

CONTRACTING WITH CORRECTIONAL FACILITY SERVICE PROVIDER

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House Bill 5174 (Substitute H-2)

Sponsor: Rep. Jon Bumstead

Committee: Appropriations

House Bill 5177 (as reported without amendment)

Sponsor: Rep. Joseph Haveman

Committee: Appropriations

Complete to 12-12-11

SUMMARY:

The bills allow the Michigan Department of Corrections (MDOC) to contract with the operator of the privately-owned correctional facility in Webber Township, Lake County or with any other public or private correctional facility service provider for the housing and management of MDOC prisoners at that facility if the contract will result in an annual cost savings of at least 10%.

House Bill 5174 (H-2) amends the Corrections Code to include new language that authorizes the contracting contingent upon the 10% annual cost savings and specifies that the vendor be selected through a competitive bidding process. The bill specifies that the contract have an initial term of 5 years with renewals by mutual agreement of 2 years each. It also requires that personnel employed by the public or private vendor in operating the facility be certified as correctional officers to the same extent as would be required if those personnel were employed in an MDOC correctional facility.

Along with these requirements, the bill also places other conditions on the contract, including:

- Written certification from the vendor that it shall not discriminate against any contractor on the basis of affiliation or non-affiliation with a collective bargaining organization and shall make a good-faith effort to employ Michigan residents
- That the vendor meet requirements specified by the Department regarding security, public protection, Department inspections, programming, liability and insurance, conditions of confinement, educational services, and other issues the Department considers necessary for the operation of the facility
- Makes the contract for the operation of the facility contingent upon appropriation of the required funding
- Prohibits the vendor from calculating inmate release and parole eligibility dates, awarding good time or disciplinary credits, imposing disciplinary time, or approving inmates for extensions of limits of confinement, unless directed to do so by Department policy
- Provides that the facility be open during both business and non-business hours to visits by an elected state legislator unless an emergency prevents it

The bill requires annual reporting on the operation of the facility to the Chairpersons of the House and Senate committees responsible for corrections and judicial issues and to the Clerk of the House and Secretary of the Senate.

Finally, the bill eliminates current law language related to the establishment and operation of the youth correctional facility that had been operated at the Lake County site until 2005 (see *Background* section below), and revises existing references to the former youth correctional facility to instead reference the correctional facility outlined in the new provisions of the bill.

House Bill 5177, as introduced, also revises existing references in the Corrections Code to the former youth correctional facility. The (H-2) substitute for House Bill 5174 now contains identical updates to these references.

BACKGROUND - YOUTH CORRECTIONAL FACILITY:

In 1996, the Legislature enacted 1996 PA 164, which authorized the Michigan Department of Corrections to establish a youth correctional facility to house prisoners committed to the Department who were 19 years of age or younger and were convicted as adults for offenses committed as juveniles. The enacted legislation allowed the MDOC either to establish and operate the prison itself or to contract with a private vendor to build and operate the youth facility.

In 1998, the MDOC entered into an agreement with the Wackenhut Corrections Corporation (now the Geo Group, Inc.) for the construction and lease of a 480-bed youth correctional facility located in Lake County. Under the agreement, the State would lease the facility from Wackenhut over a 20-year period (1999 through 2019). The agreement included options to extend the lease for up to 10 more years, and an option for the State to purchase the facility. A contract for the operation of the facility by Wackenhut was then signed in July 1999 and youthful prisoners began to occupy the facility (named the Michigan Youth Correctional Facility) shortly thereafter. Both the lease and the management contract for the operation of the facility included cancellation clauses, including clauses that allowed for cancellation if the Legislature did not appropriate funding to support the lease and/or contract.

The Michigan Youth Correctional Facility (MYCF) continued to operate through October 2005. In May 2005, an audit report from the Michigan Office of the Auditor General was released which suggested that the facility's daily cost of housing prisoners (which included both the lease and management contract costs) was greater than the comparable daily cost in 33 of the State's 37 other correctional facilities, and that the Department could save money by housing the youth at the MYCF in other existing state facilities. Based on the audit findings and internal MDOC analyses, the Executive Budget request for FY 2005-06 recommended the closure of the facility. The Legislature eventually concurred and implemented legislation to cancel the lease and contract. The facility was closed in October 2005.

Early this year, the Geo Group, Inc. re-opened the facility as the North Lake Correctional Facility to house prisoners under a contract with the State of California starting in May.

However, due to budget pressures and other factors, the State of California removed prisoners from the facility, which again closed in September.

FISCAL IMPACT:

The bill has the potential to reduce state costs related to the corrections system, but the extent to which costs are actually reduced (and by how much) will depend upon the details of any eventual contract with a public or private vendor.

The Department of Corrections' own costs of housing and managing state prisoners varies significantly for prisoners at different security levels. Per diem costs for prisons that primarily house Level I prisoners - the Department's lowest security level - are much lower than those for prisons that house high-secure prisoners at Level IV and Level V. For reference, a House Fiscal Agency review of FY 2010-11 spending levels show the total per diem costs for Level I prisons range from about \$60 to 65 per day, whereas the costs of the two state prisons that house primarily Level IV and segregation prisoners are both over \$100 per day. These costs include general operations and factors such as health care, food, transportation, and education.

The legislation requires that any contract result in at least 10% annual costs savings. Based on the analysis above, the Department of Correction's costs for housing 1,000 Level I prisoners would be around \$22.0 million to \$24.0 million per year. Achieving a 10% savings through the use of alternative housing for prisoners at this level would save the state around \$2.2 million to \$2.4 million annually. Conversely, housing 1,000 Level IV prisoners currently costs around \$36.0 million to \$39.0 million per year. Five percent savings from this higher base level is equivalent to \$3.6 million to \$4.0 million per year. Again, this assumes that any eventual contract with a public or private vendor includes all facets of MDOC's activities (e.g. health care, transportation, food, education and programs). To the extent that the MDOC retained responsibility for some of these services, overall savings would be smaller.

The legislation requires at least 10% savings under any contract, so actual savings could be greater. Again, the key factor in determining actual savings would be how much the per diem cost of any contracted service compares to the MDOC's current per diem costs for prisons at that same security level.

It should be noted that the FY 2011-12 Department of Corrections budget does include appropriation adjustments and related boilerplate that require the MDOC to explore cost-effective alternatives to housing state prisoners. The budget includes a \$47.9 million appropriation for a "Cost-Effective Housing Initiative" tied to 1,750 prisoner beds. The appropriation is sufficient to cover the costs of housing 1,750 prisoners for one year at a per diem cost of up to \$75.

Boilerplate section 937 requires the MDOC to use the funding "to house prisoners in the most cost-effective manner possible". This is to include "exploring the use of public-private partnerships, the use of privately-owned facilities in Michigan, and the use of state facilities by third-party contractors." Separately, net savings of \$31.3 million are budgeted with the

expectation that the Department would achieve savings through the Cost-Effective Housing Initiative along with other cost savings initiatives.

Fiscal Analyst: Bob Schneider

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.