

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 a.m. on February 24, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Norm Furse, Revisor of Statutes  
Renaë Jefferies, Revisor of Statutes  
June Evans, Committee Secretary

Others attending:

See Attached List.

The Chairman called the meeting to order and announced this was the last day before turn around. The bills being worked today are: **HB 2847 - Workers compensation, choice of physician by injured employee, HB 2809 - Workers compensation, liability for death or injury resulting from drugs or alcohol, HB 2537 - Workers compensation advisory council, meetings and vote requirements for recommendations and HB 2435 - Transfer of the advisory committee on Hispanic affairs, the commission on disability concerns and the advisory commission on African-American affairs, and setting of the limits for the dislocated workers program.**

Representative Pauls asked if the bills could be switched around as there were some people in the audience that were interested in **HB 2435**. The Chairman agreed to work **HB 2435** first.

Representative Ruff offered a Substitute for **HB 2435**. **Sub HB 2435** would transfer the Commission of Disabilities Concerns to the Department of Commerce and Labor (ERO 31). In **Sub HB 2435** the Advisory Committee on Hispanic Affairs would move to the Governor's Office along with the Advisory Commission on African American Affairs. Additionally, the Governor would set limits for the funding of the dislocated worker program).

The Advisory Committee on Hispanic Affairs would be renamed the Hispanic and Latino American Affairs Commission.

Representative Ruff moved and Representative Rehorn seconded that **Sub HB 2435** be adopted. The motion carried.

The Chair asked if there was a motion to amend **Sub HB 2435**, Table, or to send out favorably. What was the desire of the committee?

Representative Carlin moved and Representative Grant seconded to move **Sub HB 2435** out favorably. The motion carried.

The Chairman asked what the committee desired to do on **HB 2847**?

Chairman Dahl moved and Representative Humerickhouse seconded to move **HB 2847** out favorably.

Representative Swenson moved to adjourn.

Chairman Dahl said that motion was out of order.

Representative Ruff said this issue is one that deserves a little bit more discussion and a little bit more thorough working by the Advisory Council to tell you the truth although some people seem to have a rather tainted view of our Advisory Council. It certainly hasn't been looked at and I don't think it has been given a fair shake by that Advisory Council. I know it has been given a cursory review of it.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 24, 2004 in Room 241-N of the Capitol.

Yesterday a sub-committee was appointed at the Advisory Council to look at a number of issues and I think that this is one that deserves that. I don't think that we should be monkeying around with any kind of workers compensation issues on the Floor of the House until we have a better understanding of where we are going to be with the Advisory Council and with our workers compensation issues and that is the kind of thing that if this bill gets out on the Floor of the House anything could happen, especially when it comes to amendments, and quite frankly I don't think our committee is ready to fight any workers compensation wars on the Floor of the House and I think this is the kind of thing that deserves a little further study by the Advisory council and I would like for it to stay there.

Representative Ruff made a Substitute Motion and Representative Lane seconded to refer this bill to the Advisory Council and for the Advisory Council to take a serious look at Physician Choice and especially look at the NCCI pricing of it and for them to add this to the Sub-Committee that was appointed yesterday to discuss workers compensation issues. All workers compensation issues should be there at this time to avoid a battle on the Floor of the House.

A Division was called. The Substitute motion passed on a vote of 10-8.

**HB 2847** is referred to the Advisory Council.

The Chairman asked what the Committee's wishes were on **HB 2809**?

Representative Novascone moved and Representative Boyer seconded to move **HB 2809** out favorably.

Representative Pauls moved and Representative Ruff seconded a Substitute Motion as we heard testimony on that bill and there are a lot of good ideas but it really didn't totally fit the situation of the people that were present and because of that I would like to make a similar motion of what Representative Ruff did and refer **HB 2809** to the Advisory Council. It had a lot of good elements but did not take care of the problems we were presented and I think it needs to be dealt with more.

A Division was called. The substitute motion passed on a vote of 10-8.

**HB 2809** is referred to the Advisory Council.

The Chairman asked what the Committee's wishes were on **HB 2537**?

Representative Humerickhouse moved and Representative Novascone seconded to move **HB 2537** out favorably.

Representative Ruff offered a substitute motion and Representative Lane seconded that of all bills **HB 2537** should be sent to the Advisory Council. This should be the one because this bill deals with the Advisory Council. This has to do with their future. This talks about what is going to be, what the parameters of their new Council will be, especially when it comes to their meeting dates, their membership and their voting requirements and this should be discussed by them and decided by them before we make that decision here in the Legislature and my motion would be that this go to the Advisory Council so they could at least have the opportunity to have an input.

A Division was Called. The substitute motion passed on a vote of 10-8

**HB 2537** passes to the Advisory Council.

The meeting adjourned at 9:20 a. m. The next meeting will be March 5, 2004.





PROPONENT TESTIMONY

FOR SENATE BILL 481

MARCH 5TH, 2004

Given by

Jeff Wheeler

on behalf of

IMPACT DESIGN, INC.

Commlabor  
3-5-04  
Atch # 1

We are here before you today, the Kansas Senate Commerce Committee, as proponents of **Senate Bill 481**, a bill designed to modify a current Kansas law, **KSA No. 44-703**. If passed, **SB 481** will remove a financial burden from private industry companies that operate within Kansas state correctional facilities to provide meaningful work for inmates. This financial burden is the state's requirement of companies such as ours to pay unemployment tax for our inmate workers, a tax that is virtually of no benefit to those it is intended to help. The removal of this tax will enable companies such as ours to assist in the rehabilitation of more inmates in the state by providing more of them with meaningful wages and meaningful work. Inmates in this type of work program learn a trade, develop a sense of professionalism and work ethic, become more self-sufficient, and lower the cost of their incarceration through federally mandated deductions from their pay. Inmates gain self-worth and self-respect which lead to integrity and purpose, which in turn often lead to productivity and responsibility. This is a foundation for positive citizenship once free, a strong barrier to recidivism and a path to successful re-entry into society.

Our company, Impact Design, is the largest private industry company of our kind providing work to inmates within the Kansas correctional system. We have approximately 250 inmate workers assigned to us regularly throughout the calendar year, also making us one of the largest companies of our kind in the country. We operate under a federal law known as the Prison Industry Enhancement (PIE) Certification Program, created by Congress in 1979 to encourage government to provide prisoners with work in a work environment that simulates the private sector in the free world. PIE requires state and local governments to be certified with the Bureau of Justice Assistance (BJA), a division of the U.S. Department of Justice, demonstrating that they meet statutory guidelines and requirements. Kansas Correctional Industries (KCI), a division of the Kansas Department of Corrections (KDOC), is the PIE certificate holder authorized by the BJA in Kansas for the state. KCI, in turn, authorizes and allows Impact Design and companies like us to operate within KDOC correctional facilities to provide meaningful work to inmates who are assigned by the KDOC to us at our request.

Our company is located within the Medium Custody compound at the Lansing Correctional Facility (LCF) in Lansing, Kansas. We also have a production facility within LCF's industrial yard complex. We are joined by 6 other private industries within the LCF compound and 6 more across the Kansas correctional system as a whole. As PIE participating companies, we work closely with both KCI and the KDOC and are governed by state laws and regulations regarding our interaction with inmates. We are all required under PIE to provide the following for our inmate workers:

Prevailing Wage as determined annually by the Kansas Department of Human Resources

Overtime pay to qualifying inmates as prescribed by the Fair Labor Standards Act

Workers Compensation Insurance

PIE also requires us to make certain deductions from inmates' pay, such as:

Room & Board deductions for their incarceration

Restitution / Victim's Fund deductions that go to compensate victims of crime

Family Support deductions such as Child Support

Standard payroll tax deductions (federal and state income tax, FICA, Medicare, etc.)

Mandatory Savings that is only received by inmates upon parole

PIE participating companies of course must pay the employer portion of FICA and Medicare but do **not** have to pay FUTA (federal unemployment tax). They are exempt from having to pay FUTA for inmate workers under federal law **USC Sec. 1761**. The state of Kansas, however, currently **does** require that PIE participating companies pay state unemployment tax

for inmate workers (as stated in **KSA No. 44-703(i)(4)(M)**). This represents approximately \$211,000 of tax for businesses such as ours in Kansas in 2003. Impact Design has annually paid \$45,000 to \$60,000 in state unemployment tax for our inmate workers alone.

We believe that having to pay state unemployment tax for inmate workers represents an unfair and unreasonable burden for companies like ours that provide a vital role in the rehabilitation of inmates, especially when one considers that inmates are not eligible to claim unemployment benefits while incarcerated. The fact that PIE companies must pay unemployment tax at the state level in Kansas but not the federal level, strikes us as unfair and counter to federal law and the intent of the PIE program. We are unaware of any other state that imposes payment of such tax for companies such as ours. We believe that this current Kansas law hampers and unnecessarily burdens PIE participant companies such as us. This money could be used by PIE companies in Kansas to have more inmates assigned to them which would in turn lower the taxes of all Kansans by helping to lower incarceration costs. Moreover, it would enable PIE participant companies to assist in the rehabilitation of more inmates by providing more of them with meaningful work and the chance to experience the competitive work environment of the free world.

As a practical matter, increasing the profitability of PIE companies means more inmate jobs and more companies participating in the correctional process, either as employers or customers of PIE employers. This all equates to more qualitative and quantitative rehabilitation for offenders in Kansas. With 95% of all incarcerated offenders eventually being released into the community, it is imperative that a progressive state such as Kansas create a rehabilitative atmosphere favoring meaningful work for inmates to help them develop skills and attitudes that reduce the chances of recidivism. Additionally, such an environment allows inmates to earn a fair wage so that they may prepare themselves financially for freedom. Stability is the foundational value ultimately offered by PIE: stability for inmates through meaningful work; stability for the correctional facility by keeping inmates engaged in a productive activity; stability for society by truly

offering inmates the chance for assimilation and re-entry into the community.

For these reasons PIE companies are an asset to the community, complimenting the private sector in the free world without negatively affecting it. The vast majority of work performed by PIE inmates is very manual and labor-intensive, the type of work that is increasingly going overseas. PIE companies help to retain some of that accompanying revenue stream, keeping it in the U.S. Furthermore, PIE company products promote Kansas and help the state's economy on the whole. Many prominent U.S. companies buy products and services from PIE companies throughout the country, purchases that enable those companies to be more competitive in the world's marketplace, increasing their profitability. This in turn can lead to more meaningful work for all Americans.

In short, SB 481 will enable PIE companies in Kansas to provide more meaningful work for inmates, more products and services for private sector customers, and lower taxes for all Kansans through reduced incarceration costs and less recidivism. This is a winning proposition for all involved - there is no downside in the long term. The PIE program is helping to redistribute work value and workloads in American society and on a micro-level so, too, are PIE companies in Kansas. Help us to provide even more value to the State and our citizens by lessening an unnecessary tax burden that does not provide the help it is designed to since very few PIE inmates ever qualify for unemployment benefits. The money saved can be better spent lowering the costs of incarceration while providing expanded rehabilitation. This is simply one more example of how the partnership between government and the private sector can generate winning solutions for all concerned. Help us to strengthen this partnership even more.





Bureau of Justice Assistance

# Program Brief



## Prison Industry Enhancement Certification Program

**T**he Prison Industry Enhancement (PIE) Certification Program exempts certified state and local departments of corrections from normal restrictions on the sale of prisoner-made goods in interstate commerce. In addition, the program lifts restrictions on these certified corrections departments, permitting them to sell prisoner-made goods to the Federal Government in amounts exceeding the \$10,000 maximum normally imposed on such transactions.

The PIE Certification Program was created by Congress in 1979 to encourage states and units of local government to establish employment opportunities for prisoners that approximate private-sector work opportunities. The program is designed to place inmates in a realistic work environment, pay them the prevailing local wage for similar work, and enable them to acquire marketable skills to increase their potential for successful rehabilitation and meaningful employment on release.

A total of 50 jurisdictions may be certified under the PIE Certification Program. To become certified, each program must demonstrate to the

Richard R. Nedelkoff, Director  
[www.ojp.usdoj.gov/BJA](http://www.ojp.usdoj.gov/BJA)  
July 2002

BJA



## About BJA

The Bureau of Justice Assistance was established in 1984 as a component of the Office of Justice Programs, U.S. Department of Justice. BJA provides leadership and resources to state, local, and tribal governments and communities to reduce crime, violence, and drug abuse and to strengthen the nation's criminal justice system. BJA provides this assistance through formula and discretionary grants, training and technical assistance, publications, and the BJA web site.

## For Further Information

For additional information about the Prison Industry Enhancement Certification Program, contact:

### National Correctional Industries Association

PIE Technical Assistance  
1202 North Charles Street  
Baltimore, MD 21201-5508  
410-230-3972  
Fax: 410-230-3981  
E-mail: [Info@nationalcia.org](mailto:Info@nationalcia.org)  
Web site: [www.nationalcia.org](http://www.nationalcia.org)

### Bureau of Justice Assistance

810 Seventh Street NW.  
Washington, DC 20531  
202-616-6500  
Fax: 202-305-1367  
Web site: [www.ojp.usdoj.gov/BJA](http://www.ojp.usdoj.gov/BJA)

For publications and information on other BJA-funded programs, contact:

### Bureau of Justice Assistance Clearinghouse

P.O. Box 6000  
Rockville, MD 20849-6000  
1-800-688-4252  
Web site: [www.ncjrs.org](http://www.ncjrs.org)

Clearinghouse staff are available Monday through Friday, 8:30 a.m. to 7 p.m. eastern time. Ask to be placed on the BJA mailing list.

