

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.2-1837, 2.2-3703, 8.01-195.10, 8.01-690, 19.2-353.5, 53.1-1, 53.1-31.1,*
 3 *53.1-71.1, 53.1-71.2, 53.1-71.4, 53.1-71.5, 53.1-261, 53.1-262, 53.1-263, 53.1-265, and 53.1-266 of the*
 4 *Code of Virginia, relating to state and regional correctional facilities; private management prohibited.*

5 [S 1283]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**

8 **1. That §§ 2.2-1837, 2.2-3703, 8.01-195.10, 8.01-690, 19.2-353.5, 53.1-1, 53.1-31.1, 53.1-71.1, 53.1-71.2,**
 9 **53.1-71.4, 53.1-71.5, 53.1-261, 53.1-262, 53.1-263, 53.1-265, 53.1-266 of the Code of Virginia are**
 10 **amended and reenacted as follows:**

11 **§ 2.2-1837. Risk management plan for public liability.**

12 A. Subject to the approval of the Governor, the Division shall establish a risk management plan, which
 13 may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to
 14 provide:

15 1. Protection against liability imposed by law for damages resulting from any claim:

16 a. Made against any state department, agency, institution, board, commission, officer, agent, or employee
 17 for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in
 18 the course and scope of employment or authorization;

19 b. Made against participants, other than professional counsel, in student disciplinary proceedings at public
 20 institutions of higher education for nonmalicious acts or omissions of any nature in the course and scope of
 21 participation in the proceedings; or

22 c. Resulting from an authorized indemnification agreement entered into by a public institution of higher
 23 education in the Commonwealth in accordance with this subsection.

24 A public institution of higher education in the Commonwealth may execute an indemnification agreement
 25 if the Governor (i) considers in advance of execution (a) the institution's analysis of the relevant public
 26 benefit and risk of liability, (b) the Division's charge to be assessed against the institution for providing
 27 insurance or self-insurance coverage for the claims resulting from the indemnification agreement, and (c) the
 28 Office of the Attorney General's comments and (ii) determines that execution is necessary to further the
 29 public's best interests.

30 The indemnification agreement shall limit the institution's total liability to a stated dollar amount and shall
 31 notify the contractor that the full faith and credit of the Commonwealth are not pledged or committed to
 32 payment of the institution's obligation under the agreement. However, no such institution shall be authorized
 33 to enter into an indemnification agreement in accordance with this subsection to indemnify any person or
 34 entity against damages arising from a sponsored project conducted by such institution. For the purposes of
 35 this section, a "sponsored project" is a research, instruction, or service project conducted at a public
 36 institution of higher education in the Commonwealth pursuant to a grant, cooperative agreement, or other
 37 contract;

38 2. Protection against tort liability and incidental medical payments arising out of the ownership,
 39 maintenance or use of buildings, grounds or properties owned or leased by the Commonwealth or used by
 40 state employees or other authorized persons in the course of their employment;

41 3. For the payment of attorney fees and expenses incurred in defending such persons and entities
 42 concerning any claim that (i) arises from their governmental employment or authorization, that (ii) arises
 43 from their participation in such student disciplinary proceedings, or (iii) is described in any such
 44 indemnification agreement, where the Division is informed by the Attorney General's office that it will not
 45 provide a defense due to a conflict or other appropriate reason; and

46 4. For the payment of attorney fees and expenses awarded to any individual or entity against the
 47 Commonwealth, or any department, agency, institution, board, commission, officer, agent, or employee of the
 48 Commonwealth for acts or omissions of any nature while acting in an authorized governmental or proprietary
 49 capacity, or in reliance upon any constitutional provision, or law of the Commonwealth. It is the obligation of
 50 the Division to provide for such indemnification regardless of whether there is a request for or an award of
 51 damages associated with the award of such fees and expenses.

52 a. As a condition of coverage for the payment of attorney fees and expenses, the department, agency,
 53 institution, board, commission, officer, agent, or employee of the Commonwealth shall (i) promptly notify the
 54 Division of the commencement of any claim, suit, action or other proceeding prior to its settlement, (ii)
 55 provide the Division with full nonprivileged information on the matter as requested, and (iii) permit the
 56 Division to participate in the investigation of such claim, suit, action or other proceeding. Failure to promptly

57 notify the Division or to reasonably cooperate may, at the Division's discretion, result in no payment or a
58 reduced payment being made.

