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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Trial Court Case No. 07-ALJ-04-0517-AP
Appellate Case No. 2014-001199

Fred Gatewood, #289775, ... Appellant,

v.

South Carolina Department of Corrections, ... Respondent.

RESPONDENT'S PETITION FOR REHEARING

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I. SCDC'S PETITION FOR REHEARING

The Respondent, the South Carolina Department of Corrections ["SCDC"] respectfully petitions the Court, under South Carolina Appellant Court Rule ["SCACR"] 221(a), to rehear its March 9, 2016 opinion. *See* -- S.E.2d --, 2016 WL 912672 (S.C. Ct. App. Mar. 9, 2016).

A. RULINGS IMPACTED BY SCDC'S PETITION

SCDC respectfully petitions this Court to rehear only its rulings concerning the second and fourth issues on appeal, *Id.*, at *3:

Did the ALC err in applying [§ 24-1-295] of the South Carolina Code (Supp. 2015) rather than [§ 24-3-40] of the South Carolina Code (2007) to determine the deductions from [Gatewood's] gross wages?

Does [§ 24-1-295] apply retroactively to [Gatewood's] pre-August 1, 2007 work?

If it favorably considers SCDC's arguments on these issues, the Court would have to modify its ruling on the third issue by declaring that SCDC could have lawfully paid Gatewood "less than the prevailing wage" during July 2007 and lawfully applied deductions for security costs and overhead to his gross earnings during July 2007 under the provisions of § 2 of Senate Bill 182 ["S. 182"] (a/k/a § 24-1-295). 2007 South Carolina Laws Act No. 68 (S.B. 182).

The Court would also have to modify its ruling on the sixth issue and affirm the ALC's denial of Gatewood's demand for pre-judgment interest, post-judgment interest, costs, and attorney's fees.

B. SUGGESTION FOR THE COURT TO REHEAR ITS RULINGS ON THE SECOND AND FOURTH ISSUES EN BANC

SCDC respectfully suggests, in accordance with SCACR 219(b), that this Court rehear its rulings on these two (2) issues *en banc*. SCACR 219(a) provides that six (6) members of this Court must affirmatively vote to rehear an appeal *en banc*, and it further provides as follows:

A ... rehearing en banc is not favored and ordinarily will not be ordered except ... **(2) when the proceeding involves a question of exceptional importance.** [emphasis supplied].

The Court's rulings on the second and fourth issues animate the prospect that SCDC owes back wages to Gatewood for the labor he provided to the service work project from October 18, 2004 to July 31, 2007. The Court's ruling on the sixth issue likewise animates the prospect that SCDC also owes Gatewood, as the prevailing party on the second and fourth issues, monies attributable to interest, costs, and attorney's fees.

Gatewood is one of nearly 200 appellants in a related case, *Ackerman, et al., v. S.C. Dep't of Corr.*, -- S.E.2d --, 2016 WL 516641 (S.C. Ct. App. Feb. 10, 2016). *Id.*, at *1, n. 1. Gatewood and his fellow appellants participated in the same service work project, and, as they asserted identical or nearly identical wage claims in the grievances they filed with SCDC, the Court's rulings on the second, fourth, and sixth issues animate the prospect that SCDC also owes back wages, as well as interest, costs, and attorney's fees, to many of Gatewood's fellow appellants.

Therefore, SCDC respectfully argues that the rehearing of these issues "involves a question of exceptional importance" under SCACR 219(a)(2), and it respectfully urges this Court to rehear them *en banc*.

I. BY ITS RULING ON THE SECOND ISSUE, THE COURT ERRONEOUSLY CONCLUDED THAT SCDC SHOULD HAVE PAID GATEWOOD THE "PREVAILING WAGE" UNDER § 24-3-430(D) AND THEN APPLIED § 24-3-40(A)'S DEDUCTIONS TO HIS GROSS WAGES DURING JULY 2007

A. THE COURT'S ANALYSIS AND RULINGS

Concerning the second issue, the Court agreed with Gatewood "that [§ 24-3-40] governs deductions from his gross wages earned prior to August 1, 2007, **but only as to the month of July 2007.**" [emphasis supplied]. *Id.*, at *3.

At the outset of its analysis, *Id.*, at *4, the Court recognized that SCDC argued in its brief “that deductions for overhead and security costs were authorized by” its September 30, 1998 contract with WTI. (R. p. 52). The Court also recognized that Gatewood argued in reply “that SCDC’s overhead and other expenses were ‘not allowable deductions from [Gatewood’s] gross wages under [§ 24-3-40].’” *Id.*

However, the Court recognized that “the ALC concluded that [§ 24-3-40] does not apply “because the [WTI contract] was a service work contract, and deductions from wages resulting from service work provided to private industries by inmates is governed by [§ 24-1-295], not [§ 24-3-40].” *Id.* The Court then evaluated the ALC’s conclusion, and it began its evaluation of the ALC’s conclusion by reviewing the chronology associated with “the legislation concerning deductions from an inmate’s ‘gross wages,’ a/k/a ‘gross earnings.’” *Id.*

The Court began its chronological review in 2004 when Gatewood started in the service work project covered by SCDC’s contract with WTI. It stated that “two separate legislative enactments concerning deductions were in place: (1) [§ 24-3-40] and (2) the budget proviso concerning “Prison Industry service work” accompanying the appropriation bill for fiscal year 2004–05.” *Id.* Regarding these separate enactments, the Court first observed as follows, *Id.*:

Section 24–3–40(A) states, “Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24–3–20 to 24–3–50 *or in a prison industry program provided under Article 3 of this chapter* shall pay the prisoner’s wages directly to [SCDC].”² The provisions in Article 3 of Chapter 3, in

¹ Later in its opinion, *Id.*, at *5, n. 8, the Court declared that “an unsettled question” exists as to the meaning of the term “gross wages” from § 24-3-40(A) and the term “gross earnings” from the first unnumbered paragraph of § 24-1-295. Section 24-3-430(H) provides that “[t]he **earnings** of an inmate authorized to work at paid employment pursuant to [§ 24-3-430] must be paid directly to [SCDC] and applied as provided under [§ 24-3-40].” [emphasis supplied]. Like § 24-3-430(H), the first unnumbered paragraph of § 24-1-295 uses the term “earnings,” albeit “gross earnings.” Section 24-3-40(A) uses the terms “wages” and “gross wages.” SCDC respectfully asserts that § 24-3-430(H) renders the terms “gross wages” and “gross earnings” synonymous.

² The legislature amended § 24-3-40 in 2010. *Id.*, at *3, n. 5. The Court recognized that the amended version of § 24-3-40 would not apply to Gatewood’s gross earnings, because Gatewood stopped participating in the service work

particular, [§ 24-3-430], created the Prison Industries program and established program standards. Further, [§ 24-3-40] requires SCDC to deduct the following amounts from the gross wages of an inmate: [20%] for court-ordered restitution or the State Office of Victim Assistance;³ [35%] for any child support obligations;⁴ [10%] for the inmate's "purchase of incidentals";⁵ [10%] for an escrow account "for the benefit of the prisoner";⁶ and the "remaining balance" for federal and state taxes.⁷ [italicized emphasis added by the Court; bold face emphasis supplied].

The Court then addressed the proviso for fiscal year 2004-05, the fourth of six (6) provisos enacted starting in 2001, and it addressed the proviso's schedule of deductions, *Id.*:

[T]he Director of [SCDC] shall deduct the following from the gross earnings of the inmates engaged in Prison Industry service work. (1) If *restitution* to a particular victim or victims has been *court ordered* [,] ... then *twenty percent (20%)* must be used to fulfill the restitution obligation. If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the ten percent (10%) [sic] must be applied to the South Carolina Victims' Compensation Fund. (2) *Ten percent (10%)* must be retained by the Department of Corrections to defray the *cost of the inmate's room and board*.⁸ [italicized emphasis added by the Court].