Director of the Bureau of Justice Assistance (BJA), U.S. Department of Justice, that it meets statutory and guideline requirements as listed under Mandatory Criteria for Program Participation.

The National Correctional Industries Association (NCIA), the professional organization for prison industry employees, provides technical assistance for this program. Under a grant from BJA, the NCIA staff of volunteer correctional industry professionals audit program participants for compliance with program requirements and provide onsite and telephone technical assistance to programs that are not in compliance. NCIA provides additional technical assistance by:

- ◆ Responding to specific requests for substantive help from participating jurisdictions.
- ◆ Providing program information to government agencies, private-sector companies, journalists, professional business and labor organizations, and others interested in the program.
- ◆ Offering periodic training to program participants.
- ◆ Helping to shape program policy through development of program guidelines, quarterly program data summaries, and other documents in response to program needs.

The PIE Certification Program has two primary objectives:

- ◆ Generate products and services that enable prisoners to make a contribution to society, help offset the cost of their incarceration, compensate crime victims, and support their families.
- ◆ Reduce prison idleness, increase inmate job skills, and improve the prospects for successful inmate transition to the community on release.



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## Authority

The PIE Certification Program was first authorized under the Justice System Improvement Act of 1979 (Public Law 96-157, Sec. 827) and later expanded under the Justice Assistance Act of 1984 (Public Law 98-473, Sec. 819). The Crime Control Act of 1990 (Public Law 101-647) authorizes continuation of the program indefinitely.

## Program Benefits

The PIE Certification Program allows private industry to establish joint ventures with state and local correctional agencies to produce goods using prison labor. The program benefits:

- ◆ **The corrections administrator.** The program is a cost-effective way to occupy a portion of the ever-growing prison population.
- ◆ **The crime victim.** The program provides a means of partial repayment for harm sustained.
- ◆ **The prisoner.** The program offers a chance to work, meet financial obligations, increase job skills, and increase the likelihood of meaningful employment on release from incarceration.
- ◆ **The private sector.** The program provides a stable and readily available workforce. In addition, many correctional agencies provide manufacturing space to private-sector companies involved in the program.
- ◆ **The public.** Because of inmate worker contributions to room and board, family support, victim compensation, and taxes, the program provides a way to reduce the escalating cost of crime.

## Mandatory Criteria for Program Participation

Corrections departments that apply to participate in the PIE Certification Program must meet all eight of the following criteria:

1. Legislative authority to pay wages at a rate not less than that paid for similar work in the same locality's private sector.
2. Written assurances that the PIE Certification Program will not result in the displacement of workers employed before program implementation.
3. Authority to provide worker benefits, including workers' compensation or its equivalent.
4. Authority to involve the private sector in the production and sale of prisoner-made goods.
5. Written assurances that inmate participation is voluntary.
6. Legislative or administrative authority to collect and provide financial contributions of not less than 5 percent and not more than 20 percent of gross wages to crime victim compensation/assistance programs and legislative or administrative authority for crime victim compensation/assistance programs to accept such financial contributions.
7. Written proof of consultation with organized labor and local private industry before PIE Certification Program startup.
8. Compliance with the National Environmental Policy Act and related federal environmental review requirements.

## Allowable Wage Deductions

Corrections departments may take a series of deductions from wages earned by prisoners. Permissible deductions are limited to room and board, taxes (such as federal, state, FICA), family support, and crime victim compensation/assistance. Deductions must not total more than 80 percent of gross wages.

### **Total wages earned and deductions collected.**

During the period December 1979 through December 31, 2001, jurisdictions participating in

1-8

the program have paid the following wages and collected the following amounts:

<b>Gross wages earned</b>	<b>\$215,314,373</b>
Victim program deductions	19,976,186
Room and board deductions	55,428,991
Family support deductions	12,570,451
Taxes withheld	29,225,063
<b>Total deductions</b>	<b>\$117,200,691</b>

### Program Certification Process

Interested corrections departments may request a PIE Certification Program Application from BJA or the National Correctional Industries Association. Applicants must provide written proof that they meet all mandatory program criteria (including copies of legislation and/or administrative rulings, as appropriate). After reviewing and approving an

application, BJA will formally notify the jurisdiction that it has been certified to participate in the program. Certified jurisdictions must agree to enforce program requirements. Certification may be terminated if a jurisdiction is found to be out of compliance with any of the mandatory program criteria or if the certification is unused for 6 months or longer.

### Eligibility

All states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and all units of local government authorized by law to administer prison industry programs are eligible to apply for program certification.

As of December 31, 2001, 38 jurisdictions were certified. For a complete list, please visit the NCIA web site at [www.nationalcia.org](http://www.nationalcia.org).

*Photos courtesy of the National Correctional Industries Association.*

NCJ 193772  
July 2002

**U.S. Department of Justice**  
Office of Justice Programs  
*Bureau of Justice Assistance*

*Washington, DC 20531*

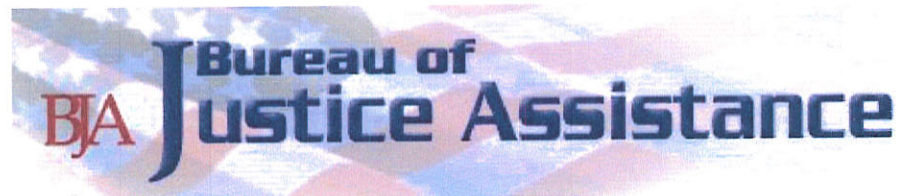
Official Business  
Penalty for Private Use \$300



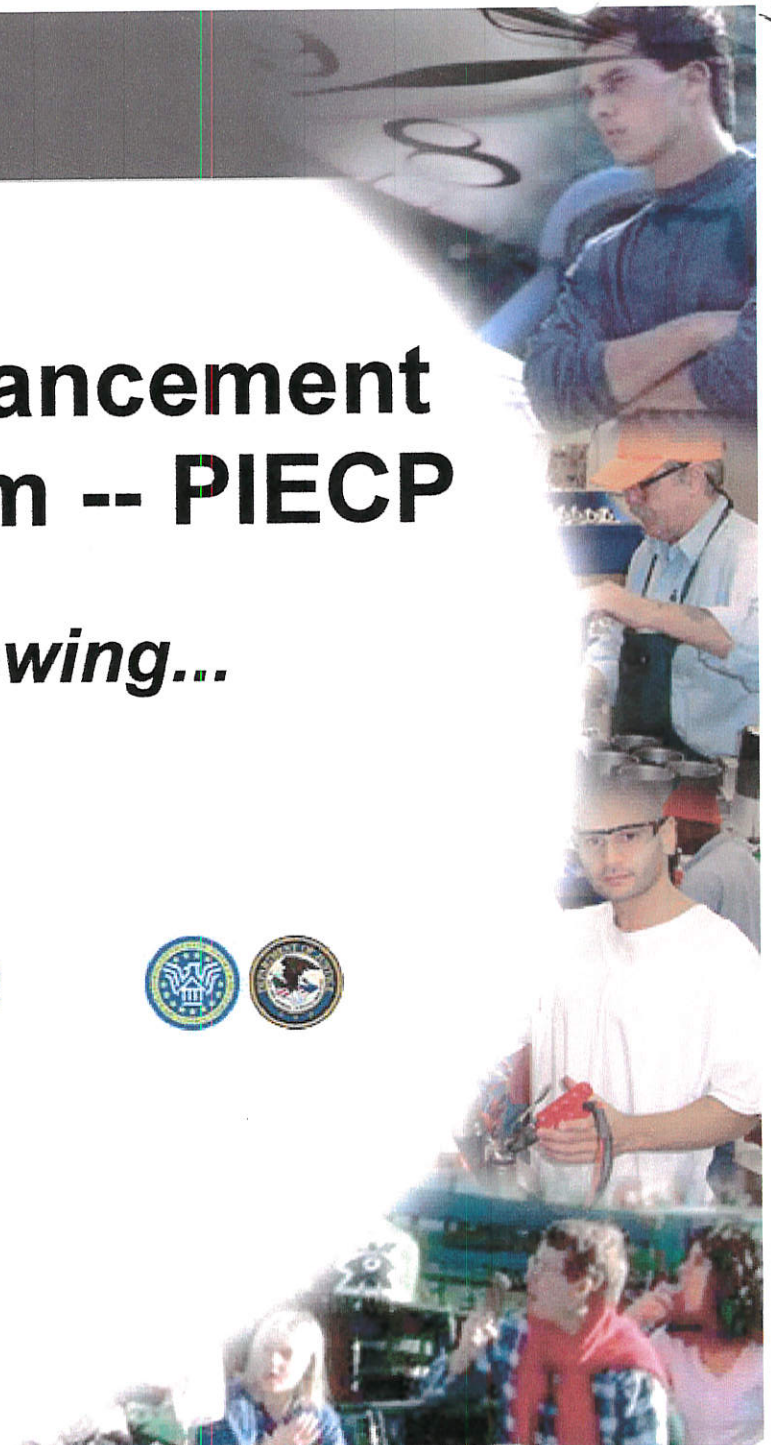
PIECP:

# Prison Industry Enhancement Certification Program -- PIECP

*Statistics Show it is Growing...  
and it Works!*



NATIONAL  
CORRECTIONAL  
INDUSTRIES  
ASSOCIATION



01-10

# Statistics Show it is Growing...

★ Society Wins

★ Offender Wins

★ **Correctional Facilities Win**



Industries keeps offender busy, reducing violence and disruptions in the correctional facility

Portion of offender wages goes to correctional facility to defray costs of drug treatment and educational programs as well as room, food and medical costs

*An industry facility in a Virginia prison*

★ Business Wins



# ...and it Works!

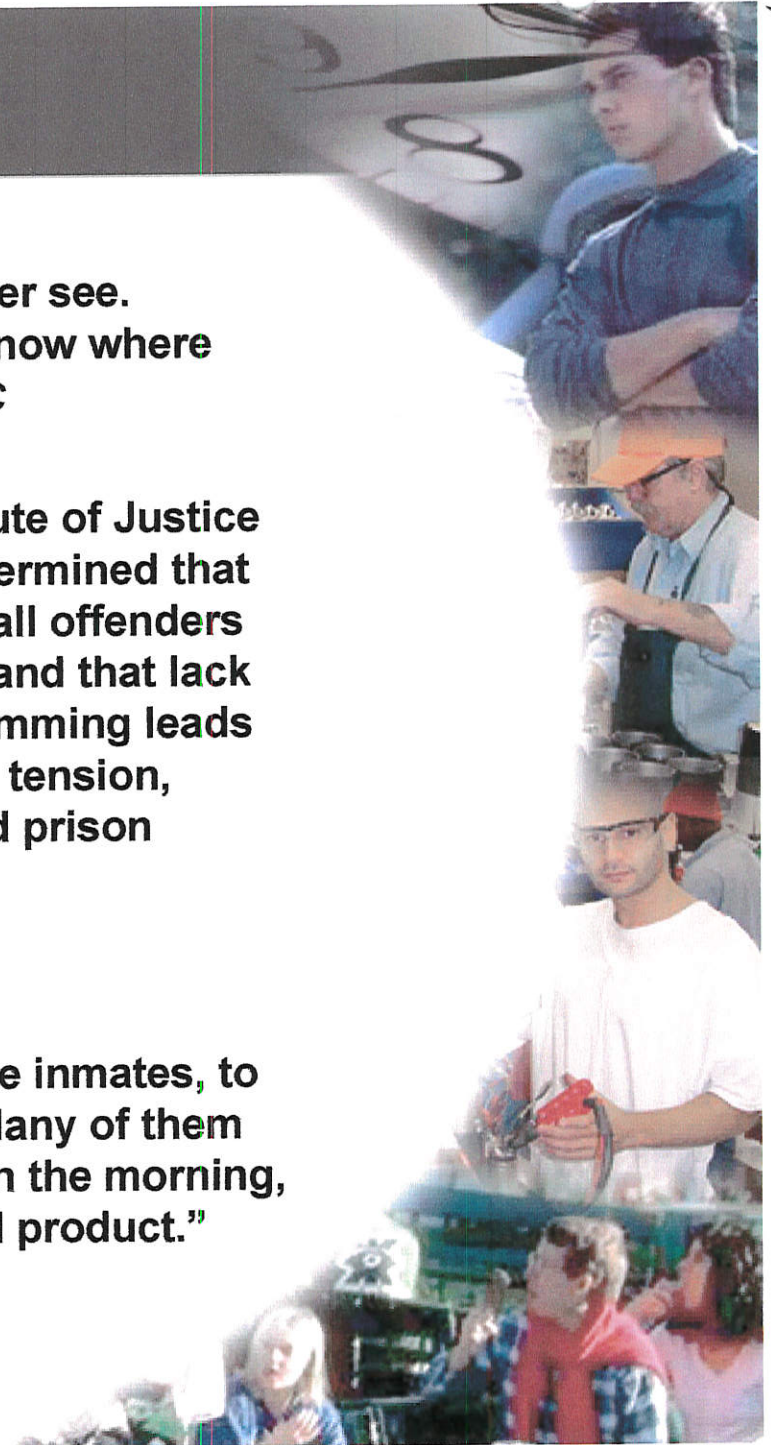
- ★ **“Work is the best management tool wardens ever see. Prisoners put in a full productive day, and we know where they are.”** *Tony Ellis, Director of Industries, SC DOC*



- ★ **A National Institute of Justice study determined that 24% of all offenders are idle, and that lack of programming leads to increased tension, frustration and prison disturbances.**

- ★ **“My biggest concern is that we have jobs for the inmates, to keep them busy and teach them a work ethic. Many of them have no clear understanding about getting up in the morning, going to work and ... feeling good about an end product.”**

*Warden Carol Pinkins, CA DOC*



# Dedicated to a Purpose

- **MISSION STATEMENT:**

**As a business, Correctional Industries is committed to maintain and expand offender work training programs which develop marketable skills, instill and promote a positive work ethic and reduce the tax burden of corrections.**

*-Washington Correctional Industries*



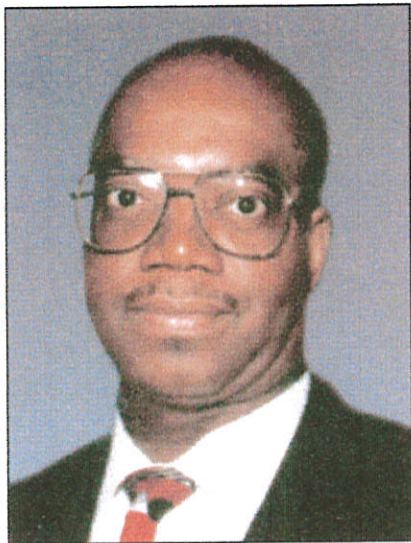


# Results: Corrections Benefits

★ Correctional Industries keep offenders productively occupied.

