



## South Bay Correctional Facility Provides Savings and Success; Room for Improvement

### *at a glance*

The Wackenhut Corrections Corporation built the private South Bay Correctional Facility at costs that were 24% below construction costs for the most comparable public prison, Okeechobee. The Department of Corrections spent \$10 million more on site preparation to prepare a larger public prison site.

South Bay and Okeechobee were operated using different percentages of capacity, requiring substantial adjustments to provide a fair comparison of operating costs. However, after OPPAGA adjusted for this and other differences between the two prisons, South Bay's operating costs were 3.5% lower during the 1997-98 fiscal year and 10.6% lower during 1998-99.

The Correctional Privatization Commission could increase savings by improving its cost control efforts. For example, private prison vendors should not be reimbursed for corporate income tax and sales tax expenses without documentation.

With the notable exception of the escape of two inmates in August 1999, the performance of the South Bay Correctional Facility has compared favorably.

### Purpose

In February 1997, South Bay Correctional Facility opened under a contract with the state through the Correctional Privatization Commission. South Bay Correctional Facility is located in southern Florida just south of Lake Okeechobee. South Bay is operated by Wackenhut Corrections Corporation, which also operates Moore Haven Correctional Facility, which was the subject of a similar review by OPPAGA in April 1998.<sup>1</sup>

As required by s. 957.11, F.S., this review evaluates the costs and benefits of the contract and the performance of the private contractor and recommends whether the contract should be continued. OPPAGA also reviewed, in a separate report, Lake City Correctional Facility, a privately operated youthful offender prison.<sup>2</sup>

### Background

The Legislature established the Correctional Privatization Commission in 1993 for the purpose of entering into contracts for the design, construction, and operation of private prisons.<sup>3</sup> In 1994, the commission issued a request for bid proposals for a private 1,318-bed adult male prison in South Florida.

<sup>1</sup> *Review of Bay Correctional Facility and Moore Haven Correctional Facility*, [OPPAGA Report No. 97-68](#), April 1998.

<sup>2</sup> *Private Prison Review: Lake City Correctional Facility Experienced Start-Up Problems, But It Has Improved*, OPPAGA [Report No. 99-33](#), February 2000.

<sup>3</sup> Chapter 93-406, Laws of Florida.

## *Private Prison Review*

The commission selected Wackenhut Corrections Corporation for the construction and operation of the prison, which is named South Bay Correctional Facility (South Bay). At present, the commission, administratively located within the Department of Management Services, oversees the contracts for five private prisons in Florida.

Prison privatization is often advocated as a means to reduce corrections costs. Although arguments have also been advanced that correctional privatization can lead to higher quality, increased flexibility and accountability, and decreased liability to the state, cost is the primary consideration when the success of privatization is evaluated. In Florida, the Legislature requires that the commission enter into a contract for the construction and operation of a private prison only if the contract is projected to result in at least 7% savings over public provision of a similar facility.

The Correctional Privatization Commission projected that the contract with Wackenhut for South Bay would meet the 7% cost savings requirement established in law. These initial projections were based on the costs at three public prisons during the 1992-93 fiscal year as certified by the Auditor General and adjusted by the commission. The commission based its cost savings projection on a combination of first-year operating costs at 95% capacity and annualized construction costs.

To determine whether the construction and operating costs of South Bay have met these expectations, we compared South Bay's costs to those of Okeechobee Correctional Institution. The Legislature authorized Okeechobee and South Bay in 1994 and 1995, respectively, to be the same size, to house similar inmate populations, and to be located in the same vicinity of the

state. Although the department has not increased Okeechobee's official inmate capacity to the same level as South Bay and their programs have not been similar, Okeechobee still provides the most useful comparison.

In this review we

- compare actual construction costs and operating costs for Fiscal Years 1997-98 and 1998-99 of the South Bay and Okeechobee Correctional Facilities;
- compare the two prisons' performance and offer alternatives to current practices; and
- provide conclusions and our recommendations for modifying future contracts with the private vendor, Wackenhut Corrections Corporation (Wackenhut).

## Costs

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Prison costs include costs of construction and operations. Construction costs normally include the costs of acquiring and preparing a site, and the costs of labor and materials to build the prison. Operations costs normally include the day-to-day costs of the prison, such as the salaries of prison staff and the food and materials used in operating the prison. Construction costs are one-time costs associated with establishing the prison, whereas operating costs are incurred throughout the life of the prison and vary from year to year as prices, programs, and policies change. This report discusses construction and operations costs separately. Detailed information on our cost analysis and the adjustments we made to the construction and operating costs of South Bay and Okeechobee Correctional Facilities are shown in Exhibit 1 and [Appendix A](#).

**Exhibit 1**

**The Construction Bonds for the Private South Bay Prison Had Higher Initial Issuance Costs but Lower Long-Term Interest Costs than the Public Okeechobee Prison**

Financing Costs as a Percentage of Bonds Issued	South Bay Private Prison (in millions)		Okeechobee State Prison (in millions)	
Total Bonds Issued	\$41.2		\$48.1	
<b>Bond Proceeds Used for Construction</b>	<b>32.2</b>	<b>46.0%</b>	<b>42.8</b>	<b>49.9%</b>
Initial Costs of Issuing Bonds	\$ 9.0		\$ 5.3	
Long-term Interest Costs	28.7		37.6	
<b>Total Financing Costs</b>	<b>\$37.7</b>	<b>54.0%</b>	<b>\$42.9</b>	<b>50.1%</b>
<b>Total Construction and Financing Costs</b>	<b>\$69.9</b>	<b>100.0%</b>	<b>\$85.7</b>	<b>100.0%</b>

Source: Prepared by OPPAGA staff using data provided by the Department of Corrections and the Correctional Privatization Commission.

