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**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: HB 2133

RELATING TO: Correctional Work Programs

SPONSOR(S): Representative Peaden

COMPANION BILL(S): CS/SB 1604

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

- (1) CORRECTIONS 7 Yeas 0 Nays
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill deletes the statutory authority of the Department of Corrections 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.

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. PRIDE would directly enter into contracts with local governments and the sheriffs or jail administrators to operate work camps.

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

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Inmate Work Assignments

Currently, s. 946.002(1)(a) F.S., allows the Department of Corrections to determine by rule how many hours of work inmates must perform. However, s. 946.002(1)(b) F.S., also requires that the department:

“ . . . have as a continuous goal the reduction of inmate idleness in the prison system . . . and that “ A goal of the department shall be for all inmates, except those inmates who pose a serious security risk or who are unable to work, to work at least 40 hours a week. Until this goal can be accomplished, the department shall maximize the utilization of inmates within existing resources.”

Finally, s. 946.002(1)(a) F.S., requires that inmates classified as medium or minimum custody who are not satisfactorily participating in any institutional work, academic or vocational programs perform public work for political subdivisions of the state pursuant to s. 946.60. F.S.

The rules of the department state a goal that “inmates in work **assignments** work at least 40 hours per week. . . “and that “ . . . until this goal is achieved, the department shall maximize the utilization of inmate labor within existing resources.” [Rule 33-3.003(1) F.A.C.] The rules define “assignment” to be the work **or** program to which an inmate is assigned. Therefore, the department includes program assignments (e.g., academic and vocational education, substance abuse, wellness education) in the definition of work as a means of reducing inmate idleness. The rules further provide that inmates shall not be required to work more than twelve hours per day or seventy-two hours per week, including travel time, except in case of an emergency. [Rule 33-3.003(4) F.A.C.]

Currently, five types of correctional assignments are available for inmates in public institutions:

1. DOC institutional work assignments - These assignments include positions in food services, laundry, sanitation, grounds maintenance, new facility construction, recycling, farming and gardening, and operating canteens.

2. Work squads - There are currently two types of inmate work squads:

a. Armed Work Squads - These squads are comprised of up to 30 close custody inmates who are supervised by one correctional sergeant and two correctional officers. In 1995, the department began working inmates in restricted labor squads (chain gangs) in which inmate’s legs are shackled together and the inmates wear distinctively different uniforms from other inmate work groups. Inmates on armed work squads are not compensated for their labor.

b. Community Work Squads - These squads are comprised of up to 14 minimum and medium custody inmates working under the unarmed supervision of either correctional officers or employees of other organizations who have been trained and certified by the department to supervise inmates. Inmates on community work squads are not compensated for their labor. There are two types of community work squads: DOT inmate work squads which perform work for maintenance of the state highway system and public works/interagency community service work

squads for projects contracted between the department and local government entities, state agencies, and non profit corporations to provide inmate work squads.

3. Prison Rehabilitation Industries and Diversified Enterprises, Inc. (PRIDE) - PRIDE is a statutorily authorized non-profit corporation that offers employment for Florida inmates.
4. Prison Industry Enhancement Program (PIE) - Created by the U.S. Congress in 1979, the PIE certification program allows private sector industry to establish joint ventures with correctional agencies to produce goods using prison labor. With the primary objectives of both reducing inmate idleness and creating products and services, the PIE program eases interstate commerce restrictions on joint private-public prison manufacturing ventures as long as prevailing wages are paid to inmates, worker's compensation is provided, and local industries are unaffected.
5. Program Assignments - In addition to the correctional work programs, the department provides program assignments for the purposes of rehabilitating and assisting inmates in their self-improvement efforts. Program assignments include academic and vocational education, drug treatment programs, library services, and motivational programs, such as life management skills.

As inmates initially enter a prison, the classification department at the individual institution is responsible for evaluating and placing the inmate in a work assignment, program assignment, or both. According to the department, two key factors involved in the evaluation process are the inmate's custody and health classification. Furthermore, factors such as the inmate's sex offender status, escape convictions, offense history, and medical or mental health restrictions may prevent inmates classified as medium and minimum custody from being assigned to certain work assignments outside of the institution. According to the department, inmates on death row, in close management, administrative or disciplinary confinement are excluded from the department's work requirements on the basis that they are unable to work or pose a serious security risk as set forth in section 946.002(1)(b) F.S.

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

Beginning in 1981 and since 1984, all Florida correctional work programs 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 profit-making enterprise.

PRIDE and the Department of Corrections have entered into various lease agreements to allow PRIDE to use certain state lands, 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 actually 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. According to PRIDE, it has built or has substantially remodeled the buildings that are subject to "rental" payments.

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 [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 [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.

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 within the United States including the private sector.

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.

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.

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.

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. 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. 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. 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.

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 [112 F.3d 1119, 1125 (11th Cir. 1997)].

Distributions or disbursements from inmate pay are made by PRIDE 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 a 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.

According to PRIDE, 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 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 industries and companies to partnership with in the PIE program.

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, cuts up the carcass, and prepares 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.

