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BILL ANALYSIS

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Senate Bill 878 (as enacted)
Sponsor: Senator John Proos
Senate Committee: Appropriations
House Committee: Appropriations

PUBLIC ACT 599 of 2012

Date Completed: 1-14-13

CONTENT

The bill amended the Corrections Code to enable the Michigan Department of Corrections (MDOC) to contract with the operator of a privately-owned correctional facility to house and manage inmates under the jurisdiction of the MDOC if the contract will result in at least 10% annual cost savings to the State.

The bill took effect on January 9, 2012.

The bill amended Section 20i of the Corrections Code and added a new section, Section 20j. The bill also made associated minor language changes to Sections 29, 63, 63a, 65, 65a, 69a, and 70; these changes make the language in those sections consistent with the revisions and additions in Sections 20i and 20j.

Previously, Section 20i was related to the use of the Michigan Youth Correctional Facility, which was located in Webber Township, Lake County, Michigan, was operated by the private vendor GEO Group, Inc. from 1999 to 2005, and housed MDOC prisoners who were 19 years old and younger and had been convicted as adults for offenses committed as juveniles. (Please see BACKGROUND for more information.) The law states that if the facility is not used for housing MDOC juvenile offenders, then the operator may instead use the facility for housing inmates from other local, state, or Federal agencies through either direct contract or interlocal agreement. The amended language allows the facility to be used for housing inmates older than the age of 19 who are under MDOC jurisdiction, in addition to all the originally authorized alternative uses.

Section 20i continues to impose a number of conditions upon the correctional facility described in Section 20g, but those conditions now apply to contracting for the housing of inmates under the MDOC's jurisdiction in addition to any other entities the facility operator may contract with. These conditions include:

-- The contractor must obtain accreditation by the American Correctional Association (ACA) and operate under applicable standards.
-- Employees must meet training requirements of the ACA.
-- Serious incidents must be reported to the county sheriff and the State Police.
-- The facility must allow on-site monitoring and reporting.
-- The use of force by employees trained to ACA standards must be in the same manner and to the same extent as would be authorized if the facility were operated by the MDOC.
-- The private operator will not be responsible for release or parole eligibility calculations or the calculation of disciplinary credits or good time credits.
-- The facility may not house inmates who are or ever have been classified above a level IV security level.
-- Transportation to and from the facility must be done in a secure manner.
-- The MDOC and the State generally are not responsible for oversight of the facility and are not civilly liable for damages arising out of facility operation.

Originally, one condition prohibited inmates housed at the facility from participating in work programs outside the secure perimeter of the facility. Under the bill, this is prohibited unless the initiating jurisdiction authorizes it.

There are a variety of minor language changes in Section 20i as well as Sections 29, 63, 63a, 65, 65a, 69a, and 70. Any reference to the "private vendor" is replaced with "private contractor". References to Webber Township and Lake County are replaced with references to "the county in which the facility is located" or "the county" generally. References to a "youth correctional facility" are replaced with "correctional facility described in section 20g or 20j". "Correctional facility" in general is defined as a facility that houses prisoners under the jurisdiction of the MDOC.

The bill also added Section 20j, which states that the Corrections Code does not prohibit the MDOC from contracting with an operator of a privately owned correctional facility to house and manage inmates under the jurisdiction of the MDOC if the contract will result in an annual cost savings of at least 10% to the State. The new section also requires the following:

-- The MDOC must document the savings from such a contract and report annually to the Legislature.
-- If a contract is agreed to with a private contractor, that contractor must interview and consider for employment employees or former employees of the MDOC who lose or reasonably expect to lose their positions as a result of prison closures.
-- The contractor also must give consideration to unemployed National Guard and Reserve officers and military personnel who are returning to the State following active deployment.

Section 20j does not, however, create a property interest in employment.

MCL 791.220i et al.

BACKGROUND

The language revised under this bill was related to the Michigan Youth Correctional Facility (MYCF), which was in operation from 1999 to 2005. The facility was constructed and operated by the GEO Group, Inc. (formerly called the Wackenhut Corrections Corp.); GEO Group still owns the facility, which is now called the North Lake Correctional Facility. It is located in Webber Township, just outside of Baldwin, Michigan, in Lake County. Michigan's contract with GEO Group, Inc. was cancelled in 2005 and the youthful offenders housed at the MYCF were distributed 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 bill has the potential to generate cost savings for the State, but whether there will actually be savings, and what their magnitude will be, is contingent on a number of factors, discussed below.

First, because the bill allows the MDOC to enter into a contract with a private contractor to house inmates under the jurisdiction of the MDOC, but does not mandate such a contract, it is possible that such a contract will not be entered into, in which case there will be no fiscal impact. Such a contract might not be entered into for a variety of reasons. For example, if no contract exhibits the 10% annual documented cost savings necessary to satisfy the requirement, then no contract can 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 was under 43,600, a decline of more than 15%. 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 either to enter into a contract with a contractor as discussed in this legislation, or to reopen mothballed facilities. (These options might not be mutually exclusive, as the MDOC could theoretically contract with a contractor to operate a currently mothballed MDOC-owned facility.) Presumably, the decision would be to go with a contractor if at least 10% savings could be realized; however, it is unclear whether that 10% savings would have to be in addition to the fixed cost to the Department of maintaining the vacant, mothballed facilities.

The third factor is the terms of the potential contract. Under this legislation, no contract can be entered into unless it is demonstrated to result in at least 10% savings. Therefore, any potential contract will 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). (In each table, the per diem cost includes general operations, food, transportation, and health care.)

At a Level I facility, the FY 2010-11 per diem was approximately $65. 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
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. 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
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 contractor could achieve savings.

It is also important to note that the above MDOC per diem rates include the costs of unfunded retirement liabilities owed by the State, payments toward which are spread on a percentage basis across the State payroll. Because these liabilities have already been accrued, simply removing current State workers would not eliminate the underlying liability, but rather, it would simply increase the percentage that would need to be assessed on all remaining State workers. Therefore, when calculating the base costs to which the 10% savings hurdle would be compared, it would be important that costs related to unfunded retirement liabilities be excluded.

The fiscal year 2011-12 MDOC budget included $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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