

## **The EPAct Tax Aspects of Correctional Facilities in the Wake of the Supreme Court's Recent *Brown v. Plata* Decision**

**By Charles Goulding and Spencer Marr**

In May 2011, the Supreme Court of the United States ruled that California must take far-reaching measures to cut down the size of its swelling prison population, the overcrowding of which has imposed unconstitutional punishment on its prisoners. In order to comply with the Court's decision, California policy makers will have to choose between releasing its prisoners with shorter sentences, building brand new state prisons, and relocating prisoners to private prisons located throughout the U.S. in states like Arizona, Mississippi, and Oklahoma.

As very few voters or representatives want to release prisoners into the general population, the Supreme Court ruling is likely going to spur a major increase in jail construction around the country. More prisons will mean fewer prisoners per prison and therefore less overcrowding, which is a scenario that will make everyone happy, including the Supreme Court. As prisons are often very large facilities, designers of state-run prisons and owners of private prisons are going to want to reduce operating costs by constructing energy-efficient prisons.

The combination of prison overcrowding and state budget deficits is putting correctional facilities' operating costs under the microscope. Energy efficiency measures will enable prisons – which by definition operate 24 hours per day – to significantly reduce their operating costs. Further, several energy-efficient technologies, such as LED lighting and centralized HVAC systems, give prison authorities the chance to optimally illuminate, heat, and air-condition prison cells while realizing significant EPAct tax deductions.

### **The EPAct Section 179D Tax Opportunities:**

Pursuant to Energy Policy Act (EPAct) Section 179D, private prison owners and primary designers of state prisons making qualifying energy-reducing investments in their new or existing locations can obtain immediate tax deductions of up to \$1.80 per square foot.

If the building project doesn't qualify for the maximum EPAct Section 179D \$1.80 per square foot immediate tax deduction, there are tax deductions of up to \$0.60 per square foot for each of the three major building subsystems: lighting, HVAC (heating, ventilating, and air conditioning), and the building envelope. The building envelope is every item on the building's exterior perimeter that touches the outside world including roof, walls, insulation, doors, windows and foundation.

### **The Supreme Court's Decision in *Brown v. Plata***

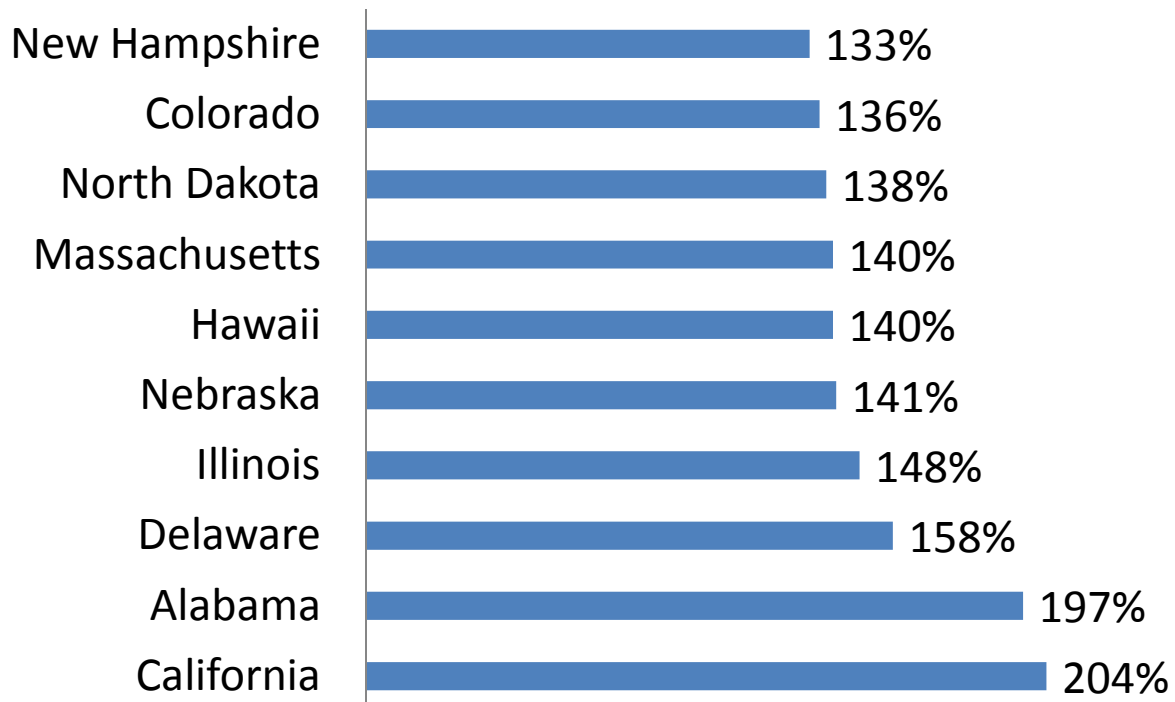
Chief Justice Kennedy's majority opinion in *Brown v. Plata* held that California's state prisons are so drastically overcrowded that it has become effectively impossible to provide prisoners with basic necessities like adequate medical care, food, and bedding, and the state is therefore denying prisoners' their constitutional rights. The Court relied on the fact that the state prison system was designed to hold 80,000 inmates but in recent years has been holding as many as 156,000 as evidence that the system is in dire need of reconstruction.

