

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on February 13, 2004 in Room 123-S of the Capitol.

All members were present except:

Senator Pete Brungardt- excused  
Senator Susan Wagle- excused

Committee staff present:

Kathie Sparks, Legislative Research  
Susan Kannarr, Legislative Research  
Helen Pedigo, Revisor of Statutes  
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:

Jeff Wheeler, Employee Relations Manager, Impact Design  
Dave Geenens, President, Impact Design  
Marlee Carpenter, Kansas Chamber of Commerce  
Dick Rader, Boeing  
Richard Clinesmith, Employers Unity  
Jim DeHoff, Kansas AFL-CIO

Others attending:

See Attached List.

Chairperson Brownlee opened the public hearing on:

**SB 481—An act concerning the employment security laws; relating to state unemployment tax, exempting private prison based industries from payment**

Mr. Wheeler testified in favor of the bill. (Attachment 1) He also provided the committee with a document from the Bureau of Justice Assistance entitled, "Program Brief: Prison Industry Enhancement Certification Program" (Attachment 2) and "Prison Industry Enhancement Certification Program—PIECP: Statistics Show it is Growing...and it Works!" (Attachment 3) and a series of letters from Impact Design. (Attachment 4)

Mr. Geenens testified in favor of the bill. He emphasized that the state of Kansas will recuperate \$750,000 a year and the state will deduct 25% for room and board. His testimony was submitted with Mr. Wheeler's. ( See Attachment 1)

Chairperson Brownlee opened the public hearing on:

**SB 482—An act concerning the employment security laws; relating to freezing automatic benefit increases**

Ms. Carpenter testified in favor of the bill. (Attachment 5)

Mr. Rader testified in favor of the bill. (Attachment 6)

Mr. Clinesmith testified in favor of the bill.

Written testimony in favor of the bill was provided by Ashley Sherard, Lenexa Chamber of Commerce. (Attachment 7)

Mr. DeHoff, Kansas AFL-CIO testified in opposition to the bill. (Attachment 8)

Chairperson Brownlee opened the public hearing on:

**SB 483—An act concerning the employment security laws; relating to disqualification from recipient of benefits**

Ms. Carpenter testified in favor of the bill. (Attachment 9)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:30 a.m. on February 13, 2004 in Room 123-S of the Capitol.

Mr. Rader and Mr. Clinesmith also testified in favor of the bill, the testimony for which is on the above attachments, respectively.

Mr. DeHoff testified in opposition to the bill. (Attachment 10) Mr. DeHoff emphasized that the Advisory Council was important because it avoids fighting later on. Chairperson Brownlee agreed; Senator Barone stated that he finds it troubling when issues that would naturally go to the Advisory Council do not and when members of the Council say one thing there and another before the Legislature.

Chairperson Brownlee stated that it was hard to understand why there was no representative from the Department of Human Resources present for the hearings.

Mr. Clinesmith stated that if an individual on FMLA had exhausted leave and were not returning to work, so that his position was then filled by a new person, he could come back, and if his position were gone, he could then apply for unemployment. Senator Emler asked if an individual was on FMLA for an illness of his own, was gone 12 weeks, and then came back, should he not get any benefits? Mr. Clinesmith stated that employers should not have to foot the bill. Senator Emler stated that cancer would not be work-related, but he wondered about a broken leg from work. Mr. Clinesmith stated that in such a case, the company would be responsible. Chairperson Brownlee asked if there were situations in which employees get benefits, but the business is not charged. Mr. Clinesmith stated that yes, sometimes an individual can go beyond FMLA and, although not released by a doctor, go apply for unemployment benefits.

Chairperson Brownlee closed the hearing on **SB 483**.

Mr. Clinesmith provided the committee with some suggested language amendments to the bills. (Attachment 11) (Attachment 12) (Attachment 13)

Chairperson Brownlee stated that it seemed there was a disconnect here. She stated that, in regard to the testimonies provided, the business community did not pursue this at the Advisory Council meeting; also, it was disappointing that the Department of Human Resources did not submit testimony. She stated that it was difficult to tell the degree of the problem. Senator Barone stated that he agreed that there was a disconnect. Senator Jordan agreed also, stating the committee needed more background information before trying to deal with these.

Chairperson Brownlee told the committee that they should plan to work all five workers compensation bills on Monday morning. The Chair adjourned the meeting at 9:30 a.m. The next meeting will be at 8:30 a.m. on February 16, 2004 in Room 123-S of the Capitol.



PROPONENT TESTIMONY

FOR SENATE BILL 481

FEBRUARY 13<sup>TH</sup>, 2004

Given by

Jeff Wheeler & Dave Geenens

on behalf of

IMPACT DESIGN, INC.

Senate Commerce  
02/13/04  
Attach #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

The 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

Senate Commerce  
02/13/04  
Attach # 2





## 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



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).

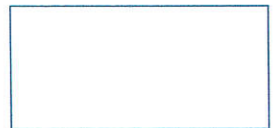
*Photos courtesy of the National Correctional Industries Association.*

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:

Jeff Wheeler

# Prison Industry Enhancement Certification Program -- PIECP

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

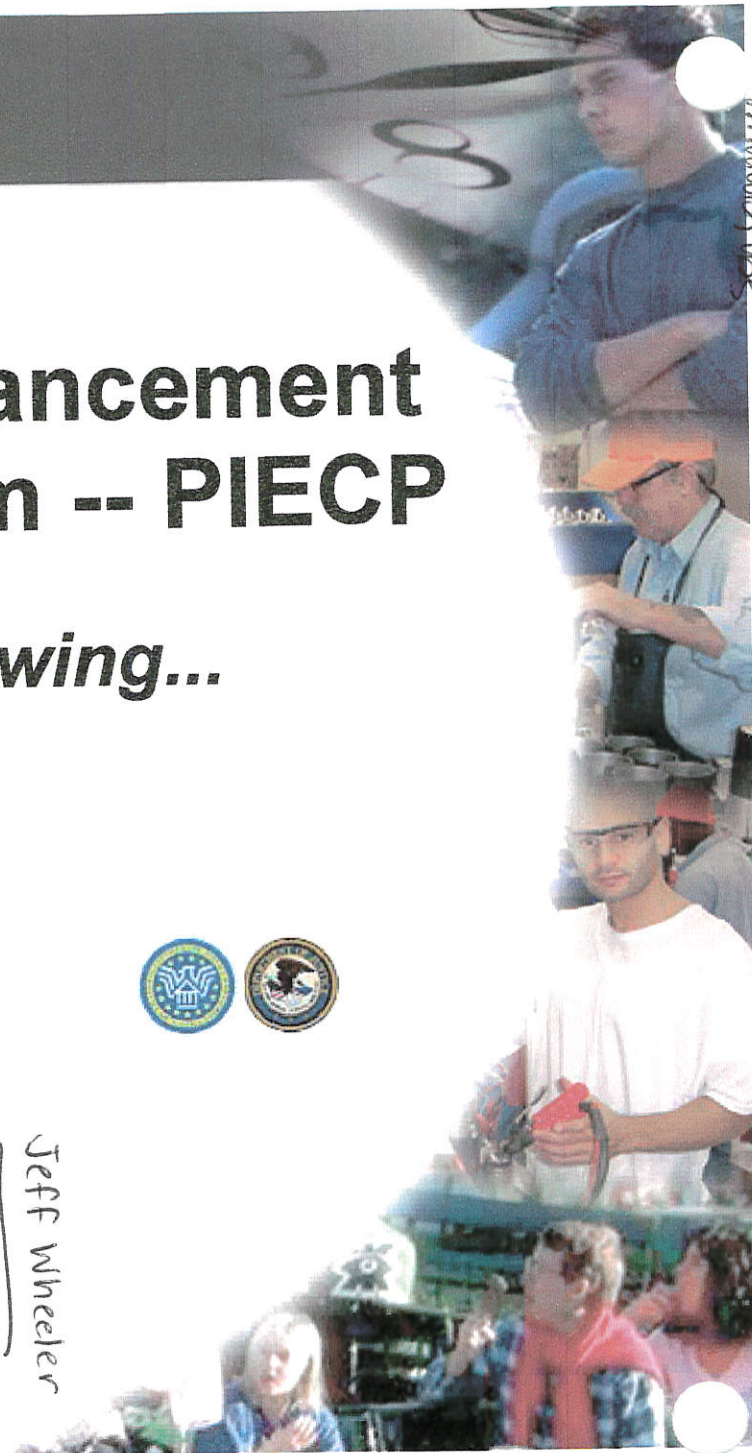


NATIONAL  
CORRECTIONAL  
INDUSTRIES  
ASSOCIATION

Jeff Wheeler

Sen. Commerce  
02/13/04  
Attach # 3

Sen. Commerce  
02/13/04  
Attach # 3





# Statistics Show it is Growing...

★ Society Wins

★ Offender Wins

★ Correctional Facilities Win

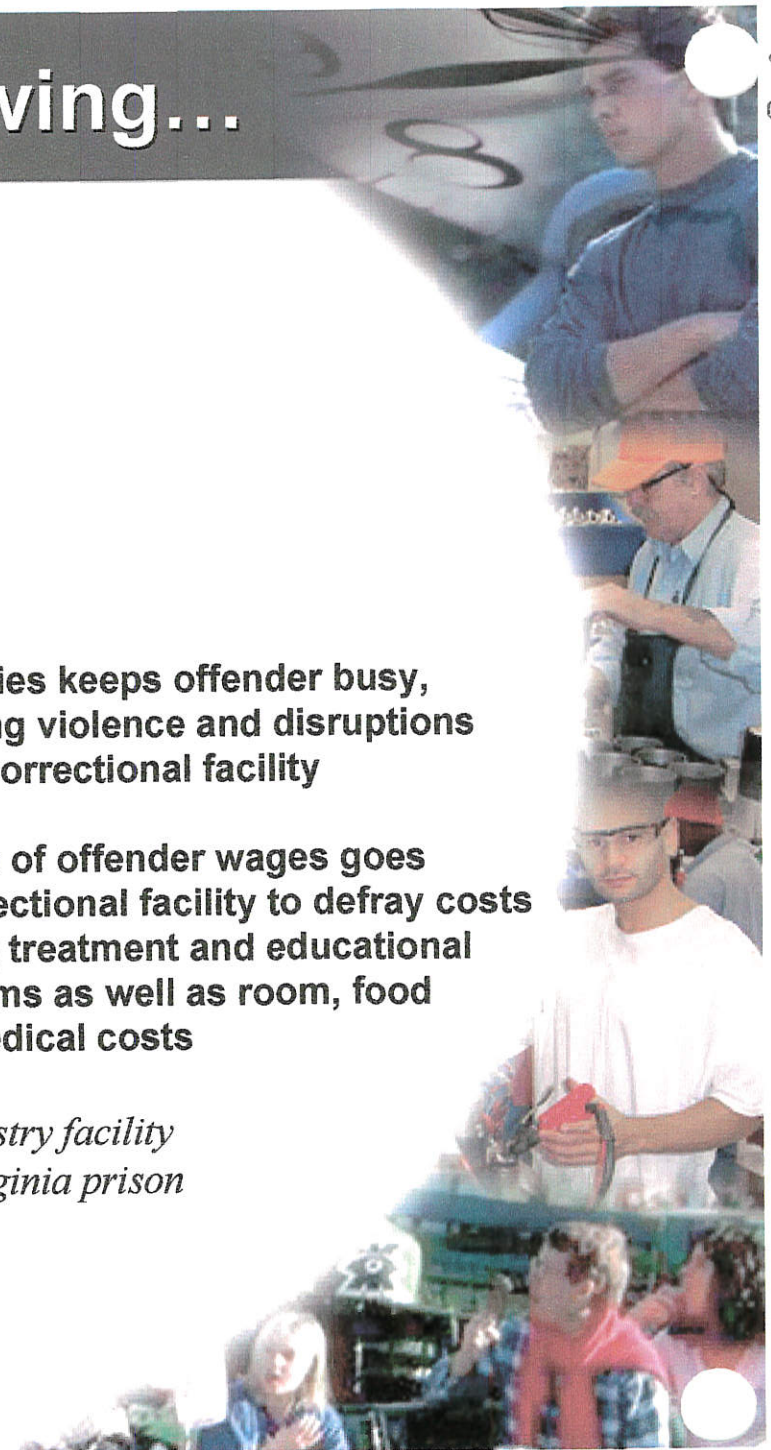


Industries keeps offender busy, reducing violence and disruptions in the correctional facility

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!

