

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB's 1604 & 1618

SPONSOR: Criminal Justice Committee and Senators Silver and Klein

SUBJECT: Corrections

DATE: April 12, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barrow</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Mannelli</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bills 1604 and 1618 would delete the statutory authority of the Department of Corrections (department or DOC) to enter into contracts with private sector businesses to operate Prison Industry Enhancement (PIE) Programs. The corporation responsible for operating correctional industries in Florida's prison system, PRIDE Enterprises (PRIDE), would be given statutory authority to enter into contracts with the private sector to operate PIE programs. Therefore, PRIDE would be authorized to seek federal certification to administer PIE programs in Florida, rather than the department. Other corresponding statutory provisions that are necessary in order to seek the PIE certificate would also be created.

PRIDE would be authorized to enter into leases directly with the Board of Trustees of the Internal Improvement Trust Fund for a period of at least 20 years for lands currently subject to specific leases.

PRIDE would be authorized to seek tax-exempt financing for the construction of buildings or capital improvements for correctional work programs and PIE programs on state-owned lands. In such cases, the state would retain a secured interest in such an investment by holding a lien against any structure or improvement that used tax-exempt financing or state funds.

The department would be authorized to sell any surplus food items cultivated by inmates to PRIDE.

PRIDE would be authorized to establish and operate work camps for jails. The work camps would use jail inmates for labor in correctional work programs or PIE programs and would directly enter into contracts with local governments and the sheriffs or jail administrators to operate the work camps for the respective jurisdictions.

The Department of Corrections would be required to periodically reevaluate the vocational programs offered in prisons to maintain correlation between the skills learned in such

programming and needed skills to work in PIE programs. Clarification is provided that minors adjudicated as adults and in the custody of the department may receive educational services without the consent of the parents of the minor.

The department would be required to develop a plan to ensure that academic and vocational classes are being offered at more frequent and convenient times, to the extent that resources permit, to accommodate the increasing number of inmates who have work assignments.

The provisions of the act would take effect on July 1, 1999.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 320.06, 944.801, 946.002, 946.006, 946.0061, 946.007, 946.008, 946.205, 946.21, 946.31, 946.32, 946.33, 946.504, 946.515, 946.519, 946.523, and 946.524.

II. Present Situation:

A. Current Status of Inmate Workers in Florida

Section 946.002 (1) (b), F.S., requires the department to have the continuous goal of working all able-bodied inmates at least 40 hours per week. Inmates can be assigned to a variety of work and self-improvement programs within the department, which include:

- (1) institutional work (e.g., food preparation and laundry);
- (2) outside work squads that perform manual labor, such as road work and landscaping, for state agencies, such as the Department of Transportation, and city and county governments; and
- (3) prison industries.

Inmates working in prison *industries* are assigned either to a program operated by Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) or a Prison Industry Enhancement (PIE) program operated by the Department of Corrections.

The mandate to try to work all inmates at least 40 hours per week recognizes that there are limitations in working inmates who either are medically unable to work or pose a serious security risk if put to work outside the secure perimeter of a prison. This mandate was made with a concern about inmate idleness and the issues it presents. The department is charged with trying to maximize the use of inmates while incarcerated, but must do this within existing resources.

On August 28, 1998, there were 63,055 inmates in Department of Corrections' facilities and 4,012 inmates in private facilities for a total of 67,067 inmates in the state prison system. Of the 63,055 inmates in the department's facilities, 51,741 inmates were "available" for a work assignment. This means that 11,314 inmates were unavailable for assignment.

B. PRIDE's Management and Operation of Florida's Prison Industries

Beginning in 1981 and since 1984, Florida correctional work programs, *in toto*, have been administered by Prison Rehabilitation Industries and Diversified Enterprises, Inc. (PRIDE). Prior to 1981, the Department of Corrections operated the state's prison industries program. However,

in 1981, the Legislature authorized the department to lease the facilities and equipment of the various correctional industries to a nonprofit corporation organized solely for the purpose of operating the correctional work programs. Ch. 81-125, 1981 *Fla. Laws* 253. By 1984, the management and operations of all prison industry programs had been transferred to PRIDE.

Pursuant to s. 946.501, F.S., the Legislature has mandated the following missions for PRIDE:

- ▶ To provide a joint effort between the Department of Corrections, the correctional work programs, and other vocational training programs to reinforce relevant education, training, and post release job placement and help reduce recommitment;
- ▶ To serve the state's security goals by reducing inmate idleness and providing incentives for good behavior;
- ▶ To reduce the costs of state government by operating enterprises primarily with inmate labor, which do not seek to unreasonably compete with private business; and
- ▶ To serve the state's rehabilitative goals by duplicating, as nearly as possible, the operating activities of a free-enterprise type of profit making enterprise.

PRIDE and the Department of Corrections have entered into various lease agreements to allow PRIDE to use certain state land, buildings, and equipment in the operation of its prison industries. Although the Florida Statutes require PRIDE to pay the department a monetary amount as rent on the leased facilities, which is to be deposited in the Correctional Work Program Trust Fund and used for purposes related to work programs, the corporation does not pay rent. s. 946.504(4), F.S. Instead, PRIDE pays 1.5 percent of its gross sales to the state to be deposited into General Revenue. In addition, PRIDE built or has substantially remodeled the buildings that are subject to rental payments, according to PRIDE.

Chapter 284, F.S., establishes a plan of self-insurance for state owned or leased structures, fixtures, and tangible personal property. Coverage is provided under the Florida Fire Insurance Trust Fund with the Division of Risk Management in the Department of Insurance. Currently, property leased by the Department of Corrections to PRIDE must have state insurance coverage.

