

STORAGE NAME: h1657.go

DATE: March 13, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1657 (PCB COR 00-01)

RELATING TO: Correctional Facilities

SPONSOR(S): Committee on Corrections and Representative Trovillion

TIED BILL(S):

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

- (1) CORRECTIONS YEAS 8 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates an unnumbered section prohibiting, with exceptions, any state agency or private vendor who operates a correctional facility in the state from entering into a contract with any state, state agency or private vendor operating a correctional facility outside the state, for the purpose of housing inmates from outside the state.

Such housing may occur only if specific, written authorization is obtained from the appropriate Regional Planning Council (or RPC), as established by ch. 186, F.S., or with specific authorization of the Legislature.

Each proposed contract must include pertinent information, and be submitted in substantially final form. In making a determination to approve or disapprove inmate housing contracts, the RPC or the Legislature must consider the risks and benefits to the local community of such housing.

The entity proposing to contract for the inmates files plans, emergency procedures and other items with the Corrections Privatization Commission (or CPC). Contracts must include: provisions that facilities will be approved by the CPC, and be accredited by the American Correctional Association; training requirements; reasonable cost reimbursement provisions; prospective employee screening information; employee use-of-force provisions; and inmate accountability provisions.

Contracts for housing may be withdrawn if continued operation poses a threat to public safety.

This bill prohibits the release of an inmate from another state who is incarcerated as a result of a crime committed in another state.

This bill has an effective date of upon becoming law.

This bill may result in fiscal impact on state or local governments, depending on the impact on changes in the number of prison beds leased for out-of-state inmates.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Private Prisons in Florida

In 1989, the Legislature authorized the Department of Corrections (DOC) to enter into contracts with private corrections firms for the construction and operation of private prisons. (See ch. 89-526, L.O.F.) Implementation of the law was delayed until 1990 and 1991, when the Legislature appropriated funds for the private prison currently known as the Gadsden Correctional Facility. This private facility was initially managed by the DOC.

To further expedite progress toward privatization, the 1993 Legislature created ch. 957, F.S., which established a five-member Correctional Privatization Commission within the Department of Management Services.

The CPC manages contracts with Corrections Corporation of America and Wackenhut Corrections Services to operate:

- | | |
|---|----------------------|
| • One 768-bed prison in Gadsden County | Opened March 1995 |
| • One 750-bed prison in Bay County | Opened July 1995 |
| • One 750-bed prison in Glades County | Opened August 1995 |
| • One 1,318-bed prison in Palm Beach County | Opened February 1997 |
| • One 350-bed prison in Columbia County | Opened February 1997 |

Out-of-State Inmates Housed in Private Correctional Facilities

Although Florida's current private correctional facilities and state correctional institutions house only state inmates, there are no provisions in law prohibiting, regulating or restricting the housing of inmates from other jurisdictions.

Several states, including Arizona and Texas, house out-of-state inmates in private facilities. Concerns regarding these states' experiences with disturbances and escapes by out-of-state inmates in private facilities prompted a review by the Florida Corrections Commission. The commission reports the following incidents, and resulting legislative action:

Texas

- In 1996, Texas experienced five separate incidents of escape or riots where state and local law enforcement intervention was necessary either to capture escaped inmates, or to suppress disturbances caused by out-of-state (Oregon) inmates at private correctional facilities, or both.
- After being recaptured, authorities found that the offenders could not be prosecuted for the escape under either Oregon or Texas statutes.
- In an August, 1996 incident, two Oregon sex offenders escaped from a Houston facility. The private vendor in Texas was not required to notify the state that it had contracted with another state to fill excess bed space.
- Texas officials were not aware that there was excess bed space which had been contracted to another state, and that 240 sex offenders from another state were housed in a minimum custody facility.
- Legislation was enacted in 1997 addressing the issue of which entity should bear the costs of responding to riots, and for apprehending escapees from out-of-state, but housed in state facilities.

Arizona

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

Ohio

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

Minnesota, Oklahoma and Tennessee have private correctional facilities, but have not experienced the same type of problems as Texas and Arizona. According to the Florida Corrections Commission, this may be attributed, in part to the statutory language that regulates prison operations in these three states.

So far, there have been no major disturbances at the private correctional facilities under contract with the State of Florida correctional system.

Presently, inmates in Florida's private correctional facilities are incarcerated for crimes committed in Florida, but there are no contract provisions permitting or restricting the housing of offenders from other state jurisdictions. In fact, there is no specific statutory prohibition against a private firm acquiring land, constructing a facility, and contracting the entire facility to house out-of-state offenders in Florida.

