

**STORAGE NAME:** h0797b.sa.doc  
**DATE:** March 7, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
STATE ADMINISTRATION  
ANALYSIS**

**BILL #:** HB 797  
**RELATING TO:** Correctional Privatization Commission  
**SPONSOR(S):** Representative(s) Allen; Wiseman; and Cantens  
**TIED BILL(S):**

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

- (1) STATE ADMINISTRATION YEAS 4 NAYS 1
  - (2) CRIME PREVENTION, CORRECTIONS & SAFETY
  - (3) FISCAL POLICY & RESOURCES
  - (4) COUNCIL FOR SMARTER GOVERNMENT
  - (5)
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I. SUMMARY:

The Florida Department of Corrections (DOC) can enter into contracts with private corrections firms for the construction and operation of private prisons. The privatization of correctional facilities was undertaken to reduce the costs associated with the state's rising inmate population and to identify innovative and effective approaches to corrections.

The Correctional Privatization Commission (CPC) was created in 1993 for the purpose of entering into contracts for the designing, financing, acquiring, leasing, constructing, and operating of private correctional facilities. The CPC may not enter into a contract unless it will result in a cost savings to the state of at least 7 percent over the public provision of a similar facility. The CPC currently oversees the operation of five facilities (see "Present Situation" section of this bill analysis for a listing). The CPC is housed administratively in the Department of Management Services, but is not subject to its control. The Commission is overseen by 5 Commissioners appointed by the Governor. The CPC was created as an entity separate from the DOC in order to encourage private vendors to be innovative in the design, construction, and operation of correctional facilities.

HB 797 abolishes the CPC, and transfers all its powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations or other funds of the CPC to the DOC utilizing a type two transfer. Additionally, HB 797 removes all references to the CPC in statute.

There does not appear to be a fiscal impact on local governments; however, there is a fiscal impact on state government. See "Fiscal Analysis & Economic Impact Statement" section for details.

*A "strike-everything" amendment was adopted in the Committee on State Administration, which is traveling with the bill. The amendment moves the CPC from the Department of Management Service's nominal control, and places it instead under the newly-created Cabinet post of Chief Financial Officer (see HB 577 [2002]), in a type I transfer (rather than a type II transfer, as in the original bill).*

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Florida Department of Corrections**

The Florida Department of Corrections (DOC) is one of the largest state agencies in Florida and runs the fourth largest state prison system in the nation. The DOC employs approximately 26,000 personnel and has an annual budget of more than \$1.6 billion. Florida has a total of 126 correction facilities: 57 major prisons, including 5 privately run prisons; 29 work camps; 30 community correctional centers (work release facilities); four forestry camps, and one youthful offender boot camp. The DOC is responsible for the custody of 72,405 inmates as well as the oversight of 203,149 offenders and absconders under probation and community supervision. In May of 1999,<sup>1</sup> the DOC reorganized to create a more centralized model; decisions that were formerly made at the regional or prison level are now made at the central office level.<sup>2</sup>

Chapter 89-526, L.O.F., allowed the DOC to enter into contracts with private corrections firms for the construction and operation of private prisons. Section 944.105, F.S., states that any contract between the DOC and a private entity must offer a substantial savings to the DOC, must provide the same quality of services as those provided in public prisons, and the Legislature must give specific appropriations for the contract. The privatization of correctional facilities<sup>3</sup> was undertaken for the following purposes: to reduce the costs associated with the state's rising inmate population and to identify innovative and effective approaches to corrections.<sup>4</sup>

**Correctional Privatization Commission**

Chapter 93-406, L.O.F., created the Correctional Privatization Commission (CPC). The CPC is housed administratively in the Department of Management Services. The Department of Management Services provides administrative support and service to the CPC to the extent

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<sup>1</sup> Ch. 99-271, L.O.F.

<sup>2</sup> All information in this paragraph is pursuant to a February 8, 2002, E-mail from DOC staff.

<sup>3</sup> Section 946.503, F.S., defines a "private correctional facility" as a facility authorized by Chapter 944, F.S., regarding private contracts entered into by the DOC, or Chapter 957, F.S., which establishes the Correctional Privatization Commission.

