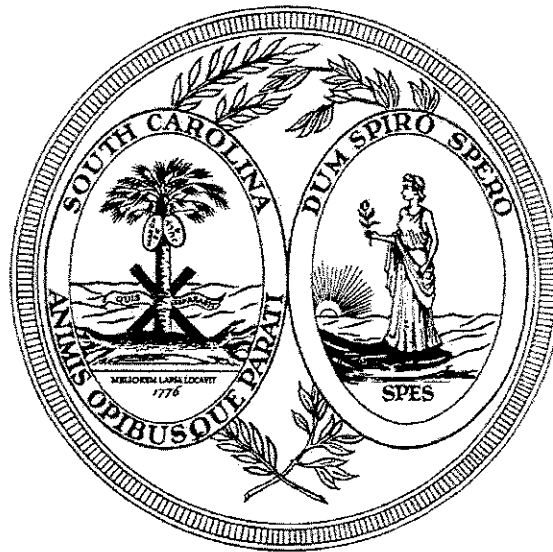


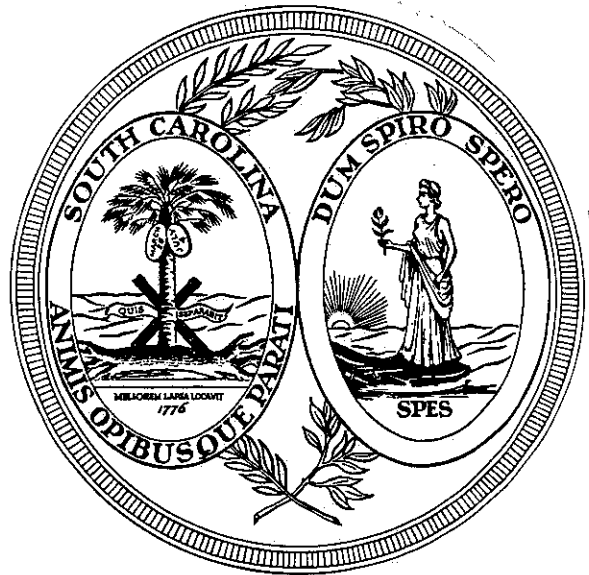
October 2003

A Review of the Department of Corrections' Prison Industries Program



October 2003

A Review of the Department of Corrections' Prison Industries Program



LEGISLATIVE AUDIT COUNCIL

1331 Elmwood Ave., Suite 315
Columbia, SC 29201
(803) 253-7612 VOICE
(803) 253-7639 FAX

Public Members

Dill B. Blackwell, Chairman
Nancy D. Hawk, Esq., Vice Chairman
Marion H. Kinon, Esq.
Philip F. Laughridge, CPA
Henry M. Swink

Members Who Serve Ex Officio

Scott H. Richardson
Senate Judiciary Committee
William S. Branton, Jr.
Senate Finance Committee
Rex F. Rice
House Ways & Means Committee
J. Adam Taylor
House Judiciary Committee

Director

George L. Schroeder

Authorized by §2-15-10 *et seq.* of the South Carolina Code of Laws, the Legislative Audit Council, created in 1975, reviews the operations of state agencies, investigates fiscal matters as required, and provides information to assist the General Assembly. Some audits are conducted at the request of groups of legislators who have questions about potential problems in state agencies or programs; other audits are performed as a result of statutory mandate.

The Legislative Audit Council is composed of five public members, one of whom must be a practicing certified or licensed public accountant and one of whom must be an attorney. In addition, four members of the General Assembly serve ex officio.

Audits by the Legislative Audit Council are conducted in accordance with generally accepted government auditing standards as set forth by the Comptroller General of the United States.

Copies of all LAC audits are available at no charge. We encourage you to visit our website to view and print copies of LAC reports.

www.state.sc.us/sclac

A Review of the Department of Corrections' Prison Industries Program
was conducted by the following audit team.

Perry K. Simpson
Audit Manager

Andrew M. Young
Senior Auditor

Typography
Candice H. Pou
Maribeth Rollings Werts

Senior Legal Counsel
Andrea Derrick Truitt

LAC

Report to the General Assembly

**A Review of the
Department of Corrections'
Prison Industries Program**

Contents

Synopsis

..... v

Chapter 1 Introduction

Audit Objectives 1
Scope and Methodology 1
Use of South Carolina Prison Labor by Private Organizations 2
Legal Requirements 3

Chapter 2 Audit Findings

Program Goals 5
Inmate Competition With Private Sector Workers 6
Bidding of Inmate Labor 10
Inmate Training Wage and Training Period 11
Incorrect Billing of Companies 12
Deductions From Inmate Wages 12
Sales of Products and Services to Government Entities 15

Appendix

Agency Comments 19

Contents

Synopsis

Members of the General Assembly requested that we conduct an audit of the prison industries program at the South Carolina Department of Corrections (SCDC). The requesters were primarily concerned with use of inmate labor by private sector companies. Our findings include the following.

- SCDC does not have adequate goals or performance measures for its prison industries program. Without adequate goals and performance measures, the effectiveness of the program cannot be accurately assessed.
- Under federal law, the use of inmates for manufacturing jobs by private sector companies involved in interstate commerce may not displace private sector workers. Also, wages must be comparable to those paid for similar work in the community. The Employment Security Commission needs to improve its methodology for determining comparable wage levels and for ensuring that displacement does not occur.
- We reviewed whether the prison industries program is operated in a manner which results in a competitive advantage over private sector workers. We found that the employment of SCDC inmates may create a competitive advantage over private sector workers because companies that employ inmates pay low wages, do not pay fringe benefits, and receive subsidized rent and utilities. Whether this competitive advantage results in the displacement of private sector workers by SCDC inmates also depends on whether a company would transfer its operations out-of-state or to a foreign country if it were not employing inmates.
- SCDC has not adhered to the requirements of the Prison Industry Enhancement (PIE) program by dividing the cost of inmate training between SCDC and a private sector company. In addition, SCDC has not consulted with the Employment Security Commission before establishing the training period for inmate workers.
- Contrary to state law, SCDC has not consistently made deductions from the wages of inmates in its prison industries who work for private organizations. As a result, funding has been reduced for items such as child support, victim restitution, and inmate room and board.
- South Carolina law limits competition between SCDC and private vendors in the sale of goods and services to government entities. As a result, there is a reduced incentive for SCDC and its private competitors to limit the prices they charge to government entities.

