

STORAGE NAME: h0769.cor

DATE: March 9, 1997

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

BILL #: HB 769

RELATING TO: Tobacco-free Prisons Act

SPONSOR(S): Representative Brooks

STATUTE(S) AFFECTED:

COMPANION BILL(S): SB 10

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

- (1) CORRECTIONS
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

House Bill 769 creates the "Tobacco-free Prisons Act," which would prohibit the possession and use of tobacco products by inmates, employees and visitors in state and private correctional facilities.

Inmates who possess or use tobacco products after the effective date of this bill would be deemed to have committed a disciplinary infraction and would be subject to forfeiture of gain-time or the right to earn future gain-time.

This bill also requires the Department of Corrections and the Correctional Privatization Commission to provide smoking cessation assistance to inmates.

House Bill 769 is intended to significantly reduce inmate health care costs in the future. However, the extent to which inmate health care costs will be avoided is indeterminant, but potentially significant.

The elimination of tobacco sales from the inmate canteen is projected to result in a loss of approximately \$1.9 million annually.

This bill will become effective upon becoming law and its provisions must be fully implemented by January 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Current Policy

The Florida Department of Corrections currently allows inmates to purchase and use tobacco products within state correctional facilities. Rule 33-20.001, Florida Administrative Code, restricts smoking in all indoor areas at state correctional facilities. A superintendent may designate a smoking area where inmates are housed or where inmate activities occur. Inmates are prohibited from smoking in dormitories or housing areas which are designated as non-smoking areas. A superintendent has the discretion to restrict areas where inmates may use tobacco-related products.

Adult inmates may purchase cigarettes from canteens in correctional institutions which generates monies that are deposited in the Inmate Welfare Trust Fund. These monies are used to employ personnel and for expenses (operating and fixed capital) for correctional education programs and to operate libraries, chapels, and visiting areas.

Inmate Smoking in Private Correctional Facilities

According to the Correctional Privatization Commission, inmates are permitted to use tobacco products in designated smoking areas inside and outside buildings at South Bay, Moore Haven, and Bay Correctional Institutions. Private correctional facilities operate under a policy which essentially parallels the rule adopted by the Department of Corrections. In states in which inmates are prohibited from smoking, such as Texas, private correctional vendors are required to adhere to the non-smoking policy.

Tobacco Use and Health Care

The department estimates that between 65% and 75% of the inmate population smokes cigarettes in prison, a rate about 2.5 times as high as the general male population.

The Department of Corrections acknowledges that smoking contributes to or exacerbates certain health-related conditions such as hypertension, pulmonary disease, diabetes among inmates. The department cannot determine the number of inmates who have medical conditions caused solely by the use of tobacco or who are currently receiving treatment for medical conditions which have been exacerbated by the use of tobacco.

The total annual expenditures for inmate health care have been increasing rapidly over the last several years due to prison health system reforms and the increasing inmate population. Nevertheless, the rate of annual inmate health care costs for the Department of Corrections has remained significantly below the annual health care cost rate for the average Florida citizen.

For FY 1996-97, the Legislature appropriated over \$200 million for inmate health care, which represented approximately 15 percent of every dollar provided to the Department of Corrections.

A recent Office of Program Policy Analysis And Governmental Accountability (OPPAGA) report analyzed inmate health care costs to determine ways to reduce or contain those costs. (Report Number 96-22, November 27, 1996). In its analysis, the researchers reported the following advantages and disadvantages of implementing smoking cessation programs in prisons:

Advantages:

- Reduction in long term treatment costs as inmates maintain their health;
- Program(s) act to occupy inmates, reducing idleness;
- Educate and instill inmate responsibility for their health.

Disadvantages:

- Additional staff required to develop and implement programs;
- Cost of program implementation;
- Institutional space limitations;
- May not achieve measurable cost savings, or even impact inmate behavior.

Opinion Surveys of Tobacco Use in Prisons

In 1996, staff of the Senate Criminal Justice Committee conducted a survey of the superintendents at 54 major correctional institutions in Florida. Twenty-nine (63%) of the superintendents surveyed reported that they did not believe that inmates should be prohibited from using tobacco products. Fourteen (30%) of the superintendents surveyed reported that inmates should be prohibited from using tobacco products.

The reason cited most often by those superintendents who believed that inmates should be prohibited from using tobacco products was health-related, including the reduction in costs of providing health care services to inmates.