PRIDE currently has approximately 400 employees and 4,600 workers. *See*, State of Florida, Handbook for the 1998 PIE Program Conference, section 2, (tab 6) p. 1. (August 27-28, 1998). The gross sales for PRIDE in 1997 were over \$83 million, with a gross margin of slightly over \$8 million. *See*, PRIDE Enterprises, *1997 Annual Report*, p. 25 (1997) (Clearwater, Florida). In 1996, PRIDE's gross sales were nearly \$73 million, with a gross margin of approximately \$5.5 million. PRIDE gives a small percentage of its gross sales to the State of Florida to encourage the purchase of PRIDE products. Through 1997, PRIDE has contributed over \$11.3 million to the Department of Corrections, which is from a voluntary contribution by PRIDE of 1.5 percent of annual gross sales. On an annual basis, the contribution is now approximately \$1.2 million.

C. Legal Restrictions on the Sale and Purchase of PRIDE Products and Services

The inmate goods and services of PRIDE are subject to state and federal laws that limit their marketing. The majority of PRIDE's sales are to state agencies. Sales to private entities are restricted by law.

Part II of ch. 946, F.S., governs inmate work programs that are leased or managed by PRIDE Enterprises. PRIDE is also controlled by federal law through the Ashurst-Sumners Act relating to the sale of prison-made goods in interstate commerce. PRIDE may only sell its goods to the public sector or to foreign customers if it is operating its traditional prison industries pursuant to state and federal law. Prison-made "goods" are distinguished from "services," however. Services rendered by inmates are not regulated and may be utilized and sold on an interstate basis. If PRIDE is operating a business pursuant to the PIE Program, it may sell prison-made products on the open market to anyone including the private sector within the United States.

Pursuant to s. 946.515, F.S., any service or item manufactured, processed, grown, or produced by PRIDE inmates may be furnished or sold to any legislative, executive, or judicial agency of the state, any political subdivision, any other state, any foreign government, any agency of the federal government, or any contractors of such agencies or their subcontractors. *See also*, s. 946.518, F.S.

Raw agricultural products, including, but not limited to, sugar cane, vegetables, beef and dairy products, may be sold to governmental or private entities. s. 946.515 (3), F.S. PRIDE is also authorized to contract with any political subdivision of the state to operate a fish and seafood processing plant and to spawn and grow seafood for sale to private entities. *Id.*

In addition, PRIDE may contract to provide inmate services or goods to private enterprise where the goods or services are under the direct supervision of PRIDE and the Governor determines that such goods or services do not unreasonably compete with other businesses in this state. s. 946.515 (5), F.S. However, this statutory provision does not significantly expand PRIDE's market to private entities because of federal law restrictions. *Id.*

Currently, if inmate-produced products are certified by PRIDE as meeting comparable performance specifications and comparable price and quality requirements as any other source, state agencies must purchase PRIDE products rather than from other sources. s. 946.515 (2), F.S. The purchasing authority of any state agency may make reasonable determinations of need, price, and quality of products made available by PRIDE. *Id.* However, by administrative rule, if PRIDE's products are made available and are not bought and used by a state agency, the agency's "reasonable determination" of its needs, pricing, and quality requirements relating to the purchase must be written and forwarded to PRIDE 10 days prior to purchasing the similar item from another source. Rule 60A-7.005, *Fla. Admin. Code Ann.* (1996). The agency's written notice not to purchase from PRIDE must include a justification for making its determination. *Id.* This 10-day notice is not codified in the Florida Statutes.

Federal law prohibits the transportation in interstate commerce or from any foreign country of any goods, wares or merchandise manufactured, produced or mined by prisoners. *Ashurst-Sumners Act of 1948*, 18 U.S.C.A. 1761 (1991 & Supp. 1995). Violation of this federal law constitutes a

crime, punishable by a fine of not more than \$50,000, a prison term of not more than 2 years, or both. *Id.* This federal prohibition specifically does *not* apply to the following:

- (1) agricultural commodities;
- (2) parts for farm machinery repair;
- (3) commodities manufactured in a federal or state institution for use by the federal government or any state or political subdivision; and
- (4) goods manufactured, produced or mined by prisoners participating in certain federally authorized Prison Industry Enhancement Programs. *Id.*

PRIDE distributes inmate pay, which is not minimum wage or “prevailing wage” for its non-PIE, traditional prison industries. Inmate pay for PRIDE’s traditional correctional industries is significantly lower than minimum wage or prevailing wages. PRIDE has been successful in court challenges against the rate of pay for inmates working in traditional correctional industries. The *Gambetta v. PRIDE, Inc.*, case found that PRIDE was an “instrumentality of the state” operating in the correctional system and did *not* have to pay inmates minimum wage in accordance with the Fair Labor Standards Act. *See*, 112 F.3d 1119, 1125 (11th Cir. 1997). The United States Eleventh Circuit Court of Appeals found that because of the enactment of s. 946.5026, F.S., and because the entity is exempt from sales taxes, is audited by the state, is required to report to the Governor and the Legislature on the status of correctional programs and submit a financial statement, has its assets revert to the state upon termination of the corporation’s existence, and has all members of the Board of Directors appointed by the Governor and confirmed by the Senate. *Id.* at 1123.

Distributions or disbursements from inmate pay are made by PRIDE for a myriad of things. Deductions and disbursements are made for such things as victim restitution and court-ordered child support.

Currently, PRIDE operates two PIE programs through the “customer model” where PRIDE acts as the partnership broker by seeking out businesses to partner with to operate a business in prisons as approved by the Department of Corrections, the PIE Program certificate holder. In these PIE industries, PRIDE acts as the “middleman” for private businesses that become a customer of PRIDE’s for the prison manufacturing of a contractually arranged product.