<sup>4</sup> Office of Program Policy Analysis and Government Accountability, Report No. 95-12, "Review of Correctional Privatization", November 13, 1995.

requested by the CPC, but the CPC and its staff are not subject to control, supervision, or direction by the Department of Management Services. The Commission is overseen by 5 Commissioners appointed by the Governor.<sup>5</sup>

The CPC was created for the purpose of entering into contracts with contractors for the designing, financing, acquiring, leasing, constructing, and operating of private correctional facilities.<sup>6</sup> The CPC may also enter into contracts for the operation of private juvenile commitment facilities. The mission of the CPC is "to foster an environment of competition between the public and private sector in order to ensure state services are performed in the most effective and efficient manner."<sup>7</sup> The CPC is administratively housed in the Department of Management Services, and is independent of the DOC. The CPC was created as an entity separate from the DOC in order to encourage private vendors to be innovative in the design, construction, and operation of correctional facilities.<sup>8</sup> Accordingly, the CPC is allowed to waive any rule, policy, or procedure of the DOC related to the operation standards of correctional facilities that are inconsistent with the mission of the commission to establish cost-effective, privately operated correctional facilities.<sup>9</sup>

Chapter 957, F.S., outlines the composition and the responsibilities of the CPC. The commission consists of five members appointed by the Governor, none of whom may be an employee of the DOC or the Department of Juvenile Justice, one of whom must be a minority person, and four of whom must be employed by the private sector. The term of office for a member of the CPC is four years. Members of the commission serve without compensation, but are entitled to reimbursement for per diem and travel expenses. The CPC is a separate budget entity, and the executive director is its chief administrative officer.

The CPC is required to enter into a contract or contracts with one contractor for the designing, acquiring, financing, leasing, constructing, and operating of a private correctional facility, unless the Legislature permits a separate contract for any additional services necessary for the operation of the particular correctional facility. In its request for proposals for a particular facility, the CPC must encourage innovation and cannot require the use of prototype designs of state correctional facilities specified or designed by the DOC or the Department of Juvenile Justice. Accordingly, the commission must not require the use of any prototype design that specially advantages any one contractor.<sup>10</sup>

Any contract entered into by the CPC must maximize cost savings. In addition, the contract must be negotiated with the most qualified firm, and the particular contractor must have the qualifications, experience, and management personnel necessary to carry out the terms of the contract.<sup>11</sup>

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<sup>5</sup> Section 957.03 (2), F.S.

<sup>6</sup> Office of Program Policy Analysis and Government Accountability, Report No. 95-12, "Review of Correctional Privatization," November 13, 1995.

<sup>7</sup> Correctional Privatization Commission, Trends and Conditions Statement, received by facsimile transmission from Executive Director, C. Mark Hodges, on March 8, 2001.

<sup>8</sup> *Id.*

<sup>9</sup> Section 957.04(1)(e), F.S.

<sup>10</sup> Section 957.03(4), F.S.

<sup>11</sup> The contractor is required to seek and maintain accreditation by the American Correctional Association for the facility under that contract, and the proposed facilities and management plans for the inmates must meet applicable American Correctional Association standards as well as meet the requirements of all applicable court orders and state law. The contractor is responsible for a range of dental, medical, and psychological services; diet; education; and work programs at least equal to provided by the DOC in its operation of state-owned facilities. The work and education programs must be designed to reduce recidivism. The contract is for a period of three years, and may be renewed for successive two-year periods. The state is not obligated for any payments to the contractor beyond current annual appropriations. Any contract between the CPC and a contractor requires the appointment of a full-time contract monitor. The contract monitor is appointed and supervised by the commission. The contractor is required to reimburse the commission for the salary and expenses of the contract monitor, and it is the obligation of the contractor to provide suitable office space for the contract monitor at the particular correctional facility. During Special Session 2001-C the Legislature fund shifted the

The CPC may not enter into a contract or series of contracts unless the commission determines that the contracts in total for the facility will result in a cost savings to the state of at least 7 percent over the public provision of a similar facility. The cost savings determined by the CPC must be based upon the actual costs associated with the construction and operation of similar facilities or services as certified to the CPC by the Auditor General. The Auditor General calculates these costs by determining the inmate per diem in public correctional facilities operated by the DOC that are of a substantially similar size, type, and location. The Auditor General must provide a report to the CPC detailing the state cost to design, finance, acquire, lease, construct, and operate such facility. The report must be provided to the CPC in sufficient time that it may be included in the request for proposals for the private facility.<sup>12</sup>

