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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
ANALYSIS**

BILL #: HB 1445

RELATING TO: Private Prisons

SPONSOR(S): House Corrections Committee and Representative Trovillion

COMPANION BILL(S):

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

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I. SUMMARY:

This proposed committee bill:

- expands the definition of escape to apply to inmates housed in private prisons;
- creates standards of conduct for the Correctional Privatization Commission's (CPC) members, employees and advisors and specifically prohibits advisors from being an officer in any business entity that has a business relationship with the commission;
- increases the membership of the CPC from five to seven members and remove the prohibition for the Governor to appoint an employee of the department;
- prohibits private vendors operating a private correctional facility in the state to enter into a contract with another state to house out-of-state inmates;
- directs the Florida Corrections Commission to study and develop proposals to expand the use of technology and privatization; and authorizes the Correctional Medical Authority (CMA) to review and advise the Correctional Privatization Commission on inmate health care;
- requires the department to notify the CPC of the profile of the inmate anticipated to be housed in a private correctional facility; and clarifies the types of inmates to be transferred by the Department of Corrections to the private facilities;
- requires the CPC to negotiate and enter into contracts for private correctional services based upon the inmate profile; and prohibits the CPC from providing for a price level increase or increase in per diem unless specific authorization is given by the legislature;
- clarifies that property owned and leased to the CPC is not subject to ad valorem taxes by counties; and
- directs the CPC as an entity to receive documentation of processed fingerprints as part of the certification process for correctional officers; authorizes FDLE to accept and submit fingerprint cards to the FBI for the purpose of conducting background checks on employees of private correctional facilities and exchange, state, multi state, and federal criminal history records of persons applying for employment in private correctional facilities and requires certification, minimum qualifications, criminal background information and specific training requirements for correctional officers at private correctional facilities.

This bill will result in a minimal fiscal impact associated with the increase in per diem paid to the two additional commission members.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The History of the Five Private Prisons in Florida

With the promise of cost-savings, speedy construction and efficient management, 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. (See Chapter 89-526, Laws of Florida) Despite multiple appropriations by the Legislature in subsequent years, the DOC did not progress toward the selection of successful bidders and any contractual agreement. 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 the private prison. (See Chapters 90-209 and 91-193) These appropriations were given to the Board of County Commissioners of Gadsden County to develop an RFP and to enter into a lease purchase agreement and private management agreement with a private vendor for a 768-bed institution. In the summer of 1992, U. S. Corrections Corporation, Inc., was selected as the successful bidder and by March of 1995, the state opened its first private prison, housing adult females, under a five-year, \$80 million contract.

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 a contract 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 an adult 1,318-bed facility and three 350-bed youthful offender facilities. (See Chapter 94-209, Laws of Florida) Prior to their opening, two of the 350-bed facilities were redesignated to house juvenile offenders under the jurisdiction of the Department of Juvenile Justice. (See Chapter 96-422, Laws of Florida) The CPC awarded the 1,318-bed facility to Wackenhut Corrections Corporation and the facility (South Bay Correctional Facility) opened in February of 1997. 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.

Description of Current Private Correctional Facilities

The Department of Corrections manages one contract with Corrections Corporation of America to operate:

- One 768-bed prison in Gadsden County* Opened March 1995

* This facility was originally operated by U.S. Corrections Corporation (USCC). USCC was purchased by Corrections Corporation of America in April of 1998.

The Correctional Privatization Commission manages contracts with Corrections Corporation of America and Wackenhut Corrections Services to operate:

- One 750-bed prison in Bay County Opened July 1995
- One 750-bed prison in Glades County Opened August 1995
- One 1,318-bed prison in Palm Beach County Opened February 1997
- One 350-bed prison in Columbia County Opened February 1997

The Composition of the Correctional Privatization Commission

The CPC was created for the purpose of entering into contracts with contractors for the designing, financing, acquiring, leasing, constructing, and operating of private correctional facilities.

The CPC is comprised of five members, each of whom is appointed by the governor for a term of four years, and of whom four must be employed by the private sector. None of the members may be an employee of the Department of Corrections or the Department of Juvenile Justice. Current membership from the private sector is comprised from the varying occupations of: attorney at law; real estate broker; planning consultant; architect/principal; and the deputy secretary of the Department of Management Services. The chairperson and vice-chairperson of the CPC are appointed by the governor for a two year term. All CPC members serve without compensation. All terms for the current membership are to expire on June 17, 2001.

In a 1995 report by the Office of Program Policy and Government Accountability (OPPAGA), a recommendation was made to amend s. 957.03, F.S., to allow an employee of the department to be appointed to the CPC. Allowing the governor to appoint the secretary of the department or his designee as a member of the CPC was advocated by OPPAGA in order to improve the working relationship between the department and the commission.

The Duties of the Correctional Privatization Commission

For administrative purposes, the CPC is created within the Department of Management Services (DMS). As statutorily required, DMS provides administrative support and service to the extent requested by the executive director of the CPC.

