

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1229 Correctional Work Programs

**SPONSOR(S):** Criminal Justice Subcommittee; McBurney

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1606

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N, As CS	Aziz	White
2) Appropriations Committee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) was created by the Legislature in 1981 as a private, non-profit corporation. In 1983, the Legislature authorized PRIDE to lease and manage the state prison industries program which had been operated by the Department of Corrections (Department).

Over the years, PRIDE has drawn mixed reviews for generating significant profits while failing to increase the number of inmates participating in its programs.

The bill terminates PRIDE by repealing Part II of ch. 946, F.S., relating to leased or managed programs, and removing PRIDE from any statute.

The bill takes the roles and responsibility of PRIDE and places it within a new program within the Department of Corrections. Under the bill, the Department will operate a correctional work program using inmate labor. The bill also creates a new "Prison Industry Board of Directors" to aid the Department in operating the correctional work programs.

The bill may have a fiscal impact (See FISCAL Section).

The bill has an effective date of July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) was created by the Legislature in 1981 as a private, non-profit corporation.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

PRIDE currently operates 41 training programs in 29 state prisons.<sup>5</sup> In 2014, 3,719 inmates were trained in jobs and worked 3,928,054 hours in the 42 industries.<sup>6</sup> Some of the industries operated by PRIDE are raising dairy calves, furniture manufacturing, agriculture, printing, binding, data entry, and document imaging services.<sup>7</sup> According to the Department of Corrections, there were a total of 1,896 inmates in these PRIDE correctional work programs.<sup>8</sup> PRIDE does not receive funding from the Legislature and is supported by the revenues it generates from selling its products.<sup>9</sup> The State of Florida is its major purchaser, accounting for 34 percent of its revenues in 2014. Total revenues for that year were \$67,820,189.<sup>10</sup>

#### **Prison Industries Enhancement (PIE) Certificate**

The Prison Industries Enhancement Certification Program (PIE program) is a federally legislated program that exempts state and local departments of corrections from normal restrictions on the sale of prisoner-made goods in interstate commerce. The Department of Justice, through its Bureau of Justice Assistance (BJA), administers the PIE program nationally and certifies that state prison industry

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<sup>1</sup> PRIDE Enterprises, “History of PRIDE” <http://www.pride-enterprises.org/content.aspx?page=HistoryOfPride> (last visited Jan. 25 2016).

<sup>2</sup> ss. 946.5026 and 946.513, F.S.

<sup>3</sup> s. 946.515, F.S.

<sup>4</sup> s. 946.517, F.S.

<sup>5</sup> PRIDE Enterprises, “Inmate Training Centers” <https://www.pride-enterprises.org/content.aspx?page=Locations> (last visited Jan. 20 2016).

<sup>6</sup> PRIDE Enterprises “2014 Annual Report”

[https://www.prideenterprises.org/Themes/PrideDefault/MediaContent/About/2014%20Annual%20Report/2014\\_Annual\\_Report.pdf](https://www.prideenterprises.org/Themes/PrideDefault/MediaContent/About/2014%20Annual%20Report/2014_Annual_Report.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> Department of Corrections, Agency Analysis 2016 House Bill 1229, p. 2 (Jan. 22, 2016).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

programs meet all the necessary requirements to be exempt from the Federal restrictions on the sale and marketability of prisoner-made goods in interstate commerce. BJA has authorized PRIDE to be the PIE certificate holder for the State of Florida, responsible for the administration and continual compliance of the Florida PIE programs in conjunction with the Federal PIE Statute.<sup>11</sup>

### **Financial and Managerial Issues**

Over the years, PRIDE has drawn mixed reviews for generating significant profits while failing to increase the number of inmates participating in its programs.<sup>12</sup> 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.<sup>13</sup> PRIDE formed the Industries Training Corporation (ITC) in July 1999, to enter into business relationships and manage work programs for PRIDE.<sup>14</sup> However, the number of inmate workstations declined by more than 500 between 2000 and 2002.<sup>15</sup>

In its 2002 Annual Report issued December 2, 2002, the Florida Corrections Commission extensively reviewed PRIDE's history and current operations. 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.

In December 2003, OPPAGA issued Report No. 03-68, "PRIDE Benefits the State but Needs to Improve Transparency in Operations."<sup>16</sup> 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. The OPPAGA report prompted then Governor Bush to request his Chief Inspector General to conduct an audit of PRIDE and its related entities.

The Office of the Chief Inspector General conducted an extensive and probing inspection of PRIDE's financial and business relationships with ITC and its affiliates (Global Outsourcing, Florida Citrus Partners, and Labor Line Inc). 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, and noted a breakdown in accountability, as well as Board of Director lack of oversight. As a consequence, all contracts and business relationships with ITC were severed. Further, PRIDE assumed all financial, human resources, and administrative functions from ITC at the end of the year.