In Special Session 2001-C, a Prison Per-Diem Workgroup was created<sup>13</sup> to develop consensus per-diem rates to be used when determining per-diem rates of privately operated prisons. The Workgroup principals are OPPAGA, the Office of the Auditor General, and House and Senate Appropriations staff. The Legislature intends that the per-diem rates determined shall be used to establish the level of funding appropriated to fund the privately operated prisons. At least a 7 percent cost-savings must be reflected.

If the CPC enters in a contract for the operation of a private correctional facility, the DOC must transfer and assign prisoners, at a rate determined by the DOC, to the particular private correctional facility. The prisoners transferred by the DOC must represent a cross section of the general inmate population, based on the grade of custody or the offense of conviction, at the most comparable facility operated by the DOC.<sup>14</sup>

Since 1993, the Legislature authorized the CPC to finance and construct six correctional facilities. The Department of Juvenile Justice subleases and operates two of the six facilities, located in Palm Beach and Polk Counties. Effective July 1, 1999, the Legislature transferred the operation of the Gadsden Correctional Facility, a facility for adult females, from the DOC to the CPC. The Gadsden facility was originally financed and constructed by the DOC. With the operation of the five private facilities that require a contract monitor for each facility, and the statutory requirements of a five-member commission, the CPC has 10 authorized full-time employment positions.<sup>15</sup>

The CPC currently oversees the operation of the following five facilities: Bay Correctional Facility, an adult male facility of medium security; Moore Haven Correctional Facility, an adult male facility of medium security; South Bay Correctional Facility, an adult male facility of close custody supervision; Lake City Correctional Facility for youthful offenders; and Gadsden Correctional Facility, an adult female facility of medium security. The total number of beds in these five facilities is 3,968.<sup>16</sup> For each facility, the CPC has entered into an "Operations and Management Contract" with a private vendor to operate the facility for an agreed daily per diem. The contract provides for an annual inflation per diem increase, subject to appropriation by the Legislature. The contracted per diem includes costs for the following operating expenditures: personnel, general operating expenditures, operating equipment, food services, medical services, maintenance and repair,

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General Revenue portion of the operating expenses of CPC to the Grants and Donations Trust Fund. As a result, all ten FTEs and operating expenditures are funded through the Grants and Donations Trust Fund.

<sup>12</sup> Section 957.07, F.S.

<sup>13</sup> HB 69-C (2001).

<sup>14</sup> Section 957.08, F.S.

<sup>15</sup> Correctional Privatization Commission, Trends and Conditions Statement, received by facsimile transmission from Executive Director, C. Mark Hodges, on March 8, 2001.

<sup>16</sup> *Id.*

educational programs, substance abuse programs, sales tax, salary and expenses of the contract monitor position, property taxes, or grants to the counties that have private prisoners, and corporate taxes.<sup>17</sup>

The CPC contracts with the private vendors and authorizes the DOC to pay the vendors for the services provided. This money comes out of the DOC budget. Per diem funding is appropriated to CPC by the Legislature in the DOC budget. In fiscal year 2001-2002, according to CPC, the state appropriated \$74,682,563 from general revenue and \$2,614,050 from trust funds, for a total of \$77,296,613 for payments to the vendors and grants to counties in lieu of property taxes. The State of Florida, through appropriations to the DOC, pays the private vendors monthly for the per diems as contracted by CPC. CPC sends authorization to the DOC and the DOC issues the warrant.<sup>18</sup>

Section 394.9151, F.S., allows the Department of Children and Family Services to contract with a private or state agency for use of and operation of facilities; this agency may also contract with the CPC to issue a request for proposals and monitor contract compliance for these services.

There are several forms of inspections and monitoring of contracted private correctional facilities.

