

HB 893

2017

1 A bill to be entitled
2 An act relating to correctional privatization;
3 amending ss. 957.04, 957.06, 957.07, 957.08, 957.14,
4 957.15, and 957.16, F.S.; transferring the duties of
5 the Department of Management Services concerning
6 private correctional facilities to the Department of
7 Corrections; amending ss. 287.042 and 945.215, F.S.;
8 conforming provisions to changes made by the act;
9 providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Paragraphs (a), (b), (e), and (g) of subsection
14 (1), paragraph (c) of subsection (2), and subsections (5), (6),
15 and (7) of section 957.04, Florida Statutes, are amended to
16 read:

17 957.04 Contract requirements.—

18 (1) A contract entered into under this chapter for the
19 operation of private correctional facilities shall maximize the
20 cost savings of such facilities and shall:

21 (a) Be negotiated with the firm found most qualified.

22 However, a contract for private correctional services may not be
23 entered into by the department ~~of Management Services~~ unless the
24 department ~~of Management Services~~ determines that the contractor
25 has demonstrated that it has:

26 | 1. The qualifications, experience, and management
 27 | personnel necessary to carry out the terms of the contract.

28 | 2. The ability to expedite the siting, design, and
 29 | construction of correctional facilities.

30 | 3. The ability to comply with applicable laws, court
 31 | orders, and national correctional standards.

32 | (b) Indemnify the state and the department, including
 33 | their officials and agents, against any and all liability,
 34 | including, but not limited to, civil rights liability. Proof of
 35 | satisfactory insurance is required in an amount to be determined
 36 | by the department ~~of Management Services~~.

37 | (e) Establish operations standards for correctional
 38 | facilities subject to the contract. However, if the department
 39 | and the contractor disagree with an operations standard, the
 40 | contractor may propose to waive any rule, policy, or procedure
 41 | of the department related to the operations standards of
 42 | correctional facilities which is inconsistent with the mission
 43 | of the contractor to establish cost-effective, privately
 44 | operated correctional facilities. The department ~~of Management~~
 45 | ~~Services~~ shall be responsible for considering all proposals from
 46 | the contractor to waive any rule, policy, or procedure and shall
 47 | render a final decision granting or denying such request.

48 | (g) Require the selection and appointment of a full-time
 49 | contract monitor. The contract monitor shall be appointed and
 50 | supervised by the department ~~of Management Services~~. The

51 contractor is required to reimburse the department ~~of Management~~
52 ~~Services~~ for the salary and expenses of the contract monitor. It
53 is the obligation of the contractor to provide suitable office
54 space for the contract monitor at the correctional facility. The
55 contract monitor shall have unlimited access to the correctional
56 facility.

57 (2) Each contract entered into for the design and
58 construction of a private correctional facility or juvenile
59 commitment facility must include:

60 (c) A specific provision requiring the contractor, and not
61 the department ~~of Management Services~~, to obtain the financing
62 required to design and construct the private correctional
63 facility or juvenile commitment facility built under this
64 chapter.

65 (5) Each contract entered into by the department ~~of~~
66 ~~Management Services~~ must include substantial minority
67 participation unless demonstrated by evidence, after a good
68 faith effort, as impractical and must also include any other
69 requirements the department ~~of Management Services~~ considers
70 necessary and appropriate for carrying out the purposes of this
71 chapter.

72 (6) Notwithstanding s. 253.025(9), the Board of Trustees
73 of the Internal Improvement Trust Fund need not approve a lease-
74 purchase agreement negotiated by the department ~~of Management~~
75 ~~Services~~ if the department ~~of Management Services~~ finds that

76 | there is a need to expedite the lease-purchase.

77 | (7) (a) Notwithstanding s. 253.025 or s. 287.057, whenever
 78 | the department ~~of Management Services~~ finds it to be in the best
 79 | interest of timely site acquisition, it may contract without the
 80 | need for competitive selection with one or more appraisers whose
 81 | names are contained on the list of approved appraisers
 82 | maintained by the Division of State Lands of the Department of
 83 | Environmental Protection in accordance with s. 253.025(8). In
 84 | those instances when the department ~~of Management Services~~
 85 | directly contracts for appraisal services, it shall also
 86 | contract with an approved appraiser who is not employed by the
 87 | same appraisal firm for review services.