In October 2006, OPPAGA issued Report No. 06-67, "PRIDE is Tightening Its Business Practices but Needs Greater Transparency" as a follow up to the 2003 report.<sup>17</sup> OPPAGA state PRIDE had limited success expanding sales and the percentage of inmates employed dropped to 2.5% of the inmate population.

As discussed above, PRIDE has had historical problems with transparency and financial management. Before PRIDE was created in 1981, the Department of Corrections operated a prison industries program.<sup>18</sup> In 1957, the Legislature established the prison industries program within the Department<sup>19</sup>

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<sup>11</sup> PRIDE's 2006 Annual Report. See [http://www.pride-enterprises.org/Annual\\_Report.aspx](http://www.pride-enterprises.org/Annual_Report.aspx).

<sup>12</sup> OPPAGA Research Memorandum, "Pride Program" Office of Program Policy Analysis & Government Accountability, (Oct. 28, 2009) (on file with Criminal Justice Staff).

<sup>13</sup> OPPAGA Special Report, "PRIDE Benefits the State But Needs to Improve Transparency in Operations" Office of Program Policy Analysis & Government Accountability, Report No. 03-68 (Dec. 2003) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0368rpt.pdf> .

<sup>14</sup> *Id.* at 8.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> OPPAGA, *supra* note 13.

<sup>17</sup> OPPAGA, "PRIDE is Tightening Its Business Practices but Needs Greater Transparency" Office of Program Policy Analysis & Government Accountability, Report No. 06-67 (Oct. 2006) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0667rpt.pdf>.

<sup>18</sup> See ss. 945.06-945.063, F.S. (1979).

<sup>19</sup> Ch. 57-213, Law of Fla.

and would later establish a prison industry advisory council to assure input from person in private industry, agriculture, labor and education.<sup>20</sup> Coinciding with the creation of PRIDE, the council was dissolved.<sup>21</sup>

### **Effect of the Bill**

The bill terminates PRIDE by repealing Part II of ch. 946, F.S., relating to leased or managed programs, and removing PRIDE from any statute.

The bill takes the roles and responsibility of PRIDE and places it within a new program within the Department of Corrections (“Department”). Under the bill, the Department will operate a correctional work program using inmate labor. The bill also creates a new “Prison Industry Board of Directors” to aid the Department in operating the correctional work programs. The bill renames Part II of ch. 946, F.S., as “Department of Corrections Programs.”

### *Legislative Findings & Intent*

The bill provides legislative findings that the Department’s correctional work programs are unique from other government programs since it is essential to the state that correctional work programs provide inmates with useful activities that, to reduce recidivism, can lead to meaningful employment after release. The legislative findings state the correctional work programs should duplicate production of goods and services outside of prison in order to aid inmates in adjustment after release, prepare inmates for gainful employment, and serve the interests of the state, inmates and the public. The bill provides the mission of the Department’s correctional work program is, in order of priority, to:

- Provide a joint effort between the department, the correctional work programs, and other vocational training programs to reinforce relevant education, training, and postrelease job placement and help reduce recidivism.
- Serve the security goals of the state through reduction in the idleness of inmates and provision of an incentive for good behavior in prison.
- Reduce costs to state government by operating enterprises primarily with inmate labor while requiring that the enterprises do not seek to unreasonably compete with private enterprise.
- Serve the rehabilitative goals of the state by duplicating in prison, as closely as possible, free enterprise and profitmaking activities.

The bill also provides it is the intent of the Legislature that the Department operate correctional work programs that provide inmates with useful activities that, to reduce recidivism, can lead to meaningful employment after release.

### *Definitions*

The bill creates definitions to be used in the new Part II of ch. 946, F.S. The bill defines correctional work program as an inmate work program administered by the Department or operated at any state correctional facility. Inmate means a person incarcerated within a state, county, municipal, or private correctional facility in Florida.

### *Applicability*

The bill provides that the newly created Part II of ch. 946, F.S. does not apply to:

- Section 945.091, F.S., relating to inmates leaving the prison to work at paid employment; and
- Section 946.40, F.S., relating to use of prisoners in public works.

### *Use of Facilities*

The bill authorizes the Department to use all leased facilities, including buildings, land, and equipment in connection with its operation of the correctional work program.

### *Inmate Labor*

The bill authorizes the Department to create and operate correctional work programs. As inmates enter the Department’s custody, the bill provides they will be evaluated to determine basic literacy, academic,

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<sup>20</sup> ss. 945.065-945.066, F.S. (1979).

