

STORAGE NAME: h1507.cor

DATE: April 9, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1507

RELATING TO: Appropriations

SPONSOR(S): Rep. Spratt

STATUTE(S) AFFECTED: None

COMPANION BILL(S): SB 1596

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

- (1) CORRECTIONS
- (2) GOVERNMENTAL OPERATIONS
- (3) FINANCE AND TAXATION
- (4) CRIMINAL JUSTICE APPROPRIATIONS
- (5)

I. SUMMARY:

House Bill 1507 provides for an annual appropriation to Glades County in an amount necessary to offset the ad valorem taxes lost due to the construction of a private correctional facility in the county. The provision is repealed July 1, 2014, or when the Department of Corrections assumes responsibility for operating the private correctional facility, whichever occurs earlier.

Passage of this legislation would cause the annual expenditure of approximately \$350,000 to Glades County.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Moore Haven Correctional Facility in Glades County

In 1993, the legislature authorized the Correctional Privatization Commission (CPC) to issue a request for proposals to design, finance, construct and operate a 750-bed secure adult correctional facility housing medium custody inmates. Wackenhut Corrections Corporation submitted the successful bid and was awarded the contract in March, 1994 for the Moore Haven Correctional Facility (MHCF) located in Glades County. The original bids submitted by the companies competing for the prison contract and the agreements originally entered into by Wackenhut Corrections Corporation expressly provided for the payment of ad valorem taxes.

Ad Valorem Taxation

Section 196.199 (2) , Florida Statutes, specifies that property owned by governmental units but used by non-governmental lessees may be exempt from taxation when the lessee serves or performs a governmental service.

Current law in Chapter 957, Florida Statutes, is silent on whether or not privately operated correctional facilities shall be assessed property taxes. The absence of a definitive state policy has produced various legal and policy interpretations on the taxable status of private correctional facility properties by both local and state officials.

In early 1994, prior to the construction of the MHCF, the CPC, upon advice from legal counsel, concluded that the Glades County property on which the correctional facility was to be constructed was exempt from ad valorem taxation. The CPC maintained that it had no legal authorization to pay the ad valorem taxes since it was the equitable owner of the facility and the property is used for governmental purposes. This opinion and position of CPC has been challenged by Glades County. In the view of Glades County officials, CPC is not the equitable owner, the property is being used by a private profit-making entity, and the property is taxable.

To conform to its policy position, in 1995, the CPC amended its management contracts (including the one with Wackenhut Corrections Corporation) to delete a portion of the per diem (daily cost per inmate) that would have provided payment of ad valorem taxes to Glades County.

According to the CPC, the estimated annual property and documentary stamp taxes included in the management contracts on the existing facilities are:

**ESTIMATED ANNUAL PROPERTY
AND DOCUMENTARY STAMP TAXES
Fiscal Year 1995-96**

Privatized Facilities Acquired through CPC	Ad Valorem Taxes	Documentary Stamps
Moore Haven Correctional Facility	\$ 348,652	\$ 85,145
Bay Correctional Facility	\$ 223,758	\$ 91,000
South Bay Correctional Facility	\$ 1,180,626	\$ 142,250
Lake City Correctional Facility	\$ 77,968	\$ 42,000
Secure Treatment and Training Program at Pahokee*	Not available	Not available
Secure Treatment and Training Program at Polk City*	Not available	Not available

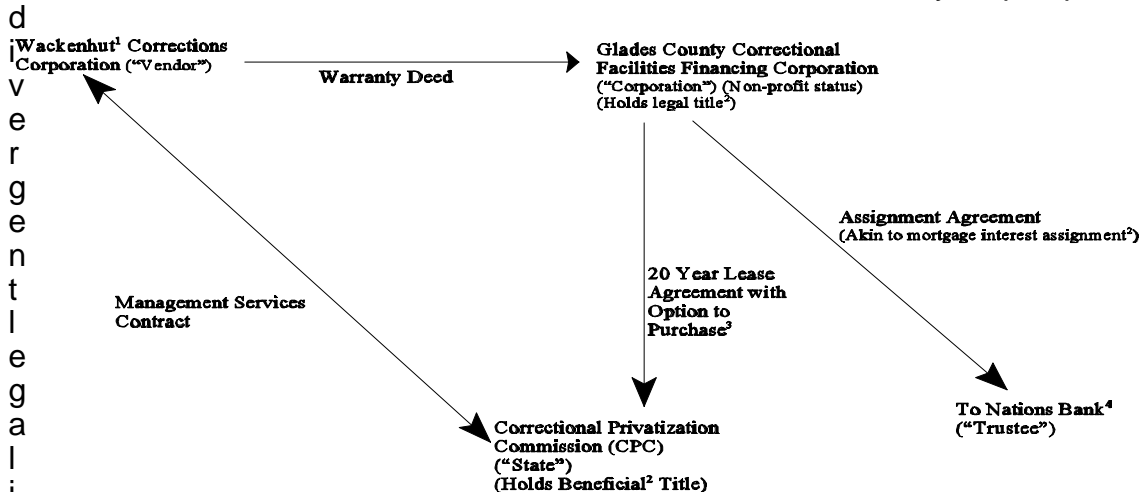
*Houses juveniles and contracts are managed by the Department of Juvenile Justice rather than CPC.

