

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 829 CS

Prison Industries

SPONSOR(S): Holloway

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 192

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Governmental Operations Committee</u>	<u>4 Y, 0 N</u>	<u>Brown</u>	<u>Williamson</u>
3) <u>Criminal Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill creates a task force to examine how well the prison industries program has fulfilled its purposes and missions. The task force is directed to report its findings to the Governor and the Legislature. The bill also clarifies the state's reversionary interest in property owned by PRIDE.

The bill will have a minimal fiscal impact related to the travel per diem of the task force members.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates a 13-member task force entitled to expenses under s. 112.061, F.S.

B. EFFECT OF PROPOSED CHANGES:

PRIDE'S History

Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) was created by the Legislature in 1981 as a private, non-profit corporation.¹ In 1983, the Legislature authorized PRIDE to lease and manage the state prison industries program which had been operated by the Department of Corrections. Section 946.501(1), F.S., notes that it is essential to the state that the correctional work programs provide inmates with activities that can then “lead to meaningful employment after release” to help reduce the number of inmates who return to the correctional system. Section 946.501, F.S., defines PRIDE's mission as:

- providing education, training, and post-release job placement to inmates to help reduce recommitment;
- enhancing security by reducing inmate idleness and providing an incentive for good behavior in prison;
- reducing the cost of state government by operating enterprises primarily with inmate labor while not unreasonably competing with private enterprise; and
- rehabilitating inmates by duplicating, as nearly as possible, the activities of a profit-making enterprise.

PRIDE was given several advantages to help offset some of its competitive disadvantages in the marketplace. It has sovereign immunity and is not required to pay unemployment compensation for inmate workers.² State agencies are required by statute to purchase products from PRIDE if the products are of similar quality and price to those offered by outside vendors.³ Also, PRIDE is not under the authority of any state agency, although it is subject to the auditing and investigatory powers of the Legislature and the Governor.⁴

PRIDE currently operates 36 industrial training programs in 20 state prisons and offers 366 on-the-job training programs.⁵ In 2004, 3,794 inmates were trained in jobs and worked 3,702,290 hours in the 36 industries.⁶ Some of the industries operated by PRIDE are raising dairy calves, furniture manufacturing, agriculture, printing, binding, data entry, and document imaging services.⁷ PRIDE does not receive funding from the Legislature and is supported by the revenues it generates from selling its products.⁸ The State of Florida is its major purchaser, accounting for 51 percent of its revenues in 2004. Total revenues for that year were \$65,694,450.⁹

¹ http://www.pride-enterprises.org/compay_info_img/pdf/WorkerHistory.pdf.

² ss. 946.5026 and 946.513, F.S.

³ s. 946.515(2), F.S.

⁴ s. 946.517, F.S.

⁵ http://www.pride-enterprises.org/table_company_information.aspx.

⁶ http://www.pride-enterprises.org/compay_info_img/pdf/2004AnnualReport.pdf.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

PRIDE reports that its recidivism rate is lower than that of the general inmate population and that for fiscal years 2002, 2003, and 2004, that rate has steadily declined.¹⁰ PRIDE also reported that it offers a program which helps inmates begin making restitution payments while in prison so that their financial burden is reduced upon release from prison.¹¹

Financial and Managerial Issues

In the late 1990's, PRIDE developed a new business plan which involved the creation of separate but related business companies to help PRIDE find ways to increase the number of inmate jobs and expand its mission. PRIDE formed Industries Training Corporation (ITC) in July 1999, to enter into business relationships and manage work programs for PRIDE. However, the number of inmate workstations declined by more than 500 between 2000 and 2002, and there are no statistics indicating any increase in the subsequent two years.

In its 2002 Annual Report issued December 2, 2002, the Florida Corrections Commission extensively reviewed PRIDE's history and current operations.¹² The report focused attention on PRIDE's fulfillment of its mission, particularly noting that the number of inmate workstations had not kept pace with the growth of the inmate population. The Corrections Commission also raised questions about the new corporate structure and affiliated entities.¹³

In December 2003, OPPAGA issued Report No. 03-68, "PRIDE Benefits the State but Needs to Improve Transparency in Operations."¹⁴ OPPAGA focused on many of the same issues as the Corrections Commission, particularly concerning PRIDE's organizational structure. OPPAGA also noted some of the challenges faced by PRIDE in the current business operating environment, and that PRIDE sales had declined by more than \$20 million over the preceding 5 years.¹⁵ The OPPAGA report prompted Governor Bush to request his Chief Inspector General to conduct an audit of PRIDE and its related entities.

On February 28, 2005, the Office of the Chief Inspector General issued its findings.¹⁶ In general, the audit noted the significant financial decline of PRIDE and its affiliates, was critical of PRIDE's internal controls and its business and organizational operation, a breakdown in accountability, as well as the Board of Director's lack of oversight.¹⁷

In September 2005, PRIDE filed suit against ITC, two of its affiliates, and its Treasurer and Chief Financial Officer. The suit sought monetary damages for actions which allegedly promoted the financial interests of some of the management groups while compromising the financial interests of PRIDE. This case is pending and has not been resolved.¹⁸

Reversionary Interest

Section 946.505, F.S., provides for the reversion of certain PRIDE property to the state if PRIDE dissolves or if a correctional work program ceases to function. Unless PRIDE intends to use the property for another correctional work program, all buildings, land, furnishings, equipment, and other chattels originally leased from the department automatically revert to full ownership by the department. The state also has a reversionary interest in any facilities¹⁹ that are subsequently constructed or

¹⁰ *Id.*

¹¹ *Id.*

¹² Available online here: <http://www.fcc.state.fl.us/fcc/reports/pdf02.htm>.

