



H.B. 377

123rd General Assembly
(As Introduced)

Reps. Gerberry, Ferderber

BILL SUMMARY

- Prohibits a private entity from operating a correctional facility in Ohio for the housing of out-of-state prisoners unless, in addition to satisfying all existing criteria, the correctional facility was constructed and the private entity had commenced its operation and management of the correctional facility before the bill's effective date.

CONTENT AND OPERATION

Existing law

Existing law, enacted in Am. Sub. H.B. 293 of the 122nd General Assembly, effective March 17, 1998, limits the operation in Ohio of correctional facilities for the housing of out-of-state prisoners and sets forth comprehensive criteria for the establishment and operation in Ohio of privately operated correctional facilities for the housing of out-of-state prisoners. Subject to the provisions described in the next paragraph, the only entities other than the state of Ohio that are authorized to operate a correctional facility to house "out-of-state prisoners" (see below) in Ohio are a "local public entity" (see below) that operates a correctional facility in accordance with specified criteria or a "private contractor" (see below) that operates a correctional facility in accordance with specified criteria under a contract with a local public entity. Additionally, subject to the exception related to facilities operated under preexisting contracts that is described in the next paragraph, a private entity may operate a correctional facility in Ohio for the housing of out-of-state prisoners only if the private entity is a private contractor that enters into a contract with a local public entity that is for the management and operation of the facility and that comports with specified requirements and criteria. (R.C. 9.07(B).)

Except as described in the next sentence, all of the above-described provisions apply in relation to any correctional facility operated by a private

contractor in Ohio for the housing of out-of-state prisoners, regardless of whether the facility is operated pursuant to a contract entered into prior to, on, or after March 17, 1998. But, if a private contractor operated a correctional facility in Ohio for the housing of out-of-state prisoners under a contract entered into with a local public entity prior to March 17, 1998, the private contractor was required to enter into a new contract *no later than 180 days after March 17, 1998*, with the local public entity that comported with the requirements and criteria of existing law for the operation of those facilities. Additionally, the existing provisions requiring a public hearing before a private contractor and a local public entity enter into a contract for the operation of a correctional facility in Ohio for housing out-of-state prisoners apply to a private contractor that is subject to the provision described in the preceding sentence. (R.C. 9.07(C)(3) and (I).)

Existing law defines the following terms for purposes of the existing law that applies to privately operated prisons for housing out-of-state prisoners (R.C. 9.07(A)):

(1) "Local public entity" means a county, a municipal corporation, a combination of counties, a combination of municipal corporations, or a combination of one or more counties and one or more municipal corporations.

(2) "Out-of-state jurisdiction" means the United States, any state other than Ohio, and any political subdivision or other jurisdiction located in a state other than Ohio.

(3) "Out-of-state prisoner" means a person who is convicted of a crime in a state other than Ohio or under federal law or who is found under the laws of a state other than Ohio or federal law to be a delinquent child or the substantially equivalent designation.

(4) "Private contractor" means either of the following: (a) a person who, on or after March 17, 1998, enters into a contract with a local public entity to operate and manage a correctional facility in Ohio for out-of-state prisoners, or (b) a person who, pursuant to a contract with a local public entity entered into prior to March 17, 1998, operates and manages on that date a correctional facility in Ohio for housing out-of-state prisoners.

Operation of the bill

The bill enacts an additional restriction on the operation by a private entity of a correctional facility in Ohio for the housing of out-of-state prisoners. Under the bill, a private entity may operate a correctional facility in Ohio for the housing of out-of-state prisoners only if: (1) as under existing law, the private entity is a

private contractor that enters into a contract with a local public entity that is for the management and operation of the facility and that comports with existing statutory requirements and criteria for the operation of those facilities, and (2) added by the bill, the correctional facility was constructed, and that private contractor had commenced its operation and management of the facility, before the bill's effective date. (See **COMMENT.**) (R.C. 9.07(B).)

As a result of this additional requirement, under the bill, a private entity cannot operate a correctional facility in Ohio for the housing of out-of-state prisoners unless the facility was in existence and operational before the bill's effective date.

COMMENT

An issue related to the bill concerns the relationship of its general prohibition against the operation of new privately operated facilities in Ohio for the housing of out-of-state prisoners to Article I, §8 of the United States Constitution, generally referred to as the Commerce Clause. The United States Supreme Court has not specifically addressed the issues of whether, for purposes of the Commerce Clause, prisoners are articles of commerce and the moving of prisoners from one state to another is interstate commerce. Arguably, though, the Commerce Clause might apply in relation to such an activity--if it does, the Supreme Court's decisions that impose restrictions on states in their enactment of laws that interfere with interstate commerce might apply in relation to the bill.

HISTORY

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