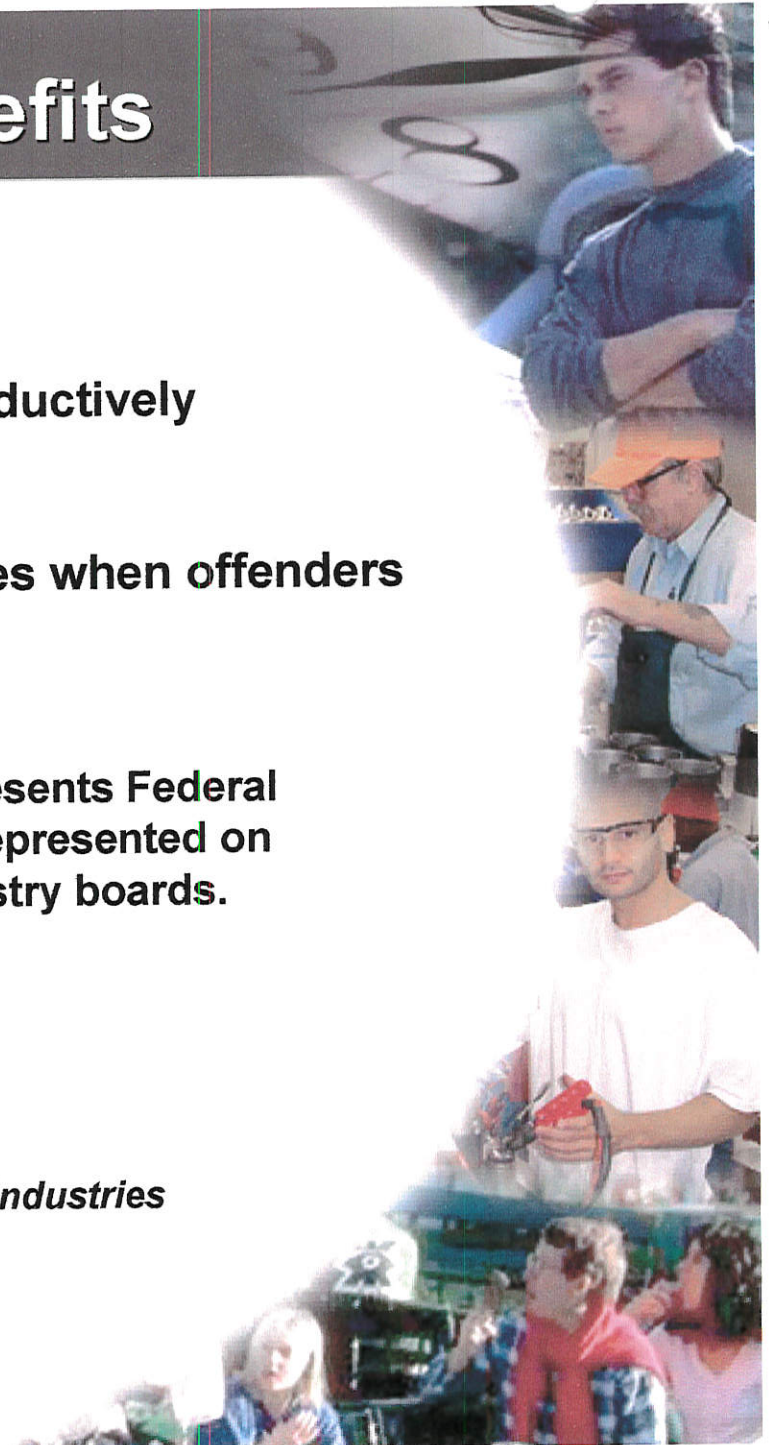


Correctional officers cite fewer disturbances when offenders are occupied with work.



★ The AFL-CIO, which represents Federal Corrections Officers, is represented on several correctional industry boards.

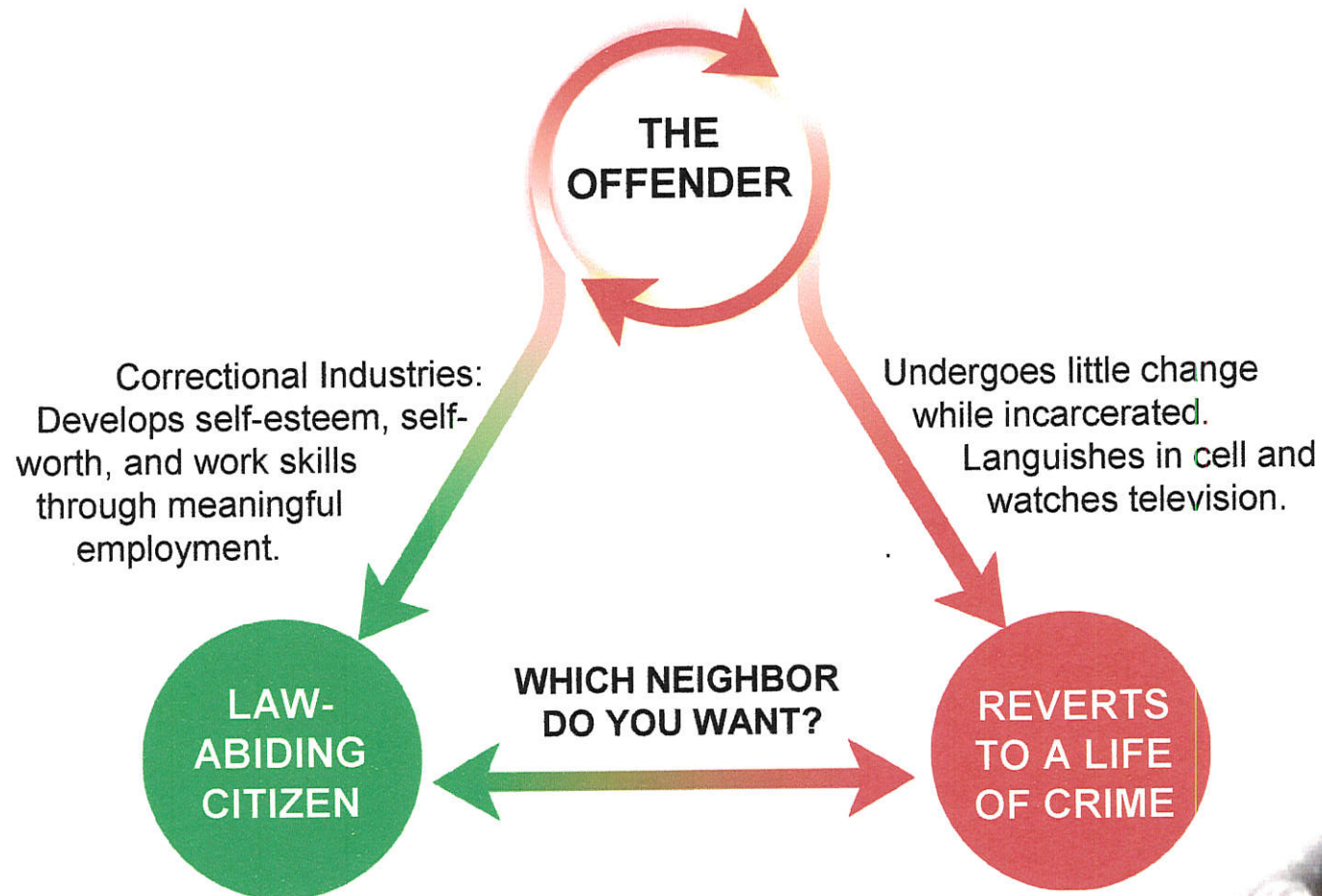
*Richard G. Womack  
Director, Office of Civil Rights  
AFL-CIO  
Former Member, Federal Prison Industries  
Board of Directors*



1-11

# Why Congress Authorized PIECP

Because 95% of offenders incarcerated in correctional facilities will eventually be released and living in our communities, with our families, children, friends and co-workers...



# Beneficial to Society

## ★ Society Benefits



Citizens safer from lower recidivism

Offenders pay taxes from earnings

Portion of offenders wages defray their support costs to society

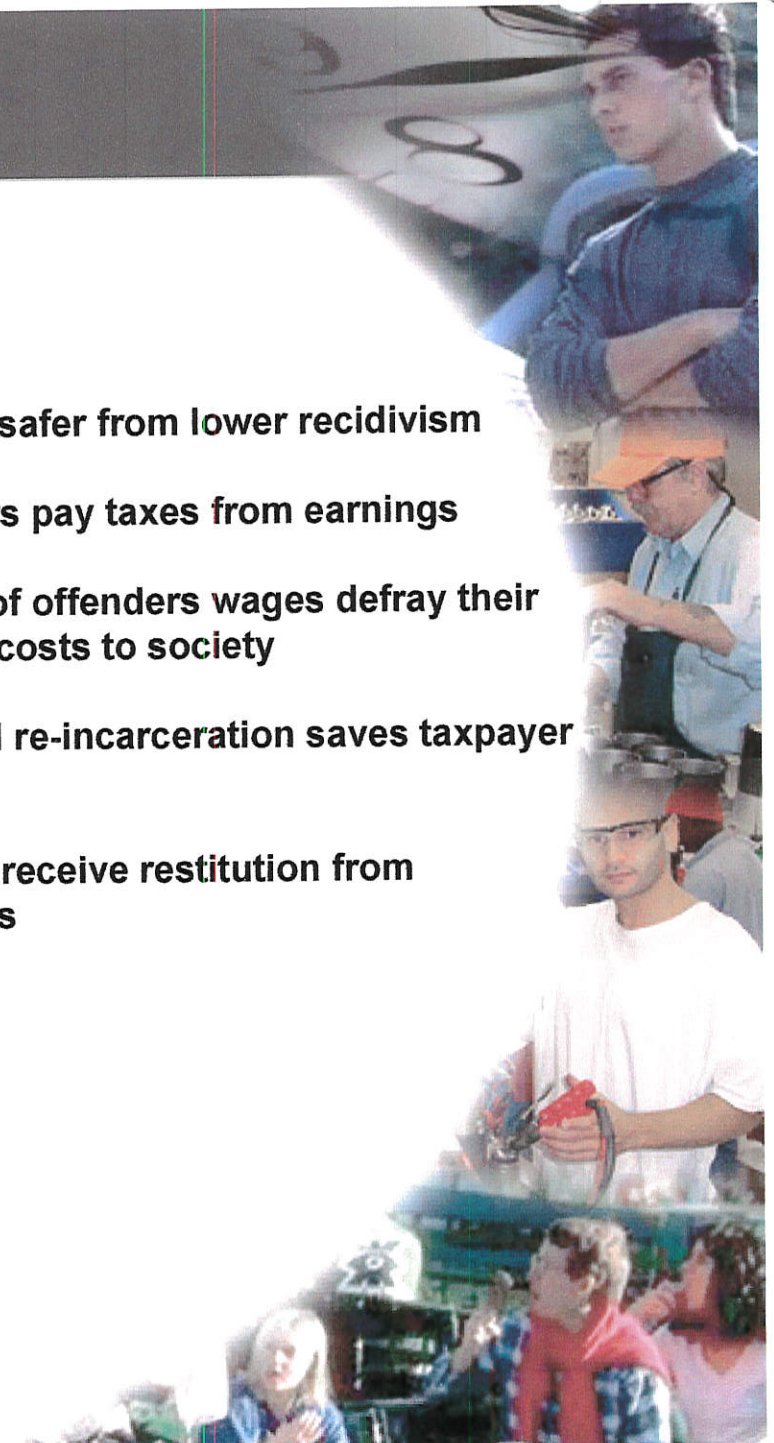
Reduced re-incarceration saves taxpayer monies