The high court's decision also exposed major inefficiencies in California's state prison system, such as persistent multibillion dollar budget deficits made worse by the high cost of keeping inmates imprisoned. Consequently, in order to remedy both the unconstitutional conditions imposed on California's prisoners and the state's budget woes, the Court has given California until 2013 to shed approximately 33,000 inmates in order to reach its target of 110,000, or 137.5% of design capacity. A panel of California state judges will now be in charge of overseeing how the state complies with the Supreme Court's ruling, which will require a mix of releasing prisoners, transferring prisoners to local jails, transferring prisoners to private prisoners, and constructing new state prisons.

Importantly, while this decision is ostensibly related to California alone, it is sure to have an impact on nearly every state's prison system policy. The following chart illustrates the extent to which many states around the country have overburdened their prisons:

## Top 10 States In Prison Overcrowding

as a percentage of design capacity



### **Government Prison Designer Tax Benefits**

EPAct provides tax incentives for the correctional facility design team that achieves the specific energy reductions targeted. Designer tax incentives are available for designers of federal, state and county correctional facilities.

### **EPAct Lighting Tax Opportunities**

EPAct lighting deductions are based on reductions of energy use below wattage levels provided in ASHRAE 90.1, 2001, which sets wattage target rates for various categories of buildings. For a reduction in lighting power density of 25 percent below the requirements of ASHRAE 90.1, 2001, a facility is eligible for a deduction of 30 cents per square foot for the space where the upgrade took place. As the reduction in lighting power density increases, the deduction also rises, reaching a maximum of 60 cents per square foot for a 40 percent reduction in lighting power density. The maximum 60 cent per square foot lighting deduction is typically achievable by installing highly energy efficient LED, fluorescent or induction lighting in place of existing incandescent or metal halide bulbs.

Of particular importance to prison facilities managers is the fact that energy-efficient lighting, and especially LED's, provides a focused beam of light ideal for illuminating prison cells for the purpose of monitoring inmates. Additionally, fluorescent and LED lighting are well-suited for ligature or vandal proof lighting boxes, meaning that they are both high performing and safe for inmates.

### **EPAct HVAC/Building Envelope Tax Opportunities**

EPAct tax deductions of up to 60 cents per square foot are also available for both the HVAC system and the building envelope if an investment into either system reduces total building energy cost by at least 16.67% as compared to ASHRAE 90.1, 2001. Since a prison is a property category where occupant comfort (air-conditioning or heating) needs to be provided 24/7, HVAC is one of the biggest prison energy needs. To cool the building, correctional facilities often use chillers. If the correctional facility is less than 150,000 square feet, then the installed energy efficient chiller will most likely trigger an EPAct HVAC tax deduction<sup>1</sup>. Correctional facilities exceeding 150,000 square feet that use very efficient HVAC system types, such as geothermal heat pumps or thermal storage, will typically generate large EPAct HVAC tax deductions<sup>2</sup>.