Of those superintendents who believe that inmates should be permitted to use tobacco products, the most frequently cited reason was that prohibiting inmates from using tobacco products would increase their anxiety and stress, creating a hostile environment and resulting in security problems.

States Restricting Tobacco Use in Prisons

The following chart displays the types of restrictions and prohibitions implemented in selected states. States which are shaded across the columns have prohibited the use of tobacco products by both inmates and staff. States which are only partially shaded in the chart have prohibited the use of tobacco products by inmates only. Many states, however, have restricted, but not eliminated, the use of tobacco products in prison.

States Surveyed Which Restrict or Prohibit Possession or Use of Tobacco Products In Prisons*

	Staff Allowed to Smoke Inside	Staff Allowed to Smoke Outside	Inmates Allowed to Smoke Inside	Inmates Allowed to Smoke Outside	Tobacco Products and Use Prohibited for Both	Comments
Alabama	No	Yes	No	Yes	No	
California	No	Yes	No	Yes	No	
Colorado	No	Yes	No	No	No, total prohibition for inmates only effective 7-1-97	Legislation in 1996 failed; later a rule was adopted
Georgia	No	Yes	No	Yes	No	Previous rule to prohibit all tobacco products was repealed on 12-1-95
Kansas	No	Yes	No	Yes	No	
Kentucky	Varies	Varies	Varies	Varies	No	
Maine	Yes	Yes	Yes	Yes	No	
Minnesota	No	No	No	No	Yes	Smoke-free Prison Act in 1996
New Jersey	Yes	Yes	Yes	Yes	No	
New York	Yes	Yes	Yes	Yes	No	
Oregon	Yes	Yes	No	No	No, total prohibition for inmates only effective 4-1-95	
Texas	No	No	No	No	Yes	Tobacco-free Prisons Act in 1995
Utah	No	Yes	No	No	No, total prohibition for inmates only effective in 1994	
Vermont	No	Yes	No	Yes	No	Previous rule to prohibit all tobacco products was repealed in 1994
West Virginia	Yes	Yes	Yes	Yes	No	

* Committee staff surveyed by telephone and compiled additional documentation for these states originally surveyed in *Corrections Alert*, p. 2, vol. 2, no. 8, December 11, 1995.

Litigation on Smoking in Prisons

The Florida Department of Corrections has designated at least one non-smoking dormitory in each prison in response to the U.S. Supreme Court case of *Helling v. McKinney*, 509 U.S. 25, 113 S. Ct. 2475, 125 L.Ed. 2d 22 (1993). In that case, an inmate in a Nevada prison prevailed in claiming that his involuntary exposure to environmental tobacco smoke (ETS) from inmates who smoked posed an unreasonable risk to his health and subjected him to cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution.

B. EFFECT OF PROPOSED CHANGES:

This bill would prohibit inmates within state correctional facilities from possessing or using tobacco products while in the custody of the Department of Corrections or a private state correctional facility. This prohibition would apply regardless of an inmate's location in relation to the physical plant of a state correctional facility. Inmates who leave the confines

of the facility pursuant to s. 945.091, F.S. (e.g., those inmates who work at paid employment in the community and are within 36 months of their release date), are exempt from the prohibition.

Violation of this prohibition by inmates would constitute a disciplinary infraction. Gain-time or the right to earn gain-time in the future would be forfeited.

Employees and visitors of state correctional facilities would not be allowed to possess or use tobacco products while in state correctional facilities. No penalties are specified in the bill for such acts committed by employees or visitors. Further, the possession of tobacco products within prisons is not specified as contraband pursuant to s. 944.47; however, in relation to visitors, the department could deny or cancel visitation for violation of this provision. Employees who violate this provision would be dealt with according to internal disciplinary procedures of the department.

This bill would require the department and the Correctional Privatization Commission to make smoking cessation assistance available to inmates and to have a program fully implemented by January 1, 1999. In addition, the department would be authorized to implement an employee wellness program that would include, among other things, smoking cessation.

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?

This bill increases the authority of the Department of Corrections (DOC) and private correctional facilities by requiring them to enforce a prohibition against tobacco possession and use by inmates, employees and visitors.

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

This bill increases the responsibilities of DOC and private correctional facilities by requiring them to provide smoking cessation assistance to inmates and to fully implement a program by January 1, 1999.

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

Currently, tobacco products are sold through the inmate canteens in prisons. By prohibiting the possession and use of tobacco products, these items would no longer be available for purchase.

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

This bill possibly could reduce the need for health services provided by the state for inmates who experience improved health as a result of not smoking.

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

None.

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

None.

