

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1337 Department of Corrections
SPONSOR(S): Criminal Justice Subcommittee, Stark and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Padgett	Hall
2) Judiciary Committee		Padgett	Kramer

SUMMARY ANALYSIS

CS/HB 1337 makes several changes to statutes relating to the Florida Department of Corrections (FDC).

The bill amends s. 944.31, F.S., to authorize a law enforcement officer employed by the FDC Office of the Inspector General to:

- Conduct all criminal investigations involving matters over which FDC has jurisdiction at private correctional facilities;
- Arrest, with or without a warrant, any prisoner of, or visitor to, any state correctional institution, including a private correctional facility, for violating *any* criminal law involving matters over which FDC has jurisdiction, including both felony and misdemeanor offenses;
- Arrest, with or without a warrant, any FDC or private correctional facility staff member, contract employee, subcontractor, or volunteer for violating *any* criminal law that occurs on property owned or leased by FDC or at any private correctional facility, including both felony and misdemeanor offenses.

The bill also amends s. 957.04, F.S., to specify that a contract for operating a private correctional facility is *not* exempt from ch. 287, F.S., including competitive solicitation requirements. Under the bill, the provisions of ch. 957, F.S., will control if there is a direct conflict between ch. 287, F.S., and ch. 957, F.S. The bill also specifies that contracts for operating a private correctional facility are not considered to be an “outsource” under s. 287.012, F.S., and that the specific outsourcing requirements in s. 287.0571, F.S., are not required under the bill. The bill also amends ss. 957.07, and 957.12, F.S., to make changes to conform with the provisions of the bill which specify that FDC may use *any* competitive solicitation process in ch. 287, F.S., to procure a contract for the operation of a private correctional facility, not just a request for proposal.

The bill amends s. 957.07, F.S., to delete references to the obsolete Prison Per-Diem Workgroup that was previously tasked with determining the inmate per diem that is used in determining the cost of operating a correctional institution, which is used in the competitive solicitation and legislative appropriations process for private correctional facilities. As such, FDC will continue to provide the per diem calculations required as part of the competitive solicitation process for private correctional facilities.

The bill amends s. 957.15, F.S., to delete the provision in current law that prohibits FDC from having authority over funds appropriated for the operation, maintenance, and lease-purchase of private correctional facilities, thereby reflecting FDC’s contract monitoring authority of private correctional facilities.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Inspector General

Background

Arrest Powers of a Law Enforcement Officer - Generally

A judge may issue a warrant authorizing a person's arrest for a felony¹ or misdemeanor² crime upon finding probable cause that the person committed a crime in the judge's jurisdiction.³ However, the United States Supreme Court has held that the Fourth Amendment to the United States Constitution does not forbid warrantless arrest, even for a misdemeanor offense.⁴

In Florida, a law enforcement officer may arrest a person without a warrant under certain statutorily enumerated circumstances, such as when:

- An officer reasonably believes a person committed a felony;
- There is probable cause to believe a person has committed certain enumerated misdemeanor offenses, such as a battery, criminal mischief or graffiti, an act of domestic violence, an injunction violation, or sexual cyberharassment; or
- A person commits a misdemeanor in an officer's presence.⁵

Office of the Inspector General

The Office of Inspector General (OIG) under the Florida Department of Corrections (FDC) is responsible for prison inspection and investigation, internal affairs investigations, and management reviews.⁶ The OIG conducts criminal investigations that occur on property owned or leased by FDC or that involve matters over which FDC has jurisdiction.⁷ The Secretary of FDC may designate a person employed by the OIG as a law enforcement officer (OIG law enforcement officer) provided such person meets specified certification and training requirements.⁸

An OIG law enforcement officer has more limited arrest authority than that of other law enforcement officers, such as a deputy sheriff or municipal police officer. An OIG law enforcement officer has the authority to arrest, with or without a warrant, any prisoner or visitor to a state correctional institution for committing any felony that occurs on property owned or leased by FDC, or any FDC staff member or contract employee for committing any felony under ch. 944, F.S.,⁹ or ch. 893, F.S.,¹⁰ that occurs on property owned or leased by FDC.¹¹ An OIG law enforcement officer may also arrest any person for whom an arrest warrant was issued, including an offender who has escaped from custody.¹² Thus, an OIG law enforcement officer may *not* arrest any person for committing a misdemeanor, regardless of

¹ The term "felony" means any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. S. 775.08(1), F.S.

² The term "misdemeanor" means any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility, except an extended term, not in excess of one year. The term "misdemeanor" does not mean a conviction for any noncriminal traffic violation of any provision of ch. 316, F.S., or any municipal or county ordinance. S. 775.08(2), F.S.

³ S. 901.02, F.S.