59 b. The Division shall set the premium and administrative costs to be paid to it for providing payment of
60 attorney fees and expenses awarded pursuant to this section. The premiums and administrative costs set by
61 the Division shall be payable in the amounts, at the time and in the manner that the Division in its sole
62 discretion requires. Premiums and administrative costs shall be set to best ensure the financial stability of the
63 plan.

64 B. Any risk management plan established pursuant to this section shall provide for the establishment of a
65 trust fund or contribution to the State Insurance Reserve Trust Fund for the payment of claims covered under
66 the plan. The funds shall be invested as provided in § 2.2-1806 and interest shall be added to the fund as
67 earned. The trust fund shall also provide for payment of administrative costs, contractual costs, and other
68 expenses related to the administration of such plan.

69 C. The risk management plan for public liability shall be submitted to the Governor for approval prior to
70 implementation.

71 D. The risk management plan established pursuant to this section shall provide protection against
72 professional liability imposed by law as provided in § 24.2-121, resulting from any claim made against a
73 local electoral board, any of its members, any general registrar, or any employee of or paid deputy to a
74 registrar for acts or omissions of any nature while acting in an authorized governmental or proprietary
75 capacity and in the course and scope of employment or authorization, regardless of whether or not the civil
76 action requests monetary damages, subject to the limitations of the risk management plan.

77 E. The risk management plan established pursuant to this section shall provide protection against any
78 claim made against any soil and water conservation district, director, officer, agent or employee thereof, (i)
79 arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or
80 maintained by any such district or used by district employees or other authorized persons in the course of
81 their employment or (ii) arising out of acts or omissions of any nature while acting in an authorized
82 governmental or proprietary capacity and in the course and scope of employment or authorization.

83 F. The risk management plan established pursuant to this section shall provide protection against
84 professional liability imposed by law for damages resulting from any claim made against a local school board
85 selection commission or local school board selection commission members for acts or omissions of any
86 nature while acting in an authorized governmental or proprietary capacity and in the course and scope of
87 authorization, subject to the limitations of the risk management plan.

88 G. The risk management plan established pursuant to this section shall provide coverage for any matter
89 that involves or could involve an action or proceeding against a judge, the nature of which is designed to
90 determine whether discipline or other sanction of the judge for malfeasance or misfeasance is appropriate or
91 to otherwise determine the fitness of the judge to hold office or to continue his employment. No coverage or
92 indemnification shall be made pursuant to this subsection when the Supreme Court of Virginia finds that the
93 judge should be censured or removed from office pursuant to § 10 of Article VI of the Constitution of
94 Virginia or statutes enacted pursuant thereto.

95 H. The risk management plan established pursuant to this section shall provide protection against claims
96 made against chaplains by persons incarcerated in a state correctional facility; *or* a juvenile correctional
97 center, ~~or including~~ a facility operated pursuant to the Corrections Private Management Services Act (§
98 53.1-261 et seq.) arising out of services provided by the chaplains to such incarcerated persons, regardless of
99 whether such services were provided on a volunteer basis or for compensation. For the purposes of this
100 subsection, chaplains shall include only those persons; who, at the time any claim may arise, were acting
101 pursuant to, and in compliance with, an agreement between the chaplain or an organization to which the
102 chaplain belongs; and the Department of Corrections, the Department of Juvenile Justice, or an operator of a
103 facility operated pursuant to the Corrections Private Management Services Act.

104 **§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election**
105 **records; access by persons incarcerated in a state, local, or federal correctional facility.**

106 A. The provisions of this chapter shall not apply to:

107 1. Petit juries and grand juries;

108 2. Family assessment and planning teams established pursuant to § 2.2-5207;

109 3. Sexual assault response teams established pursuant to § 15.2-1627.4 and human trafficking response
110 teams established pursuant to § 15.2-1627.6, except that records relating to (i) protocols and policies of the
111 sexual assault or human trafficking response team and (ii) guidelines for the community's response
112 established by the sexual assault or human trafficking response team shall be public records and subject to the
113 provisions of this chapter;

114 4. Multidisciplinary child sexual abuse response teams established pursuant to § 15.2-1627.5;

115 5. The Virginia State Crime Commission; and

116 6. The records maintained by the clerks of the courts of record, as defined in § 1-212, for which clerks are
117 custodians under § 17.1-242, and courts not of record, as defined in § 16.1-69.5, for which clerks are
118 custodians under § 16.1-69.54, including those transferred for storage, maintenance, or archiving. Such

119 records shall be requested in accordance with the provisions of §§ 16.1-69.54:1 and 17.1-208, as appropriate.
 120 However, other records maintained by the clerks of such courts shall be public records and subject to the
 121 provisions of this chapter.