- Each contracted private facility is accredited by the American Correctional Association, and reviewed every three years, the American Correctional Association.
- Each contract monitor at each particular facility must submit a monthly report to the CPC.
- The CPC contracts for an independent annual monitoring of each of its facilities.
- Management review and safety inspections of contracted private correctional facilities are conducted by the CPC and other state entities (i.e. State Fire Marshall, Department of Health).
- The DOC conducts unannounced and announced security audits of the CPC's contracted facilities.
- The DOC conducts inspections of the special education programs offered at Lake City Correctional Facility.
- The Department of Health and Rehabilitative Services licenses and reviews substance abuse programs at CPC facilities.
- The DOC and the Correctional Medical Authority audit health services provided at the CPC contracted facilities.
- Any allegations or incidents at CPC facilities are reported to and investigated by CPC and the DOC in accordance with proper procedure.<sup>19</sup>

### **Office of Program Policy Analysis and Government Accountability**

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<sup>17</sup> *Id.*

<sup>18</sup> Senate Staff Analysis and Economic Impact Statement, CS/SB 832, Criminal Justice Committee, March 27, 2001.

<sup>19</sup> Monitoring Contracted Private Correctional Facilities, Florida Corrections Commission, 2000 Annual Report.

An additional inspection of private correctional facilities is the responsibility of the Office of Program Policy Analysis and Government Accountability (OPPAGA).<sup>20</sup> OPPAGA completed an initial review of correctional privatization in a report dated November 13, 1995. OPPAGA concluded that the State of Florida had made a significant commitment to correctional privatization with the establishment of its private prisons. However, OPPAGA made several recommendations to enhance these efforts. OPPAGA acknowledged the lack of a working relationship between the DOC and the CPC.<sup>21</sup> To improve this relationship, OPPAGA suggested that the DOC and the CPC develop an agreement that clarified their respective roles relating to correctional privatization. According to OPPAGA, the DOC must remain the ultimate authority on the state's correctional facilities, but CPC must have the freedom to explore more cost-effective approaches to correctional privatization. OPPAGA further suggested that the DOC and the CPC work together to identify comparable institutions and programs so that cost comparisons between public and private institutions can be made. Lastly, in order to facilitate the evaluation of private vendors, OPPAGA suggested that the DOC and the CPC maintain data pertaining to facility costs, inmate and facility management, performance, education, substance abused outcomes, and information on investigations and litigations. With proper data maintenance, the DOC and the CPC can accurately evaluate correctional privatization.<sup>22</sup>

OPPAGA completed a follow-up report on the review of correctional privatization in September 1997. OPPAGA concluded that the DOC and the CPC were still not working cooperatively and therefore the two entities were hindering the Legislature from reducing costs and identifying effective approaches to correctional privatization. By not working cooperatively, the DOC and the CPC were not maximizing the potential benefits of privatization. The two entities were moving towards operating a dual corrections system that would become duplicative in nature. In addition, because the DOC and the CPC were not communicating on major issues, there was no cooperative transfer agreement as required by s. 957.06(2), F.S.<sup>23</sup> To date there are cooperative transfer agreements for each facility approved by both CPC and DOC. This only creates further complications when trying to compare public and private prisons. OPPAGA stated that the Governor's Office was reviewing a request by the DOC for that office to intervene in the impasse between the DOC and the CPC. OPPAGA's staff had met with the Governor's staff to discuss a particular plan of action. OPPAGA recommended that the Governor authorize an independent body within the Executive Branch, such as the Florida Corrections Commission, to mediate disputes between the DOC and the CPC, and then make recommendations to the Governor for final resolution.<sup>24</sup>

OPPAGA also conducts cost-benefit analyses of each independent facility pursuant to s. 957.11, F.S.<sup>25</sup> In April of 1998, OPPAGA conducted a review of both the Bay Correctional Facility and the Moore Haven Correctional Facility. OPPAGA concluded, in part, that the two private prisons reviewed were not providing the state with the level of overall cost savings initially projected by the

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<sup>20</sup> Pursuant to s. 957.11, F.S.

<sup>21</sup> Yet, notes the CPC, in a E-mail submission of 2-11-02, OPPAGA never recommended the abolishment of the CPC, or transfer of duties to the DOC.

<sup>22</sup> Office of Program Policy Analysis and Government Accountability, Report No. 95-12, *Review of Correctional Privatization*, November 13, 1995.