Our analysis does not include financing costs. Tax-free Certificates of Participation financed both South Bay and Okeechobee. While it has been Florida's practice to build private prisons with financing, Okeechobee was the first public prison financed without construction bonds.<sup>4</sup> The construction of both prisons has been financed over a 20-year period. Because the construction bonds were sold almost a year apart with different prevailing interest rates, it was not appropriate to include financing costs in the comparison. Although the construction bonds for South Bay had lower interest rates than those for Okeechobee, the initial financing costs for South Bay were higher.<sup>5</sup>

**South Bay Private Prison's total construction costs were 24% lower than the public Okeechobee prison costs**

The private South Bay Correctional Facility was 24% less costly to build than the Okeechobee public prison. The total costs of constructing South Bay were \$32.2 million, compared to a total cost of \$42.8 million for Okeechobee.

As illustrated in Exhibit 2, site preparation costs account for most of the variance in construction costs between the public and private prisons. Several factors contributed to these higher public prison site preparation costs. Okeechobee is built campus-style on a 500-acre site that is located more than one mile off the main highway; South Bay is on a compact 100-acre site, with connected buildings, that is located nearer to the main highway. In addition, Okeechobee includes on-site staff housing for the warden and emergency response staff, whereas South Bay provides no on-site staff housing. The site preparation for Okeechobee accounts for \$10.1 million in additional costs.

<sup>4</sup> The Department of Corrections financed Okeechobee through the issuance of certificates of participation as authorized by the Legislature in ss. 944.105 and 944.710-944.719, F.S. This was the first (and only) prison that the department has built through a debt service arrangement.

<sup>5</sup> As illustrated by Exhibit 1, financing construction essentially had the effect of doubling the cost of acquisition to the state for both the private and the public prisons. Paying for new prison construction without the use of financing can result in substantial cost savings to the state, but these savings are determined by the Legislature's decision regarding whether to use financing, regardless of whether public or private prisons are being constructed.

**Exhibit 2**  
**South Bay's Private Prison Construction Costs**  
**Were \$10.6 Million Less Than the Public**  
**Okeechobee Prison Due to Lower Site**  
**Preparation Costs**

Construction Cost Measures	South Bay Private Prison (in millions)	Okeechobee Public Prison (in millions)
Site Acquisition <sup>1</sup>		
Site Preparation	\$ 3.1	\$13.2
Building Costs	29.1	29.6
<b>Total Cost of Prison Facility</b>	<b>\$32.2</b>	<b>\$42.8</b>

<sup>1</sup>Both the private and public prisons were built on sites that were donated.

Source: Prepared by OPPAGA staff using data provided by the Department of Corrections and the Correctional Privatization Commission.

Although the Okeechobee prison was built on a larger site, and its building construction costs were slightly more than South Bay's (1.9% more), the South Bay prison has slightly more square footage in its buildings (4.2% more) than Okeechobee. The total building costs per square foot at South Bay (\$91.25) were almost 6% lower than the costs at Okeechobee (\$96.90). (See Exhibit 3.)

In addition, Okeechobee's construction cost per inmate bed was 60% higher than South Bay's. This was partly a result of the department's decision to maintain a lower official inmate capacity than the Legislature authorized. Although Okeechobee was authorized to have a capacity identical to South Bay, the department has never increased its capacity to that level. Currently, the department uses two buildings originally constructed as open bay dormitories to house program activities such as educational and vocational classrooms, keeping Okeechobee's official capacity at 1,093. This lower capacity is possible because statewide the department currently has several thousand beds in excess of its inmate population.

**Exhibit 3**  
**The State's Construction Costs for Okeechobee**  
**Exceeded the Private South Bay Prison**  
**Construction Costs Primarily Due to the**  
**Preparation Costs for the Larger Land Area**  
**of the State Prison**

Comparison of Private and State Prisons		
Measures for Comparison Descriptive Measures	South Bay Private Prison	Okeechobee Public Prison
Date Authorized by Legislature	July 1995	July 1994
Date Opened	February 1997	November 1995
Months from Authorization to Opening	19 months	16 months
Number of Beds	1,318	1,093 <sup>1</sup>
Designed for Gender	Male	Male
Age Group	Adult	Adult
Security Level	Close	Close
Total Prison Acreage	100	500
Total Prison Building Square Footage	318,458	305,500
Cost of Site Acquisition and Preparation per Acre	\$ 31,029	\$ 26,335
Cost of Construction per Square Foot of Buildings	\$ 91.25	\$ 96.90
		<b>Current capacity</b> <b>\$39,132<sup>1</sup></b>
<b>Total Prison Cost Per Inmate Bed</b>	<b>\$ 24,401</b>	<b>Planned capacity</b> <b>\$31,542</b>

<sup>1</sup> Okeechobee was authorized by the 1994 Legislature as a 1,318-bed prison. The Department of Corrections reported it was designed as a 1,356-bed prison; however, two dormitories were converted to education program space that reduced the available prison beds to 1,093.

Source: Prepared by OPPAGA staff using data provided by the Department of Corrections and the Correctional Privatization Commission.

The state does realize some benefits from the larger public prison site at Okeechobee, including having land partially prepared if expansion becomes necessary and housing some staff on site. However, based on the initial construction costs alone, it appears that the state could achieve additional cost savings by constructing its prisons on smaller sites that require less site preparation expense.

**Differences in the operations of South Bay private prison and the Okeechobee public prison lessen the validity of operational cost comparisons**

When opened, Okeechobee and South Bay appeared to provide a more direct comparison between individual public and private prisons than had previously been available in Florida. However, subsequent developments have created important differences that lessen the validity of cost comparisons of the two prisons. To improve comparability, we made adjustments for use of prison capacity, educational and substance abuse programs, health services, use of work squads, and the retirement costs for the state's unfunded actuarial liability in the Florida Retirement System, as discussed below.