The Court continued its chronological review by observing as follows, *Id.*, at *5:

Identical provisos accompanied the appropriation bills for fiscal years 2005-06, 2006-07, and 2007-08. However, curiously, the legislature

project in April 2009. *Id.*, at *3. As discussed further below, S. 182, which the legislature ratified on June 8, 2007 and which the Governor approved June 13, 2007, codified the provisions concerning service work projects from the six (6) provisos the legislature had enacted since 2001. S. 182's first two (2) sections consisted of §§ 24-1-285 and 290. The Code Commissioner redesignated §§ 24-1-285 and 290 as §§ 24-1-290 and 295, respectively. SCDC respectfully submits the Editor's and Revisor's Notes as Exhibit A in support of its instant petition.

³ Section 24-3-40(A)(1) – (A)(6) set forth the same schedule of deductions from the gross wages of inmates participating in projects operated under Article 3 as appeared in S. 182, § 2 (a/k/a § 24-1-295(1) – (6)). See § 24-3-40(A)(1) and (2) and S. 182, § 2 (a/k/a § 24-1-295(1) and (2)). SCDC respectfully submits a side-by-side comparison of § 24-3-40(A) and S. 182, § 2 (a/k/a § 24-1-295) as Exhibit B in support of its instant petition.

⁴ See § 24-3-40(A)(3) and S. 182, § 2 (a/k/a § 24-1-295(3)). See also Exhibit B.

⁵ See § 24-3-40(A)(4) and S. 182, § 2 (a/k/a § 24-1-295(4)). See also Exhibit B.

⁶ See § 24-3-40(A)(5) and S. 182, § 2 (a/k/a § 24-1-295(5)). See also Exhibit B.

⁷ See § 24-3-40(A)(6) and S. 182, § 2 (a/k/a § 24-1-295(6)). See also Exhibit B.

⁸ SCDC respectfully submits Exhibit C in support of its instant petition, which presents a side-by-side comparison of the six (6) provisos enacted beginning in 2001. Exhibit C totals three (3) pages.

sustained the Governor's veto of the proviso for the 2007-08 fiscal year. ... The Governor's stated reason for the veto was **"the language is no longer necessary after I signed [Senate Bill 182], the Prison Industries legislation. This proviso conflicts with the statutory changes and is unneeded."**⁹ [footnote omitted and emphasis supplied].

Notwithstanding the Governor's veto message and its rationale, the Court continued its analysis and determined as follows, *Id.*:

The referenced legislation, [Senate Bill 182], added [§ 24-1-295] to the South Carolina Code to codify the language in the provisos authorizing service work contracts and payment below the prevailing wage. **The Governor signed the legislation adding [§ 24-1-295] to the Code on June 13, 2007, but it did not become effective until August 1, 2007.** Therefore, there existed no authorization for SCDC to enter into service work contracts or to pay inmates below the prevailing wage from July 1, 2007 to July 31, 2007.¹⁰ ... [*Amisub of S.C. Inc. v. S.C Dep't of Health & Envtl. Control*, 757 S.E.2d 408, 414 (S.C. 2014) ("The Governor's line item veto is a negative power to void a distinct item."); *id.*, 757 S.E.2d at 415] ("[T]he line item veto power is intended to be a negative power, the power to nullify, or at least suspend, legislative intent.") ... **Critically, this gap also left a void in deductions specific to service work contracts.** [emphasis supplied and other citations omitted].

The Court continued its analysis as follows, *Id.*, at *5:

The Governor's veto message indicates he was **apparently unaware** that [§ 24-1-295] became effective on August 1, rather than July 1, 2007, or that **a gap in the authorization of the program would be created.** However, this court may not consider the Governor's veto message and its effect on the legislature's subsequent action in determining legislative intent. [*See Amisub*, 757 S.E.2d at 417] (stating the Governor's veto message does not have the force of law because it is neither a legislative act nor an Executive Order and that to hold otherwise "would violate the separation of powers doctrine by altering the allocation of powers granted to the three branches of government by our state's constitution"). [emphasis supplied].

After completing its analysis, the Court ruled on the second issue, *Id.*, at *5:

⁹ The Court first addressed the veto message issued by the Governor concerning the seventh proviso earlier in its opinion. *Id.*, at 2, n. 3. SCDC respectfully submits relevant extracts from the Governor's June 27, 2007 Veto Message as Exhibit D in support of its instant petition.

¹⁰ The Court had already offered the same conclusion in footnote 3 of its opinion. *See* note 9 immediately above.

Accordingly, [§ 24-3-40] governed deductions from the gross earnings of inmates from July 1, 2007 until [§ 24-1-295] became effective on August 1, 2007. Section 24-1-295 requires the identical deductions required by [§ 24-3-40] but adds the language “in addition to any other required deductions,” i.e., “The Director of [SCDC] shall deduct the following from the gross earnings of the inmates engaged in prison industry service work *in addition to any other required deductions*” [§ 24-1-295]. [italicized emphasis added by the Court; footnote omitted and emphasis supplied].

The Court then summarized its work on the second issue, *Id.*, at *5:

In sum, the appropriation bills for the fiscal years 2004-05, 2005-06, and 2006-07 governed deductions from [Gatewood’s] gross earnings until the month of July 2007;¹¹ during July 2007, [§ 24-3-40] governed deductions from the prevailing wage that should have comprised [Gatewood’s] gross earnings for that month. Therefore, SCDC was not entitled to deduct security costs and overhead for July 2007. Finally, [§ 24-1-295] governed the deductions from [Gatewood’s] gross earnings from August 1, 2007 through April 13, 2009, the date [Gatewood] received his last paycheck. [emphasis supplied].

B. THE COURT MISAPPREHENDED § 24-3-40(A) AND § 24-3-430(D)

SCDC respectfully asserts that the Court misapprehended § 24-3-40(A) by applying it to Gatewood’s gross wages during July 2007, because SCDC still possessed the authority to pay Gatewood “less than the prevailing wage” during July 2007, and, consequentially, § 24-3-40(A) could not have applied to Gatewood’s gross earnings during July 2007.

SCDC also respectfully asserts that it was permitted to pay Gatewood “less than the prevailing wage” during July 2007, because the legislature did not intend to create any gap between the expiration of the sixth proviso and its enactment of all three (3) sections of Senate Bill 182 [“S. Bill 182”]. 2007 South Carolina Laws Act No. 68 (S.B. 182).

In so asserting, SCDC respectfully submits that the Court overlooked the reality that the legislature enacted § S. 182, §§ 1 and 2 (a/k/a §§ 24-1-290 and 295) in order to codify the six (6) provisos that it had enacted to address service work projects since 2001. More specifically,

¹¹ These provisos were the fourth, fifth, and sixth of the six (6) provisos the legislature enacted. See Exhibit C.

SCDC respectfully submits that the Court overlooked the legislative history associated with all three (3) sections S. 182, which stands apart from the legislative history of the seventh proviso.

Therefore, SCDC respectfully argues that the Court incorrectly ruled that SCDC was not able to deduct security costs and overhead from Gatewood's gross earnings in July 2007.

1. **Section 24-3-40(A) applied only to gross wages due inmates in projects under Article 3, Chapter 3 of Title 24 for which SCDC must have paid them no less than § 24-3-430(D)'s "prevailing wage."**

As the Court acknowledged, *Id.*, at *4, § 24-3-40(A) provided that "[u]nless otherwise provided by law, the employer of a prisoner authorized to work at paid employment ... **in a prison industry program provided under Article 3 of this chapter** shall pay the prisoner's wages directly to [SCDC]." [emphasis supplied].