<sup>23</sup> Section 957.06(2), F.S., states that the contractor may request an inmate to be transferred to a facility owned by the DOC. The CPC, the contractor, and a representative of DOC must develop and implement a cooperative agreement for transferring inmates between a correctional facility operated by the CPC and a facility operated by the DOC; all entities must comply with the agreement.

<sup>24</sup> Office of Program Policy Analysis and Government Accountability, Report No. 97-06, *Follow-up Report on the Review of Correctional Privatization*, September 1997.

<sup>25</sup> Section 957.11, F.S., requires that the "Auditor General develop and implement an evaluation of the costs and benefits of each contract entered into under this chapter. This evaluation must include a comparison of the costs and benefits of constructing and operating prisons by the state versus by private contractors."

CPC, and that the CPC did not structure the contracts to ensure that the projected level of cost savings was achieved. OPPAGA also stated that although the private prisons had introduced some different methods of construction and operation into the state correctional system, it was too early to determine what kind of effect the implementation of those alternatives would produce. OPPAGA did recommend that the contracts be renewed with the private corporations operating the facilities, but gave recommendations to improve the cost-effectiveness of the prisons' operations.<sup>26</sup>

In April 2000, OPPAGA conducted a follow-up review of the Bay and Moore Haven Correctional Facilities. OPPAGA questioned the CPC's contract modification that resulted in a \$785,936 additional payment to Corrections Corporation of America, the private corporation operating Bay Correctional Facility. OPPAGA acknowledged that the DOC had increased the number of inmates at Bay and Moore Haven Facilities, a benefit to the state. In addition, the two facilities had complied with statutory requirements by depositing particular prison proceeds, including canteen profits and telephone commissions, into the newly created Department of Corrections Privately Operated Institutions Inmate Welfare Trust Fund. OPPAGA recommended that the Legislature direct the CPC and the DOC to work together to develop a methodology for indexing correctional costs so that the CPC could achieve a 7 percent cost savings at private correctional facilities.<sup>27</sup>

OPPAGA completed a report on the Lake City Correctional Facility in February 2000 that addressed this issue of refinement in the indexing of correctional costs. OPPAGA suggested that restructuring the contract's marginal per diem rate alone would reduce the rate of the contract, possibly saving over \$560,000 annually. In addition, OPPAGA discussed the significant problems that the Lake City facility experienced in its first year of existence. The facility had extremely high staff turnover and major noncompliance issues that undermined the quality of the prisons. However, OPPAGA acknowledged that following state intervention, the prison showed considerable improvement the following year. Lake City's programs were comparable to the programs at the public youthful offender prisons, and its per diem costs were consistent with the costs of similarly sized public youthful offender prisons. The Legislature exempts private youthful offender prisoners from any cost savings requirements.<sup>28</sup> The intent of the Legislature in providing this exemption is that the private vendors provide programs of optimal capacity and high quality. OPPAGA recommended that the Lake City facility establish its planned vocational and industry programs to enhance the quality of the facility. OPPAGA also recommended that the contract be renewed with the Correctional Corporations of America for the continued management of the facility with some alterations: CPC must add contract provisions which would allow the CPC to sanction the private vendor for any noncompliance with state and federal regulations, and there must be a restructuring of the marginal per diem rate.<sup>29</sup>

OPPAGA completed a report on the South Bay Correctional Facility in March 2000. OPPAGA concluded that the Wackenhut Corrections Corporation, the private vendor in charge of the South Bay Facility, built the facility at costs that were 24 percent below construction costs for the most comparable public prison. After adjusting for differences between public and private facilities to provide a fair comparison, OPPAGA concluded that South Bay's operating costs were 3.5 percent lower during the 1997-98 fiscal year than those of the comparable public prison, and 10.6 percent

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<sup>26</sup>Office of Program Policy Analysis and Government Accountability, Report No. 97-68, *Review of Bay Correctional Facility and Moore Haven Correctional Facility*, April 1998.

<sup>27</sup>Office of Program Policy Analysis and Government Accountability, Report No. 99-46, *Bay and Moore Haven Private Prison Contracts Renewed; Bay Costs Increase*, April 2000.

<sup>28</sup>Section 957.125(2), F.S.