We concluded that based on these adjustments South Bay cost the state approximately 3.5% and 10.6% less than Okeechobee, respectively, for the 1997-98 and 1998-99 fiscal years. (See Exhibit 4.)

**Exhibit 4  
After Adjustments, Private South Bay's Costs Were 10% Lower Than the Most Comparable Public Prison for Fiscal Year 1998-99**

Description of cost or adjustment to per diem costs of the prisons	FY 1997-98		FY 1998-99	
	South Bay	Okeechobee	South Bay	Okeechobee
Adjusted per diem including adjustment of South Bay to full capacity	\$42.18	\$43.72	\$43.31	\$48.43
Percentage private over/(under) state cost	(3.5)%		(10.6)%	

Source: Prepared by OPPAGA using Department of Corrections and the Correctional Privatization Commission data.

**Adjustment for capacity.** Normally, prisons with more inmates can achieve greater economies of scale than smaller prisons. However, the extent to which prisons operate at or near capacity can also influence costs. As a prison

approaches capacity, the fixed costs are spread over a greater number of inmates, so the average cost per inmate decreases.

Although Okeechobee's official inmate capacity was about 20% lower than South Bay's, the department maintained Okeechobee's inmate population at a higher percentage of its capacity than South Bay. Okeechobee's average inmate population during the 1998-99 fiscal year was 1,127, or 103% of its official capacity.<sup>6</sup> However, the department, which controls inmate populations for all institutions, maintained South Bay at about 94% of capacity. (See Exhibit 5.)

**Exhibit 5  
Private South Bay Prison Is Larger, but Public Okeechobee Operated at a Higher Percentage of Capacity during Fiscal Years 1997-98 and 1998-99**

	FY 1997-98		FY 1998-99	
	South Bay	Okeechobee	South Bay	Okeechobee
Inmate Capacity	1,318	1,093	1,318	1,093
Average Inmate Population	1,240	1,187	1,244	1,127
Percentage of Capacity Filled	94.1%	108.6%	94.4%	103.1%

Source: Prepared by OPPAGA using Department of Corrections and the Correctional Privatization Commission data.

If the department had maintained South Bay's inmate population at its maximum capacity, South Bay's inmate population would have been 1,318 inmates per day, an increase of 74 inmates per day compared to its actual population during the 1998-99 fiscal year. This would have had the effect of decreasing South Bay's average inmate per diem by over \$2 per inmate per day,

<sup>6</sup> The stated capacity for a public prison is different from its "maximum" capacity. The department may exceed the stated capacity at individual prisons within certain limits established in s. 944.023, F.S. The inmate population cannot exceed the official capacity at private prisons due to contract limitations.

or more than 4%.<sup>7</sup> Without this adjustment for capacity, our analysis of cost savings based on actual inmate populations shows that South Bay's adjusted inmate per diem cost was slightly higher than Okeechobee's for the 1997-98 fiscal year, but was about 6% lower for the 1998-99 fiscal year. (See Exhibit 6.)

**Exhibit 6**  
**Without Adjustment for Use of Capacity,**  
**South Bay's Operating Costs Were 6% Less Than**  
**Most Comparable Prison for Fiscal Year 1998-99**

Description of cost or adjustment to per diem costs of the prisons	FY 1997-98		FY 1998-99	
	South Bay	Okeechobee	South Bay	Okeechobee
Adjusted per diem including indirect costs and program adjustments	\$44.41	\$43.72	\$45.52	\$48.43
Percentage private over/ (under) state cost	1.6%		(6.0)%	

Source: Prepared by OPPAGA staff using data provided by the Department of Corrections and the Correctional Privatization Commission.

**Adjustment for programs.** The most substantial adjustments that we made in the costs of South Bay and Okeechobee were for educational and substance abuse treatment programs. South Bay had large programs functioning throughout the two years of our review, whereas Okeechobee had a small education program and no substance abuse treatment programs. Using the actual costs of comparable education programs at the New River public prison and substance abuse treatment programs at the Gainesville public prison, we adjusted the Okeechobee public prison program costs as if similar programs had been in place at Okeechobee. The total cost of

<sup>7</sup>The contract with Wackenhut Corrections Corporation specifies that the state will pay Wackenhut \$6.77 per day for each inmate in excess of 90% of capacity. By using this rate, we are able to precisely calculate the potential cost of operating Wackenhut at full capacity.

these programs was \$4.88, or \$3.97 per inmate per day more than Okeechobee's actual program costs for the 1998-99 fiscal year.<sup>8</sup>

**Adjustment for health services.** We also adjusted the costs of the public Okeechobee prison to reflect health services cost that were not reported in the department's per diem. Okeechobee is one of three adult male public prisons in which the health services function is provided through a private vendor, Prison Health Services. In December 1998, the department made a lump sum payment to this health services vendor covering the period March 1998 to December 1998. The payment was the result of a settlement agreement between the department and the vendor to cover additional costs incurred by the vendor as a result in a change in department policy for treating inmates with the HIV/AIDS virus.

We did not make an adjustment for the differences in the health characteristics of the inmates served by the two institutions. Okeechobee served a significantly higher proportion of HIV+ inmates than South Bay during the 1998-99 fiscal year. (See Exhibit 7.) These inmates were more costly than non-HIV+ inmates due to prescription needs.

<sup>8</sup>To provide a basis for comparison, the department identified New River Correctional Institution as a public prison with an educational program similar in size to South Bay's. The department also identified Gainesville Correctional Institution as having a substance abuse treatment program similar in size to South Bay's. Each of these public prison programs had at least as many authorized positions as South Bay and provided comparable programs.