Work Assignment	Brief Description
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.
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 and trains inmates in the equipment to produce customer lay-outs, composition, and camera-ready copies.
Ring Binding	Manufactures office supplies such as 3-ring binders, print designing, and embosses hem on book covers, and assists 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.).

Source: Florida Department of Corrections

Lease of Facilities by PRIDE

Legislation in 1983 transferring 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.

The Prison Industry Enhancement (PIE) Program

General Description of Program - The sale of prison-made goods were initially prohibited by the Ashurst-Sumners Act in 1935. [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. [*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.

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
- ▶ 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.

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. 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 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. 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.

Additionally, there must be a showing as determined by the "cost accounting center" (CAC) 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 currently 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.

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. [*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 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 find 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.

PIE Programs Operating in Florida - There are currently six approved PIE industries in Florida. There were two previously operational PIE industries that no longer exist: 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.

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.

Corrections Commission Report on PIE

In its 1997 Annual Report, the Florida Corrections Commission stated that “Florida has yet to tap the potential that the PIE Program offers.” The Commission’s report cited several possible impediments in Florida to attracting private industries to participate in the PIE program:

1. The environment within prison compounds has become more volatile with the prohibition against public prisons using Inmate Welfare Trust Fund money to purchase population management tools, including recreation items and televisions, because constructive outlets for stress after program and work assignments have been completed have been decreased.
2. The requirement that inmates serve 85% of their sentences, or 100% for repeat felony offenders, removes incentives inmates may have to meet or exceed work, program or behavioral expectations, making the prison environment more volatile as these inmates have few incentives to follow rules, engage in appropriate behaviors, and make productive use of time while incarcerated.
3. There are no authorized incentives to superintendents to actively seek PIE projects. A PIE project inside an institution requires some modification of the established routine and a great deal of support from the institution’s management. Superintendents must balance the security and control needs of a high risk environment with the benefits of adding an additional industry program.

Compensation for Work

Although s. 946.002(2)(a)F.S., currently allows the department to compensate “each prisoner who is engaged in productive work in any state correctional institution, program or facility,” most inmates working within the prison system do not receive compensation from the department.

Inmates working as canteen operators are paid up to \$75/month from the Inmate Welfare Trust Fund. Also, in some institutions, inmates working in food services are compensated by the contracting private sector provider. Furthermore, inmates working in the PRIDE program, the PIE program, and in the work release program receive compensation from the private sector. According to the department, payment from these private sector programs is an incentive to participate in these work areas and also to perform well.

Worker’s Compensation

Worker’s compensation issues may arise in two prison situations:

1. Injury occurs while incarcerated - In the prison work programs, only inmates working within the PIE programs are eligible for worker's compensation benefits. Federal and state law requires that inmates employed in PIE programs be entitled to worker's compensation benefits as a result of injuries sustained in the course of employment in the program, notwithstanding the provisions of s. 440.15(9) F.S. Inmates working on institutional assignments, work squads or for PRIDE are exempted from coverage under the Worker's Compensation Act pursuant to s. 946.002(5) F.S. and s. 946.0061 F.S.

2. Injury occurs prior to incarceration - Currently, injured employees who subsequently become incarcerated in a public institution may not receive worker's compensation benefit payments while incarcerated. Benefits for such employees are only payable if the inmate has dependents, in which case the benefit is paid to such dependents for the period in which the employee is incarcerated. If the incarcerated employee has no dependents, the benefits are not payable and therefore remain unpaid by the carrier.

Inmate Education in Florida's Prisons

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 Male	White Female	Black Male	Black Female	Other Male	Other Female	Total (%)
1	250	3	1,079	32	36	1	1,401 (2.4%)
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%)

Grade Level	White Male	White Female	Black Male	Black Female	Other Male	Other Female	Total (%)
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 Male	White Female	Black Males	Black Female	Other Male	Other Female	Total (%)
Less than Basic Literacy (1.0-3.9)	1,938	76	7,097	396	224	8	9,739 (16.9%)
Basic Literacy Skills (4.0-8.9)	9,012	455	16,736	960	410	36	27,609 (48%)
Funct'nl 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.

Types of Education Offered in Florida's Prisons

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.

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." [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.

Mandatory Literacy - The department is required by s. 944.801 (3) (l), 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) (l) 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.

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. [Florida Department of Corrections, 1997-98 Annual Report, p. 42 (October 1998) (Tallahassee, Florida)].

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
Vocational - Family & Consumer Sciences	124	40	Cosmetology

Source: Florida Department of Corrections (1998).

A. EFFECT OF PROPOSED CHANGES:

The bill 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. PRIDE would be authorized to seek federal certification to administer PIE programs in Florida, rather than the department.

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 not be entitled to unemployment compensation. The created statutory section would also provide purposes and objectives to 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 bill 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, 3311, 2946, 2675, 2937, 2673, and 3236. According to PRIDE, such leases involve agricultural lands (sugar cane fields and citrus groves) where it is important to obtain long-term leases to obtain needed long-term financing.

This bill 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 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.

