

STORAGE NAME: h3711s1.go

DATE: April 21, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3711

RELATING TO: Private Prisons

SPONSOR(S): Committee on Governmental Operations and Representative Lacasa

COMPANION BILL(S): SB 2112(s), HB 4411(c) and SB 1968(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CORRECTIONS YEAS 7 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

This bill provides for the Office of Program Policy Analysis and Government Accountability (OPPAGA) to study the feasibility of the Department of Corrections submitting a bid and operating its prisons in a similar manner as provided by law in Chapter 957, Florida Statutes, for private firms and contractors.

The study is to be submitted to the Speaker of the House of Representatives and to the President of the Senate by January 1, 1999.

This bill increases the workload for the Office of Program Policy Analysis and Government Accountability (OPPAGA). The fiscal impact is indeterminate.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Office of Program Policy Analysis and Government Accountability

In 1994, the Florida Legislature created The Office of Program Policy Analysis and Government Accountability (OPPAGA). The purpose of OPPAGA is to provide analyses and accountability information regarding state policies and services to the Legislature with the intent of assisting in decision making, ensuring government accountability, and recommending the best use of public resources. OPPAGA operates under the guidance of a director appointed by the Joint Legislative Auditing Committee and confirmed by the House of Representatives and the Senate.

The History of the Five Private Prisons in Florida

In 1989 the legislature authorized the Department of Corrections (DOC) to enter into contracts with private corrections firms for the construction and operation of private prisons in order to realize cost savings, speedy construction, and efficient management. (See Chapter 89-526, Laws of Florida) Despite multiple appropriations by the legislature in subsequent years, initial progress was minimal. Implementation of the law was delayed by a series of bid protests, legal challenges, budget reductions, inability of bidders to meet the 10 percent cost savings, and disagreements on cost estimates produced by the DOC.

In 1990 and 1991 the legislature again appropriated funds for a private prison. (See Chapters 90-209 and 91-193, Laws of Florida) These funds were appropriated to the Board of County Commissioners of Gadsden County to develop a request for proposals and to enter into a lease purchase agreement and private management agreement with a private vendor for a 768-bed prison. In the summer of 1992, U. S. Corrections Corporation was selected for a five-year, \$80 million contract. By March of 1995, the state opened its first private prison, housing adult females.

Although Gadsden County was initially charged with procuring the private prison, the DOC was later directed to negotiate and manage the contract. This private facility is the only private prison contract managed by the DOC. Sections 944.710-719, Florida Statutes, govern the procurement and operation of the Gadsden Correctional Institution.

To further expedite the progress toward privatization, the 1993 Legislature created Chapter 957, Florida Statutes, which established a five-member Correctional Privatization Commission (CPC) within the Department of Management Services. (See Chapter 93-406, Laws of Florida) The CPC was charged with entering into contracts with vendors for the financing, construction, and management of two 750-bed private correctional facilities. Later, Corrections Corporation of America (CCA) and Wackenhut Corrections Corporation were each awarded a contract. The two 750-bed facilities (Moore Haven Correctional Facility and Bay Correctional Facility) were opened in July and August of 1995.

In 1994, the legislature directed the CPC to solicit contracts for additional privatized facilities: an adult 1,318-bed facility and three 350-bed youthful offender facilities. (See Chapter 94-209, Laws of Florida) Later, but prior to their opening, two of the 350-bed facilities were redesignated to house juveniles. (See Chapter 96-422, Laws of Florida) The CPC awarded the contract for the 1,318-bed facility to Wackenhut Corrections Corporation and the facility (South Bay Correctional Facility) opened in February of 1996. Corrections Corporation of America was awarded the remaining contract for a 350-bed facility (Lake City Correctional Facility) which opened in October of 1996. Currently, the state contracts for a total of 3,936 privatized beds.

Applicability of Laws Governing the Private Correctional Facilities

In 1993, Section 957.09, Florida Statutes, was enacted. This section deals with the applicability of certain provisions of law to private correctional facilities:

Applicability of chapter to other provisions of law.--

(1)(a) Any offense that if committed at a state correctional facility would be a crime shall be a crime if committed by or with regard to inmates at private correctional facilities operated pursuant to a contract entered into under this chapter.

