

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 1278

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; and Senator Martin

SUBJECT: Department of Corrections

DATE: February 20, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wyant	Stokes	CJ	Favorable
2.	Atchley	Harkness	ACJ	Fav/CS
3.	Wyant	Yeatman	FP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1278 amends s. 944.31, F.S., to authorize the Office of the Inspector General (OIG) law enforcement officers to conduct any criminal investigations involving matters over which the Department of Corrections (DOC) has jurisdiction at contractor-operated correctional facilities. Such law enforcement officers may arrest, with or without a warrant, any prisoner, visitor, or staff member, including a contract employee, subcontractor, or volunteer of any state correctional institution and contractor-operated correctional facilities, for any violation of criminal laws of the state involving matters over which the DOC has jurisdiction.

The bill amends s. 957.04, F.S., to broaden methods of solicitation of contracts for the operation of contractor-operated correctional facilities to include competitive solicitation as provided in ch. 287, F.S. The bill specifies that contracts entered into under ch. 957, F.S., are not exempt from the requirements of ch. 287, F.S. However, if there is a conflict, the provisions of ch. 957, F.S., control.

The bill clarifies contracts entered into under this chapter for the operation of contractor-operated correctional facilities are not considered to be an “outsources” as defined in s. 287.012, F.S.

The bill amends s. 957.07, F.S., to eliminate the Prison Per Diem Workgroup and allow for the DOC’s procurement process to include competitive solicitation.

The bill amends s. 957.12, F.S., to clarify that a bidder or potential bidder may have written contact with the procurement office. Additionally, language is removed that permits contact in a noticed meeting.

The bill amends s. 957.15, F.S., to remove language prohibiting the DOC from having authority over funds appropriated for the operation, maintenance, and lease-purchase of contractor-operated correctional facilities.

The bill removes language in multiple sections of law relating to *request for proposals* and replaces it with *competitive solicitation*.

The bill does not have a fiscal impact on the DOC. See Section V, Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

As of October 1, 2023, all powers, duties, functions, records, personnel, associated administrative support, positions, property, administrative authority, and administrative rules relating to private correctional facilities as defined in s. 944.710(3), F.S.,¹ were transferred from the Department of Management Services to the Department of Corrections.²

Solicitations of Contracts

Section 957.04, F.S., outlines requirements of contracts entered for the operation of private correctional facilities. Contracts must be negotiated with the most qualified firm. A contract for private correctional services may not be entered into by the DOC unless the DOC determines the contractor has:³

- The qualifications, experience, and management personnel necessary to carry out the terms of the contract;
- The ability to expedite the siting, design, and construction of correctional facilities; and
- The ability to comply with applicable laws, court orders, and national correctional standards.

Additionally, a contract entered into for the operation of a private correctional facility must:

- Indemnify the state and the DOC against any and all liability;⁴
- Require the contractor seek, obtain, and maintain accreditation by the American Correctional Association for the facility under that contract;⁵
- Require the proposed facilities and the management plans for the inmates meet applicable American Correctional Association standards;⁶

¹ “Private correctional facility” means any facility, which is not operated by the DOC, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the DOC. Section 944.710, F.S.

² Chapter 2023-268, L.O.F.

³ Section 957.04(1)(a), F.S.

⁴ Section 957.04(1)(b), F.S.

⁵ Section 957.04(1)(c), F.S.

⁶ Section 957.04(1)(d), F.S.

- Establish operations standards for correctional facilities subject to the contract;⁷
- Require the contractor to be responsible for a range of dental, medical, and psychological services; diet; education; and work programs at least equal to those provided by the department in comparable facilities;⁸
- Require the selection and appointment of a full-time contract monitor appointed and supervised by the DOC;⁹ and
- Be for a period of 3 years and may be renewed for successive 2-year periods thereafter.¹⁰

Procurements

Section 957.07, F.S., prohibits the DOC from entering into a contract or series of contracts unless the DOC determines that the contract or series of contracts in the total for the facility will result in cost savings to the state of at least seven percent over the public provision of a similar facility. Such cost savings, determined and certified by the Auditor General, must be based upon the actual costs associated with the construction and operation of similar facilities or services as determined by the DOC. The DOC calculates all of the cost components that determine the inmate per diem, including administrative costs, in correctional facilities that are substantially similar and operated by the DOC.¹¹ The DOC is required to provide a report detailing the state cost to design, finance, acquire, lease, construct, and operate a facility similar to the private correctional facility on a per diem basis. This report is provided to the Auditor General in sufficient time to be certified to be included in the request for proposals.¹²

The Prison Per-Diem Workgroup must develop consensus per diem rates for use by the Legislature. The Office of Program Policy Analysis and Government Accountability and staff of the appropriations committees of both the Senate and the House of Representatives are the principals of the workgroup.¹³ When developing the consensus per diem rates, the workgroup must:¹⁴

- Use data provided by the DOC from the most recent fiscal year to determine per diem cost for the following:
 - Custody and control;
 - Health services;
 - Substance abuse programs; and
 - Educational programs
- Include the costs of departmental, regional, institutional, and program administration and any other fixed costs of the DOC;
- Calculate average per diem rates for the adult male, youthful offender male, and female offender populations; and
- Make per diem adjustments, as appropriate, to account for variations in size and location of correctional facilities.

⁷ Section 957.04(1)(e), F.S.

⁸ Section 957.04(1)(f), F.S.

⁹ Section 957.04(1)(g), F.S.

