

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: SB 1116

INTRODUCER: Senators Brandes and Pizzo

SUBJECT: Trust Funds/State-Operated Institutions Inmate Welfare Trust Fund/Department of Corrections

DATE: February 17, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Forbes</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1116 creates section 944.73, Florida Statutes, establishing a State-Operated Institutions Inmate Welfare Trust Fund within the Department of Corrections (DOC). The bill states that the purpose of the trust fund is to benefit and provide for the welfare of inmates incarcerated in state-operated correctional facilities. The bill requires money to be deposited into and the expenditures made from the trust fund as provided in section 945.215, Florida Statutes. This trust fund is substantively identical to the Privately Operated Institutions Inmate Welfare Trust Fund (POIWTF).

As with POIWTF, the newly created section 944.73, Florida Statutes, provides that notwithstanding section 216.301, Florida Statutes, and pursuant to section 216.351, Florida Statutes, any balance in the trust fund at the end of any fiscal year must remain in the trust fund at the end of the year and be available for carrying out the purposes of the trust fund.

As required by the Florida Constitution, the bill provides that the State-Operated Institutions Inmate Welfare Trust Fund must be terminated on July 1, 2024, unless terminated sooner or recreated. Additionally, the bill requires the trust fund to be reviewed as provided in section 215.3206(1) and (2), Florida Statutes, before its scheduled termination.

The bill creates a trust fund and requires that specified proceeds and donations be deposited into the trust fund, rather than the General Revenue Fund, which will result in less funds being deposited into the General Revenue Fund. However, the funds deposited into the Inmate Welfare Trust Fund pursuant to the bill must be used to fund services and programming that are required to be provided to inmates. To the extent that the bill transitions the funding of such programming from the General Revenue Fund to the newly created trust fund, the bill will have an indeterminate fiscal impact on the DOC and the General Revenue Fund. See Section V.

The bill is effective July 1, 2020.

## II. Present Situation:

### Trust Funds

#### *Establishment of Trust Funds*

A trust fund may be created by law only by the Legislature and only if passed by a three-fifths vote of the membership of each house in a separate bill for that purpose only. Except for trust funds being re-created by the Legislature, each trust fund must be created by statutory language that specifies at least the following:

- The name of the trust fund.
- The agency or branch of state government responsible for administering the trust fund.
- The requirements or purposes that the trust fund is established to meet.
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.<sup>1</sup>

#### *Florida Constitution Requirement for Trust Funds*

The Florida Constitution requires that state trust funds must terminate not more than four years after the effective date of the act authorizing the initial creation of the trust fund.<sup>2</sup> By law the Legislature may set a shorter time period for which any trust fund is authorized.<sup>3</sup>

#### *Review of Trust Funds*

The Legislature must review all state trust funds at least once every 4 years,<sup>4</sup> prior to the regular session of the Legislature immediately preceding the date on which any executive or judicial branch trust fund is scheduled to be terminated,<sup>5</sup> or such earlier date as the Legislature may specify.<sup>6</sup>

The agency responsible for the administration of the trust fund and the Governor, for executive branch trust funds, or the Chief Justice, for judicial branch trust funds, must recommend to the President of the Senate and the Speaker of the House of Representatives whether the trust fund should be allowed to terminate or should be re-created.<sup>7</sup> Each recommendation must be based on a review of the purpose and use of the trust fund and a determination of whether the trust fund will continue to be necessary.<sup>8</sup> A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.<sup>9</sup>

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<sup>1</sup> Section 215.3207, F.S.

<sup>2</sup> Art. III, s. 19(f)(2), Fla. Const.

<sup>3</sup> *Id.*

<sup>4</sup> Section 215.3208(1), F.S.

<sup>5</sup> Pursuant to Art. III, s. 19(f), Fla. Const.

<sup>6</sup> Section 215.3206(1), F.S.

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

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

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

When the Legislature terminates a trust fund, the agency or branch of state government that administers the trust fund must pay any outstanding debts or obligations of the trust fund as soon as practicable.<sup>10</sup> The Legislature may also provide for the distribution of moneys in that trust fund. If no such distribution is provided, the moneys remaining after all outstanding obligations of the trust fund are met must be deposited in the General Revenue Fund.<sup>11</sup>

### **Inmate Welfare**

In part, s. 945.215, F.S., requires that certain proceeds from specified revenue streams or donations related to inmates in the DOC be deposited into the General Revenue Fund, including:

- Proceeds from operating inmate canteens, vending machines used primarily by inmates and visitors, hobby shops, and other such facilities.<sup>12</sup>
- Proceeds from contracted telephone commissions.<sup>13</sup>
- Any funds that may be assigned by inmates or donated to the DOC by the general public or an inmate service organization.<sup>14</sup>
- All proceeds from the following sources:
  - The confiscation and liquidation of any contraband found upon, or in the possession of, any inmate;
  - Disciplinary fines imposed against inmates;
  - Forfeitures of inmate earnings; and
  - Unexpended balances in individual inmate trust fund accounts of less than \$1.<sup>15</sup>