However, the Court and the Appellants misapprehended the scope of § 24-3-40(A)'s key phrase, namely "in a prison industry program provided under Article 3 of this chapter." The Court and, again, the Appellants also overlooked the contours of Article 3, Chapter 3 of Title 24. Title 24 is entitled "Corrections, Jails, Probations, Paroles and Pardons."

Chapter 3 of Title 24 is entitled "State Prison System." Section 24-3-40 falls under Article 1 of Chapter 3, which is entitled "Persons Confined and Use Thereof Generally." Article 3 of Chapter 3 is entitled "Prison Industries," and the following 14 statutes fall under Article 3: §§ 24-3-310, 315, 320, 330, 340, 350, 360, 370, 380, 390, 400, 410, 420, and 430. *See Id.*

As the Court acknowledged, *Id.*, at *8, SCDC must, under § 24-3-315, "determine prior to using inmate labor in a prison industry project that ... **the rates of pay** and other conditions of employment **are not less than those paid** and provided **for work of similar nature in the locality in which the work is performed.**" [emphasis supplied].

As the Court also acknowledged, *Id.*, § 24-3-430(D) provides that “[n]o inmate participating in the program may earn **less than the prevailing wage for work of similar nature in the private sector.**” [emphasis supplied].

The first sentence of § 24-3-315 provides that SCDC “shall ensure that inmates participating in any prison industry program pursuant to the Justice Assistance Act of 1984 is on a voluntary basis.” SCDC operates such projects under the purview of the United States Department of Justice’s Bureau of Justice Assistance [“BJA”] and its Prison Industries Enhancement Certification Program [“PIECP”].¹²

Section 24-3-430(G) provides that “[n]o inmate who participates in a project designated by [BJA’s Director] pursuant to Public Law 90-351 is eligible for unemployment compensation upon termination from the program.”

Section 24-3-430(H) provides that “[t]he earnings of an inmate authorized to work at work at paid employment pursuant to this section must be paid directly to [SCDC] and applied as provided under [§ 24-3-40].”¹³

No statute under Article 3 of Chapter 3 has ever allowed SCDC to pay inmates less than the “prevailing wage” for the labor they performed while voluntarily engaged in projects operated under its purview. Thus, the phrase “in a prison industry program provided under Article 3 of this chapter” explicitly limits the application of § 24-3-40(A)’s deductions to projects in which SCDC must pay inmates § 24-3-430(D)’s “prevailing wage” for their labor.

¹² See *Cartrette v. S.C. Dep’t of Corr.*, 694 S.E.2d 18, 21, n. 5 (S.C. Ct. App. 2010). In *Cartrette*, 694 S.E.2d at 22, n. 6, this Court observed that, by operation of § 24-3-40(A)(1) – (A)(6), “seventy percent or more of each inmate worker’s pay is diverted for restitution, victim’s programs, child support, room and board, or taxes” in such projects. Gatewood cited *Cartrette* in his petition for rehearing, and he asserted that “his right to overtime is ensured under § 24-3-430” by operation of this Court’s decision in the case. See Gatewood’s March 19, 2016 Petition for Rehearing, pp. 4 – 5. However, as explained immediately below, the legislature did not intend for § 24-3-430(D)’s “prevailing wage” provision to apply to the wages paid to inmates engaged in service works projects once it enacted the first proviso which allowed SCDC to pay inmates engaged in such projects “less than the prevailing wage.”

¹³ See note 1 above.

2. Provisos for fiscal years 2001-2002 and 2002-2003.

The Court mistakenly stated that the legislature enacted the first of the six (6) provisos specifically addressing service work on July 20, 2001. *Id.*, at *2. The legislative history for the proviso in question, which covered the 2001-2002 fiscal year, reflects that the proviso took effect June 27, 2001. H. 3687, Appropriation Bill 2001–2002, Part IB § 37.31 (Act No. 66, 2001 S.C. Acts 738). *See also Id.*, at *2, n. 3.

As the Court acknowledged, *Id.*, the first proviso reflected the following language:

The Director of [SCDC] 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, 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.* [italicized emphasis added by the Court; bold emphasis supplied].

The above-quoted language comprised the entire first proviso. Unlike § 24-3-40(A), no language appeared in the first proviso which required SCDC to assess any deductions against the inmates' gross earnings. The legislature enacted an identical proviso to address service work for the 2002-2003 fiscal year, and the second proviso had no language which required SCDC to assess any deductions against the inmates' gross earnings.¹⁴ H. 4878, Appropriation Bill 2002–2003, Part IB § 37.25 (Act No. 289, 2002 S.C. Acts 3145). *See also Id.*, at *2, n. 3.

With the enactment of the first two (2) provisos by which it first addressed service work projects, the legislature permitted SCDC to pay inmates in such projects “less than the prevailing wage for work of a similar nature in the private sector.” Therefore, with the enactment of the first two (2) provisos, § 24-3-40(A) no longer applied to the gross earnings due inmates in

¹⁴ See Exhibit C, p. 2.

service work projects, because § 24-3-40(A) applied only to projects under Chapter 3, Article 3 of Title 24 in which SCDC had to pay inmates § 24-3-430(D)'s "prevailing wage."

Again, the first two (2) provisos, unlike § 24-3-40(A), contained no language requiring SCDC to assess any deductions against the inmates' gross earnings. However, the first two (2) provisos did not prohibit, prevent, or otherwise restrict SCDC from assessing deductions against the gross earnings paid to inmates engaged in service work projects. Thus, under the first two (2) provisos, SCDC did not run afoul of § 24-3-40(A). or any other applicable statute, if it deducted from the inmates' gross earnings the items identified in the September 30, 1998 contract between SCDC and WTI (R. p. 52), which consisted of "**security costs and overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction.**" [emphasis supplied]. *See also Id.*, *1.

3. Deductions in provisos for the fiscal years from 2003 to 2007.

With the proviso it enacted to address service work for the 2003-2004 fiscal year (i.e. the third of the six (6) provisos), the legislature, with language identical or nearly identical to the first two (2) provisos, again permitted SCDC to pay inmates less than the "prevailing wage." However, in the third proviso, the legislature, for the first time, imposed the following requirement(s) upon SCDC:

Provided, however, that [SCDC] shall deduct the following from the gross earnings of the inmates engaged in Prison Industry service work.

(1) If restitution to a particular victim or victims has been court ordered by the court, then [20%] must be used to fulfill the restitution obligation. If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then [10%] must be applied to the South Carolina Victims' Compensation Fund.

(2) [10%] must be retained by [SCDC] to defray the cost of the inmate's room and board.

H. 3749, Appropriation Bill 2003–2004, Part IB § 37.23 (Act No. 91, 2003 S.C. Acts 1437). *See also Id.*, *2, n. 3.

The fourth, fifth, and six provisos, covering fiscal years 2004-2005, 2005-2006, and 2006-2007, reflected the identical language concerning deductions.¹⁵ *See* H. 4295, Appropriation Bill 2004–2005, Part IB § 37.23 (Act No. 248, 2004 S.C. Acts 2574);¹⁶ H. 3716, Appropriation Bill 2005–2006, Part IB § 37.22 (Act No. 115, 2005 S.C. Acts 1324);¹⁷ and H. 4810, Appropriation Bill 2006–2007, Part IB § 37.22 (2006 Act No. 397) (Act No. 68, 2007 Acts 288). *See also Id.*, *2, n. 3.

Unlike the first two (2) provisos, the third, fourth, fifth, and sixth provisos articulated language which required SCDC to assess deductions for restitution and room and board against the inmates’ gross earnings. However, like the first two (2) provisos, nothing in the third, fourth, fifth, and sixth provisos prohibited, prevented, or otherwise restricted SCDC from assessing deductions against the inmates’ gross earnings for the items identified in SCDC’s contract with WTI (R. p. 52). Stated another way, these four (4) provisos did not state that SCDC “*shall only* deduct the following from the gross earnings engaged in Prison Industry service work.”