This bill amends s. 320.06, F.S., related to motor vehicle registration, license plates, and validation stickers. PRIDE would be given the 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 would be in addition to the manufacture of license plates and validation stickers under current law.

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 and PRIDE would directly enter into contracts with local governments and the sheriffs or jail administrators to operate the work camps for the respective jurisdiction.

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 or a proposed work camp facility.

This bill requires PRIDE and the Office of Program Policy Analysis and Government Accountability to report annually to the Governor and the Legislature on the performance of PRIDE.

Sections 946.006, 946.0061, 946.007, 946.008, 946.21, 946.31, 946.32, 946.33, 946.516, and 946.519, Florida Statutes, and subsection (1) of section 946.520, Florida Statutes, are repealed as either obsolete, given the changes in policy adopted in this bill, or duplicative, because stated statutory authority was transferred to a new or existing section.

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

B. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?
No.
- b. Does the bill require or authorize an increase in any fees?
No.
- c. Does the bill reduce total taxes, both rates and revenues?
No.
- d. Does the bill reduce total fees, both rates and revenues?
No.
- e. Does the bill authorize any fee or tax increase by any local government?
No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
No.
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?
No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
No.
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?
No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

C. STATUTE(S) AFFECTED:

S. 946.002, 946.504, 946.515, 946.205, 946.521, 946.523, 946.524, 946.320.06, 946.006, 946.0061, 946.007, 946.008, 946.21, 946.31, 946.32, 946.33, 946.516, and 946.519 F.S.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 946.002, F.S., clarifies the scope of work programs within the Department of Corrections.

Section 2. Amends subsection (1) of s. 946.504, F.S., Provides for the Board of Trustees the Internal Trust Fund to enter into leases with PRIDE for property to be used by PRIDE for correctional work programs.

Section 3. Amends subsection (3) of s. 946.515, F.S., deletes obsolete reference to PRIDE contacting for the operation of fish and seafood processing plants.

Section 4. Creates s. 946.205, F.S., authorizing DOC to cultivate food items grown on farms and gardens needed for the state institution and to sell to PRIDE any surplus food items.

Section 5. Creates 946.521, F.S., requires PRIDE and the Office of Policy Analysis and Government Accountability to report to the Governor and the Legislature on the performance of PRIDE.

Section 6. Creates s. 946.523, F.S., provides for prison industry enhancement (PIE) programs; provides the purposes and objectives of the programs; requires worker's compensation coverage to be provided to inmates who participate in the program; provides that inmates are not entitled to unemployment compensation; and provides for the applicability to correctional work programs in operation;

Section 7. Creates s. 946.524, F.S., provides for PRIDE to establish work camps;

Section 8. Amends subsection (4) of s. 320.06, F.S., provides authorization for PRIDE to manufacture certain tags and decals for the Department of Highway Safety and Motor Vehicles.

Section 9. Deletes sections 946.006, 946.0061, 946.007, 946.008, 946.21, 946.31, 946.32, 946.33, 946.516, and 946.519, F.S., and subsection (1) of s. 946.520, F.S.

Section 10. The provisions of the act shall take effect on July 1, 1999

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

PRIDE, a non-profit organization, is likely to experience increased revenue and expanded operations.

3. Effects on Competition, Private Enterprise and Employment Markets:

None. PIE programs, which some feel place inmate labor in direct competition with the traditional labor pool, are already authorized in statute.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of counties or municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Provisions of the bill related to designating clearly which entity shall be the holder of the federal PIE Program certificate and providing funding for structures to house PIE programs are consistent with recommendations made by staff of the Senate Criminal Justice Committee in a 1998 interim report. [*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)*].

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1999, a "strike everything after the enacting clause" amendment was offered by Rep. Peaden and was passed by the Corrections Committee. The "strike-all" amendment differs from the bill in the following ways:

1. Deletes the requirement that PRIDE and OPPAGA would conduct performance reviews and retains the responsibility for such reviews with the Office of the Auditor General.
2. Authorizes PRIDE to seek tax-exempt financing for the construction of buildings or capital improvements for correctional work programs and PIE programs on state-owned land.
3. DOC maintains its authority to use the services of inmates to perform work within correctional facilities and operate farming and gardening programs using inmate labor. DOC may sell any surplus food products to PRIDE who in turn may sell them on the open market. DOC is required to deposit proceeds from the sale of food to PRIDE in the Correctional Work Program Trust Fund.
4. DOC is required to periodically evaluate its vocational programs and keep a relationship between the skills learned in such programs and the skills needed to work in PIE programs. DOC is required to develop a plan to ensure that academic and vocational classes are being offered at more frequent and convenient times in order to accommodate the increasing number of inmates assigned to work.
5. Clarification is provided that minors adjudicated as adults and in DOC's custody may receive special education services without the consent of the inmates parents.

The "strike-all" amendment adopted in the Corrections Committee is identical to CS/SB 1604.

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DATE: April 19, 1999

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VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:

Ken Winker

Staff Director:

Ken Winker

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

James P. DeBeaugrine

Staff Director:

James P. DeBeaugrine