¹⁰ Section 957.04(1)(h), F.S.

¹¹ Section 957.07(1), F.S.

¹² Section 957.07(4), F.S.

¹³ Section 957.07(5)(a), F.S.

¹⁴ Section 957.07(5)(b), F.S.

The consensus per diem rates may be used to assist the Legislature in determining the level of funding provided to privately operated prisons to meet the seven percent savings required.¹⁵

Section 957.12, F.S., prohibits a bidder or potential bidder from having any contact with any member or employee of or consultant to the DOC regarding a request for proposal, a proposal, or the evaluation or selection process from the time a request for proposals for a private correctional facility is issued until the time a notification of intent to award is announced, unless such contract is in writing or in a meeting for which notice was provided in the Florida Administrative Register.

Section 957.15, F.S., requires the request for appropriation of funds to make payments of the contracts entered into by the DOC for the operation, maintenance, and lease-purchase of the private correctional facilities must be included in its budget request to the Legislature as a separately identified item. After an appropriation is made to the DOC for private correctional facilities, the DOC has no authority other than to pay the appropriate private vendor the amounts certified for payment.

Arrest Authority

Currently under s. 944.31, F.S., the OIG has the duty of inspecting the penal and correctional systems of the state and are responsible for criminal and administrative investigations of matters relating to the DOC. The secretary of the DOC may designate persons within the OIG as law enforcement officers. Such officers must be certified pursuant to s. 943.1395, F.S., and must have a minimum of 3 years' experience as an inspector in the OIG's office or as a law enforcement officer.

Office of the Inspector General law enforcement inspectors have the authority to:

- Conduct any criminal investigation that occurs on property owned or leased by the DOC;
- Arrest, with or without a warrant, inmates and visitors of state correctional institutions for felonies committed on the DOC's owned or leased property;
- Arrest offenders who have escaped or absconded from custody; and
- Arrest, with or without a warrant, the DOC staff including any contract employee for felony violations listed under chs. 944 and 893, F.S.

The arrested person is surrendered to the sheriff of the county with a formal complaint.

According to the DOC's analysis, the OIG law enforcement inspectors lack the authority to arrest individuals who have committed a misdemeanor in their presence without a warrant. Warrantless misdemeanor arrests are currently handled by the local law enforcement agency with jurisdiction.¹⁶

¹⁵ Section 957.07(5)(c), F.S.

¹⁶ See DOC, *2024 Legislative Bill Analysis SB 1278*, (on file with the Senate committee on Criminal Justice).

III. Effect of Proposed Changes:

The bill amends s. 944.31, F.S., to authorize the Office of the Inspector General (OIG) law enforcement officers to conduct any criminal investigations involving matters over which the DOC has jurisdiction at contractor-operated correctional facilities. Such law enforcement officers may arrest, with or without a warrant, any prisoner, visitor, or staff member, including a contract employee, subcontractor or volunteer of any state correctional institution and contractor-operated correctional facilities, for any violation of criminal laws of the state involving matters over which the DOC has jurisdiction.

The bill amends s. 957.04, F.S., to broaden methods of solicitation of contracts for the operation of contractor-operated correctional facilities beyond requests for proposal to include all methods provided for in ch. 287, F.S. Any competitive solicitation is available to all vendors, and includes the time and date for receipt of bids, proposals, or replies of the public opening, and must include all contractual terms and conditions. The following are competitive solicitation processes:¹⁷

- Invitation to bid, which is used when the 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 specification defining the commodities required.¹⁸
- Request for proposals, which is used when the purposes and uses for which the commodity or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.¹⁹
- Invitation to negotiate, which is used by an agency which is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors which the agency may negotiate with to receive the best value.²⁰

The bill specifies that contracts entered into under ch. 957, F.S., are not exempt from the requirements of ch. 287, F.S. However, if there is a conflict, the provisions of ch. 957, F.S., control.

The bill clarifies contracts entered into under this chapter for the operation of contractor-operated correctional facilities are not considered to be an “outsource” as defined in s. 287.012, F.S.²¹

The bill amends s. 957.07, F.S., to eliminate the Prison Per Diem Workgroup and allow for the DOC’s procurement process to include competitive solicitation.

The bill amends s. 957.12, F.S., to clarify that a bidder or potential bidder may have written contact with the procurement office. Additionally, language is removed that permits contact in a noticed meeting.

¹⁷ Section 287.057(1), F.S

¹⁸ Section 287.057(1)(a), F.S.

¹⁹ Section 287.057(1)(b), F.S.

²⁰ Section 287.057(1)(c), F.S.

²¹ “Outsource” means the process of contracting with a vendor to provide a service, in whole or part, or an activity while the 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. Section 287.012, F.S.

The bill amends s. 957.15, F.S., to remove language prohibiting the DOC from having authority over funds appropriated for the operation, maintenance, and lease-purchase of contractor-operated correctional facilities.

The bill removes language in multiple sections of law relating to *request for proposals* and replaces it with *competitive solicitation*.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

While the bill broadens the authority of the OIG officers, it does not have a fiscal impact on the DOC. This bill may have a positive indeterminate impact on county detention beds due to OIG officers having the authority to make arrests for misdemeanor offenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 944.31, 957.04, 957.07, 957.12, and 957.15.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations Committee on Criminal and Civil Justice on February 8, 2024:

The committee substitute replaces the term “private” correctional facility with “contracted-operated” correctional facility.

- B. **Amendments:**

None.