

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

PRISON INDUSTRIES

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 104

**COMMONWEALTH OF VIRGINIA
RICHMOND
2000**

MEMBERS OF THE JOINT SUBCOMMITTEE

The Honorable Glenn R. Croshaw, *Chair*
The Honorable William T. Bolling, *Vice-Chair*
The Honorable Anne G. Rhodes
The Honorable James M. Schuler
The Honorable James K. O'Brien
The Honorable W. Henry Maxwell
The Honorable Patricia Ticer

STAFF

DIVISION OF LEGISLATIVE SERVICES

Amigo R. Wade, *Senior Attorney*
Maria J.K. Everett, *Senior Attorney*
Rhonda J. Dyer, *Operations Staff Assistant*

HOUSE COMMITTEE OPERATIONS

Kimberly Rockhold, *Coordinator*

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I. EXECUTIVE SUMMARY

House Joint Resolution No. 606 (Appendix A), agreed to during the 1999 Session of the General Assembly, established a joint subcommittee to study prison industries. As part of its study, the joint subcommittee was directed to examine the laws excepting such industries from competitive bidding requirements.

Virginia Correctional Enterprises (VCE) administers work programs that employ approximately 1,400 inmates. Under Virginia law, goods produced or manufactured by and services provided by inmates are required to be purchased by all departments, institutions and agencies of the Commonwealth supported in whole or in part by state funds. The Director of the Division of Purchases and Supply, within the Department of General Services, may exempt a state government entity from this mandatory procurement provision in certain instances. Though not provided for in statute, VCE also grants waivers if it does not offer the desired product, it has nothing compatible with the state entity's requirements, or the delivery requirement cannot be met. While VCE has a mandate to be self-sufficient, it is restricted in selling its products, in most instances, to only governmental and nonprofit entities. Legislation enacted in 1996, however, authorized the VCE to engage in joint ventures with private sector entities.

In carrying out its charge the joint subcommittee reviewed operations with VCE representatives and the use of mandatory sourcing requirements regarding prison industries in several other states. The joint subcommittee also received public comment from private sector businesses and state entities subject to the mandatory source provision. Public comment revealed concern in the private business sector that the mandatory source provision deprived businesses of opportunities in state contracting and fostered unfair competition resulting in lost business and jobs. Information provided by VCE indicated that prison work programs reduce risks and idleness in facilities, generate salaries to staff and inmates, and introduce inmates to a real life work ethic.

After its review and study of the issues related to prison industries in the state, the joint subcommittee approved a series of recommendations including the elimination of the mandatory source provision by January 1, 2002 and requiring the VCE Advisory Board and the Department of Corrections to report on the progress of implementation to the 2001, 2002 and 2003 sessions of the General Assembly.

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING PRISON INDUSTRIES**

To: The Honorable James C. Gilmore, III, Governor of Virginia
and
The General Assembly of Virginia

Richmond, Virginia
January 2000

II. INTRODUCTION

House Joint Resolution No. 606 (Appendix A), agreed to during the 1999 Session of the General Assembly, established a joint subcommittee to study prison industries. As part of its study, the joint subcommittee was directed to examine the laws excepting such industries from the competitive bidding requirements. The joint subcommittee is composed of seven members: four members from the House of Delegates, appointed by the Speaker of the House, and three members of the Senate appointed by the Senate Committee on Privileges and Elections.

III. BACKGROUND

A. Overview

The Director of the Department of Corrections (DOC) has a duty under § 53.1-41 of the Code of Virginia to provide the state's inmates with opportunities to work. Virginia Correctional Enterprises (VCE) was established to address this mandate. A statewide conglomerate, VCE manages 22 production facilities in 14 correctional institutions. It employs approximately 1,400 inmates who produce goods such as wood and metal furniture and clothing and provide laundry, printing and other services. Goods produced or manufactured by and services provided by inmates are required to be purchased by all departments, institutions and agencies of the Commonwealth supported in whole or in part by state funds. The Director of the Division of Purchases and Supply, which is within the Department of General Services, may exempt a state government entity from this mandatory procurement provision where (i) the VCE product, in the Division Director's opinion, does not meet the reasonable requirements of the state entity or (ii) the requisition cannot be met because of an insufficient supply of the requested item. In addition, VCE may grant a waiver if it does not offer the desired product, it has nothing compatible with the state entity's requirements or the delivery requirement cannot be met.

State entities are prohibited from evading the mandatory purchase requirement by slightly varying their specifications for the items. An individual may be removed from office where there has been an intentional violation of the mandatory procurement requirements.¹

While VCE has a mandate to be self-sufficient by offsetting all operating costs through the sale of inmate-produced goods and services, there are restrictions on the customers to whom it may offer its goods and services. Pursuant to § 53.1-45, VCE may sell its products, in most instances, only to government and nonprofit entities. VCE may not offer for resale any manufactured goods to state entities unless such goods (i) have been incorporated into a finished product produced or manufactured by prisoners, (ii) are necessary for use with a product produced or manufactured by prisoners, or (iii) are a component part of a product system, a portion of which comprises goods produced or manufactured by prisoners. In 1996, VCE was authorized under § 53.1-45.1 to engage in joint ventures with private sector entities. Using this authority, VCE entered into several joint ventures. Goods or services provided by prisoners participating in an approved joint venture program are subject to mandatory procurement by state agencies and may be purchased by local governments and nonprofit entities. In addition, such goods and services may be bought, sold or acquired by exchange on the open market through the entity participating in the joint venture with VCE.