Synopsis

Introduction

Audit Objectives

Members of the South Carolina General Assembly requested the Legislative Audit Council to review the state's program of allowing private companies to use prison labor in their operations. They were concerned that inmates might be employed in jobs that would otherwise be filled by South Carolinians who are not inmates. Our objectives are listed below:

- Determine if the South Carolina Department of Corrections (SCDC) has complied with federal and state laws in its federally-certified and state prison industries program.
- Determine if SCDC's prison industries program is operated in a manner which results in a competitive advantage over private sector workers.
- Determine if SCDC has adequate procedures for procuring and monitoring its contracts to provide prison labor to private companies.
- Determine whether there is significant potential for increasing SCDC prison industry production and sale of goods and services to state and local government units in South Carolina.

Scope and Methodology

The period covered by our review was generally July 2001 through June 2003. During our review of SCDC's prison industries program, we:

- Examined SCDC contracts to provide prison labor to private companies.
- Examined prison industries financial statements and payment records.
- Examined relevant federal and South Carolina laws.
- Interviewed officials and obtained documents from organizations including SCDC, the State Budget and Control Board, the United States Justice Department, and states throughout the Southeast.

Our review of the department did not include an assessment of non-prison industries operations such as SCDC's farming, dairy, and construction enterprises.

To achieve some of our objectives, we relied on computer-generated data maintained by SCDC. We conducted limited testing to determine data reliability. We performed limited non-statistical sampling in the area of inmate wage deductions. We identified areas where management controls could be improved. When the data are viewed in context with other relevant data, we believe that the resulting opinions, recommendations, and conclusions in this report are valid.

This audit was conducted in accordance with generally accepted government auditing standards with the exception of the general standard concerning quality control. Due to LAC budget reductions, funding was not available for a timely external quality control review. In our opinion, this omission had no effect on the results of the audit.

Use of South Carolina Prison Labor by Private Organizations

SCDC has various programs in which inmates make products and provide services for private organizations. According to SCDC, these programs provide benefits to the state, including improved inmate behavior, improved inmate work habits and skills, increased ability of inmates to make payments toward child support and restitution, as well as reduced costs and increased revenue to the department.

Use of Inmates by Private Companies

As of August 2003, over 1,200 inmates worked in the prison industries division of SCDC making products or providing services for private companies. Examples of work performed by inmates under SCDC contracts with private companies include tearing down and cleaning of used transmissions (as part of a "rebuild" process), manufacture of electric wiring harnesses, and manufacture of hardwood flooring.

Under these contracts, companies pay for the raw materials. SCDC, in most instances, provides subsidized building space where the inmates work. The companies pay SCDC for providing prison labor, either on an hourly or production-based system. SCDC pays the inmates for their work. The companies sell the products and services produced under these contracts and retain the revenues.

SCDC pays the inmates amounts ranging from 35¢ to \$6.50 per hour. These amounts are negotiated by SCDC with the private sector companies. Under certain circumstances, the Employment Security Commission must be consulted before the wage can be set (see p. 7). SCDC makes deductions for items such as room and board, victim restitution, and child support from the wages of inmates who manufacture products that are sold through interstate commerce. Until FY 03-04, no deductions were made from the wages of inmates with service jobs or jobs that do not involve interstate commerce (see p. 14).

Use of Inmates to Provide Goods and Services to Government

In 2003, over 700 inmates in SCDC prison industries made products or provided services sold by the department to other government agencies. Examples of these operations include the manufacture of furniture, license plates, janitorial products, retreaded tires, and signs. SCDC pays these inmates amounts ranging from 0¢ to 60¢ per hour and makes no deductions from their wages.

Other SCDC Inmate Labor Programs

Independent of SCDC's "prison industries" division, inmates produce agricultural products such as dairy products and vegetables, primarily for use by SCDC. Some inmates work in SCDC prison construction and maintenance. Also, SCDC allows local governments to use inmate labor.

Legal Requirements

Federal and state minimum wage laws that apply to the general work force do not apply to inmates. There are, however, statutory wage requirements that apply to inmates. As described below, federal law regulates the wages of inmates with manufacturing and mining jobs if the products are traded through interstate commerce. South Carolina has a statute that regulates the wages of inmates used by private organizations for any category of job even if the products are not traded through interstate commerce. However, in recent years, this South Carolina statute has been overridden by a proviso to the state appropriations act.

Requirements of Federal Law

Federal law, 18 USC 1761(a), prohibits interstate commerce involving "any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution..." except when the convicts or prisoners work in a federally approved prison industry enhancement (PIE) project. In the PIE program, inmates are required to earn wages "... not less than that paid for work of a similar nature in the locality in which the work was performed." Federal law, therefore, requires that inmates working in most manufacturing or mining jobs be paid the prevailing wage for their geographical area.

Employment categories exempt from this inmate wage requirement include non-manufacturing, non-mining operations, the production of agricultural commodities, parts to repair farm machinery, as well as commodities sold to government agencies and non-profit organizations.

Requirements of State Law

Beyond the requirements of federal law, South Carolina does not currently regulate the wages of inmates used by private organizations.

Section 24-3-430(A) of the South Carolina Code of Laws authorizes SCDC to “establish a program involving the use of inmate labor by a nonprofit organization or in private industry for the manufacturing and processing of goods, wares, or merchandise or the provision of services or another business or commercial enterprise....”

Prior to FY 01-02, the wages of South Carolina inmates used by private organizations were regulated by §24-3-430(D), which states, “No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.”

Unlike federal law, this South Carolina statute applied to all categories of jobs in which inmates were used by private organizations, including agricultural and service jobs. Each year beginning with FY 02-03, however, the General Assembly has enacted a proviso to the state budget that overrides the prevailing wage requirement of §24-3-430 (D). Proviso 37.23 in FY 03-04 states that:

The Director of the Department of Corrections may enter into contracts with private sector entities that would allow for inmate labor to be provided for prison industry service work.... The use of such inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Service work is defined as any work such as repair, replacement of original manufactured items, packaging, sorting, recycling, labeling, or similar work that is not original equipment manufacturing.... The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts, and *such wages may be less than the prevailing wage for work of a similar nature in the private sector* [emphasis added].