**Exhibit 7**  
**Okeechobee Had More HIV+ Inmates than South Bay During the 1998-99 Fiscal Year**

	FY 1997-98		FY 1998-99	
	South Bay	Okeechobee	South Bay	Okeechobee
Average Inmate Population	1,240	1,187	1,244	1,127
Average number of HIV+ Inmates	54.7	46.7	32.5	118.8
Percentage of HIV+ Inmates	4.4%	3.9%	2.6%	10.5%

Source: Prepared by OPPAGA staff using data provided by the Department of Corrections and Wackenhut Corrections Corporation.

Although the higher percentage of HIV+ inmates would suggest the need for a downward adjustment to Okeechobee's health services costs, department officials indicated that the contracted amount for health services at Okeechobee understated the vendor's actual cost. This is illustrated by the increase in the health services per diem for Okeechobee from \$6.46 per inmate in 1998-99 to \$9.75 per inmate in a new contract effective on January 1, 2000. According to department officials, the new 2000 contract corrected a situation in which the vendor had health service contracts at other public prisons that provided for higher payments. We thus concluded that Okeechobee's reported health services cost was already artificially low and thus did not warrant an additional downward adjustment for the number of HIV+ inmates.

**Other adjustments.** We made two additional adjustments to the costs of the two prisons. First, we provided an adjustment for the cost of three public work squads at Okeechobee, a work program that is not available at the private prison. This resulted in an \$0.18 and \$0.20 reduction, respectively, to Okeechobee's 1997-98 and 1998-99 costs. Second, we made an adjustment to cover unfunded actuarial liabilities incurred in the Florida Retirement System during

previous years. The adjustment reduced Okeechobee's costs \$0.88 and \$0.89, respectively, for 1997-98 and 1998-99.

**Private prisons have potential for cost savings**

Although our analysis concluded that South Bay achieved the required 7% operational cost savings in comparison to public prisons, further savings are readily achievable through improved contract management by the Privatization Commission.

Cost savings from private prisons results in large part from the ability of private vendors to reduce certain personnel costs, such as retirement benefits. While the state pays approximately 21% of each public prison correctional officer's salary into the Florida Retirement System, Wackenhut's retirement expense is capped at 2.5% of an employee's salary, and the company pays that only if the employee contributes 5% of his or her salary. According to a South Bay official, less than 10% of the employees at that private prison participate in the retirement program. We estimate that public prison employee retirement costs exceed private prison retirement costs by approximately \$1.7 million per year, or over 10% of the Okeechobee annual budget.<sup>9</sup> The healthcare benefits for South Bay employees are also less generous than health benefits for state workers, providing additional opportunities for savings.

To balance the private prison vendor's interest in profits, it is the responsibility of the commission to ensure that cost savings are also maximized. We identified two specific ways in which the commission could

<sup>9</sup> This figure does not include the additional amounts paid by the state during the 1997-98 and 1998-99 fiscal years to reduce the unfunded liability of the Florida Retirement System. In [Appendix A](#), we have separately deducted the amounts paid by the state for this purpose.

potentially further reduce the cost of the South Bay prison: discontinuing the payment of estimated tax amounts and consistently penalizing the vendor for vacancies that exceed contract limits.

**The state paid Wackenhut \$263,499 for estimated Florida corporate income tax payments and \$94,107 for estimated state sales tax payments during its first two years of operation without requiring documentation of actual payments**

The commission's payments to Wackenhut have included estimated taxes for which actual payments have not been documented. In its request for proposals, the commission asked the vendors to estimate their costs for corporate income tax and state sales tax. The commission has been paying Wackenhut these estimated amounts, regardless of how much state sales tax or corporate income tax the Wackenhut Corrections Corporation has paid. For example, in the 1997-98 and 1998-99 fiscal years, the commission reported that the per diem payments to Wackenhut included estimated corporate income tax expenses of \$130,215 and \$133,284, respectively. However, Wackenhut officials told the commission that it paid no corporate income tax in 1997. Wackenhut reported it paid a total of \$148,534 in Florida corporate income tax on its combined Florida operations in 1998. Wackenhut officials told OPPAGA that this corporate tax liability was determined for the corporation rather than for individual operations.<sup>10</sup>

Similarly, at the direction of the commission, Wackenhut included an estimate of sales tax payments in its bid price. The commission has approved payment of this estimated amount without requiring the vendor to document these payments.

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<sup>10</sup> Officials estimated that the tax liability for South Bay alone would have exceeded the amount actually paid to the state for the whole corporation.

Over a two-year period, the commission has approved state payments to the vendor for \$263,499 for Florida corporate income tax and \$94,107 for Florida sales tax without requiring the vendor to document payment of these taxes.<sup>11</sup> It was the intent of the Legislature to give vendors credit for payment of any taxes that were not imposed on public prisons. However, paying the vendors these estimated corporate income tax and sales tax amounts without requiring documentation that the amounts were actually paid by the vendor has increased the cost of privatization to the state.

Another way the commission could reduce private prison costs would be to consistently adjust payments when staff vacancies exceed contract limits. Although the contract allows the commission to make deductions from its payments to the vendors when vacancies exceed certain time limits, the commission has not routinely made those deductions. The executive director stated that his only concern is to have the vendor fill positions as quickly as possible. However, paying the vendor for services not delivered compensates the vendor for salary expenses not incurred by the vendor and fails to provide a disincentive to discourage the vendor from allowing positions to remain vacant.

**The state's approach to establishing payment levels for private prisons needs to be changed**

The Legislature's authorization of the department and the commission to build the Okeechobee and South Bay prisons at similar size, in similar locations, and with similar populations offered the best opportunity for direct comparisons of public and private

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<sup>11</sup> Wackenhut and other vendors also estimated the amount of property tax that it would pay. The commission does deduct these amounts from its payments to the vendors because the vendors have not been required to pay property taxes.

prison operations. However, as discussed earlier, a variety of factors have combined to weaken the comparability of the two prisons. The prisons became even more dissimilar in September 1999 when the commission authorized South Bay to close its Close Management I dormitory and convert it to house detainees under the Jimmy Ryce Act. These detainees have completed their prison sentences, but are being detained for possible civil commitment as sexually violent predators. This change, which was authorized by the Correctional Privatization Commission for a period of approximately one year, effectively lowered the number of inmates that can be housed at South Bay. This change may affect 1999-2000 per diem costs and will limit future comparability of South Bay to Okeechobee and other public prisons.

