

STORAGE NAME: h1445b.ft

DATE: April 16, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: HB 1445 (PCB COR 99-02)

RELATING TO: State Correctional System

SPONSOR(S): Committee on Corrections, Rep. Trovillion, and others

COMPANION BILL(S): HB 883 (c), SB 342 (c), CS/HB 1742 ©

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

- (1) CORRECTIONS (CJCC) YEAS 6 NAYS 0
- (2) COMMUNITY AFFAIRS (PRC) YEAS 9 NAYS 0
- (3) FINANCE AND TAXATION YEAS 15 NAYS 0
- (4) CRIMINAL JUSTICE APPROPRIATIONS (FRC)

I. SUMMARY:

This proposed committee bill:

- provides that property owned and leased to the CPC is not subject to ad valorem taxes by counties;
- 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 removes 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; 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.

The ad valorem exemption on property owned or leased to the CPC will result in a negative fiscal impact of \$.8 million to local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Privatization of Prisons: Privatization of secure correctional facilities first began in Florida with passage of Chapter 85-340, Laws of Florida, which authorized both the Department, and counties to contract with private entities for the operation and maintenance of both state correctional facilities and county detention facilities for the supervision of state and county inmates. Only Bay County took advantage that year of the new statutory authority when it contracted with Corrections Corporation of America (CCA) to operate the Bay County jail.

The 1986 Legislature further clarified the statutes with enactment of Chapter 86-183, Laws of Florida. The statute provided that upon adoption of an ordinance by vote of a majority plus one, the board of county commissioners may enter into a contract with a private entity. The statute does not address cost savings; however, it provided that the county shall appoint a contract monitor to ensure contract compliance.

The 1989 Legislature enacted Chapter 89-526, Laws of Florida, during the Special Session A. The statute authorized the Department to enter into contracts with private corrections firms for the construction and operation of state prisons. The statute does not prescribe a specified cost savings, but requires private facilities contracted by the Department to be built and operated at a "substantial savings."

The 1993 Legislature enacted Chapter 93-406, Laws of Florida, which created the Correctional Privatization Commission. The Commission was created for the expressed purpose of entering into contracts for the construction and operation of private correctional facilities. The Commission consists of five commissioners, is administratively housed in the Department of Management Services (DMS), and is functionally independent from the Department.

Section 196.199, Florida Statutes: Defines governmental property which is exempt from taxation under certain specified conditions.

Section 943.13(5), Florida Statutes: Provides the minimum criteria for law enforcement and correctional officers, including the following:

- Have documentation of his or her processed fingerprints on file with the employing agency, or
- If a private correctional officer - have documentation of his or her processed fingerprints on file with the Department or the Criminal Justice Standards and Training Commission.

If administrative delays are caused by the Department or the Federal Bureau of Investigation and the person has complied with subsections (1) - (4) and (6) - (9), he or she may be employed or appointed for a period not to exceed 1 calendar year from the date he or she was employed or appointed or until return of the processed fingerprints documenting noncompliance with subsection (1) - (4) or subsection (7), whichever occurs first.

[Note: Subsections (1) - (4) of section 943.13, Florida Statutes, list the following *minimum criteria for employment*.

- Subsection (1): Be at least 19 years of age.
- Subsection (2): Be a citizen of the United States, notwithstanding any law of the state to the contrary.
- Subsection (3): Be a high school graduate or its "equivalent" as the Commission has defined the term by rule.
- Subsection (4): Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. Any person who, after July 1, 1981, pleads guilty or nolo contendere to or is found guilty of any felony or of a misdemeanor involving perjury or a false statement is not eligible for employment or appointment as an officer, notwithstanding suspension of sentence or

withholding of adjudication. Notwithstanding this subsection, any person who has pled nolo contendere to a misdemeanor involving a false statement, prior to December 1, 1985, and has such record sealed or expunged will not be deemed ineligible for employment or appointment as an officer.

Subsections (6) - (9) of section 943.15, Florida Statutes, list the following *minimum criteria for employment*.

- Subsection (6): Have passed a physical examination by a licensed physician, based on specifications established by the Commission.
- Subsection (7): Have a good moral character as determined by a background investigation under procedures established by the Commission.
- Subsection (8): Execute and submit to the employing agency or, if a private correctional officer, submit to the appropriate governmental entity an affidavit-of-applicant form, adopted by the Commission, attesting to his or her compliance with subsections (1) - (7). The affidavit must be executed under oath and constitutes an official statement within the purview of section 837.06, Florida Statutes. The affidavit must include conspicuous language that the intentional false execution of the affidavit constitutes a misdemeanor of the second degree. The affidavit must be retained by the employing agency.
- Subsection (9): Complete a Commission-approved basic recruit training program for the applicable criminal justice discipline, unless exempt under this subsection. An applicant who has:
 - Completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal government; and
 - Served as a full-time sworn officer in another state or for the Federal Government for at least one year

is exempt in accordance with section 943.131(2), Florida Statutes, from completing the Commission-approved basic recruit training program.

Section 944.40, Florida Statutes: Provides the penalty for any prisoner confined in any prison, jail, road camp, or other penal institution, state, or county, or municipal, working upon the public roads, or being transported to or from a place of confinement who escapes or attempts to escape, will be guilty of a felony of the second degree, punishable as provided in sections 775.082, 775.083, or 775.084, Florida Statutes. Punishment of imprisonment under this section must run consecutive to any former sentence imposed upon any prisoner.

Section 944.711, Florida Statutes: Requires the Department to develop a request for proposals to construct or construct and operate a single-cell prototype institution or any facility of the Department specified in section 945.025, Florida Statutes. Requires that competitive proposals must be solicited by the Department pursuant to chapter 287, Florida Statutes.

Section 945.603, Florida Statutes: Provides for the powers and duties of the Authority, as follows:

- Assists in the delivery of health care services for inmates in the Department by advising the Secretary of Corrections on the professional conduct of primary, convalescent, dental, and mental health care and the management of costs consistent with quality care;
- Advises the Governor and the Legislature on the status of the Department's health care delivery system; and
- Assures that adequate standards of physical and mental health care for inmates are maintained at all Department institutions.

The Authority has the authority to do the following:

- Review and advise the Secretary of Corrections on cost containment measures the Department could implement.
- Review and make recommendations regarding health care for the delivery of health care services.
- Develop and recommend to the Governor and the Legislature an annual budget for all or part of the operation of the State of Florida prison health care system.
- Review and advise the Secretary of Corrections on contracts between the Department and third parties for quality management programs.
- Review and advise the Secretary of Corrections on minimum standards needed to ensure that an adequate physical and mental health care delivery system is maintained by the Department.
- Review and advise the Secretary of Corrections on the sufficiency, adequacy, and effectiveness of the Department of Corrections' Office of Health Services' quality management program.
- Review and advise the Secretary of Corrections on the projected medical needs of the inmate population and the types of programs and resources required to meet such needs.
- Review and advise the Secretary of Corrections on the adequacy of preservice, inservice, and continuing medical education programs for all health care personnel and, if necessary, recommend changes to such programs within the Department of Corrections.
- Identify and recommend to the Secretary of Corrections the professional incentives required to attract and retain qualified professional health care staff within the prison health care system.
- Coordinate the development of prospective payment arrangements as described in section 408.50, Florida Statutes, when appropriate for the acquisition of inmate health care services.
- Review the Department's health services plan and advise the Secretary of Corrections on its implementation.
- Sue and be sued in its own name and plead and be impleaded.
- Make and execute agreements of lease, contracts, deeds, mortgages, notes, and other instruments necessary or convenient in the exercise of its powers and functions under this act.
- Employ or contract with health care providers, medical personnel, management consultants, consulting engineers, architects, surveyors, attorneys, accountants, financial experts, and such other employees, entities, or agents as may be necessary in its judgment to carry out the mandates of the Authority and fix their compensation.
- Recommend to the Legislature such performance and financial audits of the Office of Health Services in the Department as the Authority considers advisable.

Section 945.6031, Florida Statutes: Requires a report (not less than annually), on the status of the Department's health care system to be provided to the Governor and the Legislature. The report must include, but need not be limited to the following:

- Recommendations regarding cost containment measures the Department could implement.
- Recommendations regarding performance and financial audits of the Department's Office of Health Services.

Requires the Authority to conduct surveys of the physical and mental health care system at each correctional institution at least triennially and report the survey findings for each institution to the Secretary of Corrections.