VCE is also certified under the Prison Industry Enhancement (PIE) Certification Program administered by the Bureau of Justice Assistance in the United States Department of Justice. The PIE 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 allows private industry to establish joint ventures with state and local correctional agencies to produce goods using prison labor and releases these agencies from the normal restrictions on the sale of prisoner-made goods in interstate commerce. Two aims of the PIE program, and the projects instituted under the program, are to allow inmate pay to provide a source of repayment to victims, and to help defray the costs of inmate housing and maintenance.²

B. Previous Studies

The Virginia Public Procurement Act (§ 11-35 et seq.), which became effective in January 1983, contains the public policies of the Commonwealth pertaining to governmental procurement from nongovernmental sources. Generally, the VPPA seeks to ensure that (i) public bodies obtain high quality goods and services at

¹ See § 53.1-49.

² In a September 1998 report to the Secretary of Public Safety, the Virginia Corrections Enterprises Task Force that the total amounts paid out of inmate salaries from July 1, 1997, through June 30 of 1998 was approximately \$225,000.

reasonable costs, (ii) public procurement is administered in a fair and impartial manner, and (iii) qualified vendors have access to the public's business. To achieve these purposes, the VPPA establishes a procedure for awarding public contracts based on competitive principles and provides that all public contracts with nongovernmental contractors for the purchase or lease of goods, for the purchase of services, or for construction be awarded after *competitive sealed bidding* or *competitive negotiation*, unless otherwise provided by law.

Excluded from the VPPA's general requirement for *competitive sealed bidding* or *competitive negotiation* are the mandatory procurement provisions requiring state entities to purchase goods produced or manufactured by, and services provided by, inmates. The effect of this mandated procurement has been the subject of two legislative studies.

In 1992, the General Assembly passed House Joint Resolution No. 106, establishing a joint subcommittee to study the VPPA and the regulations governing procurement by state agencies that had been adopted by the Department of General Services' Division of Purchases and Supply. The purposes of the study were to review the VPPA, make recommendations for improvements to the government procurement process, and ensure that the VPPA was being adhered to by both governmental purchasers and nongovernmental vendors.

During the course of its study, the joint subcommittee received testimony from several of the state's public universities expressing concern over the mandatory procurement from VCE³. The concerns centered on three problems:

- Price--VCE prices were not competitive with private sector prices;
- Quality--Goods produced by VCE were not as good as those produced by the private sector; and
- Service--Deliveries by VCE were not made in a timely manner and the flow of information was slow or nonexistent.

VCE presented the subcommittee with information supporting the mandatory source provision, citing its need to ensure the viability of the work programs. VCE also asserted the worth of the work programs through their use as a critical management tool for the DOC and the benefit the programs offer to participating inmates. In addition, VCE disputed that the prices for its goods and

³ Concerns of the public universities were also addressed to the Virginia Industries for the Blind and the Department of Information Technology (See Interim Report of the Joint Subcommittee Studying the Virginia Public Procurement Act and the Regulations Adopted by the Division of Purchases and Supply for Procurement, *House Document No. 77*, pp. 2-3 (1993)).

services were unfair and provided documentation indicating that VCE prices were lower than the average market prices for a variety of goods.

In its report, House Document No. 77 (1993), the subcommittee recommended that legislation be introduced continuing the study an additional year to address several issues that had been raised. One issue that the subcommittee felt warranted additional study was the exemption from the competitive procurement process for goods and services provided by institutions such as sheltered workshops and correctional facilities, and the results of allowing such exemptions, including whether VCE actually produced skilled employees for the business community. The subcommittee also recommended that legislation be introduced directing the Division of Purchases and Supply to develop and organize an advisory group to evaluate and make recommendations concerning the services, operation, and performance of VCE.

In 1993, the General Assembly passed two resolutions pertaining to the continued study of the VPPA and the mandatory procurement provisions. House Joint Resolution 695 continued the joint subcommittee established pursuant to HJR 106 (1992) to examine the exemptions from the competitive procurement process for goods and services provided by institutions such as sheltered workshops and correctional facilities. The General Assembly also passed HJR 694, directing the Division of Purchases and Supply to develop and organize an advisory group to evaluate the services and operations of VCE, including the review of the product line, quality and pricing. This led to the creation of the Procurement Advisory Committee (Committee). The Committee elicited responses from 72 state agencies and institutions addressing product quality, prices, delivery and customer service and surveyed 30 states in regard to mandated use by their state agencies, product pricing, and the basis for granting exemptions from mandatory procurement. The Committee also visited manufacturing sites and interviewed VCE staff involved in production, sales, and customer service. The Committee presented a series of recommendations to the joint subcommittee regarding VCE operations, products and quality.

In its report, House Document No. 92 (1994), the joint subcommittee recommended that legislation be introduced to create the Virginia Correctional Enterprises Advisory Board. The Board would have the responsibility to (i) review new products and services manufactured or produced by VCE; (ii) review the pricing structure of products and services manufactured or produced by VCE; (iii) evaluate the level and quality of products and customer services offered by VCE and make recommendations on such quality and services; and (iv) advise the Director of the DGS on business trends, product development, contract opportunities, and other related matters.