To assure that prison privatization consistently provides the state with the 7% savings desired by the Legislature, we believe it is necessary to change the state's approach to establishing payment levels for private prisons. Rather than attempting to compare a private prison to the most similar public prison, the Legislature should establish a procedure that bases vendor prices on public prison costs from the previous year. For example, the state of Mississippi has an independent study performed to determine its prior year costs for public prisons and requires private vendors to provide 10% savings. This approach ensures that private prisons consistently produce costs lower than state prisons.<sup>12</sup>

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<sup>12</sup> The Mississippi Legislature's Joint Committee on Performance Evaluation and Expenditure Review (PEER) is required by Mississippi Code Ann. ss. 47-5-1201 et seq. to contract annually with a CPA firm to establish a state cost per inmate day for a comparable state facility. The law further requires that the certified cost be used as the basis for verifying the 10% savings required for private contractor costs. The 1999 report is available on the website:  
<http://www.peer.state.ms.us/reports/rpt400.pdf>.

Such an annual determination would enable the commission to ensure that private prison cost increases are consistent with public prison costs increases. At the present time, the commission enters into a multi-year contract that includes annual percentage increases for the vendor. For example, the contract with South Bay included increases of 4% at the end of each contract year. These increases are dependent upon legislative appropriation, and have previously been withheld by the Legislature. An annual determination would provide an objective basis for increasing vendor payments.

The best and fairest solution to both the state and the vendor would be to establish a formal process to determine annual price adjustments that would achieve a 7% cost savings to the state for each private prison. This process should involve an annual determination of the average public prison cost for housing offenders in a prison for the prior year.

## Performance ---

Contract performance for a privatized prison includes the vendor's compliance with requirements of the contract, the delivery of rehabilitation programs to inmates, and maintaining a secure prison. The commission oversees the performance of the vendor through an on-site monitor employed by the commission, and the commission has hired independent consultants to conduct annual monitoring reviews during each of the first two years of the contract. The latest review concluded that Wackenhut has consistently performed

satisfactorily in its management of the South Bay prison.<sup>13</sup>

We identified three specific examples in which Wackenhut's performance was noteworthy.

- South Bay programs became fully operational within six months of the prison opening, much faster than did Okeechobee.
- South Bay received a more positive review by the Correctional Medical Authority during the second year of operation than did Okeechobee.
- South Bay implemented an innovation in the management of certain close management inmates.

However, the escape of two inmates from South Bay in August 1999 indicates that the prison still has room for improvement.

#### **South Bay's programs were fully operational within six months of opening**

South Bay was able to become fully utilized and offer programs more quickly than did the public prison at Okeechobee. After three months of its opening, South Bay was operating with a full complement of inmates. By contrast, the inmate population was phased into Okeechobee over a 17-month period, using inmate labor after opening the prison to complete construction on some of the buildings inside the prison. Since September 30, 1996, Okeechobee's stated capacity has

been 1,093 beds compared to South Bay's 1,318 beds.<sup>14</sup> The inmate population levels for South Bay and Okeechobee prisons are illustrated in Exhibit 8.

The South Bay private prison provided program space upon opening in February 1997 and had fully operational programs within six months of opening that included academic education and vocational training programs and substance abuse treatment programs for its inmate population. In contrast, Okeechobee state prison did not offer academic programs until April 1998 and began its vocational programs in January 1999, more than three years after it opened.

#### **South Bay had fewer health service deficiencies than Okeechobee**

The Correctional Medical Authority (CMA) reviewed the health care services provided at Okeechobee and South Bay.<sup>15</sup> The Okeechobee public prison received a much less favorable review by the Correctional Medical Authority than did South Bay.<sup>16</sup> The CMA does

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<sup>13</sup> In a recent change that may affect vendor performance, the commission determined that it would not solicit an annual independent monitoring review of its private prisons during the 1999-2000 fiscal year. Instead the commission decided to spend the money previously used for annual monitoring to try to resolve a lawsuit over the payment of property taxes for private prison property. As a result, the commission's monitoring of the private vendors will be completely reliant on its on-site contract monitors. The annual monitors provide a major independent assessment of the prison by someone outside Florida's correctional system with an independent perspective to review prison performance. Because of this, we believe the annual reviews provided an important check and balance to the on-site monitor and would recommend that these reviews be reinstated as soon as possible.

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<sup>14</sup> Okeechobee's capacity was increased to 1,093 between November 1995 and September 1996. Two dormitories were converted to program uses, rather than for housing inmates, that resulted in less capacity than the 1,318 beds authorized in statute. The conversion of these dormitories was possible because of excess capacity within the state prison system and because specific program facilities have not yet been constructed at Okeechobee. Although Okeechobee's official capacity was 1,093, the department housed an average of 1,127 inmates during the 1998-99 fiscal year.

<sup>15</sup> The Corrections Medical Authority (CMA) is an independent state entity that conducts periodic reviews of the provision of health services at Florida's prisons. CMA is authorized by s. 945.602, F.S.

