONAL COMMISSION ON  
 2 CORRECTIONAL HEALTH CARE WITHIN 3 YEARS FROM THE DATE THE FACILITY BEGINS OPERATION.

3 ~~(B)~~(C) THE ADMINISTRATIVE RULES MUST PROVIDE FOR REVIEW AND APPROVAL OF FACILITY  
 4 DESIGN AND CONSTRUCTION BY THE DEPARTMENT OF ADMINISTRATION.

5 (2) WITHIN 90 DAYS OF [THE EFFECTIVE DATE OF THIS ACT] AND ON A BIENNIAL BASIS, THE  
 6 DEPARTMENT SHALL PUBLISH A DESCRIPTION OF THE LONG-RANGE CORRECTIONAL NEEDS,  
 7 OBJECTIVES, AND GOALS OF THE DEPARTMENT AND THE STATE.

8 ~~(2)~~(3) THE DEPARTMENT SHALL AT LEAST ANNUALLY INSPECT EACH PRIVATE CORRECTIONAL  
 9 FACILITY TO DETERMINE COMPLIANCE WITH [SECTIONS 1 THROUGH ~~13~~ 11], REGULATIONS,  
 10 APPLICABLE AMERICAN CORRECTIONAL ASSOCIATION AND NATIONAL COMMISSION ON  
 11 CORRECTIONAL HEALTH CARE STANDARDS, DEPARTMENT RULES, AND CONTRACT REQUIREMENTS,  
 12 AND DEPARTMENT RULES.

13 ~~(3)~~(4) THE DEPARTMENT SHALL PRESENT A BIENNIAL REPORT OF COMPLIANCE INSPECTIONS  
 14 TO THE LEGISLATURE.

15  
 16 NEW SECTION. SECTION 5. REQUIREMENTS OF REQUEST FOR PROPOSALS. (1) PRIOR TO  
 17 CONTRACTING FOR SERVICES WITH A PRIVATE CORRECTIONAL FACILITY, THE DEPARTMENT SHALL  
 18 PUBLISH A REQUEST FOR PROPOSALS. THE REQUEST FOR PROPOSALS MUST INCLUDE A DESCRIPTION  
 19 OF THE LONG-RANGE CORRECTIONAL NEEDS, OBJECTIVES, AND GOALS OF THE DEPARTMENT AND  
 20 THE STATE.

21 (2) THE REQUEST FOR PROPOSALS MUST INCLUDE AND IDENTIFY THE SERVICES REQUESTED  
 22 AND REQUIRED AND OTHER INFORMATION, INCLUDING BUT NOT LIMITED TO:

23 (A) THE PHYSICAL PLANT, FACILITY, AND PERIMETER, INCLUDING:

24 (I) THE FACILITY CAPACITY AND INMATE POPULATION, INCLUDING CLASSIFICATION LEVELS  
 25 ACCEPTED;

26 (II) INMATE HOUSING; AND

27 (III) SECURITY, SAFETY, AND EMERGENCY PROCEDURES.

28 (B) WHO IS RESPONSIBLE FOR TRANSPORTATION OF INMATES:

29 (I) AMONG FACILITIES;

30 (II) UPON AN INMATE'S RELEASE, INCLUDING DISCHARGE OR PAROLE;