Requires that deficiencies found by the Authority which are life-threatening or otherwise serious must be immediately reported to the Secretary of Corrections. The Department must take immediate action to correct life-threatening or otherwise serious deficiencies identified by the Authority and within 3 calendar days file a written corrective action plan with the Authority indicating the actions that will be taken to address the deficiencies. Within 60 calendar days following a survey, the Authority must submit a report to the Secretary of Corrections indicating deficiencies found at the institution.

Requires that within 30 calendar days after the receipt of a survey report from the Authority, the Department must file a written corrective action plan with the Authority, indicating the actions which will be taken to address deficiencies determined by the Authority that exist at an institution. Each plan must set forth an estimate of the time and resources needed to correct identified deficiencies.

Requires that the Authority must monitor the Department's implementation of corrective actions which have been taken at each institution to address deficiencies related to the Department's provision of physical and mental health care services found to exist by the Authority.

Provides that failure of the Department to file a corrective action plan or to timely implement the provisions of a corrective action plan correcting identified deficiencies may result in the initiation of the dispute resolution procedures by the Authority pursuant to section 945.6035, Florida Statutes.

Section 945.6035, Florida Statutes: Provides the dispute resolution process between the Authority and the Department, as follows:

- The Authority and the Assistant Secretary for Health Services must attempt to expeditiously resolve any disputes arising between the Authority and the Department regarding the physical and mental health care of inmates.
- If the Authority and the Assistant Secretary for Health Services are unable to resolve a dispute regarding inmate physical or mental health care, the Authority may submit a written notice to the Assistant Secretary for Health Services, setting forth each issue in controversy and the position of the Authority. The Assistant Secretary for Health Services must respond to the Authority within 30 days after receipt of such written notice. The Authority must place the Assistant Secretary's response on the agenda of the next regularly scheduled meeting of the Authority. If the dispute remains unresolved, the Authority may submit a written report to the Secretary of Corrections detailing the Authority's objections. The Assistant Secretary for Health Services must submit a written report setting forth his or her position to the Secretary of Corrections on the issue or issues raised by the Authority within 5 working days after receipt of the submission by the Authority.
- The Secretary of Corrections must review any disputes between the Authority and the Assistant Secretary for Health Services, and must provide written notice to the Authority of his or her decision regarding such disputes within 40 days after the date when the Authority provides written notice of the dispute to the Secretary of Corrections.
- If, at the end of the 40-day period, no resolution has been reached, the Authority is authorized to appeal to the Administration Commission for a review and resolution of the dispute between the Department and the Authority.
- The Authority, within 30 days after receiving written notice of the action of the Secretary of Corrections or, if no response is received, within 30 days after the Secretary of Corrections' response is due, may file an appeal by petition to the Administration Commission, filed with the Secretary of the Administration Commission. The petition must set forth the issues in controversy between the Authority and the Department, in the form and manner prescribed by the Administration Commission, and must contain the reasons for the appeal. The Department has 5 days after delivery of a copy of any such petition to file its reply with the Secretary of the Administration Commission, and the Department must also deliver a copy of its reply to the Authority.
- The issues which may be raised by the Authority on appeal to the Administration Commission are:

- Adoption or implementation by the Department of a health care standard which does not conform to the standard of care generally accepted in the professional health community at large.
- Failure of the Department to comply with an adopted health care standard.
- Failure to timely file a corrective action plan regarding all deficiencies which are determined by the Authority to exist at an institution, as required pursuant to section 945.6031, Florida Statutes.
- Failure to implement a corrective action plan filed pursuant to section 945.6031, Florida Statutes.
- Within 30 days after receipt of a petition from the Authority, the Secretary of the Administration Commission, or his or her designee, must conduct an informal hearing to consider the matters presented in the petition and the reply, and after the informal hearing must promptly submit a report of the findings and recommendations to the Administration Commission. Within 30 days after the informal hearing, the Administration Commission must approve either the position of the Authority or that of the Department. If the position of the Authority is approved, the Administration Commission must set forth whatever remedial measures it deems appropriate and the Department must implement such remedial measures. The decision of the Administration Commission is final and binding on the Authority and the Department will not be subject to appeal pursuant to section 120.68, Florida Statutes.

Section 957.03, Florida Statutes: Provides for the Correctional Privatization Commission, as follows:

- Created the Correctional Privatization Commission, for the purpose of entering into contracts with contractors for the designing, financing, acquiring, leasing, constructing, and operating of private correctional facilities. For administrative purposes, the Commission is created within the Department of Management Services (DMS). The Commission may enter into contracts with contractors for the designing, financing, acquiring, leasing, and constructing of private juvenile commitment facilities.
- Provides for the membership and qualifications of the members for the Commission, including:
 - Five members appointed by the Governor, none of whom may be an employee of the Department or the Department of Juvenile Justice, one of whom must be a minority person as defined in subsection 288.703(3), Florida Statutes, and four of whom must be employed by the private sector.
 - A Commissioner may not have been an employee or a contract vendor of or a consultant to the Department or the Department of Juvenile Justice, or an employee or a contract vendor of or a consultant to a bidder, for 2 years prior to appointment to the Commission and may not become an employee or a contract vendor of or a consultant to the Department or the Department of Juvenile Justice, or an employee or a contract vendor of or a consultant to a bidder, for 2 years following the termination of the appointment to the Commission.
- Provides for terms, organization, and meetings, as follows:
 - The term of office for a member of the Commission is 4 years.
 - A vacancy shall be filled in the same manner as the original appointment and will be for the remainder of the unexpired term only.
 - The Governor appoints from among the members, a chair and a vice chair for terms of 2 years each.
 - Members of the Commission serve without compensation but are entitled to reimbursement for per diem and travel expenses pursuant to section 112.061, Florida Statutes.

- The Commission may employ an executive director and such staff as is necessary, within the limits of legislative appropriation. The Commission may retain such consultants as it deems necessary to accomplish its mission. Neither the executive director nor any consultant retained by the Commission may have been an employee or a contract vendor of or a consultant to the Department or the Department of Juvenile Justice, or an employee or a contract vendor of or a consultant to a bidder, for 2 years prior to employment with the Commission and may not become an employee or a contract vendor of or a consultant to the Department or the Department of Juvenile Justice, or an employee or a contract vendor of or a consultant to a bidder, for 2 years following termination of employment with the Commission.
- The Commission meets upon the call of the chair or a majority of the members of the Commission.
- A majority of the members of the Commission constitutes a quorum.
- In accordance with all provisions of law, the Commission may lease such office space as is necessary, within the limits of legislative appropriation.
- Provides for duties of the Commission, as follows:
 - The Commission must enter into a contract or contracts with one contractor per facility for the designing, acquiring, financing, leasing, constructing, and operating of that facility or, if specifically authorized by the Legislature, separately contract for any such services. The Commission must not enter into any contract to design, acquire, finance, lease, construct, or operate more than two private correctional facilities without specific legislative authorization.
 - In its request for proposals, the Commission must invite innovation and must not require use of prototype designs of state correctional facilities specified or designed by or for the Department or of state juvenile facilities specified or designed by or for the Department of Juvenile Justice. The Commission must not require the use of any prototype design that specially advantages any contractor.
 - The Commission must report to the Speaker of the House of Representatives and the President of the Senate by December 1 each year on the status and effectiveness of the facilities under its management. Each report must also include a comparison of recidivism rates for inmates of private correctional facilities to the recidivism rates for inmates of comparable facilities managed by the Department.
- Provides for the adoption of rules.
- Provides for the support of the Department by the Department of Management Services, as follows:
 - The Commission will be a separate budget entity, and the executive director will be its chief administrative officer.
 - The DMS must provide administrative support and service to the Commission to the extent requested by the executive director.
 - The Commission and its staff are not subject to control, supervision, or direction by the DMS in any manner, including, but not limited to, personnel, purchasing, and budgetary matters, except to the extent as provided in chapters 110, 216, 255, 282, and 287, Florida Statutes, for agencies of the executive branch.
 - The executive director may designate a maximum of two policy making or managerial positions as being exempt from the Career Service System. These two positions may be provided for as members of the Senior Management Service.