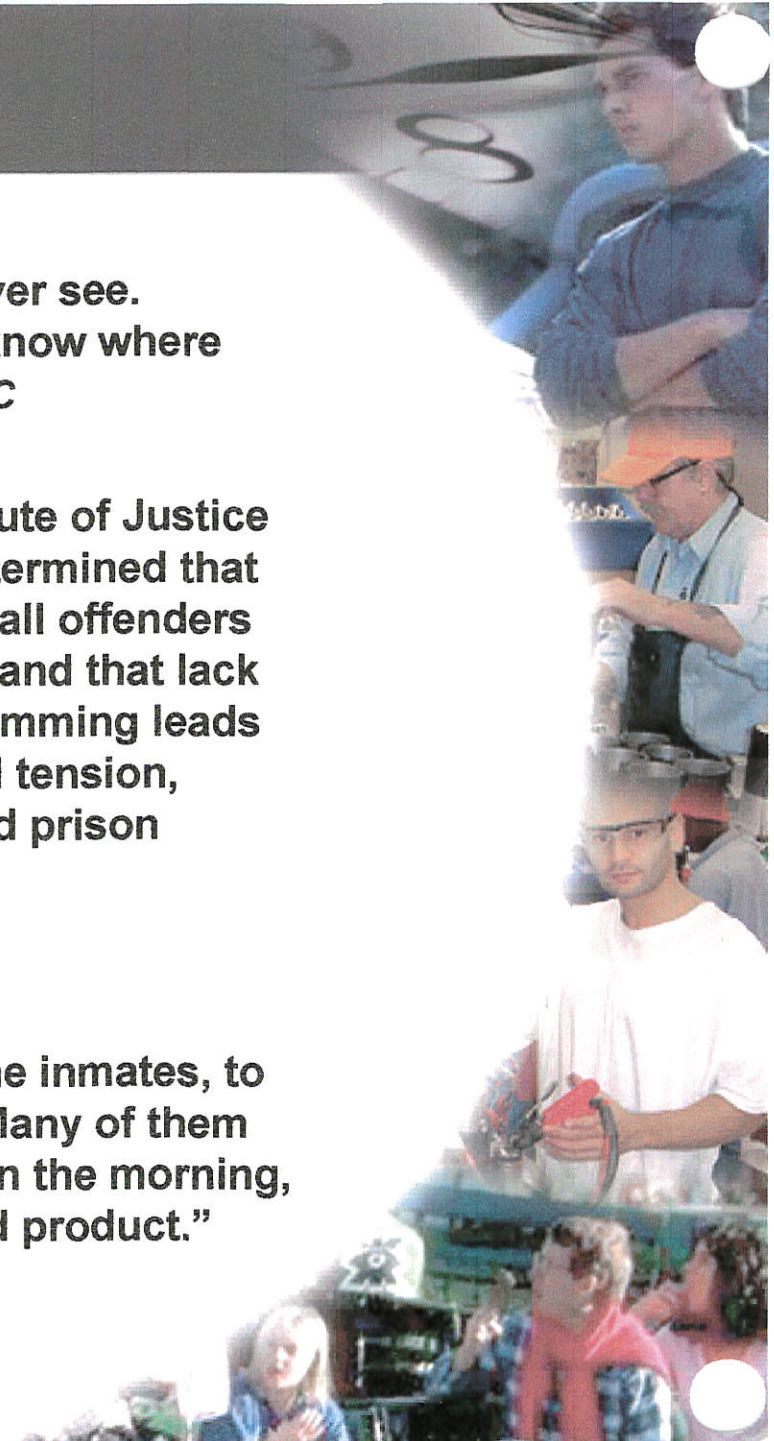
★ **“Work is the best management tool wardens ever see. Prisoners put in a full productive day, and we know where they are.”** *Tony Ellis, Director of Industries, SC DOC*



★ **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*



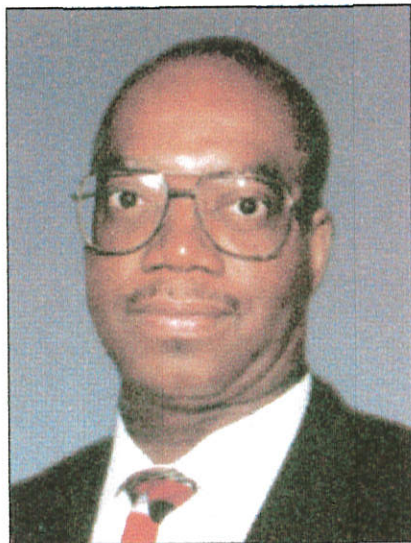


# Results: Corrections Benefits

★ **Correctional Industries keep offenders productively occupied.**

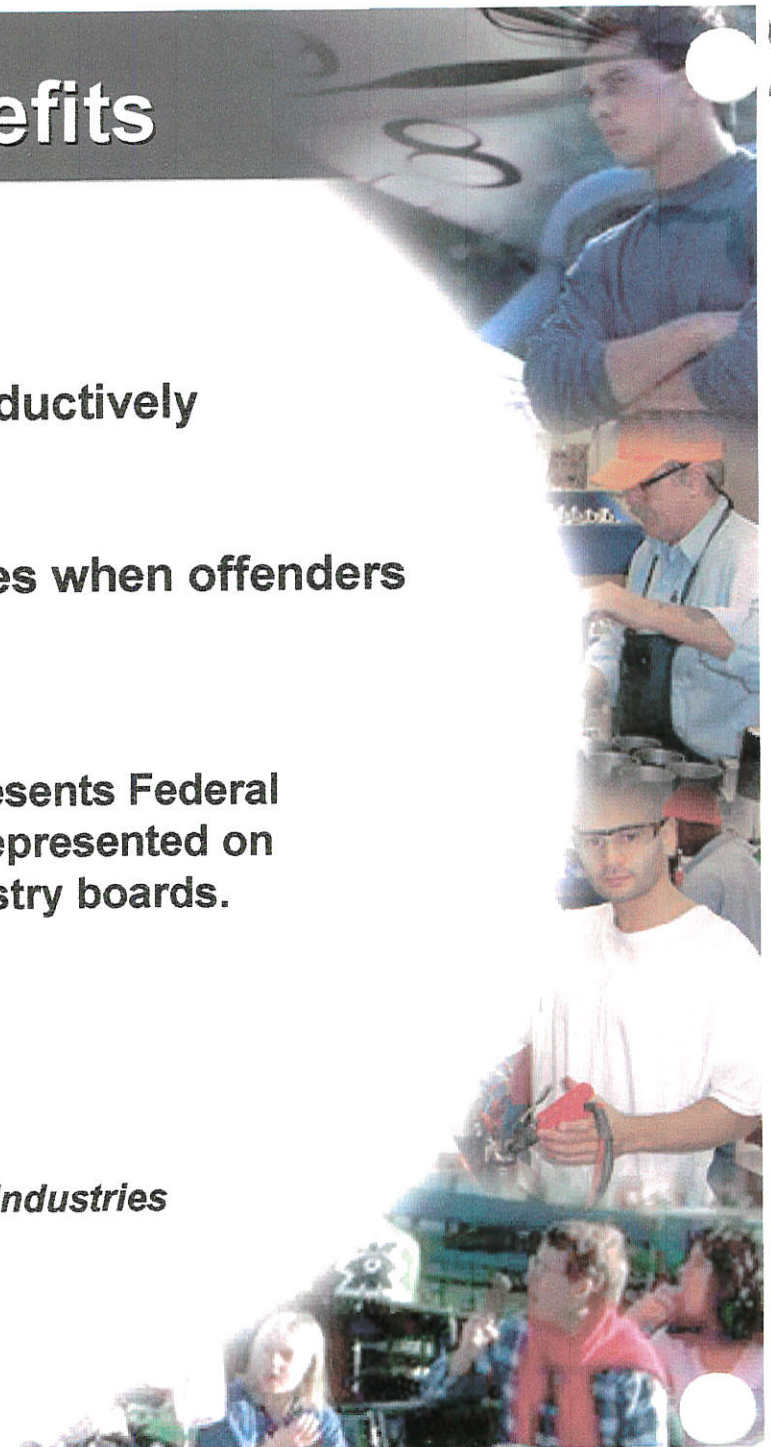


**Correctional officers cite fewer disturbances when offenders are occupied with work.**



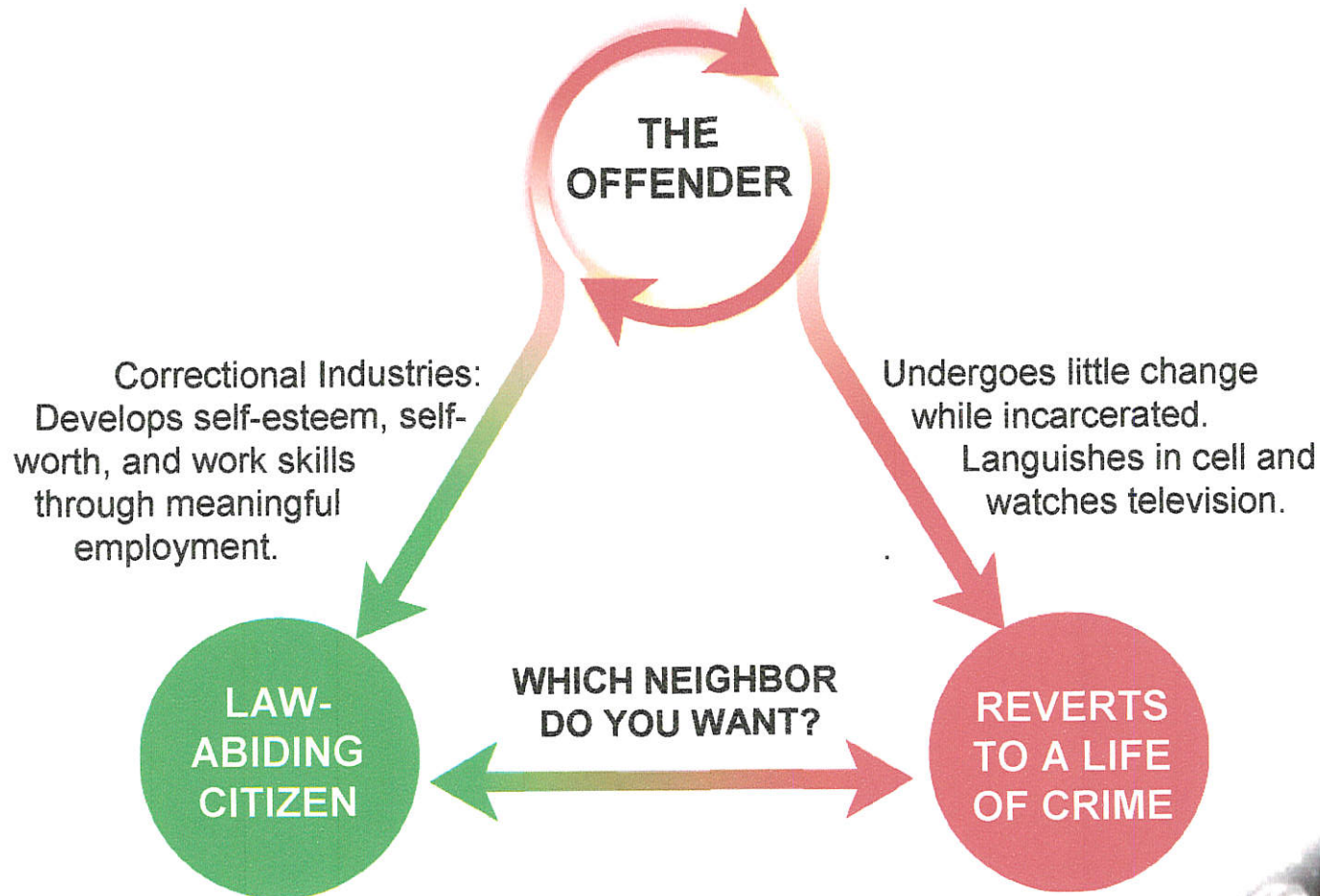
★ **The AFL-CIO, which represents Federal Corrections Officers, is represented on several correctional industry boards.**