Audit Findings

This chapter contains the findings from our review of SCDC's prison industries program that allows private companies to use inmate labor. We found that SCDC does not have adequate goals or performance measures for its prison industries program. In addition, the South Carolina Employment Security Commission (ESC) has an inadequate methodology for determining wage levels that are comparable to those in the community and for ensuring that inmates do not displace private sector workers. Deductions from inmate wages for items such as child support, victim restitution, and room and board have not been consistently made in compliance with state law. Also, we found that state law has limited competition between SCDC and private vendors in the sale of goods and services to government entities.

Program Goals

SCDC does not have adequate goals or performance measures for its prison industries program. SCDC states that its goals for the prison industries program are:

- Have inmates work a full productive day and reduce callouts.
- Produce quality products and services that create an economic benefit to governmental agencies.
- Continually create more jobs in Traditional, Service, and PIE areas, thereby employing more inmates and increasing revenue.
- Create a work ethic in each inmate worker so that job skills acquired can be taken into the free world marketplace upon completion of sentence.

There are other goals not established for prison industries which could help SCDC accomplish its mission of protecting the public, its employees, and the inmates. Among these are reducing recidivism and improving the working skills of inmates. SCDC also can earn money for its operations from prison industries. According to an agency official, during the current state budget crisis, prison industries has turned over several million dollars to help address SCDC's budget situation. In addition, a percentage of inmates' wages go to child support, room and board, and victim restitution.

We found, however, that the recidivism rate for inmates in the prison industries program is not better than that for the general population as a whole. In addition, we found that prison industries generally has better educated inmates and uses inmates who have been sentenced to longer terms than SCDC's general population. This may be an indication that prison industries is not serving the type of inmates that could benefit most from the program (i.e., those with poor work or educational skills who will be released within a few years).

Also, it is unclear if prison industries is self-sustaining. A 1998 audit cited evidence that prison industries may not be self-sustaining and recommended the implementation of a true cost analysis system. However, this system has not yet been put into place.

On an annual basis, the prison industries program reports information on product sales and deductions from inmate wages. These performance measures do not adequately reflect the degree to which the program has met its goals. Without adequate goals and performance measures, the effectiveness of the program cannot be accurately assessed.

Recommendation

1. The Department of Corrections should establish goals and performance measures for the prison industries program that accurately reflect the degree to which the program is assisting the department in meeting its mission. This information should be reported as part of the agency's accountability report.

Inmate Competition With Private Sector Workers

The employment of SCDC inmates may create a competitive advantage over private sector workers because companies that employ inmates pay low wages, do not pay fringe benefits, and receive subsidized rent and utilities. Whether this competitive advantage results in the displacement of private sector workers by SCDC inmates depends on whether a company would transfer its operation to a foreign country if it were not employing inmates.

The issue of worker displacement needs to be assessed on a case-by-case basis for each contract the department enters into with private employers. We found, however, that ESC has an inadequate methodology for conducting such an assessment. In our opinion, it is uncertain in some instances whether private sector workers are being displaced.

Displacement of Private Sector Workers

Under federal law, the use of inmate labor for manufacturing jobs by private sector companies involved in interstate commerce may not displace private sector workers. Some private sector companies state that, if they were not allowed to use inmate labor, the jobs would be done by workers overseas.

Before contracting with a private company, SCDC is required to contact ESC and have them determine if the use of inmate labor would result in the displacement of private sector workers. According to an official with ESC,

local ESC officials fill out a form answering either yes or no to the question of whether private sector employees are being displaced. There is no written methodology to be followed. ESC relies on the experience of the local ESC office in determining displacement.

We found four counties with above average unemployment rates in which private companies employ inmates.

Table 2.1: Counties With Above Average Unemployment Rates In Which Private Companies Employ Inmates

COUNTY	UNEMPLOYMENT RATE AS OF APRIL 2003
Marlboro	13.4%
Greenwood	9.7%
Lancaster	8.4%
Lee	7.5%

The average unemployment rate was 6.1% in South Carolina as of April 2003.
Source: ESC employment statistics.

We also found some other examples where displacement may be taking place. SCDC has two contracts to provide laundry services to private sector companies. Also, after a complaint, one company stopped using prison labor to disassemble and clean transmissions. This work is now being done by private sector workers in South Carolina.

Inmate Wages

Determination of “Comparable Wages”

SCDC is required by federal law to ensure that inmates in the Prison Industry Enhancement (PIE) program are paid a wage that “...is not less than that paid for work of a similar nature in the locality in which the work was performed.” This is also known as comparable wage. For most contracts, SCDC starts inmates at the Federal Minimum Wage (FMW) even if the “comparable wage” in the community may be higher. As a result, the probability that inmates will displace private sector workers is increased.

The United States Department of Justice (DOJ) has identified the FMW as the lowest wage permitted for the program. However, the DOJ leaves it up to the state employment agency to determine the comparable wage. In 2000 a review by the DOJ raised questions about the wages paid to inmates by the SCDC. As a result, ESC, the Department of Corrections, and representatives from several of the companies with contracts with SCDC met to discuss inmate wages. The result was that the starting wage for inmates in South

Carolina effectively became the federal minimum wage of \$5.15 per hour. However, federal PIE guidelines state, “Payment of the Federal minimum wage...does not automatically achieve compliance with the prevailing wage requirement unless the prevailing wage for the comparable private sector industries is, in fact, the Federal minimum wage.”

The wage for inmates in South Carolina ranges from the FMW to the 10th percentile wage contained in ESC’s annual employment survey. This means that the *upper-level* wage for inmates is set at a point where 90% of the private sector workers earn more. For example, using the wage for production workers in South Carolina as of April 2001, the wage range for inmates is \$5.15 – \$6.96 per hour. However, 90% of the production workers in the state make more than \$6.96 per hour and the *average* wage for production workers is \$10.17.