- 1           (III) FOR COURT AND ADMINISTRATIVE PROCEEDINGS SUCH AS PAROLE HEARINGS AND  
2 INMATE PARTICIPATION AS A WITNESS;
- 3           (IV) FOR MEDICAL TRANSPORTATION; AND  
4           (V) FOR SECURITY.
- 5           (C) ADMINISTRATION OF THE FACILITY, INCLUDING BUT NOT LIMITED TO:  
6           (I) THE ORGANIZATIONAL STRUCTURE AND STAFFING; AND  
7           (II) A POLICY AND PROCEDURES MANUAL ADDRESSING:  
8           (A) INMATE DISCIPLINE;  
9           (B) INCIDENT REPORTING;  
10           (C) GRIEVANCE PROCEDURES;  
11           (D) SEARCHES;  
12           (E) DRUG TESTING;  
13           (F) MONITORING OF FACILITY STANDARDS; AND  
14           (G) THE RETENTION AND MAINTENANCE OF INMATE AND FACILITY RECORDS BY THE PRIVATE  
15 CORRECTIONAL FACILITY.
- 16           (D) STAFFING ISSUES REGARDING:  
17           (I) MANAGEMENT;  
18           (II) SECURITY;  
19           (III) ADMINISTRATIVE PERSONNEL;  
20           (IV) QUALIFICATIONS AND REQUIREMENTS;  
21           (V) TRAINING; AND  
22           (VI) STAFF TO INMATE RATIOS;  
23           (E) INMATE NEEDS SUCH AS FOOD, CLOTHING, SANITATION, HYGIENE, AND LAUNDRY;  
24           (F) PROGRAMS AND SERVICES TO BE REQUIRED SUCH AS VOCATIONAL AND EDUCATIONAL  
25 TRAINING, RELIGIOUS SERVICES OR CUSTOMS, COUNSELING, RECREATION, AND CANTEEN;  
26           (G) MEDICAL, DENTAL, OPTICAL, PHARMACEUTICAL, PSYCHOLOGICAL, AND OTHER  
27 MEDICAL-RELATED CARE;
- 28           (H) INSURANCE REQUIREMENTS;  
29           (I) INDEMNIFICATION;  
30           (J) A PERFORMANCE BONDS BOND THAT IS SUFFICIENT TO PROTECT THE STATE FROM

1 DAMAGES UPON DEFAULT OR NONPERFORMANCE AND THAT MAY NOT EXCEED THE BIENNIAL  
 2 AMOUNT OF THE COMPENSATION TO BE PAID TO THE CONTRACTOR;

3 (K) A REQUIREMENT THAT PROPOSERS PROVIDE EVIDENCE OR DOCUMENTATION  
 4 DEMONSTRATING AN ABILITY TO PROVIDE THE SERVICES; TO COMPLY WITH ACCEPTABLE SERVICES;  
 5 AND TO COMPLY WITH THE RULES, REGULATIONS, AND CONTRACT REQUIREMENTS;

6 (L) A REQUIREMENT THAT PROPOSERS PROVIDE DOCUMENTATION OF FINANCIAL STABILITY  
 7 OR SECURITY; AND

8 (M) MONITORING OF FACILITY OPERATIONS.

9 ~~(2)~~(3) THE DEPARTMENT MAY RELEASE SEPARATE REQUESTS FOR PROPOSALS OR  
 10 CONTRACTS FOR SPECIFIC SERVICES SUCH AS TRANSPORTATION OF INMATES AND MEDICAL,  
 11 DENTAL, VISION, AND SICK CALL SERVICES. EACH CONTRACT MUST INCLUDE A DETAILED  
 12 EXPLANATION OF THE SERVICES THAT MUST BE PROVIDED.

13 ~~(3)~~(4) THE DEPARTMENT SHALL MAINTAIN A LIST OF QUALIFIED APPLICANTS AND ALL  
 14 PROPOSAL RESPONSES. THE DEPARTMENT SHALL RETAIN ALL RECORDS RELATED TO THE  
 15 EVALUATION PROCESS AND THE AWARDING OF A CONTRACT.

16  
 17 NEW SECTION. Section 6. License —rules -- inspection. (1) ~~(a)~~ The department shall grant  
 18 a license to a private correctional facility determined by the department to conform to [sections 1 through  
 19 ~~5-13~~ 11] and department rules.