PRIDE states that it is enthusiastic about expanding the number of PIE programs in Florida’s prison system. PRIDE’s market for traditional prison industries, the public sector, is very limited and offers the prospect of only a small margin of growth. In fact, PRIDE’s market for traditional correctional industries is arguably shrinking. The opportunity for PRIDE’s growth undoubtedly lies in the expansion of the PIE program in Florida. PRIDE is currently in a position of competing with the Department of Corrections in the expansion of the PIE program. In many respects, it appears that the Department of Corrections and PRIDE are pursuing the same people and companies to partnership with in the PIE program. The next section of this report will discuss the ramifications of this “competition” in more detail.

The following table provides a list of the different work assignments that PRIDE operates within the Florida prison system.

PRIDE Work Assignments in Florida's Prison System

Work Assignment	Brief Description
Abattoir	Slaughters animals for the use of food, cut up the carcass, and prepare the meat for distribution and consumption
Administration	Performs routine clerical duties involving substantial typing duties and the use of office equipment
Beef Cattle	Works with cattle and preparing for employment as a ranch hand or general farm laborer
Citrus	Performs operations in the citrus industry at the institution
Computer Aided Draft/Design	Performs operations in the CADD Industries Program
Corrugated Boxes	Performs operations in the corrugated box industry
Dairy	Performs operations in the dairy industry
Decals	Performs operations in manufacturing decals for various uses
Dental Lab	Manufactures dental prosthetics
Farm	Operates the farm industries program
Feed Mill	Operates the stock and poultry feed industries program
Forestry	Plants, cuts, prunes, trims, and harvests forest products
Furniture Refurbishing	Upholsters furniture
Garment	Manufactures clothing items
Key Punch Data Entry	Operates data entry equipment
Maintenance	Performs maintenance in the areas of masonry, carpentry, plumbing, electrical and painting on PRIDE buildings
Mattress/Gloves	Manufactures mattresses and gloves
Metal Furniture	Manufactures and assembles metal furniture
Metal Products	Produces metal products that are used to manufacture metal furniture
Optical Lab	Performs various duties related to the operation of the Optical Lab Industries Program under the PIE program through the customer model; Sets up and operates machines such as a generator, polisher, edger, and hardener to fabricate lenses to specifications

Work Assignment	Brief Description
Paint Factory	Performs basic paint manufacturing and learns basic techniques of production
Poultry/Eggs	Performs duties concerned with raising poultry for eggs; sorting and packaging eggs
Printing	Operates production machinery used in the print industry. Trained in equipment to produce customer lay-outs, composition and camera-ready copies
Ring Binding	Manufactures office supplies such as 3-ring binders, print designing, and emboss hem on book covers, assist with packing and shipping
Sanitary/Maintenance Supplies	Produces sanitary products such as liquid, powdered, and bar soap
School Bus/Heavy Vehicle Renovation	Prepares buses and other equipment for refinishing and repairs
Shoe Factory	Manufactures and repairs shoes
Sugarcane Farming	Plants, cultivates, and harvests sugarcane
Tag (Auto) Plant	Handles sheet metal material and operates machinery to produce auto tags
Tire Remanufacturing	Repairs and retreads auto tires
Warehouse	Receives, stores, and distributes all items received in the warehouse of PRIDE
Wood Furniture	Assembles wooden parts or sections, frames, or completes the finishing of wood furniture manufacturing
Automated Mapping & Facilities Management	Provides on-the-job experience to become accomplished in the basic fundamentals of AM/FM conversion (Geonix)
PIE/PRIDE - Kennel Kits	Bends pipes and assembles chain link fences to produce panels and gates for dog kennel kits (Reeves Southeastern Co.)
PIE/PRIDE - Optical	Performs duties related to an optical lab, such as grinding and polishing lenses from prescription and fabricates eye glasses (Advantage Optics, Inc.)

D. Lease of Facilities by PRIDE

The original legislation in 1983 that transferred the operation of correctional work programs from the Department of Corrections to a nonprofit corporation (PRIDE) required the department to lease "the buildings, land, furnishings, equipment, and other chattels used in each correctional

work program.” Ch. 83-209, *Laws of Fla.* (codified at s. 946.504 (1), F.S.). If a correctional work program operated by PRIDE is terminated or the corporation dissolved, state law provides that all property subsequently purchased or otherwise acquired by PRIDE in connection with its correctional work programs is to revert back to full ownership of the department. This reversion occurs unless PRIDE intends to use the property in another correctional work program. “Property” includes “all funds, buildings, land, furnishings, equipment, and other chattels.” s. 946.505, F.S.

Section 946.503, F.S., defines “facilities” for purposes of part II of ch. 946, F.S., as “the buildings, land, equipment, and other chattels used in the operation of an industry program.” This definition currently makes no distinction between facilities located on state property, which may revert to the department if a PRIDE program is terminated or the corporation dissolved, and “facilities” which are connected to correctional work programs in private prisons and county jails. PRIDE is authorized to contract with private contractors and local government authorities operating correctional facilities to operate correctional work programs under s. 946.5025, F.S.

E. The Prison Industry Enhancement (PIE) Program

1. General Description of Program

The sale of prison-made goods were initially prohibited by the Ashurst-Sumners Act in 1935. *See*, Pub. L. 74-215, 49 Stat. 494 (1935) (codified at 18 U.S.C. 1761). This prohibition arose from many arguments against the use of prisoner labor, such as poor prison work conditions, inmate exploitation, and the disturbance of private free enterprise by undercutting competition with cheap labor. *See, Federal Register*, Vol. 63, No. 129, p. 36711 (July 7, 1998) (as reported in section 2 of the Handbook for the 1998 PIE Program Conference (on file with the Florida Corrections Commission, Tallahassee, Florida)). The Ashurst-Sumners Act has been subsequently amended to allow the sale of prison-made goods under certain conditions. The Walsh-Healey Act also regulates the production of prison-made goods by placing dollar restrictions on government contracts prison labor may fulfill. *See, Id.* at 36712.