The joint subcommittee also recommended that legislation be introduced providing that mandatory procurement by any department, institution or agency of

the Commonwealth for goods and services produced or manufactured by persons confined in state correctional facilities apply *only* to the extent that the contract requirements of the department or agency were not expected to exceed \$15,000. While legislation introduced in the 1994 Session of the General Assembly to have the mandatory procurement provisions apply to only those goods and services not expected to exceed \$15,000 failed, legislation creating the Virginia Correctional Enterprises Advisory Board was successful. Subsequent legislation effective July 1, 1996, expanded the duties of the Advisory Board to include reviewing proposed joint venture agreements and making recommendations to the Director of the DOC.

IV. ACTIVITIES OF THE JOINT SUBCOMMITTEE

August 4, 1999

The joint subcommittee met three times during the interim. At the initial meeting, staff provided background materials to the members of the joint subcommittee that included a summary of existing statutory provisions relating to VCE. Mr. Don Guillory, Director, also provided the joint subcommittee with an overview of VCE operations and its financial status. Total VCE sales for fiscal year 1999 were \$35 million. In addition, Mr. Guillory stated that VCE had cash on hand to meet its payroll obligations for four months and inventory and raw materials for approximately 90 days. VCE employs 165 "civilian" (non-inmate population) employees with a payroll of \$6.5 million and 1,400 inmates who receive a total compensation of \$1.1 million. The jobs employ 5.4 percent of the inmate population and an anticipated apprenticeship program could double that number.⁴ VCE manufactures or produces diverse products and services including clothing, workers, license tags, office systems, wood products, printing, metal products and laundry services. The clothing operation accounts for the largest volume of sales at 26 percent. While the wood products operation accounts for 12 percent of the total sales volume, it employs the largest percentage of inmate workers.

The Director also discussed the difficulty caused by the dual objectives of VCE operations: the need to work efficiently versus the need to employ more inmates. Mr. Guillory stressed the role that the work programs play in preventing idleness and teaching responsibility through exposure to a work ethic that would in turn increase the probability that the inmate will be able to adapt to society upon release. Though acknowledging past problems in the area of customer satisfaction, Mr. Guillory reported that recent customer surveys indicated significant improvement in customer satisfaction. In addition, 33 letters from a variety of VCE customers were submitted as an indication of the improved customer service efforts. The joint subcommittee was also briefed on recent changes to improve operations at

⁴ According to VCE, the racial composition of its workforce is 57.6% Black and 39.2% White with the remaining 2.0% of other races.

VCE including hiring a chief operating officer and implementing a strategic business plan.

Members of the joint subcommittee expressed concern about VCE operations, particularly related to joint venture activities, and the effect mandatory procurement provisions have on private sector businesses. The joint subcommittee determined that it would receive public comment on these issues at its next meeting. In addition, the joint subcommittee requested that, by the next meeting, VCE provide a response to several questions related to its operations and joint venture agreements.

September 22, 1999

VCE Director Don Guillory began the meeting by reviewing VCE responses to several joint subcommittee inquiries from the first meeting. He stressed the importance of the work programs in developing a work ethic and teaching processes such as the operation of heavy machinery. General reference was made to studies supporting the finding that inmates involved in prison enterprise work programs are less likely to re-offend upon release and are more likely to acquire and maintain traditional employment than those that are not involved in such programs. Mr. Guillory acknowledged, however, that the recidivism rate for inmates involved in its programs versus those not involved was unknown because the DOC does not track inmates upon release. Mr. Guillory also noted that, while VCE employs between 1,200 to 1,400 inmates, there is an exceptionally high turnover rate reaching up to 100 percent in the past. It was also noted that VCE receives approximately \$15 million from state agencies for the purchase of furniture and related items, which accounts for 25 percent of the overall total of \$75 million dollars spent by state agencies on furniture.

The Director also responded to concerns raised from the first meeting regarding the process used by VCE in reviewing requests from agencies for waiver from the mandatory source requirement. VCE has such waiver authority if it does not offer the desired product, it has nothing compatible with the agency's requirements or the delivery requirement cannot be met. Under the process described by Mr. Guillory, agencies are required to submit a standard DOC form containing a brief explanation of why the waiver is needed. According to VCE, most waivers are received by facsimile and are acted upon within 24 hours or one week. VCE indicates it has granted a total of 2,616 waivers valued at over \$7,473,800.

In addition to the Director, Roy Graeber, a member of VCE's Advisory Board and the Board of Corrections, appeared before the joint subcommittee. Mr. Graeber supported the efforts of the VCE in improving operations and favored keeping in place the mandatory source requirement. He also cited three areas that would prevent VCE from having a level playing field if it was required to compete with

private industry- marketing, manufacturing and labor force. Competition with private industry would result in more resources being needed to fund the additional marketing that would be necessary to adequately promote VCE products. In addition, VCE would be required to participate in other aspects of product marketing such as business lunches and other forms of client maintenance which are not accepted state government practices. These forms of product marketing are available to private businesses would have to be made available to VCE. Further, Mr. Graeber stated that VCE's mandate to include the maximum number of employees in work programs works against the normal tendency of private industry to decrease costs and increase profitability through the use of automation and other advanced technologies that rely on fewer more skilled workers. Finally, Mr. Graeber noted that the VCE's labor force is largely unskilled and subject to extremely high turnover rates resulting in a workforce that is in a near constant training mode.