Private Jails in the State of Florida

The following Florida counties have established private jails: Broward, Citrus, Hernando and Bay. Monroe County held a brief contract with a private correctional facility.

Regional Planning Councils

Section 186.504, F.S., creates Regional Planning Councils in each of the several comprehensive planning districts of the state. The Department of Community Affairs administers the legislative appropriations to the eleven RPCs. The RPCs provide planning and technical assistance to Florida's local governments relating to federal and state issues such as growth management, emergency management, and intergovernmental coordination. The Bureau of State Planning also coordinates the departmental review and evaluation of strategic regional policy plans prepared by each planning council.

C. EFFECT OF PROPOSED CHANGES:

This bill regulates the housing of inmates from outside the state in correctional facilities in Florida. The bill applies to private and state operated facilities.

The original (proposed committee) bill prohibited the housing of out-of-state inmates without specific legislative authorization. This bill also permits RPCs to authorize contracts to house out-of-state inmates in institutions in Florida. Those seeking to house out-of-state inmates may come to the Legislature and have a bill passed, or they may file their plans, emergency procedures and other items with the CPC, and secure the approval of the RPC for the area where the prison is located.

The CPC is specifically directed to develop and distribute a listing of specific factors the Legislature and RPCs should consider. Then, the decision as to whether or not to house *any* out-of-state inmates is in the hands of the Legislature, or in the local community, through the RPC in the area where the facility is located. The bill permits the RPC the opportunity to make decisions concerning which type(s) of inmate to house, and the custody level needed.

While ch. 186, F.S., has authorized the RPCs to provide basic policy direction regarding the orderly social, economic, and physical development and growth in the state for a number of years, granting authority to RPCs to consider, and authorize, the locating of inmates from other states into their areas is a major, and significant expansion of their traditional purview.

The lack of experience by the RPCs in the corrections field raises concerns that the many unique technical and safety considerations needed to be addressed would necessitate that considerable assistance be provided to them by the CPC, the Department of Corrections, and other entities.

This bill requires certain specifications in housing contract proposals regarding: (1) the maximum number of inmates to be housed in a specific facility; (2) per diem and other compensation rates; and (3) custody levels, expressed in terms similar to Florida's standards.

Facilities are prohibited from releasing inmates from other states housed pursuant to one of these contracts, and the CPC or the Legislature may withdraw approval for contracts for the sake of public safety.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates an unnumbered section which: provides for the prohibition of contracts to house inmates from another state in correctional facilities in this state unless written authorization is obtained from the appropriate RPC, or the contract is established by specific legislative authorization; provides the CPC to develop risk factors for consideration; provides that proposed contracts be submitted in substantially final form, including pertinent data; provides criteria for withdrawal of contracts; prohibits the release of certain out-of-state inmates; requires the satisfaction of certain conditions prior to approval of contracts; and requires private vendors to enter into preliminary agreements containing certain conditions and requirements.

Section 2. Provides and effective date of upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. **Revenues:**

State government may lose revenues which might have been generated by leasing empty prison beds.

2. **Expenditures:**

State government may incur future incarceration payments should out-of-state inmates commit crimes, or escape, while in a Florida prison.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. **Revenues:**

Local government may lose revenues which might have been generated by leasing empty prison beds.

2. **Expenditures:**

Unless specifically approved by the legislature and the RPCs, local government will not have to bear the costs of recapturing escaped out-of-state inmates, or future costs of incarceration if out-of-state inmates commit crimes while in Florida.

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C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

This bill codifies the concept that the state of Florida should maintain control and oversight not only with respect to its own inmates, but also with regard to receipt and housing of inmates from other states. This bill is not in conflict with ch. 941, F.S., which permits and regulates interstate compacts between correctional systems.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 21, 2000, the Corrections committee unanimously passed a strike-all amendment to the proposed committee bill. The strike-all amendment prohibits specified contracts to house inmates from another state in correctional facilities within the state without approval of the RPC or specific legislative authorization.

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The amendment provides for the submission of proposed contracts to the RPC and the CPC for review and approval, requires certain contract provisions, and written confirmation of specified compliance prior to the contract approval.

The strike-all amendment also requires private vendors to enter into a preliminary agreement with the CPC that meets certain conditions and requirements.

VII. SIGNATURES:

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