88 | (b) Notwithstanding s. 253.025(8), the department ~~of~~
 89 | ~~Management Services~~ may negotiate and enter into lease-purchase
 90 | agreements before an appraisal is obtained. Any such agreement
 91 | must state that the final purchase price cannot exceed the
 92 | maximum value allowed by law.

93 | Section 2. Subsection (2) of section 957.06, Florida
 94 | Statutes, is amended to read:

95 | 957.06 Powers and duties not delegable to contractor.—A
 96 | contract entered into under this chapter does not authorize,
 97 | allow, or imply a delegation of authority to the contractor to:

98 | (2) Choose the facility to which an inmate is initially
 99 | assigned or subsequently transferred. The contractor may
 100 | request, in writing, that an inmate be transferred to a facility

101 operated by the department. The ~~Department of Management~~
102 ~~Services, the contractor,~~ and the department shall develop and
103 implement a cooperative agreement for transferring inmates
104 between a correctional facility operated by the department and a
105 private correctional facility. The department, ~~the Department of~~
106 ~~Management Services,~~ and the contractor must comply with the
107 cooperative agreement.

108 Section 3. Subsections (1) and (4) and paragraph (d) of
109 subsection (5) of section 957.07, Florida Statutes, are amended
110 to read:

111 957.07 Cost-saving requirements.—

112 (1) The department ~~of Management Services~~ may not enter
113 into a contract or series of contracts unless the department
114 determines that the contract or series of contracts in total for
115 the facility will result in a cost savings to the state of at
116 least 7 percent over the public provision of a similar facility.
117 Such cost savings as determined by the department ~~of Management~~
118 ~~Services~~ must be based upon the actual costs associated with the
119 construction and operation of similar facilities or services as
120 determined by the department ~~of Corrections~~ and certified by the
121 Auditor General. The department ~~of Corrections~~ shall calculate
122 all of the cost components that determine the inmate per diem in
123 correctional facilities of a substantially similar size, type,
124 and location that are operated by the department ~~of Corrections,~~
125 including administrative costs associated with central

126 administration. Services that are provided to the department ~~of~~
 127 ~~Corrections~~ by other governmental agencies at no direct cost to
 128 the department shall be assigned an equivalent cost and included
 129 in the per diem.

130 (4) The department ~~of Corrections~~ shall provide a report
 131 detailing the state cost to design, finance, acquire, lease,
 132 construct, and operate a facility similar to the private
 133 correctional facility on a per diem basis. This report shall be
 134 provided to the Auditor General in sufficient time that it may
 135 be ~~certified to the Department of Management Services to be~~
 136 included in the request for proposals.

137 (5)

138 (d) If a private vendor chooses not to renew the contract
 139 at the appropriated level, the department ~~of Management Services~~
 140 shall terminate the contract as provided in s. 957.14.

141 Section 4. Section 957.08, Florida Statutes, is amended to
 142 read:

143 957.08 Capacity requirements.—The Department of
 144 Corrections shall transfer and assign prisoners to each private
 145 correctional facility opened pursuant to this chapter in an
 146 amount not less than 90 percent or more than 100 percent of the
 147 capacity of the facility pursuant to the contract ~~with the~~
 148 ~~Department of Management Services~~. The prisoners transferred by
 149 the Department of Corrections shall represent a cross-section of
 150 the general inmate population, based on the grade of custody or

151 the offense of conviction, at the most comparable facility
152 operated by the department.