After the VCE presentation, the joint subcommittee received public comment regarding the required purchase of goods and services manufactured or provided by prisoners in the Commonwealth and the effect of prison industries on private businesses. Four individuals appeared to provided comment: Janet Procida, owner of Procida Design, Robert P. DeLille, President of Creative Office Environments, LLC, Tracy Marks, President of Morton Marks & Sons, Inc. and Kim Schoenadel, member of the VCE Advisory Board. In addition, written comments were provided by Larry Giaimo, Vice President of This End Up Furniture Co., and the Department of Veteran's Affairs and the Jamestown-Yorktown Foundation.

Ms. Kim Schoenadel, who in addition to being on the VCE Advisory Board also owns a commercial interior design firm, raised concerns about the Advisory Board's effectiveness. The eleven-member Advisory Board was created by legislation enacted in 1994 to assist in evaluating the services and operations of VCE. The Advisory Board has the responsibility to (i) review new products and services manufactured or produced by VCE; (ii) review the pricing structure of products and services manufactured or produced by VCE; (iii) evaluate the level and quality of products and customer services offered by VCE and make recommendations on such quality and services; (iv) advise the Director of the DGS on business trends, product development, contract opportunities, and other related matters; and (v) review proposed joint venture agreements and making recommendations to the Director of the DOC. Ms. Shoenadel maintained that the Advisory Board is controlled by the VCE and provided with little or no information regarding VCE's activities. It was also noted that all members of the Advisory Board had not been appointed as of the date of the meeting and that it had been meeting for some time without a full membership. Joint subcommittee members discussed whether the Advisory Board was able to generate the statutorily mandated quorum to hold official meetings and perform its advisory functions.

Other individuals providing comment relayed both general and personal experiences related to the manner in which VCE operates and the adverse effect the mandatory source requirement has on private industry. These comments included:

- Depriving businesses of the opportunity to compete.
- Unfair competition resulting in lost business and wages.
- Lack of competition which causes the products and services to be substandard and prices to be high.
- Long lead-time required to fill product orders.
- VCE sales representatives threatening agency purchasing agents with prosecution if they did not use VCE products.

After the public comment period, the joint subcommittee discussed whether VCE's operations would be adversely affected to the point of being unable to fulfill its mission if the mandatory source requirement were removed and VCE was forced to compete with private industry. Though the joint subcommittee could not reach a consensus, there was agreement that the effect of the repeal of the mandatory source requirement on the continued viability of VCE should be a consideration.

December 8, 1999

The joint subcommittee briefly reviewed information provided by staff regarding the status of mandatory source provisions in other states. According to a survey conducted in 1999 by the Correctional Industries Association, Inc. found that 26 states and the federal government have laws requiring state agencies to purchase products and services produced or provided by prisoners. The information reviewed by the joint subcommittee focused on 10 states: Maryland, West Virginia, Tennessee, Kentucky, the District of Columbia, North Carolina, South Carolina, Delaware, Georgia and Florida. A review of these programs follows.

Maryland. Correctional work programs are administered by State Use Industries, a state agency employing 154 civilians and 1,261 inmates. Units of state government are required to purchase any goods or services that are available from the state's prison industries and that can be provided at a price not exceeding the prevailing average market price as determined by the Maryland Department of General Services.

West Virginia. Correctional work programs are administered by Correctional Industries, a state agency employing 21 civilians and 223 inmates. Offices, departments, institutions and agencies of the state are required to purchase prison-

made goods. Such entities are further prohibited from purchasing from any other sources unless, in the opinion of a panel consisting of the commissioner of public institutions, the director of purchases and the director of the budget, it is determined that the product or item does not meet the entity's requirement or there is insufficient supply to satisfy the requirement.

Tennessee. Correctional work programs are administered by TRICOR, a state agency employing 134 civilians and 858 inmates. All departments, institutions, agencies and political subdivisions supported in whole or in part by the state are required to purchase prison-made articles provided that such articles are certified by a board of standards as being of satisfactory quality, reasonable in price and available. If it deems it appropriate, the board of standards is authorized to consider the effect of certification on markets in the private sector. The law provides, however, that it is not the legislative intent that such effect be a controlling factor in the board's decision

Kentucky. Correctional work programs are provided by Correctional Industries, a state agency employing 74 civilians and 721 inmates. All offices, departments, institutions, agencies and all political subdivisions supported in whole or in part by the state are required to purchase prison-made goods when economically feasible. State entities are prohibited from purchasing from any other source unless, in the opinion of the Finance and Administration Cabinet, the articles or products do not meet the state entity's requirements or there is insufficient supply to satisfy the requirement.

District of Columbia. Correctional work programs are administered by D.C. Industrial Services, which employs 32 civilians and 325 inmates. Agencies of the District government are required to purchase goods or services produced by a prison industry unless the director certifies that Industrial Services cannot provide the goods or services or the terms or conditions required by the agency or the agency has been quoted a price below the market price.