<sup>21</sup> Ch. 78-323, Law of Fla.

and vocational skills. The evaluation will prescribe education, work, and work-training for each inmate, as appropriate. How the inmates are assigned to each work program will be based on the length of time the inmate will be in the Department's custody. Each inmate's placement within the work program will be re-examined every six months to ensure proper placement based on bed space availability and governed by objectives and priorities regarding education and meeting revenue and non-revenue-generating contracts.

#### *Goods and Services*

The bill allows services and items produced by the correctional work program to be sold to the state, political subdivisions of the state, the federal government, contract vendors of such governments, and any person, firm, or business entity. A state agency may not purchase from another source for a product or service at a comparable price when the Department's correctional work program sells a comparable product at a comparable price and quality. If there is a dispute between the Department and a purchasing authority based on price or quality, then either party may request a hearing before the Department of Management Services. If differences aren't resolved with the Department of Management Services, either party may request a hearing with the Department of Administrative Hearings to resolve the dispute.

The Department may contract to provide goods or services to private enterprises so long as doing so does not unreasonably seek to compete with other businesses in this state. The items sold to private entities include agriculture commodities such as sugar cane, vegetables, beef and dairy products.

The bill prohibits the sale of goods made by inmates in the state except if produced under the Department's correctional work program.

#### *Rights of Inmates*

The bill provides that the newly created Part II does not restore, in whole or in part, the civil rights of inmates. Inmates compensated through the Department's correctional work program are not employees of the state or the Department for any purpose.

#### *Prison Industry Enhancement Program*

Current law provides that PRIDE is the only entity authorized to hold the Private Sector/Prison Industry Enhancement (PIE Program) Certification Program.

The bill repeals statutes that designated PRIDE as holding the PIE Program certificate for the State and instead authorizes the Department to operate and contract with the private sector for substantial operational involvement in a PIE Program. This includes contracts for the operation of a private-sector business within a prison and the hiring of inmates for such business. Any contract authorized by the bill must comply with federal law governing inmate work programs and must not result in the significant displacement of employed workers in the community. Private-sector employers shall provide workers' compensation coverage to inmates who participate in a PIE Program; however, an inmate's participation in the PIE Program is not employment for purposes of for purposes of unemployment compensation or reemployment assistance.

#### *Prison Industries Trust Fund*

In 2000, the Legislature created a Prison Industries Trust Fund to be administered by the Department of Financial Services and consist of money authorized to do be deducted under federal guidelines and deposited from PRIDE for construction or renovation of its facilities or expansion of PRIDE's work program.<sup>22</sup> The funds are deposited in the State Treasury and paid out only by warrants from the Chief Financial Officer upon receipt of a resolution from PRIDE.<sup>23</sup>

The bill removes PRIDE from the statute authorizing the trust fund and subsequently places the Department in its role regarding the trust fund. The bill also removes the requirement that funds must be deposited in the state treasury and only expended through the Chief Financial Officer. Such

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<sup>22</sup> Ch. 2000-278, Law of Fla.

<sup>23</sup> s. 946.522(2), F.S.

requirements are no longer needed since the Department, a state agency, is taking over the role of a private non-profit.

#### *Prison Industry Board of Directors*

The bill creates the Prison Industry Board of Directors ("Board"), within the Department, to guide the correctional work program with the insight of the private sector. The Board will consist of seven members with six members appointed by the Governor and confirmed by the Senate. The six appointed members will consist of:

- Two representatives from Florida-based enterprises;
- Two representatives from agricultural enterprises;
- Two representatives from the field of vocational training.

The non-appointed member of the Board will be the Secretary of Corrections ("Secretary"). All members, except the Secretary, will serve four year staggered terms.<sup>24</sup> The Secretary will serve as ex officio as a voting member while he or she remains secretary. Members may be reappointed. The Board will also hold an organizational meeting and elect a chair and any officers it deems necessary. However, the Secretary is not eligible for election to any office in the Board and officers shall only serve for one year. The Board is required to meet at least four times a year, but may hold additional meetings at the call of the chair and notice to each member. A majority of the members of the Board are needed for a quorum and any action taken must be approved by a majority of the members present at the meeting. The bill provides that members of the Board shall not receive compensation for their service but may receive a per diem and travel expenses.