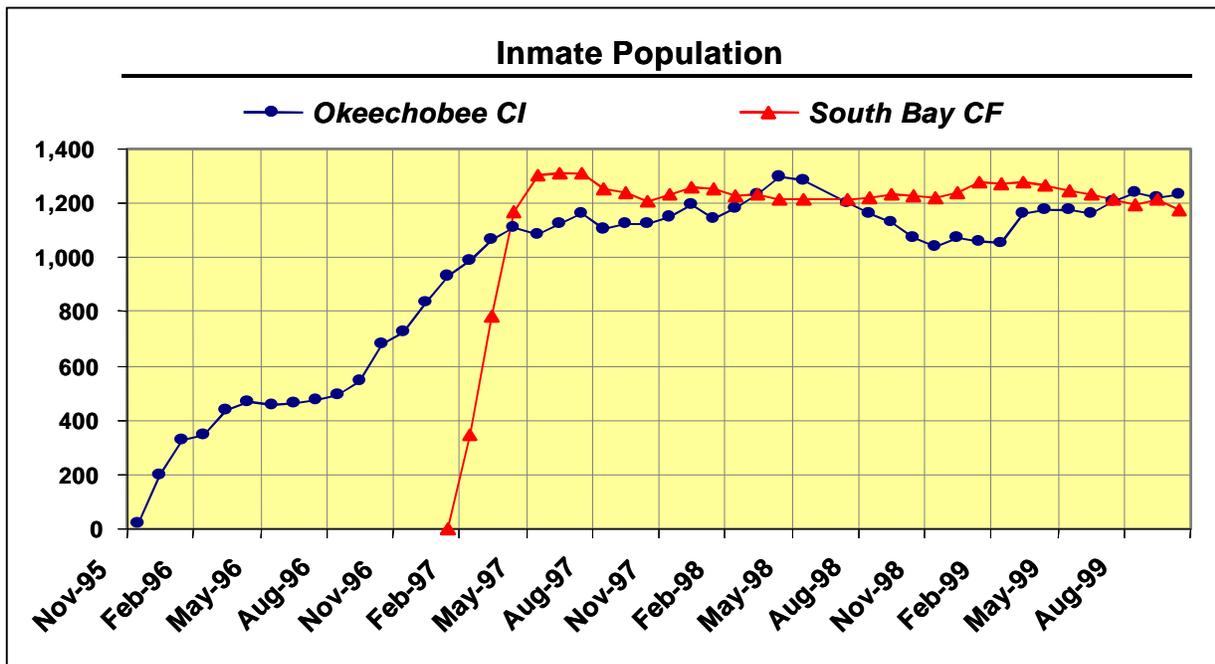
<sup>16</sup> The health services at the Okeechobee public prison are contracted to Prison Health Services (PHS), formerly Emergency Medical Services Association (EMSA), a private health services provider. Okeechobee is one of four state prisons for which the department has obtained privatized health services. Therefore, comparing the provision of Okeechobee and South Bay health services is a comparison of two types of privately delivered health services; one by a private health services vendor and the other by a private correctional vendor.

quality assurance reviews and may cite deficiencies if it finds high-risk, life threatening problems (level one) and lower risk problems that are not life threatening (level two). During the second year of each prison's operation, the medical authority reviewed the medical services of Okeechobee and South Bay. The medical authority cited

Okeechobee's medical services provider with 9 level one and 19 level two deficiencies in a July 1997 review, and the medical authority cited South Bay for 2 level one and 3 level two deficiencies in a September 1998 review.

**Exhibit 8**

**South Bay Housed More Inmates 3 Months After Opening Than the State's Okeechobee Prison Had Achieved After 17 Months of Operation**



Source: Prepared by OPPAGA staff using data provided by the Department of Corrections.

The annual monitor reported that South Bay implemented an innovative approach to housing certain close management inmates

The security risk of a prison can be gauged by the risks presented by the type of inmates it houses. Until September 1999, both Okeechobee and South Bay housed similar inmate populations, including close management inmate populations. Close management populations are inmates who must be segregated from the rest of the inmate population because the inmate has demonstrated

an inability to live in the general population without abusing the rights and privileges of others.<sup>17</sup> There are three levels of Close Management, with the most severe restrictions being applied in Close Management I and less severe restrictions applied to Close Management II and III. Rules that identify behaviors that warrant the placement of an inmate in close management and that identify the

<sup>17</sup> Close management inmates are typically allowed to spend one hour a day in a small segregated recreational area.

privileges available to inmates while in close management are set forth in Ch. 33-38, F.A.C.

The annual monitoring review reported that Wackenhut has allowed its Close Management II and III inmates to have more out of cell time than authorized by department rule. Wackenhut allows inmates in these dormitories to participate in education and other self-improvement programs within the close management dormitory. The monitor indicated this variation was commendable and should be evaluated by the department to determine whether it could be applied at other prisons.

#### **Escape of two inmates from South Bay in August 1999 revealed security problems**

A major performance issue arose in August 1999 when a breach of security at South Bay resulted in the escape of two inmates. Both inmates were recaptured near the prison within hours of their escape.

An important measure of security and protecting the public in the corrections system is preventing inmate escapes. The department has set as its goal to have no escapes from the secure perimeter of the major correctional institutions, and it met that goal in the 1998-99 fiscal year. The Okeechobee prison has reported no escapes since it opened. While the escapes at South Bay represent a serious situation, South Bay officials indicated that they are taking appropriate corrective actions to reduce the likelihood of further escapes.

Wackenhut reported that the escape resulted due to a combination of factors noted below.

- An officer permitted the inmates to enter an unsupervised vocational area at night, apparently to clean the area.
- The lock mechanism on a door from the vocational area to the outdoor fenced garden was faulty and had not been repaired.
- The inmates were able to access the roof of the administration building from the garden and to crawl across several rolls of razor wire on the roof.
- Perimeter detection devices in the vehicle entrance gate area, including cameras and motion detectors, did not alert the control room officer to the escape. Wackenhut was unable to determine whether this failure resulted from device malfunctions or human error.
- Officers at perimeter posts did not observe the inmates as they breached the perimeter fence. A correctional officer, who was in the parking lot, leaving the prison at the end of his shift saw the inmates as they came down from the fence and notified the control room.