Prisons are ideally platformed for large HVAC deductions. Under EPAct 179D, residential buildings, including prisons, with centralized HVAC systems are given favorable tax treatment. Centralized HVAC provides the added bonus of minimizing access to in-cell mechanical equipment, which could be used inappropriately in the wrong hands.

### **The Private Prison Landscape**

Two private corrections facilities dominate the private prison industry in the U.S. today: 1) Corrections Corporation of America (CCA) and 2) GEO (formerly known as Wackenhut Securities).

The following table (Table 1) presents the EPAct tax savings potential for CCA's existing facilities around the country. In addition to square footage within the cells, each of these properties contains a mix of office space for various staff members, medical examination rooms, cafeterias, recreational areas and storage space. Square footage estimates for each facility is based on an average of 240 square feet of combined space per inmate.

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<sup>2</sup> See Charles Goulding, Jacob Goldman and Joseph Most, *The Energy Tax Aspects of Chillers*, to be published in Corp. Bus. Tax'n Monthly.

<sup>3</sup> See Charles Goulding, Raymond Kumar and Kenneth Wood, *New Efficient HVAC Drives Large Tax Deductions for Buildings*, Corp. Bus. Tax'n Monthly, May 2009, at 11.

### Table 1: CCA Potential EPAct Benefits

Potential Tax Deductions Available for Energy Efficient Building Improvements Under Current Legislation						
Property	Estimated Total Square Footage	Lighting		HVAC	Building Envelope	Total
		Minimum	Maximum	Maximum	Maximum	
		Deduction	Deduction	Deduction	Deduction	
Le Palma Correctional Center, Eloy, AZ	734,400	\$ 220,320	\$ 440,640	\$ 440,640	\$ 440,640	\$ 1,321,920
Tallahatchie County Correctional Facility, Tutwiler, MS	641,280	\$ 192,384	\$ 384,768	\$ 384,768	\$ 384,768	\$ 1,154,304
North Fork Correctional Facility, Sayre, OK	576,000	\$ 172,800	\$ 345,600	\$ 345,600	\$ 345,600	\$ 1,036,800
Central Arizona Detention Center, Florence, AZ	552,960	\$ 165,888	\$ 331,776	\$ 331,776	\$ 331,776	\$ 995,328
California City Correctional Center, California City, CA Red Rock	552,960	\$ 165,888	\$ 331,776	\$ 331,776	\$ 331,776	\$ 995,328
Diamondback Correctional Facility (E), Watonga, OK	552,960	\$ 165,888	\$ 331,776	\$ 331,776	\$ 331,776	\$ 995,328
Adam County Correctional Center, Appleton, MS	535,680	\$ 160,704	\$ 321,408	\$ 321,408	\$ 321,408	\$ 964,224
Mineral Wells Pre-Parole Transfer Facility, Mineral Wells, TX	504,720	\$ 151,416	\$ 302,832	\$ 302,832	\$ 302,832	\$ 908,496
Northeast Ohio Correctional Center, Youngstown, OH	483,840	\$ 145,152	\$ 290,304	\$ 290,304	\$ 290,304	\$ 870,912
Saguaro Correctional Facility, Eloy, AZ	455,040	\$ 136,512	\$ 273,024	\$ 273,024	\$ 273,024	\$ 819,072
Florence Correctional Center, Florence, AZ	437,760	\$ 131,328	\$ 262,656	\$ 262,656	\$ 262,656	\$ 787,968
Crowley County Correctional Facility, Olney Spring, CO	430,560	\$ 129,168	\$ 258,336	\$ 258,336	\$ 258,336	\$ 775,008
Stewart Detention Center, Lumpkin, GA	420,480	\$ 126,144	\$ 252,288	\$ 252,288	\$ 252,288	\$ 756,864
Cimarron Correctional Facility (M), Cushing, OK	406,080	\$ 121,824	\$ 243,648	\$ 243,648	\$ 243,648	\$ 730,944
Davis Correctional Facility (M), Holdenville, OK	400,800	\$ 120,240	\$ 240,480	\$ 240,480	\$ 240,480	\$ 721,440