20 ~~(b) The department may grant a license to a nonconforming facility if the department determines~~  
 21 ~~that the facility is making satisfactory progress toward substantial conformity with [sections 1 through 5]~~  
 22 ~~and department rules and that the interests and well-being of the residents of this state and of the persons~~  
 23 ~~to be confined in the facility are protected.~~

24 (2) THE DEPARTMENT MAY GRANT A TEMPORARY LICENSE FOR 1 YEAR TO A FACILITY THAT  
 25 LOSES ACCREDITATION IF THE DEPARTMENT DETERMINES THAT THE FACILITY IS MAKING  
 26 SATISFACTORY PROGRESS TOWARD SUBSTANTIAL CONFORMITY WITH [SECTIONS 1 THROUGH ~~13~~  
 27 11], APPLICABLE AMERICAN CORRECTIONAL ASSOCIATION GUIDELINES AND NATIONAL COMMISSION  
 28 ON CORRECTIONAL HEALTH CARE STANDARDS AS DETERMINED BY THE DEPARTMENT BY  
 29 ADMINISTRATIVE RULE, DEPARTMENT RULES, AND CONTRACT REQUIREMENTS AND THAT THE  
 30 INTERESTS AND WELL-BEING OF THE RESIDENTS OF THE STATE AND OF THE PERSONS TO BE

1 CONFINED IN THE FACILITY ARE PROTECTED. A TEMPORARY LICENSE MAY NOT BE RENEWED.

2 (3) EXCEPT AS PROVIDED IN SUBSECTION (2), THE DEPARTMENT MAY NOT GRANT A LICENSE  
3 UNLESS THE CONTRACTOR CONFORMS TO ALL STATE AND FEDERAL STATUTES, APPLICABLE  
4 AMERICAN CORRECTIONAL ASSOCIATION GUIDELINES AND NATIONAL COMMISSION ON  
5 CORRECTIONAL HEALTH CARE STANDARDS AS DETERMINED BY THE DEPARTMENT BY  
6 ADMINISTRATIVE RULE, DEPARTMENT RULES, AND OTHER REQUIREMENTS AS DEFINED IN  
7 ADMINISTRATIVE RULE. DURING THE INITIAL 3-YEAR PERIOD OF A CONTRACT, A PRIVATE  
8 CORRECTIONAL FACILITY IS NOT REQUIRED TO BE ACCREDITED BY THE AMERICAN CORRECTIONAL  
9 ASSOCIATION OR THE NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE IN ORDER TO BE  
10 GRANTED A LICENSE BY THE DEPARTMENT.

11 ~~(c)(4) UPON REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE, THE LEGISLATIVE AUDIT~~  
12 ~~DIVISION SHALL REVIEW EACH CONTRACT PRIOR TO EXECUTION TO DETERMINE IF THE CONTRACT~~  
13 ~~ADDRESSES LEGISLATIVE INTENT AND INCLUDES THE REQUIREMENTS IMPOSED BY (SECTIONS 1~~  
14 ~~THROUGH 13). THE LEGISLATIVE AUDIT DIVISION SHALL PROVIDE THEIR FINDINGS TO THE~~  
15 ~~DEPARTMENT.~~ The department may not grant a license to a private correctional facility unless the  
16 department determines that the grant FACILITY conforms to the long-range correctional NEEDS,  
17 OBJECTIVES, AND goals of the department and state. ~~THE DEPARTMENT SHALL TAKE INTO~~  
18 ~~CONSIDERATION THE LEGISLATIVE AUDIT DIVISION FINDINGS IN ITS DETERMINATION.~~

19 ~~(d)(5)~~ The department may not grant a license to a private correctional facility until the OWNER  
20 OR OPERATOR OF THE facility has provided the department with an indemnity bond PROOF OF  
21 INDEMNITY INSURANCE that APPROPRIATELY indemnifies the state and that is acceptable to the  
22 department.

23 (6) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
24 UNLESS THE FACILITY PROVIDES CLEAR EVIDENCE OF SUPPORT FROM THE RESIDENTS OF THE  
25 COUNTY IN WHICH THE FACILITY IS TO BE LOCATED IS CONSTRUCTED IN ACCORDANCE WITH  
26 AMERICAN CORRECTIONAL ASSOCIATION FACILITY CONSTRUCTION REQUIREMENTS. IN ADDITION,  
27 THE PRIVATE CORRECTIONAL FACILITY SHALL COMPLY WITH ANY OTHER APPLICABLE LOCAL, STATE,  
28 OR FEDERAL LAWS OR REGULATIONS.

