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BILL ANALYSIS

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Senate Bills 877 and 878 (as introduced 12-13-11)
Sponsor: Senator John Proos
Committee: Appropriations

Date Completed: 1-30-12

CONTENT

The bills would amend the Corrections Code to enable the Michigan Department of Corrections (MDOC) to contract with the operator of the privately-owned correctional facility in Webber Township, Lake County, Michigan, or any other public or private correctional facility service provider, for the housing of MDOC inmates if the contract would result in annual cost savings of at least 5%.

Senate Bill 877 would remove language specifying conditions for a youth correctional facility and replace it with new language authorizing the MDOC to contract for the housing and management of inmates with any public or private correctional facility (including the Webber Township facility) through a competitive bid process, so long as the contract resulted in cost savings of at least 5% annually. Any contract reached would have to be for an initial period of five years, with subsequent two-year renewals if mutually agreed upon. The bill would impose on such a contracted facility conditions similar to those that were previously imposed on the youth facility. These conditions include:

-- The contracted vendor must not discriminate against any contractor on the basis of its affiliation or nonaffiliation with a collective bargaining organization.
-- The contracted vendor must make a good-faith effort to employ Michigan residents if qualified.
-- Vendor personnel must be certified as correctional officers to the same extent as would be required if the facility were operated by the MDOC.
-- The vendor must meet requirements for security, public safety, MDOC inspections, liability and insurance, conditions of confinement, programming, educational services, and other issues as specified by the MDOC.
-- The vendor may not calculate inmate release or parole eligibility, award good time, impose disciplinary time, or approve extensions for limits of confinement, except as directed by MDOC policy.
-- The MDOC must report annually on the operation of the contracted facility, and the facility must be open to visits by State Senators or Representatives during business and nonbusiness hours, unless prevented by an emergency.

Finally, the bill specifies that the contract between the State and the public or private facility operator would be contingent upon appropriation of the necessary funding.

Senate Bill 878 would strike language in the Corrections Code that refers to a "youth correctional facility" and instead would refer to the facility described in Section 20g (which contains the new language that Senate Bill 877 would add).

MCL 791.220g et al. (S.B. 877)
791.229 et al. (S.B. 878)

BACKGROUND

The facility referred to in Senate Bill 877 as "the privately owned correctional facility in Webber Township" is now called the North Lake Correctional Facility and is owned by the GEO Group, Inc. (formerly called the Wackenhut Corrections Corp.). It is just outside of Baldwin, Michigan. The facility opened in 1999 under a contract with the State of Michigan to operate what was called the Michigan Youth Correctional Facility (MYCF). Michigan's contract with GEO Group, Inc. was cancelled in 2005 and the youthful offenders housed at the MYCF were redistributed among remaining MDOC facilities. Except for a short period under a contract to house prisoners from the State of California, the prison has remained vacant ever since.

The primary reason for closing MYCF was cost savings. A 2005 report by the Michigan Office of the Auditor General concluded that "MYCF's daily cost per prisoner was higher than 33 of 37 other State correctional facilities", that the benefits to housing youth prisoners separately were unclear, and that it would be more cost effective to allocate the prisoners housed there among the other facilities.

However, it would be inaccurate to characterize this report as evidence that the North Lake Correctional Facility is necessarily an inefficient place to house prisoners. The reason the facility, then operating as MYCF, was not cost effective was primarily a shortage of maximum security prisoners. The facility was intended to house maximum security (Level V) youthful offenders (those who offended before their 17th birthday but were tried as adults, and would stay at the youth facility until their 20th birthday). Ultimately, however, there were not enough Level V youths to fully occupy the facility, so the Department issued waivers that allowed many youthful offenders of I, II, and IV security levels to be housed there. As a result, the MDOC paid a rate that might have been a bargain compared to other facilities' costs if all of the prisoners housed at the MYCF were truly Level V, but because approximately two-thirds of the prisoners there were much lower risk (and therefore should have been lower cost), paying Level V rates for these individuals represented an inefficient prisoner allocation.

FISCAL IMPACT

The bills would have the potential to generate cost savings for the State, but whether there would actually be savings, and what their magnitude would be, is contingent on a number of factors discussed below.