Inmates at SCDC perform a variety of jobs for companies engaged in interstate commerce ranging from manufacturing furniture to packaging gloves. Some proponents of the use of inmate labor have stated that comparing private sector workers to inmates is difficult because of the unique circumstances associated with operating an industry in a prison. For example, inmates are counted several times a day, which can slow production. However, federal law does not allow the unique costs of operating in a prison to be taken into account when setting inmate wages. Therefore, it is questionable whether all of the inmates who perform these jobs should begin at the federal minimum wage.

Wages for Non-PIE Industries

SCDC has a number of contracts with private sector companies where inmates are paid less than the FMW. The requirement that inmates be paid “comparable wages” does not apply to these jobs because they are service jobs and/or jobs that do not involve interstate commerce.

Allowing certain industries to pay less than minimum wage can result in a significant competitive advantage. While inmates do not have to be paid minimum wage, SCDC is still required to make sure that private sector workers are not displaced. It is particularly important in these instances that the issue of displacement be examined thoroughly.

Examples of the types of industries for which SCDC does not have to pay minimum wage include a contract SCDC has to disassemble, clean and reassemble transmissions. In another case, SCDC has a contract to manufacture shirts that are sent directly overseas without crossing state lines.

In most cases these shirts are sent through the port of Charleston and the inmates are paid less than FMW. However, a small percentage of the shirts are sent to North Carolina and then shipped by air to Japan. In this case, inmates must be paid the FMW.

There has been concern expressed about paying inmates less than minimum wage and federal legislation has been proposed that would require that all inmates be paid at least FMW regardless of the type of work performed. It is uncertain if this will become law in the near future.

Additional Benefits

Private sector companies contracting with prison industries receive other benefits from the use of inmate labor which can result in a competitive advantage over other private sector companies. Companies who contract with prison industries do not pay any fringe benefits for the use of SCDC inmates. In addition, most companies pay only a nominal fee (\$1 per month) for the use of SCDC buildings. SCDC provides these companies with at least 176,000 square feet of space. Also, companies can reduce their electricity bills by reimbursing DOC for electricity instead of being billed directly. In one case, a company was able to reduce its electric charge from 7¢ per Kilowatt hour to 4¢ per Kilowatt hour. These benefits are not reported by SCDC in its annual accountability report.

A federal consultant to the program noted that private sector industries are also given similar incentives by governments to try and encourage them to locate in their area.

Conclusion

According to a federal consultant for the program, the key to the economic balancing act between prison industries and the private sector is the state's wage setting agency. In South Carolina this is the ESC. According to the consultant, "the importance of an objective, arms-length relationship between [SCDC] and its state wage-setting agency to protect competing companies and free world labor cannot be overemphasized." When displacement and comparable wages are not properly determined, the result can be private sector workers losing the opportunity for gainful employment. In addition, the state may be putting its federal PIE certification in jeopardy.

Recommendations

2. The Employment Security Commission should review its methodology for determining displacement and inmate wages to ensure that inmates are not taking jobs from private sector workers and that wages are similar to those of private sector workers.
 3. The Department of Corrections should list the additional benefits received by private sector companies in its annual accountability report.
-

Bidding of Inmate Labor

SCDC does not bid out its inmate labor services. Instead, SCDC officials mostly network with companies to determine if they are interested in using inmate labor.

We identified one state that sought competitive bids for its inmate services. In Wisconsin, the prison industries program put out a request for proposals (RFP) offering the program's services. The RFP included a number of criteria. For example, inmates had to be paid a wage equal to the prevailing wage paid to private sector workers. Any contracts entered into had to be approved by both the Wisconsin Department of Corrections and the Legislative Joint Finance Committee. According to a Wisconsin official, the RFP resulted in two contracts but both have ended due to the poor economy and labor reductions by the companies involved.

Bidding out inmate labor services could increase awareness of the program and lead to greater use of inmate labor by private sector companies. This could also lead to fair and equitable treatment for all companies dealing with SCDC.

Recommendation

4. The Department of Corrections should examine the feasibility of bidding out inmate labor.

Inmate Training Wage and Training Period

SCDC has not adhered to the requirements of federal law by dividing the cost of inmate training between SCDC and a private sector company. In addition, SCDC has not consulted with the ESC before establishing the training period for inmate workers.

SCDC entered into an agreement with a private sector company that established a 160-hour training period for inmates. During this time the inmate workers would be paid a training wage of between \$5.15 and \$5.25 per hour which would be split between SCDC and the private sector company. At the end of the training period, the private company would pay the full cost of the inmate labor. For 2002, we estimate that the private sector company saved over \$50,000 by having SCDC pay half the training cost.

According to a May 14, 2003, letter from the U.S. Department of Justice, the federal programs' underlying statute requires participants to compete fairly with the private sector. DOJ officials concluded that "...it is our view that providing (a company) ...with financial support through sharing the cost of training does not meet the spirit of the fair competition requirement since competitor manufacturers in the community are not provided with the same support." During the course of our audit, SCDC notified the company that it could no longer pay half of the inmate wage during the training period.

We also found that the 160-hour training period was decided between SCDC and the private sector company without input from the ESC. According to a federal consultant for the program, any training period should be set in consultation with the state's ESC.

Recommendations

5. The Department of Corrections should ensure that inmate training wages are paid entirely by the private sector company hiring the inmates.
6. The Department of Corrections should consult with the Employment Security Commission when establishing a training period with private companies.

Incorrect Billing of Companies

Prison industries has not properly billed private sector companies for monies owed prison industries. During the course of our review, we reviewed invoices for private sector companies and found billing errors by prison industries. We found two instances where prison industries had failed to invoice companies for more than 8,700 inmate hours amounting to more than \$29,000. In another instance, prison industries incorrectly billed a company \$2.06 per hour of inmate labor when the company should have been billed \$7.06 per hour. This error amounted to more than \$4,000. During the course of our audit, prison industries invoiced these companies properly for the amounts owed. There is no independent review of the invoices of private sector companies to ensure that they have been billed properly.