<sup>29</sup>Office of Program Policy Analysis and Government Accountability, Report No. 99-33, *Lake City Correctional Facility Experienced Start-Up Problems, But It Has Improved*, February 2000.

lower during the 1998-99 fiscal year than those of the comparable public prison. Although OPPAGA complimented the savings to the State, OPPAGA criticized the CPC for the circumstances surrounding the CPC paying state taxes for Wackenhut. The CPC paid Wackenhut \$263,499 for Florida corporate income tax and \$94,107 for state sales tax, but the CPC did not require documentation of Wackenhut's actual tax payments. OPPAGA concluded that the CPC could even increase savings by improving its cost control efforts.<sup>30</sup>

Since the above mentioned reports, an agreement has been reached between CPC and DOC that clarifies the respective roles relating to correctional privatization.<sup>31</sup> Cooperative agreements have been established and approved for each facility. The CPC and DOC have also worked together to meet the needs for additional beds for female inmates state wide. The CPC funded the cost of the additional beds from funds appropriated to the CPC.

### **The Florida Corrections Commission**

The Florida Corrections Commission was created in 1994 and its primary function is to oversee Florida's correctional system. The commission is responsible for reviewing the efficiency and the effectiveness of the state's correctional efforts, recommending policies, and evaluating the implementation of approved policies and legislation. The commission is composed of nine members appointed by the Governor and subject to Senate confirmation. The Florida Corrections Commission operates independently of the DOC.<sup>32</sup>

In its 2000 Annual Report, the Florida Corrections Commission recommended the abolishment of the CPC.<sup>33</sup> The recommendation was based on the following findings:

- The CPC has no standard reporting format that is consistent among its five contracted private correctional facilities, although a standard monitoring tool is utilized;
- The distribution of the monthly monitoring reports extends only to the appropriate private correctional firm's corporate office; the DOC does not receive a copy;
- There are significant gaps in the submission of monthly monitoring reports from the five contracted private correctional facilities; the CPC does not appear to have adequate mechanisms in place to ensure the timely submission of monthly monitoring reports;
- There are numerous errors and/or discrepancies in the monthly monitoring reports as well as error and/or discrepancies in the data carried forward and reported from one monthly report to the next;
- The CPC elected to redirect funds in FY 2000-2001 that were previously utilized to hire consultants to conduct annual monitoring; these funds were redirected to contract with legal consultants to assist in property tax litigation;

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<sup>30</sup> Office of Program Policy Analysis and Government Accountability, Report No. 99-39, *South Bay Correctional Facility Provides Savings and Success; Room for Improvement*, March 2000.

<sup>31</sup> E-mail communication from CPC staff, 2-11-02.

<sup>32</sup> *The Basics of Florida Corrections*, Committee on Crime Prevention, Corrections, & Safety, January 2001.

<sup>33</sup> Yet (notes the CPC, in a 2-11-02 E-mail communication), in its 1998 Annual Report, the Florida Corrections Commission had recommended that any new facilities be constructed and operated by the CPC.



- In FY 1999-2000, the CPC reported no payment deductions to three private correctional facilities for vacant positions that exceeded the contractually allowed time requirements, although the monthly monitoring reports for each facility identified vacancies that exceeded the contractually allowed requirements; and
- Florida is the only state that has established a separate government entity outside the state correctional agency for the expressed purpose of entering into contracts for the privatization of correctional facilities.<sup>34</sup>

Based on these findings, the Florida Corrections Commission stated that the CPC should be abolished and its functions transferred to the DOC utilizing a Type Two Transfer as set forth in s. 20.06, F.S.<sup>35</sup>

The CPC notes<sup>36</sup> that the Florida Corrections Commission based its recommendations on the above findings, which primarily focuses on monthly reports and auditing of the CPC facilities. The monthly reports submitted to the Commission by the on-site monitors are reflective of the Commission's five unique facilities. The CPC facilities are audited and monitored by various entities, inclusive of the Department of Corrections, Correctional Medical Authority, and accrediting agencies. Indicative of the level of monitoring at the facilities is the fact that CPC facilities have achieved some of the highest accreditation scores in the State of Florida.

