

By Mr. McDonough of Boston, petition of John E. McDonough and W. Paul White for legislation to regulate the acquisition and construction of emergency correctional facilities for the Commonwealth and counties. Public Safety.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT GOVERNING THE ACQUISITION AND CONSTRUCTION OF COMMONWEALTH OR COUNTY CORRECTIONAL FACILITIES DURING AN EMERGENCY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. If the Governor declares that there exists a
2 critical shortage of housing for inmates in state and county
3 correctional facilities, which shortage creates a threat to the
4 health, safety, or security of inmates or correctional staff or to
5 the public safety, then notwithstanding the provisions of chapters
6 seven, twenty-nine, thirty, thirty B, and one hundred forty-nine
7 of the General Laws or any other applicable general or special
8 law, ordinance, or regulation, the deputy commissioner of the
9 division of capital planning and operations is hereby authorized
10 and directed, subject to the approval of the secretary of
11 administration and finance and to the provisions of this act and
12 to the availability of authorized funds, to take whatever actions,
13 to enter into any contracts with any person, and to refrain from
14 any act or procedure otherwise prescribed or required, all as
15 needed in his or her discretion to relieve the critical overcrowding
16 in the correctional facilities of the Commonwealth or of any of
17 its subdivisions; including, without limitation, the acquisition of
18 any real or personal property, the design and construction of any
19 such new facility, the design, reconstruction, installation,
20 demolition, maintenance, repair or renovation of any existing

21 facility. The provisions of this section shall apply to correctional
22 facilities projects currently in progress and to correctional
23 facilities projects commenced after the effective date of this act.
24 The provisions of this section shall not alter or restrict the
25 application of any provisions of law governing the subsequent
26 operation of facilities constructed or improved pursuant to this
27 act.

28 Any such contracts entered into, in connection with this act may
29 also include, without limitation, provisions (i) for the lease to
30 persons, for a term not greater than twenty years, of such state
31 property at the state facilities as is necessary for the construction,
32 operation, and maintenance of such correctional facilities; and
33 (ii) for the lease-purchase of any building to be used for such
34 correctional facilities by the Commonwealth over a term not to
35 exceed twenty years.

36 As used in this act, the term "person" shall include, without
37 limitation, individuals, corporations, associations, societies, joint
38 ventures, partnerships, or any combination of the foregoing.

1 SECTION 2. Upon determining the course of action to be
2 followed with respect to any existing or proposed correctional
3 facility affected by this act, the deputy commissioner shall inform
4 the general court of the actions to be taken, by delivering a written
5 report describing such actions to the clerks of the house and of
6 the senate, to the house and senate committees on ways and means
7 and to the joint committees on state administration and on natural
8 resources. Said report shall describe in detail the specific
9 procedures that the division will use in order to maximize the
10 competitiveness or procurements and to ensure thorough and
11 timely design review and evaluation.

1 SECTION 3. For the purposes of this act, the deputy
2 commissioner of the division of capital planning and operations
3 hereby is granted the right to acquire interests in real property
4 by whatever means, including by a taking by eminent domain
5 pursuant to chapter seventy-nine of the General Laws; provided
6 that, before each taking by eminent domain pursuant to this
7 section, the deputy commissioner shall give written notice of said

8 taking, describing with particularity the property to be taken, to
9 the clerks of the house and of the senate, to the house and senate
10 committees on ways and means and to the joint committees on
11 state administration and on natural resources.

1 SECTION 4. Any contracts which are entered into by the
2 deputy commissioner pursuant to this act are subject to
3 appropriation; provided further, that the deputy commissioner of
4 the division of capital planning and operations is hereby
5 authorized to expend for all activities undertaken pursuant to
6 section one of this act, including all administrative costs associated
7 with such activities, those funds available in all prior
8 appropriations pertaining to the acquisition of land for
9 correctional facilities, and pertaining to the study, design,
10 construction, reconstruction, alteration, improvement, lease, and
11 furnishing of correctional facilities, including any modular units
12 therefor, including, without limitation, funds authorized in
13 chapter seven hundred ninety-nine of the acts of nineteen hundred
14 eighty-five, chapter six hundred fifty-eight of the acts of nineteen
15 hundred eighty-six, chapter three hundred and three of the acts
16 of nineteen hundred eighty-seven, and chapter one hundred
17 twenty of the acts of nineteen hundred eighty-eight.