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



# 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

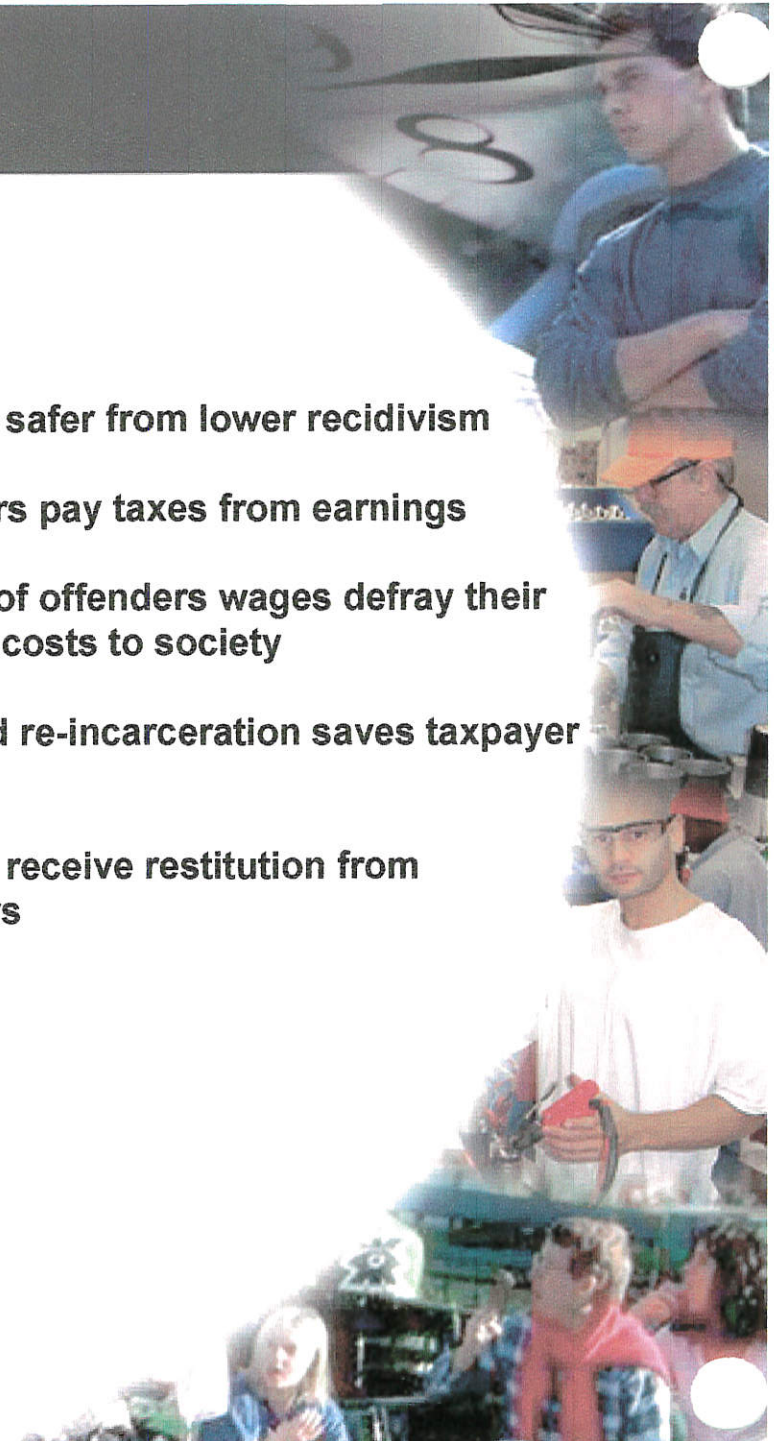
Reduced re-incarceration saves taxpayer monies

Victim's receive restitution from offenders

## ★ Offender Benefits

## ★ Correctional Facilities Benefit

## ★ Business Benefits



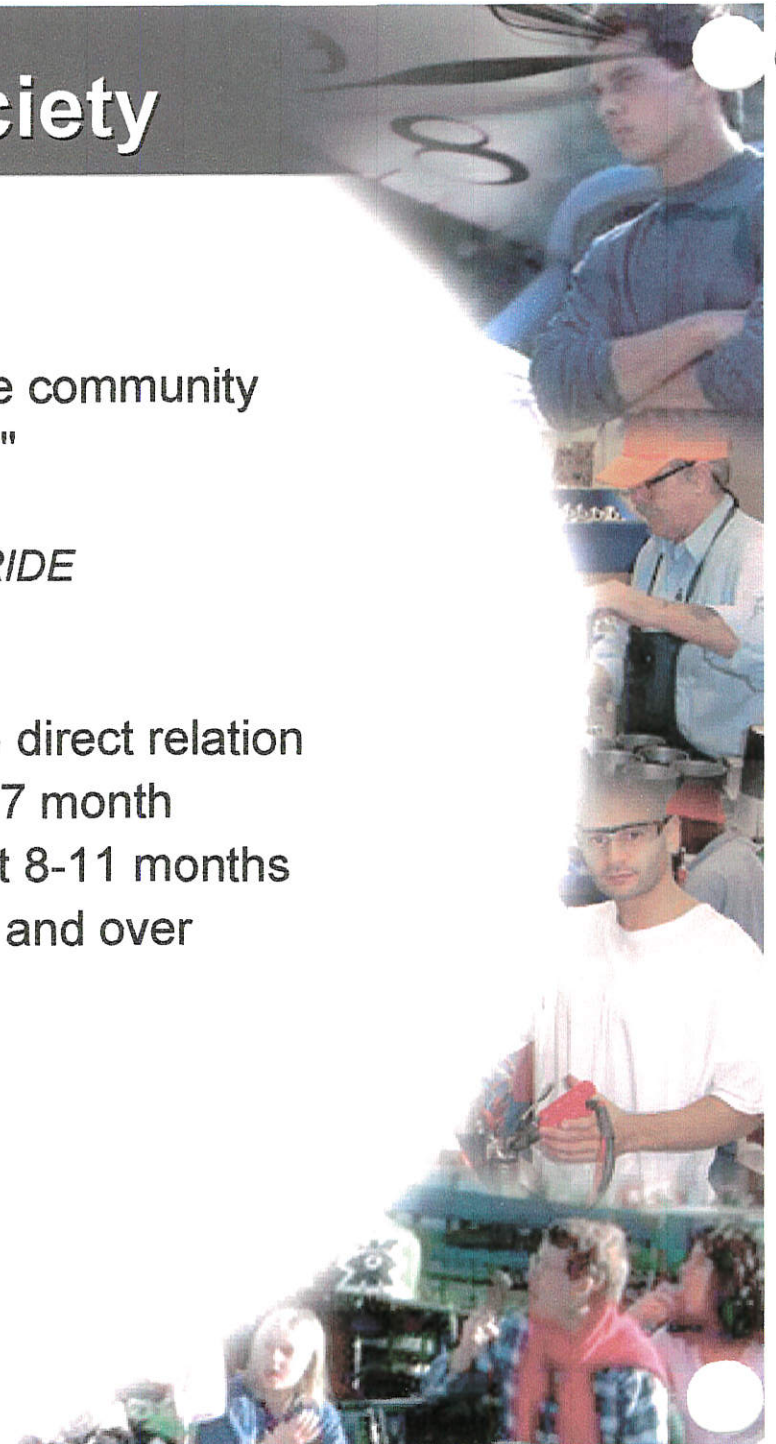
# Results: Beneficial to Society

"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*

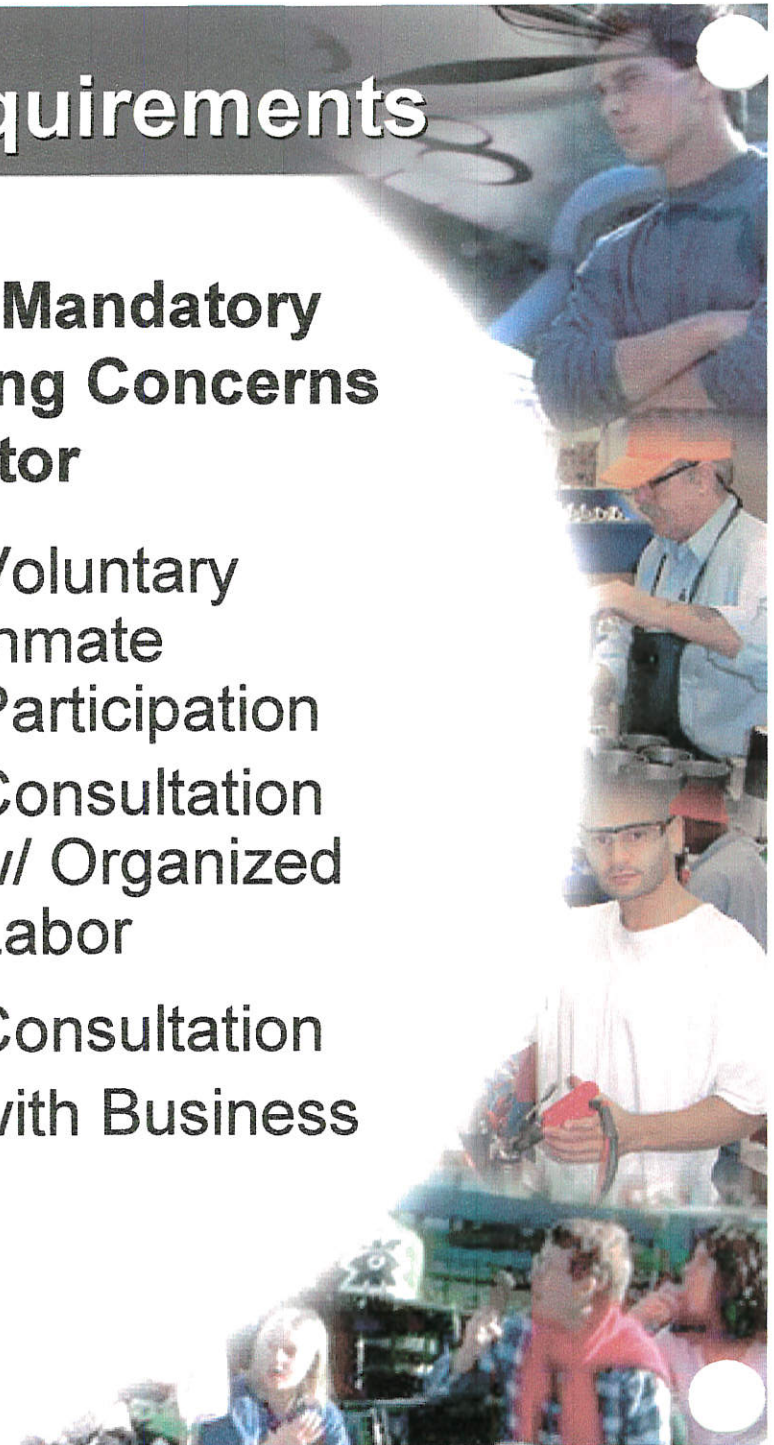
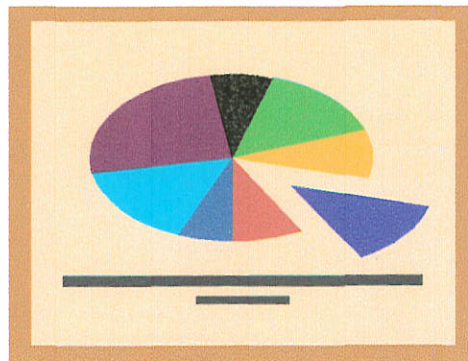




# Guideline: Nine Core Requirements

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

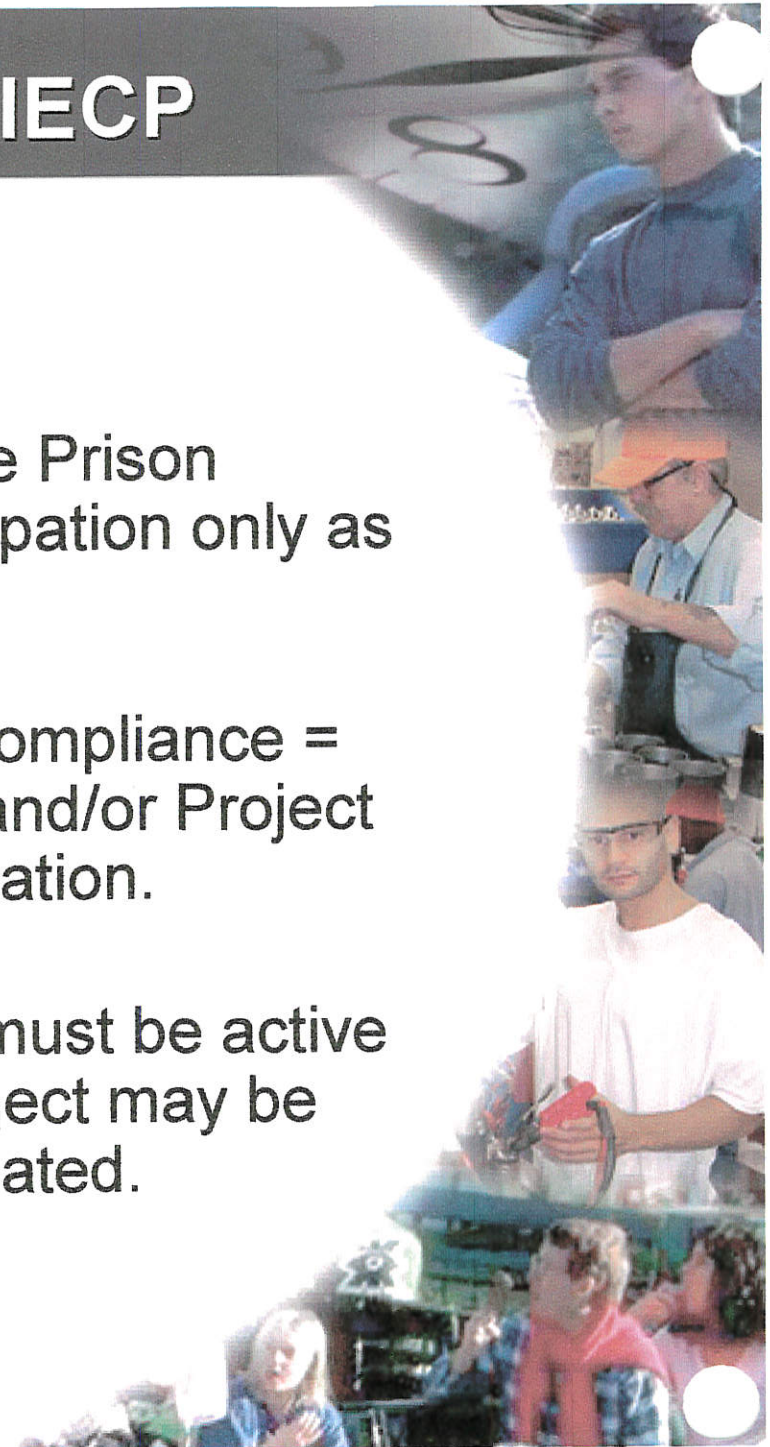
- Eligibility
- Inmate Wages
- Non-Inmate Worker Displacement
- Benefits
- Deductions
- NEPA
- Voluntary Inmate Participation
- Consultation w/ Organized Labor
- Consultation with Business