#### C. EFFECT OF PROPOSED CHANGES:

The bill repeals Chapter 957, F.S., known as the "Correctional Privatization Commission Act." This repeal abolishes the Correctional Privatization Commission, and transfers all its powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations or other funds of the CPC to the Department of Corrections utilizing a type two transfer.

HB 797 amends s. 394.9151, F.S., removing the authority of the Department of Children and Family Services to contract with the CPC.

HB 797 removes any references to the CPC currently in statute. Accordingly, any reference to a "private correctional facility" means a facility authorized by Chapter 944, F.S.

#### D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

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<sup>34</sup>The Florida Corrections Commission, *Monitoring Contracted Private Correctional Facilities*, 2000 Annual Report.

<sup>35</sup> Section 20.06, F.S., "A Type Two Transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished."

<sup>36</sup> E-mail communication from CPC staff, 2-11-02.

2. Expenditures:

This bill provides for a transfer of unexpended balances of monies appropriated to the CPC to the DMS. The CPC's 2001-2002 budget, as modified by the budget approved by the Legislature in Special Session 2001-C is: 10 full-time employees and \$935,266.<sup>37</sup> The CPC's 2002-2003 budget has not yet been determined.

Such monies that are transferred from the Department of Management Services to the DOC will all come from the Grants and Donations Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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.

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<sup>37</sup> Phone conversation, 2-11-02, with CPC staff.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Members of the CPC oppose HB 797.<sup>38</sup> The members believe that if the commission is abolished, the healthy competition between public and private run correctional facilities will be destroyed, for the DOC will be in the lone position of managing the competition. The CPC believes that the competition created by the private vendors has forced the DOC to become more efficient and effective in its operation of public facilities. This competition, according to the CPC, has produced savings to the taxpayers in the State of Florida in two ways: savings have been documented in OPPAGA reports, and the DOC generates savings in its efforts to compete with bids from the private sector.

The CPC further notes<sup>39</sup> that in addition to cost savings, the educational and vocational completion statistics at CPC operated facilities are significantly higher than those of the DOC. Generally speaking, the proportion of prisoners in the CPC facilities that are productively involved in educational, vocational training, and substance abuse programs is roughly twice that of what one finds in the DOC system. For instance, although responsible for only some 6 percent of the prisoner population of Florida, the best available evidence from the FY 2000-2001 indicated that prisoners in CPC facilities received nearly 15 percent of all GED diplomas earned by prisoners in Florida and approximately 21 percent of all vocational training program completion certificates. Additionally, the CPC has maintained a much lower administrative overhead than the DOC. Furthermore, the CPC states that its administrative overhead for FY 1999-2000 was \$1.80 (per inmate, per day) and the DOC administrative overhead was \$4.57 (per inmate, per day). According to CPC, "this is markedly lean when you consider that the inmate population the CPC has oversight of is greater than that of nine other states. Thus setting higher standards for the DOC to measure up to."<sup>40</sup>

If the CPC is transferred to the DOC, future privatization of correctional facilities will not occur; the CPC was created to spur privatization because the DOC was not aggressive enough in its pursuit of private contracts. Another reason for the continuation of the CPC is that the CPC is required to show a cost savings in the construction and operation of the facilities it operates in comparison to public facilities. If the DOC controls both public and private facilities, there would result a conflict of interest and therefore inadequate privatization attempts. The CPC believes that its commissioners are "very dedicated to the privatization effort in State Government. Without a strong dedication to privatization, it will be just a matter of time before the facilities, which are currently privatized, will become state operated facilities."<sup>41</sup> In response to the claim that the State of Florida is the only state to operate two independent agencies, the CPC believes "it makes better sense to be proud of the fact that the Florida Legislature set the privatization process up correctly in Florida than to follow less successful experiences in other states."<sup>42</sup>

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<sup>38</sup> Correctional Privatization Facility, Bill Analysis for SB 832, received by facsimile transmission from Executive Director, C. Mark Hodges, on March 8, 2001.

<sup>39</sup> E-mail communication from CPC staff, 2-11-02.

<sup>40</sup> *Id.*

<sup>41</sup> Correctional Privatization Facility, Bill Analysis for SB 832, received by facsimile transmission from Executive Director, C. Mark Hodges, on March 8, 2001.