29 (7) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
30 UNLESS THE FACILITY HAS PROMULGATED A POLICY TO PROVIDE REASONABLE ACCESS TO THE

1 FACILITY BY REPRESENTATIVES OF THE PUBLIC MEDIA.

2 (8) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
 3 UNLESS THE FACILITY HAS ENTERED INTO AN AGREEMENT WITH LOCAL AND STATE LAW  
 4 ENFORCEMENT AUTHORITIES. THE PRIVATE CORRECTIONAL FACILITY MUST SHALL DEMONSTRATE  
 5 AN ADEQUATE RESPONSE FOR THE MUTUAL AID, ASSISTANCE, AND NOTIFICATION IN THE EVENT OF  
 6 AN ESCAPE, RIOT OR DISTURBANCE, NATURAL OR HUMAN-CAUSED DISASTER, RIOT EVENT, OR  
 7 OTHER ACT THAT MAY POTENTIALLY AFFECT PUBLIC SAFETY.

8 (9) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
 9 UNLESS THE LEGISLATURE HAS APPROPRIATED FUNDS FOR THE HOUSING OF STATE INMATES IN  
 10 PRIVATE CORRECTIONAL FACILITIES.

11 ~~(2) The department shall adopt rules, including minimum standards, for the location, construction,~~  
 12 ~~operation, management, and physical condition of private correctional facilities and for the security, safety,~~  
 13 ~~health, treatment, and discipline of persons confined in them. The rules must provide for review and~~  
 14 ~~approval of facility design and construction by the department of administration.~~

15 ~~(3)(10)~~ (10) The department shall at least annually inspect each private correctional facility to determine  
 16 compliance with [sections 1 through ~~5-13~~ 11] and department rules.

17  
 18 **NEW SECTION. SECTION 7. LICENSURE LIMITATIONS -- SITING OF PRIVATE CORRECTIONAL**

19 **FACILITIES. (1) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL**  
 20 **FACILITY LOCATED WITHIN 2 MILES 1 MILE OF A PUBLIC OR NONPUBLIC SCHOOL, NOT INCLUDING**  
 21 **A HOME SCHOOL. HOWEVER, IF A PUBLIC OR NONPUBLIC SCHOOL IS ESTABLISHED AFTER A**  
 22 **FACILITY HAS BEEN APPROVED, THE DEPARTMENT MAY NOT PREVENT THE PRIVATE CORRECTIONAL**  
 23 **FACILITY FROM OPERATING BECAUSE OF THIS SUBSECTION (1).**

24 **(2) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY**  
 25 **UNLESS THERE HAS BEEN A PUBLIC HEARING IN THE COUNTY IN WHICH THE PRIVATE CORRECTIONAL**  
 26 **FACILITY IS TO BE LOCATED AND UNLESS THE COUNTY COMMISSIONERS APPROVE THE LOCATION**  
 27 **OF THE PRIVATE CORRECTIONAL FACILITY BY A MAJORITY VOTE. IF THE PROPOSED FACILITY IS TO**  
 28 **BE LOCATED WITHIN THE LIMITS OF A MUNICIPALITY, THE DEPARTMENT MAY NOT GRANT A LICENSE**  
 29 **TO A PRIVATE CORRECTIONAL FACILITY UNLESS THERE HAS BEEN A PUBLIC HEARING IN THE**  
 30 **MUNICIPALITY AND THE LOCAL GOVERNING BODY APPROVES THE LOCATION OF THE PRIVATE**

1 CORRECTIONAL FACILITY BY A MAJORITY VOTE.

2 (3) IF THE SITING OF A PRIVATE CORRECTIONAL FACILITY IS PROPOSED WITHIN 10 7 1/2  
 3 MILES OF AN ADJACENT COUNTY OR IF THE DEPARTMENT DETERMINES THAT THERE ARE  
 4 REASONABLE EXPECTATIONS THAT THE SITING MAY HAVE AN A SIGNIFICANT IMPACT ON AN  
 5 ADJACENT COUNTY, THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL  
 6 FACILITY UNLESS THERE HAS BEEN A PUBLIC HEARING IN THE ADJACENT COUNTY AND UNLESS THE  
 7 COUNTY COMMISSIONERS OF THE ADJACENT COUNTY APPROVE THE LOCATION OF THE PRIVATE  
 8 CORRECTIONAL FACILITY BY A MAJORITY VOTE CONCERNS OF THE ADJACENT COUNTY HAVE BEEN  
 9 CONSIDERED.