The bill provides the responsibilities of the Board, which include:

- Plan correctional work programs that provide suitable training and work experience to assist the rehabilitation and training of persons confined to adult correctional institutions;
- Recommend the establishment and maintenance of industrial plants that can be operated primarily by inmates in manner beneficial to the state through creating items that are need and used by the government or private sector;
- Annually review the operation of correctional work programs;
- Determine which existing industries are operated on a self-sustaining foundation;
- Provide an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives before July 1 of each year summarizing the status of the correctional work programs, including but not limited to the use of profits from such programs, breakdown of the amount o of non-inmate labor used, work subcontracted to other vendors, use of consultants, finished goods purchased for resale, and the number of inmates working in the correctional work program. Also included in the report will be a report on post release job placement and rate of subsequent recidivism for those inmates who have participated in the correctional work program.

In addition to the report above, the Board shall submit an annual financial audit report and other information requested by the Legislature.

The bill makes correlating changes to sections of law to address the removal of PRIDE and creation of the Department's correctional work program.

The bill provides an effective date of July 1, 2016.

#### **B. SECTION DIRECTORY:**

Section 1. Repeals ss. 946.501-946.520; 946.523-946.525, F.S. relating to leased or managed work programs.

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<sup>24</sup> To establish staggered terms, the bill provides the terms of the initial members appointed by the Governor shall be: two members serve for two years, two members serve for three years, and two members serve for four years, as determined by the Governor.

Section 2. Directs the Division of Law Revision and Information to rename Part II of ch. 946, F.S., consisting of ss. 946.5101-5115, as "Department of Corrections Programs."

Section 3. Creates s. 946.5101, F.S., relating to legislative findings.

Section 4. Creates s. 946.5102, F.S., relating to legislative intent.

Section 5. Creates s. 946.5103, F.S., relating to definitions.

Section 6. Creates s. 946.51035, F.S., relating to applicability.

Section 7. Creates s. 946.5104, F.S., relating to use of facilities.

Section 8. Creates s. 946.5105, F.S., relating to inmate labor.

Section 9. Creates s. 946.5106, F.S., relating to rulemaking.

Section 10. Creates s. 946.5107, F.S., relating to goods and services produced in correctional work programs.

Section 11. Creates s. 946.5108, F.S., relating to sale of goods made by inmates.

Section 12. Creates s. 946.5109, F.S., relating to rights of inmates; inmates not state employees; liability for inmate injuries.

Section 13. Creates s. 946.5111, F.S., relating to prison industry enhancement program.

Section 14. Transfers and renumbers current s. 946.522, F.S., as s. 946.5112, F.S., relating to Prison Industries Trust Fund.

Section 15. Creates s. 946.5113, F.S., relating to Prison Industry Board of Directors; creation; membership; meetings; compensation.

Section 16. Creates an unnumbered section that establishes staggered terms for the Prison Industry Board of Directors.

Section 17. Creates s. 946.5115, F.S., relating to Prison Industry Board of Directors; powers and duties.

Section 18. Amends s. 212.08, F.S., relating to sales, rental, use, consumption, distribution, and storage tax.

Section 19. Amends s. 255.25001, F.S., relating to Department of Agriculture and Consumer Services authorized to sell property without complying with specified laws, distribution of proceeds.

Section 20. Amends s. 283.33, F.S., relating to printing of publications; lowest bidder awards.

Section 21. Amends s. 403.757, F.S., relating to coordination with other state agencies.

Section 22. Amends s. 957.04, F.S., relating to contract requirements.

Section 23. Amends s. 958.12, F.S., relating to participation in certain activities required.

Section 24. Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Department reports the fiscal impact on state revenue is indeterminate but there could be substantial revenue related to the sale of products and services provided by the correctional work program.<sup>25</sup>

#### 2. Expenditures:

The bill will have a fiscal impact on state expenditures. The Department reports there would be significant fiscal impact in expending additional resources to:

- Manage lands currently leased by PRIDE that would revert back to the Department.
- Contract out for consulting services to comply with statutory land management plan requirements.
- Contract with the private sector to establish a PIE program with Department staff.
- Provide staff assistance to the new Prison Industries Board of Directors.
- Create new accounting software for handling of payroll taxation and withholding for inmates.<sup>26</sup>

In order to operate the correctional work program, the Department reports it will need to create a new accounting section consisting of six or more full-time employees at an estimated cost of \$413,288.<sup>27</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### 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 counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

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<sup>25</sup> Department of Corrections, Agency Analysis of 2016 House Bill 1229, p. 11 (Jan. 22, 2016).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*



None.

**B. RULE-MAKING AUTHORITY:**

The bill provides the Department may adopt rules, procedures, and policies relating to the use of its inmates in correctional work programs.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Current law provides for the reversion of property to the Department upon the dissolution of PRIDE. The bill eliminates that language without including a reversion provision.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 3, 2016, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides the Department may use their discretion when evaluating and prescribing education, work, and work-training for inmates. This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.