

CONTRACTING WITH CORRECTIONAL FACILITY SERVICE PROVIDER

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 878 (Substitute H-2)

Sponsor: Sen. John Proos

Committee: Appropriations

Complete to 12-11-12

SUMMARY OF THE BILL:

Senate Bill 878 (H-2) amends the Corrections Code to allow the Michigan Department of Corrections (MDOC) to contract with the operator of a privately-owned correctional facility for the housing and management of prisoners under the jurisdiction of the MDOC. Separate sections of the bill address contracting in general as well as contracting for the operations of the former Michigan Youth Correctional Facility.

General Provisions Related to Contracting for Prison Operations

New section 20j contains language that provides that the Corrections Code does not prohibit the MDOC from contracting with the operator of a privately-owned correctional facility for the housing and management of prisoners under the jurisdiction of the MDOC. The language also specifies that if the Department of Corrections does contract with a privately-owned correctional facility, the private contractor do all of the following:

- Interview and consider for employment employees or former employees of MDOC who lose or reasonably expect to lose their positions as the result of prison closures
- Give consideration to the hiring of unemployed National Guard or reserve officers and military personnel who are returning to the state following active deployment

Finally, the language states that the section does not create a property interest in employment.

Provisions Related to the Michigan Youth Correctional Facility

The bill also amends section 20i related to the utilization of the Michigan Youth Correctional Facility, which was operated by a private contractor from under 1999 to 2005 to house prisoners committed to the MDOC who were 19 years of age or younger and were convicted as adults for offenses committed as juveniles. Current law provides that if the facility is not used for this purpose, that the private vendor that operates the facility may utilize the facility for the housing, custody, and care of inmates from other local, state, or federal agencies either through direct contracts or interlocal agreements. New language authorizes the private contractor to utilize the facility for the housing, custody, and care of adult detainees and inmates under the jurisdiction of the MDOC, again through either a direct contract or interlocal agreement.

Current law provisions in section 20i related to contracting with other local, state, or federal agencies are retained and would also apply to contracting involving MDOC. These include provisions related to:

- Accreditation and operating standards
- Employment and training standards
- Reporting serious incidents to law enforcement
- Allowance of on-site monitoring and reporting requirements
- Exercising use of force in the same manner and to the same extent as would be authorized in an MDOC facility
- Prohibition against contractor involvement in prisoner time-keeping functions
- Restrictions against housing inmates determined to be above security level IV
- Requirements for secure transportation of inmates and their return to the contracting agency upon completion of their term
- Limitations of state civil liability for damages arising out of the facility's operation

The bill does make two changes to these sections. First, current law prohibits inmates and detainees at the facility from participating in work release, work camp, or similar programs occurring outside the secure perimeter of the facility. New language allows such activity, but only with the authorization of the initiating jurisdiction. In addition, references to "private vendor" throughout the sections are revised to "private contractor".

References to "Youth Correctional Facility"

Finally, the bill makes changes to existing references in various sections of the Corrections Code which define "youth correctional facility" or "correctional facility". References to "youth correctional facility" are generally revised to refer to a correctional facility described in section 20g and 20j. In this context, "correctional facility" in general is defined as facility or institution that houses prisoners under the jurisdiction of the MDOC.

FISCAL IMPACT:

The bill does not require any form of contracting for the housing and management of prisoners, and thus would have no direct fiscal impact on the State or on local units of government.

However, the expanded authorization allowing the MDOC to contract with operators of privately-owned correctional facilities has the potential to affect state costs related to the corrections system to the extent that the MDOC elects to utilize this authorization. The impact on state costs will depend upon the details of any eventual contract with a third-party for the operations of a correctional facility. Furthermore, in order to proceed with any contract, the contract would have to demonstrate estimated cost savings that satisfy requirements in Department of Civil Service rules and regulations.

Chapter 7 of the Michigan Civil Service Rules guide state expenditures for personal services outside of the state classified civil service. Rule 7-3 establishes four standards under which a state agency can contract for services that would otherwise be provided by

state civil service employees. The first three standards define services that (a) are temporary, intermittent, or irregular; (b) are specialized or unique so that they are not recognized in the classified service or where the State is unable to recruit qualified candidates; and (c) involve the use of equipment, materials, or facilities not reasonably available and/or affordable. These standards are unlikely to apply to a decision to contract for the operations of a prison.

The fourth standard is tied to cost savings. The rule allows for contracted expenditures that result in substantial savings when compared to having the same services performed by the classified work force. For projected average annual disbursements of more than \$1,000,000, the minimum required average annual savings would have to equal 5% of the average annual cost of the services provided by state employees. Thus, it would appear that any contracting for the housing and management of MDOC prisoners would have to meet this 5% savings threshold.

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. Significantly, they also include the costs of unfunded retirement liabilities owed by the State, which are spread across all state payroll. Since the State has already incurred these costs, the cost of these retirement liabilities should properly be excluded from base costs for the purpose of the 5% calculation, as should any savings obtained from avoiding these costs by shifting these functions from state employees.

Based on the analysis above, the House Fiscal Agency has estimated the cost savings that would be necessary to achieve the 5% Civil Service requirement. The Department of Correction's costs (excluding unfunded retirement liability costs) for housing 1,000 Level I prisoners are estimated to be around \$19.0 million to \$20.0 million per year. Achieving a 5% savings through the use of alternative housing for prisoners at this level would amount to savings of around \$1.0 million annually. Conversely, housing 1,000 Level IV prisoners currently costs (again, net of unfunded retirement costs) around \$30.0 million to \$33.0 million per year. Five percent savings from this higher base level amounts to around \$1.6 million in savings 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, the 5% savings amounts would be smaller.

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.