10

11 NEW SECTION. SECTION 8. LICENSURE LIMITATIONS — CONSTRUCTION REQUIREMENTS. (1)  
 12 THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY UNLESS THE  
 13 DESIGN MEETS LONG TERM CORRECTIONAL NEEDS, GOALS, AND OBJECTIVES AS DETERMINED BY  
 14 THE DEPARTMENT.

15 (2) THE DEPARTMENT MAY NOT GRANT A LICENSE TO A PRIVATE CORRECTIONAL FACILITY  
 16 UNLESS THE FACILITY IS CONSTRUCTED IN ACCORDANCE WITH AMERICAN CORRECTIONAL  
 17 ASSOCIATION FACILITY CONSTRUCTION REQUIREMENTS. IN ADDITION, THE PRIVATE CORRECTIONAL  
 18 FACILITY MUST COMPLY WITH ANY OTHER LOCAL, STATE, OR FEDERAL LAWS OR REGULATIONS.

19 (3) THE DEPARTMENT MAY NOT GRANT A LICENSE UNLESS THE DEPARTMENT AND THE  
 20 DEPARTMENT OF ADMINISTRATION HAVE REVIEWED AND APPROVED THE DESIGN AND  
 21 CONSTRUCTION OF THE PRIVATE CORRECTIONAL FACILITY.

22

23 NEW SECTION. SECTION 8. CONTRACTS WITH OWNERS OR OPERATORS OF PRIVATE  
 24 CORRECTIONAL FACILITIES. (1) UPON REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE, THE  
 25 LEGISLATIVE AUDIT DIVISION SHALL REVIEW THE PROCEDURES BY WHICH A CONTRACT WAS  
 26 AWARDED AND SHALL REVIEW EACH CONTRACT PRIOR TO EXECUTION TO DETERMINE IF THE  
 27 CONTRACT INCLUDES THE REQUIREMENTS PROVIDED IN [SECTIONS 1 THROUGH 11].

28 (1)(2) A CONTRACT WITH AN OWNER OR OPERATOR OF A PRIVATE CORRECTIONAL FACILITY  
 29 MUST BE AWARDED TO THE CONTRACTOR WHO BEST MEETS THE NEEDS OF THE STATE AND THE  
 30 DEPARTMENT AND DEMONSTRATES THE CAPABILITY OF PROVIDING SERVICES REQUESTED.

1       ~~(2)(3)~~ A CONTRACT MUST SPECIFY THE TYPE AND LEVEL OF SERVICES TO BE PROVIDED BY  
2 THE CONTRACTOR. THE DEPARTMENT SHALL PLACE REQUIREMENTS IN THE CONTRACT THAT  
3 REQUIRE THE PRIVATE CONTRACTOR TO ALLOW THE DEPARTMENT TO REVIEW AND APPROVE THE  
4 CONTRACT MUST PROVIDE THAT A PRIVATE CONTRACTOR MAY NOT:

5       (A) CHOOSE THE CORRECTIONAL FACILITY TO WHICH AN INMATE IS INITIALLY OR  
6 SUBSEQUENTLY ASSIGNED. A CONTRACTOR MAY REQUEST THE DEPARTMENT TO TRANSFER AN  
7 INMATE TO A STATE FACILITY OR TO ANOTHER PRIVATE CORRECTIONAL FACILITY.