The limited use of inmate labor for profit from interstate sales was originally authorized in the Justice System Improvement Act of 1979 upon the creation of the Prison Industry Enhancement (PIE) Program. The PIE Program is a federally administered program that authorizes public and private partnerships to employ inmates in correctional systems to produce items for open sale to the private sector if certain criteria are met. The United States Department of Justice administers the PIE Program through the Office of Justice Programs’ Bureau of Justice Assistance (BJA). At the time the PIE Program was created, it was noted that it was being created to accomplish two goals:

- ▶ attract private businesses to prison programs for the benefit of expanding prison programs for inmates by creating a realistic working environment for inmates to learn self-sufficiency and
- ▶ to encourage growth in prison industries for capital growth while not introducing a threat of unfair competition with other private industries. *Federal Register*, Vol. 63, No. 129, p. 36712 (July 7, 1998).

The Justice Assistance Act of 1984 and the Crime Control Act of 1990 have further expanded and regulated the PIE Program since its enactment. The exception authorizing the PIE Program also states that it serves the purposes of providing a cost-efficient means to address inmate idleness; preventing the exploitation of prison labor; and increasing the advantages to the public through inmate wage deductions that cover costs of incarceration, pay victim restitution, and provide family monetary support. *Id.* at p. 36713.

Pursuant to an exception to the Ashurst-Sumners Act and the Walsh-Healey Act, the PIE Program allows prison-made goods to be sold within the stream of interstate commerce *if* the prison industry that produces the goods operates under the umbrella of a PIE certified program. *See*, 18 U.S.C. 1761. In March 1995, the Florida Department of Corrections was certified for the PIE Program by the BJA after it determined that all necessary legislative and guideline requirements were met or would be met. There are currently 38 other states or jurisdictions that have been certified for the PIE Program through the BJA.

The BJA recently finalized new guidelines pertaining to the PIE program. There are many requirements that must be followed in order to achieve and maintain certification and to allow the interstate sale of the prison-made goods under the PIE Program Guidelines.

One of the most prominent provisions in the guidelines is the level of pay that must be given to inmate workers. Federal law requires that inmate workers must be paid the “prevailing wage” for the industry that is set up in the prison compound. This means that PIE inmate workers cannot be paid wages at a rate which is less than that paid for work of a similar nature in the locality in which the work is to be performed. This requirement is viewed as a protection for competing businesses from unfair competition that would otherwise stem from the flow of low-cost, prison-made goods into the marketplace. *Federal Register*, Vol. 63, No. 129, p. 36715-6 (July 7, 1998). The “prevailing wage” amount must be set exclusively in relation to the amount of pay received by similarly situated non-inmate workers. *Id.*; 18 U.S.C. 1761. The federal statute does not allow other cost variables to be taken into consideration, such as unique expenses incurred as a result of undertaking production within the prison environment. *See*, 18 U.S.C. 1761.

Additionally, there must be a showing as determined by the “cost accounting center” of the certified agency that a proposed PIE industry operation will not result in the “displacement” of employed workers, that there is not a surplus of available gainful labor in the locality where the PIE industry would be established, and that the proposed PIE industry would not “significantly impair” existing contracts. *Federal Register*, Vol. 63, No. 129, p. 36716 (July 7, 1998).

The cost accounting center (CAC) is a distinct PIE program goods production unit of the industries system that is managed as a separate accounting entity under the authority of a PIE certificate holder. In Florida, the CAC is the Department of Corrections or its designee.

A PIE industry must also provide “benefits” to inmate workers. Such benefits must be comparable to those made available by the Federal or State Government to private sector employees. This would include workers’ compensation coverage, under some circumstances social security, but *not* unemployment coverage.

The state benefits from the PIE Program by taking deductions from inmate wages earned by working in a PIE industry. There are restrictions on the deductions and distribution of deductions taken from inmate wages. Although deductions are not required under federal law, if deductions are taken, the total deductions cannot exceed 80 percent of the wages earned by the inmates. If deductions are taken, they must be taken from gross wages and only for the following purposes: federal, state, and local taxes; reasonable charges for the cost of "room and board"; statutory, court-ordered, or inmate-consensual family support; and a crime-victim compensation fund. *See, Id.* at 36716-17; 18 U.S.C. 1761 (c) (2) (B).

2. The Administration of the PIE Program in Florida

In 1994, the Legislature authorized the Department of Corrections to participate in the federal PIE Program. The Florida Department of Corrections holds the PIE certificate that was issued by the BJA in March 1995 allowing industries operating through this certification to sell its prison-made products in the stream of interstate commerce.

As authorized by the BJA's PIE Program Guidelines, industries may be set up as one of two different models, the employer model or the customer model. Both types of models have been approved in Florida. There are advantages and disadvantages to both models; so, knowing these, it is the choice of the company contracting with the department as the certificate holder.

If a company chooses the "employer model," the company would come into a specific prison, as agreed upon by the department and the company, and would set up operations within that prison using its own equipment and taking on other associated costs. *See, Federal Register*, Vol. 63, No. 129, p. 36714 (July 7, 1998). The company would be likely to operate as the designated cost accounting center (CAC) that is required by the PIE Program Guidelines. As the operator of the cost accounting center, the company controls the hiring, firing, training, supervision, and payment of the inmate workers. The department would not play a major role in the industry operations or direct production, and would not exercise control over inmate labor performance. Instead, the private company would control the aspects of the industry it establishes pursuant to a contract with the department. However, the department is still responsible for monitoring overall guideline compliance of the designated program as the certificate holder under the PIE Program Guidelines.

