

STORAGE NAME: hb1657.cor

DATE: March 6, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
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)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 1657 would prohibit any state agency or private vendor who operates a correctional facility in the state to enter into a contract with any state, state agency or private vendor operating a correctional facility outside the state to house inmates from out of state unless specific legislative authorization is provided or the entity proposing to contract for the inmates files plans, emergency procedures and other items with the Corrections Privatization Commission and also receives the approval of the Regional Planning Council for the area in which the prison is located. Provisions allow the decision as to whether to house *any* out-of-state inmates at all to be made by the local community where the facility is located or by the legislature. The bill permits the Legislature or the local community to make the decision as to what types or inmates should be accepted.

This bill does not appear to have a fiscal impact on state or local governments.

This bill takes effect upon becoming law.

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

HB 1657 supports the concept that the state of Florida would support and maintain only its own inmates in the absence of specific legislative or local governmental approval for the receipt of inmates from other states. This bill is not in conflict with Chapter 941, Florida Statutes which permits and regulates interstate compacts between correctional systems.

B. PRESENT SITUATION:

The History of the Five 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 Chapter 89-526, Laws of Florida.) Implementation of the law was delayed, and in 1990 and 1991, the Legislature again appropriated funds for the private prison currently known as Gadsden Correctional Facility. This private facility was initially managed by the DOC.

To further expedite the progress toward privatization, the 1993 Legislature created Chapter 957, Florida Statutes, which established a five-member Correctional Privatization Commission (CPC) within the Department of Management Services. (See Chapter 93-406, Laws of Florida)

Description of Current Private Correctional Facilities

The Correctional Privatization Commission 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 escape of out-of-state

inmates in private facilities prompted a review by the Florida Corrections Commission. They report the following incidents and resulting legislative action:

Texas

- In 1996, Texas experienced five separate incidents of escape and/or riots where state and local law enforcement intervention was necessary to capture escaped inmates or suppress disturbances caused by out-of-state (Oregon) inmates at private correctional facilities.
- 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 the minimum custody facility.
- Legislation passed in 1997 which addressed the issue of who should bear the costs of apprehending out-of-state escapees and responding to riots.

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 passed in 1997 regulating the housing of such inmates by requiring the 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. All six inmates had been sent to Youngstown from the District of Columbia. This facility is operated by Corrections Corporation of America. Four of the inmates were serving sentences for murder. Another was facing pending charges of murder. One 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 not experienced the same type of problems as have been experienced in Texas and Arizona. According to the Florida Corrections Commission, this may be attributed, in part to the statutory language that regulates operation in these three states.

There have been no major disturbances at the private correctional facilities under contract with the State of Florida correctional system.

Presently, Florida's private correctional facilities house only state inmates and there are no contract provisions permitting or restricting the housing of offenders from other state jurisdictions. 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 Regional Planning Councils. The regional planning councils 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:

In the originally proposed committee bill, the bill prohibited the housing of out-of-state inmates unless specific legislative authorization is provided. HB 1657 now permits regional planning councils and the Correctional Privatization Commission to provide authorization in limited circumstances.

HB 1657 regulates the housing of inmates from outside the state at state owned institutions. The bill would apply equally to the operators of private facilities and the Department of Corrections.

The bill provides for two different procedures for approval to house inmates from another state which can be followed: (1) those seeking to house out-of-state inmates may come to the Legislature and have a bill passed; or (2) those seeking to house out-of-state inmates will have to file their plans, emergency procedures and other items with the Corrections Privatization Commission and also receive the approval of the Regional Planning Council for the area in which the prison is located. The Correctional Privatization Commission is specifically directed to develop and distribute a listing of specific factors the Regional Planning Councils should consider. This provision allows the decision as to whether to house *any* out-of-state inmates at all in the hands of the Legislature or the local community in which the facility is located. The bill permits the Regional Planning Council to make the decision concerning the custody level and specific offenses for which inmates may be housed.

While Regional Planning Councils have been providing basic policy direction regarding the orderly social, economic, and physical growth of the state, pursuant to Chapter 186, F.S., for a number of years, the decision to permit these entities to consider the locating of inmates from other states into the area of the Regional Planning Council breaks new

ground for the traditional areas of review for planning councils. Many different safety considerations will need to be addressed, which have not previously been the subject of planning council actions. The councils should receive assistance in developing criteria from the Correctional Privatization Commission, the Department of Corrections, and any other entity the council believes will be helpful.

HB 1657 requires contract restrictions regarding (1) maximum number of inmates; (2) per diem and other compensation rates to be paid; (3) custody level terms compatible to the state of Florida's; (4) withdrawal of approval, and (5) prohibition for inmate from another state housed pursuant to one of these contracts to be released in the state of Florida.

D. SECTION-BY-SECTION ANALYSIS:

Originally, the proposed committee bill would have prohibited against any municipality, county, state agency or private vendor operating a correctional facility in the state to enter into a contract with any municipality, county, state agency or private vendor operating a correctional facility to house out-of-state inmates unless specific legislative authorization is provided.

HB 1657 provides the following changes:

Section 1. This bill provides for the prohibition of contracts to house inmates from another state in correctional facilities in this state without the approval of Regional Planning Councils or specific legislative authorization; provides for the submission for the proposed contracts to the Regional Planning Council and the Correctional Privatization Commission for review and approval if legislative review is not sought, and to the Legislature if legislative review will be obtained. In those cases where legislative review is not sought, it provides for written confirmation of specified compliance prior to contract approval on various issues such as escapes and emergency situations; provides for specific contract restrictions; provides for the specific conditions and requirements for preliminary agreements; and provides that inmates housed as inmates from another state are subject to the same governing laws and criminal sanctions for infractions as inmates defined in this state's correctional system; and

Section 2. This bill takes effect upon becoming 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 the out of state inmate commit a crime while in a Florida prison or when escaped from the institution.

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 regional planning councils, 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.

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.

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C. OTHER COMMENTS:

None.

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 prohibited specified contracts to house inmates from another state in correctional facilities within the state without approval of the Regional Planning Council or specific legislative authorization. The amendment provided for the submission of proposed contracts to the Regional Planning Council and the Correctional Privatization Commission for review and approval; required certain contract provisions; and the written confirmation of specified compliance prior to the contract approval.

The strike-all amendment also required private vendors to enter into a preliminary agreement that meet certain conditions and requirements with the Correctional Privatization Commission.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

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