Prairie Correctional Facility, Appleton, MN	384,000	\$ 115,200	\$ 230,400	\$ 230,400	\$ 230,400	\$ 691,200
Red Rock Correctional Center, Eloy, AZ	383,040	\$ 114,912	\$ 229,824	\$ 229,824	\$ 229,824	\$ 689,472
Whiteville Correctional Facility (M), Whiteville, TN	368,640	\$ 110,592	\$ 221,184	\$ 221,184	\$ 221,184	\$ 663,552
Wheeler Correctional Facility, Alamo, GA	365,769	\$ 109,731	\$ 219,461	\$ 219,461	\$ 219,461	\$ 658,384
Coffee Correctional Facility (F), Nicholls, GA	365,760	\$ 109,728	\$ 219,456	\$ 219,456	\$ 219,456	\$ 658,368
McRae Correctional Facility, McRae, GA	365,760	\$ 109,728	\$ 219,456	\$ 219,456	\$ 219,456	\$ 658,368
Eloy Detention Center, Eloy, AZ	360,000	\$ 108,000	\$ 216,000	\$ 216,000	\$ 216,000	\$ 648,000
D.C. Correctional Treatment Facility (N), Washington, D.C.	360,000	\$ 108,000	\$ 216,000	\$ 216,000	\$ 216,000	\$ 648,000
Kit Carson Correctional Center, Burlington, CO	357,120	\$ 107,136	\$ 214,272	\$ 214,272	\$ 214,272	\$ 642,816
Eden Detention Center, Eden, TX	341,280	\$ 102,384	\$ 204,768	\$ 204,768	\$ 204,768	\$ 614,304
Bent County Correctional Facility, Las Animas, CO	340,800	\$ 102,240	\$ 204,480	\$ 204,480	\$ 204,480	\$ 613,440
Nevada Southern Detention Center, Pahrump, NV	340,800	\$ 102,240	\$ 204,480	\$ 204,480	\$ 204,480	\$ 613,440
San Diego Correctional Facility, San Diego, CA	276,960	\$ 83,088	\$ 166,176	\$ 166,176	\$ 166,176	\$ 498,528
Cibola County Corrections Center, Milan, NM	270,960	\$ 81,288	\$ 162,576	\$ 162,576	\$ 162,576	\$ 487,728
Leavenworth Detention Center, Leavenworth, KS	247,920	\$ 74,376	\$ 148,752	\$ 148,752	\$ 148,752	\$ 446,256
Houston Processing Center, Houston, TX	240,000	\$ 72,000	\$ 144,000	\$ 144,000	\$ 144,000	\$ 432,000
Torrance County Detention Facility, Estancia, NM	218,400	\$ 65,520	\$ 131,040	\$ 131,040	\$ 131,040	\$ 393,120
Queensgate Correctional Facility (L), Cincinnati, OH	204,000	\$ 61,200	\$ 122,400	\$ 122,400	\$ 122,400	\$ 367,200
Marion Adjustment Center, St. Mary, KY	198,240	\$ 59,472	\$ 118,944	\$ 118,944	\$ 118,944	\$ 356,832
Lee Adjustment Center, Beattyville, KY	195,840	\$ 58,752	\$ 117,504	\$ 117,504	\$ 117,504	\$ 352,512
Huerfano County Correctional Center (E), Walsenburg, CO	180,480	\$ 54,144	\$ 108,288	\$ 108,288	\$ 108,288	\$ 324,864
Crossroads Correctional Center, Shelby, MT	159,360	\$ 47,808	\$ 95,616	\$ 95,616	\$ 95,616	\$ 286,848
Otter Creek Correctional Center (G), Wheelwright, KY	157,440	\$ 47,232	\$ 94,464	\$ 94,464	\$ 94,464	\$ 283,392
West Tennessee Detention Facility, Mason, TN	144,000	\$ 43,200	\$ 86,400	\$ 86,400	\$ 86,400	\$ 259,200
New Mexico Women's Correctional Facility, Grants, NM	143,040	\$ 42,912	\$ 85,824	\$ 85,824	\$ 85,824	\$ 257,472
T. Don Hutto Residential Center, Taylor, TX	122,880	\$ 36,864	\$ 73,728	\$ 73,728	\$ 73,728	\$ 221,184
Webb County Detention Center, Laredo, TX	115,200	\$ 34,560	\$ 69,120	\$ 69,120	\$ 69,120	\$ 207,360
Laredo Processing, Laredo, TX	61,920	\$ 18,576	\$ 37,152	\$ 37,152	\$ 37,152	\$ 111,456
Shelby Training Center, Memphis, TN	48,000	\$ 14,400	\$ 28,800	\$ 28,800	\$ 28,800	\$ 86,400
Bridgeport Pre-Parole Transfer Facility, Bridgeport, TX	48,000	\$ 14,400	\$ 28,800	\$ 28,800	\$ 28,800	\$ 86,400
<b>Totals:</b>	<b>15,051,129</b>	<b>\$ 4,515,339</b>	<b>\$ 9,030,677</b>	<b>\$ 9,030,677</b>	<b>\$ 9,030,677</b>	<b>\$ 27,092,032</b>