The DOC does not currently have a trust fund to be used for the welfare of inmates incarcerated in state-operated facilities, but one was in operation from 1998 to 2003.<sup>16</sup> The 2003 Legislature passed and the Governor signed SB 954 (2003), which terminated the Inmate Welfare Trust Fund and required all proceeds and donations from inmates in state-operated correctional facilities to be deposited into the General Revenue Fund rather than the Inmate Welfare Trust Fund. The DOC reports that it has deposited the following amount of funds into General Revenue related to canteen commissions, vending commissions, and medical copay:

- Fiscal Year 2016-2017: \$34,150,970;
- Fiscal Year 2017-2018: \$36,569,593; and
- Fiscal Year 2018-2019: \$35,760,957.<sup>17</sup>

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<sup>10</sup> Section 215.3208(2)(a), F.S.

<sup>11</sup> *Id.* at (b).

<sup>12</sup> Section 945.215(1)(a), F.S. Funds necessary to purchase items for resale at inmate canteens and vending machines are required to be deposited into local bank accounts designated by the DOC.

<sup>13</sup> Section 945.215(1)(b), F.S.

<sup>14</sup> Section 945.215(1)(c), F.S. However, the department shall not accept any donation from, or on behalf of, any individual inmate.

<sup>15</sup> Section 945.215(1)(d), F.S.

<sup>16</sup> Chapter 98-388, L.O.F., created the Inmate Welfare Trust Fund. Chapter 2003-179, L.O.F., terminated the Inmate Welfare Trust Fund.

<sup>17</sup> The DOC, Email from Scotti Vaughan, Deputy Legislative Affairs Director, Re: GR Deposits, January 14, 2020 (on file with Senate Criminal Justice Committee)(hereinafter cited as “The DOC Email”).

### **Privately Operated Inmate Welfare Trust Fund**

Section 944.72, F.S., establishes the Privately Operated Institutions Inmate Welfare Trust Fund (POIWTF) within the DOC. The purpose of the POIWTF is for the benefit and welfare of inmates incarcerated in private correctional facilities under contract with the DOC pursuant to ch. 944, F.S., or the Department of Management Services (DMS) pursuant to ch. 957, F.S.<sup>18</sup> Moneys are required to be deposited in the trust fund and expenditures made from the POIWTF as provided in s. 945.215, F.S.<sup>19</sup> Further, notwithstanding the provisions of s. 216.301, F.S., and pursuant to s. 216.351, F.S., any balance in the trust fund at the end of any fiscal year must remain in the POIWTF at the end of the year and be available for carrying out the purposes of the POIWTF.<sup>20</sup>

The net proceeds derived from inmate canteens, vending machines used primarily by inmates, telephone commissions, and similar sources at private correctional facilities must be deposited into the POIWTF. The funds in the POIWTF must be expended only pursuant to legislative appropriation.<sup>21</sup>

The DMS is required to annually compile a report that documents POIWTF receipts and expenditures at each private correctional facility, including to specifically identify receipt sources and expenditures. The DMS is required to compile this report for the prior fiscal year and submit the report by September 1 of each year to the chairs of the appropriate substantive and fiscal committees of the Senate and House of Representatives and to the Executive Office of the Governor.<sup>22</sup>

The DOC reports that some of the current uses of the POIWTF include training service dogs for veterans, barbering and cosmetology programs, Commercial Driver's License programs, welding, architectural drafting, wastewater management training, veterinary assistant training, chapel programs, visitation activities, cable television, and wellness equipment.<sup>23</sup> Additionally, the DOC reports that the POIWTF has a cash balance of \$6,916,086 as of January 13, 2020.<sup>24</sup>

### **Programming for Inmates in State-Operated Facilities**

All major institutions, or prisons, are similar to small towns in that they have their own academic and vocational schools, places of worship, medical services, maintenance facilities, parks (for visiting family), and often their own water supplies. Placement is based on institutional and

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<sup>18</sup> Section 945.215(2)(a), F.S.

<sup>19</sup> Section 944.72(1), F.S.

<sup>20</sup> Section 944.72(2), F.S. Section 216.301, F.S., specifically addresses an agency's duty to identify any incurred obligations and undisbursed balances at the end of each fiscal year. Section 216.351, F.S., provides that any subsequent inconsistent laws supersedes ch. 216, F.S., only to the extent that they do so by express reference to s. 216.351.

<sup>21</sup> Section 945.215(2)(b), F.S.

<sup>22</sup> Section 945.215(2)(c), F.S.