If a company chooses the "customer model" for operating a business in the PIE Program, the company does not exactly come in and set up shop within the prison walls. Because PRIDE is the sole operator of prison industries in Florida for *public* facilities, PRIDE would actually be "setting up shop" for that specific company according to specifications within an agreement between PRIDE and the purchaser. For private facilities, the private vendor or other prison industry managers could operate an industry under the customer model. Under the customer model, PRIDE acts as an out-sourcing agent to private businesses, which for any number of reasons cannot meet their production demands or finds it cheaper to out-source production of certain items. PRIDE or the industry manager can then act as the designated CAC to monitor compliance with the federal PIE Program Guidelines, but with ultimate responsibility for monitoring compliance falling on the Department of Corrections as the certificate holder. Under the customer model, PRIDE or other industry managers would then be in control of the hiring, firing, training, supervision, and payment of the inmates working within that industrial operation. The private company purchases

all or a significant portion of the products that the specific PRIDE/PIE or other PIE industry manager manufactures.

Strict compliance with the PIE Program Guidelines is important to maintain the PIE Certification Program exemption to the Ashurst-Sumners Act. Non-compliance by any one designated CAC may result in PIE Certification suspension and/or termination as to that CAC, and if warranted, termination of the state agency certification. This means that if the PIE Program certificate-holder, the Florida Department of Corrections, is not prudent and vigilant in its monitoring of its designated CACs, or itself if it would ever act as an industry's CAC, the certificate could be "pulled." If the Department of Corrections is not careful in its designation and monitoring of CACs it risks losing certification, which translates into all PIE programs operating within the State of Florida being terminated. With such high stakes, designations of CACs must be calculated and cautious, and agreements between the Department of Corrections and designated CACs must be contemplative, detailed, and farsighted.

3. PIE Programs Operating in Florida

There are currently six approved PIE industries in Florida. There were two previously operational PIE industries that are now defunct: the luffa sponge cultivation program at Hendry C.I. and the embroidery program at Gadsden C.I. The luffa operation did not become a profitable industry because the anticipated customers were not present after the industry was established. The embroidery program was an advantageous business that did not continue only because of corporate difficulties of the Exchange Group Corporation. The private business terminated the contract apparently because of difficulties in transporting the products from Gadsden C.I. to the necessary locations.

PRIDE acts as the operator of the industry, or the outsourcing agent for two PIE programs that are currently operational in the Florida prison system by utilizing the "customer model" of the PIE Program. Polk C.I. has a PIE industry that manufactures steel tubing and refines and compiles parts for consumer kits for dog kennels and fence gates. This industry is operated pursuant to a contract between Reeves Southeastern Corporation and PRIDE. It has been operational since 1997. Broward C.I. has a PRIDE optical program that assembles eye glasses to be sold on the wholesale market. Because PRIDE does not have a contract for the purchase of all or a substantial part of the eye glasses with one business, a variety of private businesses wholesale purchase frames or glasses from this PIE industry. PRIDE has another PIE industry approved, but not operational at Polk C.I. If this latter PIE program becomes operational, this industry would manufacture custom wooden boxes under the "customer model" as well.

Three other PIE programs have been approved by the Department of Corrections. The department has contracted with Mavin Manufacturing, Inc., to operate a furniture manufacturing business at Hardee C.I. under the "employer model." It is anticipated that the project will employ approximately 15 inmates in the beginning, but increase to approximately 75 inmates if the space permits. There is a desire to enlarge the industry beyond current limits to eventually employ as many as 200 inmates. To accomplish this, however, a larger building would need to be constructed. The other two PIE programs designated and certified by the department are two "cut and sew" industries at South Bay C.F. and Moore Haven C.F., which are Wackenhut-operated facilities. These programs are not yet operational but will be operated by Labor-to-Industry, Inc.,

which is a wholly owned subsidiary of the correctional industry manager, U.S. Technologies, Inc. These latter programs will be operated as “customer model” industries.

4. New Federal PIE Program Guidelines Allowing Other Entities to Hold the Certificate

The new PIE guidelines contain a provision that expands the entities that may “hold” the federal PIE certificate within a state. Until the new guidelines were issued, only state agencies could hold the certificate.

To obtain specificity on the federal interpretation of the new guidelines, PRIDE Enterprises wrote to the U.S. Department of Justice asking whether an entity such as PRIDE could hold the PIE certificate in the state of Florida under 18 U.S.C. section 1761 (c) if the Florida Legislature so designated. A reply letter from BJA to PRIDE Enterprises general counsel, dated December 15, 1998, essentially answered in the affirmative. It stated that BJA defers to state legislatures to determine what organizations or agencies may apply for PIE certification, and if certified, how to administer the PIE program. Specifically, not-for-profit entities authorized by a state legislature are eligible certificate holder candidates. BJA looks for a potential PIE certificate holder to express a commitment to comply with the operational requirements set forth in relevant federal law.

Under the new program guidelines, while BJA would “prefer to issue” PIE certificates “sparingly” so as to insure maximum opportunity for PIE participation nationwide, BJA stated in its letter that nothing in the federal statute or BJA’s program guidelines precludes the issuance of more than one PIE certificate in a given state.

F. Inmate Education in Florida’s Prisons

1. A Profile of Inmate Education Levels

At the time an inmate enters the state prison system, each inmate is assessed for his or her education grade level. This assessment occurs at the reception center in which the inmate is processed: North Florida Reception Center, Central Florida Reception Center, or South Florida Reception Center. The educational testing, along with medical and psychological testing assists the department in determining the most appropriate institutional placement based on the needs and conditions of the inmate. This initial assessment of functional literacy skill levels of inmates indicates that approximately 70 percent of inmates entering Florida’s prison system are testing at or below the 9th grade level. Further testing occurs at the institution after an inmate is transferred to his or her permanent facility placement. The following charts show the breakdown of tested grade levels and literacy skill levels by gender and race of inmates as of June 30, 1998.

