



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #229

Eliminate Private Business/Prison Employment Program (DOC -- Adult Corrections)

[LFB 2005-07 Budget Summary: Page 128, #11]

CURRENT LAW

The Department of Corrections is authorized to lease space within state prisons and juvenile correctional institutions to not more than two private businesses that would employ prison inmates to manufacture products or components or to provide services for sale on the open market. As of June 30, 2004, the program revenue (PR) appropriation for the private business/prison employment program had a deficit of -\$1,377,700 PR.

GOVERNOR

Eliminate the private business/prison employment program and delete base funding of \$370,800 PR annually. Create statutory language to transfer the encumbered balance from the private business/prison employment program appropriation to the prison industries appropriation in order to eliminate the current deficit in the private sector ventures program.

DISCUSSION POINTS

1. The Department of Corrections is authorized to lease space within state prisons and juvenile correctional institutions to not more than two private businesses that would employ prison inmates to manufacture products or components or to provide services for sale on the open market.

2. Under the bill, the private business/prison employment program is eliminated. The current program contains the following provisions:

- In selecting businesses to participate in the program, the Department is required to

comply with state procurement laws by soliciting proposals. The Department must also consult with trade organizations and labor unions prior to issuing requests for proposals and prior to selecting proposals. In addition, before a private business/prison employment project begins, the Joint Committee on Finance must hold a public hearing and approve the contract, and the Prison Industries Board must approve the business.

- In accordance with federal law, inmates must be paid at the prevailing wage for work of a similar nature and may have as much as 80% of total earnings withheld for taxes, room and board, court obligations and victim compensation. Federal law requires that inmates retain at least 20% of earnings.

- A private employer may not employ inmates or institution residents under a prison contract if any of the following applies: (a) the inmates or institution residents are to be employed in a skill, craft or trade in which there is a surplus of available labor in the locality of the private employer; (b) the employment of the inmates or institution residents will impair the performance of other contracts to which the private employer is a party; or (c) the inmates or institution residents will replace employees who are on strike against the private employer or locked out of work.

- A private employer participating in the program is required to post in all of its workplaces a notice provided by Corrections containing a description of the nature of the prison contract and an explanation of what it means for an employee of a private to be displaced and identifying the person at Corrections whom an employee of a private employer may contact if the employee believes that he or she may have been displaced by a prison contract.

The statutes define "displace an employee" as "to lay off an employee in this state as a direct result of work being performed in a state prison or juvenile correctional institution under a prison contract or to permanently transfer an employee in this state to another job that reduces the employee's base pay, excluding overtime, differentials and bonuses, by more than 25% as a direct result of work being performed in a state prison or juvenile correctional institution under a prison contract."

3. Previously, two private business/prison employment projects operated at correctional facilities: (a) Jorgensen Conveyors of Mequon, at the Waupun Correctional Institution, providing welding services for the company (1996-1999); and (b) Fabry Glove and Mitten Company, at Green Bay Correctional Institution (1996-2002). No private business/prison employment projects have operated since November, 2002.

4. Under 1997 Act 27, a separate program revenue appropriation for the private business/prison employment program was created, effective January 1, 1998. Prior to that time, revenues and expenditures for the program were a portion of Corrections' prison industries appropriation. The table below provides a summary of the financial position of the private business/prison employment program since it began in 1995-96. The program has run a deficit since it began, related to expenditures for the Fabry Glove project. Under terms of the initial contract, Corrections provided the cost of materials, security and production personnel, equipment

purchases, and other start-up costs. The contract was later renegotiated more favorably to Corrections, but the original debt remained. It should be noted that unlike the prison industries appropriation, the private business/prison employment program is not statutorily authorized to maintain a negative cash balance.

Private Business/Prison Employment Program Financial Status Since 1995-96

<u>Fiscal Year</u>	<u>Operating Cash Balance</u>	<u>Profit or Loss</u>	<u>Closing Cash Balance</u>
1995-96	-	-\$5,280	-\$5,280
1996-97	-\$5,280	-984,030	-989,310
1997-98	-989,310	-290,747	-1,280,057
1998-99	-1,280,057	-413,407	-1,693,464
1999-00	-1,693,464	83,701	-1,609,763
2000-01	-1,609,763	-58,169	-1,667,932
2001-02	-1,667,932	-29,128	-1,697,060
2002-03	-1,697,060	215,188	-1,481,872
2003-04	-1,481,872	104,199	-1,377,673

5. Section 16.513 of the statutes requires an agency to report to the Joint Committee on Finance if a program revenue (or segregated revenue) appropriation has insufficient funding to meet expenditures. The agency must submit a plan to the Committee on how it will address the shortfall in funding. On March 28, 2005, Corrections submitted its plan for addressing the funding shortfall in the private business/prison employment program:

"Currently the deficit in the private business employment program revenue appropriation is approximately \$1,315,700. While FY05 revenues to date are \$61,924, all inmates working in the PIE [private industry employment] program in out-of-state facilities have been returned to Wisconsin, so no additional revenue is anticipated for FY05. The Department proposed in its 2005-07 Biennial Budget Request to delete statutory language allowing the Department to operate private businesses in Wisconsin prisons and retire the debt associated with the program. The Governor's 2005-07 Executive Budget includes these provisions."

6. Assembly Bill 100 would create non-statutory language to transfer the balance from the program's appropriation to the prison industries appropriation in order to eliminate the current deficit. Based on the January 14, 2005 prison industries report, the prison industries appropriation balance at the end of 2004-05 is estimated to be \$3,625,200. Subsequent to the transfer, the appropriation balance would be \$2,309,500 (equivalent to approximately 1.5 months of revenue).

7. While elimination of the private business/prison employment appropriation program deficit may be appropriate, the Committee may wish to consider retaining statutory authority for the program. Although the private business/prison employment program has not operated in a

correctional facility since 2002, it could be argued that retaining the statutory language authorizing the program would allow Corrections the flexibility to operate a business if opportunities arose in the future. If the Department wished to operate a program at a later date, expenditure authority could be provided in future budget deliberations or under s. 16.515 of the statutes. As under current law, the Department would still be required to come before the Committee for approval of a contract.

8. On the other hand, since the private business/prison employment program appropriation has run a deficit since it began and no current project is operating, the Committee may wish to approve the Governor's recommendations to eliminate the program.

ALTERNATIVES

1. Approve the Governor's recommendation to eliminate the private business/prison employment program and delete base funding of \$370,800 PR annually. Create non-statutory language to transfer the encumbered balance from the private business/prison employment program appropriation to the prison industries appropriation in order to eliminate the current deficit in the private business/prison employment program.

2. Delete base funding of \$370,800 PR annually and create non-statutory language to transfer the encumbered balance from the private business/prison employment program appropriation to the prison industries appropriation in order to eliminate the current deficit in the private business/prison employment program. Retain statutory language authorizing the private business/prison employment program.

3. Maintain current law.

<u>Alternative 3</u>	<u>PR</u>
2005-07 FUNDING (Change to Bill)	\$741,600

Prepared by: Chris Carmichael