

**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:** PCS/CS/SB 1118 (773884)

**INTRODUCER:** Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senators Brandes and Pizzo

**SUBJECT:** Inmate Welfare Trust Funds

**DATE:** February 17, 2020

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

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

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

PCS/CS/SB 1118, which is linked to the passage of SB 1116, amends section 945.215, Florida Statutes, to authorize, up to \$10 million collected from certain proceeds and donations by the Department of Corrections (DOC) relating to inmates to be deposited into the State-Operated Institutions Inmate Welfare Trust Fund, rather than into the General Revenue Fund. Any proceeds or funds above the \$10 million cap must be deposited into the General Revenue Fund. Further, funds in the trust fund may only be expended pursuant to legislative appropriation.

In addition, the bill specifies that for an inmate who is transferred between department facilities, is released, dies, or escapes during incarceration, any unexpended inmate trust fund account balances of less than \$1 shall be transferred to the trust fund, or to general revenue if the fund has reached the \$10 million cap. Similarly, if an inmate escapes, any forfeited prisoner earnings shall be deposited in the trust fund or general revenue.

SB 1116, which is linked to this bill, creates the State-Operated Institutions Inmate Welfare Trust Fund within the DOC to benefit and provide for the welfare of inmates incarcerated in state-operated correctional facilities.

The bill provides that the State-Operated Institutions Inmate Welfare Trust Fund is a trust held by the DOC for the benefit and welfare of inmates incarcerated in correctional facilities operated directly by the DOC. Additionally, the bill specifically enumerates the ways that the DOC may

use the funds deposited into the State-Operated Institutions Inmate Welfare Trust Fund and requires the funds to be used exclusively to provide for or operate specified programming needs at correctional facilities operated by the DOC.

The bill requires the DOC to compile and submit a report detailing specific information related to the State-Operated Institutions Inmate Welfare Trust Fund to the Executive Office of the Governor and the chairs of the appropriate substantive and fiscal committees of the Senate and the House of Representatives annually by October 1 of each year.

The bill provides an appropriation of \$10 million in recurring funds for FY 2020-2021 from the State-Operated Institutions Inmate Welfare Trust Fund to the DOC for the purpose of providing for the welfare of inmates incarcerated in correctional facilities operated directly by the DOC pursuant to section 945.215(2), Florida Statutes.

The bill requires that a specified amount of proceeds and donations from certain sources be deposited into the State-Operated Institutions Inmate Welfare Trust Fund, rather than the General Revenue Fund. However, the funds deposited into the State-Operated Institutions Inmate Welfare Trust Fund must be used to fund services and programming for inmates. To the extent that the bill transitions the funding of such programming, the bill will have an indeterminate fiscal impact on the DOC and the General Revenue Fund. See Section V.

The bill is effective on the same date that SB 1116 or similar legislation takes effect, if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

## II. Present Situation:

### 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.<sup>1</sup> 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> 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> and 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>

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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.*

SB 1116, which is linked to this bill, establishes the State-Operated Institutions Inmate Welfare Trust Fund within the DOC to benefit and provide for the welfare of inmates incarcerated in state-operated correctional facilities.

### **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>8</sup>
- Proceeds from contracted telephone commissions.<sup>9</sup>
- Any funds that may be assigned by inmates or donated to the DOC by the general public or an inmate service organization.<sup>10</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>11</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>12</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>13</sup>

### **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>14</sup>

<sup>8</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>9</sup> Section 945.215(1)(b), F.S.

<sup>10</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>11</sup> Section 945.215(1)(d), F.S.

<sup>12</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>13</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”).

<sup>14</sup> Section 945.215(2)(a), F.S.

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>15</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>16</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>17</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>18</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 individual need such as programs, education, health, and availability of bed space.<sup>19</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>20</sup>
- Transitional services;<sup>21</sup>
- Educational and vocational programs;<sup>22</sup> and
- Faith- and character-based programs.<sup>23</sup>

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<sup>15</sup> Section 944.72(1), F.S.

<sup>16</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, F.S.

<sup>17</sup> Section 945.215(2)(b), F.S.

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

<sup>19</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>20</sup> Section 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 FY 2017-18, a total of 10,844 inmates participated in some form of substance abuse treatment. *See Annual Report*, p. 45.

<sup>21</sup> Sections 944.701-944.708, F.S.

<sup>22</sup> Section 944.801, F.S. In Fiscal Year 2017-2018, 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>23</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.