Profile of Inmate Tested Grade Levels

Grade Level	White Males	White Females	Black Males	Black Females	Other Males	Other Females	Total (%)
1	250	3	1,079	32	36	1	1,401 (2.4%)

Grade Level	White Males	White Females	Black Males	Black Females	Other Males	Other Females	Total (%)
2	712	27	2,668	163	94	2	3,666 (6.4%)
3	976	46	3,350	201	94	5	4,672 (8.1%)
4	979	36	2,904	184	68	5	4,146 (7.3%)
5	1,446	76	3,405	230	83	10	5,250 (9.1%)
6	1,553	81	3,243	185	58	6	5,915 (10.3%)
7	2,090	111	3,420	182	106	6	5,915 (10.3%)
8	2,944	151	3,764	179	95	11	7,144 (12.4%)
9	2,607	168	2,659	118	77	6	5,635 (9.8%)
10	2,987	231	2,069	125	72	10	5,494 (9.6%)
11	988	81	604	27	27	2	1,729 (3.0%)
12	5,183	314	1,634	79	90	12	7,312 (12.7%)
Data Unavailable	4,016	179	3,979	186	359	43	8,762
Total	26,731	1,504	34,778	1,891	1,259	117	66,280 (100%)

Source: Florida Department of Corrections, 1997-98 Annual Report, p. 97.

Profile of Inmate Tested Literacy Skill Levels

Literacy Skill Level	White Males	White Females	Black Males	Black Females	Other Males	Other Females	Total (%)
Less than Basic Literacy (1.0-3.9)	1,938	76	7,097	396	224	8	9,739 (16.9%)

Literacy Skill Level	White Males	White Females	Black Males	Black Females	Other Males	Other Females	Total (%)
Basic Literacy Skills (4.0-8.9)	9,012	455	16,736	960	410	36	27,609 (48%)
Func'tnl Literacy Skills (9.0-12.9)	11,765	794	6,966	349	266	30	20,170 (35.1%)
Data Unavail.	4,016	179	3,979	186	359	43	8,762
Total	26,731	1,504	34,778	1,891	1,259	117	66,280

Source: Florida Department of Corrections, 1997-98 Annual Report, p. 97.

2. Types of Education Offered in Florida's Prisons

a. Basic Education

Adult basic education offers the same curriculum as mandatory literacy but enables inmates who have either completed the mandatory literacy program or were not eligible for that program because they tested too high to continue to study until they have reached the 9th grade level or higher on the Test for Adult Basic Education (TABE). This basic education is provided in both public and private prisons. Once the 9.0 level or higher is achieved, inmates would be eligible to study for their General Education Development (GED) certificate, which is available in public and private facilities. Basic education in youthful offender facilities, both public and private facilities alike, is provided through the level of 12th grade or a 12.9 score on the TABE.

b. Special Education

The Individuals with Disabilities Education Act (IDEA) is a federal education law that is monitored by the U.S. Department of Education. It regulates an educational program for which federal funds are provided for students having specific disabilities that fall within one or more of the thirteen (13) listed categories.

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a federal civil rights law that is monitored by the U. S. Office for Civil Rights. *See*, Title 29, *United States Code*, s. 794. Similarly to the IDEA, Section 504 mandates that for any recipient of federal funds, all handicapped persons be identified, not be discriminated against, and shall not be denied benefits, which includes a special education. Such benefits are to be provided to persons who are considered to have a "physical or mental impairment which substantially limits one or more major life activities." *See*, 34 CFR 104.3 (j).

These two federal laws apply to all persons who are of an age to whom the state is required to provide a free appropriate education. Any person who is of an age in which a free basic education

is to be provided by the state of Florida and has a physical or mental impairment, which substantially limits one or more major life activity or has one or more of the disabling conditions listed in the IDEA, is entitled to receive special education.

This right to special education applies to persons in the correctional system if the criteria is met by an inmate. With the coupling of these laws, there is a broadly defined group that would have to be identified and provided special education in the prison system. Recipients of special education would include age-appropriate inmates, having a history of, or are regarded as having, attention deficit disorder (ADD), attention deficit hyperactive disorder (ADHD), mental retardation, and HIV/AIDS among many other mental and physical conditions. The Department of Corrections is monitored for compliance with these laws and is subject to inspections with regard to the provision of special education and compliance with federal requirements.

c. Mandatory Literacy

The department is required by s. 944.801 (3) (i), F.S., to ensure that every inmate who has two years or more to serve on his or her sentence at the time that he or she is received at an institution and who lacks basic and functional literacy skills as defined in s. 239.105, F.S., attend at least 150 hours of sequential instruction in a correctional adult basic education program. Literacy levels are determined by the average composite score obtained on a test that has been approved by the Department of Education. If an inmate attends and actively participates in the 150 hours of instruction, the Department of Corrections can grant a one-time award of up to 6 additional days of incentive gain-time. *See*, s. 944.801 (3) (i) 5., F.S.; *see also*, s. 944.275, F.S.

After the minimum-required hours of instruction have been completed, inmates are retested. If an inmate does not attain a score of functional literacy, the department may require an inmate to remain in the instructional program until functional literacy is attained.

d. General Education Development (GED) Preparation & Testing

In the department's efforts to improve the educational levels achieved by inmates, the department also provides preparation classes for inmates who are interested and motivated to obtain their GED certification. It is not a requirement of the department that inmates obtain their GED certificate. However, the department became an official GED testing center in May of 1997 so that it can schedule and supply the GED tests to approved institutions. There were 1,878 inmates in major institutions that were awarded their GED certificates in FY 1997-98. *See*, Florida Department of Corrections, *1997-98 Annual Report*, p. 42 (October 1998) (Tallahassee, Florida).