The duties of the CPC are to:

- enter into contract/s with one contractor per facility for the design, acquisition, financing, lease, construction and operation of the facility, or if specifically authorized by the legislature, separately contract for such services;

- invite innovation in its request for proposals and not require the use of prototype designs of the facilities by either the Department of Corrections or the Department of Juvenile Justice; and
- report by December 1 each year to the Speaker of the House of Representatives and the President of the Senate on the status and effectiveness of the facilities under its management. The report must include a comparison of recidivism rates for inmates of private correctional facilities to the recidivism rates for inmates of comparable DOC facilities.

Use of Inmate Labor to Construct Prisons

Inmate labor is used to support and maintain the ongoing operation of the correctional facilities, as well as to construct new correctional facilities. According to the department, in FY 95-96, inmates spent more than 3.5 million hours building new prisons, in addition to renovating and repairing existing prisons. Currently, the four private prisons contracted with the commission are not authorized to use inmate labor in the construction of facilities.

The Private Corrections Project

The Private Corrections Project is a University of Florida research project dedicated to studying the correctional privatization movement. The Private Corrections Project is, and has been since 1989, supported by unrestricted donations and gifts from corporate sponsors through the University of Florida Research Foundation (UFRF). According to the University of Florida, the UFRF was given approximately \$78,000 during FY 95-96 from private corrections management firms, including those vendors under contract to CPC, to support the Private Corrections Project.

The CPC has, since 1994, frequently retained the consultant services and/or employed principals from the Private Corrections Project.

In April of 1997, the principal investigator of the Private Corrections Project, Dr. Charles Thomas, was named to the board of the CCA Prison Realty Trust, a real-estate investment trust (REIT) specializing in the purchasing and leasing of correctional facilities. The business purpose of the REIT is to purchase correctional facilities from either public or private owners and then enter into multi-year lease agreements with the sellers of such properties. The CCA Prison Realty Trust has entered into an agreement with CCA to acquire CCA facilities.

Shortly after this development, the CPC sought an advisory opinion from the Commission on Ethics to determine if continuing to employ Dr. Thomas would constitute a conflict of interest. Also, on June 30, 1997, the Florida Police Benevolent Association (PBA) filed a complaint with the Commission on Ethics against Dr. Thomas alleging a possible conflict of interest. Probable cause has been determined by the Commission on Ethics. The complaint was referred to the Attorney General's office for settlement. A settlement has not occurred and an administrative hearing has been scheduled for May of this year.

Comparison of Recidivism Rates

As directed in s. 957.03(4)(c), F.S., the commission released in December, 1997 a study of the recidivism rates for inmates of private correctional facilities as compared to the rates from comparable DOC facilities. The recidivism study, entitled A Comparative Recidivism Analysis of Releases From Private and Public Prisons in Florida, was prepared by Lon Lanza-Kaduce, J.D., Ph.D. and Karen F. Parker, Ph.D. Dr. Lanza-Kaduce is an Associate Professor of Criminology and Sociology at the University of Florida and Dr. Parker is an Assistant Professor of Criminology and Sociology at the University of Florida. The research was supported by a grant from the CPC to the Private Corrections Project.

The main finding of the report is that:

Releasees from private prisons had a lower incident of recidivism than their public prison matches for all indicators of recidivism except technical violations.

On February 2, 1998, the staff of the Joint Legislative Management Committee's Division of Economic and Demographic Research reviewed the methodology used in the recidivism study. The reviewers found three major deficiencies. The first was that there was not yet sufficient numbers of inmates who had served most of their time in private correctional facilities and who have spent a reasonable amount of time out of prison to permit a reliable comparison.

Second, the conclusions drawn in the report were out of proportion to the weak evidence collected. An extremely small sample size of 1.7% of total releases was used in the study and was found to be highly unstable and not a true representation of the inmate population.

Finally, the methodology used did not adequately take into account that program participation (type, length, quality, etc.) may have an impact on post release behavior. The role of program participation as a possible explanatory variable for the difference in outcomes between public and private facilities has not been explored, despite the fact that the researchers acknowledge its probable importance.

Prohibited Conduct by Commission Members, Employees and Consultants

Chapter 957, Florida Statutes, contains no specific provisions governing the standards of conduct for or prohibiting certain conduct by any CPC member, employee, advisor or consultant. Section 112.313, F.S., which does provide standards of conduct for public officers and employees of agencies, applies only to the Correctional Privatization Commission and its employees, not to independent contractors it employs. Section 112.313, F.S., restricts the solicitation or acceptance of gifts, doing business with one's own agency, unauthorized compensation, misuse of public position, and conflicting employment or contractual relationship.

Out-of-State Inmates Housed in Private Correctional Facilities

Although Florida's five current private correctional facilities house only state inmates, presently there are no provisions in law authorizing, regulating or restricting the housing of inmates from other state jurisdictions. According to the March, 1997, *Private Adult Correctional Facility Census* by the University of Florida's Private Corrections Project, twelve states contract with privately operated prisons in five states. These five states are Texas, Arizona, Minnesota, Oklahoma and Tennessee.