¹³ *Id.*

¹⁴ Available online here: <http://www.oppaga.state.fl.us/reports/crime/r03-68s.html>.

¹⁵ *Id.*

¹⁶ Available online here: http://www.myflorida.com/eog/inspector_general/pdfs/PRIDE_2005.pdf.

¹⁷ *Id.*

¹⁸ For a general overview of the litigation, see "Firm that employs inmates sues its spinoff company," St Petersburg Times, September 24, 2005. Available online here: http://www.sptimes.com/2005/09/24/State/Firm_that_employs_inm.shtml.

¹⁹ "Facilities" is defined in s. 946.503(4), F.S., to mean buildings and land used in the operation of an industry program on state property.

otherwise acquired in connection with the operation of the program. In its report, OPPAGA noted that the statute does not provide for reversion of all PRIDE property to the state, nor address the state's interest in property that is transferred by PRIDE during its existence.²⁰ In its response to the OPPAGA report, PRIDE noted that the state's reversionary interest is ensured in PRIDE's articles of incorporation and further protected by its designation as a 501(c)(3) organization under the Internal Revenue Code.²¹

Effect of Proposed Changes:

The bill creates the Prison Industries Task Force to examine and report on the state's prison industries program. Previous reports concerning PRIDE have focused on structural and management issues, examining whether PRIDE is accomplishing its statutory missions. The bill provides a broader mission for the task force, which will determine: (1) how well the program has fulfilled its statutory missions and purposes; and (2) whether the program's statutory missions are still feasible and relevant and whether they will remain so in the future.

The task force will be housed within the Office of Legislative Services, with staff support provided by the Legislative Committee on Intergovernmental Relations. The Secretary of the Department of Corrections will chair the task force, and its first meeting must be held by July 15, 2006, and at least three meetings must be held. The task force must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than February 15, 2007. The bill abolishes the task force on July 1, 2007.

The task force will consist of the following 13 members:

- The Secretary of the Department of Corrections and 2 wardens of institutions that have prison industries programs;
- A representative from the Agency for Workforce Innovation;
- A representative from the Department of Education's Office of Workforce Education;
- A member of the Senate, appointed by the President of the Senate;
- A member of the House of Representatives, appointed by the Speaker of the House;
- A representative from the PRIDE board of directors;
- A representative from a local governmental entity that purchases products produced by prison industries;
- A representative from a private industry that regularly employs former inmates;
- A representative from a private industry that regularly trains inmates;
- A representative from the academic community with expertise in research concerning reentry of prisoners into society and the employment of former felons; and
- A former inmate who worked in the prison industries program.

The President of the Senate and the Speaker of the House of Representatives must jointly appoint the representatives of PRIDE, local government, private industry, and academia by July 1, 2006.

The bill requires the task force to receive testimony from the Auditor General, the Governor's Inspector General, OPPAGA, PRIDE, and other appropriate officials to address a number of questions regarding the correctional work program's missions:

- Whether the statutory missions of the program, as defined in s. 946.501(2), F.S., are still valid; whether there are other valid missions that should be included; and whether any of the valid current or recommended missions are in conflict;
- Whether the missions should be ranked in order of priority and the extent to which accomplishment of a higher-priority mission can be reduced to accomplish a lower-priority mission;
- Whether duplicating a free-enterprise operation as closely as possible is the most effective way of accomplishing the program's missions;

²⁰ See fn 14.

²¹ *Id.*

- Whether the program's management structure should be changed to facilitate accomplishment of the missions;
- Whether operating the program independently of state government is the most effective manner to accomplish its valid missions;
- Whether PRIDE can fulfill the legislative intent in s. 946.502(6), F.S., that correctional work programs use inmates in all levels of custody, with emphasis on reducing idleness among inmates in close custody;
- The extent to which privatization and market changes have reduced PRIDE's sales and impeded its ability to expand training; and
- What creative strategies could enhance the program's ability to accomplish its valid missions.

Section 2 of the bill addresses the concern raised in OPPAGA Report No. 03-68 that state property interests in reversion of PRIDE property to the state need to be clarified. Section 946.505(1), F.S., is amended to clarify that all property and assets related to a correctional work program will revert to state ownership if the program closes and PRIDE does not intend to use the property and assets in another correctional work program. The property and assets would also revert to the state if PRIDE were dissolved. The bill does not address the status of property that is sold or otherwise transferred by PRIDE. However, PRIDE does not have authority to transfer title to property originally leased from the department or the state, or to permanent enhancements to facilities or work programs.

C. SECTION DIRECTORY:

Section 1 creates the Prison Industries Task Force within the Office of Legislative Services and requiring the task force to determine how well the prison industries program has fulfilled its statutory mission and purpose;

Section 2 amends s. 946.505, F.S., clarifying the state's reversionary interest in the facilities, property, and assets of the corporation operating a correctional work program.

Section 3 provides that the act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The fiscal impact to the government is expected to be insignificant. There will be some expense to the state for reimbursement of travel and per diem costs for task force members, but members are not authorized additional compensation, and the task force is directed to meet only three times. The task force will be supported by current state personnel.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Criminal Justice Committee adopted one amendment to the bill and reported the bill favorably with committee substitute. The amendment clarifies who will serve as chair of the task force, removes the Florida Tax Watch representative from the list of task force members, and deletes the provisions of the bill requiring that the task force be subject to executive branch open meeting and public records requirements.