<sup>42</sup> *Id.* at 5.

The Florida Police Benevolent Association, Inc. (PBA) supports the abolishment of the CPC.<sup>43</sup> The PBA's rationale is based on the following areas: cost, oversight, and ethics. The PBA claims that three OPPAGA studies indicated gross overpayment by the CPC to the private prison industry. In addition, the PBA claims that there is a lack of oversight by the CPC in regards to the private prisons under its control. Lastly, the PBA points out the "number of serious ethical problems" the CPC has experienced.<sup>44</sup>

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

A "strike-everything" amendment was adopted in the Committee on State Administration, which is traveling with the bill. The amendment moves the CPC from the Department of Management Service's nominal control, and places it instead under the newly-created Cabinet post of Chief Financial Officer<sup>45</sup> (see HB 577 [2002]), in a type I transfer (rather than a type II transfer, as in the original bill).

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<sup>43</sup> Florida Police Benevolent Association, Inc., report received by hand delivery on March 8, 2001, from Ken Kopczynski, Legislative Assistant for the FBA.

<sup>44</sup> One problem involved a consultant who had worked with the CPC and one problem involved the Executive Director of the CPC. An article in the July 19, 2000, Tallahassee Democrat discussed charges brought against the Executive Director of the CPC. The article stated that the Florida Police Benevolent Association (FBA), a union representing state corrections officers, filed an ethics complaint against C. Mark Hodges, Executive Director of the CPC, for operating a consulting business out of his state office. The FBA charged that Mr. Hodges violated Florida law by "using his state position to get prison privatization contracts worth more than \$90,000 with governments in Alachua County and Youngstown, Ohio." The FBA additionally charged that Mr. Hodges had not filled out the required paperwork disclosing his extra sources of income. The charges were characterized by the attorney for Mr. Hodges as "part of the union's 'transparent' attempt to discredit the commission." The charges were claimed to be "minor little violations" and the gaps in the financial disclosure forms were due to inexperience on the part of Mr. Hodges. The Office of the Inspector General's Investigations Section is responsible for conducting internal investigations of agency employees regarding alleged violations of policies, procedures, rules or laws. Complaints may originate from the Office of Chief Inspector General, Comptroller's "Get Lean" Hotline, agency employees, facilities and/or health care practitioners, or the general public. The Office of the Chief Inspector General released an executive summary on September 8, 2000, regarding allegations brought against the CPC by the PBA. The PBA alleged that the Executive Director of the CPC had violated the provisions of Ch. 957, F.S., by accepting an honorarium from a private firm who bid on CPC facilities. These charges were found to be unsubstantiated. It was also alleged by the PBA that the executive director had violated the provision of s. 112.3149(6), F.S., for he had failed to report the receipt of the honorarium related expenses in the proper time period. The office of investigations found that these charges were substantiated. The PBA further alleged that a former employer of the CPC had violated the provisions of Ch. 957, F.S., by accepting employment within two years with a private corrections firm that currently operated two CPC facilities. The office of investigations found these charges substantiated. The investigation further found that the procurement and travel practices of the CPC did not ensure proper accountability. In addition, the CPC did not have dedicated legal support, a necessary inclusion when executing contracts with private entities (Executive Office of the Governor, Office of the Chief Inspector General, Office of Investigations, September 8, 2000, Case number: 200004030001. Received from the Florida Benevolent Association, Inc.)

<sup>45</sup> In the 1998 General Election, Florida voters approved Constitutional Revision 8 to the Florida Constitution. Constitutional Revision 8 significantly restructured the Cabinet, creating the Cabinet post of Chief Financial Officer and abolishing the Cabinet offices of Treasurer, Comptroller, Secretary of State and Commissioner of Education. The result is the Cabinet is reduced from seven to four members, consisting of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. In addition, the membership of the State Board of Administration changes to the Governor, Chief Financial Officer, and Attorney General from the Governor, Comptroller, and Treasurer. These changes govern with respect to the qualifying for and the holding of primary elections leading to the November 2002 General Election. The changes take effect January 7, 2003.

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VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

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Gip Arthur

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J. Marleen Ahearn, Ph.D., J.D.