

House Bill 413 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Sims of the 167<sup>th</sup>, Murphy of the 18<sup>th</sup>, Walker of the 141<sup>st</sup> and Skipper of the 137<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 42 of the Official Code of Georgia Annotated, relating to penal institutions,  
2 so as to prohibit the establishment of new private prison facilities in this state; to authorize,  
3 restrict, and regulate operation of private prison facilities in certain existing facilities in this  
4 state; to define terms; to authorize local government regulation of such facilities; to provide  
5 for the categories of prisoners who may be confined in private prison facilities; to provide  
6 that acts which would be a crime if committed within a state prison shall be a crime if  
7 committed in a private prison facility; to provide standards for the personnel of such  
8 facilities; to provide for authorization for and limitations on the use of firearms by such  
9 personnel; to provide for the discharge of prisoners by return to the committing jurisdiction;  
10 to provide for conditions of detention; to disclaim state jurisdiction of inmates; to provide for  
11 duties of the Department of Corrections, including approval of physical facilities,  
12 determination of adequate conditions of custody, and assurance of adequate insurance  
13 coverage; to require that facilities achieve and maintain accreditation; to provide for  
14 enforcement and remedies; to provide for the promulgation of rules and regulations; to  
15 provide for related matters; to provide for severability and construction; to provide an  
16 effective date; to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
20 by adding a new Chapter 13 to read as follows:

21 "CHAPTER 13

22 42-13-1.

23 As used in this Code section, the term:

1 (1) 'Private prison facility' or 'facility' means any facility which is not operated by or  
2 under contract with the State of Georgia or any of its political subdivisions and which is  
3 used or intended for use for the incarceration of adults.

4 (2) 'Private prison operator' or 'operator' means any person engaged in the operation of  
5 a private prison facility.

6 (3) Notwithstanding any other provision of this act to the contrary, The South Fulton  
7 Municipal Jail Authority shall not be construed herein to be a private prison facility.

8 42-13-2.

9 (a) No new private prison facility may be constructed or established in this state on or after  
10 May 1, 2001; and except as provided in subsection (b) of this Code section, no private  
11 prison facility shall be operated in this state.

12 (b) A prison structure the construction of which was more than 50 percent complete prior  
13 to May 1, 2001, may be operated as a private prison facility only in strict compliance with  
14 the provisions of this chapter.

15 42-13-3.

16 The operation of any private prison facility shall be subject to the nondiscriminatory zoning  
17 ordinances and other ordinances of the political subdivision in which it is located or to be  
18 located.

19 42-13-4.

20 (a) A private prison operator may contract with only another state of the United States or  
21 the federal government to provide for housing, care, and control of minimum or medium  
22 security level inmates, as provided in this Code section, who are in the lawful custody of  
23 such other jurisdiction; who do not have histories of escape from medium or maximum  
24 security level correctional facilities for adults; who do not have histories of rioting; and  
25 who are sentenced to terms of incarceration for conviction of a felony, other than a felony  
26 that would be a capital offense if committed in this state or a sex related offense, within a  
27 facility owned or operated by the private prison operator. As used in this subsection,  
28 security level restrictions shall refer to the security levels applicable to inmates in  
29 institutions within the Georgia Department of Corrections, as determined by policy of the  
30 Department of Corrections.

31 (b) Any offense which would be a crime if committed within a state correctional institution  
32 of this state shall be a crime if committed in a facility owned or operated by a private  
33 prison operator.

1 (c) All personnel employed in a private prison facility shall meet standards promulgated  
2 by the Board of Corrections which shall set qualifications for initial and continued  
3 employment substantially similar to those applicable to eligibility for employment in a state  
4 prison.

5 (d) Any personnel of a facility owned or operated by a private prison operator shall be  
6 authorized to carry and use firearms while in the performance of their official duties only  
7 in the manner provided in this subsection and only after completing training approved  
8 under rules adopted by the Board of Corrections. Private prison personnel shall only be  
9 authorized to use firearms for the following purposes:

10 (1) To prevent escape from the facility or from custody while being transported to or  
11 from the facility; or

12 (2) To prevent an act which would cause death or serious bodily injury to any person.

13 The Department of Corrections is authorized to provide training to personnel of the private  
14 prison operator, pursuant to contract. The Department of Corrections shall charge a  
15 reasonable fee for the training, not to exceed the cost of such training. The provisions of  
16 this subsection shall not be construed to confer peace officer status upon any employee of  
17 the private prison operator or to authorize the use of firearms, except as provided in this  
18 subsection.

19 (e) If an inmate escapes from the facility, or in the event of any riot or other serious  
20 disturbance, personnel from the facility immediately shall inform the Department of Public  
21 Safety, the county sheriff, and, if the facility is located within the boundaries of a  
22 municipality, the police department of the municipality. Any emergency response provided  
23 by any state or local law enforcement agency shall be at the sole expense of the private  
24 prison operator. Each responding agency shall submit a written invoice detailing costs  
25 incurred which shall be paid within 30 days of receipt by the private prison operator.

26 (f) A private prison operator shall not accept any maximum security level inmate.

27 (g) If an inmate is to be released or discharged from incarceration, is released or  
28 discharged by any court order, is to be placed on probation, or is paroled, the private prison  
29 operator immediately shall transfer or return the inmate to the physical custody of the  
30 sending jurisdiction which has legal authority over the sentence.