Section 957.04, Florida Statutes: Establishes contract requirements for the operation of private correctional facilities maximizing the cost savings, as follows:

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- Be negotiated with the firm found most qualified. However, a contract for private correctional services may not be entered into by the Commission unless the Commission determines that the contractor has demonstrated that it has:
 - The qualifications, experience, and management personnel necessary to carry out the terms of the contract.
 - The ability to expedite the siting, design, and construction of correctional facilities.
 - The ability to comply with applicable laws, court orders, and national correctional standards.
- Indemnify the state and the Department, including their officials and agents, against any and all liability, including, but not limited to, civil rights liability. Proof of satisfactory insurance is required in an amount to be determined by the Commission, following consultation with the Division of Risk Management (Division) of the Department of Insurance. Not less than 30 days prior to the release of each request for proposals by the Commission, the Commission must request the written recommendation of the division regarding indemnification of the state and the Department under this paragraph. Within 15 days after such request, the division must provide a written recommendation to the Commission regarding the amount and manner of such indemnification. The Commission must adopt the division's recommendation unless, based on substantial competent evidence, the Commission determines a different amount and manner of indemnification is sufficient.
- Require that the contractor seek, obtain, and maintain accreditation by the American Correctional Association for the facility under that contract. Compliance with amendments to the accreditation standards of the association is required upon the approval of such amendments by the Commission.
- Require that the proposed facilities and the management plans for the inmates meet applicable American Correctional Association standards and the requirements of all applicable court orders and state law.
- Establish operations standards for correctional facilities subject to the contract. 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.
- Require the contractor to be responsible for a range of dental, medical, and psychological services; diet; education; and work programs at least equal to those provided by the Department in comparable facilities. The work and education programs must be designed to reduce recidivism, and include opportunities to participate in such work programs as authorized pursuant to section 946.006, Florida Statutes.
- Require the selection and appointment of a full-time contract monitor. The contract monitor must be appointed and supervised by the Commission. The contractor is required to reimburse the Commission for the salary and expenses of the contract monitor. It is the obligation of the contractor to provide suitable office space for the contract monitor at the correctional facility. The contract monitor shall have unlimited access to the correctional facility.
- Be for a period of 3 years and may be renewed for successive 2-year periods thereafter. However, the state is not obligated for any payments to the contractor beyond current annual appropriations.
- Each contract entered into for the design and construction of a private correctional facility or juvenile commitment facility must include:
 - Notwithstanding any provision of chapter 255, Florida Statutes, to the contrary, a specific provision authorizing the use of tax-exempt financing through the issuance of tax-exempt bonds, certificates of participation, lease-purchase agreements, or other tax-exempt financing methods. Pursuant to s. 255.25, approval is hereby provided for the lease-purchase of up to two private correctional facilities and any other facility authorized by the General Appropriations Act.

- A specific provision requiring the design and construction of the proposed facilities to meet the applicable standards of the American Correctional Association and the requirements of all applicable court orders and state law.
- A specific provision requiring the contractor, and not the Commission, to obtain the financing required to design and construct the private correctional facility or juvenile commitment facility built under this chapter.
- A specific provision stating that the state is not obligated for any payments that exceed the amount of the current annual appropriation.
- Provides that each contract for the designing, financing, acquiring, leasing, constructing, and operating of a private correctional facility is subject to sections 255.2502 and 255.2503, Florida Statutes.
- Provides that each contract for the designing, financing, acquiring, leasing, and constructing of a private juvenile commitment facility is be subject to sections 255.2502 and 255.2503, Florida Statutes.
- Provides that a contract entered into under this chapter does not accord third-party beneficiary status to any inmate or juvenile offender or to any member of the general public.
- Provides that each contract entered into by the Commission must include substantial minority participation unless demonstrated by evidence, after a good faith effort, as impractical and must also include any other requirements the Commission considers necessary and appropriate for carrying out the purposes of this chapter.
- Provides that notwithstanding section 253.025(8), Florida Statutes, the Board of Trustees of the Internal Improvement Trust Fund need not approve a lease-purchase agreement negotiated by the Commission if the Commission finds that there is a need to expedite the lease-purchase.

[Note: Section 253.024(8), Florida Statutes, was redesignated as section 253.025(7), Florida Statutes, Chapter 94-240, Laws of Florida.]

- Provides that notwithstanding section 253.025 or section 287.057, Florida Statutes, whenever the Commission finds it to be in the best interest of timely site acquisition, it may contract without the need for competitive selection with one or more appraisers whose names are contained on the list of approved appraisers maintained by the Division of State Lands of the Department of Environmental Protection in accordance with section 253.025(7)(b), Florida Statutes. In those instances when the Commission directly contracts for appraisal services, it shall also contract with an approved appraiser who is not employed by the same appraisal firm for review services.

[Note: Section 253.025(7), Florida Statutes, was redesignated as section 253.025(6), Florida Statutes, by Chapter 94-240, Laws of Florida.]

- Provides that notwithstanding section 253.025(7), Florida Statutes, the Commission may negotiate and enter into lease-purchase agreements before an appraisal is obtained. Any such agreement must state that the final purchase price cannot exceed the maximum value allowed by law.

Section 957.05, Florida Statutes: Requires contractors operating private correctional facilities, as follows:

- Each contractor entering into a contract under this chapter is liable in tort with respect to the care and custody of inmates under its supervision and for any breach of contract. Sovereign immunity may not be raised by a contractor, or the insurer of that contractor on the contractor's behalf, as a defense in any action arising out of the performance of any contract entered into under this chapter or as a defense in tort, or any other application, with respect to the care and custody of inmates under the contractor's supervision and for any breach of contract.

- The training requirements, including inservice training requirements, for employees of a contractor that assumes the responsibility for the operation and maintenance of a private correctional facility must meet or exceed the requirements for similar employees of the Department or the training requirements mandated for accreditation by the American Correctional Association, whichever of those requirements are the more demanding. All employee training expenses are the responsibility of the contractor.
- Employees of a contractor who are responsible for the supervision of inmates shall have the same legal authority to rely on nondeadly and deadly force as do similar employees of the Department.
- Any contractor or person employed by a contractor operating a correctional or detention facility pursuant to a contract executed under this chapter shall be exempt from the requirements of chapter 493, Florida Statutes, relating to licensure of private investigators and security officers.

Section 957.06, Florida Statutes: Provides powers and duties not delegable to contractor, as follows:

- Make a final determination on the custody classification of an inmate. The contractor may submit a recommendation for a custody change on an inmate; however, any recommendation made shall be in compliance with the Department's custody classification system.
- Choose the facility to which an inmate is initially assigned or subsequently transferred. The contractor may request, in writing, that an inmate be transferred to a facility operated by the Department. The Commission, the contractor, and a representative of the Department must develop and implement a cooperative agreement for transferring inmates between a correctional facility operated by the Department and a private correctional facility. The Department, the Commission, and the contractor must comply with the cooperative agreement.
- Develop or adopt disciplinary rules or penalties that differ from the disciplinary rules and penalties that apply to inmates housed in correctional facilities operated by the Department.
- Make a final determination on a disciplinary action that affects the liberty of an inmate. The contractor may remove an inmate from the general prison population during an emergency, before final resolution of a disciplinary hearing, or in response to an inmate's request for assigned housing in protective custody.
- Make a decision that affects the sentence imposed upon or the time served by an inmate, including a decision to award, deny, or forfeit gain-time.
- Make recommendations to the Parole Commission with respect to the denial or granting of parole, control release, conditional release, or conditional medical release. However, the contractor may submit written reports to the Parole Commission and must respond to a written request by the Parole Commission for information.
- Develop and implement requirements that inmates engage in any type of work, except to the extent that those requirements are accepted by the Commission.
- Determine inmate eligibility for any form of conditional, temporary, or permanent release from a correctional facility.

Section 957.08, Florida Statutes: Provides that the Department must transfer and assign prisoners, at a rate to be determined by the Commission, to each private correctional facility opened pursuant to this chapter in an amount not less than 90 percent or more than 100 percent of the capacity of the facility pursuant to the contract with the Commission. The prisoners transferred by the Department must represent a cross section of the general inmate population, based on the grade of custody or the offense of conviction, at the most comparable facility operated by the Department.

Section 957.12, Florida Statutes: Prohibits a bidder or potential bidder to have any contact with any member or employee of or consultant to the Commission regarding a request for proposal, a proposal, or the evaluation or selection process from the time a request for proposals for a private correctional facility is issued until the time a notification of intent to award is announced, except if

such contact is in writing or in a meeting for which notice was provided in the Florida Administrative Weekly.