## Conclusions and Recommendations

We concluded that the South Bay private prison has provided the state with a well run correctional facility and that Wackenhut exceeded the 7% cost savings requirement for construction costs. Furthermore, South Bay's operating costs for the 1998-99 fiscal year did meet the Legislature's requirement to provide a 7% cost savings to the state in comparison to the Okeechobee public prison when

reasonable cost adjustments were considered. Okeechobee is a state prison that was authorized by the Legislature to be of similar size, to house a similar population, and to be located in the same part of the state as South Bay. However, steps taken by the department to limit the capacity of Okeechobee due to excess capacity within the state prison system have weakened the comparability of South Bay and Okeechobee.

Improved cost control efforts by the commission could increase the level of savings achieved through privatization. We recommend that the contract with Wackenhut Corrections Corporation for the operation of South Bay Correctional Facility be renewed. However, the changes discussed below are needed to improve the benefit of privatization to the state.

- To better monitor vendor performance, the commission should include specific performance measures in each vendor contract. The commission's measures should parallel those of the department to facilitate comparison with state prison performance. Examples of measures that could be used include: the number of escapes, the number of General Education Development (GED) certificates earned by inmates, the number of vocational certificates awarded to inmates, the number of inmates completing substance abuse programs, and the meeting of the statutory 7% cost savings requirement. Failure to meet performance standards agreed to by the vendor and the commission in these areas should result in penalties levied upon the vendor.

Given the complications involved in comparing public and private prison

costs, we believe that the Legislature should require a new approach to setting the per diem rates for private prisons. To ensure that privatization achieves a 7% cost savings to the state for each private prison, the Legislature should direct the commission and the department to work together to develop a methodology for indexing correctional costs so that vendor contracts can be set at 7% below public prison costs. We believe that an annual process is needed to determine actual public prison costs and that private prison per diems should be set based upon that determination. This annual process would include a determination of

- the average cost to the state of maintaining custody of an inmate within the secure perimeter of a public prison;
- the average cost of providing educational, vocational, substance abuse treatment, and other programs to each participating inmate; and
- the average cost of health services for typical inmates as well as average cost for inmates diagnosed with selected high cost medical conditions.

The state of Mississippi currently uses a process in which a third party determines the annual public prison cost that is used to set private prison compensation.

The commission needs to improve its annual report to the Legislature. Section 957.03(4)(c), F.S., requires the commission to report to the Speaker of the House and the President of the Senate by December 1, each year, on the status and effectiveness of the facilities under its management. Each report must also include a comparison

of recidivism rates for inmates of private correctional facilities to the recidivism rates of inmates of comparable facilities managed by the department. The commission's 1998 report did not address recidivism. Although the commission's 1998 report stated that it had ensured cost effectiveness, we found that the commission had missed opportunities to improve cost effectiveness through better contract management. Therefore, we recommend that the commission's annual report include the following information on each private prison:

- the commission's analysis and comparison of the cost of private prisons services to similar state prison services;
- the commission's evaluation of specific performance measures such as escapes, health services grievances upheld, educational program certificates awarded compared to similar state prisons;
- the results of the commission's tracking of the recidivism of private prison inmates and comparison with state prison inmates; and
- the results of the commission's efforts to ensure cost effectiveness of private prison contracts to produce cost savings to the state.

## Response Summaries —

In accordance with the provisions of s. 11.45(7)(d), F.S., a draft of our report was submitted to the Wackenhut Corrections Corporation, the Correctional Privatization Commission, and the Department of Corrections for review and response. The responses provided cannot be reproduced within the space limitations of this report, but

are published in full with the electronic version of our report on our website, The Florida Monitor (<http://www.oppaga.state.fl.us>) and are available on request.

## Department of Corrections

The Secretary of the Department of Corrections disagreed with some of the assumptions and conclusions of our report. He argued that our adjustment to calculate the private prison cost as if it were at full capacity had the effect of distorting the operating cost comparison between the private and public prison. In addition, he states that by ignoring the differences in medical populations (more HIV+ inmates at the public prison during the second comparison year), the private prisons received a distinct cost advantage. He concludes that "the impact of these controversial cost adjustments directly affect the validity of one of your primary findings - that the South Bay contract provided the required 7 percent savings."

As indicated in our report, differences in the size of and types of inmates assigned to South Bay and Okeechobee prisons weakened the significance of the cost comparisons. These differences were the result of decisions made by the department in its management of the state correctional system. We made those adjustments that we felt were justified. The differences in the medical populations created a concern for us for which we could not identify an appropriate adjustment. However, if we were to remove all medical costs from the comparison, the results would be unchanged, still showing that South Bay per diem costs were approximately 10.5% less than Okeechobee for the 1998-99 fiscal year.

The Secretary also challenges the fact that OPPAGA gives credit to the private vendor for housing more inmates within three months of opening than the public prison housed after 17 months of operation. He states that this happened because the contract guarantees those beds, and that the state had to move inmates from other state prisons in order to fill up those beds. He states, "Creating empty beds in state-owned and operated prisons to fill private prisons at an artificially accelerated pace is a cost of privatization that is not addressed in this analysis." The Secretary accurately comments that we did not address costs associated with emptying beds in public prisons to fill the private prison. Nonetheless, we believe that the fact that South Bay was fully operational within a much shorter time period than the public Okeechobee prison is a noteworthy accomplishment. We did not attempt to address whether it is more cost-efficient to achieve full operation within the short time frame or to spread the start-up of a prison over a period of many months.

## **Wackenhut Corrections Corporation**

The CEO and Vice Chairman of the Wackenhut Corrections Corporation generally concurred with the findings of our report.