3. Vocational Programming Offered in Florida's Prisons

The Department of Corrections and private correctional vendors provide programs that will certify inmates for a variety of vocations in the facilities they operate. A wide variety of different vocational classes are provided. The vocational classes offered to inmates vary from facility to facility. Currently, there is no formal coordination or linkage between vocational instruction and correctional industries. In FY 1997-98, there were 2,471 vocational certificates that were awarded to inmates in major correctional institutions. *Id.* The following table provides a profile of

the different types of vocational classes offered in prisons operated by the Department of Corrections.

**Vocational Classes Offered
in Department of Corrections' Facilities**

Program Type	# of Inmates Enrolled on 8/28/98	Ave. # of Inmates on Waiting List in 1998	Examples
Vocational - Total	3,399	7,600	n/a
Vocational - Industrial Education	2,331	5,570	Apparel Design Auto Technology Carpentry Collision Repair Commercial Foods Commercial Driving Drafting Environmental Service HVAC Pipe Trades Turf Equipment Maintenance Welding
Vocational - Business Education	645	1,600	Business Administration Operations Business Software Application Computer Programming Data Entry Desk Top Publishing
Vocational - Public Service	50	90	Water/Wastewater treatment
Vocational - Diversified	147	230	Diversified Cooperative Training
Vocational - Agribusiness & Natural Resources	151	140	Nursery Operations

Program Type	# of Inmates Enrolled on 8/28/98	Ave. # of Inmates on Waiting List in 1998	Examples
Vocational - Family & Consumer Sciences	124	40	Cosmetology

Source: Florida Department of Corrections (1998).

III. Effect of Proposed Changes:

Committee Substitute for Senate Bills 1604 and 1618 would delete the statutory authority of the Department of Corrections to enter into contracts with private sector businesses to operate PIE programs. PRIDE Enterprises, which is the entity currently responsible for operating correctional industries in prisons, would be given statutory authority to enter into contracts with the private sector to operate PIE programs. Therefore, PRIDE would be authorized to seek federal certification to administer PIE programs in Florida, rather than the department. Other corresponding statutory provisions that are necessary in order to seek the PIE certificate would also be created.

The statute that would be created to authorize PRIDE to operate PIE programs, s. 946.523, F.S., would reiterate federal requirements imposed upon a PIE Program certificate holder. For instance, any contract to operate a PIE program must not result in the significant displacement of employed workers in the community. Private sector employers would be required to provide workers' compensation coverage to inmates who participate in PIE programs. Inmates would expressly not be entitled to unemployment compensation. The statutory section would also provide purposes and objectives for PRIDE in operating PIE programs.

PRIDE would be authorized to enter into leases directly with the Board of Trustees of the Internal Improvement Trust Fund for a period of at least 20 years for lands that are currently under specific leases. PRIDE would no longer have to submit such lease requests through the Department of Corrections. This CS specifically lists the lease numbers that are given the authority to enter into such long-term leases directly with the Board of Directors. The lease numbers are 3513, 2946, 2675, 2937, 2673, and 2671. PRIDE represents that such leases involve agricultural lands wherein it is important to obtain long-term leases to obtain needed long-term financing, such as sugar cane fields and citrus groves.

PRIDE would be authorized to seek tax-exempt financing for the construction of buildings or capital improvements for correctional work programs and PIE programs on state-owned lands. In such cases, the state would retain a secured interest in such an investment by holding a lien against any structure or improvement that used tax-exempt financing or state funds. PRIDE would be provided specific statutory authority to seek and obtain tax-exempt bonds, certificates or participation, lease-purchase agreements, or other tax-exempt financing methods to construct facilities or make capital improvements for PRIDE or PIE programs.

If the corporation obtains tax-exempt financing, the state would retain a secured interest by holding a lien against any structure or improvement that utilized tax-exempt financing or state funds. The corporation would be required to include in its financing contract that a lien be filed by the Department of Corrections, on behalf of the state, in order to procure the issuance of tax-exempt bonds or certificates of participation, to enter into lease-purchase agreements, or to obtain any other tax-exempt financing methods for the construction or renovation of facilities related to correctional work programs or prison industry enhancement programs. The lien would be required to be against the property where any facility or structure is located which have been constructed or substantially renovated, in whole or in part, through the use of state funds. However, there would not be a requirement for the Department of Corrections to file a lien if the amount of state funds does not exceed \$25,000 or 10 percent of the contract amount, whichever is less. This CS would require the lien be recorded in the county where the property is located upon the execution of the contract authorizing such construction or renovation. It would require the lien to specify that the Department of Corrections has a financial interest in the property equal to the pro rata portion of the state's original investment of the then-fair-market value of the construction. The lien would be required to specify that the Department of Corrections' financial interest is proportionately reduced and subsequently vacated over a 20-year period of depreciation. This CS would also require the contract to include a provision that as a condition of receipt of state funding for this purpose, the corporation agrees that, if it disposes of the property before the state's interest is vacated, the corporation will refund the proportionate share of the state's initial investment, as adjusted by depreciation.

This CS would delete now-obsolete language that authorizes PRIDE to contract with any governmental entity in Florida to operate a fish and seafood processing plant. The language that would also be deleted currently authorizes PRIDE to spawn and grow fish and seafood for sale.

The department would maintain its statutory authority to use the services of inmates in the adult correctional institutions to perform work as needed and used within the state institutions. Therefore, through the shifting and deletions in this CS, the department will maintain authority to work inmates without pay for the maintenance and operation of the institutions. It is anticipated that the department would still be able to pay the current inmate workers who earn wages, such as canteen operators and paralegals.