North Carolina. Correctional work programs are administered by Correction Enterprises, a state agency employing 390 civilians and 2,354 inmates. All departments, institutions and agencies of the state supported in whole or in part by the state are required to give preference to prison industry products when purchasing goods and services. This is in effect a mandatory source provision as the law also provides that no article or commodity available from prison industries may be purchased from any other source unless the product (i) does not meet the reasonable specifications and requirements of the agency as determined by the Secretary of Administration or (ii) there is insufficient supply to satisfy the requirement. The law also requires the Department of Corrections to keep the prices of its products and commodities in accord with the prices paid by agencies for similar articles and products of equivalent quality.

South Carolina. The Division of Industries, a state agency employing 89 civilians and 1,634 inmates, administers correctional work programs. All departments, institutions and agencies of the state supported in whole or in part by the state are required to purchase articles or products produced by prison labor. The law also provides, however, that no state entity is required to purchase any article or product from prison industries unless the purchase price of the product or article is no higher than the price obtainable from any other producer or supplier.

Delaware. Correctional work programs are administered by Correctional Industries, a state agency employing 15 civilians and 174 inmates. The products of inmate labor and services may be sold and marketed to tax-supported entities of the state and its governmental subdivisions. The state does not have a mandatory source requirement.

Georgia. Correctional work programs are administered by Correctional Industries, a state agency employing 170 civilian and 1,400 inmate employees. The state does not have a mandatory source requirement.

Florida. Correctional work programs are administered by PRIDE Enterprises, a non-profit corporation which employs 351 civilians and 2,534 inmates. The law provides that any service or items manufactured or processed by the corporation in a correctional work program may be furnished or sold to any legislative, executive or judicial agency of the state and any political subdivision of the state. State agencies are prohibited from purchasing a product or service of comparable price and quality from any other source if the corporation certifies that the product is manufactured by, or the service is provided by, inmates and the product or service meets comparable performance specifications and comparable price quality requirements. The law provides that a state agency may make reasonable determinations of need, price, and quality regarding the products and services available from the corporation. Disputes between the corporation and a state agency may be resolved through an administrative proceeding with the Department of Management Services. If the dispute is not resolved at that stage, either party may request that the matter be referred to the Division of Administrative Hearings.

After completing review of prison industry mandatory sourcing in other states, the joint subcommittee proceeded to discuss items for final recommendation.

V. RECOMMENDATIONS

Based on its study and after review and discussion, the joint subcommittee approved the following recommendations:

1. Elimination of the mandatory source provision effective January 1, 2002.

2. Require all state procurement of VCE products to be published in accordance with established procedures for non-VCE products in the Public Procurement Act.
3. That VCE be prohibited from using special bidding practices.
4. That VCE be prohibited from requesting or receiving from state entities drawings, specifications, quotations or other proprietary information developed by private companies to assist VCE in developing its own bid.
5. VCE and its agents be prohibited from using threats, actual or implied, in order to receive business from State entities. Threats or disciplinary actions against State employees who criticize VCE's products, services or tactics will not be tolerated by VCE or other state entities.
6. VCE will eliminate their design staff and contract for such work from the private sector.
7. The Chairman and Vice-Chairman of the joint study committee will request that the Governor fill vacancies on the Advisory Board as soon as possible.
8. The Department of General Services' Division of Purchases and Supply should clarify to all state entities that the authority to grant exemptions for the mandatory source requirement rests with DPS.
9. Requests for exemptions must be resolved within 30 calendar days of receipt.
10. The Department of Corrections be required to assure that access to VCE employment is fully open and competitive to the State prison population.
11. The VCE Advisory Board and the Department of Corrections be required to report to the 2001, 2002 and 2003 sessions of the General Assembly on the progress of, and the steps made to implement, the elimination of mandatory sourcing.

The recommendations of the joint subcommittee were included in a legislative proposal, House Bill 1426, which was introduced in the 2000 Session of the General Assembly.

1999 SESSION

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HOUSE JOINT RESOLUTION NO. 606

Offered January 20, 1999

Creating a joint subcommittee to study prison industries.

Patrons—Jones, J.C., Crittenden, Jones, D.C. and McEachin; Senator: Miller, Y.B.

Referred to Committee on Rules

WHEREAS, increasingly, federal and state prisoners are being used to produce consumer goods for sale to governmental agencies and to the public; and

WHEREAS, the use of prison labor has been supported as a training program for future work outside of the prison system, a rewards method for controlling prisoners, and as a way to instill self-respect and a work ethic in prisoners; and

WHEREAS, although those goals may be laudable, they should be balanced against the effect prison industries have on private businesses which must compete with those industries; and

WHEREAS, competition against these industries is very difficult, especially for small businesses, because the government, be it state or federal, is often required to purchase goods from prison industries instead of using the competitive bidding system; and

WHEREAS, problems have recently come to light in Virginia which highlight the dangers of an unbalanced competitive market and its adverse impact on private companies in competition with prison industries, private companies contracting for goods and services with prison industries, and consumers who are, more often than not, state agencies and institutions; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the use of prison industries in Virginia and the laws involving such industries as exceptions to the competitive bidding process. The joint subcommittee shall consist of seven members to be appointed as follows: four members of the House of Delegates to be appointed by the Speaker and three members of the Senate to be appointed by the Senate Committee on Privileges and Elections.