The EPAct tax savings potential for GEO is presented in Table 2 below. Information used to compile this table is accurate as for 2007, the last year for which information can be found.

**Table 1: GEO Potential EPAct Benefits**

Potential Tax Deductions Available for Energy Efficient Building Improvements Under Current Legislation						
Property	Estimated Total Square Footage	Lighting		HVAC	Building Envelope	Total
		Minimum Deduction	Maximum Deduction	Maximum Deduction	Maximum Deduction	
Reeves County Detention Complex, Pecos, TX	903,120	\$ 270,936	\$ 541,872	\$ 541,872	\$ 541,872	\$ 1,625,616
Lawton Correctional Facility, Lawton, OK	604,320	\$ 181,296	\$ 362,592	\$ 362,592	\$ 362,592	\$ 1,087,776
New Castle Correctional Facility, New Castle, IN	579,840	\$ 173,952	\$ 347,904	\$ 347,904	\$ 347,904	\$ 1,043,712
Crowley County Correctional Facility, Olney Spring, CO	504,720	\$ 151,416	\$ 302,832	\$ 302,832	\$ 302,832	\$ 908,496
Taft Correctional Institution, Taft, CA	491,520	\$ 147,456	\$ 294,912	\$ 294,912	\$ 294,912	\$ 884,736
Coffee Correctional Facility (F), Nicholls, GA	457,760	\$ 137,328	\$ 274,656	\$ 274,656	\$ 274,656	\$ 823,968
South Texas Detention Complex, Pearsall, TX	456,960	\$ 137,088	\$ 274,176	\$ 274,176	\$ 274,176	\$ 822,528
George W. Hill Correctional Facility, Thornton, PA	451,920	\$ 135,576	\$ 271,152	\$ 271,152	\$ 271,152	\$ 813,456
South Bay Correctional Facility, South Bay, FL	446,880	\$ 134,064	\$ 268,128	\$ 268,128	\$ 268,128	\$ 804,384
Stewart Detention Center, Lumpkin, GA	437,760	\$ 131,328	\$ 262,656	\$ 262,656	\$ 262,656	\$ 787,968
Central Arizona Correctional Facility, Florence, AZ	406,080	\$ 121,824	\$ 243,648	\$ 243,648	\$ 243,648	\$ 730,944
Central Valley Modified Community Correctional Facility, McFarland, CA	400,800	\$ 120,240	\$ 240,480	\$ 240,480	\$ 240,480	\$ 721,440
Allen Correctional Facility, Kinder, LA	369,120	\$ 110,736	\$ 221,472	\$ 221,472	\$ 221,472	\$ 664,416
Lawrenceville Correctional Center, Lawrenceville, VA	368,640	\$ 110,592	\$ 221,184	\$ 221,184	\$ 221,184	\$ 663,552
Colorado Medium Custody Prison, Ault, CO	360,960	\$ 108,288	\$ 216,576	\$ 216,576	\$ 216,576	\$ 649,728
Graceville Correctional Facility, Graceville, FL	360,000	\$ 108,000	\$ 216,000	\$ 216,000	\$ 216,000	\$ 648,000
Rivers Correctional Institution, Winton, NC	288,000	\$ 86,400	\$ 172,800	\$ 172,800	\$ 172,800	\$ 518,400