Again, the items identified in the contract consisted of “**security costs and overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction.**” [emphasis supplied]. *See also Id.*, *1. Critically, the deductions against the inmates’ gross earnings from the third, fourth, fifth, and sixth provisos for restitution and room and board did not overlap or otherwise replicate the above-quoted items from SCDC’s contract with WTI.

¹⁵ *See* Exhibit C, p. 2.

¹⁶ According to its legislative history, the fourth proviso became effective May 25, 2004. The Court focused on the fourth proviso in its analysis of the second issue. *Id.*, at **4 – 5. It did so because Gatewood did not begin participating in the service work project until after the legislature enacted the fourth proviso. The Court acknowledged that the fifth and sixth provisos were identical to the fourth proviso. *Id.*, at *5, n. 7.

¹⁷ According to its legislative history, the fifth proviso became effective May 17, 2005. *See also Id.*, at *5, n. 7.

Therefore, SCDC respectfully asserts that contrary to the Court's conclusion in footnote 15 of its opinion,¹⁸ it remitted lawful amounts of net earnings to Gatewood, consisting of the deductions required by the fourth, fifth, and sixth provisos as well as the items identified by the contract (i.e. "security costs and overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction), from October 18, 2004 through June 30, 2007.

Moreover, as discussed below, SCDC respectfully asserts that the genesis of the "in addition to any other required deductions" language from the first unnumbered paragraph of S. 182, § 2 (i.e. § 24-1-295) is derived from the third, fourth, fifth, and sixth provisos, and it further asserts that the legislature did not intend for a gap to be created between the expiration of the sixth and final proviso and the enactment of all three sections of S. 182.¹⁹

4. Marketing plan language in provisos for fiscal years 2005 to 2007.

With the proviso it enacted to address service work projects for the 2005-2006 fiscal year (i.e. the fifth of the six (6) provisos), the legislature, with language identical or nearly identical to the first four (4) provisos, again permitted SCDC to pay inmates less than the "prevailing wage."

¹⁸ The Court concluded that "applying [§ 24-1-295] retroactively to [Gatewood's] gross wages earned prior to July 2007, when the provisos for fiscal years 2004-05, 2005-06, and 2006-07 would otherwise govern deductions, would violate due process to the extent that imposing the deductions authorized by [§ 24-1-295] would reduce [Gatewood's] net wages from what they would have been as a result of taking the deductions allowed by the provisos." *Id.*, at *7, n. 15. The Court determined that "the ALC's conclusion that [§ 24-1-295] applies to [Gatewood's] gross earnings implies [§ 24-1-295] operates retroactively, given that [Gatewood] began working for the WTI project almost three years before [§ 24-1-295] became law." *Id.*, at *7. *See also Id.*, n. 11. Therefore, the Court agreed with Gatewood that "the ALC's retroactive application of [§ 24-1-295] to his wages earned prior to the effective date of [§ 24-1-295], August 1, 2007, violates his right to due process of law." *Id.*, at *7. However, SCDC respectfully submits that since it remitted lawful amounts of net earnings to Gatewood during the three (3) fiscal years covered by the fourth, fifth, and sixth provisos (i.e. 2004-2005, 2005-2006, and 2006-2007), Gatewood was not deprived of due process from October 18, 2004 through June 30, 2007.

¹⁹ On the third issue, the Court ruled that SCDC lawfully assessed deductions for security costs and overhead, as provided by SCDC's contract with WTI, from August 1, 2007 until SCDC remitted its final amount of net wages to Gatewood on April 13, 2009. The Court anchored its ruling upon its conclusions that the "in addition to any other required deductions" language from the first unnumbered paragraph of § 24-1-295 permitted such deductions and that the effective date of § 24-1-295 was August 1, 2007. *Id.*, at **6 – 7. SCDC does not challenge the Court's ruling on the third issue. Instead, SCDC respectfully asserts that the legislature intended for the entirety of S. 182 to cover service work projects during July 2007 upon the expiration of the sixth and final proviso.

With the fifth proviso, the legislature, with language identical to the third and fourth provisos, again required SCDC to apply deductions to the gross earnings of inmates who participated in such projects for restitution and room and board. However, with the fifth proviso, the legislature, for the very first time, articulated a new section by which it required SCDC, in conjunction with the Department of Commerce, to “develop and maintain a marketing plan to attract private sector businesses for the employment of inmates through the prison industries program.” The entirety of the new section from the fifth proviso read as follows:

[SCDC], in conjunction with [Commerce], shall develop and maintain a marketing plan to attract private sector businesses for the employment of inmates through the prison industries program. The marketing plan must include, but not be limited to, provisions of public advertising to establish a prison based industry and a certification by [Commerce] that each new contract does not create an unfair competitive wage disadvantage to the local economy. The negotiation of new contracts and the renewal of existing contracts with private sector entities must be consummated in accordance with procedures established jointly by [Commerce] and [SCDC]. The procedures shall be drafted to ensure fairness and consistency in establishing contracts with private sector entities seeking to establish or continue prison based operations **whenever the wage to be paid is less than the Federally established minimum wage**. The marketing plan and the procedures for negotiating new contracts and contract renewals must be submitted to and approved by the Budget and Control Board prior to implementation. [SCDC] shall annually submit an audit report of the program to the Senate Corrections and Penology Committee and the House Medical, Military, Public and Municipal Affairs Committee. The provisions of the section shall not be construed to apply to traditional prison industries as authorized in [§ 24-3-320]. [emphasis supplied].

H. 3716, Appropriation Bill 2005–2006, Part IB § 37.22 (Act No. 115, 2005 S.C. Acts 1324).²⁰

See also Id., *2, n. 3.

²⁰ Again, the fifth proviso became effective May 17, 2005. *See* note 15 above. *See also Id.*, at *5, n. 7.

The legislature included the identical section in the sixth proviso it enacted which covered the fiscal year 2006-2007.²¹ H. 4810, Appropriation Bill 2006–2007, Part IB § 37.22 (2006 Act No. 397) (Act No. 68, 2007 Acts 288). *See also Id.*, *2, n. 3.

The Court overlooked the above-quoted section from the fifth proviso and which the legislature included verbatim in the sixth proviso. As discussed below, the legislature included most if not all of the provisions from this section in its enactment S. 182, § 1 (a/k/a § 24-1-290).

5. Governor’s veto message for the seventh proviso.

As discussed above, the Court acknowledged, *Id.*, at *5, that the legislature proposed a seventh proviso for fiscal year 2007-2008. H. 3620, Appropriation Bill 2007–2008, Part IB § 37.21. *See also Id.*, at *5, n. 7. The seventh proviso was identical in nearly every respect to the fifth and sixth provisos covering fiscal years 2005-2007.²²

The Court also acknowledged the realities that the Governor vetoed the seventh proviso and that the legislature sustained the Governor’s veto of the seventh proviso. *Id.*, at *5. The Court characterized the legislature’s action in sustaining the Governor’s veto of the seventh proviso as having been “curiously” undertaken. *Id.*

After reiterating its conclusion that no authorization existed for SCDC to pay inmates below the prevailing wage during July 2007 from note 3 of its opinion, the Court then quoted the Governor’s veto message, in which the Governor stated that the seventh proviso covering 2007-2008 was “no longer necessary” after he signed S. 182 and that the seventh proviso conflicted with the statutory changes represented by the enactment of S. 182 and was “unneeded.”²³ *Id.*

²¹ *See* Exhibit C, p. 3.