The direct costs of this study shall not exceed \$ 5,250.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 2000 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

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Virginia Correctional Enterprises

Overview

Mission

Two Products:
Trained inmate
Finished Goods
Normalize
Facility / Real
Life Work Ethic
Reduce Idleness

Self Sufficient -
VCE pays
staff/inmate
Wages from
Sale of Products

Retain Earnings
to Re-Capitalize
Organization

Economic Impact

Purchase Raw
Material - \$17
Million
Services,
Machinery and
other Goods -
\$5.8 Million
165 Civilian
Employees -
1400 inmate
jobs

Civilian Payroll
\$6.5 Million
Inmate
Compensation
\$1.1 Million
5.4% of inmate
population
employed by
VCE
0.1 - 3.3 % of
Market per
Product Type

Product Type Plant Locations

Wood - Greenville Correctional Center, Nottoway Correctional Center, Lunenburg Correctional Center

Metal - Buckingham Correctional Center, Dillwyn Correctional Center

Printing/Silkscreen/Tag - Powhatan Correctional Center

Office Systems - Brunswick Correctional Center

Clothing/Uniforms - Haynesville Correctional Center, Augusta Correctional Center, Coffeewood Correctional Center, Staunton Correctional Center, Halifax Correctional Unit

Shoes/Boots - Augusta Correctional Center

Laundry Services - Virginia Correctional Center for Women/Greenville Correctional Center

Dental Services - Southampton Correctional Center

Sales Volume - Typical Products

Clothing - 26%

License Tags -
19%

Office Systems-
18%

Wood Products -
12%

Printing 7%

Metal - 7%

Laundry - 6%

Other Products
(Footwear, Dental
Vinyl/Silkscreen)
5%

Clothing, Shoe,
Boots, Dental,
primarily

supplies

Department of
Corrections;

Laundry

Services for

Department of
Corrections

Facilities and

UVA Hospital

Financial Status

FY 1999

Total Sales for
the FY

\$35Million

VCE is solvent
Cash on hand to
meet Payroll for
4 Months

Inventory / Raw
Material on
hand

Impact to Commonwealth

Risk reduction in Facility

Normalize Facility - Idleness
reduction

VCE generates salaries to staff
and inmates

Purchases Raw Material from
VA Companies

Prison Industry Enhancement

Partnership with Private
Business

More inmate employment

Returned Revenue to
Commonwealth

Reduction of Idleness

Issues

Dichotomy of Mission

Customer Satisfaction

Inmate Employment

Secretary of Corrections Task Force

Completed September, 1999

Strategic Business Plan

Chief Operating Officer

Welcome to Tour Q&A

All Facilities are open for Tour

Questions ?

Remarks from Committee

CUSTOMER SATISFACTION RESEARCH

The following is a review of the research results starting with fiscal year 1993. Customers were asked to respond as to how satisfied they are on a scale of 1 to 5 with 1 representing Very Unsatisfied and 5 indicating Completely Satisfied.

Question	FY93	FY94	FY95	FY96	FY97	FY98
Exhibit willingness to help	3.44	3.60	4.08	3.66	3.14	3.67
Friendly, caring manner	3.47	3.47	4.05	3.60	3.14	3.73
Flexibility in meeting your needs	3.06	3.08	3.65	3.23	2.86	3.23
Ability to solve problems	3.09	3.00	3.59	3.13	2.85	3.22
Understand your needs	3.19	3.23	3.72	3.31	3.05	3.23
Have staff that is accessible	3.15	3.20	3.68	3.20	2.77	3.13
Offer an adequate choice of products	3.07	3.02	3.40	3.16	2.77	3.05
Products made from Quality Materials	3.01	3.09	3.43	3.00	2.82	3.11
Products are well made	2.87	2.89	3.37	3.06	2.71	3.06
Introduce appropriate number new products	*	2.96	3.47	2.86	2.64	2.94
Deliver in error-free manner	2.80	2.75	3.40	2.95	3.00	3.26
Responsiveness in meeting your needs	2.84	2.72	3.48	2.95	2.89	3.13
Deliver within a promised time-frame	2.52	2.28	3.28	2.67	2.46	2.66
Products available within adequate time	2.44	2.29	3.12	2.51	2.36	2.50
Keep you informed	2.72	2.92	3.56	2.98	2.49	2.74
Has knowledge of your business	3.02	3.25	3.49	3.12	2.77	3.19
Listen to your concerns	2.98	3.38	3.76	3.34	3.04	3.39
Seek information about your needs	2.63	3.00	3.36	3.01	2.71	2.99
Admit when a mistake is made	3.04	3.09	3.61	3.04	2.71	3.14
Make it up to you when mistake made	2.94	3.07	3.57	2.82	2.56	3.06
Correct errors in reasonable time	*	3.03	3.34	2.68	2.37	2.89
Demonstrate knowledge of VCE products	*	3.75	4.22	3.67	3.38	3.74
Conduct business in professional manner	*	3.78	4.18	3.64	3.16	3.77
Present available inventory	*	3.52	4.02	3.40	3.07	3.48
Level of contact currently receiving	*	*	3.05	2.55	2.58	2.79~
Level of contact desire	*	*	2.60	2.22	2.57	3.31@
Type of sales contact you prefer	*	*	3.34	2.87	2.57	3.31@
Overall rate service compared to year ago	2.94	3.17	3.63	2.89	2.59	3.32

• Indicates a new question

~ Indicates a different response scale 1=monthly, 2=quarterly, 3=semi-annual, 4=annual, 5=none