Victim's receive restitution from offenders

## ★ Offender Benefits

## ★ Correctional Facilities Benefit

## ★ Business Benefits



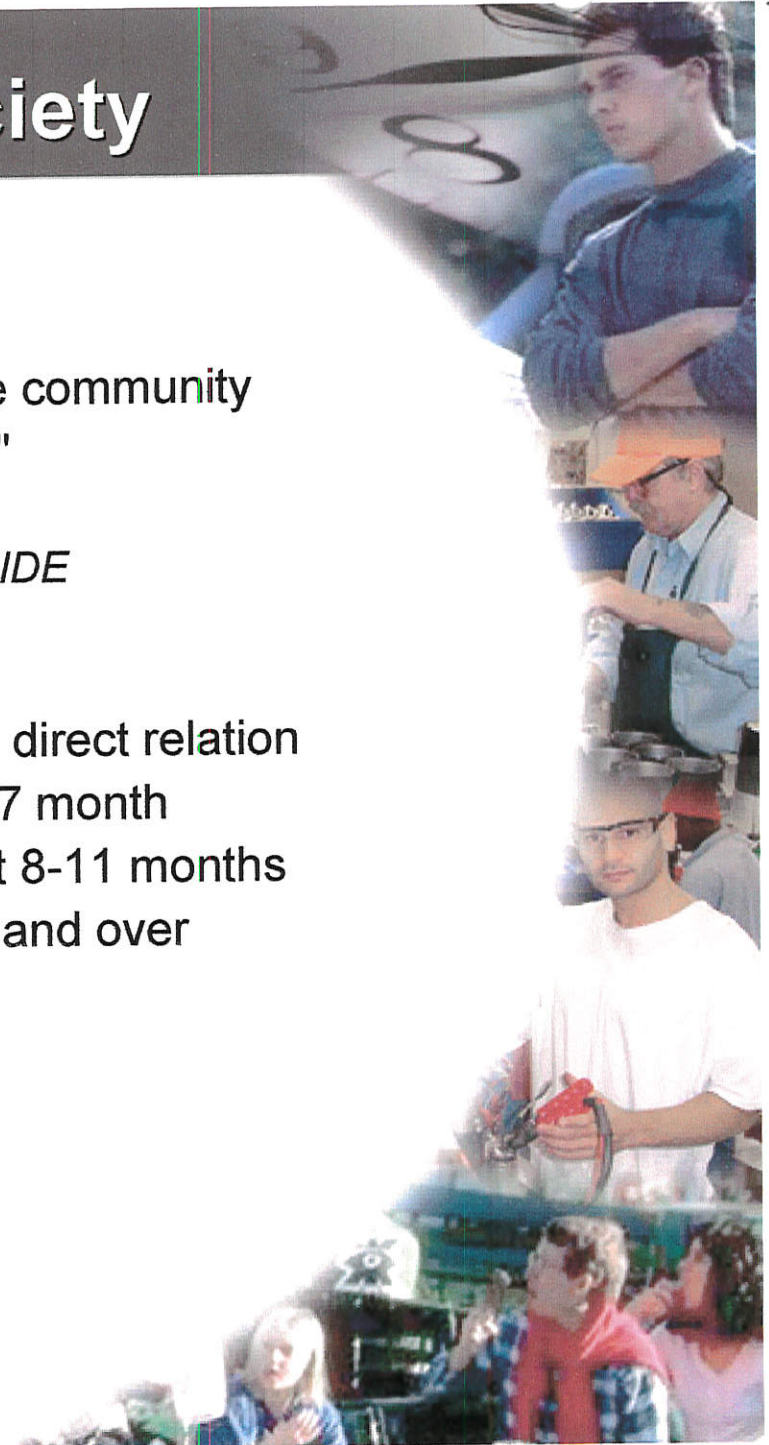
# Results: Beneficial to Society

"Of 4,710 PRIDE inmate workers released into the community only 719, or 15.2 percent have returned to prison."

*Pat Foote, Former Director of Communications for PRIDE*

"...you see a substantial decrease in recidivism in direct relation to longer periods of employment at UCI (i.e.: at 4-7 month employment there was a 59.9% recidivism rate, at 8-11 months 47.8%, at 12-17 months 44.9% and at 18 months and over 37.5%)."

*Utah study of recidivism figures for 1994*

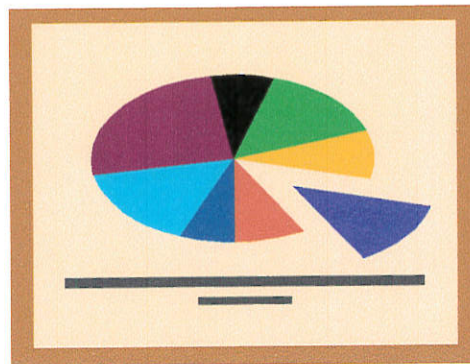


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# Guideline: Nine Core Requirements

## PIECP Authorized with 1761 ( c ) Mandatory Requirements: Aimed at Addressing Concerns of Labor and Private Sector

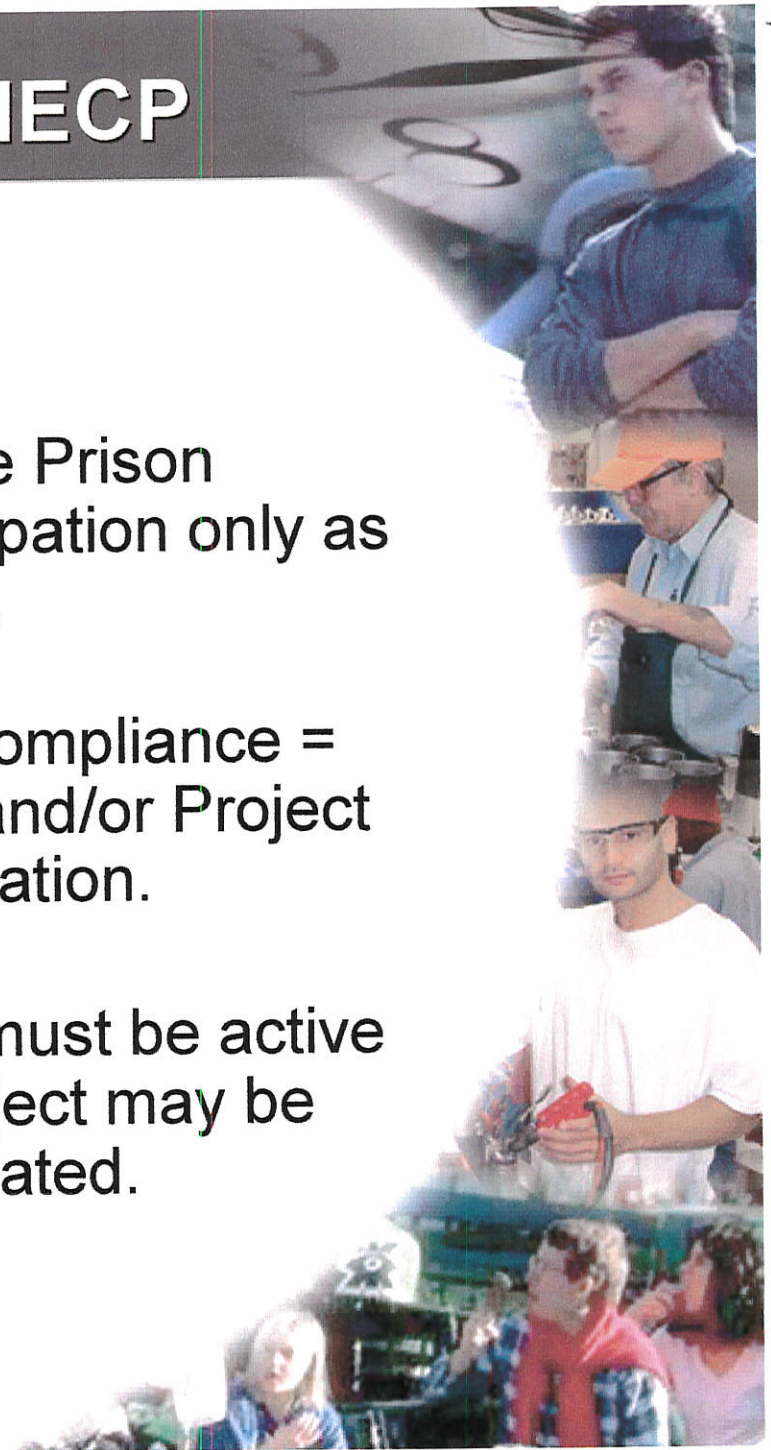
- Eligibility
- Inmate Wages
- Non-Inmate Worker Displacement
- Benefits
- Deductions
- NEPA
- Voluntary Inmate Participation
- Consultation w/ Organized Labor
- Consultation with Business



# Eligibility to Administer PIECP

## Eligibility: Certification

- All State and local DOCs and juvenile justice agencies, and entities authorized by law to administer correctional industries.
- Authority to designate Cost Accounting Centers (CACs)
- Private Prison Participation only as CACs.
- Non-compliance = CAC and/or Project termination.
- CAC must be active or project may be terminated.

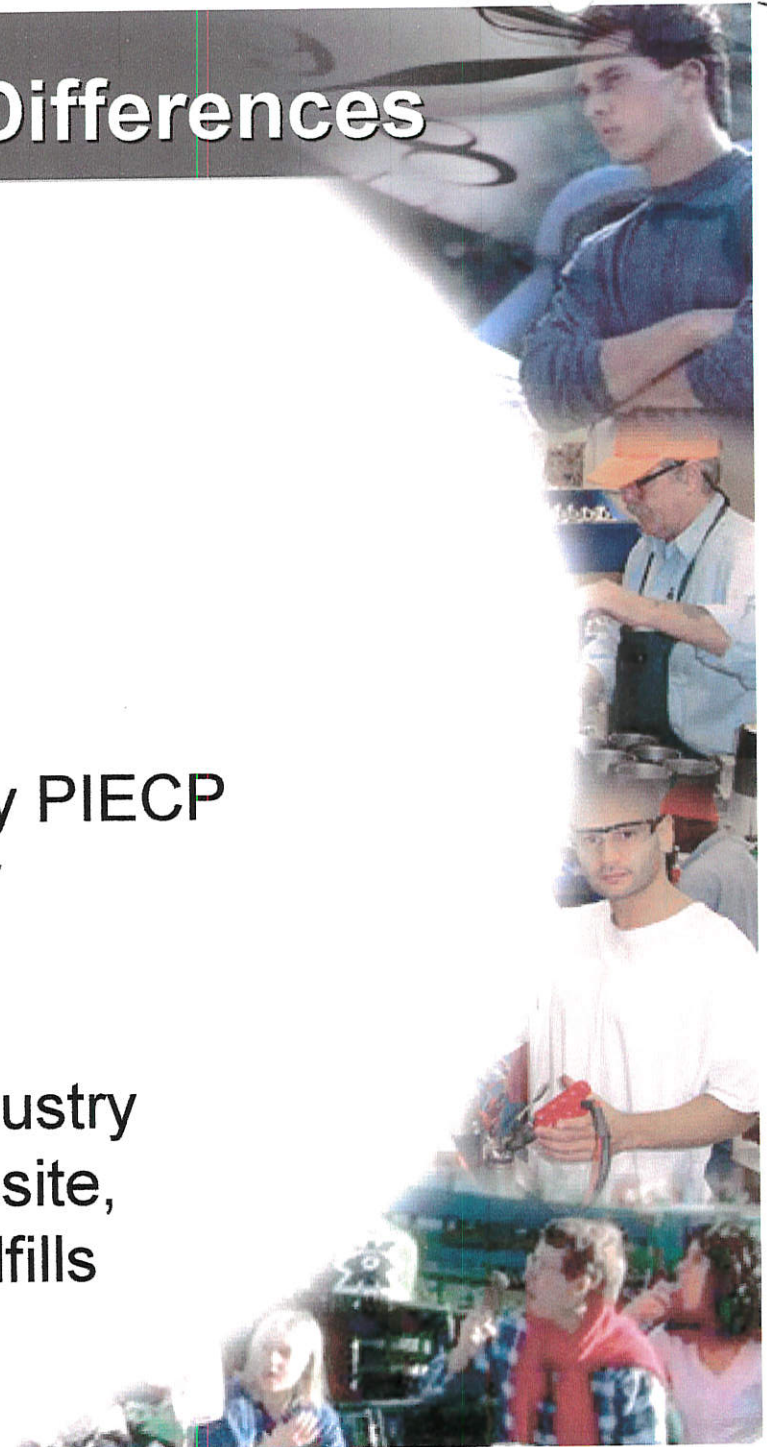


# Practical Results: *Model* Differences

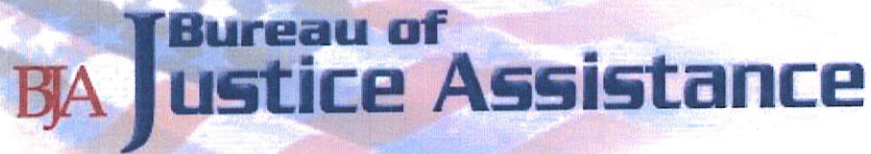


**EMPLOYER Model:** Private company PIECP partner manages correctional industry operation onsite, including payroll.

**CUSTOMER Model:** Correctional industry agency manages PIECP operation onsite, including payroll. Private company fulfills customer role only.