122 B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2
 123 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

124 C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford
 125 any rights to any person (i) incarcerated in a state, local, or federal correctional facility, whether or not such
 126 facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management
 127 Services Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§
 128 37.2-900 et seq.). However, this subsection shall not be construed to prevent such persons from exercising
 129 their constitutionally protected rights, including, but not limited to, their right to call for evidence in their
 130 favor in a criminal prosecution.

131 **§ 8.01-195.10. Purpose; action by the General Assembly required; definitions.**

132 A. The purpose of this article is to provide directions and guidelines for the compensation of persons who
 133 have been wrongfully incarcerated in the Commonwealth. Compensation for wrongful incarceration is
 134 governed by Article IV, § 14 of the Constitution of Virginia, which prohibits the General Assembly from
 135 granting relief in cases in which the courts or other tribunals may have jurisdiction. No compensation shall be
 136 awarded under this article unless the recipient has executed a release and waiver pursuant to subsection B of §
 137 8.01-195.12. The payment and receipt of any compensation for wrongful incarceration shall be contingent
 138 upon the General Assembly appropriating funds for that purpose. This article shall not provide an entitlement
 139 to compensation for persons wrongfully incarcerated or require the General Assembly to appropriate funds
 140 for the payment of such compensation.

141 B. As used in this article:

142 "Incarceration" or "incarcerated" means (i) confinement in a local or regional correctional facility,
 143 juvenile correctional center, state correctional facility, or residential detention center; or (ii) *confinement in a*
 144 facility operated pursuant to the Corrections Private Management Services Act (§ 53.1-261 et seq.).

145 "Wrongful incarceration" or "wrongfully incarcerated" means incarceration for a felony conviction for
 146 which the conviction has been vacated pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) or 19.3 (§ 19.2-327.10
 147 et seq.) of Title 19.2, or the person incarcerated has been granted an absolute pardon for the commission of a
 148 crime that he did not commit.

149 **§ 8.01-690. Applicability provisions.**

150 The provisions of this chapter shall apply to all pro se civil actions for money damages brought under the
 151 laws of this Commonwealth, or for injunctive, declaratory, or mandamus relief, brought by prisoners
 152 incarcerated in any state or local correctional facility, ~~or~~ including a facility operated pursuant to the
 153 Corrections Private Management Services Act (§ 53.1-261 et seq.).

154 **§ 19.2-353.5. Interest on fines and costs.**

155 A. For purposes of this section, "incarcerated" or "incarceration" means confinement in a local or regional
 156 correctional facility, juvenile correctional facility, state correctional facility, residential detention center, or
 157 facility operated pursuant to the Corrections Private Management Services Act (§ 53.1-261 et seq.).

158 B. No interest shall accrue on any fine or costs imposed in a criminal case or in a case involving a traffic
 159 infraction (i) for a period of 180 days following the date of the final judgment imposing such fine or costs;
 160 (ii) during any period the defendant is incarcerated; and (iii) for a period of 180 days following the date of the
 161 defendant's release from incarceration if the sentence includes an active term of incarceration.

162 C. A person who owes fines and costs on which interest has accrued during a period of incarceration may
 163 move any court in which he owes fines and costs to waive the interest that accrued on such fines and costs
 164 during such period of incarceration. Upon certification of the period of incarceration by the superintendent,
 165 warden, or other official in charge of a correctional facility on a form developed by the Office of the
 166 Executive Secretary of the Supreme Court, such interest shall be waived.

167 D. In no event shall interest accrue during any period in which a fine, costs, or both a fine and costs are
 168 being paid in deferred or installment payments pursuant to an order of the court. Whenever interest on any
 169 unpaid fine or costs accrues, it shall accrue at the judgment rate of interest set forth in § 6.2-302.

170 **§ 53.1-1. Definitions.**

171 As used in this title, unless the context requires a different meaning:

172 "Board" or "State Board" means the State Board of Local and Regional Jails.