Section 957.125, Florida Statutes: Provides for correctional facilities for youthful offenders, as follows:

- The Commission may enter into contracts in fiscal year 1994-1995 for designing, financing, acquiring, leasing, constructing, and operating three correctional facilities, notwithstanding section 957.07, Florida Statutes. These three facilities must be designed to have a capacity of up to 350 beds each and house inmates sentenced or classified as youthful offenders within the custody of the Department under chapter 958, Florida Statutes. Two of these facilities must be designed to house youthful offenders between the ages of 14 and 18, and one must be designed to house youthful offenders between the ages of 19 and 24.
- These youthful offender facilities must be designed to provide the optimum capacity for programs for youthful offenders designed to reduce recidivism, including, but not limited to:
 - educational and vocational programs,
 - substance abuse and mental health counseling,
 - prerelease orientation and planning,
 - job and career counseling,
 - physical exercise,
 - dispute resolution, and
 - life skills training.

In order to ensure this quality programming, the Commission shall give no more than 30 percent weight to cost in evaluating proposals.

- Effective July 1, 1996, the authority to contract for the operation of two youthful offender facilities must be transferred from the Commission to the Department of Juvenile Justice, and those facilities must be used for male or female committed juvenile offenders. The Department of Juvenile Justice is authorized to modify any operational contract with the same contractor to whom the Commission awarded the contract for these facilities, without rebidding, in order to conform with the requirements of this subsection.
- The Commission must specify the area in which each facility will be located and require that each be located in or near a different metropolitan area in areas of the state close to the home communities of the youthful offenders they house in order to assist in the most effective rehabilitation efforts, including family visitation.

B. EFFECT OF PROPOSED CHANGES:

The bill revises provisions of law relating to the state correctional system, as follows:

- Provides, with respect to a provision of law governing government property tax exemptions, that property leased to the Correctional Privatization Commission is owned by the Commission pursuant to the lease for described purposes.
- Includes the Correctional Privatization Commission as an entity to receive documentation of processed fingerprints as part of the certification process for law enforcement officers.
- Prohibits the escape or attempted escape by inmates in private correctional facilities under contract with the state, county, or municipality and provides penalties with respect to such escapes or attempts to escape.

- Authorizes the Correctional Medical Authority to review and advise the Correctional Privatization Commission on inmate health care and requires the Authority to conduct surveys of the physical and mental health care system at private correctional facilities.
- Provides for the resolution of disputes between the Authority and the Department of Corrections or the Correctional Privatization Commission and to require the decision of the Administration Commission to be final and binding.
- Revises membership on the Correctional Privatization Commission and revises the duties of the Commission.
- Prohibits described conduct by a Commission member, employee, or consultant who reviews, monitors, or approves private correctional facility contracts or who otherwise advises the Commission with respect to private correctional facilities.
- Revises provisions with respect to contract monitors.
- Requires the Department to notify the Commission of the profile of the inmates to be housed in a private correctional facility and requires the Commission to negotiate and enter into contracts for private correctional services based upon inmate profiles.
- Requires certification and minimum qualifications for correctional officers at private correctional facilities.
- Provides for cooperative transfer agreements and restricts the types of inmates to be assigned and transferred to private correctional facilities.
- Authorizes the Department of Law Enforcement to submit fingerprint cards to the FBI for the purpose of conducting background checks on employees of private correctional facilities.
- Provides that the Correctional Privatization Commission is the legal entity to authorize addenda to contracts, to prohibit contract modifications which provide for price level increases and to provide that no private vendor shall enter into a contract with another state to house out-of-state inmates in Florida unless specific legislative authorization is provided.
- Provides for an in-depth analysis on technology and private services contracts and a report to the Legislature.

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?

N/A

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

Yes.

Section 2: Requires the Commission to maintain a file containing documentation of private correctional officers' documentation of processed fingerprints.

Section 4: Requires the Authority to assist in the delivery of health care services for inmates in the legal custody of the Department and assure that adequate standards of physical and mental health care are maintained in all private correctional facilities.

Requires the Authority to review and advise the Commission on contracts between the private vendors and third parties for quality management programs.

Requires the Authority to review and advise the Commission on minimum standards needed to ensure that an adequate physical and mental health care delivery system is maintained by the private vendors under contract pursuant to "The Florida Corrections Code of 1957" and the "Correctional Privatization Commission Act."

Section 5: Requires the Authority to, not less than annually, report to the Governor and the Legislature the status of the health care delivery system provided by vendors operating private correctional facilities.

Requires the Authority to conduct surveys of the physical and mental health care systems at each privately operated correctional institution or facility and report the survey findings to the Commission.

Requires the Commission to take immediate action to correct life-threatening or otherwise serious deficiencies identified by the Authority and within 3 calendar days file a written corrective action plan with the Authority.

Requires the Authority, within 60 days following a survey, to submit a report to the Commission, indicating deficiencies found at the facility.

Requires the Commission, within 30 calendar days after the receipt of a survey report from the Authority, to file a written corrective action plan with the Authority, indicating the actions which will be taken to address deficiencies determined by the Authority to exist at the facility.

Requires the Authority to monitor the implementation of the corrective actions at each facility.

Section 6: Requires the Authority to participate in the identical dispute resolution with the Commission as it currently participates in with the Department.

Section 7: Expands the Commission from five to seven members.

Section 8: Provides that an action of the Commission is not binding unless the action is taken pursuant to an affirmative vote of a majority of members present. Provides for quorums.

Authorizes the Commission to authorize contractors to use inmate labor under certain circumstances.

Requires the Department to assign inmate work crews at the request of the Commission and the contractor.

Authorizes the Commission to authorize contractors to use selected inmates in public work programs subject to certain requirements.

Requires private contractors to develop security procedures to ensure the safety of the public when using inmates in public work programs.

Requires the Commission and the Department to approve contractor security procedures.

Requires for renegotiation or origination of contracts, on or after the effective date of this act, the Commission must require each contractor to develop and annually report to the Legislature outcome performance measures similar to those included in the General Appropriations Act for the Department.

Section 10: Requires a full-time contract monitor for the initial contract award.

Allows the contract monitor position to be less than full-time after 1 year, if deemed appropriate by the Commission.

After the first year of the contract, allows the contract monitor to oversee more than one facility, but no more than three, when the facilities are within close proximity.

Section 11: Requires the Department to provide notice of anticipated inmate profiles, subject to certain requirements.

Section 12: Requires the Commission to require certification of private correctional officers at the private vendor's expense.

Requires that all such officers must meet the minimum qualifications as established by law.

Requires that private vendors provide, at the vendors' expense, at a minimum, training of the same quality and quantity of training as that required by the state for employees of state-operated correctional facilities.

Requires the Commission be the contributor and recipient of all criminal background information necessary for certification by the Criminal Justice Standards and Training Commission.

Section 14: Requires the Commission, the contractor, and a representative of the Department to develop and implement a cooperative transfer agreement for each private correctional facility for transferring inmates between a correctional facility operated by the Department and a private correctional facility.

Section 15: Requires the Department to conform to the cooperative transfer agreement.

Section 17: Requires the Commission to require a background investigation of each applicant for employment at a private correctional facility.

Requires the Commission to use fingerprint checks by FDLE and the FBI.

Requires the Commission to submit the completed fingerprint card to the FDLE.

Authorizes FDLE to submit the fingerprints to the FBI for a national criminal history record check.

Requires FDLE to accept fingerprints of individuals who apply for employment at a private correctional facility and who are required to have background checks under the provisions of this act.

Section 18: Provides that the Commission, as a whole, is the only entity legally recognized to authorize an amendment or addendum to any contract entered into by the Commission.

Prohibits the Commission from authorizing or approving contract modifications for any price level increases or any other upward adjustments to per diem rates, either directly or indirectly, unless specific funding or authorization is provided by the Legislature.

Section 20: Requires the Commission to conduct an in-depth analysis and develop a legislative proposal for the fiscal year 2000-2001 on the future and expanded use of technology and private services contracts in all aspects of corrections.

Requires the Commission to report its findings and recommendations to the Governor and the Legislature in its 1999 annual report.

Section 21: Requires the Commission to enter into a contract with an academic researcher to produce a study comparing recidivism rates for inmates of private

correctional facilities to recidivism rates for inmates of comparable facilities managed by the Department.

