

By Senator Farmer

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

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

12
13 Section 1. The duties of the Department of Management
14 Services concerning private correctional facilities are
15 transferred by a type two transfer, as defined in s. 20.06,
16 Florida Statutes, from the Department of Management Services to
17 the Department of Corrections. Any binding contract or
18 interagency agreement entered into and between the Department of
19 Management Services concerning private correctional facilities
20 and any other agency, entity, or person shall continue as a
21 binding contract or agreement of the Department of Corrections
22 for the remainder of the term of such contract or agreement.

23 Section 2. Subsection (17) of section 287.042, Florida
24 Statutes, is amended to read:

25 287.042 Powers, duties, and functions.—The department shall
26 have the following powers, duties, and functions:

27 ~~(17) (a) To enter into contracts pursuant to chapter 957 for~~
28 ~~the designing, financing, acquiring, leasing, constructing, or~~
29 ~~operating of private correctional facilities. The department~~

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30 ~~shall enter into a contract or contracts with one contractor per~~
31 ~~facility for the designing, acquiring, financing, leasing,~~
32 ~~constructing, and operating of that facility or may, if~~
33 ~~specifically authorized by the Legislature, separately contract~~
34 ~~for any such services.~~

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

37
38 ~~The department may not delegate the responsibilities conferred~~
39 ~~by this subsection.~~

40 Section 3. Paragraph (a) of subsection (3) of section
41 945.215, Florida Statutes, is amended to read:

42 945.215 Inmate welfare and employee benefit trust funds.—

43 (3) PRIVATELY OPERATED INSTITUTIONS INMATE WELFARE TRUST
44 FUND; PRIVATE CORRECTIONAL FACILITIES.—

45 (a) For purposes of this subsection, privately operated
46 institutions or private correctional facilities are those
47 correctional facilities under contract with the department
48 pursuant to chapter 944 or ~~the Department of Management Services~~
49 ~~pursuant to~~ chapter 957.

50 Section 4. Paragraphs (a), (b), (e), and (g) of subsection
51 (1), paragraph (c) of subsection (2), and subsections (5), (6),
52 and (7) of section 957.04, Florida Statutes, are amended to
53 read:

54 957.04 Contract requirements.—

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

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

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59 However, a contract for private correctional services may not be
60 entered into by the department ~~of Management Services~~ unless the
61 department ~~of Management Services~~ determines that the contractor
62 has demonstrated that it has:

63 1. The qualifications, experience, and management personnel
64 necessary to carry out the terms of the contract.

65 2. The ability to expedite the siting, design, and
66 construction of correctional facilities.

67 3. The ability to comply with applicable laws, court
68 orders, and national correctional standards.

69 (b) Indemnify the state and the department, including their
70 officials and agents, against any and all liability, including,
71 but not limited to, civil rights liability. Proof of
72 satisfactory insurance is required in an amount to be determined
73 by the department ~~of Management Services~~.

74 (e) Establish operations standards for correctional
75 facilities subject to the contract. However, if the department
76 and the contractor disagree with an operations standard, the
77 contractor may propose to waive any rule, policy, or procedure
78 of the department related to the operations standards of
79 correctional facilities which is inconsistent with the mission
80 of the contractor to establish cost-effective, privately
81 operated correctional facilities. The department is ~~of~~
82 ~~Management Services~~ shall be responsible for considering all
83 proposals from the contractor to waive any rule, policy, or
84 procedure and shall render a final decision granting or denying
85 such request.

86 (g) Require the selection and appointment of a full-time
87 contract monitor. The contract monitor shall be appointed and

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88 supervised by the department ~~of Management Services~~. The
89 contractor is required to reimburse the department ~~of Management~~
90 ~~Services~~ for the salary and expenses of the contract monitor. It
91 is the obligation of the contractor to provide suitable office
92 space for the contract monitor at the correctional facility. The
93 contract monitor shall have unlimited access to the correctional
94 facility.

95 (2) Each contract entered into for the design and
96 construction of a private correctional facility or juvenile
97 commitment facility must include:

98 (c) A specific provision requiring the contractor, and not
99 the department ~~of Management Services~~, to obtain the financing
100 required to design and construct the private correctional
101 facility or juvenile commitment facility built under this
102 chapter.

103 (5) Each contract entered into by the department ~~of~~
104 ~~Management Services~~ must include substantial minority
105 participation unless demonstrated by evidence, after a good
106 faith effort, as impractical and must also include any other
107 requirements the department ~~of Management Services~~ considers
108 necessary and appropriate for carrying out the purposes of this
109 chapter.

110 (6) Notwithstanding s. 253.025(9), the Board of Trustees of
111 the Internal Improvement Trust Fund need not approve a lease-
112 purchase agreement negotiated by the department ~~of Management~~
113 ~~Services~~ if the department ~~of Management Services~~ finds that
114 there is a need to expedite the lease-purchase.

115 (7) (a) Notwithstanding s. 253.025 or s. 287.057, whenever
116 the department ~~of Management Services~~ finds it to be in the best

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117 interest of timely site acquisition, it may contract without the
118 need for competitive selection with one or more appraisers whose
119 names are contained on the list of approved appraisers
120 maintained by the Division of State Lands of the Department of
121 Environmental Protection in accordance with s. 253.025(8). In
122 those instances when the department ~~of Management Services~~
123 directly contracts for appraisal services, it must ~~shall~~ also
124 contract with an approved appraiser who is not employed by the
125 same appraisal firm for review services.