173 "Community correctional facility" means any group home, halfway house or other physically unrestricting
 174 facility used for the housing, treatment or care of adult offenders established or operated with funds
 175 appropriated to the Department of Corrections from the state treasury and maintained or operated by any
 176 political subdivision, combination of political subdivisions or privately operated agency within the
 177 Commonwealth.

178 "Community supervision" means probation, parole, postrelease supervision, programs authorized under
 179 the Comprehensive Community Corrections Act for local responsible offenders, and programs authorized
 180 under Article 7 (§ 53.1-128 et seq.) of Chapter 3.

181 "Correctional officer" means a duly sworn employee of the Department of Corrections whose normal
 182 duties relate to maintaining immediate control, supervision and custody of prisoners confined in any state
 183 correctional facility.

184 "Department" means the Department of Corrections.

185 "Deputy sheriff" means a duly sworn officer appointed by a sheriff pursuant to § 15.2-1603 whose normal
 186 duties include, but are not limited to, maintaining immediate control, supervision and custody of prisoners
 187 confined in any local correctional facility and may include those duties of a jail officer.

188 "Director" means the Director of the Department of Corrections.

189 "Jail officer" means a duly sworn employee of a local correctional facility, except for deputy sheriffs,
 190 whose normal duties relate to maintaining immediate control, supervision and custody of prisoners confined
 191 in any local correctional facility. This definition in no way limits any authority otherwise granted to a duly
 192 sworn deputy sheriff whose duties may include those of a jail officer.

193 "Local correctional facility" means any jail, jail farm or other place used for the detention or incarceration
 194 of adult offenders, excluding a lock-up, which is owned, maintained, or operated by any political subdivision
 195 or combination of political subdivisions of the Commonwealth. For the purposes of subsection B of § 53.1-68
 196 and §§ 53.1-69, 53.1-69.1, and 53.1-127, "local correctional facility" also includes any facility owned,
 197 maintained, or operated by any political subdivision or combination of political subdivisions of the
 198 Commonwealth that is used for the detention or incarceration of people pursuant to a contract or third-party
 199 contract with the federal government or any agency or contractor thereof.

200 "Lock-up" means a facility whose primary use is to detain persons for a short period of time as determined
 201 by the Board.

202 "State correctional facility" means any correctional center or correctional field unit used for the
 203 incarceration of adult offenders established and operated by the Department of Corrections, or operated ~~under~~
 204 ~~contract pursuant to § 53.1-262. This term shall include pursuant to the Corrections Private Services Act (§~~
 205 ~~53.1-261 et seq.). "State correctional facility" includes "penitentiary" whenever used in this title or other titles~~
 206 of the Code.

207 **§ 53.1-31.1. Transportation of prisoners.**

208 A. Notwithstanding any other provision of law, the Department shall provide all transportation to and
 209 from court for any prisoner in connection with a crime committed within a state correctional facility, ~~or~~
 210 ~~including~~ a facility operated pursuant to the Corrections Private ~~Management~~ *Services Act* (§ 53.1-261 et
 211 seq.), unless the affected sheriff and the Department agree on other transportation. Auxiliary police forces
 212 established under § 15.2-1731 who have met the training requirements of § 9.1-102, with the concurrence of
 213 the sheriff or other chief law-enforcement officer as appropriate, are specifically authorized to provide such
 214 transportation.

215 B. Authorized corrections personnel from any other state, the United States, and any political subdivisions
 216 thereof who transport a prisoner through the Commonwealth, deliver a prisoner to the Commonwealth, or
 217 take custody of a prisoner in the Commonwealth for transport to another jurisdiction are deemed to have
 218 lawful custody of such prisoner while in the Commonwealth.

219 C. Authorized Virginia corrections personnel who have a need to travel with a prisoner through or to
 220 another state are authorized to travel through such state and retain authority over such prisoner as allowed by
 221 such state.

222 Article 1.1.

223 ~~Private Operation of Services at Regional Jail Facilities.~~

224 **§ 53.1-71.1. Private construction, maintenance, etc., of regional jail facility.**

225 A. Any regional jail authority constituted pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or 5 (§ 53.1-105 et
 226 seq.) of Chapter 3 of Title 53.1 may contract with a private entity for the financing, site selection, acquisition,
 227 construction, maintenance, *or* leasing; ~~management; or operation~~ of a regional jail facility.