Requires the methodology and sampling strategy be developed by consensus and unanimously approved by the director of the Office of Economic and Demographic Research, one professional staff person who has research expertise from the Department, and the academic researcher retained by the Commission.

Requires the report to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than February 1, 2000.

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

N/A

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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

- 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?

N/A

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

N/A

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?

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:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 196.199; 943.13; 944.40; 944.711; 945.40; 945.603; 945.6031; 945.6035; 957.03; 957.04; 957.05; 957.06; 957.08; 957.125; 957.13; Florida Statutes

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Adds subsection 196.199(11), Florida Statutes, creating a government property exemption for building and other improvements which are financed under the provisions of paragraph 957.04(2)(a), Florida Statutes, and are leased to the Commission, must be deemed to be owned by the Commission for the purposes of this section if, by terms of the lease, the building and other improvements will become the property of the Commission or the State at the expiration of the lease.

[Note: Paragraph 957.04(2)(a), Florida Statutes, provides, notwithstanding any provision of chapter 255, Florida Statutes, to the contrary, a specific provision authorizing the use of tax-exempt financing through the issuance of tax-exempt bonds, certificates of participation, lease-purchase agreements, or other tax-exempt financing methods. Approval is also provided for the lease-purchase of up to two private correctional facilities and any other facility authorized by the General Appropriations Act.]

Section 2: Amends subsection 943.13(5), Florida Statutes, amending correctional officers' minimum qualifications for employment or appointment to require the employed or appointed person to have documentation of his or her processed fingerprints on file with the Department, the Commission, or the Criminal Justice Standards and Training Commission. Providing that if administrative delays are caused by the Commission and the person has complied with subsections (1) - (4) and subsections (6) - (9), of section 943.13, Florida Statutes, he or she may be employed or appointed for a period not to exceed 1 calendar year from the date he or she was employed or appointed or until return of the processed fingerprints documenting compliance with subsections (1) - (4) or subsection (7), of section 943.13, Florida Statutes, whichever occurs first.

Section 3: Amends section 944.40, Florida Statutes, applying penalties for escape to prisoners confined in private correction facilities. Providing that an escaped prisoner commits a felony of the second degree.

Section 4: Amends section 945.603, Florida Statutes, as follows:

- Including within the purview of the Correctional Medical Authority, inmates in the legal custody of the Correctional Privatization Commission and all private correctional facilities.
- Clarifying that inmates are in the legal custody of the Department.
- Providing that the Authority is to review and advise the Secretary of Corrections and the Correctional Privatization Commission on contracts between the Department or private vendors.
- Providing that the Authority is to review and advise the Secretary of Corrections and the Correctional Privatization Commission on minimum standards needed to ensure that an adequate physical and mental health care delivery system is maintained by the Department of Corrections and by private vendors under contract pursuant to chapters 944 and 957.

[Note: Chapter 944, Florida Statutes, is the "Florida Corrections Code of 1957." Chapter 957, Florida Statutes, is the "Correctional Privatization Commission Act."]

Section 5: Amends section 945.6031, Florida Statutes, as follows:

- Requiring the not less than annual report to the Governor and the Legislature on the status of the health care delivery system to include the health care systems provided by the Department and vendors operating private correctional facilities under contract.

- Requiring the Authority to conduct surveys on the physical and mental health care system at each publicly and privately operated correctional institution or facility at least triennially and report the survey findings for each institution to the Secretary of Corrections or the Commission.
- Requiring deficiencies found by the Authority which are life-threatening or otherwise serious to be immediately reported to the Secretary of Corrections or the Commission.
- Requiring the Department and the Commission to take immediate action to correct life-threatening or otherwise serious deficiencies identified by the Authority and within 3 calendar days file a written corrective action plan.
- Requiring within 60 calendar days following a survey, the Authority must submit a report to the Secretary of Corrections or the Commission indicating deficiencies found at the institution or facility.
- Requiring within 30 calendar days after the receipt of a survey report from the Authority which will be taken to address deficiencies determined by the Authority to exist at the institution or facility.
- Requiring the Authority to monitor the implementation of corrective actions which have been taken at each institution or facility to address deficiencies related to the provision of physical and mental health care services found to exist by the Authority.
- Providing for initiation of the dispute resolution process for failure to file a corrective action plan or to timely implement the provision of a corrective action plan correcting identified deficiencies for both the Department and the Commission.

Section 6: Amending section 945.6035, Florida Statutes, providing for the inclusion of the Correctional Privatization Commission and appropriate persons of the Commission in the dispute resolution process between the Authority and the Department or Commission. The dispute resolution process is as follows:

- The Authority, the Assistant Secretary for Health Services or the Executive Director of the Correctional Privatization Commission, whoever is appropriate, have a duty to attempt to expeditiously resolve any disputes arising between the Authority and the Department or Commission regarding physical and mental health care of inmates.
- If they are unable to resolve a dispute regarding inmate physical or mental health care, the Authority may submit a written notice to the Assistant Secretary for Health Services or to the Executive Director of the Commission setting forth each issue in controversy and the position of the Authority. The Assistant Secretary for Health Services or the Executive Director of the Commission must respond to the Authority within 30 days after receipt of such written notice. The Authority must place the Assistant Secretary of the Health Services' or the Executive Director of the Commissions' response on the agenda of the next regularly scheduled meeting of the Authority. If the dispute remains unresolved, the Authority may submit a written report to the Secretary detailing the Authority's objections. The Assistant Secretary must submit a written report setting forth his or her position to the Secretary of the Department or the Chair of the Commission on the issue or issues raised by the Authority within 5 working days after receipt of the submission by the Authority.
- The Secretary of Corrections or the Chair of the Commission must review any disputes between the Authority and the Assistant Secretary for Health Services or Executive Director of the Commission, and shall provide written notice to the Authority of his or her decision regarding such disputes within 40 days after the date when the Authority provides written notice of the dispute to the Secretary of Corrections or Chair of the Commission.
- If, at the end of the 40-day period, no resolution has been reached, the Authority is authorized to appeal to the Administration Commission for a review and resolution of the dispute between the Department or the Commission and the Authority.
- The Authority, within 30 days after receiving written notice of the action of the Secretary or Chair, if no response is received, within 30 days after the Secretary of Corrections' or Chair of the

Commissions' response is due, the Authority may file an appeal by petition to the Administration Commission, filed with the Secretary of the Administration Commission. The petition must set forth the issues in controversy between the Authority and the Department or Commission, in the form and manner prescribed by the Administration Commission, and must contain the reasons for the appeal. The Department or Authority has 5 days after delivery of a copy of any such petition to file its reply with the Secretary of the Administration Commission, and the Department or Commission must also deliver a copy of its reply to the Authority.

- The issues which may be raised by the Authority on appeal to the Administration Commission are:
 - Adoption or implementation by the Department or Commission of a health care standard which does not conform to the standard of care generally accepted in the professional health community at large.
 - Failure of the Department or Commission to comply with an adopted health care standard.
 - Failure to timely file a corrective action plan regarding all deficiencies which are determined by the Authority to exist at an institution or facility.
 - Failure to implement a filed corrective action plan.
- Within 30 days after receipt of a petition from the Authority, the Secretary of the Administration Commission, or his or her designee, must conduct an informal hearing to consider the matters presented in the petition and the reply, and after the informal hearing shall promptly submit a report of the findings and recommendations to the Administration Commission. Within 30 days after the informal hearing, the Administration Commission must approve either the position of the Authority or that of the Department or Commission. If the position of the Authority is approved, the Administration Commission shall set forth whatever remedial measures it deems appropriate and the Department or Commission must implement such remedial measures. The decision of the Administration Commission is final and binding on the Authority and the Department or Commission and is not subject to appeal.

Section 7: Effective February 1, 2000, amends sections 957.03(2)(a) and (b), and 957.03(3), Florida Statutes, as follows:

- Amending members and qualifications, as follows:
 - The Commission must consist of seven members appointed by the Governor.
 - Two of the members must be minority persons, as defined in statute.

[Note: Section 288.703(3), Florida Statutes, defines minority persons, as a lawful, permanent resident of Florida who is, as follows: (a) An African American - a person having origins in any of the racial groups of the African Diaspora; (b) A Hispanic American - a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race; (c) An Asian American - a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778; (d) A Native American - a person who has origins in any of the Indian Tribes of North America prior to 1835, upon presentation of proper documentation as established by rule of the Department of Management Services; or (e) An American woman.