# BJA Administration & Oversight



## PIECP authorizing statute mandates the Director of the Bureau of Justice Assistance to administer the Prison Industry Enhancement Certification Program

- BJA grants PIECP Certification.
- BJA monitors PIECP Certificate Holders and requires corrective action be implemented when non-compliance is identified.
- BJA may suspend or terminate PIECP designation authority or project participation for non-compliance.
- BJA provides legal and policy direction to PIECP Certificate Holders.





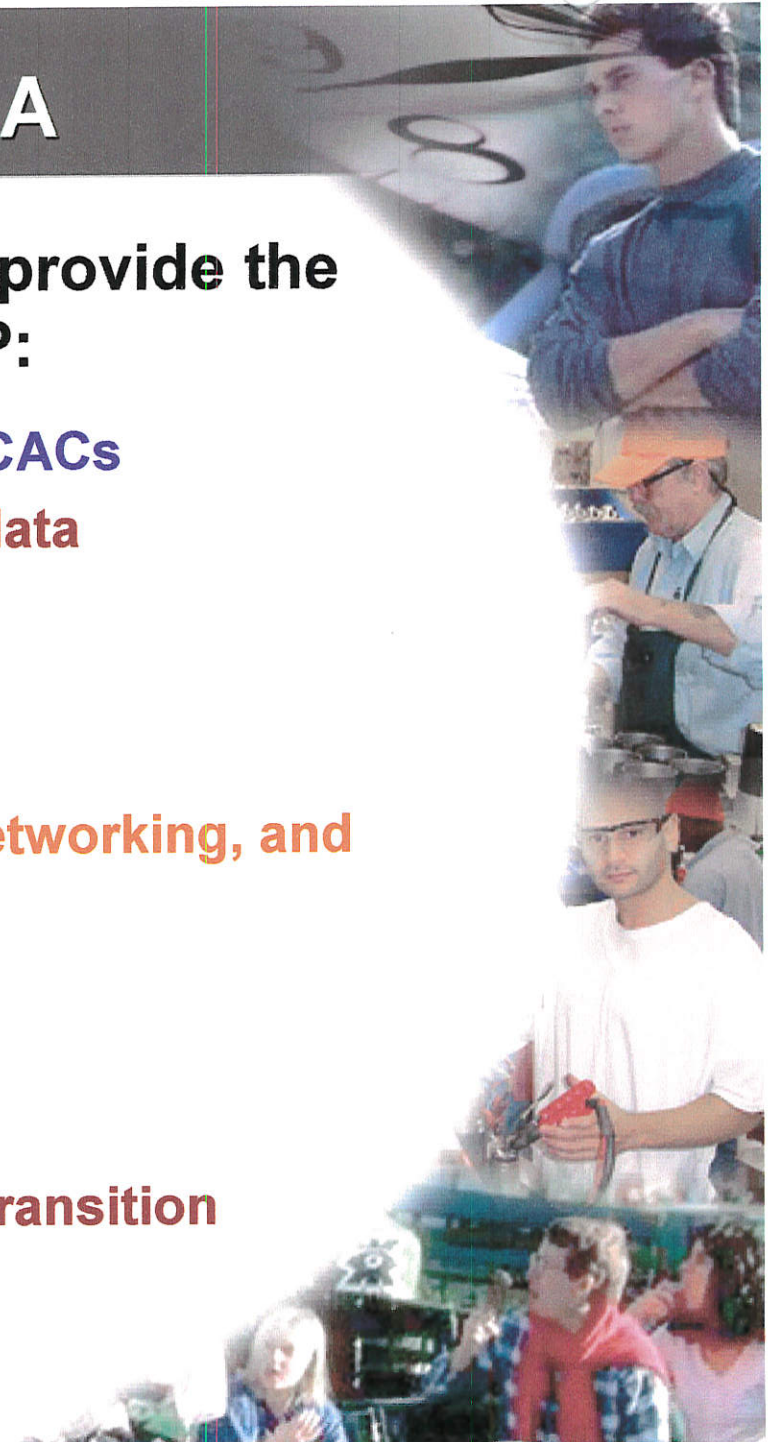
# BJA Partnership with NCIA

**BJA funds NCIA through a grant to provide the following support services to PIECP:**

- **On-site field and desk assessments of CACs**
- **Quarterly performance reports of field data**
- **Technical assistance and support**
- **Specialized training**
- **Marketing resources**
- **Website, newsletter and directory for networking, and information sharing and dissemination**
- **Research studies**
- **Public policy education and advocacy**
- **Jail Work & Industry Center services**
- **Information on efforts to form re-entry/transition linkages**

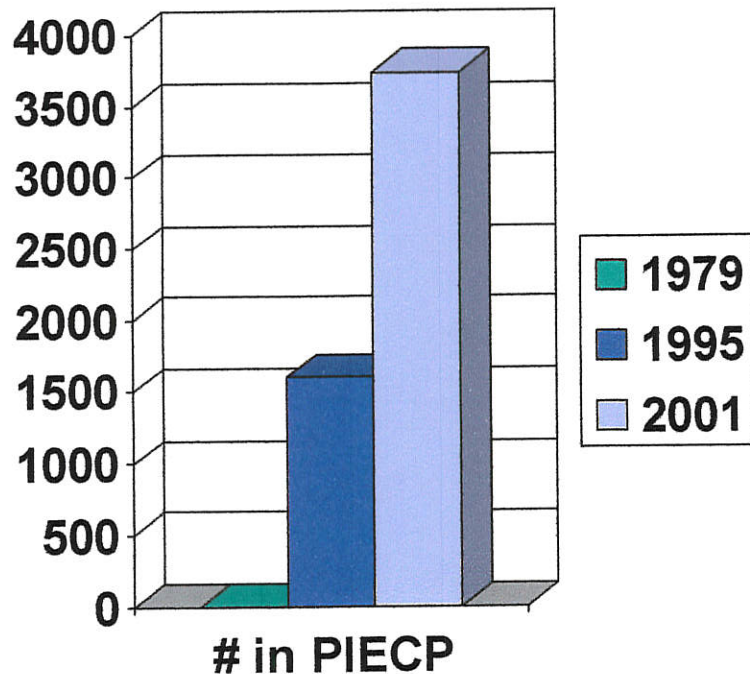


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CORRECTIONAL  
INDUSTRIES  
ASSOCIATION

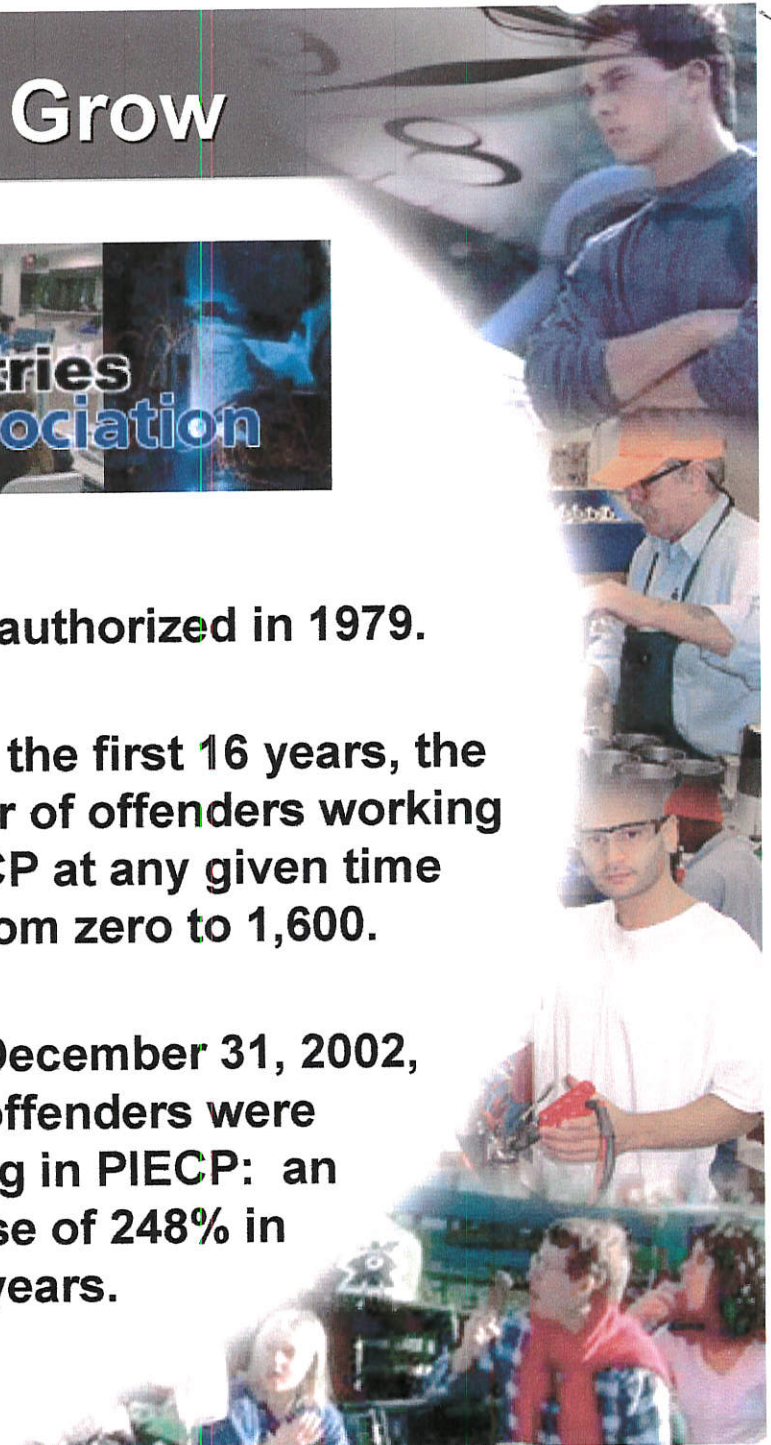


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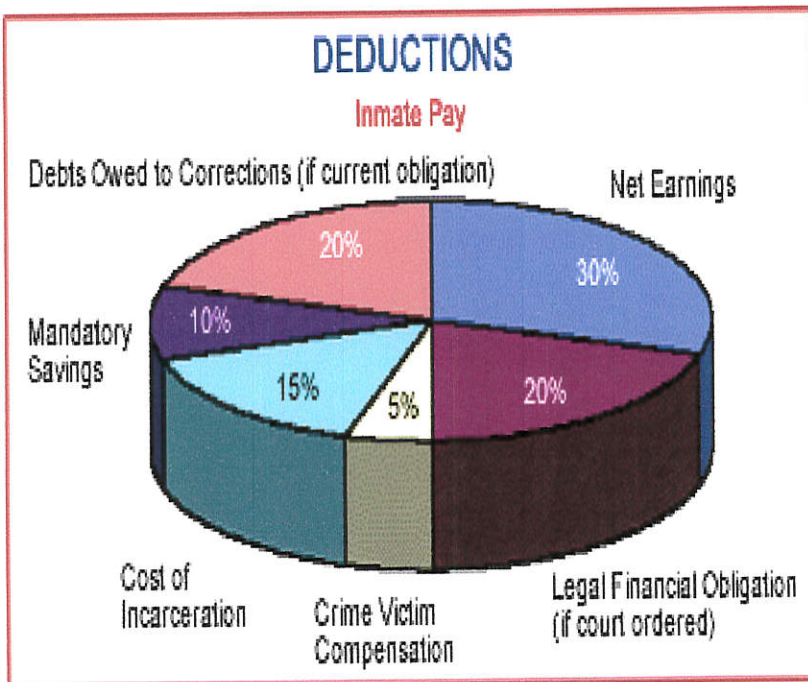
# Results: Watching PIECP Grow