²² SCDC respectfully submits a side-by-side comparison of the sixth proviso, seventh proviso, and S. 182, §§ 1 and 2 as Exhibit E in support of its instant petition. Exhibit E totals three (3) pages.

²³ *See* Exhibit D, p. 1.

The Court then observed only that S. 182 added § 24-1-295 to codify the six (6) provisos authorizing “authorizing service work contracts and payment below the prevailing wage,” and, based upon this analysis, it concluded that § 24-1-295 did not become “effective” until August 1, 2007. *Id.* The Court completely overlooked the language from the fifth and sixth provisos which the legislature codified by enacting S. 182, § 1 (a/k/a § 24-1-290).

The Court extended its analysis and concluded that the legislature created a one (1) month gap (i.e. July 2007) which left “a void in deductions specific to service work contracts.” *Id.* Relying on the Governor’s veto message, to the exclusion of the legislative history associated with S. 182, the Court observed that the Governor was “apparently unaware” that § 24-1-295 did not become effective until August 1, 2007 and that he was likewise “apparently unaware” that a gap concerning service work projects “would be created.” *Id.* Again, relying on the veto message rather than S. 182’s separate and valid legislative history, the Court declared that it could not consider the message “and its effect on the legislatures subsequent action in determining legislative intent.” *Id.*

By doing so, the Court ruled that the fourth, fifth, and sixth provisos both permitted SCDC to pay Gatewood less than the “prevailing wage” from when he started in the project in October 2004 until “the month of July” and required SCDC to assess deductions from Gatewood’s gross earnings for restitution and room and board during the same period of time. *Id.*

The Court then used two (2) statutes from Chapter 3, Article 3 of Title 24, namely § 24-3-430(D) and § 24-3-40(A), to fill the July 2007 gap purportedly created by the Governor’s veto. The Court declared (1) that SCDC should have paid Gatewood the “prevailing wage” during July 2007 in accordance with § 24-3-430(D) and (2) that SCDC should have applied the deductions

from § 24-3-40(A) to the gross wage, represented by the “prevailing wage,” it should have paid Gatewood during July 2007. *Id.*

6. Senate Bill 182’s legislative history.

Contrary to the Court’s analysis and ruling on the second issue, SCDC respectfully asserts that the legislature and, for that matter, the Governor followed parallel tracks by which legislation specifically addressing service work projects would continue beyond the expiration of the sixth proviso. The seventh proviso represented one track and S. 182 represented the other. While it examined the demise of the seventh proviso in its ruling on the second issue, the Court overlooked the separate and valid legislative history of S. 182’s three (3) sections.

Senators Fair and Campsen introduced S. 182, and, according to the South Carolina Senate Journal from January 9, 2007,²⁴ its intent was as follows:

A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING [§ 24-1-290] SO AS TO PROVIDE THAT [SCDC] IN CONJUNCTION WITH THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR BUSINESSES FOR THE EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM; **AND BY ADDING [§ 24-1-295] SO AS TO PROVIDE THAT THE DIRECTOR OF [SCDC] SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF THE INMATES ENGAGED IN PRISON INDUSTRY SERVICE WORK.**²⁵ [emphasis supplied].

According to the Senate Journal from January 31, 2007, Senators Richardson, Hayes, and Elliott had joined Senators Fair and Campsen in sponsoring S. 182. The Senate Journal from January 31, 2007 also reflects that Senator Jackson offered the first of two (2) proposed amendments to S. 182, and his first proposed amendment consisted of changing the language

²⁴ SCDC respectfully submits relevant extracts from the House and Senate Journals for 2007 as Exhibit F in support of its instant petition. *See* Exhibit F, p. 1.

²⁵ The Code Commissioner redesignated § 24-1-285 as § 24-1-290 and § 24-1-290 as § 24-1-295. *See* Exhibit A.

from S. 182, § 2 (a/k/a § 24-1-295) from “these wages may be less than the prevailing wage for work of a similar nature in the private sector” to “these wages may be less than the prevailing wage for work of a similar nature in the private sector, **but may not be less than the minimum wage as required by the Fair Labor Standards Act.**”²⁶, [emphasis supplied].

By his second proposed amendment, Senator Jackson wanted to change the same language from “and these wages may be less than the prevailing wage for work of a similar nature in the private sector” to “these wages may be less than the prevailing wage for work of a similar nature in the private sector **but may not be less than [50%] the minimum wage as required by the Fair Labor Standards Act.**”²⁷, [emphasis supplied].

The Senate did not enact either of the amendments proposed by Senator Jackson, and, according to the Senate Journal from February 7, 2007, the Senate proceeded to a third reading of S. 182.²⁸ As reflected by the bill’s third reading, the language from S. 182, § 1 (a/k/a § 24-1-290) required, as in the fifth and sixth provisos, SCDC to, in conjunction with the Department of Commerce, “develop and maintain a marketing plan to attract private sector businesses for the employment of inmates through the prison industries program.”²⁹,

The entirety of S. 182, § 1 (a/k/a § 24-1-290), as reflected by its third reading, was identical or nearly identical to the corresponding provisions from the fifth and sixth provisos.³⁰ Likewise, the entirety of S. 182, § 2 (a/k/a § 24-1-295), including the schedule of deductions

²⁶ See Exhibit F, pp. 2 – 3.

²⁷ See Exhibit F, p. 4.

²⁸ See Exhibit F, p. 5.

²⁹ See Exhibit F, pp. 5 – 6.

³⁰ See Exhibit C, p. 3.

applicable to inmates' gross earnings, was identical or nearly identical to the corresponding provisions from the third, fourth, fifth, and sixth provisos.³¹

The House took up S. 182, and, according to the House Journal for May 22, 2007, the Judicial Committee proposed amending S. 182, § 2 (a/k/a § 24-1-295) by replacing the schedule of deductions, which was identical or nearly identical to the corresponding provisions from the third, fourth, fifth, and sixth provisos, with a schedule of deductions that was identical or nearly identical to the schedule of deductions from § 24-3-40(A)(1) – (A)(6).³²

Between May 22, 2007 and June 5, 2007, both chambers resolved to amend S. 182, and §§ 1 and 2 of S. 182 (a/k/a §§ 24-1-290 and 295) evolved into their final respective versions. As reflected by the House Journal from June 5, 2007 and the Senate Journal from June 6, 2007, S. 182 had received three (3) readings in both chambers, and it was order that the title of S. 182 be changed to that of an Act, and that S. 182 be enrolled for ratification.³³

As reflected by both the Senate and House Journals from June 7, 2007, the legislature ratified S. 182,³⁴ and, upon ratification, it reflected the following title:³⁵

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING [§§ 24-1-290 AND 295] SO AS TO PROVIDE THAT THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR SERVICE BUSINESSES FOR EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT THE DIRECTOR OF [SCDC] MAY ENTER INTO CONTRACTS WITH PRIVATE SECTOR ENTITIES THAT ALLOW INMATE LABOR TO BE PROVIDED FOR PRISON INDUSTRY SERVICE WORK THAT

³¹ See Exhibit F, p. 6 and Exhibit C, p. 2.

³² See Exhibit F, pp. 7 – 8 and Exhibit C, p. 2.

³³ See Exhibit F, pp. 9 – 11.

³⁴ See Exhibit F, pp. 12 – 15.

³⁵ SCDC respectfully submits a copy of the ratified version of S. 182 as Exhibit G in support of its instant petition.

INVOLVES EXPORTATION OF CERTAIN PRODUCTS UNDER CERTAIN CIRCUMSTANCES, AND PROVIDE THAT THE DIRECTOR OF [SCDC] SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF AN INMATE ENGAGED IN PRISON INDUSTRY SERVICE WORK *IN ADDITION TO ANY OTHER REQUIRED DEDUCTIONS*. [bold and italicized emphasis supplied].