First, because these bills would allow the MDOC to enter into a competitively bid contract with a public or private correctional facility, but would not mandate such a contract, it is possible that such a contract would not be entered into, in which case there would be no fiscal impact. Such a contract might not be entered into for a variety of reasons. For example, if no contract could exhibit the annual cost savings necessary to satisfy the requirement, then no contract could be entered into.

The second important factor is the MDOC prisoner population. Since reaching a peak of 51,544 in March 2007, the MDOC inmate population has been in relatively consistent decline, and as of January 2012 the population is under 43,000, a decline of more than 16%. While the future trends in population depend on a number of factors including sentencing policy and the crime rate and cannot be known with certainty, few anticipate a steep rebound in the inmate population that would precipitate the Department's need for additional bed space. Additionally, due to the decline in population over this period, the MDOC has closed a number of facilities. Some of these closures are permanent in nature, while other facilities are being "mothballed", meaning they are being preserved in working condition and could be opened again if the population experienced unanticipated growth. If population eclipsed capacity, the MDOC would be faced with a choice to either enter into a contract with a vendor as discussed in this proposal, or to reopen mothballed facilities. (These options might not be mutually exclusive, as the MDOC could theoretically contract with a vendor to operate a currently mothballed MDOC-owned facility.) Presumably, the decision would be to go with a contracted vendor if at least 5% savings could be realized; however, it is unclear whether that 5% savings would have to be in addition to the fixed cost to the Department of maintaining the vacant, mothballed facilities.

The third factor would be the terms of the contract. Under this proposal, no contract could be entered into unless it were demonstrated to result in at least 5% savings. Therefore, any potential contract would generate at least that much savings, but it is possible that a competitively bid contract could result in greater savings. Tables 1 and 2 demonstrate potential savings, depending on how many beds were contracted for, the inmates' security level, and what the percentage of savings was (implicitly assuming that the MDOC would measure savings based on a prisoner per diem cost, which may or may not be how it would actually go about calculating savings).

At a Level I facility, the FY 2010-11 per diem was approximately $65 (which includes general operations, food, transportation, and health care). Thus, contracting to house Level I prisoners could save annually, in GF/GP dollars, the amounts shown in Table 1.

Table 1

	1,000 prisoners	1,250 prisoners	1,500 prisoners	1,750 prisoners
5%	$1.2 million	$1.5 million	$1.8 million	$2.1 million
7.5%	$1.8 million	$2.2 million	$2.7 million	$3.1 million
10%	$2.4 million	$3.0 million	$3.6 million	$4.1 million
12.5%	$3.0 million	$3.7 million	$4.4 million	$5.2 million

At a Level IV facility, the FY 2010-11 per diem was approximately $105 (which includes general operations, food, transportation, and health care). Contracting to house Level IV prisoners could save annually, in GF/GP dollars, the amounts shown in Table 2.

Table 2

	1,000 prisoners	1,250 prisoners	1,500 prisoners	1,750 prisoners
5%	$1.9 million	$2.4 million	$2.9 million	$3.4 million
7.5%	$2.9 million	$3.6 million	$4.3 million	$5.0 million
10%	$3.8 million	$4.8 million	$5.7 million	$6.7 million
12.5%	$4.8 million	$6.0 million	$7.2 million	$8.4 million

The key to any savings initiative would be to have per diem rates appropriately benchmarked based on the specific security levels of the inmates being housed. Also, it would be important that the per diem rates being compared account for the same portfolio of services such as transportation and health care. A carefully executed contract, with costs allocated appropriately, would be the primary driver of whether a partnership with a third-party vendor could achieve savings.

The fiscal year 2011-12 MDOC budget includes $47.9 for the "Cost-Effective Housing Initiative", which requires the Department to explore alternative housing arrangements, such as through public-private partnerships, privately owned facilities, or third-party contractors operating State-owned facilities. The appropriated amount would fund up to 1,750 beds at a per diem rate of $75. As demonstrated above, a per diem of $75 would represent savings if it were associated with higher-security prisoners, but would lead to a net cost increase if it were for lower-security prisoners.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.