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 (Oregon) 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.
- 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.
- Legislation passed in 1997 which addressed the issue of who should bear the costs of apprehending out-of-state escapees and responding to riots.

Arizona

- Arizona experienced similar problems with escapes of and riots by out-of-state offenders in private correctional facilities. In October, 1996, 6 serious offenders (3 murderers and 3 sex offenders) from Alaska escaped from a private facility.
- Legislation passed in 1997 regulating the housing of such inmates by requiring the notification of the number and type of out-of-state offenders brought into the state and by imposing a penalty in the amount of \$10,000 per escapee or the cost of the actual capture.

Ohio

- On July 25, 1998, Ohio experienced the escape of 6 inmates from the Northeast Correctional Center in Youngstown. All 6 inmates had been sent to Youngstown from the District of Columbia. This facility is operated by Corrections Corporation of America. Four of the inmates were serving sentences for murder. Another was facing pending charges of murder. One inmate was captured within an hour and within two weeks four others had been recaptured. The sixth inmate was recaptured approximately one month after the escape.

Minnesota, Oklahoma and Tennessee have not experienced the same type of problems as in Texas and Arizona. According to the Florida Corrections Commission, this may be attributed, in part to the statutory language that regulates their operation.

There have been no escapes or major disturbances at the private correctional facilities under contract with either the CPC or the DOC.

Presently, Florida's private correctional facilities house only state inmates and there are no contract provisions permitting or restricting the housing of felons from other state jurisdictions. 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.

Inmate Public Work Programs

Chapter 946, Florida Statutes, relates to inmate labor and the operation of correctional work programs. Chapter 946 provides that all able-bodied prisoners work, according to rules prescribed by the DOC. The department's statutory goal is to work all inmates at least 40 hours a week, except for those who are a serious security risk or who are unable to work. Until this goal is accomplished, the department is directed to maximize its use of inmates within existing resources.

Sections 946.40, F. S., specifically authorizes the department to enter into agreements with political subdivisions, cities, counties, non-profit organizations, and government agencies to provide inmates for public works projects.

Currently, there are two types of community work squads existing in the Florida correctional system. The DOC operates both of these types: (1) those that work under an agreement with the Department of Transportation (DOT), and (2) those who work under a local agreement between correctional institutions and agencies such as the Division of Forestry, cities, counties, municipalities and non-profit corporations.

The types of work performed by these squads include roadway and right-of-way work for cities and counties; grounds and building maintenance (mowing, painting, litter removal); construction projects and structure repair; office moving and cleaning of the state's forests. The work squads also assist state and local governments in removing debris after natural disasters.

There is no specific statutory authorization provided to the private correctional facilities to operate similar public work projects. However, s. 957.06, F.S., specifies that contractors are not permitted to develop or implement requirements that inmates engage in work, except to the extent that those requirements are accepted by the commission. The commission has published the following proposed rules relating to include work programs:

60AA-3.003 Inmate Work Program.

(1) Commission-approved policy, procedure, and practice will provide for inmate work programs.

(2) Each able-bodied inmate will be required to work and to perform the work to which he is assigned in a satisfactory and acceptable manner.

(3) No inmate will be authorized to leave the grounds of a facility for reasons other than a transfer or for medical treatment without the written authorization of the Executive Director.

The Moore Haven Correctional Facility, operated by Wackenhut Corrections Corporation, is the only private prison operating an inmate work program in which inmates do perform work in the community and off the prison grounds.

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 s. 957.06 (2), Florida Statutes.

In a November, 1995 report done by OPPAGA on the review of correctional privatization, OPPAGA made several recommendations to the Legislature, as well as to the department and to the commission. OPPAGA suggested the Legislature direct the department to assign inmates to private prisons for the duration of their sentence and direct the commission to transfer inmates out of private prisons if, and only if, the inmate requires excessive medical treatment or is a threat to public safety, institutions staff or other inmates.

Three and one half years after enactment of Chapter 94-148, Laws of Florida, a cooperative agreement was reached. According to OPPAGA, (Report # 97-06) there had not been a cooperative transfer agreement because the DOC and CPC have been unable to cooperate to resolve issues surrounding the transfer of inmates to and from private prisons.

By not working cooperatively, OPPAGA reported that the department and the commission are not maximizing the potential benefits privatization may offer the state. Instead of using privatization as a tool to increase the efficiency of today's corrections services delivery, the department and the commission have moved the state towards operating a dual or alternative corrections systems of publicly and privately operated prisons that may be duplicative.

To solve this problem, OPPAGA made the recommendation that the governor authorize an independent body within the executive branch, such as the Florida Corrections Commission, to mediate the disputes between the department and the commission, and make recommendations to the Governor for final resolution.