Recommendation

7. The Department of Corrections should take steps to ensure that companies are billed properly for inmate labor.

Deductions From Inmate Wages

Contrary to state law, SCDC has not consistently made deductions from the wages of inmates in its prison industries who work for private organizations. As a result, funding has been reduced for items such as child support, victim restitution, and inmate room and board.

The department has made deductions from the wages of inmates who perform manufacturing jobs for private organizations involved in interstate commerce. SCDC has not, however, made deductions from the wages of inmates involved in “service” jobs and/or jobs that do not involve interstate commerce. “Manufacturing” jobs generally involve the production of physical goods. Examples of “service” jobs are packaging, rebuilding, and repairing.

In addition, the department does not have adequate procedures for checking whether inmates earning wages have court-ordered obligations to pay child support and/or victim restitution.

Federal and State Law

Section 18 USC 1761(c)(2) of federal law permits SCDC to make deductions from the wages of inmates who work in manufacturing and mining jobs producing goods sold through interstate commerce. These deductions may not exceed 80% of an inmate's wages. Service jobs and jobs not involving interstate commerce are not cited in this federal statute requiring inmate wage deductions.

South Carolina law requires SCDC to make specific deductions from the wages of all inmates who work in manufacturing or service jobs for private organizations, regardless of whether the goods or services are sold through interstate commerce. Section 24-3-430 of the South Carolina Code of Laws (in conjunction with §24-3-40) requires SCDC to make deductions from the wages of inmates in jobs that involve:

... the use of inmate labor by a nonprofit organization or in private industry for the manufacturing and processing of goods, wares, or merchandise or the provision of services or another business or commercial enterprise considered by the director to enhance the general welfare of South Carolina.

The deductions required by South Carolina law, §24-3-40, are listed below:

- 20% for victim restitution.
- 35% for child support if the inmate owes child support.
- 25% to defray SCDC's cost of room and board if the inmate does not owe child support.

After paying the preceding deductions, the remainder goes to the inmate's personal account and to pay federal and state taxes.

The wage deduction percentages listed above as they pertain to service jobs, were changed for FY 03-04 by an appropriations act proviso enacted by the General Assembly. In FY 03-04, SCDC is being required to deduct 20% from the service job wages of any inmate who has been ordered to pay restitution to a specific victim. For all other inmates, SCDC is required to deduct 10% for general victim restitution and 10% to defray the cost of room and board.

Deductions Made From Manufacturing Wages

To comply with federal and state law, SCDC has made deductions from the wages of inmates in prison industries who perform manufacturing jobs for private organizations involved in interstate commerce. For example, in FY 01-02, SCDC inmates with manufacturing and/or interstate commerce-related jobs received wages of approximately \$3.6 million. Deductions included:

- \$548,000 for child support.
- \$707,000 for victim restitution.
- \$491,000 for room and board.

Deductions Not Consistently Made From Service Wages

Until FY 03-04, SCDC did not make deductions from the wages of inmates who worked for private organizations performing service jobs or jobs that did not involve interstate commerce. As cited on page 13, however, deductions were required prior to FY 03-04, by §24-3-40 and §24-3-430, for items such as court-ordered child support and victim restitution, as well as room and board.

We analyzed the inmate wage deductions that were required by law but not made by SCDC in FY 01-02. More than \$200,000 in additional funding would have been allocated to victim restitution if SCDC had made the required deductions. There also would have been increased funding for child support and inmate room and board.

Inadequate Checking of Inmate Obligations

When inmates are hired by SCDC prison industries, department officials attempt to determine whether the inmates have court-ordered child support obligations by asking the inmates. However, asking inmates to report their own child support obligations may not be a reliable method collecting such information. We reviewed a sample of 22 inmate records from FY 01-02 and found 2 inmates who had been ordered by the courts to pay child support. However, SCDC had made none of the required child support deductions from the wages of one of these inmates. The Department of Social Services reports that it has a database of most South Carolinians who owe child support. If SCDC regularly informed DSS of inmates who are earning wages and or have accumulated earnings in an SCDC account, DSS could better determine which inmates have been ordered to pay child support.

Victim restitution orders are summarized in inmate sentencing documents maintained by SCDC. In the sample of 22 inmates cited above, 2 inmates had

been ordered by the courts to pay victim restitution. However, SCDC had made none of the required victim restitution deductions from the wages of one of these inmates. Following our review, agency officials took action to make the required deductions.

Recommendations

8. SCDC should ensure that it complies with all state laws that require deductions from the wages of inmates in its prison industries program who produce goods or perform services for private organizations.
9. SCDC and the Department of Social Services should coordinate with each other to ensure that legally required inmate wage deductions are made for child support.
10. SCDC should ensure that it regularly reviews inmate sentencing documents to ensure that wage deductions are made for court-ordered victim restitution.

Sales of Products and Services to Government Entities

Independent of SCDC's program of allowing private companies to use inmate labor, SCDC operates in-house enterprises which produce goods and services that are sold to governmental entities. We found that South Carolina law (§11-35-710(13), §24-3-330(A), and §24-3-340) limits the ability of private companies to compete with prison industries in the sale of goods and services to state agencies. Prison industries, however, is prohibited by state law (FY 03-04 Appropriations Act proviso 37.12) from selling retreaded tires to local governments.

If increased competition were permitted, there would be greater incentive for SCDC and its private competitors to charge lower prices to government entities. It is unclear whether the net effect of this increased competition would result in greater sales of prison industries goods and services.

SCDC Advantage When Selling to State Agencies

SCDC has a legally mandated competitive advantage over private sector vendors when selling goods and services (except for retreaded tires) to state agencies.

According to §11-35-710(13) of the South Carolina Code of Laws, state agencies are not required to solicit competitive bids, quotes, or proposals when purchasing items from SCDC. When these same state agencies purchase items from private vendors, above a specific dollar amount, they are required to solicit bids, quotes, or proposals from multiple sources.

Under §24-3-330(A) and §24-3-340, state agencies are required to buy goods and services from SCDC when SCDC's price is equal to or lower than prices charged by other vendors. State agencies are allowed but not required to purchase items from SCDC when its price is higher than those of other vendors.

SCDC's competitive advantage over private vendors gives it the ability to increase its revenue by charging higher prices to state agencies.