(b) All laws relating to commutation of sentences, release and parole eligibility, and the award of sentence credits shall apply to inmates incarcerated in a private correctional facility operated pursuant to a contract entered into under this chapter.

(2) The provisions of this chapter are supplemental to the provisions of ss. 944.105 and 944.710-944.719. However, in any conflict between a provision of this chapter and a provision of such other sections, the provision of this chapter shall prevail.

(3) The provisions of law governing the participation of minority business enterprises are applicable to this chapter.

At the time of the enactment of this section, the DOC was the only provider or contract manager of state correctional services. Consequently, the bulk of the statutory mandates dealing with prisons were specifically directed to the DOC.¹ Subsequently, several private correctional facilities have begun operation. Since Section 957.09, Florida Statutes, specifically defines which laws are applicable to private correctional facilities, its effect could exempt such facilities from many legal provisions to which the public corrections system is ordinarily subject.²

¹ Prior to the enactment of Chapter 957, Florida Statutes, the three major chapters of law that governed the correctional system were Chapters 944, 945, and 958, Florida Statutes.

² Because of this exception, the CPC and the private prison contractors are free to establish innovative policies in the area of corrections which may substantially differ from those set by the legislature and the DOC for the public prisons. However, according to a recent OPPAGA

Cooperative Transfer Agreement/Mediation of Disputes

Chapter 94-148, Laws of Florida, mandated that inmate transfers to and from private correctional facilities be accomplished through a cooperative agreement between the department, the contractor and the commission. This provision of law went into effect May 11, 1994, and was codified in Section 957.06 (2), Florida Statutes. In a 1995 report (Report No. 95-12, November 1995), OPPAGA recommended that "the Legislature direct the [DOC] to assign inmates to private prisons for the duration of their sentences and direct the [CPC] to with transfer inmates out of private prisons if, and only if, the inmate requires excessive medical treatment or is a threat to public safety, institution staff or other inmates."

B. EFFECT OF PROPOSED CHANGES:

See "Section-By-Section Research."

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, The Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed to conduct a feasibility study, and to submit it to the Speaker of the House of Representatives, and to the President of the Senate, by January 1, 1999.

(3) any entitlement to a government service or benefit?

No.

report (Report No. 97-06, September, 1997), the adoption of policies by the CPC which differ substantially from those governing the public prisons could create a dual corrections system, duplicative in nature, which dilutes the potential benefits privatization may offer the state.

- b. If an agency or program is eliminated or reduced:

No agency or program is eliminated or reduced.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

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- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

None

E. SECTION-BY-SECTION RESEARCH:

Section 1--Provides for the Office of Program Policy Analysis and Government Accountability (OPPAGA) to study the feasibility of the Department of Corrections submitting a bid and operating its prisons in a similar manner as provided by law in Chapter 957, Florida Statutes, for private firms and contractors. Also provides for the study to be submitted to the Speaker of the House of Representatives and to the President of the Senate by January 1, 1999.

Section 2--Provides that the act shall take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See "Fiscal Comments."

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The bill produces an increased workload for the Office of Program Policy Analysis and Government Accountability (OPPAGA). Whether this would necessitate additional staff is uncertain. Therefore, the fiscal impact is indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 21, 1998, the Committee on Governmental Operations adopted one amendment which removed everything after the enacting clause and substituted new language for the original bill. The amendment provided that the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) shall study the feasibility of the Department of Corrections submitting a bid and operating its prisons in a similar manner as provided by law in Chapter 957, Florida Statutes, for private firms and contractors. The amended bill was made a committee substitute.

The original bill provided for the requirement that any contract, for the private operation of a correctional facility entered into after January 1, 1998, provide for the operation of private facilities under the same conditions as publicly operated facilities with regard to air conditioning of inmate housing, use and acquisition of recreational facilities, permitted reading materials, use of televisions, and use of inmate labor for chain gangs and other public works. Also, the original bill prohibited private correctional facilities from housing certain violent inmates from other states. These provisions were removed by the committee substitute.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

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