

HB 438-FN - AS INTRODUCED

2025 SESSION

25-0500

09/05

HOUSE BILL ***438-FN***

AN ACT relative to immigration detention facilities.

SPONSORS: Rep. Horrigan, Straf. 10

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill regulates the contracting and operation of an immigration detention facility in this state and requires the governor to obtain executive council approval before deploying the national guard to any immigration detention facility.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to immigration detention facilities.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Immigration Detention Facilities. Amend RSA by inserting after chapter 622-C
2 the following new chapter:

3 CHAPTER 622-D

4 IMMIGRATION DETENTION FACILITIES

5 622-D:1 Private Contracts Prohibited. The state or a political subdivision of the state shall not
6 enter into or renew a contract, or modify a contract to extend the length of the contract, with a
7 private corporation, contractor, or vendor to detain immigrants in civil immigration proceedings for
8 profit. Unless operated or regulated by the federal government, all facilities in this state which are
9 used to detain immigrants in civil immigration proceedings shall be under civilian control, operated
10 or regulated by the state, and shall operate in compliance with the provisions of RSA 622-D:2. Any
11 immigration detention center operated or regulated by the federal government or an agency thereof
12 shall inform the state of such facility.

13 622-D:2 Contracts for Immigration Detention.

14 I. If the state or a political subdivision of the state chooses to enter into a contract, renews a
15 contract, or modifies a contract to extend the length of the contract, to detain immigrants in civil
16 immigration proceedings, it shall detain immigrants only pursuant to a contract that requires the
17 immigration detention facility operator to adhere to the standards for detaining those individuals
18 described in the 2011 Operations Manual ICE Performance-Based National Detention Standards
19 (PBNDS 2011) as revised in December 2016, and ICE Directive 11065.1 (Review of the Use of
20 Segregation for ICE Detainees). All contracts under this section shall include as a party the state of
21 New Hampshire and be approved by the attorney general.

22 II. An immigration detention facility operator, an agent of an immigration detention facility,
23 or a person acting on behalf of an immigration detention facility shall not deprive any immigrant
24 detainee in civil immigration proceedings access to an attorney or any other person authorized by
25 the Board of Immigration Appeals under section 292.2 of Title 8 of the Code of Federal Regulations,
26 access to a translator or interpretation services, medical care, freedom from harm or harassment, or
27 privacy.

28 III. An immigration detention facility operator, an agent of an immigration detention
29 facility, or a person acting on behalf of an immigration detention facility shall not detain any citizen
30 of the United States in the immigration detention facility.

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1 IV. An immigration detention facility operator, an agent of an immigration detention
2 facility, or a person acting on behalf of an immigration detention facility shall not utilize the
3 detention facility or permit the detention facility to be utilized for mass deportation of immigrants.

4 V. An immigrant detainee shall not be involuntarily placed in segregated housing in an
5 immigration detention facility because of his or her actual or perceived gender, gender identity,
6 gender expression, or sexual orientation. Transgender and gender nonconforming immigrant
7 detainees shall be given the option to choose a housing placement consistent with their gender
8 identity.

9 VI. Nothing in this section shall prohibit an immigration detention facility operator from
10 exceeding the 2011 Operations Manual ICE Performance-Based National Detention Standards
11 (PBNDS 2011) as revised in December 2016, or ICE Directive 11065.1 (Review of the Use of
12 Segregation for ICE Detainees).

13 VII. If an immigration detention facility operator, or agent of an immigration detention
14 facility, or person acting on behalf of an immigration detention facility violates paragraphs II
15 through V, or the 2011 Operations Manual ICE Performance-Based National Detention Standards
16 (PBNDS 2011) as revised in December 2016, or ICE Directive 11065.1 (Review of Use of Segregation
17 for ICE Detainees), the attorney general, or any county attorney, may bring a civil action for
18 injunctive and other appropriate equitable relief in the name of the people of the state of New
19 Hampshire. An action brought by the attorney general or any county attorney may also seek a civil
20 penalty of \$25,000. If this civil penalty is requested, it shall be assessed individually against each
21 person who is determined to have violated this section, and the penalty shall be awarded to each
22 individual who has been injured under this section.