31 (h) A private prison operator shall not allow any inmate to leave the premises of the  
32 facility, except to comply with an order to appear in a court of competent jurisdiction, to  
33 receive medical care not available at the facility, or to return or be transferred to another  
34 jurisdiction as provided by the provisions of subsection (g) of this Code section.

35 (i) A private prison operator shall be responsible for the reimbursement of all reasonable  
36 costs and expenses incurred by this state or a political subdivision of this state for legal  
37 actions brought in this state by or on behalf of any inmate incarcerated in the facility,

1 including court costs, sheriff mileage fees, witness fees, district attorney expenses,  
2 expenses of the office of Attorney General, indigent or public defender fees and costs,  
3 judicial expenses, court reporter expenses, and any other costs, fees, or expenses associated  
4 with the proceedings or actions.

5 (j) The State of Georgia shall not assume jurisdiction or custody of any inmate from  
6 another jurisdiction housed in a facility owned or operated by a private prison operator.  
7 Such inmates from another jurisdiction shall at all times be subject to such other  
8 jurisdiction. This state shall not be liable for loss resulting from the acts of such inmates  
9 nor shall this state be liable for any injuries to the inmates.

10 42-13-5.

11 (a) A private prison operator shall prior to commencing operation of a private prison  
12 facility and thereafter as specified by rules of the Department of Corrections:

13 (1) Obtain from the Department of Corrections approval of the internal and perimeter  
14 security of the facility of the private prison operator. Such approval shall be given only  
15 if the commissioner of corrections determines that the security is adequate to protect the  
16 public;

17 (2) Show, to the satisfaction of the Department of Corrections, that adequate food,  
18 housing, and medical care shall be available for inmates, that the facility will have the  
19 necessary qualified personnel to operate the facility, that the financial condition of the  
20 private prison operator is such that the facility can be operated adequately, and that the  
21 facility has the ability to comply with applicable court orders and American Correctional  
22 Association standards;

23 (3) Furnish to the Department of Corrections satisfactory proof that the private prison  
24 operator has obtained insurance or is self-insured in such a manner and form and in such  
25 an amount as the Department of Corrections may deem necessary and adequate to  
26 reimburse this state or a political subdivision of this state for expenses arising from any  
27 incident which occurs at said prison or which requires intervention by this state or a  
28 political subdivision of this state. Such insurance, in addition, shall be in an amount  
29 sufficient to indemnify this state and its officers and employees for any liability or other  
30 loss, including property damage, judgments, costs, attorney's fees or other expenses  
31 arising from the operation of the facility, and such facility shall in any event and  
32 regardless of the amount of insurance available indemnify and hold harmless this state  
33 and its officers and employees for any and all acts of prison inmates and all officers,  
34 employees, and stockholders of such private prison operator for any liability arising out  
35 of acts of said inmates, officers, employees, and stockholders of such private prison  
36 operator in relation to the operation of the facility. The insurance required by this

1 paragraph shall not provide coverage for more than one facility. If the private prison  
 2 operator owns or operates more than one facility, separate insurance coverage shall be  
 3 obtained or provided for each facility; and

4 (4) Obtain written confirmation from the governing board of any municipality in which  
 5 the facility is to be located or, if the facility is not to be located within a municipality,  
 6 written confirmation from the board of county commissioners of the county in which the  
 7 facility is to be located that the facility is in compliance with all applicable zoning  
 8 ordinances and other ordinances.

9 (b) A private prison operator shall attain accreditation by the American Correctional  
 10 Association within three years after commencing operation of the facility and thereafter  
 11 shall maintain such accreditation.

12 (c) The Department of Corrections shall have assigned to each private prison facility in the  
 13 state a full-time monitor employed by the department who shall observe and review the  
 14 performance of the private prison operator and the continued compliance of the private  
 15 prison operator with the provisions of this chapter. If at any time a private prison operator  
 16 fails to comply with any of said provisions, the commissioner of corrections may order the  
 17 facility to cease operations. If a private prison operator fails to attain or maintain the  
 18 accreditation required by subsection (b) of this Code section, the Department of  
 19 Corrections shall order the facility to cease operations. Any order to cease operations may  
 20 be enforced by injunction issued by a superior court of this state.

21 (d) Each private prison operator shall pay to the Department of Corrections an amount  
 22 established by the department to compensate the department for the direct and indirect  
 23 costs incurred in providing a monitor or monitors for that operator, as provided in  
 24 subsection (c) of this Code section.

25 42-13-6.

26 The Board of Corrections shall promulgate and adopt rules for the implementation of this  
 27 chapter."

## 28 SECTION 2.

29 (a) In the event any part of this Act is declared or adjudged to be invalid or unconstitutional,  
 30 such declaration or adjudication shall not affect the remaining portions of this Act, which  
 31 shall remain of full force and effect. The General Assembly declares that it would have  
 32 enacted the remaining parts of this Act if it had known that such portion thereof would be  
 33 declared or adjudged invalid or unconstitutional.

34 (b) In the event any provision of federal law supersedes or makes unenforceable any part of  
 35 this Act, such event shall not affect the remaining portions of this Act, which shall remain

1 of full force and effect. The General Assembly declares that it would have enacted the  
2 remaining parts of this Act if it had known that such portion thereof would be superseded or  
3 made unenforceable.

4 **SECTION 3.**

5 This Act shall become effective on May 1, 2001.

6 **SECTION 4.**

7 All laws and parts of laws in conflict with this Act are repealed.