@ Indicates a different response scale 1=face to face visits, 2=telephone, 3=mail, 4=combination

APPENDIX D

Jurisdiction	Markets and Sales Restrictions							
	Law Allowing Sale of Items to Other States, Jurisdictions, or Provinces	State Agency Use Law	State Agency Preference Law	Use or Preference Law Enforced	Purchase End Product from Other Correctional Industries for Resale	# of Sales Reps.	Incentives Offered to Sales Staff	Offer Product Catalog
Alabama	Yes	Yes	No	No	No	5	No	Yes
Alaska	Yes	Yes	No	No	No	2	No	Yes
Arizona	Yes	No	No	N/A	Yes	4	Yes	Yes
Arkansas	Yes	No	Yes	No	No	4	Yes	Yes
California	Yes	Yes	No	Yes	No	10	No	Yes
California Joint Venture	Yes	No	No	N/A	No	0	N/A	No
California Youth Authority	No	No	No	N/A	No	0	N/A	No
Colorado	Yes	Yes	No	No	No	6	No	Yes
Connecticut	Yes	Yes	No	No	Yes	3	No	Yes
Delaware	No	No	No	N/A	No	0	N/A	No
District of Columbia	Yes	Yes	No	No	No	0	No	Yes
Florida	Yes	No	Yes	No	No	12	Yes	Yes
Georgia	Yes	No	No	N/A	No	5	Yes	Yes
Hawaii	No	No	No	N/A	No	2	No	Yes
Idaho	No	No	No	N/A	No	3	Yes	Yes
Illinois	Yes	Yes	No	No	No	10	No	Yes
Indiana	No	Yes	No	No	No	6	No	Yes
Iowa	Yes	No	Yes	No	Yes	8	Yes	Yes
Kansas	Yes	Yes	No	No	No	3	No	Yes
Kentucky	Yes	Yes	No	No	No	4	No	Yes
Louisiana	Yes	Yes	No	No	No	2	No	Yes
Maine	No	No	No	N/A	No	2	No	No
Maryland	Yes	Yes	No	Yes	No	4	No	Yes
Massachusetts	Yes	Yes	No	No	No	1	No	Yes
Michigan	Yes	Yes	No	Yes	Yes	2	No	Yes
Minnesota	No	No	No	No	No	10	No	Yes
Mississippi	No	No	No	N/A	No	2	Yes	Yes
Missouri	Yes	Yes	No	Yes	No	9	No	Yes
Montana	Yes	No	No	N/A	Yes	2	No	Yes
Nebraska	Yes	Yes	Yes	No	Yes	4	No	Yes
Nevada	Yes	No	No	N/A	No	2	No	Yes
New Hampshire	Yes	Yes	No	No	Yes	0	N/A	Yes
New Jersey	Yes	Yes	No	No	Yes	2	No	Yes
New Mexico	Yes	Yes	No	No	No	4	No	Yes
New York	Yes	No	Yes	No	No	15	No	Yes
North Carolina	Yes	No	Yes	Yes	Yes	6	No	Yes
North Dakota	No	No	No	N/A	No	3	Yes	Yes
Ohio	Yes	Yes	No	Yes	No	11	No	Yes
Oklahoma	Yes	Yes	No	Yes	Yes	8	Yes	Yes
Oregon	Yes	No	No	N/A	Yes	5	No	Yes
Pennsylvania	No	No	No	N/A	No	5	No	Yes
Rhode Island	No	Yes	No	No	No	1	No	Yes
South Carolina	No	No	Yes	No	No	4	Yes	Yes
South Dakota	Yes	No	No	N/A	Yes	0	N/A	No
Tennessee	Yes	No	Yes	No	Yes	2	No	Yes
Texas	Yes	Yes	No	Yes	No	5	No	Yes
Utah	No	Yes	No	Yes	No	5	No	Yes
Vermont	No	No	No	N/A	No	0.25	No	Yes
Virginia	Yes	Yes	No	No	No	4	No	Yes
Washington	Yes	No	Yes	Yes	No	13	No	Yes
West Virginia	No	Yes	No	No	No	0	Yes	Yes
Wisconsin	Yes	No	Yes	Yes	No	4	Yes	Yes
Wyoming	No	No	No	N/A	No	0	N/A	Yes
Federal Bureau	No	Yes	No	No	No	27	Yes	Yes
Canada Federal	Yes	No	Yes	No	No	15	Yes	Yes
Canada Provincial	Yes	No	No	N/A	No	1	No	Yes
Totals	Y/39 N/17	Y/27 N/29	Y/10 N/44	Y/11 N/27	Y/13 N/43	267.25	Y/14 N/36	Y/51 N/5

Source: Correctional Industries Association, 1999 Directory

APPENDIX E
2000 SESSION

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HOUSE BILL NO. 1426

Offered January 24, 2000

A BILL to amend and reenact §§ 53.1-41, 53.1-47, and 53.1-48 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 53.1-45.6, and to repeal §§ 53.1-49 and 53.1-51 of the Code of Virginia, relating to the Department of Corrections; Virginia Correctional Enterprises.