Private Vendor Advantage When Selling Retreaded Tires to Local Governments

State law allows local governments in South Carolina to purchase any of SCDC's inmate-made goods and services except for retreaded tires. These tires are produced exclusively at the department's Lieber institution.

Prior to FY 02-03, SCDC was authorized by an appropriations act proviso to sell retreaded tires to "governmental" agencies. Beginning in FY 02-03, however, South Carolina's appropriations act has contained a proviso (37.12 in FY 03-04) which states, "[t]he tire retreading program at the Lieber Correctional Institution shall be limited to the marketing and sale of retreads to state governmental entities."

The revised proviso has the effect of prohibiting sales to local governments. This restriction reduces potential revenue to SCDC and, due to reduced competition, gives private vendors greater ability to charge higher prices to local governments.

No Formal Monitoring of Compliance With State Law

As noted above, §24-3-330(A) of state law requires state agencies to purchase goods from prison industries except when other suppliers have lower prices. Section 24-3-330(B), states:

The Materials Management Office of the Division of General Services [within the state Budget and Control Board] shall monitor the cooperation of state offices, departments, institutions, and agencies in the procurement of goods, products, and services from the Division of Prison Industries of the Department of Corrections.

MMO, however, does not have a formal process for monitoring or reporting on state agency purchases from SCDC's prison industries. As a result, there is an increased chance that state agencies are, without detection, out of compliance with state law. MMO does routinely conduct audits of state agencies to determine compliance with purchasing laws, but purchases from prison industries are not reviewed.

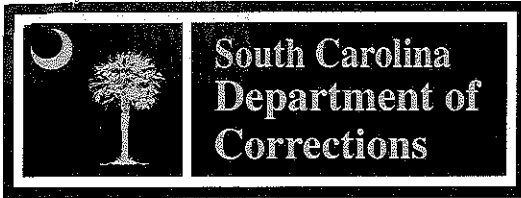
Recommendations

11. The General Assembly should consider amending state law so that state agencies are required to follow the same purchasing laws whether buying goods and services from the South Carolina Department of Corrections or from other vendors.
12. The General Assembly should consider amending state law so that local governments have the authority to purchase any of the inmate-produced products sold by SCDC.
13. The materials management office of the State Budget and Control Board should implement a formal process for complying with §24-3-330(B) of the South Carolina Code of Laws. This process should include regular monitoring and reporting of state agency compliance with the laws pertaining to state agency purchases of SCDC goods and services.

Chapter 2
Audit Findings

Agency Comments

**Appendix
Agency Comments**



October 20, 2003

Mr. George L. Schroeder, Director
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, SC 29201

Dear Mr. Schroeder:

Per your letter of October 14, 2003, below are my comments to the Final Draft Report of your review of the South Carolina Department of Corrections' (SCDCs') Prison Industries Program.

1. Program Goals: SCDC does not have adequate goals or performance measures for its prison industries program. Without adequate goals and performance measures, the effectiveness of the program cannot be accurately assessed.

Response: The Legislative Audit Council (LAC) concedes that PI has four clearly defined goals. The report fails to note, however, that our Mission Statement, which is clearly stated on our web site and posted on the walls of each prison includes, "Delivering value by becoming more self-sufficient and by constant evaluation and improvement in the operations, services and programs." Our Mission includes self-sufficiency and rehabilitation that is required by enabling statute, SC Code Section 24-1-20. Promoting self-sufficiency and rehabilitation, and reducing recidivism are clearly part of our Agency Mission and are, therefore, part of the primary mission of PI.

The LAC also alleges that recidivism rates for inmates in PI is not better than that of the general population as a whole. Our entire agency three-year recidivism rate is 29% -- among the top three correctional agencies in the country. We believe that our success is directly attributable to our ability to provide work opportunities. Work opportunities build a work ethic. National studies have demonstrated that inmates who work or attend class in prison are less likely to re-offend. However, we agree that it would be helpful to compare the recidivism rate for PI inmates to those of other groups of inmates. Currently, there is an ongoing study making such a comparison. Beyond anecdotal evidence, the LAC cites no reports or finding to support its contention that recidivism rates for inmates in the PI program are not better than that for the general population.

Mr. George L. Schroeder, Director
October 20, 2003
Page Two

2. Inmate Competition With Private Sector Workers: The LAC states that the employment of SCDC inmates may create a competitive advantage. The LAC is “uncertain” about whether or not private sector workers are being displaced.

Response: The LAC makes no mention of speaking to non-inmate employees of those companies who have jobs now because these labor-intensive operations are not overseas. Surley, the LAC is aware that these labor-intensive manufacturing jobs in South Carolina and in the nation have been leaving our borders at an alarming pace.

The LAC listed four counties with high unemployment rates in which private companies employed inmates. The LAC fails to mention that those private companies also employ civilian workers. Furthermore, the LAC fails to note that there are other counties with low unemployment rates, where private companies employ inmates. There is simply no connection and to imply a connection is misleading.

The LAC stated that “after a complaint, one company stopped using prison labor to disassemble and clean transmissions. This work is now being done by private sector workers in South Carolina.” The LAC fails to provide adequate details about this complaint. The complaints came from unions, and it is true that one of the big three domestic auto makers chose to stop using inmate labor. However, two of the three domestic auto makers continue to use inmate labor, as do two of the big three Japanese auto manufacturers. Those four large auto makers recognize that these inmate jobs prevent certain industries from operating overseas and that these inmate jobs do result in the employment of private sector workers.

With regard to the remaining LAC concerns about inmate competition with private sector workers, the LAC fails to note that PI has worked closely with the Employment Security Commission (ESC) which resulted in the ESC approving a wage plan for each cost accounting center (that is, each PIE project within our correctional institutions). The wage plans ensure inmates receive comparable wages, and complies with the Bureau of Justice Assistance Guidelines (J): “BJA strongly encourages the use of wage plans that take into consideration a PIECP workers’ experience, seniority and performance.”