- Five of the members must be employed by the private sector.
- A commissioner from the private sector may not have been an employee or contract vendor of or a consultant to the Department or the Department of Juvenile Justice, or an employee or a contract vendor of or a consultant to a bidder, for 2 years prior to appointment to the Commission and may not become an employee or a contract vendor of or a consultant to the Department or the Department of Juvenile Justice, or an employee or contractor vendor of or

a consultant to a bidder, for 2 years following the termination of the appointment to the Commission.

- Amending the terms of office for members to 4 years except that, in order to create staggered terms, when filling the vacancies created by the expiration of terms in calendar year 2001, one person must be appointed to a term which will expire January 31, 2002, two persons will be appointed to terms which will expire January 31, 2004, and two persons will be appointed to terms expiring January 31, 2005.

Section 8: Amends paragraph 957.03(3)(f), Florida Statutes, amending the terms, organization, and meetings, by providing that an action of the Commission is not binding unless the action is taken pursuant to an affirmative vote of a majority of the members present. Not fewer than three members must be present. On or after February 1, 2000, not fewer than five members must be present. The vote must be recorded in the minutes of the meeting.

Amends paragraph 957.03(4)(c), Florida Statutes, deleting the requirement that each report must also include a comparison of recidivism rates for inmates of private correctional facilities to the recidivism rates for inmates of comparable facilities managed by the Department.

Adding paragraphs 957.03(4)(d), (e), and (f), Florida Statutes, as follows:

- Requiring, in the request for proposal, the Commission may authorize the contractor to use inmate labor to assist in the construction of the facility. The Department must assign inmate work crews at the request of the Commission and the contractor.
- Permitting the Commission, in renegotiation or origination of contracts on or after the effective date of this act, to authorize the contractors to use selected inmates in public work programs pursuant to state law. If inmates are placed in public work programs, the private contractor must develop security procedures which must ensure the safety of the public, and the Commission and the Department must approve such procedures.
- Requiring the Commission, in the renegotiation or origination of contracts on or after the effective date of this act, to require each contractor to develop and annually report to the Legislature outcome performance measures similar to those included in the General Appropriations Act for the Department.

Section 9: Creates section 957.031, Florida Statutes, creating prohibited conduct by any Commission member, employee, consultant, or advisor, as follows:

- Provides that any Commission member, employee, or consultant who reviews, monitors, or approves private correctional facility contracts, or who advises the Commission in any manner with respect to private correctional facilities, may not:
 - Solicit or accept, directly or indirectly, any personal benefit or promise of benefit from any bidders, potential bidders, or contractors; or
 - Be an officer, director, trustee, stockholder, or investor in any business entity that:
 - ◆ Has a business relationship of any kind with the Commission;
 - ◆ Is owned or controlled by a business entity that has a business relationship of any kind with the Commission; or
 - ◆ Is owned or controlled by one or more individuals or business entities who, separately or collectively, own or control a business entity that has a business relationship of any kind with the Commission.
- Provides that this section must not be construed to conflict with sections 112.313, 112.3145, or 112.3148, Florida Statutes.

[Note: Section 112.313, Florida Statutes, provides for standards of conduct for public officers, employees of agencies, and local government attorneys. Section 112.3145, Florida Statutes,

provides for disclosure of financial interests and clients represented before agencies. Section 112.3148, Florida Statutes, provides for reporting of and prohibition of receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.]

Section 10: Amends paragraph 957.04(1)(g), Florida Statutes, providing that contracts entered into under this chapter for the operation of correctional facilities, must maximize the cost savings of such facilities and must require the selection and appointment of a full-time contract monitor for the initial contract award. The full-time contract monitor position may be less than full-time after 1 year, if deemed appropriate by the Commission. After the first year, the contract monitor may oversee more than one facility, but no more than three, when such facilities are in close proximity of each other.

Section 11: Creates section 957.041, Florida Statutes, requiring the Department to provide notice of anticipated inmate profile, as follows:

- Providing that prior to the Commission issuing a request for proposal, the Department must notify the Commission, in writing, of the projected profile of the inmates anticipated to be housed in the private correctional facility. The anticipated inmate profile must include, but not be limited to the following factors:
 - Education grade and literacy level;
 - Gender;
 - Custody grades;
 - Medical and psychological grades and
 - Age range.
- Providing that the Commission shall negotiate and enter into contracts for private correctional services based upon the anticipated inmate profile provided by the Department.

Section 12: Amends paragraph 957.05(2)(a), Florida Statutes, amending the requirements for contractors operating private correctional facilities, as follows:

- Requires the Commission to require the certification of private correctional officers at the private vendor's expense under section 943.1395, Florida Statutes.

[Note: Section 943.1395, Florida Statutes, provides for certification for employment or appointment; concurrent certification; reemployment or reappointment; inactive status; revocation; suspension; investigation of law enforcement and correctional officers.]

- Requires that all such officers must meet the minimum qualifications established in section 943.13, Florida Statutes.

[Note: Section 943.13, Florida Statutes, provides for officers' minimum qualifications for employment or appointment.]

- Requires that all other employees of the private vendor who perform their duties at the private correctional facility must receive, at a minimum, the same quality and quantity of training as that required by the state for employees of state-operated correctional facilities.
- Requires that all training expenses are the responsibility of the private vendor.
- Requires that the Commission must be the contributor and recipient of all criminal background information necessary for certification by the Criminal Justice Standards and Training Commission.
- Deletes the requirement that the training requirements, including inservice training requirements, for employees of a contractor that assumes the responsibility for the operation and maintenance of a private correctional facility must meet or exceed the requirements for similar employees of

the Department or the training requirements mandated for accreditation by the American Correctional Association, whichever requirements are the more demanding.

- Deletes the requirement that all employee training expenses are the responsibility of the contractor.

Section 13: Amends subsections 957.06(2) and (7), Florida Statutes, amending the powers and duties not delegable to the contractor, as follows:

- Deletes the requirement that the Commission, the contractor, and a representative of the Department must develop and implement a cooperative agreement for transferring inmates between a correctional facility operated by the Department and a private correctional facility. The Department, the Commission, and the contractor must comply with the cooperative agreement.
- Prohibits the contractor from developing and implementing requirements that inmates engage in any type of work or develop and implement any such work program, except to the extent provided by law or approved by the Commission.

Section 14: Creates section 957.061, Florida Statutes, creating cooperative transfer agreements, requiring the Commission, the contractor, and a representative of the Department to develop and implement a cooperative transfer agreement. The agreement operates as a method for transferring inmates between a correctional facility operated by the Department and a private correctional facility. The Department, the Commission, and the contractor must comply with the cooperative transfer agreement.

Section 15: Amends section 957.08, Florida Statutes, amending capacity requirements, as follows:

- Replaces the term “prisoners” with the term “inmates.”
- Requires the Department to transfer and assign the inmates at a rate to be determined by contract replacing the current Commission determined rate.
- Requires that the types of inmates transferred by the Department must conform to the cooperative transfer agreement developed pursuant to section 957.061, Florida Statutes, as created by this bill.
- Requires that types of inmates transferred represent a cross section of the general inmate population, based on the grade of custody or the offense of conviction, the physical and mental health grade, and the level of education, at the most comparable facility.

Section 16: Amends subsection 957.125(2), Florida Statutes, amending correctional facilities for youthful offenders, as follows:

- Requires youthful offender facilities, contracted under this chapter, to be designed to provide the optimum capacity for programs for youthful offenders designed to reduce recidivism, including, but not limited to the following:
 - Educational and vocational programs;
 - Substance abuse and mental health counseling;
 - Prerelease orientation and planning;
 - Job and career counseling;
 - Physical exercise;
 - Dispute resolution; and
 - Life skills training.

[Note: This section does not change the requirement that the Commission will not give more than 30 percent weight to cost in evaluating proposals.]

Section 17: Amends section 957.13, Florida Statutes, amending requirements for background checks, as follows:

- Requires the Commission to require a background investigation of each applicant for employment at a private correctional facility under contract with the Commission.
- Requires fingerprint checks of each applicant for employment at a private correctional facility under contract with the Commission, by the FDLE and the Federal Bureau of Investigation.
- Requires the Commission to submit the completed fingerprint card to the FDLE, which is authorized to submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
- Requires the FDLE to accept fingerprints of individuals who apply for employment at a private correctional facility and who are required to have background checks under the provisions of this chapter.
- Requires the FDLE to exchange state, multistate, and federal criminal history records of individuals who apply for employment at a private correctional facility with the Commission for the purpose of conducting background checks as required by the Commission.