The primary functions of the Corrections Commission, as authorized in s. 20.315(6), F.S., are, among other things, to: recommend correctional policies; review the correctional system and recommend improvements; and evaluate the annual budget request by the department. The Corrections Commission currently is not authorized to perform any function that is non-advisory in nature relating to the operations of the CPC or the department.

The Department's Inspector General's Duties

Section 944.31, F.S., establishes the powers and duties of the Department of Corrections' Inspector General. The Inspector General shall:

- be responsible for prison inspection and investigation, internal affairs investigations, inmate grievances, and management reviews;

- inspect each correctional institution or any place in which state prisoners are housed, worked, or kept for, among other things, cleanliness, sanitation, safety and comfort, quality and supply of bedding and food, the number and condition of prisoners, and the general conditions of each institution;
- see that all departmental rules and regulations are strictly observed and followed by all persons connected with the state's correctional system;
- coordinate and supervise the work of inspectors throughout the state; and
- be responsible for criminal and administrative investigation of matters relating to the department.

The inspector general may:

- enter any place where prisoners in this state are kept and privately consult with any prisoner; and
- in criminal or administrative investigations, consult privately with any prisoner or staff member and detain any person for a criminal violation.

The Department's Internal Audits and Management Reviews

Section 20.055(5), F.S. establishes the Office of Inspector General in each state agency and sets forth duties and responsibilities. These duties include directing, supervising, and coordinating audits, investigations, and management reviews relating to the programs and operations of the state agency.

Agency inspector generals are to conduct financial, compliance, electronic data processing and performance audits of the agency, and may be directed to perform audits of a specific program, function, or organizational unit by the agency head. s. 20.055(5), F.S. Additional responsibilities relating to both internal audits conducted by the Inspector General and those conducted by the Auditor General are set forth in the statute.

The DOC's Office of the Inspector General conducts management reviews of each correctional facility on a biennial basis, with self-reviews conducted by the institution during the interim year. A typical management review involves a 3-4 day visit to the institution by a team that reviews all aspects of institutional operations, using over 1200 standards. A corrective action plan is devised to address any identified deficiencies or problems with a required follow up by the regional office.

Since August, 1996, the Inspector General's Office has been compiling information provided by management reviews in a data management system. This system will enable the department to more quickly evaluate compliance, compare facilities, and evaluate standards and corrective actions.

The Department's Security Audits

Section 944.151, F.S., provides legislative intent that the Department of Corrections shall be responsible for the security of correctional institutions and facilities. The statute

provides for establishment of a security review committee, whose members are appointed by the secretary of the department and must include the inspector general. The statute further specifies responsibilities of the committee relating to both state and private correctional institutions.

The committee is required, among other things, to establish an inspection schedule for each state and private correctional institution in order to inspect buildings and structures for security deficiencies. The committee is also required to conduct announced or unannounced security audits of each state and private correctional institution annually and must evaluate the physical plant, landscaping, fencing, security alarms and perimeter lighting, and inmate classification and staffing policies.

Beginning in July, 1997, the department began conducting unannounced security audits of all state correctional facilities at least once a year. In January of 1998, the department conducted the first unannounced security audit of a private correctional facility (Moore Haven Correctional Facility) under contract with the commission.

The Department's Contraband Interdiction

A Contraband Interdiction Unit was established in December, 1993 within the Office of the Inspector General. The unit's goal is to prevent the introduction of contraband, such as drugs and alcohol, into the state correctional facilities. The unit conducts unannounced operations at department facilities and inspects employees, visitors, and inmates with a chemical detection system called IONSCAN. Procedures for the interdiction process have been established by a policy and procedure directive issued by the department.

According to the department, the contraband interdiction unit makes unannounced visits to about one third of the state's correctional facilities on an annual basis. The contraband interdiction unit has visited private correctional facilities on two occasions to conduct its operations.

Investigations by the Department

Each state agency inspector general is required under section 20.055, F.S., to conduct, supervise, and coordinate investigations "designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct and other abuses in state government." According to the department, criminal investigations are referred to the appropriate State Attorney's office for prosecution, while administrative and internal affairs investigations are referred to management for appropriate follow-up action.

Inspections of Private Facilities by the Department's Inspector General/ Mediation of Disputes

The Inspector General's role in conducting investigations in private correctional facilities has been limited since there has been and continues to be a difference in the interpretation of the governing statute by both agencies. According to the Correctional Privatization Commission, s. 944.31, F.S., is not applicable to the facilities under contract with the commission. The department, on the other hand, interprets the law to apply to the private facilities.

To resolve this two-year dispute, in the fall of 1997, the Executive Office of the Governor intervened and began negotiating with the respective agencies to develop a Letter of

Understanding which is intended to clarify the duties of the Inspector General to conduct specific types of inspections at the private correctional facilities. While the Letter of Understanding has not yet been finalized, the commission reports that there is preliminary agreement on the need to conduct special education audits and security audits in the private correctional facilities.