ESC met with each company having a project within one of South Carolina’s prisons to determine the specific task required by the private sector company for each job on the outside and for each job on the inside of the fence. ESC analyzed the task, the degree of complexity, level of control by the worker, cross training,

independent decision making in the various jobs and other factors. ESC learned from the companies that inmate tasks were more entry level, repetitive, heavily supervised, with little independent decision making. Not all skill tasks performed by civilians were performed by inmates. Accordingly, ESC established a wage plan that PI adopted in 2002 which allows inmate, with little or no skills, to enter a job for 90 days, be evaluated by both PI and the private sector company for retention, and then annually thereafter receive a review for a raise. ESC and PI created a realistic world scenario for inmate workers.

Amazingly, in this entire section, the LAC makes no mention of the benefits to the primary mission of SCDC, public safety, by ensuring that inmates are gainfully employed and busy.

3. Bidding of Inmate Labor: The LAC states that SCDC does not bid out its inmate labor services. Instead, SCDC officials must network with companies to determine if they are interested in using inmate labor.

Response: It is a misconception that many companies are contacting PI for opportunities to use inmate labor. The most effective way to contract for inmate labor is what Industries is currently doing. From time to time, an announcement of available space in one of our correctional facilities is placed in the South Carolina Business Opportunities Bulletin, published by the Materials Management Office. This is a widely disseminated publication. An additional method is networking at regional and national correctional industries meetings. One other method used is writing targeted letters to potential companies both locally and regionally. Using these methodologies allows Industries flexibility in exploring opportunities with companies. Interestingly, few companies have inquired into opportunities with Industries and even fewer companies get to a serious stage of discussion. Bidding out inmate labor would be costly and time consuming as Industries would take weeks to prepare a generic proposal and spend time finding potential companies to receive a proposal. Experience has been that through the marketing methods discussed above, companies contact Industries and discuss a potential relationship. If both Industries and the company agree, a potential win-win situation exists, then negotiations take place. Maximum flexibility is needed at this point. A decision by both parties can be made to proceed or stop.

3. Inmate Wage and Training: The LAC concludes that PI does not adhere to the requirements of federal law by dividing the cost of inmate training between SCDC and a private sector company.

Response: This conclusion is wrong. Prison Industries requires its eleven private sector partners to pay the cost of inmate training. On May 17, 2001, one company asked if PI could split the cost of training due to a severe downturn in the economy. The request was made to the U.S. Justice Department and approval granted. During this audit, the LAC raised the question again with Justice, as only one company was using this methodology. After Justice took a second look, a recommendation was made to PI to cease the split training cost. Accordingly, on July 17, 2003, Industries notified the company that the split system would cease immediately. This company now pays the full training cost.

4. Incorrect Billing of Companies: SCDC should take steps to ensure that companies are billed properly for inmate labor.

Response: There is currently a check system in place for each company that is billed for inmate labor to ascertain that all inmate hours have been billed properly. Due to Department of Corrections' budget reductions and reductions in force, the Industries' accounting department is 40% smaller than three years ago, with no reduction in work load. Some personnel had to be trained in areas in which they had not previously worked and other duties had to be realigned. The mentioned missed and erroneous invoices occurred during a time of transition between employees.

5. Deduction from Inmate Wages: The LAC alleges that SCDC has not made deductions from wages of inmates in its prison industries who work for private organizations.

Response: This conclusion is wrong. SCDC is currently in compliance concerning all wage deductions. Additionally, SCDC has passed three compliance reviews by the Bureau of Justice Assistance in its PIE operations. Furthermore, inmates who work in the PIE program are paid through the Comptroller General's (CG's) payroll system as are all SCDC employees. Periodically, DSS runs a computer program against the CG's payroll to detect any potential child support discrepancies. These discrepancies are then reported to the various agencies. Inmates who work for the service program have only recently had deductions

withheld from their checks and these inmates are paid on an inmate payroll system versus the CG's system. An official from the Child Support Enforcement Division for DSS has been contacted about the potential use of DSS's Employee New Hire Reporting program. Programming would have to be completed by SCDC to capture newly hired inmate data to be furnished to DSS.

The LAC also states that SCDC does not have adequate procedures for checking to see whether inmates earning wages have court-ordered obligations to pay child support and/or victim restitution. This statement is also incorrect. Inmate records are examined when an inmate is being hired into an Industries position.

6. Sales of Products and Services to Government Entities: The LAC found that South Carolina law limits the ability of private companies to compete with prison industries in the sale of goods and services to state agencies.

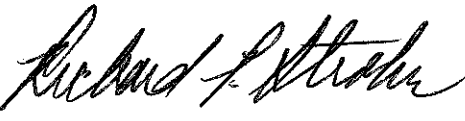
Response: State law does not have to be amended in order for state agencies to be required to follow the same purchasing laws whether buying goods and services from the South Carolina Department of Corrections or from other vendors. In Articles 1 through 21 of the South Carolina Consolidated Procurement Code and accompanying regulations, the process is clearly set forth for the acquisition of goods and services by governmental entities from any source. State procurement law clearly allows the Budget and Control Board, upon recommendation of the Division of General Services, to exempt governmental bodies from purchasing certain items through the respective chief procurement office's area of responsibility in Section 11-35-710. In addition, the Materials Management Office establishes contracts for items, as well as for individual agencies. This process gives agencies a choice as to acquiring the needed products and services at the most competitive prices from available public or private sources.

PI jobs are critical in helping SCDC maintain safety and efficiency. The South Carolina Department of Corrections is currently the second most efficient correctional system in the country. We have achieved this remarkable value to the taxpayer by seeking ways to become more self-sufficient. SCDC's current inmate-to-staff ratio is well over double the national average. SCDC's Prison Industries Program is currently a model for the nation. Any review of the Prison Industries Program is incomplete without a complete and thorough consideration of the value of the ability to keep inmates gainfully employed within the confines of prison fences. SCDC has carefully attempted to do that with minimal competition to the private sector. At current funding levels within our Agency, changes that would reduce the numbers of inmate jobs available within our fences will result in the prisons being less safe and less efficient.

Mr. George L. Schroeder, Director
October 20, 2003
Page Six

Any reduction in inmate jobs most likely will result in more violence within our prisons and the need to hire additional staff. Thus, in addition to victims losing restitution currently being paid by inmates, taxpayers of South Carolina would have an even larger bill to hire more staff to supervise more idle inmates.