⁴ *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

⁵ S. 901.15, F.S.

⁶ S. 944.31, F.S.

⁷ *Id.*

⁸ *Id.* To be designated as an OIG law enforcement officer, a person must be certified as law enforcement officer under s. 943.1395, F.S., and have a minimum of three years' experience as an inspector in the OIG or three years' experience as a law enforcement officer at another law enforcement agency. *Id.*

⁹ For example, s. 944.47, F.S., prohibits a person from introducing contraband into a state correctional institution.

¹⁰ Generally, ch. 893, F.S., provides offenses related to controlled substances.

¹¹ S. 944.31, F.S.

¹² *Id.*

whether such person commits the misdemeanor in the officer's presence, unless a warrant has been issued for his or her arrest. An OIG law enforcement officer who makes any such arrest must surrender the arrestee to the sheriff of the county in which the arrest is made "without delay."¹³

In circumstances where an OIG law enforcement officer lacks the authority to make a warrantless arrest, such as when a prisoner or visitor commits a misdemeanor offense, arrests are made by the law enforcement agency which has jurisdiction over the FDC facility, such as the sheriff or municipal police department.

Effect of Proposed Changes – Inspector General

CS/HB 1337 amends s. 944.31, F.S., to authorize an OIG law enforcement officer to:

- Conduct all criminal investigations involving matters over which FDC has jurisdiction at private correctional facilities;¹⁴
- Arrest, with or without a warrant, any prisoner of, or visitor to, any state correctional institution, including a private correctional facility, for violating *any* criminal law involving matters over which FDC has jurisdiction, including both felony and misdemeanor offenses;
- Arrest, with or without a warrant, any FDC or private correctional facility staff member, contract employee, subcontractor, or volunteer for violating *any* criminal law that occurs on property owned or leased by FDC or at any private correctional facility, including both felony and misdemeanor offenses.

Private Correctional Facilities

Background

Section 944.105, F.S., authorizes FDC to enter into contracts with private vendors¹⁵ to operate and maintain correctional facilities and supervise inmates.¹⁶ Generally, ch. 957, F.S., provides requirements with which FDC must comply in contracting with private vendors to operate private correctional facilities, specifies minimum standards for such private vendors, and establishes certain criteria for the operation of private correctional facilities.

Methods of Competitive Solicitation

Chapter 287, F.S., generally provides requirements and procedures with which a state agency must comply when procuring commodities and contractual services. The three types of competitive solicitation that a state agency may use for procuring a commodity or service greater than \$35,000 are as follows:

- Invitation to bid, which is used when an agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.¹⁷ In an invitation to bid, a contract is awarded to the responsible¹⁸ and responsive vendor¹⁹ who submits the lowest bid.²⁰
- Request for proposal, which is used when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the

¹³ *Id.*

¹⁴ "Private correctional facility" means any facility, which is not operated by the department, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the department. S. 944.710(3), F.S.

¹⁵ "Private vendor" means any individual, partnership, corporation, or unincorporated association bound by contract with the department to construct, lease, or operate a private correctional facility. S. 944.710(5), F.S.

¹⁶ Prior to October 1, 2023, the Florida Department of Management Services was responsible for negotiating and overseeing contracts for private correctional facilities. See Ch. 2023-268, L.O.F.

¹⁷ S. 287.057(1)(a), F.S.

¹⁸ "Responsible vendor" means a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. S. 287.012(25), F.S.

¹⁹ "Responsive vendor" means a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation. S. 287.012(27), F.S.

²⁰ S. 287.057(1)(a)4., F.S.

state agency is capable of identifying necessary deliverables.²¹ In a request for proposal, the contract is awarded to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals.²²

- Invitation to negotiate, which used by a state agency to determine the best method for achieving a specific goal or solving a particular problem and which identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.^{23, 24} In an invitation to negotiate, a state agency must award a contract to the responsible and responsive vendor that such agency determines will provide the best value to the state, based on the selection criteria.²⁵

In addition to the requirements for the competitive solicitation of commodities and contractual services, there are additional requirements for state procurement if such procurement results in the outsourcing²⁶ of state services. Prior to proceeding with outsourcing with any service, the business case for any outsourcing that has an expected cost in excess of \$10 million within a single fiscal year must be evaluated for feasibility, cost-effectiveness and efficiency.²⁷ Generally, the business case for outsourcing any service must specify the service for which outsourcing is proposed, the goals of outsourcing the service, an analysis of the advantages and disadvantages of outsourcing a service, a cost-benefit analysis for such outsourcing, performance standards, the projected timeframe for key events in the outsourcing contract, and a contingency plan for contractor nonperformance.²⁸