Lea County Correctional Facility, Hobbs, NM	288,000	\$ 86,400	\$ 172,800	\$ 172,800	\$ 172,800	\$ 518,400
Montgomery County Detention Facility, Montgomery, TX	264,000	\$ 79,200	\$ 158,400	\$ 158,400	\$ 158,400	\$ 475,200
Northwest Detention Center, Tacoma, WA	240,000	\$ 72,000	\$ 144,000	\$ 144,000	\$ 144,000	\$ 432,000
East Mississippi Correctional Facility, Meridian, MS	240,000	\$ 72,000	\$ 144,000	\$ 144,000	\$ 144,000	\$ 432,000
Marshall County Correctional Facility, Holly Springs, MS	240,000	\$ 72,000	\$ 144,000	\$ 144,000	\$ 144,000	\$ 432,000
Lockhart Secure Work Program Facility, Lockhart, TX	240,000	\$ 72,000	\$ 144,000	\$ 144,000	\$ 144,000	\$ 432,000
Sanders Estes Unit, Venus, Tx	240,000	\$ 72,000	\$ 144,000	\$ 144,000	\$ 144,000	\$ 432,000
Moore Haven Correctional Facility, Moore Haven, FL	236,400	\$ 70,920	\$ 141,840	\$ 141,840	\$ 141,840	\$ 425,520
Val Verde County Correctional Facility & Jail, Del Rio, TX	210,000	\$ 63,000	\$ 126,000	\$ 126,000	\$ 126,000	\$ 378,000
Newton County Correctional Center, Newton, TX	209,280	\$ 62,784	\$ 125,568	\$ 125,568	\$ 125,568	\$ 376,704
Arizona State Prison - Florence West, Florence, AZ	180,000	\$ 54,000	\$ 108,000	\$ 108,000	\$ 108,000	\$ 324,000
Western Region Detention Facility at San Diego, San Diego, CA	168,000	\$ 50,400	\$ 100,800	\$ 100,800	\$ 100,800	\$ 302,400
Central Texas Detention Facility, San Antonio, TX	165,120	\$ 49,536	\$ 99,072	\$ 99,072	\$ 99,072	\$ 297,216
Karnes Correctional Center, Karnes City, TX	162,960	\$ 48,888	\$ 97,776	\$ 97,776	\$ 97,776	\$ 293,328
Desert View Modified Community Correctional Facility, Adelanto, CA	154,320	\$ 46,296	\$ 92,592	\$ 92,592	\$ 92,592	\$ 277,776
Maverick County Detention Facility, Maverick, TX	150,720	\$ 45,216	\$ 90,432	\$ 90,432	\$ 90,432	\$ 271,296
Golden State Modified Community Correctional Facility, McFarland, CA	150,000	\$ 45,000	\$ 90,000	\$ 90,000	\$ 90,000	\$ 270,000
Northeast New Mexico Detention Facility, Clayton, NM	150,000	\$ 45,000	\$ 90,000	\$ 90,000	\$ 90,000	\$ 270,000
Broward Transition Center, Deerfield Beach, FL	144,000	\$ 43,200	\$ 86,400	\$ 86,400	\$ 86,400	\$ 259,200
Guadalupe County Correctional Facility, Santa Rosa, NM	144,000	\$ 43,200	\$ 86,400	\$ 86,400	\$ 86,400	\$ 259,200
Robert A. Denton Detention Facility, Lovejoy, GA	138,240	\$ 41,472	\$ 82,944	\$ 82,944	\$ 82,944	\$ 248,832
Bridgeport Correctional Center, Bridgeport, TX	124,800	\$ 37,440	\$ 74,880	\$ 74,880	\$ 74,880	\$ 224,640