Monitoring of Private Facilities Under Contract With the Correctional Privatization Commission

Chapter 957, F.S., provides that contracts with private vendors for the operation of private correctional facilities must provide for a full-time contract monitor. (s. 957.04(1)(g), F.S.) The Correctional Privatization Commission uses an on-site monitor at each of the four private correctional facilities currently under contract. The monitor is expected to make several visits to various parts of the facility each day for observation. The on-site monitors, who are employed by the commission, submit monthly reports as well as quarterly reports, which follow up on any problems or discrepancies that surface in the monthly reports.

For purposes of monitoring, the contract monitors use standards that, while similar to those used by the department in its management reviews, are not as numerous in many areas and are adapted to the private correctional facilities operation. Certain areas, such as inmate grievances, use of force, and disciplinary reports, are considered to be of such importance that they are monitored on a monthly basis. According to the commission, copies of both monthly and quarterly monitoring reports are forwarded to the department.

Further, the commission contracts for an independent annual monitoring of each private facility in which adherence to American Correctional Association (ACA) standards and contract compliance are reviewed. According to the independent monitor, an initial review is conducted after a facility has been open for about 4 months, followed by reviews on an annual basis. The independent monitor typically spends 7-10 days on-site, including weekends, reviewing all aspects of the facility. While there is some acknowledged duplication of the monitoring that occurs on a monthly and quarterly basis, the independent monitor provides a "second opinion" of the conditions at the facility. Annual monitoring reports containing the monitor's findings are prepared for the commission.

Monitoring of the Private Facility Under Contract With the Department of Corrections

Gadsden Correctional Institution, the only private prison under contract with the Department of Corrections, does not have an on-site monitor. Monitoring assignments have been assigned to regional personnel. The department contracts with one of the two independent monitors used by the Correctional Privatization Commission for on-site visits of this institution every three months. The monitor reviews adherence to the terms of the contract only.

Accreditation Reviews of Private Facilities

Section 957.04 (1)(c), F.S., requires contracts for private correctional facilities under chapter 957 to include a requirement for accreditation by the American Correctional Association (ACA). When a correctional facility applies for accreditation status with the ACA, the ACA sends a team to audit the facility and review policies and procedures, programs, and overall

operation of the facility. There are over 400 accreditation standards that are used to evaluate a facility. Typically, the initial ACA audit is not done until a facility has been open for at least 12 months.

Both Moore Haven Correctional Facility and Bay Correctional Facility were visited by ACA audit teams in the fall of 1996. Accreditation was conferred on these facilities in January, 1997. Gadsden Correctional Institution received accreditation from the ACA in August of 1997. South Bay Correctional Facility and Lake City Correctional Facility both received accreditation in August of 1998.

Management Reviews of Private Correctional Facilities

As stated above, the Office of the Inspector General conducts management reviews of each correctional facility on a biennial basis, with self-reviews conducted by the institution during the interim year. While the private correctional facilities have been scheduled for a department management review, the Corrections Privatization Commission opposes management reviews of those facilities as being duplicative of the reviews that the on-site monitors currently conduct.

The commission also opposes the department's authority to conduct management reviews of its facilities based on section 957.04(1)(e), F.S., which provides that:

The commission may waive any rule, policy, or procedure of the department related to the operations standards of correctional facilities that are inconsistent with the mission of the commission to establish cost-effective, privately operated correctional facilities.

In its 1996 Annual Report, the Florida Corrections Commission recommended amending section 944.31, F.S., to exclude performance management reviews by the department of private correctional facilities under contract with the Correctional Privatization Commission. The commission recommended, however, that sworn investigators from the department be given express statutory authority to conduct criminal investigations in all private correctional facilities.

Correctional Medical Authority

The Correctional Medical Authority, created by the 1986 Florida Legislature (Chapter 86-183, Laws of Florida), is comprised of nine members appointed by the Governor and confirmed by the Senate. The purpose of the authority is to assist in the delivery of primary, acute, emergency, convalescent, dental and mental health care, and management costs consistent with quality care. The authority is not subject to control or supervision by the Department of Corrections.

The major statutory powers of the authority are as follows.

- Review and make recommendations regarding health care for the delivery of health care services in the Department of Corrections.
- Develop and recommend to the Governor and Legislature an annual budget for all or part of the operation on the prison health care system.

- Approve contracts for quality assurance programs, peer review standards for quality of care and appropriate utilization of health care services and accounts for the expenditure of public funds.
- Review projected medical needs of the inmate population.
- Establish and approve pre-service, in-service and continuing medical education programs for Department of Corrections health care personnel.
- Identify the professional incentives that will be required to attract and retain qualified professional health care staff within the Department of Corrections.
- Assist in the developing and implementing of a health care service plan.
- Employ or contract with health care providers, medical personnel, management consultants, consulting engineers, architects, etc., as may be necessary in the judgement of the authority.
- Report, not less than annually, to the Governor and Legislature regarding the status of the Department's health care delivery system.
- Conduct or cause to be conducted, comprehensive surveys of the health care system at each correctional institution at least triennially.
- Appoint a medical review committee to provide oversight of the Department's quality management program.