# 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.



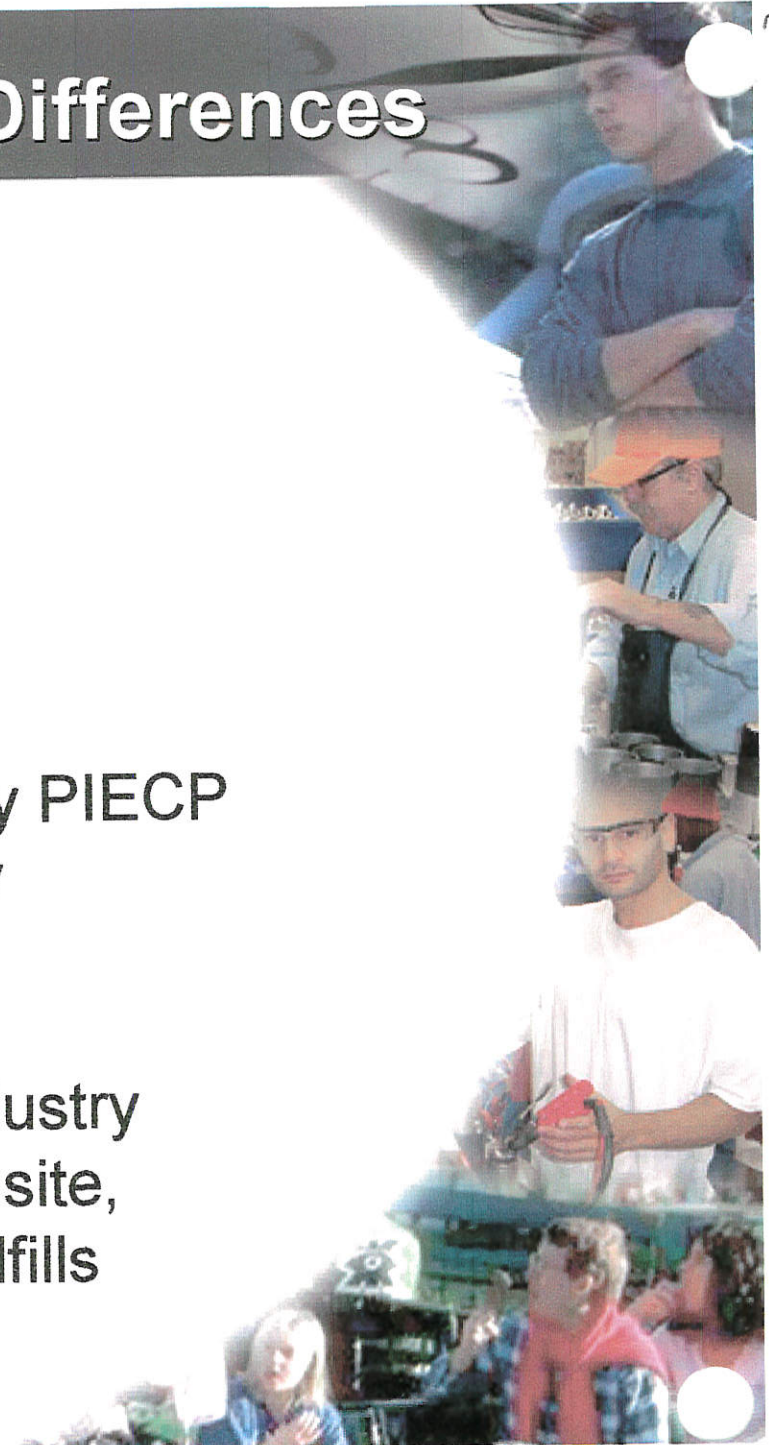


# Practical Results: *Model* Differences



**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.





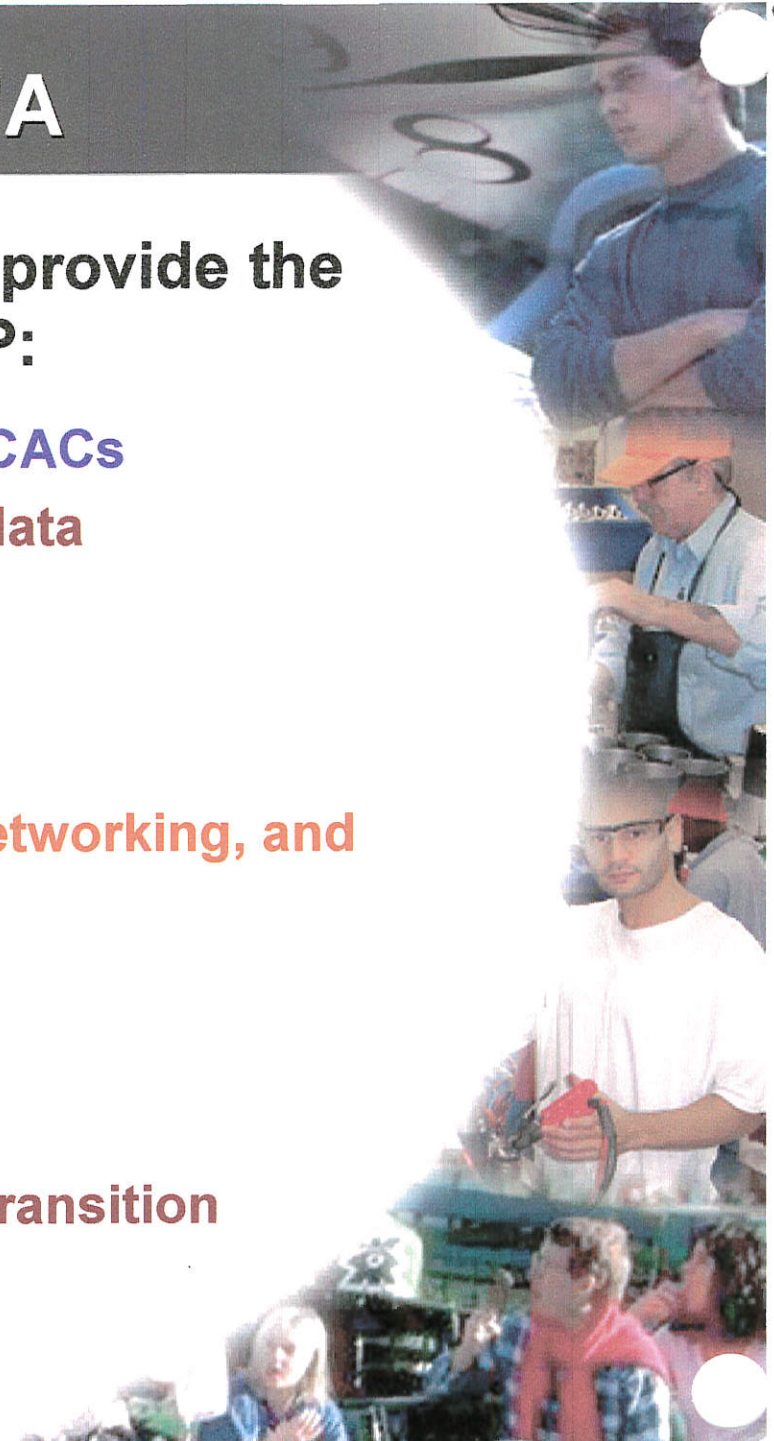
# BJA Partnership with NCIA

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

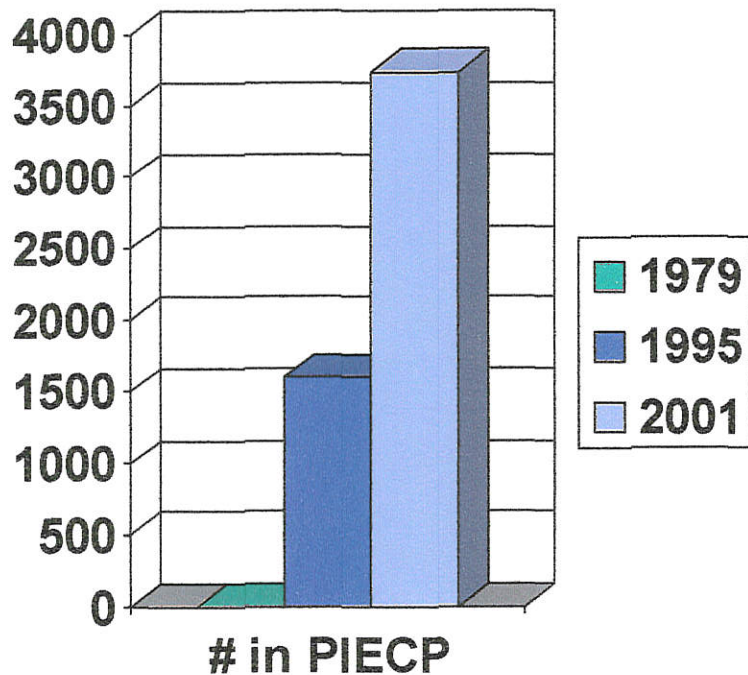


NATIONAL  
CORRECTIONAL  
INDUSTRIES  
ASSOCIATION





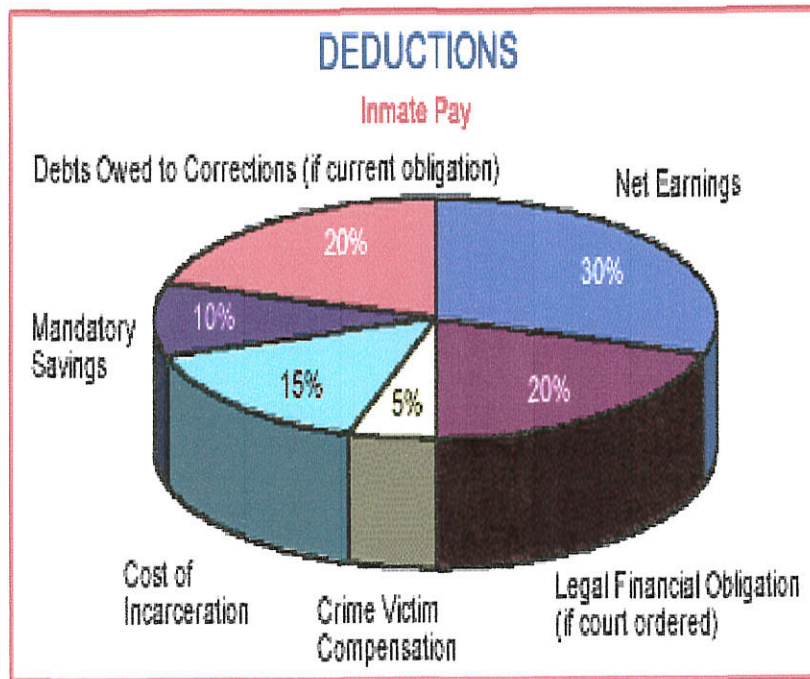
# Results: Watching PIECP Grow



- 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

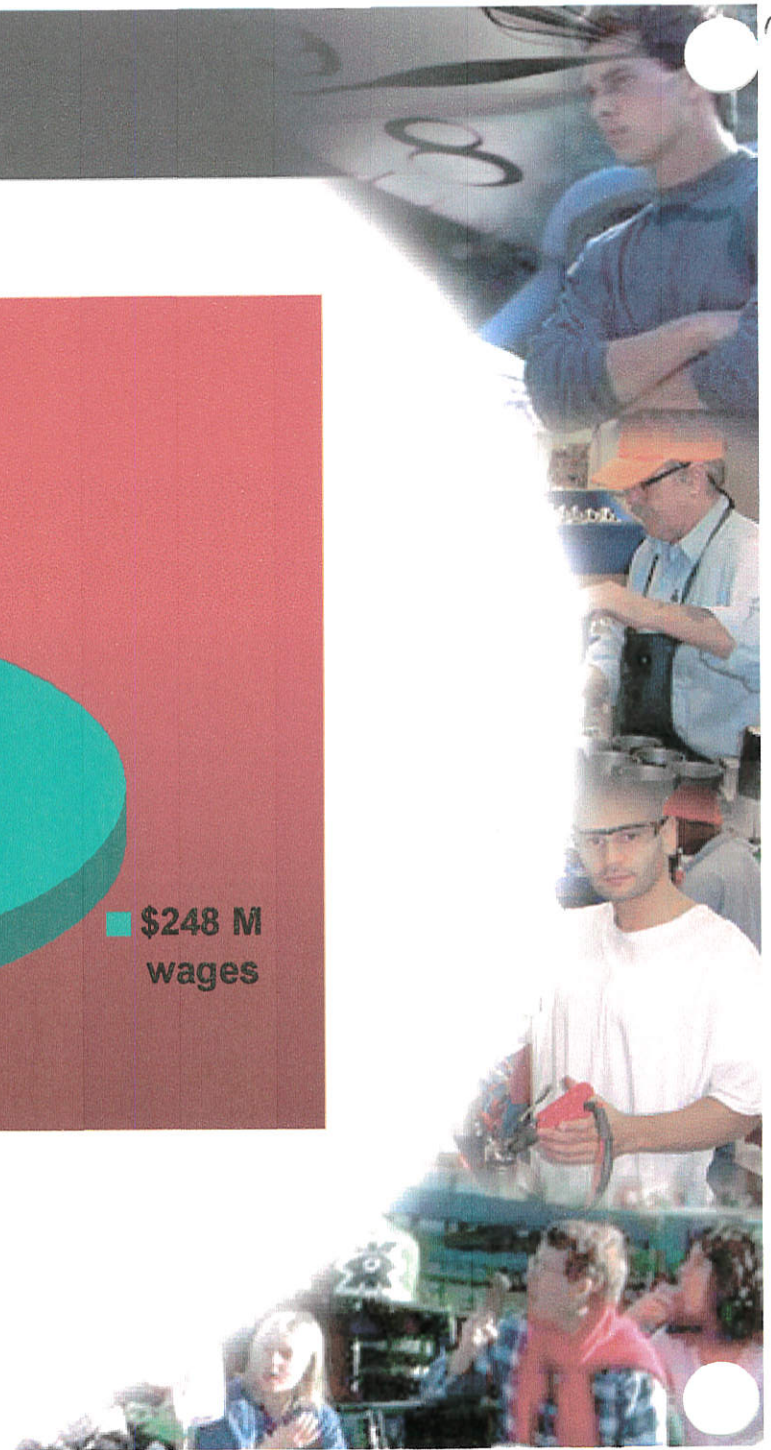
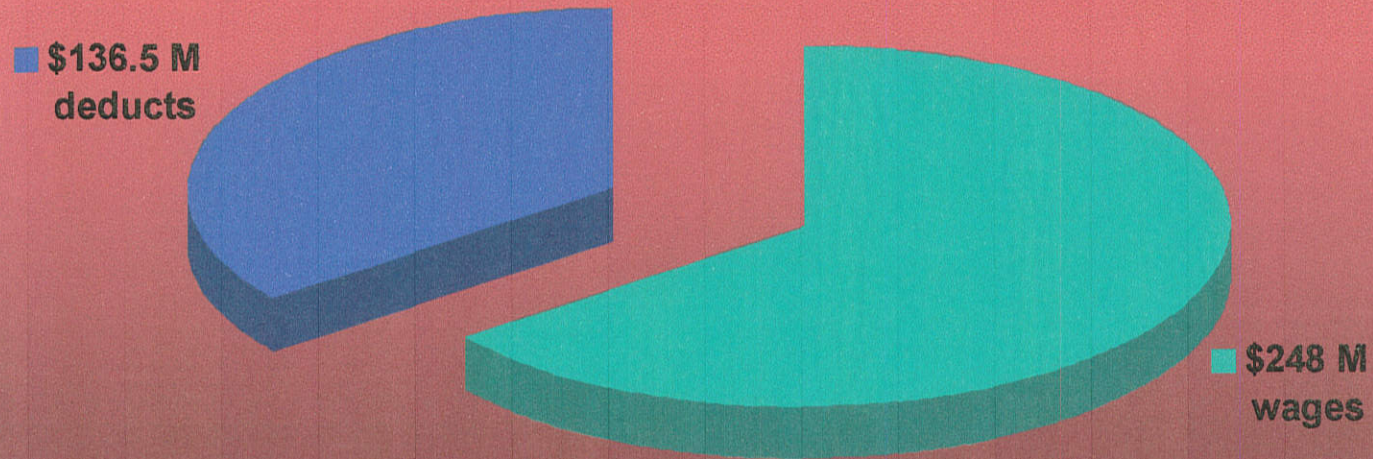


- **PIECP programs pay wages to inmates from which specified deductions are made to serve many purposes.**



# Making a Contribution

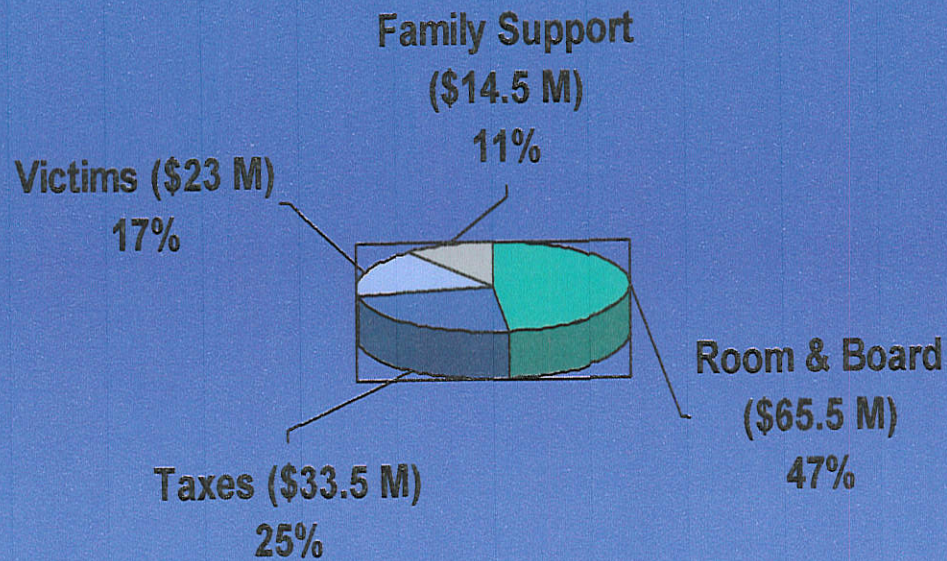
**PIECP Wages & Deductions:  
1979 - 2002**





# 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

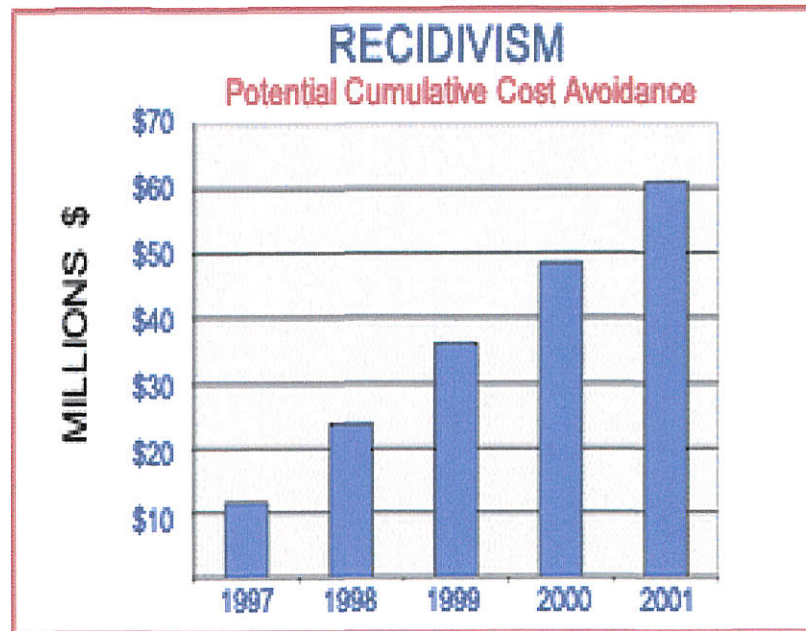