## **Correctional Privatization Commission**

The Executive Director of the Correctional Privatization Commission highlighted the differences between the Okeechobee public prison and the South Bay private prison and how these weakened the opportunity for a direct comparison between public and private prison costs. He also emphasized the competitive effect that privatization has had on corrections in the state of Florida.

## Appendix A

# South Bay Private Prison Adjusted Costs Were Lower Than Okeechobee Public Prison for Fiscal Year 1998-99

Cost of Operating South Bay Private Prison Compared with Okeechobee State Prison Fiscal Years 1997-98 and 1998-99	Fiscal Year 1997-98		Fiscal Year 1998-99	
	South Bay Private Prison	Okeechobee State Prison	South Bay Private Prison	Okeechobee State Prison
<b>Direct Costs for the Operation of the Prisons</b>				
Contracted per diem for inmate days billed by vendors at full capacity of 1,318 inmates	\$19,465,945		\$19,912,930	
Add: salary competitive area differential (CAD) paid to vendor	1,273,012		1,388,545	
<b>Less</b>				
Medical co-payments collected from inmates -- retained by vendor	\$ (2,165)		\$ (2,071)	
Amount retained by the CPC for salaries of monitors and additional commission administrative staff	(106,843)		(108,116)	
Per diem provided by the contract for property taxes -- not payable to counties/cities	(1,200,034)		(1,227,851)	
<b>Per Diem and CAD Payments to the Vendor</b>	<b>\$19,429,915</b>		<b>\$19,963,437</b>	
Medical expenses over \$7,500 paid by the Department of Corrections for private prison inmates	\$ 199,728		\$ 166,005	
Cost for DC classification staff at private prison	116,324		106,592	
Impact fees paid for private prison in lieu of property taxes	-		307,055	
<b>Total Direct Expenditures for the Prisons</b>	<b>\$19,745,967</b>	<b>\$15,952,341</b>	<b>\$20,543,089</b>	<b>\$17,061,980</b>
<b>Direct Costs Converted to a Per Diem Rate for the Fiscal Year</b>				
Average inmate population for the fiscal year	1,240	1,187	1,244	1,127
Adjust South Bay to full capacity	1,318		1,318	
<b>Total Inmate-days for the Fiscal Year</b>	<b>481,070</b>	<b>433,192</b>	<b>481,070</b>	<b>411,252</b>
Fiscal Year 1997-98 per diem costs: operations	\$30.01	\$32.35	\$31.21	\$34.11
Health services	5.73	4.00	5.97	6.46
Education programs	2.45	0.48	2.54	0.91
Substance abuse treatment	2.86		2.98	
<b>Total Direct Expenditures Calculated as a Per Diem</b>	<b>\$41.05</b>	<b>\$36.83</b>	<b>\$42.70</b>	<b>\$41.48</b>
<b>Indirect Costs Allocated to Private and State Prisons</b>				
Correctional Privatization Commission	\$0.68		\$0.68	
Department of Corrections	0.77	\$3.15	0.90	\$3.22
Other state agencies	0.04	0.24	0.04	0.23
<b>Total Indirect Costs</b>	<b>\$1.49</b>	<b>\$3.39</b>	<b>\$1.62</b>	<b>\$3.45</b>

Cost of Operating South Bay Private Prison Compared with Okeechobee State Prison Fiscal Years 1997-98 and 1998-99	Fiscal Year 1997-98		Fiscal Year 1998-99	
	South Bay	Okeechobee	South Bay	Okeechobee
	Private Prison	State Prison	Private Prison	State Prison
<b>Statutory Credits to Costs of Private Prisons and Adjustments for Comparison</b>				
Credit for impact subsidy paid to local government in lieu of property tax			\$ (0.64)	
Credit for sales tax paid by private vendor	\$ (0.10)		(0.11)	
Credit for Florida corporate income tax paid <sup>1</sup>				
Vendor payments to major maintenance repair fund \$125,000/year	(0.26)		(0.26)	
Additional medical costs reimbursed to healthcare provider		\$ 0.39		\$ 0.62
Increase Okeechobee's level of education and vocational programs offered to that of South Bay (\$0.48+2.23=\$2.71) and (\$0.91+1.86=\$2.77)		2.23		1.86
Add state substance abuse programs to Okeechobee equivalent to that offered at South Bay		1.94		2.11
Reduce Okeechobee's cost for inmate work squads that South Bay does not have		(0.18)		(0.20)
Reduce costs of Okeechobee for contributions to repay prior years' unfunded debt of the Retirement System		(0.88)		(0.89)
<b>Statutory Credits and Adjustments for Comparison</b>	<b>\$ (0.36)</b>	<b>\$ 3.50</b>	<b>\$ (1.01)</b>	<b>\$ 3.50</b>
Operating cost comparison	\$ 42.18	\$43.72	\$43.31	\$48.43
Private over or under(-) state cost	-3.5%		-10.6%	
Private over or under(-) state cost without adjustment to full capacity	1.6%		- 6.0%	

<sup>1</sup> In the 1997-98 and 1998-99 fiscal years, the commission reported that the per diem payments to Wackenhut included estimated corporate income tax expenses of \$130,215 and \$133,284, respectively. Wackenhut reported that it paid no corporate income tax in 1997 and paid \$148,534 in corporate income tax for tax year 1998 for all of its Florida operations within the Wackenhut Corrections Corporation economic family. If we were to give credit for the amount of tax actually paid, the credit would be nothing for 1997-98, and would reduce the adjusted per diem by \$0.33 for 1998-99. No amount was included for the 1998-99 fiscal year because it was not clear what portion of the payment was attributable to South Bay.

Source: Prepared by OPPAGA staff using data provided by the Department of Corrections, the Correctional Privatization Commission, and Wackenhut Corrections Corporation.

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