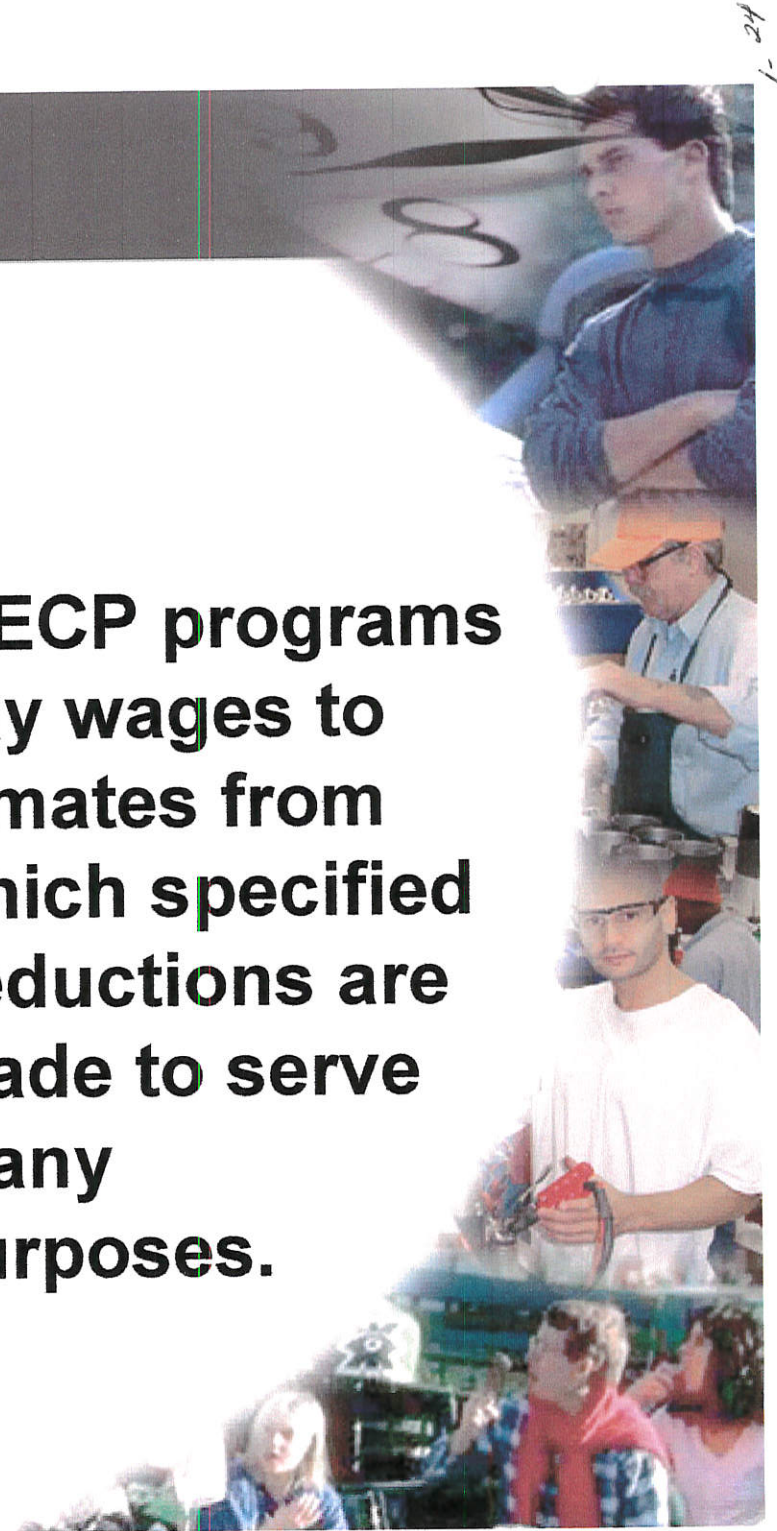
- PIECP authorized in 1979.
- During the first 16 years, the number of offenders working in PIECP at any given time rose from zero to 1,600.
- As of December 31, 2002, 5,564 offenders were working in PIECP: an increase of 248% in just 7 years.



# Making a Contribution

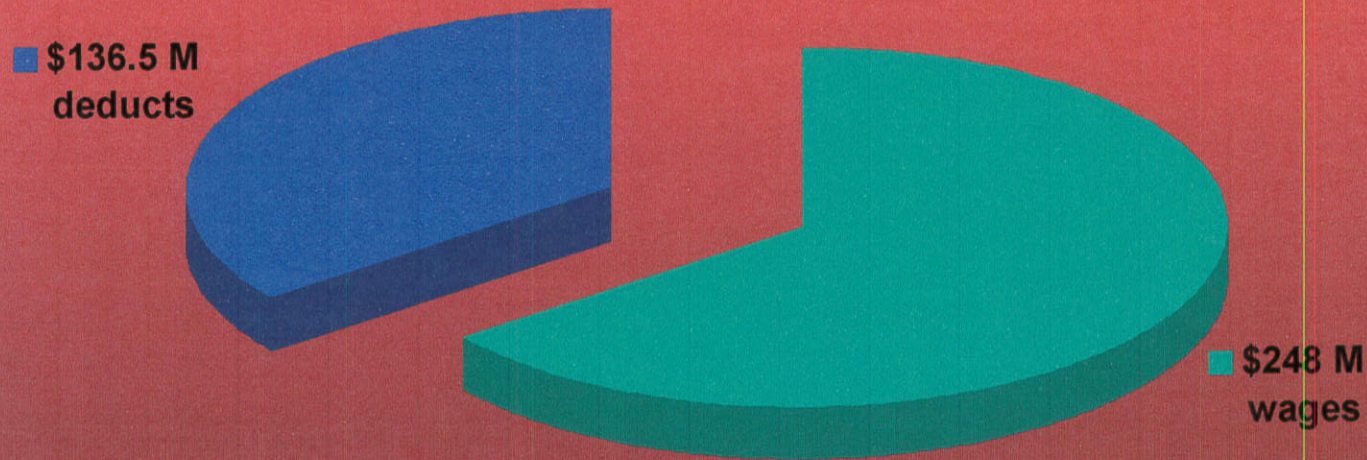


- **PIECP programs pay wages to inmates from which specified deductions are made to serve many purposes.**



# Making a Contribution

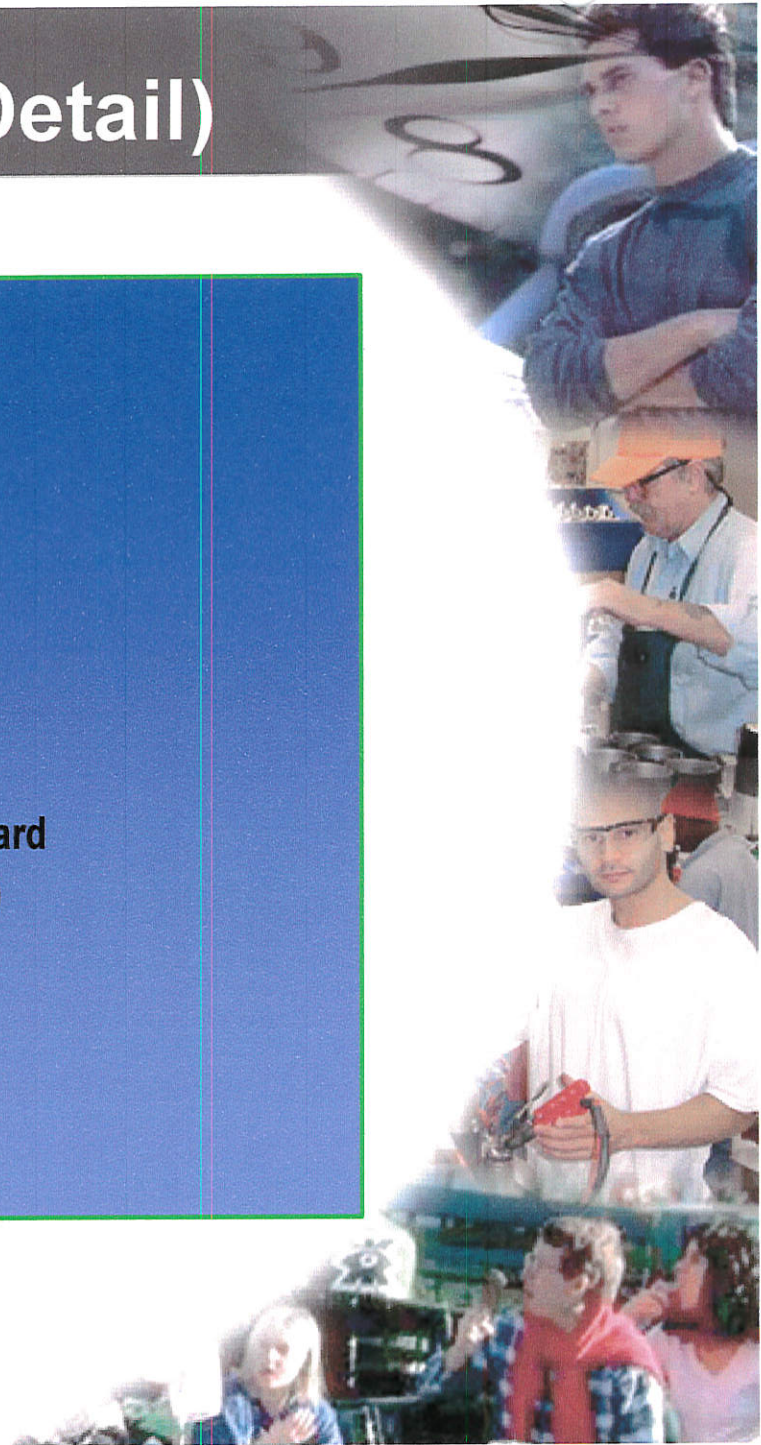
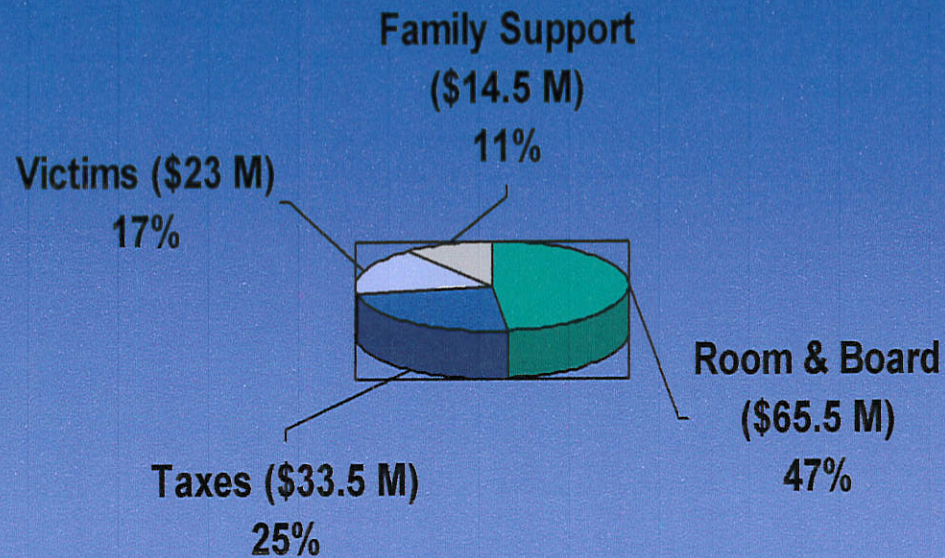
PIECP Wages & Deductions:  
1979 - 2002



1-25

# Making a Contribution (Detail)

## PIECP Deductions Detail: 1979 - 2002



# Results: Many Benefit

- ★ Employed offenders contribute to offset the enormous cost of incarceration
- ★ Cost of incarceration per offender averages \$30,000 annually
- ★ Cost to build each cell averages \$60,000
- ★ In 1995, for the first time, states spent more money on prison construction than college construction

The total cost of incarcerating offenders in America's federal, state, and local correctional facilities topped \$41 billion in 2001

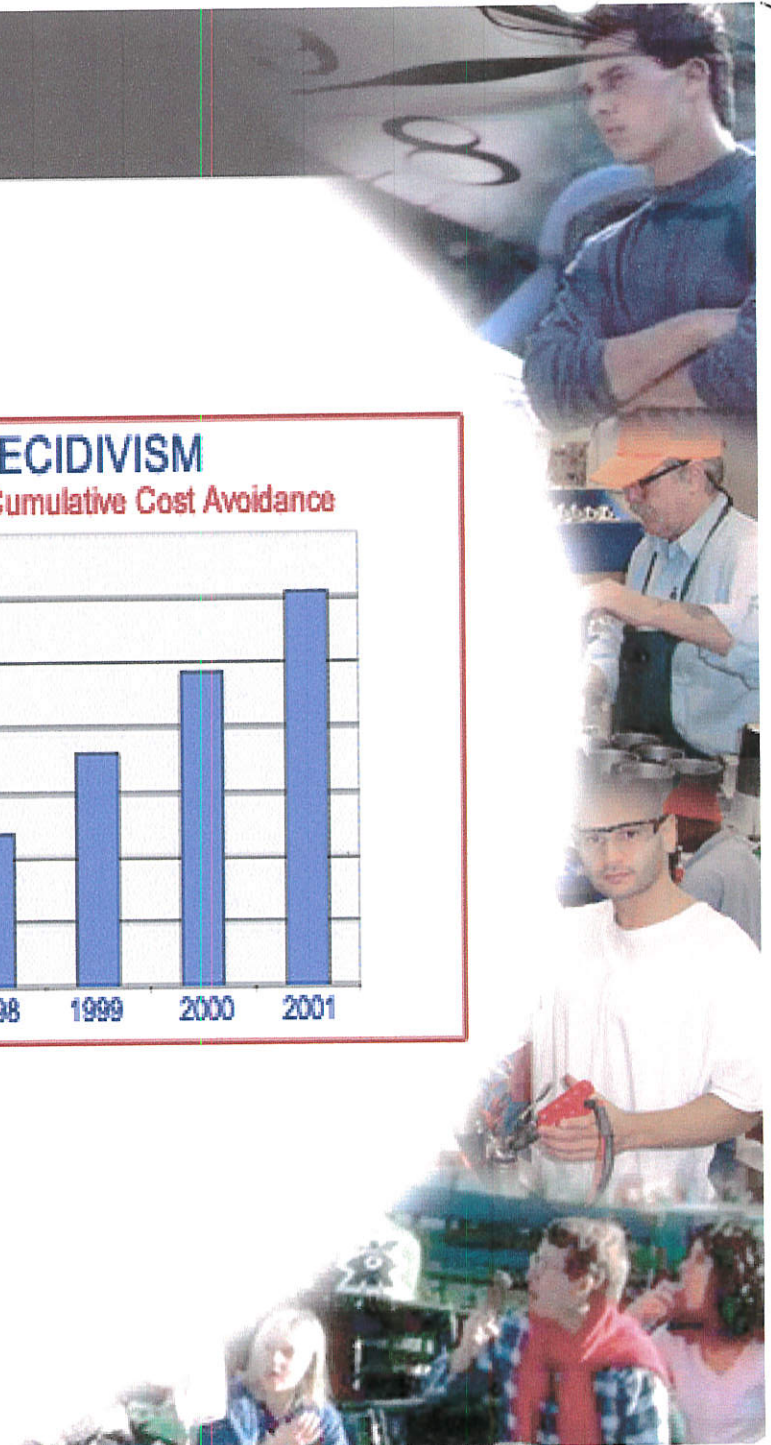
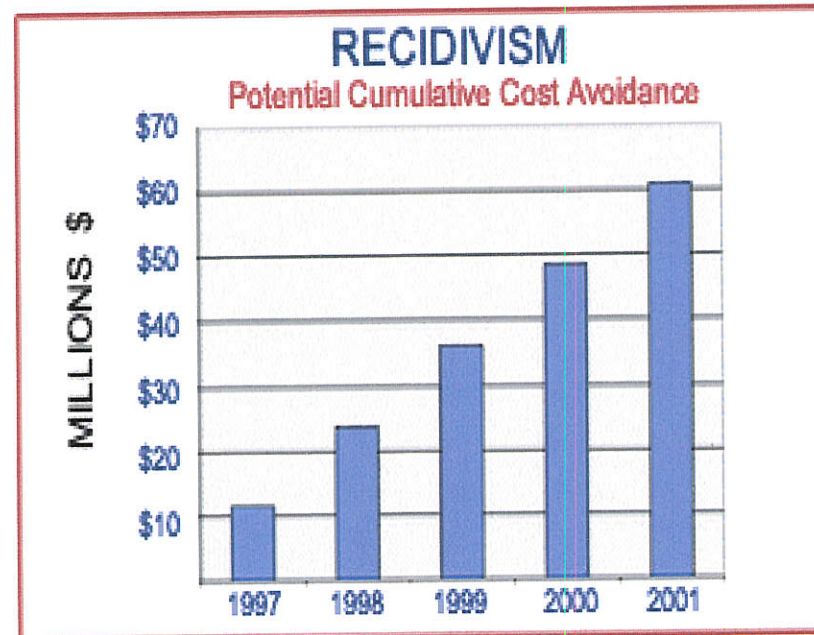
- ★ "If one in four prisoners was put to work it would result in 500,000 new prison jobs. Allocating 60% of their earnings to taxpayer compensation could reduce taxpayer costs by \$2.4 billion each year."