- ★ "If one in four prisoners was put to work it would result in 500,000 new prison jobs. Allocating 60% of their earnings to taxpayer compensation could reduce taxpayer costs by \$2.4 billion each year."

*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.

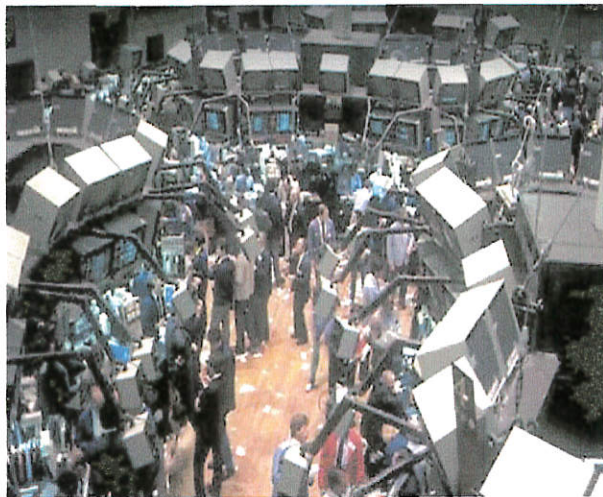




# Years of Experience Shows

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

- ★ **Business Wins**



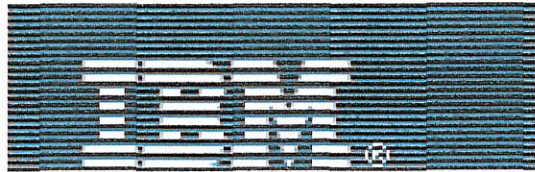
- ✓ Beneficial to keep production in U.S. given the volatile global climate.
- ✓ Much quicker product turn-around than off-shore production sites.
- ✓ Eases scheduling, resulting in improved order fill.
- ✓ Opportunity to partner is available to companies, large & small.





# Results: Business Wins

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



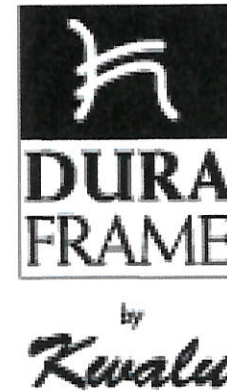
*We bring good things to life.*





# 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

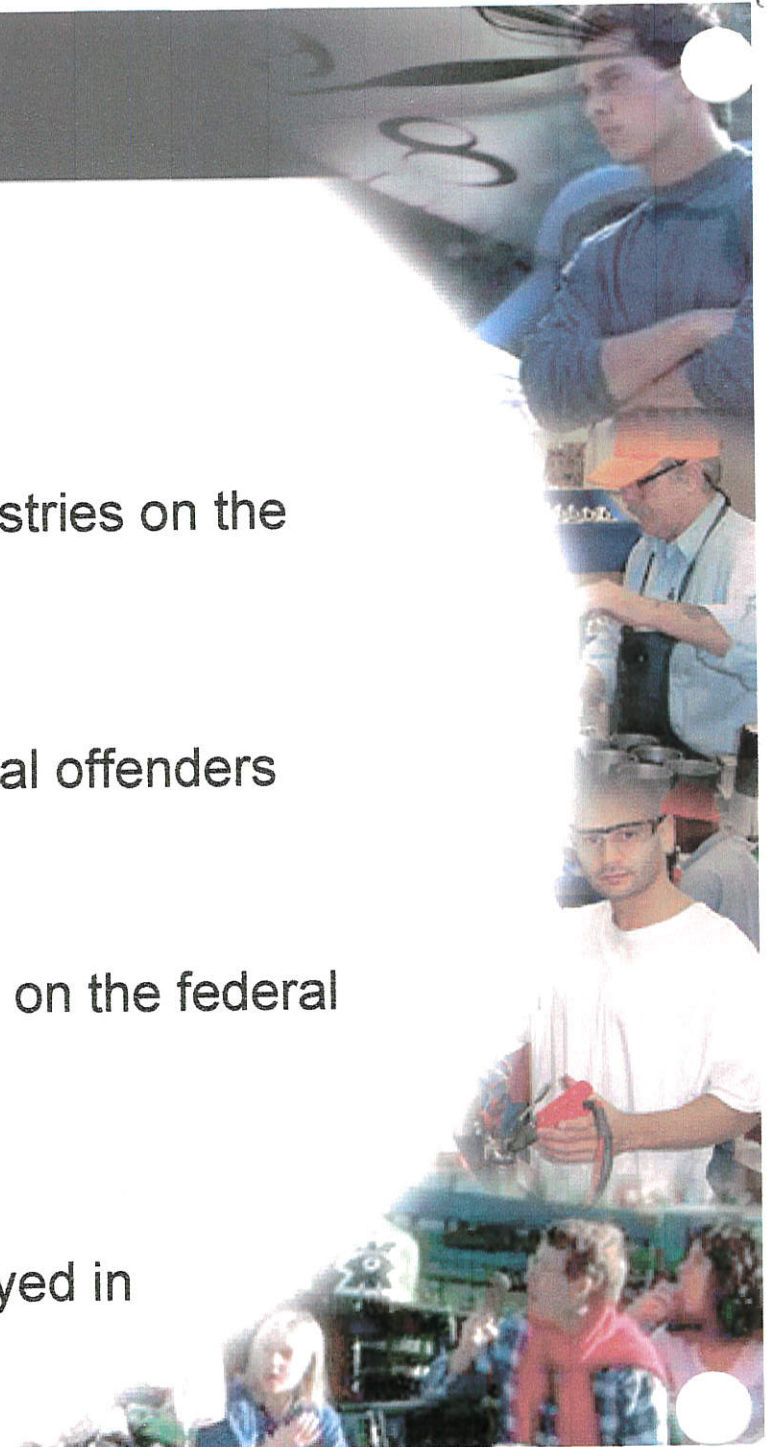
Feds employ 22,000+ of 150,000+ federal offenders