These 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>24</sup> The DOC reports that an estimated six percent of the department's spending is being used to pay for all prison programming.<sup>25</sup>

### III. Effect of Proposed Changes:

The bill amends s. 945.215, F.S, authorizing the deposit of up to \$10 million collected from the above-mentioned funds into the State-Operated Institutions Inmate Welfare Trust Fund, created by SB 1116, rather than into the General Revenue Fund, including proceeds and donations collected from the:

- Proceeds from operating inmate canteens, vending machines used primarily by inmates and visitors, hobby shops, and other such facilities.
- Proceeds from contracted telephone commissions.
- Any funds that may be assigned by inmates or donated to the DOC by the general public or an inmate service organization.
- 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.

The bill requires any proceeds or funds collected in a fiscal year above the \$10 million cap must be deposited into the General Revenue Fund. Further, funds in the trust fund may only be expended pursuant to legislative appropriation.

The bill requires that when an inmate is transferred between DOC facilities, is released, dies, or escapes during incarceration, any unexpended inmate trust fund account balance of less than \$1 must be transferred to the trust fund, or to general revenue if the \$10 million cap has been reached. In the case of an escape, any portion of inmates' earnings that are forfeited shall be deposited into the trust fund, or into general revenue.

The bill provides that the State-Operated Institutions Inmate Welfare Trust Fund is a trust held by the DOC for the benefit and welfare of inmates incarcerated in correctional facilities operated directly by the DOC.

Additionally, the bill restricts the manner with which the funds deposited into the State-Operated Institutions Inmate Welfare Trust Fund may be expended. The bill provides that the funds must be used exclusively to provide for or operate specified programming needs at correctional facilities operated by the DOC, specifically including:

- Literacy programs, vocational training programs, and educational programs.

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<sup>24</sup> Annual Report, at 33.

<sup>25</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).

- Inmate chapels, faith-based programs, visiting pavilions, visiting services and programs, family services and programs, and libraries.
- Inmate substance abuse treatment programs and transition and life skills training programs.
- The purchase, rental, maintenance, or repair of electronic or audiovisual equipment, media, services, and programming used by inmates.
- The purchase, rental, maintenance, or repair of recreation and wellness equipment.
- The purchase, rental, maintenance, or repair of bicycles used by inmates traveling to and from employment in the work-release program authorized under s. 945.091(1)(b), F.S.

The bill also requires the DOC to compile and submit a report to the Executive Office of the Governor and the chairs of the appropriate substantive and fiscal committees of the Senate and the House of Representatives annually by October 1 of each year documenting the receipts and expenditures of the State-Operated Institutions Inmate Welfare Trust Fund for the previous fiscal year. The report must be compiled at both the statewide and institutional levels.

The bill provides an appropriation of \$10 million in recurring funds for the 2020-2021 fiscal year from the State-Operated Institutions Inmate Welfare Trust Fund to the DOC for the purpose of providing for the welfare of inmates incarcerated in correctional facilities operated directly by the DOC pursuant to s. 945.215(2), F.S.

The bill is effective on the same date that SB 1116 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

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

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**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 provides an appropriation of \$10 million in recurring funds for the 2020-2021 fiscal year from the State-Operated Institutions Inmate Welfare Trust Fund to the DOC for the purpose of providing for the welfare of inmates incarcerated in correctional facilities operated directly by the DOC pursuant to s. 945.215(2), F.S.

The bill requires that specified proceeds and donations be deposited into the State-Operated Institutions Inmate Welfare Trust Fund. Currently, annual proceeds in the amount of \$36 million are deposited into the General Revenue Fund each year from inmate canteen and vending receipts. The bill redirects \$10 million in General Revenue funds to the newly created trust fund. The funds deposited into the State-Operated Institutions Inmate Welfare Trust Fund pursuant to the bill are required to be used to fund services and programming for inmates.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 945.215 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.)

**Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 13, 2020:**

The committee substitute amends s. 944.516, F.S., to require that when an inmate is transferred between DOC facilities, is released, dies, or escapes, any unexpended inmate trust fund account balance of less than \$1 must be transferred to the State-Operated Institution Inmate Welfare Trust Fund, or as provide in s. 945.215 (2) (b), to general revenue as is currently is done. In addition, the committee substitute amends s. 946.002, F.S., to require

that if a prisoner escapes, any forfeited earnings shall be deposited into the trust fund of DOC or, as provided in s. 945.215(2) (b), into general revenue.

**CS by Criminal Justice on January 21, 2020:**

The committee substitute adds the specific linked bill number, SB 1116, to the contingent effective date language.

**B. Amendments:**

None.