The department would maintain its ability to operate farming and gardening programs at major institutions that utilize inmate workers. The food grown by inmates would be as needed and used in the state institutions. The department would be authorized to sell to PRIDE any surplus food items cultivated by inmates. PRIDE would, in turn, be able to sell such items on the open market if it chose that use for such purchases from the department. The department would be required to deposit any proceeds received from such surplus food sales into the Correctional Work Program Trust Fund.

PRIDE would be authorized to establish and operate work camps for jails pursuant to contracts. In such work camps, PRIDE would be authorized to use jail inmates for labor in PRIDE's regular correctional industries or PIE programs. The work camps would use jail inmates for labor in correctional work programs or PIE programs and would directly enter into contracts with local governments and the sheriffs or jail administrators to operate the work camps for the respective jurisdictions.

PRIDE would have the authority to designate appropriate land that is owned or leased by the corporation as the site of a proposed work camp facility. PRIDE would also be able to use state, county, or municipal land as the site of a proposed work camp facility. The CS would require prior approval of the Board of Trustees of the Internal Improvement Trust Fund if any state lands were used for a jail work camp.

This CS would amend s. 320.06, F.S., pertaining to motor vehicle registration, license plates, and validation stickers. In addition to obsolete language being deleted, PRIDE would be given the express authority to manufacture temporary tags, disabled hang tags, vessel decals, and fuel use decals for the Department of Highway Safety and Motor Vehicles. This authority to manufacture such items would be in addition to license plates and validation stickers under current law.

The Department of Corrections would be required to periodically reevaluate the vocational programs offered in prisons to maintain correlation between the skills learned in such programming and needed skills to work in PIE programs. The department must look to providing vocational programming to inmates who could be assigned to a PIE program. From a practical and financial standpoint, dovetailing vocational offerings and training for PIE and PRIDE programs that are operating in Florida's prison system would have the potential result of attracting private sector businesses to participate in a PIE program if inmates are properly taught and trained within the fields of the businesses the department and PRIDE would want to attract.

The CS provides that minors adjudicated as adults and in the custody of the department may receive educational services without the consent of the parents of the minor. This would allow the department to provide educational services to persons who have been committed to the custody or are under the supervision of the Department of Corrections without delay in services.

The department's Education and Job Training Office states that such statutory authority will allow the department to continue its reported practice of providing special education services to eligible inmates without obtaining prior parental consent for those inmates who are 18 years of age or younger. The department states that the language does not reduce the department's legal responsibility or commitment to providing appropriate special education services to inmates as required by federal law. The department states that such language would assist it in preventing "numerous challenges and lawsuits requiring the department to halt transfers of inmates and delay their institutional placement and program assignment until there is consultation with parents, guardians, and attorneys representing them." The department states that by having such language, it would prevent unnecessary costs that would be incurred by the department and it would prevent family "interference" with the management of inmates and institutions. The department states that parental input in educational services for minors in the custody of the department will continue. With the language in this CS, non-responsive parents will not hold up the provision of services deemed appropriate by the department to inmates who are minors with special education requirements.

The department would be required to develop a plan to ensure that academic and vocational classes are being offered at more frequent and convenient times, to the extent that resources permit, to accommodate the increasing number of inmates who have work assignments.

Sections 946.006, 946.0061, 946.007, 946.008, 946.21, and 946.519, F.S., are expressly repealed as either obsolete, given the changes in policy adopted in this CS, or duplicative because essentially the state statutory authority was transferred to a new or existing section.

The provisions of the act would take effect on July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If PIE programs are expanded, private sector businesses would have an increased opportunity to enter into partnerships with PRIDE in order to operate a PIE program to employ inmates. One fiscal result of establishing a business in a prison setting is that overhead costs, other than inmate wages, tend to be less expensive than if a business is operating in a non-prison setting.

PRIDE Enterprises, a non-profit organization would also potentially benefit if its business involvements increase as a result of the modifications made in this CS. Although it is a non-profit organization, the corporation would fiscally benefit from the standpoint that if business increases, the infrastructure of the corporation would also increase. In addition to increased staff, the assets of the corporation would also be expected to increase an indeterminate amount.

C. Government Sector Impact:

Shifting the authority to hold a PIE certificate from the Department of Corrections to PRIDE Enterprises should eliminate duplication of recruiting efforts directed toward companies to operate businesses in state prisons.

The authorization in the CS for the state to provide tax-exempt financing directly to PRIDE for the construction of structures or improvements to structures related to correctional work programs or PIE programs could cause an adverse fiscal impact. The state may be financially "extended" in such cases despite the ability to hold a lien against the constructed or improved structure since the state's credit would be supporting the tax-exempt bond. The corporation is not required to adhere to state policies concerning debt and could financially commit the state without state oversight. Even though annual funding through the General Appropriations Act would be necessary, if funds were not appropriated, it would adversely affect the state's bond standing and could affect other areas of state financing, e.g., P2000.

There would not be a fiscal impact upon the department as it relates to the academic and vocational programming provisions in this CS. The CS contains a provision that classes be provided more frequently and at more convenient times "to the extent existing resources permit." The department should be able to develop its plan to more closely align its vocational classes to PIE and PRIDE programs within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Provisions contained in this CS related to designating clearly which entity shall be the holder of the PIE Program certificate, providing funding for structures to house PIE programs, and inmate academic and vocational education programming are consistent with recommendations made by staff of the Senate Criminal Justice Committee in a 1998-99 interim report. *See generally*, Florida Senate Criminal Justice Committee, *What Are Florida's Prisoners Doing While They Are Serving Time in the State Prison System? An Overview of Inmate Programming and Work Assignments* (Report No. 98-15)(November 1998)(on file with comm)(Tallahassee, Florida).

VIII. Amendments:

None.