Cleveland Correctional Center, Cleveland, TX	124,800	\$ 37,440	\$ 74,880	\$ 74,880	\$ 74,880	\$ 224,640
Laredo Processing, Laredo, TX	122,880	\$ 36,864	\$ 73,728	\$ 73,728	\$ 73,728	\$ 221,184
Jefferson County Downtown Jail, Beaumont, TX	120,000	\$ 36,000	\$ 72,000	\$ 72,000	\$ 72,000	\$ 216,000
Dickens County Correctional Center, Lubbock, TX	117,360	\$ 35,208	\$ 70,416	\$ 70,416	\$ 70,416	\$ 211,248
Arizona State Prison - Phoenix West, Phoenix, AZ	108,000	\$ 32,400	\$ 64,800	\$ 64,800	\$ 64,800	\$ 194,400
South Texas Intermediate Sanction Facility, Houston, TX	108,000	\$ 32,400	\$ 64,800	\$ 64,800	\$ 64,800	\$ 194,400
Aurora ICE Processing Center, Aurora, CO	96,000	\$ 28,800	\$ 57,600	\$ 57,600	\$ 57,600	\$ 172,800
North Texas Intermediate Sanction Facility, Forth Worth, TX	96,000	\$ 28,800	\$ 57,600	\$ 57,600	\$ 57,600	\$ 172,800
Frio Country Detention Center, Pearsall, TX	93,840	\$ 28,152	\$ 56,304	\$ 56,304	\$ 56,304	\$ 168,912
Bill Clayton Detention Center, Littlefield, TX	74,400	\$ 22,320	\$ 44,640	\$ 44,640	\$ 44,640	\$ 133,920
Queens Private Correctional Facility, Jamaica, NY	54,960	\$ 16,488	\$ 32,976	\$ 32,976	\$ 32,976	\$ 98,928
Tri-County Justice and Detention Center, Ullin, IL	54,240	\$ 16,272	\$ 32,544	\$ 32,544	\$ 32,544	\$ 97,632
Fort Worth Community Corrections Facility, Forth Worth, TX	54,000	\$ 16,200	\$ 32,400	\$ 32,400	\$ 32,400	\$ 97,200
McFarland Community Correctional Facility, McFarland, CA	53,760	\$ 16,128	\$ 32,256	\$ 32,256	\$ 32,256	\$ 96,768
Coke County Juvenile Justice Center, Bronte, TX	48,000	\$ 14,400	\$ 28,800	\$ 28,800	\$ 28,800	\$ 86,400
Brooklyn Community Correctional Center, Brooklyn, NY	41,760	\$ 12,528	\$ 25,056	\$ 25,056	\$ 25,056	\$ 75,168
Bronx Community Re-Entry Center, Bronx, NY	28,800	\$ 8,640	\$ 17,280	\$ 17,280	\$ 17,280	\$ 51,840
<b>Totals:</b>	<b>13,525,040</b>	<b>\$ 4,057,512</b>	<b>\$ 8,115,024</b>	<b>\$ 8,115,024</b>	<b>\$ 8,115,024</b>	<b>\$ 24,345,072</b>

**Conclusion**

The Supreme Court decision in *Brown v. Plata* is going to have a significant effect on the U.S. prison landscape. Both primary designers of state-run prisons and private prison owners are going to undergo major expansion, and will be under a lot of pressure to increase

operating efficiencies. In the process of retrofitting their building to save on energy-related operating expenses, prison designers and owners will have the opportunity to realize large tax incentives.