Section 18: Creates section 957.17, Florida Statutes, creating addenda to contracts and prohibits unauthorized contracts in excess of appropriations, as follows:

- Provides that the Commission, as a whole, is the only entity legally recognized to authorize an amendment or addendum to any contract entered into by the Commission under this chapter.
- Provides that pursuant to section 216.311, Florida Statutes, the Commission, in authorizing or approving contract modifications, may not provide for any price level increases or any other upward adjustments to per diem rates, either directly or indirectly unless specific funding or authorization is provided by the Legislature.

[Note: Section 216.311, Florida Statutes, prohibits unauthorized agency contracts in excess of appropriations and provides a penalty.]

- Provides that this section does not prohibit the Commission from negotiating lower per diem levels whenever possible.

Section 19: Prohibits, notwithstanding any other provision of law, any private vendor operating a private correctional facility located in the state from entering into a contract with another state to house out-of-state inmates unless specific legislative authorization is provided.

Section 20: Requires for fiscal year 2000-2001, the following:

- Requires the FCC to conduct an in-depth analysis and develop legislative proposals on the future and expanded use of technology and private services contracts in all aspects of corrections ranging from prison management, including: mobile surgical units, prison industry, health care, food services, inmate transportation, pharmaceutical products, canteen services, distance learning programs, victim notification hotlines, satellite tracking of offenders, inmate legal services, and community supervision.
- Requires that the analysis must, at a minimum identify, the following: cost efficiencies, technological innovations, and the best corrections practices at both public and private correctional programs, bureaucratic and legal barriers that prevent or nullify effective cost containment strategies in both public and private corrections.

- Requires that the analysis, must, at a minimum identify, the following: determine ways to reduce inmate idleness through partnerships with private industries; and produce plans for the most effective use of general and specialized private sector services in corrections.
- Requires that the FCC must report its findings and recommendations to the Governor and Legislature in its 1999 annual report.

Section 21: Requires for fiscal year 1999-2000, the following:

- Requires the Commission to contract with an academic researcher to produce a study comparing recidivism rates for inmates of private correctional facilities to recidivism rates for inmates of comparable facilities managed by the Department.
- Requires the methodology and sampling strategy to be developed by consensus and unanimously approved by the director of the Office of Economic and Demographic Research, one professional staff person who has research expertise from the Department, and the academic researcher retained by the Commission.
- Requires the methodology and sampling strategy developed to be adhered to in all subsequent and independent analyses or reports produced for the Commission on such recidivism rates.
- Requires the academic researcher under contract to the Commission as well as the researchers for the Department and the Office of Economic and Demographic Research to independently analyze the data collected pursuant to this section and shall collaborate on a single report.
- Requires the report to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than February 1, 2000.
- Requires the December 1, 1999, report by the Commission pursuant to section 957.03(4)(c), Florida Statutes, need not contain a comparison of recidivism rates for inmates of private correctional facilities to the recidivism rates for inmates of comparable facilities managed by the Department.

Section 22: Repeals the following:

- Repeals subsection 957.125(1), Florida Statutes, repealing obsolete language which authorizes the Commission to enter into contracts in fiscal year 1994-1995 for designing, financing, acquiring, leasing, constructing, and operating three correctional facilities, notwithstanding s. 957.07, Florida Statutes. Repealing the requirement that these three facilities must be designed to have a capacity of up to 350 beds each and house inmates sentenced or classified as youthful offenders within the custody of the Department under chapter 958, Florida Statutes. Repealing the requirement that two of these facilities must be designed to house youthful offenders between the ages of 14 and 18, and one shall be designed to house youthful offenders between the ages of 19 and 24.
- Repeals subsection 957.125(3), Florida Statutes, repealing obsolete language which authorizes that effective July 1, 1996, the authority to contract for the operation of two youthful offender facilities must be transferred from the Commission to the Department of Juvenile Justice, and those facilities must be used for male or female committed juvenile offenders. Repeals the authorization of the Department of Juvenile Justice to modify any operational contract with the same contractor to whom the Commission awarded the contract for these facilities, without rebidding, in order to conform with the requirements of this subsection.
- Repeals subsection 957.125(4), Florida Statutes, repealing the requirement for the Commission to specify the area in which each facility will be located and require that each be located in or near a different metropolitan area in areas of the state close to the home communities of the youthful offenders they house in order to assist in the most effective rehabilitation efforts, including family visitation.
- Repeals section 944.711, Florida Statutes, repealing the requirement for the Department to develop a request for proposals to construct or construct and operate a single-cell prototype institution or any facility of the Department specified in section 945.025, Florida Statutes.

Repeals the requirement that competitive proposals must be solicited by the Department pursuant to chapter 287, Florida Statutes.

- Repeals subsection 957.04(8), Florida Statutes, repealing obsolete language which requires for fiscal year 1996-1997, that the Commission may expend appropriated funds to assist in defraying impact costs that are incurred by a municipality or county and that are associated with the opening and operating of a facility under the authority of the Commission and within that municipality or county. That 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. Provides that this subsection applies only to facilities contracted under the Authority of the 1996-1997 General Appropriations Act. This subsection was repealed on July 1, 1997.

Section 23: Except as otherwise provided, provides that the act will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Section 7: This bill **increases the number of commissioners appointed** to the Correctional Privatization Commission from five to seven. Commissioners do not receive salaries, however, their travel expenses are paid by the Commission from a General Revenue appropriation. The average travel cost of a commissioner per meeting is \$600.00. The Commission meets at least every two months. When the Commission has new facilities to contract and construct or other important issues, the commissioners also meet. The commissioners have approximately 15 meetings per fiscal year. The additional travel cost would be approximately \$9,750 per commissioner or **a total of \$19,500 to be appropriated from the General Revenue Fund.**

[Note: This information was provided by the Correctional Privatization Commission.]

Section 21: This bill **requires the Commission to contract with an academic researcher** to produce a study comparing recidivism rates for inmates of private correctional facilities to recidivism rates for inmates of comparable facilities managed by the Department. The bill requires that the methodology and sampling to be developed by consensus and unanimously approved by the director of the Office of Economic and Demographic Research, one professional staff person who has research expertise from the Department, and the academic researcher retained by the Commission. All three participants must independently analyze the data collected and collaborate on a single report. To pay for this expanded study, the Commission will require **an additional \$50,000 to be appropriated from the General Revenue Fund, as a non-recurring item.**

[Note: This information was provided by the Correctional Privatization Commission.]

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:

N/A

2. Recurring Effects:

	<u>FY 99-00</u>	<u>FY 00-01</u>
Local Property Taxes	(\$.8M)	(\$.8M)

Section 1: Creates an exemption from ad valorem taxes, for buildings and other improvements to real property which are financed under the provisions of the "Correctional Privatization Commission Act." Currently, there are pending court cases on whether or not privately operated and financed facilities should pay ad valorem taxes or property taxes. Because of this uncertainty, ad valorem taxes were included in the per diem contract with the private vendors and General Revenue funds were appropriated for this purpose. Before the facilities were operational, the Commission voted to not pay ad valorem taxes because court cases supported the fact that the privately operated correctional facilities are owned by the State of Florida and, therefore, are exempt from ad valorem taxes. In the past, the funds appropriated for these taxes have reverted to General Revenue Unallocated at the end of the fiscal year. The Commission is currently involved in lawsuits with Bay and Glades Counties. The Bay and Glades County Tax Collectors's hold the position that their counties are entitled to the property taxes. Funds have continued to be appropriated for ad valorem taxes because of the pending court cases.

In the Commission's current year appropriation, proviso in Line Item 589, designates \$1,888,520 to pay local property taxes to Bay, Glades, Columbia, and Palm Beach Counties. In the event that the courts determine that these properties are not subject to local property taxes, these funds are to be provided as grants to the local governments in an amount equal to the property taxes. Proviso in the 1999-2000 House Appropriations Bill, Line Item 573, is the same as the 1998-1999 proviso except the payment is in the amount of \$974,362. The balance of the tax appropriations (\$914,158) was deleted from the Commission's budget as a budget cut.

