

S2106 Article vii Public Protection

PART M

Section 1. A temporary state commission on prison capacity is hereby created to evaluate the utilization of prison capacity and make recommendations to improve the efficiency of the prison system, including recommendations for prison closures. The need for the commission is compelled by the dramatic reduction in the inmate population over the last seven years from a high of 71,500 in December of 1999 to an estimated 63,400 at the end of the 2006-07 fiscal year. This decrease of over 8,000 inmates is now reflected in unused prison capacity within the department of correctional services, which continues to operate 70 institutions. The commission shall:

(a) Evaluate the existing prison capacity in light of trends in the size and needs of the prison population, the goals and initiatives of the criminal justice system including the use of alternatives to incarceration, and the state's responsibility to taxpayers to operate an efficient and effective prison system;

(b) Develop and adopt criteria for the consideration of specific facilities for closure that shall include, but not be limited to, a facility's physical condition, projected maintenance needs, security features, total capacity, operating efficiency, per inmate cost, geographic location, program offerings, special populations served, and unique services provided;

(c) Hold public hearings to inform the public of the process and allow reasonable input from stakeholders;

(d) Evaluate the impact on employees of facilities considered for closure, in consultation with the president of the state civil service commission and the director of the governor's office of employee relations;

(e) Evaluate the potential for reuse of a facility considered for closure, in consultation with the department of economic development and any other governmental entity as may be deemed appropriate. The commission shall consider the potential for the use of the property for another state purpose, the sale or transfer of the property to another governmental entity, or the sale of the property for development by a private entity; and

(f) Undertake any other actions as may be necessary to further the achievement of more efficient prison operations.

§ 2. The commission shall consist of the commissioner of correctional services, who shall serve ex officio, and eight additional members appointed by the governor. Four of these members shall be appointed as follows: one upon the advice of the temporary president of the senate, one upon the advice of the speaker of the assembly, one upon the advice of the minority leader of the senate, and one upon the advice of the minority leader of the assembly. The chair of the commission shall be appointed by the

governor. No member of the commission, other than the commissioner of correctional services, shall be a public officer or employee or hold any elected or appointed public office, hold office in any political party or be employed as a lobbyist. The appointed members of the commission may designate a representative to act temporarily in their stead, with the consent of the chair; provided, however, that such temporary designees shall not be entitled to vote.

§ 3. The legislative leaders shall submit their recommendations for appointment to the governor no later than 10 days after this act shall have become a law; and, in the event such recommendations are not forthcoming by that date, the ability of the commission to proceed shall not be affected. The governor shall make his or her appointments no later than 20 days after this act shall have become a law. In the event a recommendation from a legislative leader is not made within 60 days after this act shall become law, the governor may fill such appointment. Vacancies in the commission shall be filled in the same manner as the initial appointment.

§ 4. A quorum of the commission shall consist of a majority of the members, all of whom are entitled to a vote on any matter under consideration. Approval of any matter shall require the affirmative vote of a majority of the members voting thereon.

§ 5. The members of the commission shall receive no compensation for their services, but shall be allowed the actual and necessary expenses incurred in the performance of their duties pursuant to this act. Members of the commission shall be considered public officers for the purposes of section 17 of the public officers law.

§ 6. The commission shall begin to act no later than 25 days after this act shall have become a law.

§ 7. The commission is hereby authorized to require any agency, department, office, division, court or public authority of this state to supply it with such information and assistance as it deems necessary to discharge its responsibilities. Each agency, department, office, division and public authority of this state shall cooperate with the commission and furnish such information and assistance as is reasonably necessary for it to accomplish its purposes. The commissioner of correctional services shall designate such employees of the department of correctional services as are reasonably necessary to provide support services to the commission.

§ 8. The commission shall be entitled to request and, to the maximum extent feasible, be afforded the use of such facilities and resources as it may reasonably require to carry out properly its powers and duties pursuant to this act.

§ 9. The deliberation, meetings and other proceedings of the commission shall be governed by article 7 of the public officers law. Any one or more members of the commission may participate by means of a conference telephone, conference video, or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in

person at a meeting. At any meetings of the commission conducted by means of a conference telephone, conference video or similar communications equipment, other than executive sessions, the public shall be given the opportunity to listen. If a meeting, other than an executive session, is to be conducted by means of a conference telephone, conference video or similar communications equipment, the public notice for the meeting shall inform the public that such equipment will be used, and identify the means by which the public may listen to such meeting. The commission may deliberate in executive session when permitted by article 7 of the public officers law including, but not limited to, when the matters under consideration could compromise the safety and security of a specific facility.

§ 10. In carrying out its functions, the commission shall consult with representatives of each of the public employee unions representing employees of the department of correctional services, as well as representatives of communities which host correctional facilities.

§ 11. The commission shall recommend a specific facility or facilities for closure, and shall submit a report detailing its findings and recommendations for closure of facilities on or before November first of each year. The recommendations shall be accompanied by a justification, including the use of the criteria adopted pursuant to paragraph (b) of section one of this act. The report shall be transmitted to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly.

§ 12. (a) Notwithstanding any contrary provision of law, rule or regulation, the commissioner of correctional services shall take all actions necessary to implement the recommendations of the commission.

(b) The provisions of subdivision (a) of this section shall not apply: (i) unless the governor has transmitted the commission's report under section eleven of this act with his or her written approval of the recommendations of the commission to the commissioner of correctional services and transmitted a message to the legislature stating his or her approval of the report within 15 days of the receipt of such report; and (ii) if a majority of the members of each house of the legislature vote to adopt a concurrent resolution rejecting the recommendations of the commission in their entirety within thirty days after receiving a message from the governor under this subdivision. In no event shall the commissioner of correctional services begin to implement the recommendations of the commission prior to December thirty-first of any year.

§ 13. Nothing in this act shall diminish or eliminate any of the powers, duties or responsibilities imposed upon the department of correctional services by sections 79-a and 79-b of the correction law; provided, however, that the findings of this commission with regard to the potential reuse of a facility shall be deemed to satisfy the requirements of section 79-b of the correction law.

§ 14. Upon the expiration and repeal of this act, all books, papers and other records of the commission shall be transferred to the custody of the department of correctional services.

§ 15. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall be rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 16. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2007; provided, however, this act shall expire and be deemed repealed December 31, 2008.