8       (B) DEVELOP OR ADOPT DISCIPLINARY RULES THAT DIFFER FROM THE DISCIPLINARY RULES,  
9 PENALTIES, AND POLICIES OF THE DEPARTMENT;

10       (C) MAKE A DECISION THAT AFFECTS THE SENTENCE IMPOSED ON AN INMATE OR THE TIME  
11 SERVED BY AN INMATE;

12       (D) MAKE RECOMMENDATIONS TO THE BOARD OF PARDONS AND PAROLE WITH RESPECT TO  
13 THE DENIAL OR GRANTING OF PAROLE OR RELEASE, EXCEPT TO SUBMIT REPORTS TO THE BOARD OF  
14 PARDONS AND PAROLE AND TO RESPOND TO REQUESTS BY THE DEPARTMENT OR THE BOARD OF  
15 PARDONS AND PAROLE;

16       (E) DEVELOP OR IMPLEMENT REQUIREMENTS THAT INMATES ENGAGE IN ANY TYPE OF WORK,  
17 EXCEPT TO THE EXTENT THAT THOSE REQUIREMENTS ARE ACCEPTED BY THE DEPARTMENT;

18       (F) DETERMINE INMATE ELIGIBILITY FOR ANY FORM OF RELEASE FROM A CORRECTIONAL  
19 FACILITY; OR

20       ~~(G) DEVELOP OR USE A CLASSIFICATION SYSTEM OTHER THAN THE CLASSIFICATION SYSTEM~~  
21 ~~USED BY THE DEPARTMENT AN INMATE CLASSIFICATION SYSTEM BASED ON A VALIDATED~~  
22 ~~OBJECTIVE CLASSIFICATION SYSTEM UNLESS IT IS APPROVED BY THE DEPARTMENT.~~

23       ~~(3)(4)~~ CONTRACTS MAY NOT EXCEED A TERM OF 30 YEARS AND MUST CONTAIN PROVISIONS  
24 FOR RENEGOTIATION AFTER 30 YEARS. THE PROVISIONS OF 18-3-104 AND 18-4-313 THAT LIMIT THE  
25 TERM OF A CONTRACT DO NOT APPLY TO A CONTRACT AUTHORIZED BY THIS SECTION.

26       ~~(4)(5)~~ THE CONTRACT MUST SPECIFY THAT THE PRIVATE CORRECTIONAL FACILITY SHALL  
27 GRANT ACCESS TO THE LEGISLATIVE AUDIT DIVISION OR A PERSON CONTRACTING WITH THE  
28 LEGISLATIVE AUDIT DIVISION FOR COMPLIANCE AUDITING. THE CONTRACTOR SHALL PROVIDE  
29 ACCESS TO ALL AREAS OF THE FACILITY AND TO ALL RECORDS MAINTAINED ONSITE OR OFFSITE  
30 THAT PERTAIN TO ALL ASPECTS OF THE FACILITY, INCLUDING BUT NOT LIMITED TO OPERATION,

1 FINANCIAL, AND INMATE RECORDS.

2

3 NEW SECTION. SECTION 9. CONTRACTOR COSTS RESPONSIBILITY. (1) THE PRIVATE  
 4 CORRECTIONAL FACILITY IS RESPONSIBLE FOR ALL MONITORING COSTS INCURRED BY THE STATE.

5 (2)(1) THE CONTRACTOR IS RESPONSIBLE FOR COSTS INCURRED BY THE STATE OR ANY  
 6 POLITICAL SUBDIVISION OF THE STATE FOR LEGAL COSTS RELATING TO ESCAPES, RIOTS OR  
 7 DISTURBANCES, OR OTHER NATURAL OR HUMAN-CAUSED EVENTS THAT OCCUR AT THE FACILITY  
 8 BECAUSE OF THE CONTRACTOR'S NEGLIGENCE, ERRORS, OMISSIONS, INTENTIONAL ACTS, OR  
 9 FAILURE TO COMPLY WITH THE TERMS OF THE CONTRACT.