228 B. Any project authorized pursuant to subsection A ~~of this section~~ shall be subject to the requirements and
 229 limitations set out below:

230 1. Contracts entered into under the terms of this article shall be with an entity submitting an acceptable
 231 response pursuant to a request for proposals. An acceptable response shall be one ~~which~~ *that* meets all the
 232 requirements in the request for proposals. However, no contract for correctional services may be entered into
 233 unless the private contractor demonstrates that it has:

234 a. The qualifications; *and* experience ~~and management personnel~~ necessary to carry out the terms of this
 235 contract;

236 b. The financial resources to provide indemnification for liability arising from jail ~~management~~ projects;

237 c. Evidence of past performance of similar contracts; and

238 d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and
 239 local laws; court orders; and correctional standards.

240 2. Contracts awarded under the provisions of this article, including contracts for the provision of
 241 correctional services or for the lease or use of public lands or buildings for use in the operation of facilities,
 242 may be entered into for a period of up to ~~thirty~~ 30 years, subject to the requirements for expenditure of funds

243 by the local governing bodies.

244 3. No contract for correctional services shall be entered into which would adversely affect the tax-exempt
245 status of obligations issued or to be issued to finance the facility, and unless the following requirements are
246 met:

247 a. The contractor provides audited financial statements for the previous five years or for each of the years
248 the contractor has been in operation, if fewer than five years, and provides other financial information as
249 requested; and

250 b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil
251 rights claims. The indemnification plan shall be adequate to protect the combination of counties or cities and
252 public officials from all claims and losses incurred as a result of the contract. The indemnification plan shall
253 include liability insurance in limits of not less than ~~five~~ \$5 million ~~dollars~~. Nothing herein is intended to
254 deprive a regional jail facility contractor or the combination of counties or cities of the benefits of any law
255 limiting exposure to liability or setting a limit on damages.

256 4. No contract for correctional services shall be executed unless:

257 a. The proposed contract has been reviewed and approved by the Board;

258 b. An appropriation for the services to be provided under the contract has been expressly approved as is
259 otherwise provided by law;

260 c. The correctional services proposed by the contract are of at least the same quality as those routinely
261 provided by a regional jail facility to similar types of inmates; and

262 d. An evaluation of the proposed contract demonstrates a cost benefit to the combination of counties or
263 cities when compared to alternative means of providing the services through governmental agencies.

264 **§ 53.1-71.2. Authority of security employees.**

265 Security employees of a regional jail facility contractor *approved by the General Assembly to operate a*
266 *regional jail facility pursuant to § 53.1-71.4* shall be allowed to use force and shall exercise their powers and
267 authority only while on the grounds of a regional jail facility under the supervision of the regional jail facility
268 contractor, while transporting inmates, and while pursuing escapees from such facilities until such time that
269 the pursuit of the escapees is assumed by state or local law-enforcement agencies. All provisions of law
270 pertaining to custodians of inmates or jail guards or officers shall apply to contractors' security employees.

271 **§ 53.1-71.4. Powers and duties not delegable to contractor.**

272 The regional jail authority issuing the contract shall retain the authority and responsibility for the rules and
273 procedures as they apply to the treatment of prisoners, and no contract for correctional services shall
274 authorize, allow, or imply a delegation of authority or responsibility to a regional jail facility contractor for
275 any of the following:

276 1. Developing and implementing procedures for calculating inmate release dates;

277 2. Developing and implementing procedures for calculating and awarding sentence credits;

278 3. Approving inmates for furlough and work release;

279 4. Approving the type of work inmates may perform and the wages or sentence credits which may be
280 given the inmates engaging in such work;

281 5. Granting, denying, or revoking sentence credits;

282 6. Classifying inmates or placing inmates in less restrictive custody or more restrictive custody;

283 7. Transferring an inmate; however, the contractor may make written recommendations regarding the
284 transfer of an inmate or inmates;

285 8. Formulating rules of inmate behavior, violations of which may subject inmates to sanctions; however,
286 the contractor may propose such rules for review and adoption, rejection, or modification as otherwise
287 provided by law or regulation; ~~and~~

288 9. Disciplining inmates in any manner which requires a discretionary application of rules of inmate
289 behavior or a discretionary imposition of a sanction for violations of such rules; *or*