7. Impact of Senate Bill 182's ratification and approval.

As shown by its above-quoted title,³⁶ the legislature clearly intended for SCDC, upon S. 182's ratification, to assess deductions against the gross earnings of inmates participating in service work projects consisting of the schedule in S. 182, § 2 (a/k/a §§ 24-1-295(1) – (6)), as well as “any other required deductions,” like security costs and overhead, as authorized by the final sentence of the unnumbered first paragraph of S. 182, § 2 (a/k/a § 24-1-295).

The legislature ratified S. 182 on June 8, 2007, and the Governor approved it on June 13, 2007.³⁷ In other words, the legislature approved and made valid S. 182 on June 8, 2007, and the Governor signed S. 182 into law on June 13, 2007.³⁸ Thus, SCDC respectfully asserts that the legislature did not intend for any gap or void to be created during July 2007 in which the ratified provisions of all three (3) sections of S. 182 did not apply.

8. The seventh proviso.

Again, the legislature's action concerning service work projects in 2007 followed parallel tracks with one track consisting of S. 182, and its three (3) sections, and the other consisting of the seventh proviso. H. 3620, Appropriation Bill 2007–2008, Part IB § 37.21.

³⁶ Compare S. 182's ratified title with its original title. See Exhibit F, p. 1 and Exhibit G, p. 1.

³⁷ See Exhibit G, p. 2.

³⁸ See <http://www.scstatehouse.gov/studentpage/coolstuff/glossary.shtml>.

A comparison of the sixth proviso, the seventh proviso, and §§ 1 and 2 of S. 182 (a/k/a §§ 24-1-290 and 295), reveals that they were identical or nearly identical.³⁹

The Governor vetoed the seventh proviso by the message he issued June 27, 2007,⁴⁰ and his veto message read as follows: “I am vetoing this proviso because **the language is no longer necessary after I signed S. 182**, the Prison Industries legislation. This proviso conflicts with the statutory changes and is unneeded.” [emphasis supplied]. *See Id.*, at *5.

The Court, invoking *Amisub*, did not factor the Governor’s veto message into its effort to determine the legislative intent associated with § 24-1-295. *Id.* More precisely, the Court, again invoking *Amisub*, appeared to use the Governor’s veto power to nullify or otherwise suspend the legislative intent associated with § 24-1-195. *Id.* By so applying *Amisub*, the Court declared that a gap one month in length existed (i.e. July 2007) between the expiration of the sixth proviso and the effective date of § 24-1-295, and, as explained above, the Court plugged the one month gap with §§ 24-3-430(D) and 24-3-40(A).

SCDC respectfully asserts, however, the legislative intent associated with § 24-1-295 had nothing at all to do with the seventh proviso’s fate. Instead, the legislative intent of § 24-1-295 was entirely contingent upon the legislative history associated with S. 182 and its three (3) sections. By the time it sustained the Governor’s veto of the seventh proviso on either June 28 or 29, 2007, the legislature had, on June 8, 2007, already ratified the entirety of S. 182 and the Governor, on June 13, 2007, had already signed S. 182. Stated more plainly, the Governor and the legislature abandoned the seventh proviso, because both realized that the seventh proviso was unneeded upon S. 182’s ratification.

³⁹ See Exhibit E.

⁴⁰ See Exhibit D, p. 1.

Thus, S. 182's legislative history evidences the legislature's intent for all three (3) of its sections to cover service work projects upon the expiration of the sixth proviso, and, accordingly, SCDC respectfully asserts that the legislature could not have intended and did not intend to create the July 2007 gap manifested by the Court in its analysis.

9. The Court overlooked § 3 of Senate Bill 182.

Not only did it overlook § 1 of S. 182 (a/k/a § 24-1-290), the Court overlooked § 3 of S. 182. In its entirety, S. 182 read as follows:⁴¹ "The provisions of this act supercede and are controlling over any provision to the contrary in [§ 37.36], Part IB of the 2007-2008 General Appropriations Bill."

In his June 27, 2007 veto message, in which he also vetoed the seventh proviso, the Governor also vetoed § 37.36, and, in doing so, he stated as follows:⁴²

I am vetoing this proviso because I have concerns about the impact that this will have on [SCDC]. Throughout the course of this session, we have worked to try to reach an agreement with all parties involved to ensure a smooth and seamless transition of prisoners held at the local level to [SCDC]. However, this proviso gives [SCDC] little flexibility in accepting prisoners from around the state. In addition, this mandate will require an additional \$1.2 million above the requested amount for Fiscal Year 2007-2008. However, this proviso supersedes all funding requirements and, in light of the fact that [SCDC] was not appropriately funded, I am left with little choice but to veto this proviso.

While it sustained his veto of the seventh proviso, the legislature overrode the Governor's veto of § 37.36.⁴³ H. 3620, Appropriation Bill 2007–2008, Part IB § 37.26 (2007 Act No. 117, 478 – 79 and 622).

⁴¹ See Exhibit G, p. 2.

⁴² See Exhibit D, p. 2.

⁴³ SCDC respectfully submits relevant extracts from the 2007 Statutes at Large as Exhibit H in support of its instant petition See Exhibit H, pp. 1 and 3.

Consequently, § 37.36 took effect no later than June 29, 2007, and it applied for the fiscal year beginning July 1, 2007.⁴⁴

Under the Court's ruling on the second issue, § 3 of S. 182, which explicitly addressed § 37.36 of the 2007-2008 appropriations bill, would not have applied until August 1, 2007 despite the reality that the legislature, by overriding the Governor's veto of § 37.36, clearly intended for § 37.36 to take effect on July 1, 2007.

By declaring in its ruling on the second issue that the July 2007 gap existed during which § 2 of S. 182 (a/k/a §§ 24-1-295) did not apply, the Court also effectively declared that § 1 of S. 182 (a/k/a § 24-1-290) did not apply during July 2007. Likewise, the Court's declaration also means that § 3 of S. 182 did not apply during 2007, despite the legislature's clear action on § 37.36 of the 2007-2008 appropriations bill.

10. The legislative histories of the seven provisos and Senate Bill 182 support SCDC's argument on the second issue.

SCDC respectfully asserts that the Court's ruling on the second issue negates the legislature's clear intent, as evidenced by the ratification and approval of S. 182 in mid-June 2007, for all three (3) sections of S. 182, including S. 182, § 2 (§ 24-1-295), to cover July 2007.

In *Sloan v. S.C. Bd. Of Phys. Therapy Examiners*, 636 S.E.2d 598, 606 – 07 (S.C. 2006), our Supreme Court articulated the following applicable guidance:

A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. **The real purpose and intent of the lawmakers will prevail over the literal import of particular words.** ... Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. ... The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons. [citations omitted and emphasis supplied].

⁴⁴ See Exhibit H, p. 3.

However, in its ruling on the second issue, the Court primarily relied upon *Amisub*. SCDC respectfully asserts that the standards concerning legislative intent from *Amisub*, just like the standards from *Sloan*, actually support SCDC's argument on the second issue.

In *Amisub*, 757 S.E.2d at 415, our Supreme Court held that the legislature "did not intend to suspend DHEC's obligations under the CON Act for Fiscal Year 2013-2014" notwithstanding the reality that the House failed "to override the Governor's veto of the line item in the state budget providing funding" for the CON program. *Id.*, at 410.

According to the *Amisub* Court, *Id.*, at 416, "[t]he primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly." Our Supreme Court in *Amisub* also recalled an instance in which it "discerned legislative intent from both 'the statutory scheme and budget provisos.'" *Id.*, at 416 – 17 (citing *Beaufort Cnty., v. S.C. State Election Comm'n*, 718 S.E.2d 432, 434 – 35, and 436 – 37 (S.C. 2011)).