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

131 Section 5. Subsection (2) of section 957.06, Florida
132 Statutes, is amended to read:

133 957.06 Powers and duties not delegable to contractor.—A
134 contract entered into under this chapter does not authorize,
135 allow, or imply a delegation of authority to the contractor to:

136 (2) Choose the facility to which an inmate is initially
137 assigned or subsequently transferred. The contractor may
138 request, in writing, that an inmate be transferred to a facility
139 operated by the department. The ~~Department of Management~~
140 ~~Services, the contractor,~~ and the department shall develop and
141 implement a cooperative agreement for transferring inmates
142 between a correctional facility operated by the department and a
143 private correctional facility. The department, ~~the Department of~~
144 ~~Management Services,~~ and the contractor must comply with the
145 cooperative agreement.

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146 Section 6. Subsections (1) and (4) and paragraph (d) of
147 subsection (5) of section 957.07, Florida Statutes, are amended
148 to read:

149 957.07 Cost-saving requirements.—

150 (1) The department ~~of Management Services~~ may not enter
151 into a contract or series of contracts unless the department
152 determines that the contract or series of contracts in total for
153 the facility will result in a cost savings to the state of at
154 least 7 percent over the public provision of a similar facility.
155 Such cost savings as determined by the department ~~of Management~~
156 ~~Services~~ must be based upon the actual costs associated with the
157 construction and operation of similar facilities or services as
158 determined by the department ~~of Corrections~~ and certified by the
159 Auditor General. The department ~~of Corrections~~ shall calculate
160 all of the cost components that determine the inmate per diem in
161 correctional facilities of a substantially similar size, type,
162 and location that are operated by the department ~~of Corrections~~,
163 including administrative costs associated with central
164 administration. Services that are provided to the department ~~of~~
165 ~~Corrections~~ by other governmental agencies at no direct cost to
166 the department shall be assigned an equivalent cost and included
167 in the per diem.

168 (4) The department ~~of Corrections~~ shall provide a report
169 detailing the state cost to design, finance, acquire, lease,
170 construct, and operate a facility similar to the private
171 correctional facility on a per diem basis. This report shall be
172 provided to the Auditor General in sufficient time that it may
173 be ~~certified to the Department of Management Services to be~~
174 included in the request for proposals.

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175 (5)

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

179 Section 7. Section 957.08, Florida Statutes, is amended to
180 read:

181 957.08 Capacity requirements.—The department ~~of Corrections~~
182 shall transfer and assign prisoners to each private correctional
183 facility opened pursuant to this chapter in an amount not less
184 than 90 percent or more than 100 percent of the capacity of the
185 facility pursuant to the contract ~~with the Department of~~
186 ~~Management Services~~. The prisoners transferred by the department
187 ~~of Corrections~~ shall represent a cross-section of the general
188 inmate population, based on the grade of custody or the offense
189 of conviction, at the most comparable facility operated by the
190 department.

191 Section 8. Section 957.14, Florida Statutes, is amended to
192 read:

193 957.14 Contract termination and control of a correctional
194 facility by the department.—A detailed plan shall be provided by
195 a private vendor under which the department shall assume
196 temporary control of a private correctional facility upon
197 termination of the contract. The department ~~of Management~~
198 ~~Services~~ may terminate the contract with cause after written
199 notice of material deficiencies and after 60 workdays in order
200 to correct the material deficiencies. If any event occurs that
201 involves the noncompliance with or violation of contract terms
202 and that presents a serious threat to the safety, health, or
203 security of the inmates, employees, or the public, the

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204 department may temporarily assume control of the private
205 correctional facility, ~~with the approval of the Department of~~
206 ~~Management Services~~. A plan shall also be provided by a private
207 vendor for the purchase and temporary assumption of operations
208 of a correctional facility by the department in the event of
209 bankruptcy or the financial insolvency of the private vendor.
210 The private vendor shall provide an emergency plan to address
211 inmate disturbances, employee work stoppages, strikes, or other
212 serious events in accordance with standards of the American
213 Correctional Association.

214 Section 9. Section 957.15, Florida Statutes, is amended to
215 read:

216 957.15 Funding of contracts for operation, maintenance, and
217 lease-purchase of private correctional facilities.—The request
218 for appropriation of funds to make payments pursuant to
219 contracts entered into by the department ~~of Management Services~~
220 for the operation, maintenance, and lease-purchase of the
221 private correctional facilities authorized by this chapter shall
222 be made by the department ~~of Management Services in a request to~~
223 ~~the department~~. The department shall include such request in its
224 budget request to the Legislature as a separately identified
225 item ~~and shall forward the request of the Department of~~
226 ~~Management Services without change. After an appropriation has~~
227 ~~been made by the Legislature to the department for the private~~
228 ~~correctional facilities, the department shall have no authority~~
229 ~~over such funds other than to pay from such appropriation to the~~
230 ~~appropriate private vendor such amounts as are certified for~~
231 ~~payment by the Department of Management Services.~~

232 Section 10. Section 957.16, Florida Statutes, is amended to

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233 read:

234 957.16 Expanding capacity.—The department may ~~of Management~~
235 ~~Services is authorized to~~ modify and execute agreements with
236 contractors to expand up to the total capacity of contracted
237 correctional facilities. Total capacity means the design
238 capacity of all contracted correctional facilities increased by
239 one-half as described under s. 944.023(1)(b). Any additional
240 beds authorized under this section must comply with the cost-
241 saving requirements set forth in s. 957.07. Any additional beds
242 authorized as a result of expanded capacity under this section
243 are contingent upon specified appropriations.

244 Section 11. This act shall take effect July 1, 2021.