

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 832

SPONSOR: Criminal Justice Committee and Senators Mitchell, Lawson and others

SUBJECT: Correctional Privatization Commission

DATE: March 27, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gardner	Cannon	CJ	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	APJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 832 would do three things related to the Correctional Privatization Commission (CPC):

1. CPC employees and commissioners would not be allowed to work as consultants for businesses and entities involved in the criminal justice system;
2. The Department of Management Services (DMS) would assume direct oversight for CPC as well as the support services DMS now provides; and
3. The Office of Program Policy Analysis and Governmental Accountability (OPPAGA) rather than the Auditor General's Office would be responsible for evaluation and review of CPC performance.

This bill becomes effective on July 1, 2001.

This bill substantially amends the following sections of the Florida Statutes: 957.03, 957.07 and 957.11.

## II. Present Situation:

### A brief history of correctional privatization in Florida

In 1985, the Florida Legislature authorized the department to contract with private vendors to build and operate prisons. ch. 85-340, L.O.F., s. 944.105, F.S. Between 1985 and 1993, the department arranged for the construction of one prison which was operated by United States Corrections Corporation. That vendor was acquired in 1998 by Corrections Corporation of

America (CCA), which now runs this facility as Gadsden Correctional Facility, a women's prison.

As one response to the prison overcrowding crisis in the early 1990s, the Legislature created CPC in 1993 for the purpose of entering into contracts for the design, construction, and operation of private prisons. ch. 93-406, L.O.F., s. 957.03, F.S. CPC states competition was another reason for its creation. The Legislature also required private prisons to achieve a 7 percent savings over state run prisons. s. 957.07, F.S. The initial legislation required CPC to create two prisons of at least 750 beds in less than two years. Bay Correctional Facility and Moore Haven Correctional Facility were opened in 1995. Florida is the only state with a separate governmental entity outside the state's correctional agency contracting with private prison vendors. Thirty other states have private prisons.

At the present time there are five privately run prisons in Florida, three adult male, one adult female, and one male youthful offender. Two private vendors hold these contracts, CCA and Wackenhut Corrections Corporation (Wackenhut). Wackenhut operates South Bay Correctional Facility (opened 1997) and Moore Haven Correctional Facility and CCA operates Gadsden Correctional Facility (opened 1995), Lake City Correctional Facility (opened 1997) and Bay Correctional Facility. CPC is currently handling the request for proposals for contracting to build and operate the state's sexually violent predator facility, which will be overseen by the Department of Children and Families.

### **Current expenditures**

While CPC contracts with the private vendors, the Department of Corrections pays the vendors for the services the vendors provide. This money comes out of the department budget, as provided by legislation. In fiscal year 2000-2001, according to CPC, the state appropriated \$74,008,359 from general revenue and \$2,025,906 from trust funds, for a total of \$76,034,265 for payments to the vendors and grants to counties in lieu of property taxes. The State of Florida, through appropriations to the department, pays the private vendors monthly for the per diems as contracted by CPC. CPC sends authorization to the department and the department issues the check.

### **Commission operations**

The CPC consists of five commissioners appointed by the Governor. s. 957.03(2), F.S. According to CPC documents, the budget for salaries and other expenses is \$955,624, slightly more than half of which comes from general revenue and the remainder from trust funds. There are ten paid employees. CPC is located in the Department of Management Services, but not subject to its oversight. Prior to October 1, 1997, DMS had greater oversight than it now does. In 1997, the Legislature amended s. 957.03, F.S., to state that CPC is not subject to the oversight of DMS. ch. 97-296, L.O.F.

Oversight or monitoring of private prisons is a function of CPC for the most part. Chapter 957, F.S., requires CPC to place a contract monitor at each facility to report on performance and compliance. On January 31, 2001, CPC reported having monitors at all of the five prisons. The

department does conduct security reviews and along with the Correctional Medical Authority audits health care services.

Chapter 957, F.S., provides the structure for CPC, s. 957.03, F.S., as well as directions for how to negotiate contracts, s. 957.04, F.S., and some of the basic requirements for the vendors operating the facilities. s. 957.05, F.S. The vendors are not allowed to make quasi-governmental decisions such as inmate classification, disciplinary punishments, and release of inmate recommendations. s. 957.06, F.S. Other sections of ch. 957, F.S., deal with the 7 percent cost savings requirement, capacity and marginal capacity, contract evaluation by the Auditor General, and background checks on people employed by the vendors.

### **OPPAGA reviews and Florida Correction Commission recommendation**

Three OPPAGA progress reports from 2000 raised questions about CPC actions and payments to the vendors. OPPAGA Report No. 99-46, April 2000, criticized CPC for making an additional \$785,936 payment to CCA for operation of the Bay Correctional Facility to off set the reduction in the marginal per diem for inmate population above 90 percent of capacity. OPPAGA Report No. 99-39, March 2000, criticized CPC for the circumstances surrounding CPC paying state taxes for Wackenhut. CPC paid Wackenhut \$263,499 for Florida corporate income tax and \$94,107 for state sales tax, but CPC did not require documentation of Wackenhut's actual tax payments. OPPAGA Report No.99-33, February 2000, noted that CCA made improvements at Lake City Correctional Facility, a youthful offender facility. However, OPPAGA recommended CPC reduce the marginal per diem, and address staff vacancies. The Florida Corrections Commission recommended that the Legislature abolish CPC and transfer all its functions and property to the Department of Corrections. Currently, ss. 957.07 and 957.11, F.S., authorize the Auditor General's Office to review and evaluate the performance of CPC and the private vendors CPC contracts with. However, OPPAGA generally conducts reviews and reports to the Legislature.

### **III. Effect of Proposed Changes:**

Committee Substitute for Senate Bill 832 would prohibit CPC employees and CPC commissioners from also working as consultants for businesses or other entities involved in the criminal justice system, allows the Department of Management Services to oversee the operations of CPC, and requires OPPAGA rather than the Auditor General to review the performance of CPC and the vendors it contracts with.

**Section 1** of this bill would prohibit CPC employees and CPC commissioners from also working as consultants for businesses or other entities involved in the criminal justice system. This prohibition is added to s. 957.03(3)(e), F.S., dealing with the organization of CPC. This prohibition is added to existing prohibitions on CPC employees, commissioners, and consultants also working as consultants for the Department of Corrections, the Department of Juvenile Justice, or a vendor. A violation of this prohibition is punishable under s. 112.317, F.S.

**Section 2** of this bill would amend s. 957.03(6), F.S., to require DMS to assume more of an oversight roll for CPC. The bill makes CPC "subject to the control, supervision, and direction" of DMS, including matters related to personnel, purchasing, and budget. This essentially reverses

ch. 97-296, L.O.F., and returns CPC to DMS oversight. DMS does not have similar oversight over any other commission. DMS generally manages state properties, such as office buildings.

**Section 3** of this bill would amend ss. 957.07 and 957.11, F.S., to remove the Auditor General's Office and empower OPPAGA as the governmental entity responsible for reviewing the performance of CPC and the private vendors CPC contracts with.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.