153 Section 5. Section 957.14, Florida Statutes, is amended to
154 read:

155 957.14 Contract termination and control of a correctional
156 facility by the department.—A detailed plan shall be provided by
157 a private vendor under which the department shall assume
158 temporary control of a private correctional facility upon
159 termination of the contract. The department ~~of Management~~
160 ~~Services~~ may terminate the contract with cause after written
161 notice of material deficiencies and after 60 workdays in order
162 to correct the material deficiencies. If any event occurs that
163 involves the noncompliance with or violation of contract terms
164 and that presents a serious threat to the safety, health, or
165 security of the inmates, employees, or the public, the
166 department may temporarily assume control of the private
167 correctional facility, ~~with the approval of the Department of~~
168 ~~Management Services~~. A plan shall also be provided by a private
169 vendor for the purchase and temporary assumption of operations
170 of a correctional facility by the department in the event of
171 bankruptcy or the financial insolvency of the private vendor.
172 The private vendor shall provide an emergency plan to address
173 inmate disturbances, employee work stoppages, strikes, or other
174 serious events in accordance with standards of the American
175 Correctional Association.

176 Section 6. Section 957.15, Florida Statutes, is amended to
177 read:

178 957.15 Funding of contracts for operation, maintenance,
179 and lease-purchase of private correctional facilities.—The
180 request for appropriation of funds to make payments pursuant to
181 contracts entered into by the department ~~of Management Services~~
182 for the operation, maintenance, and lease-purchase of the
183 private correctional facilities authorized by this chapter shall
184 be made by the department ~~of Management Services in a request to~~
185 ~~the department~~. The department shall include such request in its
186 budget request to the Legislature as a separately identified
187 item and ~~shall forward the request of the Department of~~
188 ~~Management Services without change. After an appropriation has~~
189 ~~been made by the Legislature to the department for the private~~
190 ~~correctional facilities, the department shall have no authority~~
191 ~~over such funds other than to pay from such appropriation to the~~
192 ~~appropriate private vendor such amounts as are certified for~~
193 ~~payment by the Department of Management Services.~~

194 Section 7. Section 957.16, Florida Statutes, is amended to
195 read:

196 957.16 Expanding capacity.—The department may ~~of~~
197 ~~Management Services is authorized to~~ modify and execute
198 agreements with contractors to expand up to the total capacity
199 of contracted correctional facilities. Total capacity means the
200 design capacity of all contracted correctional facilities

201 increased by one-half as described under s. 944.023(1)(b). Any
 202 additional beds authorized under this section must comply with
 203 the cost-saving requirements set forth in s. 957.07. Any
 204 additional beds authorized as a result of expanded capacity
 205 under this section are contingent upon specified appropriations.

206 Section 8. Subsection (17) of section 287.042, Florida
 207 Statutes, is amended to read:

208 287.042 Powers, duties, and functions.—The department
 209 shall have the following powers, duties, and functions:

210 ~~(17)(a) To enter into contracts pursuant to chapter 957~~
 211 ~~for the designing, financing, acquiring, leasing, constructing,~~
 212 ~~or operating of private correctional facilities. The department~~
 213 ~~shall enter into a contract or contracts with one contractor per~~
 214 ~~facility for the designing, acquiring, financing, leasing,~~
 215 ~~constructing, and operating of that facility or may, if~~
 216 ~~specifically authorized by the Legislature, separately contract~~
 217 ~~for any such services.~~

218 ~~(b) To manage and enforce compliance with existing or~~
 219 ~~future contracts entered into pursuant to chapter 957.~~

220
 221 ~~The department may not delegate the responsibilities conferred~~
 222 ~~by this subsection.~~

223 Section 9. Paragraph (a) of subsection (2) of section
 224 945.215, Florida Statutes, is amended to read:

225 945.215 Inmate welfare and employee benefit trust funds.—

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226 (2) PRIVATELY OPERATED INSTITUTIONS INMATE WELFARE TRUST
227 FUND; PRIVATE CORRECTIONAL FACILITIES.—

228 (a) For purposes of this subsection, privately operated
229 institutions or private correctional facilities are those
230 correctional facilities under contract with the department
231 pursuant to chapter 944 or ~~the Department of Management Services~~
232 ~~pursuant to~~ chapter 957.

233 Section 10. This act shall take effect July 1, 2017.