### ★ 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...

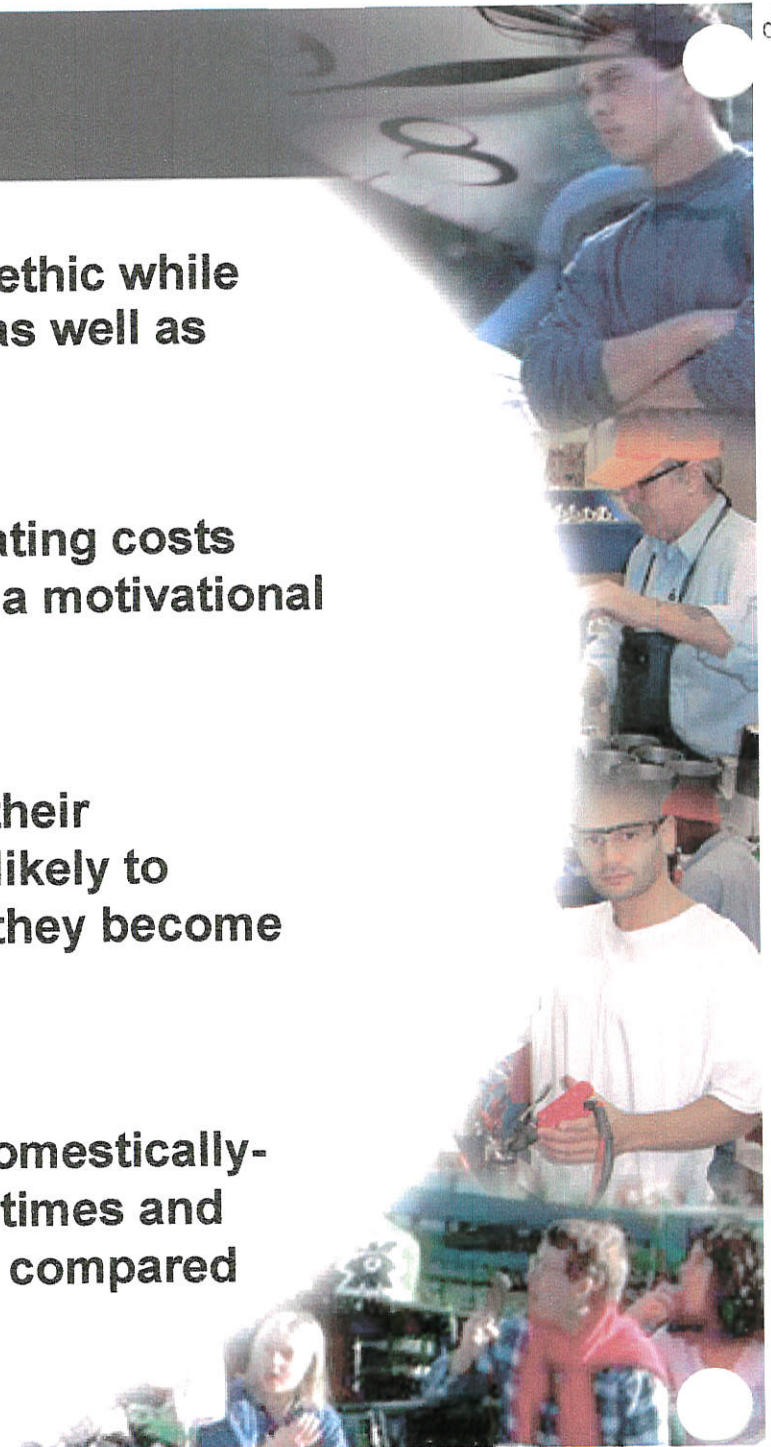
benefit as they receive monies to offset escalating costs associated with incarceration while providing a motivational tool to induce good behavior.

## ★ 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.

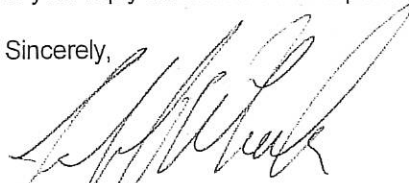
Senate Commerce  
02/13/04  
Attach #4

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 Layes, 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". The signature is fluid and cursive, written over a white background.

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

# Legislative Testimony

SB 482

February 13, 2004

**Testimony before the Kansas Senate Commerce Committee  
By Marlee Carpenter, Vice President Government Relations**



**THE KANSAS  
CHAMBER**

## The Force for Business

835 SW Topeka Blvd.

Topeka, KS 66612-1671

785-357-6321

Fax: 785-357-4732

E-mail: [info@kansaschamber.org](mailto:info@kansaschamber.org)

[www.kansaschamber.org](http://www.kansaschamber.org)

Madam Chair and members of the committee:

I am Marlee Carpenter with the Kansas Chamber of Commerce. Our members support SB 482, which freezes the rate of the automatic increase for maximum Unemployment Compensation benefits for two years.

Kansas' Unemployment Compensation taxes are escalating. For the five-year period between 2000 and 2004, UC taxes increased significantly. As unemployment increased, the state's private sector employers have increased their contributions to the fund.

Year-to-year there are still more than 65,000 Kansans that cannot find work and the trust fund balance continues to decline. Unemployment benefits are high in Kansas as compared with the surrounding states. Only one surrounding state has higher average weekly benefits than Kansas and only two surrounding states, Colorado and Iowa, have a maximum benefit level.

Freezing the maximum weekly benefit amount through 2006 helps relieve pressure on the trust fund as the economy hopefully begins to recover and more Kansans eventually go back to work – all the while providing a benefit that is comparable within the region.

The Employment Security Advisory Committee in a report issued January 23, 2004, priced freezing benefit payments. Quoting the report, "If benefit payments were to remain at the average estimated for CY 2004, \$285 per week, an estimated \$10.9 million would be saved during CY 2005 while \$27.8 million would be saved during CY 2006."

The Kansas Chamber asks for your support of SB 483. Thank you for your time and I will be happy to answer any questions.

*The Kansas Chamber is the statewide business advocacy group, with headquarters in Topeka. It is working to make Kansas more attractive to employers by reducing the costs of doing business in Kansas. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have nearly 7,500 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, large and medium sized employers all across Kansas.*

Senate Commerce  
02/13/04  
Attach # 5



Dick Rader

February 13, 2004

HB 410, HB 482 and HB 483

Testimony before the Senate Commerce Committee

By Dick Rader, Human Resource Specialist - The Boeing Company

Madam Chairperson and members of the Committee:

My name is Dick Rader. I live in Wichita, Kansas and work at The Boeing Company as a Human Resources Specialist. Thank you for this opportunity to explain why I support the passage of SB 410, SB 482 and SB 483.

I would describe the Drug and Alcohol Free Workplace Program at the Boeing Company as being focused on rehabilitation. An employee that refuses to test, tests positive for drugs and/or alcohol, or is under the influence at work, is given the opportunity to attend and successfully complete a required treatment program at the Company's expense. Upon entering the Drug and Alcohol Free Workplace Program, the employee is advised that a second refusal to test, a second positive test or failure to complete treatment will result in dismissal. Therefore, I support what SB 410 defines as conclusive evidence of misconduct regarding substance abuse.

Due to the recent unfavorable economic conditions, the increasing levels of unemployment have placed significant demands on the Unemployment Trust Fund. Kansas currently maintains a positive trust fund balance, however, the fund needs to be monitored to ensure that it does not become insolvent. SB 482 freezes the automatic benefit increases. By holding the weekly maximum and minimum benefit amount to the same as what was determined on July 01, 2003 would assist in slowing any decline to the trust fund balance. For this reason, I would support the passage of SB 482.

SB 483 addresses some of the on-going issues that surround discharges for absenteeism. During my experience as an HR professional, I have had many opportunities to deal with employee absenteeism. Including counseling with managers and employees on the reasons for absences, creating attendance guidelines and policy, dealing with progressive discipline for attendance, and approving the dismissal of an employee for violating attendance guidelines. The frustration begins with the absence. Most employers that I'm aware of have policy in place to excuse or to work with absences that may occasionally occur. However, frustration increases when absences become seemingly excessive. I have asked employees that are at risk for attendance why they were absent. I've gotten many different responses and have made employment decisions based on those responses. I sometimes see employees that were discharged for attendance at an Unemployment Hearing. The frustration at the hearing comes when the Administrative Law Judge only requires the claimant to declare illness under oath as proof that the absences were for good cause. I also have the opportunity under oath to testify what the claimant had told me was the reason for the absences. Unfortunately, sometimes the reasons that may have been given at the time of discharge do not match the reasons that the claimant offers at the hearing and the Administrative Law Judge may not require any other documentation to determine that the absence was for good cause, thus awarding benefits. SB 483 addresses the issue of "documentation as evidence" and I support it's passage.

Thank you for the opportunity to comment on SB 410, SB 482 and SB 483. I would be happy to answer any questions.

Senate Commerce  
02/13/04  
Attach # 6



*The Historic Lackman-Thompson Estate*

11180 Lackman Road  
Lenexa, KS 66219-1236  
913.888.1414  
Fax 913.888.3770

TO: Senator Karin Brownlee, Chairperson  
Senator Nick Jordan, Vice-Chairperson  
Members, Senate Commerce Committee

FROM: Ashley Sherard, Vice-President  
Lenexa Chamber of Commerce

DATE: February 13, 2004

RE: **SB 482—Two-Year Moratorium on Automatic  
Unemployment Compensation Benefit Increases**

---

The Lenexa Chamber of Commerce would like to express its support for Senate Bill 482, which would place a two-year moratorium on annual automatic increases in unemployment compensation benefits (from July 1, 2004, to July 1, 2006), maintaining the weekly maximum benefit amount of \$351 as it was determined on July 1, 2003.

Businesses have faced particularly difficult economic challenges in recent years. Unfortunately, these economic challenges have sometimes forced employers to make difficult choices, resulting in workers losing their jobs. To assist these workers, Kansas employers pay unemployment compensation taxes each year -- taxes that are paid at rates both high for our region and above the U.S. national average.

**Since the unemployment compensation moratorium ended in 1999, Kansas employers have experienced significant annual increases in unemployment compensation costs.** While employers paid \$143 million in unemployment compensation taxes in 2000, it is currently estimated employers will pay at least \$270 million in 2004 – a 24% increase over 2003's total (\$217.7 million) and an 89% increase since 2000. A portion of these increases is attributable to automatic annual increases in U.C. benefits based on inflation – wage increases that the employed may not be receiving during difficult economic times.

**These dramatically rising costs contribute yet another burden on businesses at a time when the economy is still struggling to recover. A two-year moratorium on the automatic annual U.C. benefit increases as proposed in SB 482 would save Kansas employers several million dollars a year, helping to prevent additional job loss and encouraging the economic and business recovery that would actually provide jobs – the only long-term solution to unemployment.**

Senate Commerce  
02/13/04  
Attach # 7



Unemployed workers would continue to receive their current assistance, and **Kansas unemployment benefits are high for our region – historically second behind only Colorado and higher than Missouri, Oklahoma, Nebraska, and Iowa according to a Kansas Department of Human Resources “Unemployment Insurance Interstate Handbook.”**

In addition, a review by the National Foundation for Unemployment Compensation and Workers Compensation found that the Kansas Unemployment Trust Fund remains one of the more solvent in the country, despite high unemployment benefit payouts in recent years.

For these reasons, the Lenexa Chamber of Commerce urges the committee to recommend SB 482 favorable for passage. Thank you for your time and attention to this issue.

# Kansas AFL-CIO

2131 S.W. 36th St.

Topeka, KS 66611

785/267-0100

Fax 785/267-2775



President  
**Ron Eldridge**

Executive Secretary  
Treasurer  
**Jim DeHoff**

Executive Vice  
President  
**Wil Leiker**

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Shawn Lietz  
Pam Pearson  
Dave Peterson  
Emil Ramirez  
Bruce Reves  
Steve Rooney  
Debbie Snow  
Wilma Ventura  
Betty Vines  
Dan Woodard*

Senate Commerce Committee  
Friday, February 13, 2004  
SB #482  
Senator Karen Brownlee, Chairperson

Madam Chair and Committee Members,

I am Jim DeHoff, Executive Secretary of the Kansas AFL CIO. I am appearing today in opposition to SB 482.

The reason for opposition to this bill is because it is not necessary at this time. I serve on the Employment Security Council along with 11 other members. There are 4 from labor, 4 from business and 4 from the public at large. We have been studying solvency of the trust fund for quite some time. A sub-committee was sanctioned on December 11, 2003 to review trust fund financing. The sub-committee met twice and reported back to the full committee on January 29, 2004. The sub-committee recommended that we continue to measure solvency of the trust fund, which we are doing.