The Correctional Medical Authority (CMA) began its monitoring of the Department's physical health care delivery system in 1991, and in 1992, the CMA was given the responsibility for conducting mental health surveys.

The CMA has begun, at the Correctional Privatization Commission's request, to monitor the private correctional facilities, as well. At the invitation of the private vendors, CMA began reviewing private facilities in 1997.

Performance-Based Program Budgeting

The 1994 Legislative session passed and the governor signed into law the "Government Performance and Accountability Act" (Chapter 94-249, Laws of Florida). The initiative developed a new system for conducting comprehensive evaluations of government programs. It established a performance-based program budget process in which funding decisions are based on program performance. A performance-based program budget is a budget which incorporates programs and performance measures.

All state agencies are to be phased into this new budget system by the year 2002. The DOC established program areas and performance measures which were approved by the Legislature in 1998. The CPC is identified in s. 216.0172, F.S., as a state agency, but is not specifically scheduled for submission of a performance based program budget.

Since four of the five private correctional facility contracts are managed by CPC, the performance measures to be adopted by the Legislature for FY 1998-99 are not applicable to these four private prisons and are not included in the performance based program budget submitted by the department.

While the Department of Management Services submitted its performance based program budget in FY 1995-96, the commission and the private correctional facilities were excluded from the process.

In its 1997 report, the Corrections Commission recommended that the private correctional facilities be subjected to the same or similar performance measures placed in the General Appropriations Act for the public and private prisons operated by the department.

Certification and Background Checks of Private Correctional Officers

Section 957.05, F.S. requires contractors operating private correctional facilities to provide training requirements for employees of a contractor that meet or exceed the requirements for similar employees of DOC. Additionally, contractors must meet the training requirements mandated by the American Correctional Association.

Section 957.13, F.S., currently permits the Florida Department of Law Enforcement (FDLE) to accept fingerprints of those who apply for employment at a private correctional facility. Currently, FDLE may exchange state, multi state, and federal criminal history records of individuals who apply for employment at a private correctional facility with the CPC for the purpose of conducting background checks.

As previously mentioned, pursuant to s. 957.04 (1) (g), F.S., the CPC appoints to each private correctional facility, a monitor who is responsible for observing the day-to-day operations of the facility. The State's Auditor General's office recommended in an operational audit of the Department of Management Services (Report No. 12976) that the CPC take actions necessary to ensure, through background security investigations, the appropriateness of the backgrounds of those selected to work inside the private correctional facilities under contract to the CPC. The report bases the recommendation on the sensitivity of these particular positions and the security concerns relating to any correctional facility.

Assessing Ad Valorem Taxes on Private Prisons

Currently in litigation between the CPC and Glades county is the issue which involves the ability to tax private correctional facilities under contract to the CPC. The property includes one 1,318 mixed custody, two 750-bed medium custody and one 350-bed facilities operated by private non-governmental contractors, in four different counties. Of these four counties where the CPC has state facilities, one has granted an exemption and the other three have attempted to impose ad valorem taxes. The CPC has filed lawsuits in two counties asking the court for a declaratory judgement stating the property is not subject to ad valorem taxation. The issue before the court is whether the property is immune from ad valorem taxes as state owned property. The State authorized lease-purchase financing, through the CPC, to provide prison beds at a time when General Revenue was not sufficient and a desperate need was evident for prison beds. As of date, there has not been a ruling by any of the courts.

B. EFFECT OF PROPOSED CHANGES:

The bill prohibits the housing of out-of-state inmates unless specific legislative authorization is provided.

Section 957.03, F.S., is amended to, effective February, 1999, increase the membership on the Correctional Privatization Commission from five to seven members; eliminate the restriction that no employee of the Department of Corrections or the Department of Juvenile Justice be appointed to the commission; increase the number of members appointed to the commission who are employed by the private sector; and provide for staggered terms of appointments.

Paragraph (f) of section 957.03, F.S., is also amended to specify that the action of the commission is not binding unless the action is taken pursuant to an affirmative vote of a majority of the members present. No fewer than three members of the commission must be present and the vote must be recorded in the minutes of the meeting. However, on or after February 1, 1999 no fewer than five members must be present.

Paragraph (c) of section 957.03, F.S., is amended to eliminate the requirement for an annual recidivism report to the Legislature.

Section 957.03, F.S., is also amended to expand the duties of the CPC. Paragraph (d) is added to s. 957.03 (4), F.S., to authorize the contractor to use inmate labor to assist in the construction of a facility. The department is required to assign work crews at the request of the commission and the contractor.

Paragraph (e) is added to s. 957.03 (4), F.S., to authorize the CPC and the contractor to use selected inmates in public work programs. If inmates are placed in public work programs, the contractor is required to develop certain security procedures and those procedures must be approved by the department.