FDC is currently limited to using a request for proposal in procuring contracts for the operation of private correctional facilities.²⁹ During such a request for proposal, a bidder or potential bidder is prohibited from contacting an FDC employee or consultant until the time a notification of intent to award the contract is announced.³⁰

Inmate Per Diem

FDC is prohibited from entering into a contract with a private vendor to operate a correctional facility unless the contract will result in cost savings to the state of at least seven percent over a similar state-operated correctional facility.³¹ FDC is responsible for calculating the inmate per diem that is used to determine cost of operating and maintaining such a state-operated correctional facility.³² In the alternative, current law authorizes the Speaker of the House of Representatives and the President of the Senate to develop consensus per diem rates for legislative use by convening the Prison Per-diem Workgroup (Workgroup) comprised of appropriations staff from the House of Representatives and the Senate, as well as staff from the Office of Program Policy Analysis and Government Accountability. The inmate per diem calculated by the Workgroup is used in the competitive solicitation and legislative appropriations process for private correctional facilities. According to FDC, this Workgroup has not existed for over 20 years and all inmate per diem calculations are provided directly by FDC.³³

FDC Authority over Appropriations

²¹ S. 287.057(1)(b), F.S.

²² S. 287.057(1)(b)4., F.S.

²³ S. 287.057(1)(c), F.S.

²⁴ "Best value" means the highest overall value to the state based on factors that include, but are not limited to, price, quality, design, and workmanship. S. 287.012(4), F.S.

²⁵ S. 287.057(1)(c)4., F.S.

²⁶ "Outsource" means the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(g), F.S., in whole or in part, or an activity as defined in s. 216.011(1)(a), F.S., while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources. S. 287.012(20), F.S.

²⁷ S. 287.0571(2) and (4), F.S.

²⁸ S. 287.0571(4), F.S.

²⁹ Ss. 957.04, 957.07, 957.12, F.S.

³⁰ S. 957.12, F.S.

³¹ S. 957.07(1), F.S.

³² *Id.*

³³ Florida Department of Corrections, Agency Analysis of 2024 House Bill 1337, p. 2-3 (Jan. 19, 2024).

Section 957.15, F.S., requires FDC to request legislative appropriations for funds for the operation, maintenance, and lease-purchase of private correctional facilities as separately identified items in its budget request. Following such an appropriation from the Legislature, FDC is prohibited from having any authority over such funds other than to pay a private vendor the appropriate amounts that are certified for payment by FDC.³⁴

Effect of Proposed Changes – Private Correctional Facilities

Methods of Competitive Solicitation

The bill amends s. 957.04, F.S., to specify that a contract for operating a private correctional facility is *not* exempt from ch. 287, F.S., including competitive solicitation requirements. Under the bill, the provisions of ch. 957, F.S., will control if there is a direct conflict between ch. 287, F.S., and ch. 957, F.S. The bill also specifies that contracts for operating a private correctional facility are not considered to be an “outsource” under s. 287.012, F.S., and that the specific outsourcing requirements in s. 287.0571, F.S., are not required under the bill.

The bill amends ss. 957.04, 957.07, and 957.12, F.S., to make changes to conform with the provisions of the bill which specify that FDC may use *any* competitive solicitation process in ch. 287, F.S., to procure a contract for the operation of a private correctional facility, not just a request for proposal.

Inmate Per Diem

The bill amends. 957.07, F.S., to delete references to the obsolete Prison Per-Diem Workgroup. As such, FDC will continue to provide the per diem calculations required as part of the competitive solicitation process for private correctional facilities.

FDC Authority over Appropriations

The bill amends s. 957.15, F.S., to delete the provision in current law that prohibits FDC from having authority over funds appropriated for the operation, maintenance, and lease-purchase of private correctional facilities, thereby reflecting FDC’s contract monitoring authority of private correctional facilities.³⁵

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 944.31, F.S., relating to inspector general; inspectors; power and duties.

Section 2: Amends s. 957.04, F.S., relating to contract requirements.

Section 3: Amends s. 957.07, F.S., relating to cost-saving requirements.

Section 4: Amends s. 957.12, F.S., relating to prohibition on contact.

Section 5: Amends s. 957.15, F.S., relating to funding of contracts for operation, maintenance, and lease-purchase of private correctional facilities.

Section 6: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

³⁴ S. 957.15, F.S.

³⁵ See note 16, *supra*.

According to FDC, the bill will not have a fiscal impact to FDC or state government.³⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

FDC has sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Criminal Justice Subcommittee adopted an amendment to the bill and reported the bill favorably as a committee substitute. The amendment made non-substantive technical changes to clarify a provision in the bill and correct a punctuation error.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

³⁶ Florida Department of Corrections, Agency Analysis of 2024 House Bill 1337, p. 5 (Jan. 19, 2024).