

STORAGE NAME: h0617.go
DATE: February 15, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 617

RELATING TO: State Correctional Facilities

SPONSOR(S): Representative Kilmer

COMPANION BILL(S): SB 860 (Identical), HB 883 (Compare), and SB 342 (Compare)

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

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

The bill authorizes the Department of Corrections to submit bids to the Correctional Privatization Commission to finance, construct, and operate correctional facilities. It requires the Commission to give the Department's bid and proposal the same consideration it affords a private firm or contractor, and to select the lowest cost-responsive bid for such a facility.

If the Department is awarded the contract, the bill gives the Department sole authority over the funds and control of the project, and permits the Department to operate such a facility with the same management tools and operating conditions that are presently allowed for private vendors.

Finally, the bill prohibits a private vendor that operates a private correctional facility under contract with either the Commission, the Department, or a political subdivision of the state from housing out-of-state inmates who have been convicted of certain felonies involving the actual or threatened use of physical force or violence.

The bill would take effect upon becoming law.

The fiscal impact of the bill has not yet been determined. Increased competition for contracts to build and operate correctional facilities may result in increased savings to the state.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Correctional Privatization Commission

The 1989 Legislature authorized the construction and operation of private correctional facilities for the purpose of reducing the costs of the state's rising inmate population and to provide the opportunity for the development and use of innovative and effective approaches to corrections (see ch. 89-526, L.O.F.). The Legislature anticipated that establishing private correctional facilities would also provide an opportunity to compare the costs and effectiveness of private correctional facilities with public correctional facilities operated by the Department of Corrections.

The 1993 Legislature enacted ch. 93-406, L.O.F., codified in ch. 957, F.S., creating the Correctional Privatization Commission for the purposes of entering into contracts for the construction and operation of private correctional facilities. The Commission is independent of the Department of Corrections and, for administrative purposes, is within the Department of Management Services.

The Commission consists of five members appointed by the Governor. Four members must be from the private sector, one member must be a minority person, and employees of the Department are prohibited from being appointed to the Commission.

Section 957.07, F.S., requires that the Commission enter into a contract for the construction and operation of a private prison only if the contract is projected to result in a cost savings to the state of at least 7 percent over the public provision of a similar facility.

Private Prisons in Florida

There are currently five private prisons operating in Florida. The first private prison, Gadsen Correctional Institution, was contracted and is administered by the Department. The 768 bed adult female facility opened in March 1995 under a five year \$80 million contract. The remaining four facilities--Bay Correctional Facility, Moore Haven Correctional Facility, South Bay Correctional Facility, and Lake City Correctional Facility--were then contracted and are administered by the Commission.

The Office of Program Policy Analysis & Government Accountability (OPPAGA) reviewed two of these private prisons--Bay Correctional Facility and Moore Haven Correctional Facility--and found that although private prison vendor performance during the 1996-97 fiscal year was satisfactory, the private prisons did not provide the state with the 7% level of overall savings anticipated by the statute. According to OPPAGA's *Report 97-68 Review of Bay Correctional Facility and Moore Haven Correctional Facility (April 1998)*:

- The Bay Correctional Facility, operated by the Corrections Corporation of America, was more costly to construct than public prisons constructed during the same period, and did not provide operating cost savings to the state during the 1996-97 fiscal year.

- The Moore Haven Correctional Facility, operated by the Wackenhut Corrections Corporation, was constructed within the cost range of public prisons constructed during the same period, and provided a savings of about \$480,000 in operating costs during the 1996-97 fiscal year. This represents savings of approximately 4% over comparable public prison operating costs.

Out-of-State Inmates Housed in Private Correctional Facilities

Although Florida's five current private correctional facilities house only Florida inmates, the existing contracts that the Commission has entered into for the private operation of correctional facilities do not appear to restrict the private firms from housing felons from other state jurisdictions. (But see, Comments.) Similarly, there is no specific statutory prohibition against a private firm acquiring land, constructing a facility, and contracting the entire facility to house out-of-state offenders in Florida.

Concerns regarding recent experiences in Texas and Arizona relating to inmate disturbances and escape of out-of-state inmates in private facilities prompted a review by the Florida Corrections Commission which reported on the following incidents and resulting legislative action.

Texas

- In 1996, Texas experienced five separate incidents of escape and/or riots where state and local law enforcement intervention was necessary to capture escaped inmates or suppress disturbances caused by out-of-state inmates at private correctional facilities;
- After being recaptured, authorities found that the offenders could not be prosecuted for the escape under either Oregon or Texas statutes;
- In an August, 1996 incident, two Oregon sex offenders escaped from a Houston facility. The private vendor in Texas was not required to notify the state that it had contracted with another state to fill excess bed space; and
- Texas officials were not aware that there was excess bed space which had been contracted to another state and that 240 sex offenders from another state were housed in the minimum custody facility.