Sincerely,


for Jon Ozmint

JO:abb



www.sces.org

South Carolina Employment
Security Commission
P. O Box 995
Columbia, SC 29202

October 20, 2003

COMMISSIONERS
J. William McLeod
McKinley Washington, Jr.
Carole C. Wells

Mr. George L. Schroeder
Director, Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, SC 29201

EXECUTIVE DIRECTOR
Roosevelt T. Halley
(803) 737-2617
thalley@sces.org

Dear Mr. Schroeder:

This letter is the Employment Security Commission's response to the summary of your audit *A Review of the Department of Corrections' Prison Industries Program*. Our response specifically addresses the excerpts "Inmate Competition with Private Sector Workers" and "Inmate Training Wage and Training Period" that pertain to ESC.

SCESC has been working for some time with SCDC for its Prison Industries program. ESC's approach with SCDC has been the same as with our other customers. That is, the customer identifies its need, we work with that customer to meet its needs, and we work further with that customer to better meet its needs when asked. In the case of the Prison Industries program, SCDC identified a need to us for wage and local job market information, and we provided that information to SCDC. When SCDC judged that information inadequate, we worked with them to arrive at a solution satisfactory to SCDC. We have not been advised by SCDC as to specific legal or regulatory guidelines governing the wage and displacement information SCESC has provided.

Thank you for the opportunity to respond to your findings. If you have any questions, please contact Bob Branham, director of our Labor Market Information Department, at 737-2660.

Sincerely,

Roosevelt T. Halley
Executive Director

ES-8



Serving Children and Families

KIM S. AYDLETTE, STATE DIRECTOR

October 22, 2003

Mr. George L. Schroeder, Director
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, SC 29201

Dear Mr. Schroeder:

We received the final draft report entitled, "A Review of the Department of Corrections' Prison Industries Program." The Department of Social Services (SCDSS) has no additional comments beyond those in our September 24, 2003 letter to you regarding the preliminary draft.

We appreciate the opportunity to comment and will work with the South Carolina Department of Corrections to explore alternatives for the verification of inmates with court-ordered child support obligations.

Sincerely,

A handwritten signature in black ink that reads "Kim S. Aydlette". The signature is written in a cursive style with a large initial 'K'.

Kim S. Aydlette
State Director

KSA:cmm



Serving Children and Families

KIM S. AYDLETTE, STATE DIRECTOR

September 24, 2003

Mr. George L. Schroeder, Director
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, SC 29201

Dear Mr. Schroeder:

Listed below is the Legislative Audit Council's recommendation for the South Carolina Department of Corrections (SCDC) as it relates to the collection of child support and the South Carolina Department of Social Services' (DSS') response.

LAC RECOMMENDATION:

SCDC and the Department of Social Services should coordinate with each other to ensure that legally required inmate wage deductions are made for child support.

DEPARTMENT OF SOCIAL SERVICES' (DSS') RESPONSE:

DSS agrees with the finding as far as it is practical. While the DSS has most child support cases in the State, the Agency does not have all such cases. Private cases are maintained at each of the forty-six (46) Clerk of Court offices. DSS maintains approximately 225,000 Child Support Enforcement Program cases on its database. The number of SCDS inmates is unknown to DSS at this time and DSS does not know whether there is a central SCDC database of all inmates.

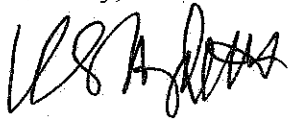
If the volume of SCDC inmates needing to be matched against the Child Support database is more than approximately one-hundred (100) per month, an automated matching of files would be preferred. If an automated match is necessary, this will require the two agencies to develop system extract and matching files. If the volume per month is small SCDC could send, via email, a listing to DSS' Division of Child Support Enforcement for manual input for research.

Letter to Mr. George L. Schroeder, Director
Legislative Audit Council
Page 2

In summary, DSS will work with the SCDC to explore alternative ways of verifying inmate obligations for court-ordered child support.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "K. S. Aydlette". The signature is stylized and somewhat cursive.

Kim S. Aydlette,
State Director

KSA:cmm

STATE OF SOUTH CAROLINA
State Budget and Control Board
OFFICE OF EXECUTIVE DIRECTOR

MARK SANFORD, CHAIRMAN
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

RICHARD ECKSTROM
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

ROBERT W. HARRELL, JR.
CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK W. FUSCO
EXECUTIVE DIRECTOR

P.O. Box 12444
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-2320

October 17, 2003

Mr. George L. Schroeder, Director
South Carolina Legislative Audit Council
1331 Elmwood Ave., Suite 315
Columbia, S.C. 29201

Dear Mr. Schroeder:

This is a response to the audit, *A Review of the Department of Correction's Prison Industries Program*. We appreciate the professionalism of your staff and the opportunity to comment on this document.

Your audit states that the MMO does not have a "formal process" for monitoring or reporting on state agency purchases from prison industries and that "as a result, there is an increased chance that state agencies are, without detection, out of compliance with state law."

We believe that the statute in question clearly gives MMO a very limited scope of oversight of these purchases, with a stated goal of ensuring agency "cooperation" with the Department of Corrections' Prison Industries program. A plain reading of 24-3-330(A) indicates that the intent of the legislation is that MMO should only ensure that agencies are not refusing to do business with Prison Industries, not that our office should judge the cost effectiveness of the transactions. The process for monitoring cooperation is to review an annual report on agency purchasing trends with Prison Industries. We are also in periodic contact with Department of Corrections staff responsible for this program to determine if problems exist.

A formal auditing process as suggested in your recommendation is not authorized by current statute. MMO's authority to audit agency purchasing practices is found in the Consolidated Procurement Code. Purchases from Prison Industries are exempt from the Code and thus are not subject to the Code's requirement of regular audits. Should the General Assembly desire that Prison Industries be subject to such an audit, a change in the existing statute may be necessary.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank W. Fusco".

Frank Fusco

This report was published for a total cost of \$157.50; 70 bound copies were printed at a cost of \$2.25 per unit.