10 (3)(2) THE CONTRACTOR IS RESPONSIBLE FOR ALL REASONABLE COSTS AND EXPENSES  
 11 INCURRED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE FOR DEFENSE OF CAUSES OF  
 12 ACTION BROUGHT BY OR ON BEHALF OF AN INMATE THAT ACCRUE WHILE AN INMATE IS  
 13 INCARCERATED AT A PRIVATE CORRECTIONAL FACILITY.

14 (3) THE PROVISIONS OF [SECTIONS 1 THROUGH 11] ARE NOT INTENDED TO CREATE A  
 15 PRIVATE OR PUBLIC CAUSE OF ACTION FOR ANY PERSON, PARTNERSHIP, CORPORATION, OR OTHER  
 16 ENTITY, INCLUDING ANY INMATE HOUSED WITHIN ANY PRIVATE CORRECTIONAL FACILITY OR ANY  
 17 INMATE HOUSED WITHIN THE STATE OF MONTANA.

18

19 NEW SECTION. SECTION 11. QUALIFICATIONS OF CORRECTIONAL OFFICERS. (1)  
 20 CORRECTIONAL OFFICERS MAY NOT BE EMPLOYED IF PREVIOUSLY CONVICTED OF A FELONY  
 21 OFFENSE.

22 (2) A CORRECTIONAL OFFICER MAY NOT CARRY A FIREARM OR OTHER WEAPON IN THE  
 23 PERFORMANCE OF THE CORRECTIONAL OFFICER'S DUTIES UNLESS THE CORRECTIONAL OFFICER HAS  
 24 COMPLETED A DEPARTMENT APPROVED WEAPONS TRAINING COURSE OR IS IN COMPLIANCE WITH  
 25 STANDARDS DEVELOPED OR ADOPTED BY THE DEPARTMENT.

26

27 NEW SECTION. SECTION 10. RESTRICTIONS ON INMATE MOVEMENTS. AN INMATE MAY NOT  
 28 LEAVE THE SECURE PREMISES OF A PRIVATE CORRECTIONAL FACILITY EXCEPT TO COMPLY WITH A  
 29 COURT ORDER, TO RECEIVE MEDICAL CARE THAT IS NOT AVAILABLE AT THE PRIVATE CORRECTIONAL  
 30 FACILITY, OR AS PART OF A WORK PROGRAM WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE

1 DEPARTMENT. ANY MOVEMENT OF AN INMATE OUTSIDE OF THE SECURE PREMISES OF THE PRIVATE  
 2 CORRECTIONAL FACILITY MUST BE IN COMPLIANCE WITH APPROVED POLICIES AND PROCEDURES  
 3 ESTABLISHED BY THE DEPARTMENT.

4  
 5 NEW SECTION. Section 11. Failure to comply with law -- action by department. (1) A  
 6 CONTRACTOR SHALL REMAIN IN STRICT COMPLIANCE WITH [SECTIONS 1 THROUGH ~~13~~ 11],  
 7 ESTABLISHED APPLICABLE AMERICAN CORRECTIONAL ASSOCIATION ~~GUIDELINES~~ AND NATIONAL  
 8 COMMISSION ON CORRECTIONAL HEALTH CARE STANDARDS AS DETERMINED BY THE DEPARTMENT  
 9 BY ADMINISTRATIVE RULE, DEPARTMENT RULES, AND CONTRACT REQUIREMENTS.

10 (2) If the department determines at any time that a private correctional facility does not conform  
 11 to [sections 1 through ~~5-13~~ 11], APPLICABLE AMERICAN CORRECTIONAL ASSOCIATION AND NATIONAL  
 12 COMMISSION ON CORRECTIONAL HEALTH CARE STANDARDS, and department rules, AND CONTRACT  
 13 REQUIREMENTS, the department shall notify the chief executive officer and the ~~governing board of the~~  
 14 OWNER OR OPERATOR, OR BOTH, OF THE PRIVATE CORRECTIONAL facility. The notice must state the  
 15 deficiencies and order that they be remedied within a ~~reasonable~~ SPECIFIED period of time NOT TO EXCEED  
 16 1 YEAR. If the deficiencies are not remedied within that time, the department may hold a contested case  
 17 hearing under Title 2, chapter 4, and if the department finds that suspension or revocation is warranted by  
 18 nonconformance with [sections 1 through ~~5-13~~ 11], APPLICABLE AMERICAN CORRECTIONAL  
 19 ASSOCIATION AND NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE STANDARDS, and  
 20 department rules, AND CONTRACT REQUIREMENTS, the department may suspend or revoke the facility's  
 21 license.