23 VIII. For purposes of this section, the following definitions shall apply:

24 (a) "Immigration detention facility" means a facility where immigrants are detained for
25 civil immigration proceedings pursuant to an agreement between state or a political subdivision of
26 the state and either of the following:

27 (1) The United States Department of Homeland Security or other federal agency.

28 (2) A private corporation, contractor, or private vendor.

29 (b) "Immigration detention facility operator" means an individual, firm, corporation,
30 association, partnership, joint venture, commercial entity, municipality, commission, or state or a
31 political subdivision of the state that operates or owns an immigration detention facility.

32 (c) "Mass deportation of immigrants" means any federal or state effort to deport large
33 numbers of individuals based on their ethnicity or national origin, or on their family members'
34 ethnicity of family origin, including undocumented immigrants, documented immigrants, and/or
35 citizens. Nothing in this section should be construed to forbid officials from participating in routine
36 immigration or criminal proceedings.

1 (d) "Segregated housing" means administrative segregation or disciplinary segregation,
2 as defined in the 2011 Operations Manual ICE Performance-Based National Detention Standards
3 (PBNDS 2011) as revised in December 2016, or any other act resulting in an individual being
4 segregated from the general population through prolonged physical or social isolation for hours,
5 days, weeks, or years.

6 2 New Section; Ordering National Guard to Immigration Detention Facilities. Amend RSA 110-
7 B by inserting after section 6-a the following new section:

8 110-B:6-b Ordering National Guard To Immigration Detention Facilities. Notwithstanding any
9 other provision of law, the governor shall not order into the active service any part of the national
10 guard for any purpose involving deploying to immigration detention facilities, as that term is defined
11 in RSA 622-D:2, unless the governor has first obtained the consent of the executive council.

12 3 Effective Date. This act shall take effect January 1, 2026.

**HB 438-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to immigration detention facilities.

FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures*	\$0	Indeterminable	Indeterminable	Indeterminable
<i>Funding Source(s)</i>	General Fund			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

***Expenditure = Cost of bill**

***Appropriation = Authorized funding to cover cost of bill**

METHODOLOGY:

This bill regulates the contracting and operation of an immigration detention facility and requires the Governor to obtain Executive Council approval before deploying the National Guard to any immigration detention facility. It also requires all contracts must include the state as a party and must be approved by the Attorney General.

The Department of Justice states the fiscal impact on the Department would depend on the quantity of enforcement actions initiated under this proposed chapter and the related personnel and litigation expenses for each case. Consequently, the Department would require an increase in its litigation budget by as much as \$100,000 depending on the larger levels of enforcement actions. Given that the number of potential enforcement actions resulting from the enactment of this bill is currently unknown, the total fiscal impact remains indeterminable. If this bill leads to a notable increase in enforcement actions, the Department would need to add an attorney and a legal assistant to the Bureau of Civil Law. The projected costs for these positions are listed in the table below:

ESTIMATED FISCAL IMPACT (ROUNDED)			
	FY 2026	FY 2027	FY 2028
Assistant Attorney General Unclassified (1 position)	\$125,000	\$129,000	\$129,000
Legal Assistant (1 position)	\$78,000	\$82,000	\$84,000

Computers, office equipment, office space, travel, and other supplies	\$12,800	\$7,000	\$7,000
Total Estimated Cost	\$215,800	\$218,000	\$220,000

This bill does not provide funding nor does it authorize new positions.

The Judicial Branch states this could possibly result in an increase in civil cases in the Superior Court, however, there is no way to predict how many such actions would occur so any such increase is indeterminable. The Judicial Branch has provided average cost information for civil cases in the Superior Court:

NH Judicial Branch Average Civil Case Estimates

Judicial Branch Average Cost	FY 2025	FY 2026
Superior Court Complex Civil Case	\$1,430	\$1,473
Superior Court Routine Civil Case	\$535	\$552

Common Civil Case Fees

Superior Court Fees	As of 2/12/2020
Original Entry Fee	\$280
Third-Party Claim	\$280
Motion to Reopen	\$160

The Department of Corrections states there would be no fiscal impact on the Department as they do not house detained immigrants and do not engage in receiving funds for the detention of immigrants for profit.

AGENCIES CONTACTED:

Department of Corrections, Department of Justice, and Judicial Branch