Glades County officials have billed Wackenhut Corrections Corporation for property taxes for the MHCF. Officials from Bay and Columbia counties have likewise billed Corrections Corporation of America for property taxes for Bay Correctional Facility and Lake City Correctional Facility.

According to CPC, the agency requested and was granted two ad valorem tax exemptions for 1996 for two facility sites (Pahokee and South Bay) in Palm Beach County.

Legal Transactions Related to the Taxable Status of the Property of Moore Haven Correctional Facility

The exhibit below illustrates the flow of various and complicated real estate and contractual transactions that have occurred since 1993 which may help explain the



interpretations on whether or not the Moore Haven Correctional Facility property is owned by a governmental unit and hence, tax exempt.

¹Purchased property and transferred title through warranty deed to non-profit corporation approved up by CPC.

²Based on representations by the Department of Management Services.

³Monies received from the lease-purchase agreement must be used to retire the certificates of participation.

⁴Trustee acts as a fiscal agent to receive funds to be disbursed for the construction of the facility, and to receive payments for the repayment of the certificates of participation (COPS).

Per Diem Funded by the Legislature

The CPC received general revenue funding in both FY 1995-96 and FY 1996-97 to pay the per diem and debt service of the MHCF under its control. The MHCF per diem calculation funded in both fiscal years included the following payments of ad valorem taxes:

**SCHEDULE OF PER DIEM AND LEASE PAYMENTS
APPROPRIATIONS AND EXPENDITURE BALANCE
Fiscal Years 1995-96 and 1996-97***

Moore Haven Correctional Facility Wackenhut						
Year	Per Diem	Contract Monitor	Property Tax**	Medical Copayments	Payment to Wackenhut	Lease Payment to Nations Bank
FY 1995-96	\$11,416,685	\$49,600	\$345,867	\$1,728	\$11,019,494	\$671,564
FY 1996-97*	\$7,097,752	\$41,764	\$204,809	\$56	\$6,851,121	\$895,274

*FY 1996-97 reflects only partial year through February, 1997.

**Allocated in per diem calculation, but not paid to taxing authority

The property tax portion of the per diem is being held in reserve by CPC and the unused monies revert to the general revenue fund at the end of the fiscal year. For FY 1995-96, the monies originally earmarked for ad valorem taxation reverted to the state general revenue fund.

The Department of Corrections does not pay property taxes. Impact fees are negotiated on a case-by-case basis.

Payment of Impact Fees

Chapters 95-430 and 96-420, Laws of Florida, authorized the CPC to:

...expend appropriated funds to assist in defraying impact costs that are incurred by a municipality or county and are associated with the opening and operating of a facility under the authority of the commission and within the municipality or county. The amount that may be paid under this subsection for any facility may not exceed 1 percent of the facility construction cost, less any building and construction impact fees imposed during the permitting process for the facility.

Both provisions applied only to facilities contracted under the authority of the 1995-96 and 1996-97 General Appropriations Act.

To date, only county officials in South Bay, where Wackenhut Corrections Corporation just opened a 1,318-bed prison, have applied for a one percent cost reimbursement payment of \$282,924. This request was denied because the facility was not open at the time of the request. The City of South Bay has, however, received payment of \$1.5 million for costs associated with the expansion of the city's water and sewage system.

According to the Department of Juvenile Justice (DJJ), the CPC has requested payment of an impact fee to the City of Pahokee. The DJJ has denied payment since it is their position that the 1996-97 implementing bill only authorized CPC to make such payments.

Practices in Other States

The Florida Corrections Commission conducted a survey of the fifteen states that are in the final stages of negotiating contracts for privatization. In six of these fifteen states (CO, LA, MS, NM, TN, and UT) the land or the facility are owned by the state or a subdivision of the state and are not subject to property taxes. In three states, (AZ, CA and KY), the land or facilities are privately held and property taxes are assessed.

In Texas, private prisons are exempt from ad valorem taxes. However, the standard contract used in Texas contains a clause encouraging, but not requiring, the vendor to reach an agreement with the local taxing jurisdiction for payments in lieu of property taxes.

In Virginia, the first private prison is under construction and a second prison has been contracted. The land is owned by a local development authority and is tax exempt. Recent legislation in Virginia, however, requires local approval for the siting of a prison. This arrangement permits counties to negotiate for impact payments in lieu of taxes.

B. EFFECT OF PROPOSED CHANGES:

House Bill 1507 provides for an annual appropriation for Glades County in an amount necessary to offset the ad valorem taxes lost due to the construction of a private correctional facility in the county. The provision is repealed July 1, 2014, or when the Department of Corrections assumes responsibility for operating the private correctional facility, whichever occurs earlier.

Passage of this legislation would cause the annual expenditure of approximately \$350,000 to Glades County.

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?

No.

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

No.

b. If an 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, although the state will incur a substantial and recurring fiscal impact in appropriating funds to Glades County.

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

Yes, the bill requires the state to pay Glades County a "fee" for taxes "lost" due to the construction of a private correctional facility.

- 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?

No.

5. Family Empowerment:

a. If the bill purports 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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

None.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The bill will obligate the state to expend approximately \$350,000 to Glades County each year for the next 18 years or until the Department of Corrections assumes responsibility for operating the private correctional facility.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

The bill will obligate the state to expend approximately \$350,000 to Glades County each year for the next 18 years or until the Department of Corrections assumes responsibility for operating the private correctional facility.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Passage of this bill will result in a substantial and recurring benefit to Glades County.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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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:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:

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