Paragraph (f) is added to s. 957.03 (4), F.S., to require the CPC and each contractor to, upon renegotiation or upon the origination of the contract, develop and annually report to the legislature outcome performance measures similar to those included in the General Appropriations Act for the department pursuant to s. 216.0166, F.S.

Section 957.031, F.S., is created to prohibit specified conduct by any commission member, employee, consultant or advisor who reviews, monitors or approves private correctional facility contracts, or who advises the commission in any manner with respect to private correctional facilities to solicit or accept, directly or indirectly, any personal benefit or promise of benefit from any bidders, potential bidders or contractors; or serve on any corporate board or be associated with any corporation with which the CPC has a business relationship of any kind.

Section 957.06, F.S., is amended to reorganize provisions relating to the cooperative transfer agreement and republish the provisions in newly created section. Subsection (7) is also amended to clarify the duties and powers not delegable to the contractor to include work programs.

Section 957.061, F.S., is created relating to the cooperative transfer agreement. A cooperative transfer agreement shall be developed and implemented for each private

correctional facility for the transferring of inmates between a correctional facility operated by the department and the private correctional facility. The department, the commission, and the contractor must comply with the cooperative transfer agreement.

Section 957.08, F.S., is amended to require the department to transfer inmates at a rate to be determined by the contract, rather than by the commission. The department is required to transfer inmates to the private correctional facilities based on, among other things, the physical and mental health grade and level of education.

The bill, additionally, requires the commission to contract with an academic researcher to produce a comparative recidivism study; however, beginning fiscal year 1999-2000, the methodology and sampling strategy shall be developed through a consensus and unanimously approved by specified participants. The academic researcher under contract with the commission, researchers from the Department of Corrections and the Division of Economic and Demographic Research shall independently analyze the data and collaborate on a single report. Additionally, the 1999 Correctional Privatization Commission report need not contain a comparison of recidivism rates between public and private prisons.

Section 957.125, F.S., is amended to provide for a technical clarification.

Subsections (1), (3) and (4) of s. 957.125, s. 944.711 and subsection (8) of s. 957.04, F.S. are repealed. These provisions of law are considered obsolete and are not of a continuing nature.

The bill directs the Corrections Commission to conduct an in-depth analysis, develop Legislative proposals for the FY 2000-01, and report its findings to the Governor and the legislature on the future and expanded use of technology and private services contracts to all aspects of corrections. The analysis shall, at a minimum, identify cost-efficiencies, technological innovations, and best corrections practices for both public and private correctional programs, identify barriers to cost effectiveness in both public and private prisons, determine ways to reduce inmate idleness through partnerships with private industries and plan for the most effective use of the general and more specialized private sector services. This analysis is to be included in the commission's 1998 annual report.

Section 945.603, F.S., is amended to authorize the Correctional Medical Authority to review and advise the Correctional Privatization Commission on inmate health care.

Section 945.6031, F.S., is amended to require the Correctional Medical Authority to conduct physical and mental health care system at private correctional facilities and requiring certain reports.

Section 945.6035, F.S., is amended to require the Correctional Privatization Commission to expeditiously resolve any disputes between the authority and the commission regarding the physical and mental health care of inmates in private prisons; provide for an appeal review and resolutions to the Administrative Commission; requiring the decision of the Administration Commission to be final and binding to the commission.

Section 957.04, F.S., is amended to clarify that the monitor shall be full-time for the initial contract. However, the contract monitor may be less than full-time after the first year of operation, if deemed appropriate by the commission. After the first year of

operation the contract monitor may monitor no more than three facilities if such facilities are within close proximity of each other.

Section 957.041, F.S., is created to require the department to notify the commission of the profile of the inmate anticipated to be housed in a private correctional facility, and requiring the commission to negotiate and enter into contracts for private correctional services based upon the inmate profile.

Section 957.17, F.S., is created to prohibit the CPC from providing for a price level increase or increase in per diem unless specific authorization is given by the legislature.

Section 196.199 (11), F.S., is created to make property leased to the Correctional Privatization Commission owned by the commission and the state, pursuant to terms of leases and contracts between the CPC and private vendors, therefore not subject to ad valorem taxation by counties .

Section 943.13(5), F.S., is amended to add the Correctional Privatization Commission as an entity to receive documentation of processed fingerprints as part of the certification process for correctional officers.

Section 957.05(2)(a), F.S., is amended to require certification and minimum qualifications for correctional officers at private correctional facilities; require all other employees at private correctional facilities to meet the same training requirements as employees in state-operated correctional facilities; require the commission to receive criminal background information for certification purposes; authorize FDLE to submit fingerprint cards to the FBI for the purpose of conducting background checks on employees of private correctional facilities; require FDLE to accept fingerprints of persons applying for employment in private correctional facilities for the purposes of background checks; and require the FDLE to exchange, state, multi state, and federal criminal history records of persons applying for employment in private correctional facilities.