1 SECTION 5. Notwithstanding the provisions of section one of
2 this act, activities undertaken pursuant to this act shall continue
3 to be subject to the provisions of sections twenty-six through
4 twenty-seven G of chapter one hundred and forty-nine of the
5 General Laws, the provisions of section forty N of chapter seven
6 of the General Laws and the provisions of chapters twenty-one E
7 and two hundred and sixty-eight A of the General Laws, to the
8 extent that said sections are otherwise applicable to said activities.

1 SECTION 6. Notwithstanding the provisions of section one of
2 this act, activities undertaken pursuant to this act shall continue
3 to be subject to the provisions of sections sixty-two through sixty-
4 two H of chapter thirty of the General Laws, to the extent that
5 said sections are otherwise applicable to said activities; provided,
6 however, that all activities undertaken pursuant to this act are

7 hereby deemed emergency actions for the purposes of section
8 sixty-two F of said chapter thirty and such activities shall not be
9 subject to any delay or suspension on account of the provisions
10 of said sections sixty-two through sixty-two H of said chapter
11 thirty.

1 SECTION 7. Notwithstanding the provisions of section one of
2 this act, activities undertaken pursuant to this act shall continue
3 to be subject to the provisions of sections one through nineteen
4 of chapter thirty B of the General Laws, to the extent that said
5 sections are otherwise applicable to said activities; provided,
6 however, that all activities undertaken pursuant to this act are
7 hereby deemed emergency procurements for the purposes of
8 section eight of said chapter thirty B and such activities shall not
9 be subject to any delay or suspension on account of the provisions
10 of said sections one through nineteen of said chapter thirty B.

1 SECTION 8. Notwithstanding the provisions of section one of
2 this act, activities undertaken pursuant to this act shall continue
3 to be subject to the provisions of section forty of chapter one
4 hundred and thirty-one of the General Laws and regulations
5 promulgated pursuant thereto, to the extent that said section and
6 regulations are otherwise applicable to said activities; provided,
7 however, that, for the purposes of said section and regulations,
8 any project undertaken or proposed by the deputy commissioner
9 pursuant to this act shall be conclusively presumed to be necessary
10 to accommodate an overriding state public interest; and provided
11 further that, for the purposes of said section and regulations, a
12 written finding by the deputy commissioner that there are no
13 reasonable alternative sites for a project undertaken or proposed
14 pursuant to this act shall be binding upon the commissioner of
15 the department of environmental quality engineering but shall not
16 limit said commissioner's authority to consider reasonable
17 alternative means to accommodate the project on the site.

1 SECTION 9. Notwithstanding any provisions of any general
2 or special law or any other provision of this act to the contrary,
3 and except insofar as may be necessary to enforce constitutional

4 rights, if a court of the commonwealth determines that an order
5 of injunctive or declaratory relief against any officer of the
6 commonwealth or any department or agency of the common-
7 wealth in connection with any activities undertaken by the deputy
8 commissioner pursuant to this act may have the effect of delaying
9 a project within the scope of this act, as evidenced by an affidavit
10 of the deputy commissioner, then said court shall not order such
11 injunctive or declaratory relief.

1 SECTION 10. In selecting and undertaking any activities
2 subject to the provisions of this act, the deputy commissioner of
3 the division of capital planning and operations, to the maximum
4 extent that said deputy commissioner determines to be consistent
5 with the speedy reduction of overcrowding in correctional
6 facilities and with the provisions of this Act, shall act in such a
7 manner as to foster competition for the commonwealth's business
8 and to protect against fraud, waste, and abuse. Except in cases
9 of extreme emergency, as defined in sections forty-four A(4) and
10 forty-four J(6) of chapter one hundred and forty-nine of the
11 General Laws, no services shall be procured by the division
12 pursuant to this act except on the basis of its impartial evaluation
13 of responses to a publicly advertised request for proposals.

1 SECTION 11. This act shall expire when the governor declares
2 that the critical shortage of correctional housing declared
3 pursuant to section one of this act has been resolved, but no later
4 than five years from its effective date; provided, however, that
5 such expiration shall not affect any correctional facility project
6 which has been commenced before the date of said expiration.

1 SECTION 12. This act shall take effect upon its passage.