290 10. *Operating a regional jail facility, including management, custody of inmates, or provision of security;*
291 *however, the contractor may operate a regional jail facility, including management, custody of inmates, or*
292 *provision of security, upon approval by the General Assembly.*

293 **§ 53.1-71.5. Board to promulgate regulations.**

294 The Board shall make, adopt, and promulgate regulations governing the following aspects of private
295 management and operation of regional jail facilities *approved by the General Assembly pursuant to §*
296 *53.1-71.4*:

297 1. Minimum standards for the construction, equipment, administration, and operation of the facilities;
298 however, the standards shall be at least as stringent as those established for local correctional facilities;

299 2. Contingency plans for operation of a contractor-operated facility in the event of a termination of the
300 contract;

301 3. Use of deadly and nondeadly force by regional jail facility contractors' security personnel;

302 4. Methods of monitoring a contractor-operated facility by an appropriate state or local governmental
303 entity or entities;

304 5. Public access to a contractor-operated facility; and

305 6. Such other regulations as may be necessary to carry out the provisions of this article.

306 CHAPTER 15.

307 CORRECTIONS PRIVATE MANAGEMENT SERVICES ACT.

308 § 53.1-261. Definitions.

309 As used in this chapter, unless the context requires otherwise or it is otherwise provided a different
310 meaning:

311 "Correctional services" means the following functions, services, and activities when provided within a
312 prison or otherwise:

- 313 1. ~~Operation of facilities, including management, custody of inmates and provision of security;~~
- 314 2. Food services, commissary, medical services, transportation, sanitation, or other ancillary services;
- 315 3. 2. Development and implementation assistance for classification, management information systems, or
316 other information systems or services;
- 317 4. 3. Education, training, and employment programs;
- 318 5. 4. Recreational, religious, and other activities; and
- 319 6. 5. Counseling, special treatment programs, or other programs for special needs.

320 "Prison" or "facility" or "prison facility" means any institution operated by or under authority of the
321 Department and shall include, whether obtained by purchase, lease, construction, reconstruction, restoration,
322 improvement, alteration, repair, or other means, any physical betterment or improvement related to the
323 housing of inmates or any preliminary plans, studies, or surveys relative thereto; land or rights to land; and
324 any furnishings, machines, vehicles, apparatus, or equipment for use in connection with any prison facility.

325 "Prison contractor" or "contractor" means any entity, including a local government, entering into or
326 offering or proposing to enter into a contractual agreement to provide any correctional services to inmates
327 under the custody of the Commonwealth or federal inmates under the custody of the prison contractor, while
328 in the Commonwealth of Virginia.

329 § 53.1-262. State correctional facilities; private contracts.

330 The Director, subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), is
331 hereby authorized to enter into contracts with prison contractors for the financing, site selection, acquisition,
332 construction, maintenance, *or* leasing; ~~management or operation~~ of prison facilities, or any combination of
333 those services, subject to the *following* requirements and limitations ~~set out below~~:

334 1. Contracts entered into under the terms of this chapter shall be with an entity submitting an acceptable
335 response pursuant to a request for proposals. An acceptable response shall be one ~~which~~ *that* meets all the
336 requirements in the request for proposals. However, no contract for correctional services may be entered into
337 unless the private contractor demonstrates that it has:

- 338 a. The qualifications; *and* experience ~~and management personnel~~ necessary to carry out the terms of this
339 contract;
- 340 b. The financial resources to provide indemnification for liability arising from prison ~~management~~
341 projects;
- 342 c. Evidence of past performance of similar contracts which shall include the experience of persons in
343 management with such entity and may include the experience of the parent of such entity; and
- 344 d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and
345 local laws; court orders; and correctional standards.

346 2. Contracts awarded under the provisions of this chapter, including contracts for the provision of
347 correctional services or for the lease or use of public lands or buildings for use in the operation of facilities,
348 may be entered into for a period of up to ~~thirty~~ 30 years, subject to the requirements for annual appropriation
349 of funds by the Commonwealth.