If you would look at page 3 (bottom of page) of the minutes of the January 29<sup>th</sup> meeting of the Employment Security Council, you will see that I asked Terry Leatherman with the Kansas chamber of Commerce, if business wanted to do anything at this time. Mr. Leatherman responded "no". I then moved to have the sub-committee continue to monitor and discuss options. Mr. Leatherman seconded the motion.

The trust fund is estimated to have fund balance of 248 million as of December 31, 2004 - 274 million as of December 31, 2005 and 295 million as of December 31, 2006. This estimate was provided by the Kansas Department of Human Resources.

One of the reasons the trust fund has dropped is due to a moratorium for positive account employers. These positive accounts paid no employment security tax from 1995 to 1999. Business saved approximately 556 million. I have attached a copy of the savings along with my testimony. Another reason would be a downturn in the economy.

Freezing benefits at this time is not necessary.

I respectfully ask that you refer SB 482 to the Employment Security Council.

Thank you.



Senate Commerce  
02/13/04  
Attach #8



**Kansas Department of Human Resources  
Employment Security Advisory Council  
Meeting Minutes  
January 29, 2004**

**Members Present**

Clyde Bracken  
Jim DeHoff  
Mickey Fornaro-Dean  
Wil Leiker

Dick Rader  
Terry Leatherman  
Roger Morris

Russell Smith  
Dave Huston  
Chuck Krider

**Staff Present**

Jim Garner  
John Polzar  
Marge Baker  
Paul Bicknell  
Teila Gilchrist  
Wayne Maichel

Tom Henderson  
A.J. Kotich  
Jerry Schneider  
Ron Sicka  
Orval Weber

Matilda Michaelis  
Bill Schafer  
Bob Lierz  
Tina Burghart  
Lisa Trammel

**Call to Order and Introductions**

Chair Jim Garner called the meeting to order at 1:38 p.m.

**Approval of Minutes**

The first order of business was approval of minutes from the meeting held December 11, 2003. Chair asked if there were any questions on the minutes. A motion was made by Mr. DeHoff and seconded by \_\_\_\_\_ to approve the minutes as written. The motion was carried.

**Agency UI Operations**

Chair turned the meeting over to Mr. Maichel to discuss UI operations. Mr. Maichel stated that we now have CY2003 numbers on UI. A Key Facts sheet was included in the packet to compare 2002 and 2003. Initial claims increased 13,000 this year and continued claims increased a lot. Total benefits from all programs; regular, X, airline benefits, plus two-week extension totaled \$497M. The average weekly benefit amount was \$272. The maximum weekly benefit amount was \$351. Average duration increased little. Chair asked if there were questions for Mr. Maichel. There were none.

**Questions at Last Meeting**

Chair mentioned questions asked at the last meeting and turned the discussion over to Mr. Weber. Mr. Weber reviewed the single sheet included in the packet.

**ESAC Sub-Committee**

Chair moved on to the sub-committee report and deferred to Dr. Smith for that report. Dr. Smith reported that the sub-committee had met twice on January 8 and 23. The sub-committee did not

provide a full report or recommendation. At the first meeting discussion began on measure of adequacy. It was the consensus of the group that they would like to use the high cost multiple (HCM) as a measure of adequacy as it is connected to a worst case annual payout, better than the reserve fund ratio (RFR). It was agreed that the last 15 years would be used to compute the HCM as opposed to the last three recessions. It was agreed that a HCM of 1.0 would be a target minimum level. The USDOL recommends 1.5. The use of \$400M as reserves was discussed. Subsequently, KDHR staff provided data for the next meeting to answer questions raised. Mr. Weber was asked to explain those questions. Mr. Weber mentioned the members of the subcommittee included Mr. Rader, Dr. Smith, Dr. Krider, Mr. Leatherman, Mr. Huston and Mr. Leiker. Mr. Weber reviewed the seven-page handout in the packet. On question one, the 0.74 reported could be a little higher now, possibly 0.9. Dr. Smith commented that he had been watching the numbers to better understand the random noise in movement. The idea is to operate below 1.0. If we are way below, there is a problem. If we are over, then we can cheer. Moving to question two, Mr. Weber indicated that in March and April the fund is low. For 2004 the estimated lowest balance would be \$195M, \$169M and \$189M. Dr. Smith asked if this was an optimistic view. Mr. Weber responded it was neutral. Ms. Gilchrist mentioned that it was more optimistic than two percent in 2004 and 1.8 in 2005 and 2006. Dr. Smith asked if this was the key driver and Ms. Gilchrist responded yes. Dr. Smith asked about looking at raising the hurdle that benefits have gone down. Is there distribution in the formula? What is the average benefit received? Mr. Henderson asked about the price index and benefits. Does the figure include when unemployment was taxable then made non-taxable? Mr. Weber responded no, this was not done. In 1995-96 (estimated) it lowered the amount of power of the dollar. Questions five and six referred to different forms of revenue and spending cuts. Mr. Weber reviewed some of the options. Alaska has an employee tax of 20 percent of the average benefit cost. New Jersey and Pennsylvania have this tax, also. New Jersey's tax is .3825 percent. Lots of variables are connected to an employee tax. In 1984 or 1985 possibly, benefits were frozen. Option seven concerns taxing reimbursable employers. An administrative fee could be an option but we would probably be out of conformity if we touch reimbursing employers. Chair asked what reimbursing employers paid a flat payment? Mr. Weber said one example would be the City of Topeka paying dollar for dollar. Chair asked about the concern. Mr. Weber said he was certain we would be out of compliance. The feds allow all states to have reimbursing employers. Chair asked what kind of businesses are included. Mr. Weber responded these would include the state, schools, city and non-profit organizations. Mr. Leatherman indicated that for the state of Kansas this would have a general fund impact. Mr. Weber mentioned that we have stacking of employers now and none are over 5.4 percent by statute. We could change the tax schedule itself. Bottom line is there are lots of options for revenue enhancement and lots of options for reducing spending. Dr. Smith sees no single mathematical situation to generate a lot of enhancements. He asked about a tax schedule in 2007. Ms. Gilchrist indicated we did not have that detail. We do have the current centered at 0.4 with projected 0.5 for 2005 and 0.6 in 2006. One raise each year will get \$400M. Dr. Smith asked if there is any way to translate this to the HCM? Ms. Gilchrist indicated it was illustrated on the next page. Dr. Smith commented that 0.6 is what it takes. Ms. Gilchrist mentioned that on the down side it would stack employers. Mr. Weber indicated that six rate groups are stacked at the maximum now. This would cause additional stacking of 25 in 2005 and 36 in 2006. Ms. Gilchrist mentioned it would be lots of dollars and an increase in rate groups that exceed the maximum. Dr. Smith commented it would fall on positive balance employers. An economist has one mood as a scientist. They take new



things and generate upbeat now, which is good for one year. They are happy professionally but sad otherwise with the possibility of things being significantly worse. Dr. Smith had heard of a Mr. Greenspan speech in which he admitted we have been too easy on monetary policy. Is an increase in interest rates what it takes to repair the damage? We have fairly good economic indicators except for employment. We need an argument for a high reserve or strategy for rapid adjustment. We need to make a statement to show we are paying attention. Dr. Krider commented that the sub-committee recommended moving to a 1.0 HCM. With 0.74 this year it is risky. Part of the reason is the lag in changing policy. If nothing is done this session there will be no change until 2006. The sub-committee had some disagreement on risk. If we do not get something to the Legislature until 2005, it will not take off until the following year. Chair indicated that most legislative action becomes effective on July 1 of the year enacted. Contributions determine tax rates on a calendar year basis. Dr. Smith mentioned that an old statute could be retroactive to begin in the calendar year. This would not provide a good relationship with other people. Dr. Smith reported that the sub-committee had agreement to measure solvency of the trust fund. On funding or a proposed change there was no consensus. Mr. Huston agreed with the findings but how fast and how should it be done. The issue is on the mechanism to be used. Chair indicated there was no consensus on mechanism. Dr. Smith asked for scenarios on the wage base concept of raising rates to get better numbers to meet the goal. Chair indicated it was more advantageous to not know the details. Dr. Smith mentioned there is some small advantage to get rid of bunching and raise revenues. We could do tax increases more now and back off later. The point is to brainstorm and make decisions. Chair indicated there was no consensus to make a recommendation on mechanism. Chair commented there is agreement that work is needed and monitoring. Mr. Leatherman mentioned that if we take no action this year the system will take action this year with \$260M more in the fund. Mr. Leatherman felt the HCM was the best test because it relates to benefits. We can begin to have concern because it is below 1.0. Benefits are at too high levels. When large layoffs stop then benefits will recede. We need to look at a variety of options. An employer tax would be draconian. Positive employers would pay all the taxes. With an employer tax we are headed to a world of systemic unemployment, not a depression of the 30's, but an evolution of unemployment compensation. We need to have the system more responsive than the old system. The sub-committee is doing important work. Mr. Leatherman felt the sub-committee should continue in some degree, with him perhaps off the sub-committee. This is a great opportunity to look at more aggressive systems and new benefit options. Dr. Smith mentioned that a tax on employees would be a difficult entitlement in benefits and eligibility. Mr. DeHoff asked if an employee tax would raise benefits. Mr. Leiker indicated this needs to change. Mr. Huston thought discussion was needed. Mr. Weber commented that we have no numbers figured to get benefits raised. This would be personally felt. An average wage of \$30,000 would make revenues neutral. This would be positive for small businesses. If they had less than \$30,000, taxes could go down. Or we could change the wage base and reward employees who work for companies that have done a good job with low experience factors. A company with high-risk layoffs would pay a higher tax and probably get high wages. There are social implications. This could be a way to make employees aware of the cost of insurance. The burden will be to raise the wage base and employers responsive to higher numbers. If employee is above that then employee would pick up. If the employee is less than \$20,000, there would be no tax. This would be a socially difficult program. Mr. Leatherman commented that today's system works well for \$10 an hour positions. As an example, Boeing, this would not be a good system. Mr.

Huston mentioned that he is worried that if a large employer closes, it could devastate a town. In rural Kansas if a major employer closed, even a manager would move to a lower wage. This is a completely different funding mechanism. If revenues were neutral than the tax rate would decrease and change the social obligation. If you make a lot over the maximum, the employee contributes. This is an opportunity to benefit small businesses. Chair indicated this would not be resolved today. Mr. Leiker mentioned that nothing has been added. There are lots of ideas and agreement on none. Dr. Krider commented that the wage base has not changed since 1984 and there are consequences to raise rates. Mr. Weber mentioned that if the \$8,000 base were raised there would be more provision to tax with no bunching of taxes. Raising the base will not cause rates to increase. Chair commented there is no action on agreement on the HCM as an indicator of measurement. There is no consensus at this point but commitment to continue to monitor the situation. Plan for the full Council to meet earlier in late summer and a sub-committee meeting first before the full Council meeting. Dr. Smith mentioned that we should not lose what we have done now. The situation is redone every period. Chair asked for a volunteer to review. Dr. Smith indicated he could review. From 1999-2002 we had \$400M. Next year an estimate is \$300M. These are powerful statistics that are easy to understand. All members should receive weekly data that they can work through. One year ago to now the trust fund decreased 31 percent. Take the Reed Act funds out it shows a 38 percent decrease. In April we will be down to \$195M that gives a feel for seasonality. We may need quick action. Dr. Smith indicated he could review the numbers but not make it to meetings. Ms. Gilchrist mentioned stretching the trust fund certification to two years, not one year. This would provide good information but require a law change. Mr. Weber stated we could provide this information to the Council. Mr. Polzar commented that we continue to monitor, discuss and look at using the concepts the sub-committee used. Later in the fall the sub-committee could see where we are at prior to the full Council meeting. Dr. Krider commented this was fair but there is some risk to doing nothing. He felt it should be conveyed that if the economy does not pick up as expected there is risk that the balance will fall even further. We need a trigger to indicate automatic action. At the 1.0 danger point, watch closely for when something needs to be done. Dr. Smith commented the trust fund balance is lower in December than January. If the forecast is worse, we need to review. How much worse than the forecast does it need to be and at what point do we have another meeting? Mr. DeHoff mentioned the session runs until May. Mr. Leatherman asked if graph two could be easily updated. Mr. Weber indicated this would not be difficult. Dr. Krider mentioned updating every three months. Ms. Gilchrist commented that the high benefit cost rate runs every three months. Dr. Krider mentioned that on table two we index the maximum and minimum wages but we do not index the wage base or income side. Should we index the wage base? Mr. Weber commented that nationally some states do have a high wage base with high wages. As rates decrease the base spreads. Moving from \$8,000 to \$16,000 would cut the rates in half. There are a variety of ways to accomplish this. Dr. Krider mentioned the table shows an increase of 40 percent. With a wage base of \$8,000 will tax rates increase? Mr. Weber indicated that in essence you could say some have based their rates on draw down. Dr. Krider asked why there was no increase in the wage base for 20 years. Was this deliberate or was there ever any discussion? Mr. Maichel indicated yes. Ms. Gilchrist mentioned the taxable wage base index would be 14,700. Dr. Smith mentioned the key words are agree to monitor. Mr. Polzar stated the sub-committee and staff would gather information. There will be a review and sub-committee meeting if needed. Mr. DeHoff asked if business would do anything. Mr. Leatherman responded no. Mr. DeHoff asked if there should be a close watch and continue the