22 (3) IF A PRIVATE CORRECTIONAL FACILITY FAILS TO COMPLY WITH [SECTIONS 1 THROUGH  
 23 ~~13~~ 11], APPLICABLE AMERICAN CORRECTIONAL ASSOCIATION AND NATIONAL COMMISSION ON  
 24 CORRECTIONAL HEALTH CARE STANDARDS, DEPARTMENT RULES, OR CONTRACT REQUIREMENTS  
 25 WITHIN THE SPECIFIED TIME PERIOD, THE STATE MAY ASSUME CONTROL OF THE FACILITY FOR THE  
 26 PURPOSE OF PROTECTING THE INMATES, FACILITY STAFF, OR THE PUBLIC. IF THE STATE ASSUMES  
 27 CONTROL OF THE FACILITY, THE DEPARTMENT SHALL SUSPEND PAYMENT FOR ANY SERVICES, AND  
 28 THE DEPARTMENT ASSUMES THE COSTS OF ASSUMING CONTROL.

29 (4) THE DEPARTMENT MAY ASSUME EMERGENCY CONTROL OF A PRIVATE CORRECTIONAL  
 30 FACILITY IF SUBSTANTIAL VIOLATIONS EXIST THAT AFFECT THE LIFE, HEALTH, OR SAFETY OF THE



1 INMATES, FACILITY EMPLOYEES, OR THE PUBLIC OR THAT OTHERWISE SUBSTANTIALLY IMPACT THE  
 2 SECURITY OF THE PRIVATE CORRECTIONAL FACILITY.

3 (5) IN THE EVENT THAT A CONTRACTOR FAILS TO COMPLY WITH [SECTIONS 1 THROUGH 13]  
 4 11], APPLICABLE AMERICAN CORRECTIONAL ASSOCIATION AND NATIONAL COMMISSION ON  
 5 CORRECTIONAL HEALTH CARE STANDARDS, DEPARTMENT RULE RULES, OR CONTRACT  
 6 REQUIREMENTS, THE STATE MAY RETAIN THE OPTION OF PURCHASING OR LEASING THE FACILITY.

7 (6) IF EITHER THE STATE OR THE CONTRACTOR FAILS TO RENEW A CONTRACT, THE STATE  
 8 MAY RETAIN THE OPTION OF PURCHASING OR LEASING THE FACILITY.

9 (7) IF THE STATE RETAINS THE OPTION OF PURCHASING OR LEASING THE FACILITY UNDER  
 10 SUBSECTIONS (5) AND (6) OF THIS SECTION, BECAUSE IT REQUIRES THE CREATION OF STATE DEBT,  
 11 THE APPROPRIATION BILL THAT FUNDS THE PURCHASE OF SERVICES FROM THE FACILITY MUST BE  
 12 TREATED IN THE SAME MANNER AS A BILL CREATING STATE DEBT AND REQUIRES A VOTE OF  
 13 TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE FOR PASSAGE.

14  
 15 NEW SECTION. Section 12. Codification instruction. [Sections 1 through ~~5-13~~ 11] are intended  
 16 to be codified as a new part in Title 53, chapter 30.

17  
 18 NEW SECTION. SECTION 13. APPLICABILITY. (1) [THIS ACT] APPLIES TO PROCEEDINGS  
 19 BEGUN OR CONTRACTS RENEWED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

20 (2) [SECTION 7] DOES NOT APPLY TO A PRIVATE CORRECTIONAL FACILITY THAT HAS BEEN  
 21 ESTABLISHED OR PROPOSED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

22  
 23 NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.

24 -END-