350 3. ~~Contracts awarded under the provisions of this chapter shall, at a minimum, comply with the following:~~

- 351 a. ~~Provide for internal and perimeter security to protect the public, employees and inmates;~~
- 352 b. ~~Provide inmates with work or training opportunities while incarcerated; however, the contractor shall~~
353 ~~not benefit financially from the labor of inmates;~~
- 354 e. ~~Impose discipline on inmates only in accordance with applicable regulations; and~~
- 355 d. ~~Provide proper food, clothing, housing and medical care for inmates.~~

356 4. No contract for correctional services shall be entered into unless the following requirements are met:

357 a. The contractor provides audited financial statements for the previous five years or for each of the years
358 the contractor has been in operation, if fewer than five years, and provides other financial information as
359 requested; and

360 b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil
361 rights claims. The indemnification plan shall be adequate to protect the Commonwealth and public officials
362 from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a prison
363 contractor or the Commonwealth of the benefits of any law limiting exposure to liability or setting a limit on
364 damages.

365 5- 4. No contract for correctional services shall be executed by the Director nor shall any funds be
366 expended for the contract unless:

367 a. The proposed contract complies with any applicable regulations ~~which that~~ may be promulgated by the
 368 Director pursuant to § 53.1-266;

369 b. An appropriation for the services to be provided under the contract has been expressly approved as is
 370 otherwise provided by law;

371 c. The correctional services proposed by the contract are of at least the same quality as those routinely
 372 provided by the Department to similar types of inmates; and

373 d. An evaluation of the proposed contract demonstrates a cost benefit to the Commonwealth when
 374 compared to alternative means of providing the services through governmental agencies.

375 6. A site proposed by a contractor for the construction of a prison facility shall not be subject to the
 376 approval procedure set forth in § 53.1-19. However, no contract for the construction and operation of a
 377 private correctional facility shall be entered into nor shall any funds be expended for the contract unless the
 378 local governing body, by duly adopted resolution, consents to the siting and construction of such facility
 379 within the boundaries of the locality.

380 **§ 53.1-263. Authority of security employees.**

381 Security employees of a prison contractor *approved by the General Assembly to operate a prison facility*
 382 *pursuant to § 53.1-265* shall be allowed to use force and shall exercise their powers and authority only while
 383 on the grounds of an institution under the supervision of the prison contractor, while transporting inmates,
 384 while pursuing escapees from such institutions, and while providing inmate security for prisoners at a
 385 medical facility in the Commonwealth. All provisions of law pertaining to custodians of inmates, correctional
 386 officers, or prison or jail officers, except § 19.2-81.1, shall apply to contractors' security employees.

387 **§ 53.1-265. Powers and duties not delegable to contractor.**

388 No contract for correctional services shall authorize, allow, or imply a delegation of authority or
 389 responsibility of the Director to a prison contractor for any of the following:

390 1. Developing and implementing procedures for calculating inmate release and parole eligibility dates;

391 2. Developing and implementing procedures for calculating and awarding sentence credits;

392 3. Approving inmates for furlough and work release;

393 4. Approving the type of work inmates may perform and the wages or sentence credits ~~which that~~ may be
 394 given the inmates engaging in such work;

395 5. Granting, denying, or revoking sentence credits;

396 6. Classifying inmates or placing inmates in less restrictive custody or more restrictive custody;

397 7. Transferring an inmate; however, the contractor may make written recommendations regarding the
 398 transfer of an inmate or inmates;

399 8. Formulating rules of inmate behavior, violations of which may subject inmates to sanctions; however,
 400 the contractor may propose such rules to the Director for his review and adoption, rejection, or modification
 401 as otherwise provided by law or regulation; ~~and~~

402 9. Disciplining inmates in any manner ~~which that~~ requires a discretionary application of rules of inmate
 403 behavior or a discretionary imposition of a sanction for violations of such rules; *and*

404 10. *Operating a prison facility, including management, custody of inmates, or provision of security;*
 405 *however, the contractor may operate a prison facility, including management, custody of inmates, or*
 406 *provision of security, upon approval by the General Assembly.*

407 **§ 53.1-266. Department shall promulgate regulations.**

408 The Director shall make, adopt and promulgate regulations governing the following aspects of private
 409 management and operation of prison facilities *approved by the General Assembly pursuant to § 53.1-265*:

410 1. Contingency plans for state operation of a contractor-operated facility in the event of a termination of
 411 the contract;

412 2. Use of deadly and nondeadly force by prison contractors' security personnel;

413 3. Methods of monitoring a contractor-operated facility by the Department;

414 4. Public access to a contractor-operated facility; and

415 5. Such other regulations as may be necessary to carry out the provisions of this chapter.