By another of its rulings, the *Amisub* Court declared that DHEC was "required to fund the CON program, regardless of the 2013-2014 Appropriations Act's failure to appropriate funding for the program," and, in so declaring, it recognized that "under separation of powers principles, **'[e]xecutive agencies are required to comply with the General Assembly's enactment of a law until it has been otherwise declared invalid.'**" *Id.*, at 417 – 18 (citing *Edwards v. State*, 678 S.E.2d 412, 417 (S.C. 2009), which cited *Layman v. State*, 658 S.E.2d 320, 328 (S.C. 2008)).

Thus, under the above-quoted authorities and in light of the analysis it conducted concerning the chronologies and histories of the applicable provisos, bills, and statutes, SCDC respectfully asserts that it did not have to pay Gatewood § 24-3-430(D)'s "prevailing wage," nor did it have to apply § 24-3-40(A)'s deductions to Gatewood's gross wages during July 2007. Instead, SCDC lawfully paid Gatewood "less than the prevailing wage" during July 2007, and,

under the provisions of S. 182, § 2 (a/k/a § 24-1-295), any deductions it applied to Gatewood's gross earnings during July 2007 for security costs and overhead conformed to the "in addition to any other required deductions" language from S. 182, § 2 (a/k/a § 24-1-295).

Moreover, the legislature, by its enactment of S. 182's first two (2) sections, codified the six (6) provisos into §§ 24-1-290 and 295, and these two (2) statutes fell under Chapter 1 of Title 24 rather than Chapter 3, Article 3 of Title 24. Such designations reveal that the legislature never intended for the provisions of any statute from Chapter 3, Article 3 of Title 24 (i.e. § 24-3-430(D)) or any statute that applied only to projects operated by SCDC under Article 3 of Title 24 (i.e. § 24-3-40(A)) to apply to the gross earnings of inmates engaged in service work projects after it enacted the first proviso for 2001-2002. Thus, SCDC respectfully asserts that deductions for security costs and overhead from the gross earnings of inmates engaged in service work projects have been lawful since the enactment of the first proviso in 2001.

While it may not have engaged in the above-provided analysis when it concluded that § 24-1-295 and its deductions, including the "in addition to any other required deductions" language from the first unnumbered paragraph of § 24-1-295, applied to Gatewood's gross earnings in July 2007, the ALC reached the correct result by doing so. Accordingly, SCDC respectfully urges the Court to "affirm in result" the ALC's ruling on the second issue.

III. IN ITS RULING ON THE FOURTH ISSUE, THE COURT ERRONEOUSLY CONCLUDED THAT GATEWOOD WAS DEPRIVED OF DUE PROCESS

By its ruling on the fourth issue, the Court agreed with Gatewood both that "the ALC's retroactive application of [§ 24-1-295] to his wages earned prior to the effective date of [§ 24-1-295], August 1, 2007, violates his right to due process of law" and that § 24-1-295's "addition of 'other required deductions' to the deductions previously required by [§ 24-3-40] reduced his net wages beginning on August 1, 2007, and applying this result retroactively would divest him of

his right to certain wages that vested when they were earned prior to August 1, 2007.” 2016 WL 912672, at *7.

A. GATEWOOD’S WAGE CLAIMS INHERENTLY SOUGHT LAWFUL NET WAGES FROM SCDC; THUS, HIS CLAIMS PREDATED ANY RETROACTIVE APPLICATION OF § 24-1-295 BY THE ALC, AND HE FAILED TO PRESERVE HIS DUE PROCESS CLAIM FOR REVIEW

1. The Court rejected SCDC’s arguments that Gatewood failed to preserve both his retroactivity and due process claims for review.

Concerning whether Gatewood preserved for review his retroactivity claim, the Court observed as follows:

SCDC contends [Gatewood] did not preserve the question of retroactivity for review because he did not raise it before the ALC. However, the ALC’s conclusion that [§ 24-1-295] applies to [Gatewood’s] gross earnings implies [§ 24-1-295] operates retroactively, given that [Gatewood] began working for the WTI project almost three years before [§ 24-1-295] became law. Further, the question of whether [§ 24-3-40] or [§ 24-1-295] applies to [Gatewood’s] gross wages fairly encompasses the question of whether [§ 24-1-295] applies retroactively to the wages earned before the statute’s effective date. Therefore, it is proper to address the issue on the merits. *Id.*, at *7.

In rejecting SCDC’s argument that he did not preserve his due process claim before the ALC, the Court leaned upon its above-quoted ruling that the ALC itself animated the § 24-1-295’s retroactive application, *Id.*, at *7:

The question of whether applying a statute retroactively violates due process is fairly subsumed within the question of whether the statute in fact operates retroactively. In other words, the very standard for determining whether a statute operates retroactively requires analyzing its potential to divest or limit a vested right. [See *Dunham v. Davis*, 91 S.E.2d 716, 718 (S.C. 1956)] (holding retroactive application of a statute relaxing the stringency of a tax sale procedure to respondents, whose rights in certain real property vested prior to the statute’s enactment “would be clearly unconstitutional as depriving them of property without due process of law”); [see also *Edwards v. State Law Enft Div.*, 720 S.E.2d 462, 466 (S.C. 2011)] (“[A]bsent a specific provision or clear legislative intent to the contrary, statutes are to be construed prospectively rather than retroactively, unless the statute is remedial or procedural in nature.”); [Se.

Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC, 713 S.E.2d 650, 655 (S.C. Ct. App. 2011)] (“A statute is remedial where it creates new remedies for existing rights unless it violates a contractual obligation, creates a new right, or divests a vested right.”); [*Edwards*, 720 S.E.2d at 467] (“[A] statute that limits a right is generally not procedural.”).

2. Gatewood did not need the ALC’s order to animate his net wages claim, and he failed to preserve his due process claim for review.

At the outset of its due process analysis, the Court observed as follows, *Id.*, at *8:

These standards for remedial and procedural statutes dovetail with [Gatewood’s] argument that retroactive application of [§ 24-1-295] **violates due process by divesting his vested right to earn a certain net wage** prior to the effective date of [§ 24-1-295]. To evaluate this argument, **we first examine [Gatewood’s] right to wages, then determine how the implementation of [§ 24-1-295] should have affected his net wages.** [emphasis supplied].

A review of the record, as well as the chronology of the provisos enacted beginning in 2001, reveals both that the ALC’s April 29, 2014 order (R. pp. 29 – 39) did not animate to Gatewood’s claim for net wages and that Gatewood failed to raise his due process claim concerning his net wages to SCDC during the grievance proceedings conducted under Policy GA-01.12 or during his appeal to the ALC of SCDC’s denial of the net wage claims.

a) Grievance proceedings before SCDC.

SCDC received Gatewood’s Step 1 form, which he dated October 16, 2004, on October 18, 2004. (R. pp. 46 – 47). On his Step 1 form, Gatewood stated as follows (R. p. 46):

From 1999 to July 2001, WTI/Lieber were required by **S.C. Code 24-3-430** to pay [Inmates] **the “prevailing wage”** for work of a similar nature in the private sector. This prevailing wage was \$8.40 to \$10.97 for 1999, \$9.74 to \$11.59 for 2000, and \$10.10 to \$12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay [Inmates] the negotiated wage of \$4.00 per hour (**Statutes at Large, No. 66, § 37.31, eff. July 1, 2001**; Exh. B, C). [emphasis supplied].

Thus, Gatewood explicitly invoked § 24-3-430 and § 24-3-430(D)’s “prevailing wage” language in his Step 1 as grounds upon which he claimed SCDC owed him back wages.