<sup>23</sup> The DOC, SB 1116 Agency Analysis, p. 2 (hereinafter cited as "The DOC SB 1116 Agency Analysis")(on file with the Senate Criminal Justice Committee).

<sup>24</sup> The DOC Email.

individual need such as programs, education, health, and availability of bed space.<sup>25</sup> Chapter 944, F.S., requires the DOC to provide a variety of services and programming to inmates committed to the custody of the DOC, including:

- Substance abuse treatment programs;<sup>26</sup>
- Transitional services;<sup>27</sup>
- Educational and vocational programs;<sup>28</sup> and
- Faith- and character-based programs.<sup>29</sup>

For instance, s. 944.473(2), F.S., requires each inmate to be assessed to determine if he or she qualifies to receive mandated substance-abuse treatment while incarcerated. The DOC provides four levels of inmate substance abuse programming, including intensive outpatient, residential therapeutic community, program centers, and work release centers. In Fiscal Year 2017-2018, a total of 10,844 inmates participated in some form of substance abuse treatment.

The above-mentioned services and programs provide inmates with skills and tools to assist with an inmate's successful transition into the community upon release. These services are not offered at all prisons, therefore, services that an inmate needs to best provide rehabilitative programming are paramount to placement decisions.<sup>30</sup> The DOC reports that an estimated six percent of the department's spending is being used to pay for all prison programming.<sup>31</sup>

The DOC reports that the creation of a trust fund for the benefit of inmates in state-operated facilities will provide the DOC and its inmates with valuable resources to combat inmate idleness and improve safety within state-operated institutions as well as assist in expanding the above-mentioned programming efforts allowing the DOC to better attain its overall goal of developing, improving, and readying the people in its care to return to their communities. Further, the DOC reports that studies have shown that inmates who are provided with programming and wellness opportunities and other recreational equipment are better suited in an incarcerated environment resulting in far less instances of inmate-on-inmate violence.<sup>32</sup>

### **III. Effect of Proposed Changes:**

The bill creates s. 944.73, F.S., establishing a State-Operated Institutions Inmate Welfare Trust Fund within the DOC that is substantively the same as the POIWTF, but with the stated purpose to benefit and provide for the welfare of inmates incarcerated in state-operated correctional

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<sup>25</sup> The DOC, *Annual Report Fiscal Year 2017-18*, p. 13, available at [http://www.dc.state.fl.us/pub/annual/1718/FDC\\_AR2017-18.pdf](http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf) (last visited January 14, 2020)(hereinafter cited a "Annual Report").

<sup>26</sup> See Annual Report, p. 45.

<sup>27</sup> Sections 944.701-944.708, F.S.

<sup>28</sup> Section 944.801, F.S. In FY 2017-18, the DOC had 16,630 inmates participating in educational programs, 18,734 in academic programs, and 6,328 in vocational programs. Annual Report, at 33.

<sup>29</sup> Section 944.803, F.S., encourages the DOC to operate faith- and character-based facilities, which emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.

<sup>30</sup> Annual Report, at 33.

<sup>31</sup> The DOC, SB 1118 Agency Analysis, p. 3-4 (hereinafter cited as "The DOC SB 1118 Agency Analysis")(on file with the Senate Criminal Justice Committee).

<sup>32</sup> See The DOC SB 1116 Agency Analysis, p. 2 and the DOC SB 1118 Agency Analysis, p. 4.

facilities. Money is required to be deposited into and the expenditures made from the trust fund as provided in s. 945.215, F.S.

As with POIWTF, the newly created s. 944.73, F.S., provides that notwithstanding s. 216.301, F.S., and pursuant to s. 216.351, F.S., any balance in the trust fund at the end of any fiscal year must remain in the trust fund at the end of the year and be available for carrying out the purposes of the trust fund.

As required by the Florida Constitution, the bill provides that the State-Operated Institutions Inmate Welfare Trust Fund will terminate on July 1, 2024, unless terminated sooner or recreated. Additionally, the bill requires the trust fund to be reviewed as provided in s. 215.3206(1) and (2), F.S., before its scheduled termination.

The bill is effective July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Art. III, s. 19(f)(1) of the Florida Constitution specifies that a trust fund may be created or re-created only by a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

Art. III, s. 19(f)(2) of the Florida Constitution specifies that state trust funds must terminate not more than four years after the effective date of the act authorizing the initial creation of the trust fund. By law the Legislature may set a shorter time period for which any trust fund is authorized.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill creates a trust fund and requires that specified proceeds and donations be deposited into the trust fund, rather than the General Revenue Fund, which will result in less funds being deposited into the General Revenue Fund. However, the funds deposited into the Inmate Welfare Trust Fund pursuant to the bill must be used to fund services and programming that are required to be provided to inmates.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 944.73 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.