

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0458/P1dn  
JEO & RAC:jlg:lp

December 14, 1998

Representative Boyle:

Please review this draft carefully to make sure that it does what you want it to do. When reviewing the draft, note the following:

1. The draft covers the following: a) contracts with the federal government under s. 301.07, stats.; b) contracts under s. 301.21, stats., with other states, political subdivisions of other states and private persons in other states; and c) contracts under s. 302.25, stats., which is the interstate corrections compact. Is that your intent? Note that withdrawal from the interstate corrections compact is governed by s. 302.25 (8), stats., which requires a year delay from the date notice of withdrawal is sent to other party states.

2. Given the requirements under s. 302.25 (8), stats., concerning withdrawal from the interstate corrections compact, it seemed to make sense to provide for similar sort of "lag time" for termination of the other contracts covered by the draft. Specifically, while the draft prohibits DOC from entering into new contracts to send prisoners out of state, the draft does allow DOC to renew or extend an existing contract as long as the contract expires by the first day of the 13th month beginning after publication (that is, approximately one year after the draft takes effect). The draft uses the one-year period because most of the current contracts are for one year periods.

If a contract does not have an expiration date (like the contract with the federal bureau of prisons) or has an expiration date that is beyond one year after the draft takes effect, things get a bit trickier. The draft provides that in either situation DOC must take steps to terminate the contract so that it ends by the first day of the 13th month beginning after publication. This provision will work if the contract allows for unilateral termination upon written notice given no more than 12 months in advance. The current contracts that I have reviewed allow for termination upon 30 or 60 days written notice.

However, if a contract has no unilateral termination provision or one that requires, say, 18 months advance notice, then requiring DOC to terminate the contract within a year of the effective date might impair a contractual obligation in violation of article I, section 12, of the state constitution. In that situation, DOC might be limited to terminating the contract as soon as its terms allowed or, if the contract did not allow termination, to complying with the contract until it expired. It seems to me, though, that DOC is unlikely to enter into a contract with no unilateral termination provision or with a notice requirement exceeding 12 months.

3. The draft prohibits sending any new prisoners out of state under any existing contract on or after the effective date of the draft. Is that your intent? Again, this provision may present a problem if it has the effect of impairing a contractual obligation. For example, say the draft was enacted and took effect on February 1st and that DOC had a previous contract with Illinois to transfer 100 prisoners on January 15th and 100 prisoners on March 1st. The provision in the draft prohibiting sending more prisoners out of state after the effective date might impair DOC's obligation to deliver prisoners to Illinois on March 1st and, if so, would be unenforceable as to such a provision.

4. As I discussed with your aide Mary Lou, I will provide a copy of the draft to Jere Bauer at LFB so that he can advise you as to the possible fiscal impact of this draft.

Please let us know if you have any questions or changes.

Jefren E. Olsen  
Legislative Attorney  
266-8906

Richard A. Champagne  
Legislative Attorney  
266-9930