Patrons—O'Brien, Shuler, Albo, Armstrong, Barlow, Baskerville, Black, Blevins, Bolvin, Brink, Broman, Bryant, Cantor, Cox, Cranwell, Deeds, Devolites, Diamonstein, Drake, Dudley, Grayson, Hall, Hargrove, Harris, Howell, Hull, Ingram, Joannou, Johnson, Jones, J.C., Jones, S.C., Katzen, Keister, Kilgore, Landes, Larrabee, Louderback, Marshall, May, McClure, McDonnell, McEachin, McQuigg, Moran, Morgan, Moss, Nixon, Orrock, Parrish, Purkey, Putney, Reid, Rhodes, Rollison, Ruff, Rust, Sherwood, Suit, Tata, Tate, Van Landingham, Van Yahres, Wagner, Wardrup, Weatherholtz, Williams and Woodrum; Senators: Byrne, Colgan, Edwards, Hanger, Hawkins, Houck, Maxwell, Miller, K.G., Mims, Newman, Norment, Potts, Puckett, Puller, Quayle, Saslaw, Schrock and Ticer

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-41, 53.1-47, and 53.1-48 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 53.1-45.6 as follows:

§ 53.1-41. Opportunities for work and vocational training.

To the extent feasible, it shall be the duty of the Director to provide persons sentenced to the Department with opportunities to work and to participate in vocational training programs as operated by the Department of Correctional Education in accordance with § 22.1-339 et seq. Such work opportunities may include business, industrial, agricultural, highway maintenance and construction, and work release programs as hereafter specified in this article. In addition, prisoners may be employed to improve, repair, work on or cultivate public property or buildings. *The Director shall ensure, whenever possible, that work opportunities, including but not limited to Virginia Correctional Enterprises, are open to the entire inmate population on a competitive basis.*

§ 53.1-47. Purchases by agencies, localities and certain nonprofit organizations.

~~Articles and services produced or manufactured by persons confined in state correctional facilities:~~

~~1. Shall be purchased by all departments, institutions and agencies No department, institution or agency of the Commonwealth which are supported in whole or in part with funds from the state treasury for their use or the use of persons whom they assist it assists financially. Except as provided in § 53.1-48, no such articles or services shall be purchased by any department, institution or agency of the Commonwealth from any other source; and shall be required to purchase articles and services produced or manufactured by persons confined in state correctional facilities.~~

~~2. May B. Articles and services produced or manufactured by persons confined in state correctional facilities may be purchased by any county, district of any county, city or town and by any nonprofit organization, including volunteer lifesaving or first aid crews, rescue squads, fire departments, sheltered workshops and community service organizations.~~

§ 53.1-45.6. Virginia Correctional Enterprises; bidding practices.

Virginia Correctional Enterprises ("VCE") shall not (i) use any special bidding practices not available to other bidders; (ii) use any drawings, specifications, quotations or other proprietary information developed by private companies in developing a bid; or (iii) employ design personnel, including, but not limited to, certified interior designers. In conducting its operations, VCE shall be subject to the Virginia Public Procurement Act (§ 11-35 et seq.).

§ 53.1-48. Exceptions as to purchases.

The A. Only the Director of the Division of Purchases and Supply may shall be authorized to exempt a department, institution or agency of the Commonwealth from the provisions of § 53.1-47 in any case where, in the opinion of the Director, the article so produced or manufactured does not meet the reasonable requirements of such department, institution or agency, or the requisition made cannot

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1/26/00 8:20

1 be complied with on account of an insufficient supply of the articles or supplies required, or
 2 otherwise. *Determinations regarding requests for exemptions from the provisions of § 53.1-47 shall*
 3 *be made within thirty days of receipt by the Director of Purchases and Supply.* In any case where the
 4 Director of Purchases and Supply grants an exemption from the provisions of § 53.1-47, he shall
 5 submit a written justification for the exemption to the Director of the Department of Corrections.

6 *B. The use of actual or implied threats by VCE or any of its employees relative to conducting*
 7 *business with any state department, institution or agency, or the enforcement of the the provisions of*
 8 *§ 53.1-47 shall be strictly prohibited.*

9 2. That the Virginia Correctional Enterprises Advisory Board and the Department of
 10 Corrections shall report to the Governor and General Assembly regarding the status and
 11 progress made towards elimination of the mandatory source requirement provided in § 53.1-47
 12 on or before December 1 in each of the following years: 2001, 2002 and 2003.

13 3. That The Director of the Division of Purchases and Supply shall adopt and publish guidelines
 14 for reviewing requests for exemptions from the provisions of § 53.1-47 on or before January 1,
 15 2001.

16 4. That §§ 53.1-49 and 53.1-51 of the Code of Virginia are repealed.

17 5. That the provisions the first and fourth enactments of this act shall become effective on
 18 January 1, 2002, except that §§ 53.1-41, 53.1-45.6, and 53.1-48 of the first enactment of this act
 19 shall become effective on July 1, 2000.

Official Use By Clerks			
Passed By		Passed By The Senate	
The House of Delegates			
without amendment	<input type="checkbox"/>	without amendment	<input type="checkbox"/>
with amendment	<input type="checkbox"/>	with amendment	<input type="checkbox"/>
substitute	<input type="checkbox"/>	substitute	<input type="checkbox"/>
substitute w/amdt	<input type="checkbox"/>	substitute w/amdt	<input type="checkbox"/>
Date: _____		Date: _____	
_____ Clerk of the House of Delegates		_____ Clerk of the Senate	