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

None.

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?

The bill may reduce revenues generated from cigarette taxes.

- 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?

This bill may reduce the need for health care services provided to inmates by the state if their health improves as a result of not smoking.

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

While there may be certain costs associated with implementing the smoking cessation assistance to inmates that the Department of Corrections and the Correctional Privatization Commission must provide, these costs will be borne by the state or private correctional facilities.

Inmates who need non-emergency health care are assessed medical co-payments. Those inmates who experience better health as a result of not using tobacco products may have less need for health care and may pay fewer costs in medical co-payments.

4. Individual Freedom:

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

This bill decreases the option of inmates, employees and visitors who smoke to use tobacco products within state-operated and privately-operated correctional institutions; however, the nonsmoking inmates, employees and visitors will benefit in that they are not subjected to secondhand smoke.

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

This bill will restrict the ability of inmates, employees and visitors to possess and use tobacco products in prisons, an activity which is currently allowed in designated areas.

5. Family Empowerment:

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

This 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?

N/A

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:

This 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. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

There may be a minimal cost to the Department of Corrections associated with the purchase of smoking cessation products such as video tapes and training materials.

2. Recurring Effects:

The Department projects the **need for additional OPS part-time staff** to conduct smoking cessation programs. The projected costs associated with these positions are unavailable.

HB 769 will result in the state receiving an indeterminate but most likely **significant loss in revenues from the taxation** of tobacco products sold to state inmates.

HB 769 may result in the Department of Corrections receiving **fewer profits from the inmate canteen due to the loss of tobacco sales**. The Department receives approximately \$1.9 million in profits from tobacco sales annually. It is likely, however, that the sale of other goods, such as gum, candy and smoking cessation products, will increase and canteen sales and profits will be only marginally impacted.

3. Long Run Effects Other Than Normal Growth:

A significant, but long-term, benefit of this legislation is the potential to **reduce long-term treatment costs** as inmates maintain their health. This financial benefit to be realized by the state over time could be sizable. However, any future health care cost savings to be achieved due to HB 769 are difficult to reasonably predict and quantify.

4. Total Revenues and Expenditures:

See III., A. 1. & 2.

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:

The Department of Corrections purchases tobacco products from the private sector to sell at its inmate canteens. Figures were unavailable on how much money is spent annually to purchase tobacco products for resale by the Department of Corrections. However, the Department of Corrections reports that the sale of tobacco products

generates a profit of approximately \$1.9 million in revenues annually. Consequently, the negative fiscal impact on the tobacco products industry will be significant and will result in an annual loss of sales totaling several million dollars.

2. Direct Private Sector Benefits:

Although the sale of tobacco products to inmates would be eliminated in this bill, it is likely that the sale of other goods, such as gum, candy and smoking cessation products, will increase, and private sector industries producing such products would financially benefit accordingly.

A significant, but long-term, benefit of this legislation is the potential to reduce long-term treatment costs as inmates maintain their health. This financial benefit could be realized by private health care providers as well as by private prison management companies under contract to either the Department of Corrections or to the Correctional Privatization Commission.

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:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

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:

Employee Wellness Program

The 1996 Legislature authorized the Department of Corrections to develop an employee wellness program that includes wellness education, smoking cessation, nutritional education, health-risk reduction, and random drug testing. (Chapter 96-312, L.O.F., codified at s. 944.474, F.S., 1996 Supp.). As a result, staff recommends that substantially similar language in section 2 of the bill be stricken.

References to the Correctional Privatization Commission

Clarification is needed to provide that the “employees” referred to in this bill are the Department of Corrections’ employees, employees of the privately-operated prisons, who are hired by the private vendor operating the prison, and employees of the Correctional Privatization Commission who are assigned to monitor privately-operated prisons. In addition, the bill requires the Correctional Privatization Commission to make smoking cessation assistance available to inmates. It is more likely that the private vendors operating each private prison would undertake that responsibility as the Commission’s statutory duties under Chapter 957, Florida Statutes, involve contracting with the private sector and monitoring all correctional facilities under contract with the commission.

Tobacco as Contraband

Section 944.47, F.S., specifies the items declared to be contraband and provides penalties for the unlawful possession of contraband in state correctional institutions. Because tobacco products do not currently constitute contraband under this section, inmates, employees and visitors who possess such items in correctional facilities will not be subject to criminal penalties. If the Legislature intends for tobacco products to be contraband and for criminal penalties to attach to the acts described in the bill, then this statutory section needs to be amended.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

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