[Note: This information was provided by the Correctional Privatization Commission.]

Facilities identified which would currently qualify for the Ad Valorem Tax exemption are as follows:

- Moore Haven Correctional Facility - Glades County
- South Bay Correctional Facility - Palm Beach County
- Bay Correctional Facility - Columbia County
- Lake City Correctional Facility - Columbia County

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate.

2. Direct Private Sector Benefits:

Those privately managed prisons contracting with the CPC would receive an exemption on property taxes.

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

Indeterminate.

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 municipalities or counties to spend money or to take action that requires a significant expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill reduces the authority of counties to raise revenues; however, the anticipated impact is insignificant and therefore the mandates provision will not apply.

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

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

V. COMMENTS:

The Florida Legislative Office of Program Policy Analysis and Government Accountability Review of Bay Correctional Facility and Moore Haven Correctional Facility, Report No. 97-68, April 1998:

- Although private prison vendor performance during the 1996-97 fiscal year was satisfactory, the private prisons did not provide the state with the 7% level of overall cost savings anticipated by statute.
- The Bay Correctional Facility, operated by the Corrections Corporation of America, was more costly to construct than public prisons constructed during the same period, and did not provide operating cost savings to the state during the 1996-97 fiscal year.
- The Moore Haven Correctional Facility, operated by the Wackenhut Corrections Corporation, was constructed within the cost range of public prison constructed during the same period, and provided a savings of about \$480,000 in operating costs during the 1996-97 fiscal year. This represents savings of approximately 4% over comparable public prison operating costs.
- The Commission did not structure the contracts to ensure that the projected level of operating cost savings was achieved. Requiring vendors to return canteen profits and telephone commissions to the state treasury and restructuring the contract with the Corrections Corporation of America would allow both private prisons to provide the state with approximately 7% operational cost savings.
- The private prisons have introduced some different methods of construction and operation into the state correctional system, such as a more compact prison design and greater use of technology such as cameras in the housing units. However, it is too early to determine if implementation of these alternatives would improve existing Department practices.

[Note: The OPPAGA report is available at <http://www.oppaga.state.fl.us>]

Comment on Sections 20 and 21:

Florida Police Benevolent Association, Inc.: The Florida Police Benevolent Association (FPBA), is concerned regarding the possibility of **Dr. Charles Thomas**, *a criminology professor and the primary investigator and Project Director for the Private Corrections Project at University of Florida*, receiving the contract to conduct the research required in sections 20 and 21 of this bill. *Dr. Charles Thomas is a consultant for the Florida Correctional Privatization Commission and other public and corporate entities*

Florida Commission on Ethics:

**Complaint No. 97- 100 - ADVOCATE'S RECOMMENDATION - Dr. Charles Thomas.
April 28, 1998**

Allegation #1: The Respondent is alleged to have violated section 112.313(7)(a), Florida Statutes, by having contractual relationships with private corrections companies, or companies related to the private corrections industry, which conflict with his duty to objectively evaluate the corrections industry through his research with the University.

Recommendation for Allegation #1: There is probable cause to believe the Respondent violated section 112.313(7)(a), Florida Statutes, by having contractual relationships with private corrections industry, which conflict with his duty to objectively evaluate the corrections industry through his research with the University.

Allegation #2: The Respondent is alleged to have violated section 112.313(7)(a), Florida Statutes, by having contractual relationships with companies that are regulated by, or doing business with, his agency, the Correctional Privatization Commission, which impede the full and faithful discharge of his public duties or create continuing and frequently recurring conflict between his private interest and his duties with the Correctional Privatization Commission.

Recommendation for Allegation #2: There is probable cause to believe that the Respondent violated section 112.313(7)(a), Florida Statutes, by having contractual relationships with companies that are regulated by, or doing business with, his agency, the Correctional Privatization Commission, and which impede the full and faithful discharge of his public duties or create a continuing and frequently recurring conflict between his private interests and his duties with the Correctional Privatization Commission.

**Complaint No. 97-100 - ORDER FINDING PROBABLE CAUSE - Dr. Charles Thomas
May 28, 1998**

Based on the preliminary investigation of this complaint, the Commission on Ethics accepts the recommendation of the Commission's Advocate and finds that there is probable cause to believe that the Respondent, as a professor at the University of Florida and also an OPS employee for the Correctional Privatization Commission, violated Section 112.313(7)(a), Florida Statutes, and therefore orders a public hearing as to whether the Respondent violated Section 112.313(7)(a), Florida Statutes, by having contractual relationships with private corrections companies, or companies related to the private corrections industry, which conflict with his duty to objectively evaluate the corrections industry through his research with the University. Additionally, the Commission accepts the recommendation of the Advocate and finds that there is probable cause to believe that the Respondent violated Section 112.313(7)(a), Florida Statutes, and therefore orders a public hearing as to whether the Respondent violated Section 112.313(7)(a), Florida Statutes, by having contractual relationships with companies that are regulated by, or doing business with, his agency, the Correctional Privatization Commission, and which impede the full and faithful discharge of his public duties or create continuing or frequently recurring conflict between his private interests and his duties with the Correctional Privatization Commission.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on Thursday, May 28, 1998.

**Complaint No. 98-206 - ADVOCATE'S RECOMMENDATIONS - Dr. Charles W. Thomas
February 5, 1999**

Allegation: The Respondent is alleged to have violated section 112.313(7)(a), Florida Statutes, by having a contractual relationship with a company related to the private corrections industry which conflicts with his duty to objectively evaluate the corrections industry through his research with the University.

Recommendation: There is probable cause to believe that the Respondent violated section 112.313(7)(a), Florida Statutes, by having contractual relationships with a company related to the private corrections industry which conflicts with his duty to objectively evaluate the corrections industry through his research with the University.

**Complaint No. 98-206 - ORDER FINDING PROBABLE CAUSE - Dr. Charles W. Thomas
March 12, 1999**

Based on the preliminary investigation of this complaint, the Commission on Ethics accepts the recommendation of the Commission's Advocate and finds that there is probable cause to believe that the Respondent, as a professor at the University of Florida, violated section 112.313(7)(a), Florida Statutes, and therefore orders a public hearing as to whether the Respondent violated the second part of section 112.313(7)(a), Florida Statutes, by performing consulting work for a merger that led to the formation of Prison Realty Company, by serving on Prison Realty Company's board of directors, and by owning its stock, which conflicts with his duty to objectively evaluate the corrections industry through his research with the University.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its meeting on March 30, 1999, the House Committee on Community Affairs adopted an amendment to the bill. The amendment differs from the bill as introduced, as follows:

Section 23: Amends section 945.215, Florida Statutes, removing the prohibition for funds in the Inmate Welfare Trust Fund to be used to purchase or to rent videocassettes, videocassette recorders, or other audiovisual or electronic equipment used primarily for recreational purposes.

[Note: Section 945.215, Florida Statutes, prohibits the use of the Inmate Welfare Trust Fund or any other fund to be used to purchase cable television service, or to rent or purchase the following: videocassettes, videocassette recorders, or other audiovisual or electronic equipment used primarily for recreational purposes.]

Section 24: Creates section 944.145, authorizing a state correctional facility under the Department of Corrections may operate under the same conditions as privately operated facilities with regard to air conditioning of inmate housing and the use and acquisition of wellness-related equipment and facilities, and televisions.

Section 25: Requires the Office of Program Policy Analysis and Governmental Accountability, with assistance from the Florida Corrections Commission, to conduct a study to determine the feasibility of authorizing the Department of Corrections to submit bids to the Correctional Privatization Commission to construct and operate correctional facilities. Requires findings and recommendations from the study to be submitted to the President of the Senate, the Speaker of the House of Representatives by January 1, 2000.

On April 16, 1999, the Committee on Finance and Taxation adopted two amendments as follows:

Amendment 1: This amendment removes the ad valorem exemption for property owned and leased to the CPC.

Amendment 2: This amendment to the amendment [amending Community Affairs' amendment] removes language that permits a state correctional facility under the Department of Corrections to permissively operate facilities with regard to air conditioning of inmate housing.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Johana P. Hatcher

Ken Winker

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Tonya Sue Chavis, Esq.

Joan Highsmith-Smith

AS FURTHER REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Staff Director:

George T. Levesque

Alan Johansen