The bill becomes effective upon becoming law.

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?

Yes, authorization is given to the Florida Corrections Commission to mediate disputes relating to the cooperative transfer agreement.

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

Yes, the Florida Corrections Commission is authorized to study and develop proposals to expand the use of technology and privatization.

- (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.

- 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:

- (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. STATUTE(S) AFFECTED:

ss. 196.199, 943.13, 944.18, 944.185, 944.40, 944,711, 945.603, 945.6031, 945.6035, 957.03, 957.04, 957.041, 957.05, 957.06, 957.061, 957.08, 957.125, 957.13, 957.17, F.S.

E. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

There will be a minimal fiscal impact associated with the increase per diem payments due to the increase in the commission membership.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

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:

There may be a small but undeterminable impact on the contractors.

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:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The amendment adding section (11) to s. 196.199 F.S. deeming real property leased to the Correctional Privatization Commission as owned by the Correctional Privatization Commission would in application exempt this property from ad valorem taxes thus requiring scrutiny pursuant to Article VII, section 18(b) of the Florida Constitution. Within section 18(b), general laws enacted, amended, or repealed by the legislature which may have the anticipated effect of reducing the authority that municipalities or counties have to raise revenues in the aggregate are mandates. This amendment may adversely affect the ability of counties and municipalities to raise revenues in the aggregate.

The Correctional Privatization Commission is currently litigating two separate cases concerning this very issue: *State of Florida Correctional Privatization Commission; Bay County Correctional Facility Finance Corp. vs. Peggy Brannon, Bay County Tax Collector* Case No. 97-3510 (Fourteenth Judicial Court) and *State of Florida Correctional Privatization Commission; Glades County Correctional Facility Finance Corp. vs. Larry Luckey, Glades County Property Appraiser; Jim Greer, Glades County Tax Collector* (Trial Court Case Number - 97-116) (Fla. 2nd DCA Case Number - 98-02683).

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

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

V. COMMENTS:

The amendment adding section (11) to s. 196.199 F.S. deeming real property leased to the Correctional Privatization Commission as owned by the Correctional Privatization Commission which in application exempt this property from ad valorem taxes may be interpreted to be in violation of the single subject rule.

Article III, section 6, of the Florida Constitution provides, "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." In *State v. Canova*, 94 So.2d 181, 184 (Fla.1957), the Florida Supreme Court noted three purposes served by this provision. These purposes are:

- to prevent hodge podge or "log rolling" legislation, i.e., putting two unrelated matters in one act;
- to prevent surprise or fraud by means of provisions in bills of which the titles gave no intimation and which might therefore be overlooked and carelessly and unintentionally adopted; and
- to fairly apprise the people of the subjects of legislation that are being considered in order that they may have an opportunity of being heard on the subject.

Florida courts found violations of the single subject rule in *Heggs v. State* 718 So.2d 263 (Fla. 2nd DCA 1998). In *Heggs*, an act containing sentencing guidelines and provisions addressing domestic violence injunctions violated the single subject rule because it embraced civil and criminal provisions that were not logically connected.

Additional violations were cited in *State v. Johnson*, 616 So.2d 1 (Fla.1993), and *Bunnell v. State*, 453 So.2d 808 (Fla.1984). In *Johnson*, the court held that chapter 89-280, Laws of Florida, violated the single subject provision because it addressed two subjects: "the first being the habitual offender statute, and the second being the licensing of private investigators and their authority to repossess personal property." 616 So.2d at 4. The court stated that the two matters had "absolutely no cogent connection" and were not "reasonably related to any crisis the legislature intended to address." *Id.* Similarly, in *Bunnell v. State*, 453 So.2d 808 (Fla.1984), the court held that a session law violated the single subject requirement when the law created the criminal offense of obstruction of justice by false information and made amendments concerning membership of the Florida Council on Criminal Justice (a noncriminal provision dealing with an executive branch function). *Id.*

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Amendment #1: Creates subsection (1) of s.196.199, F.S., making property leased to the Correctional Privatization Commission owned by the commission pursuant to terms of the leases and thus not subject to ad valorem taxes by counties.

Amendment #2: Amends s. 943.13(5), F.S., by adding the Correctional Privatization Commission as an entity to receive documentation of processed fingerprints as part of the certification process for correctional officers.

Amendment #3A: Amends s. 957.05(2)(a), F.S., by requiring certification and minimum qualifications for correctional officers at private correctional facilities; requiring all other employees at private correctional facilities to meet the same training requirements as employees in state-operated correctional facilities; requiring the commission to receive criminal background information for certification purposes; authorizing FDLE to submit fingerprint cards to the FBI for the purpose of conducting background checks on employees of private correctional facilities; requiring FDLE to accept fingerprints of persons applying for employment in private correctional facilities for the purposes of background checks; and requiring the FDLE to exchange, state, multi state, and federal criminal history records of persons applying for employment in private correctional facilities.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:
Prepared by:

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