Arizona

- Arizona experienced similar problems with escapes of and riots by out-of-state offenders in private correctional facilities. In October, 1996, six serious offenders (3 murderers and 3 sex offenders) from Alaska escaped from a private facility.

There have been no escapes or major disturbances involving out-of-state offenders at the private correctional facilities under contract with either the Commission or the Department.

B. EFFECT OF PROPOSED CHANGES:

The bill authorizes the Department of Corrections to submit a bid to the Correctional Privatization Commission to finance, construct, and operate a correctional facility. It requires the Commission to give the Department's bid and proposal the same consideration afforded to any private firm or contractor.

The bill allows the Department to develop such a bid and proposal to operate a facility with the **same** management tools and operating conditions that are allowed for private vendors who have contracts with the Commission, including air conditioning, recreational equipment and facilities, reading materials, televisions, and the use of inmate labor. The bill also puts the Department on equal footing with the private vendors in determining the types of inmates received at the facility, and limitations on the transportation and health care of these individuals.

It requires the Commission to select the lowest cost-responsive bid, and provides that if the Department is awarded the contract, all funds and control of the project will be under the sole authority of the Department.

The bill requires that the bid submitted by the Department be the basis for the inmate per diem requested to be funded by the legislature. Also, the bill requires the Department to include in its bid and inmate per diem all costs, including staff salaries and benefits. Any adjustment in payments for inmate per-diem costs must be approved by the Legislature.

The bill expands the **purposes** of the Commission to include evaluating and determining the lowest cost-responsive bids submitted by private vendors or the Department to finance, construct, and operate correctional facilities. It expands the **duties** of the Commission to include allowing responses from both Department and private vendors to bid for the financing, construction, and operation of a correctional facility, and to evaluate these responses and to determine the lowest cost-responsive bid.

Finally, the bill prohibits a private vendor that operates a private correctional facility under contract with either the Commission, the Department, or a political subdivision of the state from housing out-of-state inmates who have been convicted of felonies involving the use or threat of physical force or violence.

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 bill authorizes the Department of Corrections to submit a bid to the Correctional Privatization Commission to finance, construct, and operate a correctional facility, and provides for the Department to have sole authority over the operation of the facility if awarded the contract.

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

No.

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

The bill does not eliminate or reduce any agency or program.

- (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?

N/A

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?

Yes. The bill prohibits a private vendor that operates a private correctional facility under contract with either the Commission, the Department, or a political subdivision of the state from housing out-of-state inmates who have been convicted of certain felonies involving the use or threat of violence. Currently, there is no such prohibition.

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.

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 nor 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:

ss. 957.19, and 957.03, F.S.

E. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

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:

The bill authorizes the Department of Corrections to submit a bid to the Correctional Privatization Commission to finance, construct, and operate a correctional facility, and, if awarded the contract, to have sole authority over all funds and control of the project. It requires the Commission to select the lowest cost-responsive bid for such a facility. Therefore, it is possible that private vendors will be affected by this increased competition for correctional facility contracts.

D. FISCAL COMMENTS:

Although the fiscal impact of this bill has not yet been determined, increased competition for Commission contracts may result in cost savings to the state.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The Department of Corrections believes that to ensure a fair competition in comparing private versus public prison operations, it is important that the operating units be truly comparable and that neither side be provided an unfair advantage. According to the Department, private facilities have been allowed certain management tools that are forbidden to the Department, including air-conditioned dormitories and the purchasing of televisions and recreational equipment for inmate use. They have also benefitted from contracts imposing a maximum on the cost of individual inmate health care, and have discretion with regard to the type of inmates received at the facilities.

HB 883, which was prefiled on February 19, 1999, and the identical SB 342, which on January 20, 1999, was referred to the Senate Criminal Justice and Fiscal Policy Committees, would:

- Require contracts entered into on or after July 1, 1999 for the private operation of a correctional facility, to provide that the **private** facility will operate 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. They would also prohibit such contracts from imposing a maximum on the cost of individual inmate health care;
- Allow a law enforcement agency to assess a charge against the contractor of a private correctional facility to recoup the costs incurred by that agency in

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apprehending any out-of-state inmate who escapes from the private correctional facility; and

- Provide that a private correctional facility may not house out-of-state inmates who were convicted of violent crimes, including murder, rape, child molestation, or sexual battery.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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