*Dr. Morgan Reynolds, Director  
National Center for Policy Analysis' Criminal Justice Center*



# Invaluable Contribution

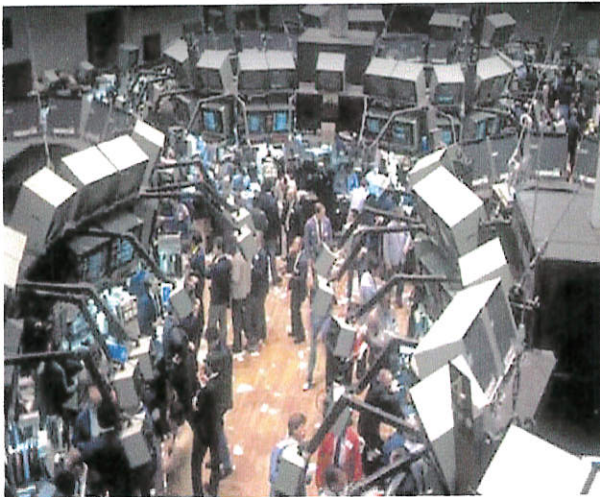
- A 13% reduction in the rate of recidivism would translate to a cumulative cost avoidance of over \$60 million by the year 2001.



# Years of Experience Shows

- ★ Society Wins
- ★ Offender Wins
- ★ Correctional Facilities Win

- ★ **Business Wins**



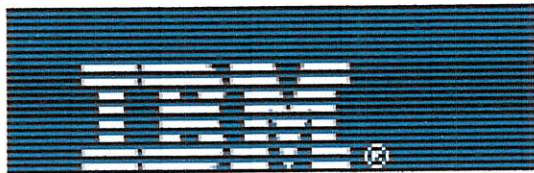
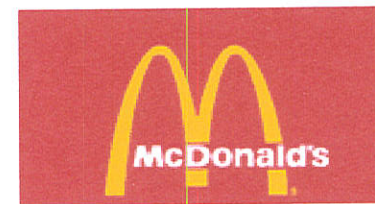
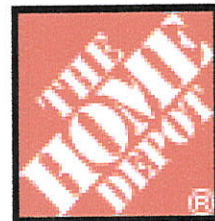
- ✓ Beneficial to keep production in U.S. given the volatile global climate.
- ✓ Much quicker product turn-around than off-shore production sites.
- ✓ Eases scheduling, resulting in improved order fill.
- ✓ Opportunity to partner is available to companies, large & small.





# Results: Business Wins

The following are among the companies who currently purchase products manufactured by correctional facilities in the United States:



*We bring good things to life.*



# Results: Beneficial to Business

Kwalu, an international company, uses offender labor in a PIECP program in a South Carolina prison facility, to manufacture furniture which is sold to The Walt Disney Co., McDonald's Corporation, Marriott, Hilton Hotels and Hyatt Hotels.



# It is Growing...

## Employing Offenders is Not New!

### ★ State Level

65,000+ offenders working in 1,442 industries on the state level.

### ★ Federal Level

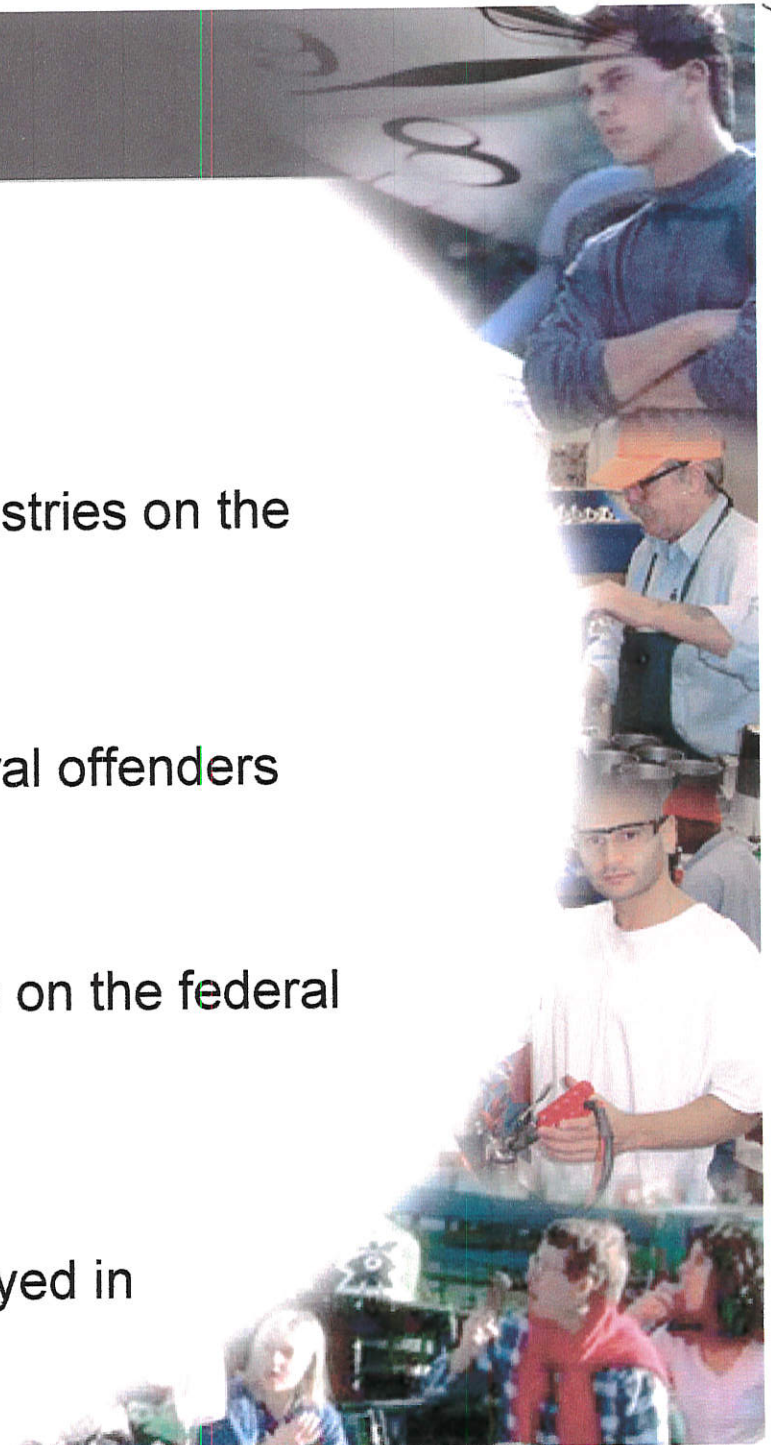
Feds employ 22,000+ of 150,000+ federal offenders

### ★ CORCAN (Canadian Corrections)

Employs 2,500 out of 12,000+ offenders on the federal level.

### ★ Correctional industries is growing!

Over the past 20 years offenders employed in correctional industries increased by more than 358%



# ...and it Works!

## ★ Offenders...

benefit as they develop self-esteem and work ethic while gaining work skills to become self-sufficient, as well as supporting family members.

## ★ Correctional facilities...

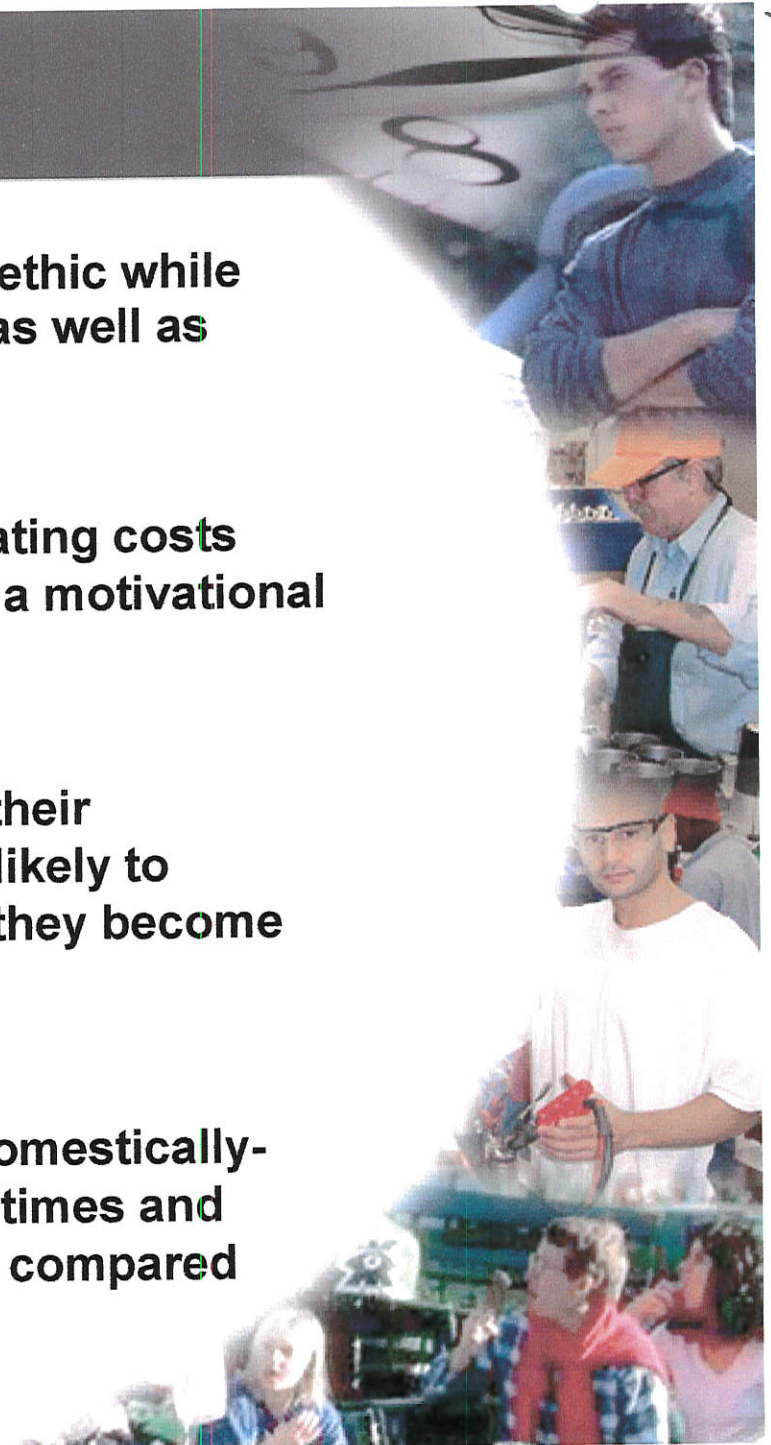
benefit as they receive monies to offset escalating costs associated with incarceration while providing a motivational tool to induce good behavior.

## ★ Society...

benefits as offenders contribute to defraying their incarceration costs and are significantly less likely to commit crimes against citizens after release; they become law-abiding citizens.

## ★ Business...

benefits, as companies secure a motivated, domestically-based work force that is eager to learn. Lead times and working capital investment are reduced when compared with producing abroad.