sub-committee. Mr. Leiker indicated there was no proposed bill. Mr. DeHoff moved to continue the sub-committee to monitor and discuss options. Mr. Leatherman seconded. Mr. Huston mentioned the data will be updated quarterly at the end of March. Mr. Weber indicated staff would send the information to members. Mr. Polzar indicated the sub-committee would review information as available. They would continue to monitor the status and continue discussing concepts and if a full Council meeting is advised, a meeting will be called. Dr. Krider mentioned the 1.0 HCM and asked if the Council will adopt this. Mr. Leatherman indicated yes, the HCM measure is comfortable, a standard measure of solvency adequacy of the fund at 1.0HCM. If it falls below that level, the Council will monitor more closely. Mr. DeHoff mentioned the Council could have an automatic recommendation for a tax increase. Mr. Leatherman responded that the sub-committee indicated the trust fund is not where it should be. There is a problem. One solution could be a significant tax increase this year. Mr. Morris commented that his company is concerned about spending unemployment. His controller of the company had a 32 percent increase in 2003 and a 72 percent increase in 2004. The increase in 2004 will cost an extra \$80,000. Kicking in a projected \$215,000 extra to an account balance of \$300,000 is difficult to accept. Dr. Smith asked if benefits are low with a RFR? Ms. Gilchrist indicated not the RFR but the reserve ratio. Dr. Smith mentioned operating a \$500M balance on taxes left for all. Mr. Weber agreed. Ms. Gilchrist indicated this is relative to wages. Dr. Smith mentioned a tax increase because of a low balance. Mr. Morris asked about the function of payout. Mr. Weber said this is individual and it is drawn on the company. All factors being the same, rates will increase due to draw down on the fund. Dr. Smith commented that because the fund is too low, we have a vicious circle. Dr. Krider advised not increasing taxes when the economy is weak. The negative side of a low trust fund balance is being higher to smooth out the balance. It would not effect how much but when an increase to employers. Dr. Krider felt it was important to say the standard is 1.0 then go back to the Council. Mr. Polzar stated there is a motion before the Council and Mr. Leatherman seconded that the sub-committee continue to monitor the fund and Dr. Smith to use KDHR staff as needed. Mr. Leatherman commented that the HCM should be a measure of 1.0 is a barometer where concern heightens. Dr. Smith stated that for him to continue with the sub-committee he would need a co-chair since his schedule requires him to be gone quite a bit. Mr. Leatherman indicated he would co-chair. Mr. Polzar asked if members understood the motion. Motion carried.

#### **Other Issues, Next Meeting**

There were no other issues presented. Scheduling the next meeting will remain open on an as needed basis.

#### **Adjournment**

Mr. Leatherman motioned the meeting to adjourn and Ms. Fornaro-Dean seconded. The meeting adjourned at 3:00p.m.

Respectfully submitted,

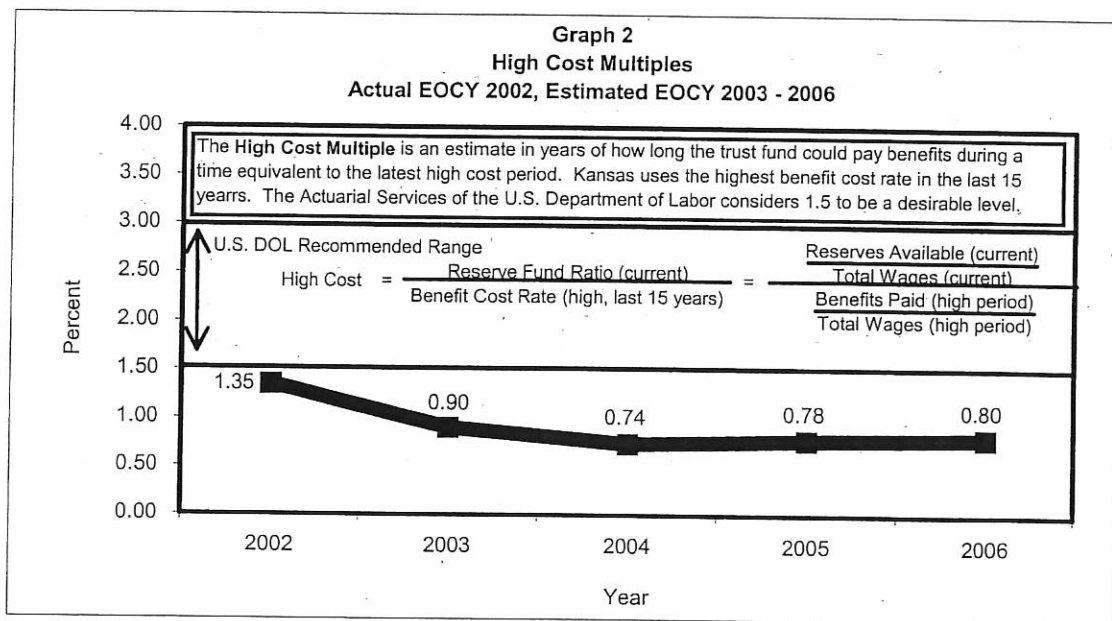
Matilda Michaelis

**Question 2: What would the trust fund balance be in 2005 were no action taken this year?**

Current projections depict 2.3 percent growth in the trust fund resulting in a trust fund balance of \$295.6M by the end of CY 2006. Factors used in these estimates include an insured unemployment rate of 2.0 percent for CY 2004 and 1.8 for CYs 2005 and 2006, an annual total wage increase of 4.8 percent, an annual taxable wage increase of 3.0 percent and an increase of 1.8 percent in covered employment each year.

Table 1  
Summary of Estimated Trust Fund Activity  
CY 2004 - 2006

Item	2004	2005	2006
Trust Fund Balance, January 1	\$289.0M	\$248.2M	\$274.4M
Contributions	282.4M	332.8M	348.3M
Benefit Payments	340.0M	323.0M	345.0M
Interest	16.8M	16.4M	17.9M
Trust Fund Balance, December 31	\$248.2M	\$274.4M	\$295.6M



**Question 3: How are the maximum and minimum weekly benefit amounts (WBA) calculated each year? How much have maximum and minimum benefit payments increased each year?**

Maximum and minimum weekly benefit amounts are calculated each fiscal year and are based upon calendar year average weekly wage. The maximum weekly benefit amount is 60% of the average weekly wage for the state. The minimum weekly benefit amount is 25% of the maximum weekly benefit amount.



Estimated Employer Savings Due to Moratorium  
CY 1995 - 1999

<u>Year</u>	<u>Estimated Savings</u>
	<u>\$555.9M</u>
1995	97.4M
1996	103.8M
1997	110.7M
1998	119.8M
<u>1999</u>	<u>124.2M</u>

# Legislative Testimony

SB 483

February 13, 2004

Testimony before the Kansas Senate Commerce Committee  
By Marlee Carpenter, Vice President Government Relations

Madam Chair and members of the committee:

I am Marlee Carpenter with the Kansas Chamber of Commerce and our members support the absenteeism changes in SB 483. Employers are frustrated in adjudicating unemployment compensation cases especially in absenteeism cases. There are several ways that SB 483 will help clarify these rules.

First, Administrative Law Judges adjudicate No-Call-No Shows as attendance discharges. In doing so, employers are required to provide prior warning to employees, advising them that if they continue to be absent from work, they could be discharged. Also, some judges will award the individual unemployment compensation because the reason the individual did not attend work is for "good cause."

Unless employees are medically unable to notify their employers that they will not be at work, this should be considered a violation of a reasonable duty toward employers and individuals should be disqualified from receiving unemployment benefits. This is especially true when employers have given employees a written policy that failing to call and report an absence would be grounds for termination. Failing to report an absence would be differentiated from attendance discharges.

Finally, in Kansas, if employees are absent due to incarceration, they are typically allowed benefits and the employer experience rating is charged. In Oklahoma, when an individual is absent from work for one week or longer due to incarceration, it is considered misconduct and the individual is disqualified from receiving benefits. In Illinois, if the absences were due to incarceration, the individual is allowed benefits, but the employer's experience rating is not charged.

These changes are important to our Kansas employers, especially in times of high unemployment. Unemployment compensation is for employees who are unemployed through no fault of their own. The changes in SB 483 would help clarify some of the absenteeism provisions in Kansas law. Thank you for your time and I will be happy to answer any questions.

*The Kansas Chamber is the statewide business advocacy group, with headquarters in Topeka. It is working to make Kansas more attractive to employers by reducing the costs of doing business in Kansas. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have nearly 7,500 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, large and medium sized employers all across Kansas.*

Senate Commerce  
02/13/04  
Attach #9



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Pam Pearson  
Dave Peterson  
Emil Ramirez  
Bruce Reves  
Steve Rooney  
Debbie Snow  
Wilma Ventura  
Betty Vines  
Dan Woodard*

Senate Commerce Committee  
February 13, 2004  
Senator Karen Brownlee, Chairperson

Madam Chair and Committee Members,

I am Jim DeHoff, Executive Secretary Treasurer representing the Kansas AFL CIO. I rise in opposition to SB 483.

The addition of language stating - - continued absence after exhaustion of Family Medical Leave Act benefits shall be considered a voluntary resignation - - would prove to be a discrimination against hourly employees.

The Family and Medical Leave Act provides a means for employees to balance their work and family responsibilities by taking unpaid leave for certain reasons. The Act is intended to promote the stability and economic security of families as well as the nation's interest in preserving the integrity of families. This is a family issue.

The Family Medical Leave Act applies to any employer in the private sector who engages in commerce, or in any industry or activity affecting commerce, and who has 50 or more employees each working day during at least 20 calendar weeks in the current or preceding calendar year.

The law covers all public agencies (state and local governments) and local education agencies (schools whether public or private). These employers do not need to meet the "50 employees" test. Title II of the act covers most federal employees, who are subject to regulations issued by the Office of Personnel Management.

To be eligible for Family Medical Leave Act leave, an individual must (1) be employed by a covered employer and work at a worksite within 75 miles of which that employer employs at least 50 people; (2) have worked at least 12 months which do not have to be consecutive) for the employer; and (3) have worked at least 1,250 hours during the 12 months immediately before the date Family Medical leave begins.

The Family Medical Leave Act provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12-month period for the following reasons:

\* Birth and care of the employee's child, or placement for adoption or



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foster care of a child with the employee

\* Care of an immediate family member (spouse, child, parent) who has a serious health condition; or

\* Care of the employee's own serious health condition.

Family Medical Leave Act only requires unpaid leave. However, the law permits an employee to elect, or the employer to require the employee, to use accrued paid leave, such as vacation or sick leave, for some or all of the Family Medical Leave Act leave period. When paid leave is substituted for unpaid Family Medical Leave Act leave, it may be counted against the 12 week Family Medical Leave Act entitlement if the employee is properly notified of the designation when the leave begins.

What does all of this mean: First of all, an individual could be off work and forced to take their vacation while on Family Medical Leave Act. It could be for any of the above reasons. This individual may have had 12 weeks of accrued vacation, which were used during a 13 week Family Medical Leave Act leave. One week over the 12 week limit. They are fired and no unemployment benefits are due if SB 483 becomes law. Understand this individual could have been on vacation 12 weeks anyway. What fairness would this be?

I mentioned discrimination earlier. Hourly workers and managers are treated differently.

KCCI has often testified the government should not dictate to industry how to run their business. In this instance we agree. Their members have a right to set attendance policy in their employee handbook or their union contracts. Line 16 (D) already addresses this issue.

Please don't allow an employer the right to unjustly penalize an individual for using a benefit which truly addresses family needs.

We respectfully ask that SB 483 be referred to the Employment Security Council for a recommendation.



Richard Clinesmith

KSA 44-706(a)

If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection (a).

Failure to return to work after expiration of approved personal and / or medical leave shall be considered a voluntary resignation.

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Attach # 11

Richard Clinesmith

Exhibit 2

KSA 44-706(d)(1)

For the purposes of this subsection (d), "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. The term "gross misconduct" as used in this subsection (d) shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection (d).

Failure of the employee to notify the employer of an absence or tardy prior to the commencement of their work shift shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

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Attach #12



Richard Clinesmith

Exhibit 3

KSA 44-706 (E)

If an employee disputes being absent and / or tardy without good cause the employee shall prove by a preponderance of physical evidence that a majority of the of the employee's absences and / or tardys were for good cause. If the employee alleges the tardiness or absence was the result of health related issues such evidence shall include documentation from a licensed and practicing health care professional as defined in (a)(1). Incarceration shall not be considered good cause for absence or tardiness.

Senati Commerce

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Attach #13