January 7, 2004

Senator Karin Brownlee  
14725 S. Chalet Drive  
Olathe, KS 66062

Dear Senator Brownlee:

I am writing to you on behalf of my employer, Impact Design, a private industry participant in the Prison Industry Enhancement (PIE) Certification Program, a federally supported initiative that allows private industry companies to utilize inmate labor within the State of Kansas under the supervision of Kansas Correctional Industries. We have over 250 inmate workers at the Lansing Correctional Facility and have expanded our inmate workforce every year for the last 5 years, effectively lowering the tax burden of Kansans each year since a portion of the inmate's room and board costs are deducted from the wages we pay them.

I have had conversations with both Terry Leatherman of The Kansas Chamber of Commerce and Industry and Senator David Adkins in whose district I personally reside and they both indicated that you would be an appropriate person to initially lobby for a change we are seeking in a state law, **KSA No. 44-703**. This Kansas law requires that we pay state unemployment taxes for our inmate workers to the Kansas Department of Human Resources. As the Chair of the Senate Commerce Committee, we felt it would be best to approach you and ask for your support to amend or change this statute to exempt private prison based industries in Kansas from having to pay this tax. We believe that specifically section **(i)(4)(M)** represents an unfair and unreasonable burden for companies like ours that provide a vital role in the rehabilitation of inmates, especially when one considers that inmates are not eligible to claim unemployment while incarcerated. We are exempt from having to pay FUTA which adds to our argument for changing the law.

Under federal law **USC Sec 1761**, companies that operate under PIE are exempt from having to pay federal unemployment tax for inmate workers assigned to them. We would like **KSA No. 44-703** amended to exempt PIE participating companies like ours from having to pay state unemployment tax for inmate workers in the same manner as the IRS FUTA exception due to **USC Sec 1761**. The fact that PIE companies must pay unemployment tax at the state level in Kansas but not the federal level, strikes us as unfair and counter to federal law and the intent of the PIE program. We are unaware of any other state that imposes payment of such tax for companies such as ours.

We believe that this current Kansas law hampers and unnecessarily burdens PIE participant companies such as us. We pay approximately \$62,000 a year in Kansas unemployment taxes on our inmate workers, money that could be used to have more inmates assigned to us which would in turn lower the taxes of all Kansans by helping to lower incarceration costs. Moreover, it would enable PIE participant companies to assist in the rehabilitation of more inmates by providing more of them with meaningful work and the chance to experience the competitive work environment of the free world.

Will you support us by sponsoring a change to this law (**KSA No. 44-703**) to exempt PIE participating companies such as us from having to pay state unemployment tax for inmate workers? We believe the simplest way to do this is to leave the first phrase of 44-703 (i)(4)(M) alone to read: "service performed by an inmate of a custodial or correctional institution", omitting the last phrase "unless such service is performed for a private, for-profit employer".

This is the only amendment we desire – this is all we ask.

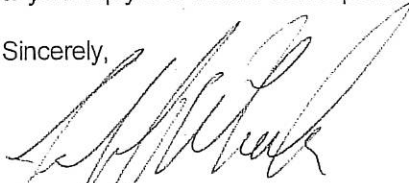
January 7, 2004

We seek your support and legislative action on this issue as a benefit for not only privately held prison based industries such as ours, but for the benefit of all Kansans. For your review, we have enclosed the following:

- a fax to both Bill Layes and Secretary Garner of KDHR
- a reply from Secretary Garner regarding our letter to him on this issue
- documentation of the IRS FUTA exception ruling
- a section of KSA No. 44-703
- information about PIE industries from the National Institute of Justice.

We appreciate your input and consideration of this matter. Thank you for your time. We look forward to your reply and further correspondence. Feel free to contact me directly.

Sincerely,



Jeff Wheeler  
Employee Relations Manager

# IMPACT DESIGN

## Fax Cover Sheet

Date: 10/07/2003 Please Deliver the Following Page(s)

To: Bill Laves, Chief of Labor Market Information, KDHR

Fax # 785-296-5286

Jeff Wheeler

Impact Design

Phone 913-727-6556

Fax 913-727-1834

Total number of Pages 10 Including Cover Sheet

Please review and pass on all of the attached to the Employment Security Advisory Council in the hopes that we may present at the next scheduled meeting. There is a copy of the letter that I have sent previously to Secretary Garner, a brief description of the federal program that allows us to operate in Kansas penitentiaries, 2 pages from the IRS ruling that allows us a FUTA exception, and 2 pages from KSA No. 44-703. **We desire to have a current Kansas law amended (KSA No. 44-703) so that inmates of Kansas state penitentiaries are no longer covered by it. We are seeking a state unemployment insurance exception for inmate workers of private industry companies like ourselves. We believe the simplest way to do this is to leave the first phrase of 44-703 (i)(4)(M) alone to read: "service performed by an inmate of a custodial or correctional institution", omitting the last phrase "unless such service is performed for a private, for-profit employer".**

Thank You!



August 19, 2003

Secretary Jim Garner  
Kansas Department of Human Resources  
401 S. Topeka Boulevard  
Topeka, KS 66603

Dear Mr. Garner:

I am writing to you on behalf of my employer, Impact Design, a private industry participant in the Prison Industry Enhancement (PIE) Certification Program, a federally supported initiative that allows us to utilize inmate labor within the State of Kansas under the supervision of Kansas Correctional Industries. We have over 250 inmate workers at the Lansing Correctional Facility and have expanded our inmate workforce every year for the last 5 years, effectively lowering the tax burden of Kansans each year since a portion of the inmate's room and board costs are deducted from the wages we pay them.

Under federal law **USC Sec 1761**, companies that operate under PIE are exempt from having to pay federal unemployment tax for inmate workers assigned to them. Presently under Kansas law, however, we are required to pay state unemployment tax for inmate workers assigned to us. **We would like to see this Kansas law changed (KSA No. 44-703) so that this is no longer the case.** We would like this law amended to exempt PIE participating companies like ours from having to pay state unemployment tax for inmate workers in the same manner as the IRS FUTA exception due to **USC Sec 1761**. The fact that PIE companies must pay unemployment tax at the state level in Kansas but not the federal level, strikes us as unfair and counter to federal law and the intent of the PIE program. We are unaware of any other state that imposes payment of such tax for companies such as ours.

We believe that this current Kansas law hampers and unnecessarily burdens PIE participant companies such as us. We pay approximately \$62,000 a year in Kansas unemployment taxes on our inmate workers, money that could be used to have more inmates assigned to us which would in turn lower the taxes of all Kansans by helping to lower incarceration costs. Moreover, it would enable PIE companies to assist in the rehabilitation of more inmates by providing more of them with meaningful work and the chance to experience the competitive work environment of the free world.

**Do you object to changing the law (KSA No. 44-703) to exempt PIE participating companies such as us from having to pay state unemployment tax for inmate workers?** If so, what are your objections? We appreciate your input and consideration of this matter, especially given that inmates can only become eligible for unemployment benefits when on parole and only limitedly at that time since failing to work can be a parole violation.

Thank you for your time and consideration. We look forward to your reply and further correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Wheeler".

Jeff Wheeler  
Employee Relations Manager



October 9, 2003

Jeff Wheeler  
Impact Design  
301 E. Kansas Avenue  
Lansing, Kansas 66043

Dear Mr. Wheeler:

Thank you for your interest concerning KSA 44-703(i)(4)(M) and its treatment of state unemployment tax paid on inmate workers wages. I reviewed the correspondence dated August 19, 2003 and subsequently faxed to Bill Layes, Chief of Labor Market Information on October 7, 2003 suggesting amendment of (KSA No. 44-703(i)(4)(M). The statute and proposed verbiage to be struck are as follows:

(4) The term "employment" shall not include: (M) service performed by an inmate of a custodial or correctional institution, ~~unless such service is performed for a private, for-profit employer;~~

I applaud those employers who willingly provide jobs and job training to those incarcerated. Recidivism is reduced and assimilation into the societal mainstream enhanced due to the practices of these employers.

The Employment Security Advisory Council (ESAC) is advisory to me in my role as Secretary of Human Resources and it provides further direct input into the Kansas Legislature. Currently the ESAC is focused on pressing matters concerning funding and the demands being placed on the Unemployment Trust Fund due to the recent economic downturn. Because of this the Council will not address your concerns during this session.

Again, I appreciate your position on this issue and feel confident that it's merit could possibly be a topic for the Council at a later time. If you have further questions, please don't hesitate to give John Polzar or me a call at (785) 296-0821.

Sincerely,

Jim Garner  
Secretary of Human Resources

JDG:oww

cc: John Polzar  
Bill Layes

Ms. Victoria O'Brien  
United States Department of Justice

other institution by a patient or inmate thereof are not covered under section 218 agreements.

Section 3121(b)(7)(F), in effect, includes within employment service performed in the employ of a State, of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality. However, this provision is not applicable to service performed in a hospital, home, or other institution by a patient or inmate thereof. See section 3121(b)(7)(F)(ii).

Thus, services performed in an institution by an inmate in the employ of a State, a political subdivision, or a wholly owned instrumentality are excepted from FICA employment by section 3121(b)(7). Section 3121(u)(2)(B)(ii)(II) also provides that such services are not subject to the Medicare tax.

In contrast to services performed in the employ of a state, a political subdivision, or a wholly owned instrumentality, there is no exception for the services of inmates of a prison who are performing services in the employ of a non-governmental entity (for example, a private corporation operating a prison or a private corporation operating under the PIECP employer model).

#### FUTA EXCEPTION FROM EMPLOYMENT

The Federal Unemployment Tax Act (FUTA), sections 3301 through 3311, imposes an employer tax on wages (as defined in section 3306(b)) paid by an employer with respect to employment (as defined in section 3306(c)). Section 3306(c)(21) excepts from employment "service performed by a person committed to a penal institution."<sup>2</sup> Thus, in the case of services performed by PIECP inmates, regardless of whether services are being performed under the customer model or the employer model, FUTA taxes will not apply to such services.

#### INCOME TAX WITHHOLDING

Income tax withholding applies to "wages" as defined in section 3401(a). For income tax withholding purposes, there is

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<sup>2</sup> There is no identical exclusion from the definition of employment for purposes of the FICA (section 3121(b)) or the definition of "wages" for purposes of the FICA (section 3121(a)) or the definition of "wages" for purposes of federal income tax withholding (section 3401(a)).

Ms. Victoria O'Brien  
United States Department of Justice

I.R.C. Section 3402(a) provides, with respect to withholding, that "every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary [of the Treasury]." (Emphasis added.) Section 3403 provides that "[t]he employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment."

The requirement to withhold FICA tax is also mandatory if a payment of "wages" as defined in section 3121(a) is made. I.R.C. section 3102(a) provides that "[t]he tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid." (Emphasis added.)

Thus, we strongly urge that this text be revised to indicate the mandatory requirement of withholding FICA tax (if liability exists) and the mandatory requirement of withholding federal income tax. Alternatively, the text could be revised to indicate that, although the statute authorizing the PIECP does not require that deductions be made, the Internal Revenue Code requires federal income tax withholding if payments of wages are made to employees.

#### SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The PIECP inmate workers are employees for purposes of the FICA and federal income tax withholding. Remuneration paid to these workers is subject to federal income tax withholding on a mandatory basis at the rates provided under withholding tables. Remuneration paid to the PIECP inmate workers is subject to FICA taxes unless the workers are employees of a State or local governmental entity or a wholly owned instrumentality. Remuneration paid the PIECP inmate workers is not subject to FUTA taxes. Liability for the payment of the taxes and for the filing of the appropriate returns is with the entity that has control over the payment of the wages.

We recommend that the language of the Proposed Guideline be revised to eliminate the suggestion that federal income tax withholding is optional and the suggestion that FICA tax withholding is optional when applicable.

We appreciate the opportunity to review this text. It may also be helpful if we reviewed any revision of this material, if made. If it is contemplated that a decision will be made against

# Kansas AFL-CIO

2131 S.W. 36th St.

Topeka, KS 66611

785/267-0100

Fax 785/267-2775



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House Labor & Commerce Committee  
Representative Don Dahl, Chairman  
SB #481  
March 5, 2004

Chairman Dahl and Committee Members,

I am Jim DeHoff, Executive Secretary of the Kansas AFL CIO and I thank you for the opportunity to appear before you today in opposition to SB 481.

SB 481 addresses exempting private prison based industries from paying Kansas Employment Security Taxes on incarcerated persons. At first reading of SB 481, our thoughts were why should any business have to pay unemployment tax on someone who breaks the law? There are several reasons for you to consider:

1. These companies can and do compete with outside business so a competitive question arises.
2. Prisoners who are released do in fact draw unemployment benefits if they have worked for a private prison based employer.

As most of you know, it is very hard for someone to find a good job when they are released from prison. Unemployment benefits help them until they find employment. Remember a lot of these people have families. The Kansas AFL CIO feels very strongly about helping make former inmates productive citizens. Denying unemployment could force them back to a life of crime.

3. The Advisory Council has been working very hard to keep track of the Employment Security Trust Fund for the past two years, there have been a large number of layoffs. The loss of twenty prison based employers would have an effect on the Trust Fund.

4. SB 481 was not brought to the Employment Security Advisory council for a recommendation.

We urge you to send SB 481 to the Employment Security Advisory Council for review.

Thank you.



Comm labor  
3-5-04  
Atch #2