Gatewood explicitly acknowledged the existence of at least the first proviso enacted in 2001 in his Step 1, because the first proviso allowed SCDC to pay inmates “less than the prevailing wage” in service work projects. Gatewood also invoked the first proviso as another ground upon which he claimed SCDC owed him back wages in his Step 1.

SCDC received Gatewood’s Step 2 form, dated November 2, 2004, on November 8, 2004. (R. pp. 48 – 49). On his Step 2 form, Gatewood stated as follows (R. p. 48):

Adkins & Wicker do require payment of **prevailing wages**. ... Adkins & Wicker further allow this issue of payment of wages under **S.C. Code 24-3-430** to be grieved, pursuant to SCDC’s grievance procedure. [emphasis supplied].

While he didn’t mention the provisos in his Step 2, Gatewood again explicitly invoked both § 24-3-430 and § 24-3-430(D)’s “prevailing wage” language as grounds supporting his claims against SCDC.

Gatewood did not explicitly mention § 24-3-40 in either his Step 1 or Step 2 filings to SCDC. When he filed his Step 1 and Step 2 forms, the first four (4) provisos had been enacted. Starting with the 2003-2004 fiscal year (i.e. the third proviso), the provisos reflected deductions different than § 24-3-40(A)’s deductions.⁴⁵ However, the claims Gatewood presented in his Step 1 and Step 2 *inherently* animated a demand for SCDC to pay him lawful net wages.

In the final paragraph of the “amendment” to his grievance, which he dated February 3, 2006, Gatewood explicitly articulated a claim for lawful net wages (R. p. 50):

[Gatewood] requests back wages owed for ... hours in 1999 at \$9.68 per hour; ... hours in 2000 at \$10.66 per hour; ... hours in [January 1, 2001 to June 30, 2001] at \$11.08 per hour; and ... hours in [July 1, 2001 to present] at \$4 per hour; **less wages paid, § 24-3-40 deductions, and [social security/medicare]**; plus interest costs, and attorney fees. [emphasis supplied].

As of Gatewood’s February 3, 2006 amendment, the fifth proviso had been enacted, and,

⁴⁵ See Exhibit C, p. 2.

again, it reflected deductions different than § 24-3-40(A)'s deductions.⁴⁶

Gatewood attached several documents to his "amendment." (R. pp. 51 – 55). Gatewood's first attachment consisted of two (2) pages from the contract between SCDC and WTI, and the page upon which the following language appeared comprised the second page of Gatewood's first attachment (R. p. 52):

SCDC shall be responsible to pay inmate workers, **cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction.**

...
Thirty (30) days prior to each anniversary date of this agreement, SCDC and [WTI] may negotiate an increase in the per hour rate paid by [WTI] to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. **It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.** [emphasis supplied].

In its ruling on the third issue, *Id.*, at *6, the Court relied upon the second of the above-quoted passages from the contract, and its final sentence,⁴⁷ when it affirmed the ALC's conclusion that "SCDC's security costs and Prison Industries overhead constituted 'other required deductions or purposes of [§ 24-1-295] **because they were built into the \$4.00 per hour rate WTI agreed to pay SCDC for inmate labor.**"^{48,}

⁴⁶ See Exhibit C, p. 2.

⁴⁷ Gatewood petitioned the Court to rehear its ruling on the third issue, and he addressed the Court's reliance upon the above-quoted language from SCDC's 1998 contract with WTI. See Gatewood's Petition, pp. 3 – 4.

⁴⁸ The Court's conclusion on this point supports SCDC's assertion that it could have assessed deductions for security costs and overhead against Gatewood's gross earnings beginning in fiscal year 2001-2002 when the legislature enacted the first proviso. The \$4.00 per hour labor rate from SCDC's 1998 contract with WTI still applied when the legislature enacted the first proviso. As explained above, the legislature intended to remove the hourly wage SCDC paid to inmates, like Gatewood, engaged in service work projects from the ambit of both § 24-3-430(D)'s "prevailing wage" language and § 24-3-40(A)'s deductions when it enacted the first proviso. No language in any of the six (6) provisos prohibited or otherwise prevented SCDC from assessing deductions for security costs and overhead, as specified in the operative language from SCDC's contract with WTI, against the inmates' gross earnings, because security costs and overhead were, as the ALC concluded and as this Court agreed, "built into the \$4.00 per hour rate WTI agreed to pay SCDC for inmate labor." SCDC's instant analysis serves as its return to Gatewood's petition for the Court to rehear its ruling on the third issue. See Gatewood's Petition, pp. 3 – 4.

By the February 3, 2006 amended grievance he filed with SCDC, Gatewood clearly claimed that the net wages SCDC had been remitting to him and, since he continued to participate in the project, continued to remit to him did not conform to § 24-3-430(D)'s "prevailing wage" language, the operative provisos, or the deductions from § 24-3-40(A).

As he continues to do in his March 19, 2016 petition for rehearing,⁴⁹ Gatewood explicitly asserted in his February 3, 2006 amended grievance that § 24-3-40(A)'s deductions applied to the gross wages he had earned up to that time and, because he continued to participate in the service work project Lieber, they continued to apply to his gross wages going forward.

By invoking § 24-3-40(A)'s deductions in his February 3, 2006 amended grievance, Gatewood explicitly claimed that SCDC was not remitting to him the lawful amount of net wages. For that matter, the wage claim Gatewood articulated in his Step 1 and Step 2 filings inherently asserted that SCDC was not remitting to him the lawful amount of net wages.

Succinctly stated, Gatewood has, from the inception of this controversy, demanded that SCDC pay him lawful net wages for his labor, and the ALC's decision, which upheld SCDC's denial of all wage claims Gatewood presented in his grievance filings (R. pp. 29 – 39), did not launch Gatewood's demand for lawful net wages. Therefore, this Court erroneously concluded that Gatewood's demand for lawful net wages was not animated until the ALC retroactively applied S. 182, § 2 (a/k/a § 25-1-295) to his gross earnings. *Id.*, at 7.

As his wages claims have, from their inception, sought recovery for the lawful amount of net wages SCDC owed him, Gatewood could have claimed in his Step 1, Step 2, or February 3, 2006 amended grievance that SCDC had denied him and continued to deny him due process by

⁴⁹ In his petition for rehearing, Gatewood continues to argue that § 24-3-40(A)'s deductions applied to his gross earnings despite the reality that the provisos enacted before and after Gatewood began participating in the service work project at Lieber in October 2004 (i.e. the fourth, fifth, and sixth provisos) set forth an entirely different deductions schedule applicable to the gross earnings attributable to inmates who participated only in such projects. See Gatewood's Petition, p. 4, §§ 2(d) and (f). See also Exhibit C to SCDC's Petition, p. 2.

depriving him of his vested property right to the lawful amount of net wages.

This Court, in *Bowers v. College of Charleston*, 2011 WL 11736338 at *1 (S.C. Ct. App. 2011), held as follows:

As to Bowers' argument that the College's grievance procedures denied him due process by placing an impermissible limitation on his counsel's participation, we find the issue unpreserved because Bowers did not object to the grievance procedures at either the prehearing conference or the hearing itself. [See *Lee Cnty. Sch. Dist. Bd. of Trs. v. MLD Charter Sch. Acad. Planning Comm.*, 641 S.E.2d 24, 27 (S.C. 2007)] ("**[An appellate court] has a limited scope of review and cannot consider issues that were not raised to and ruled on by the administrative agency.**"). [emphasis supplied].

The operative ruling from *Lee County* reads as follows, 641 S.E.2d at 27:

The Lee Board argues the circuit court erred in finding no conflict existed between [§ 59-40-70(A)(6)], which requires all applications to be completed by the State Board's published deadline, and 24 S.C. Code Ann. Reg. 43-601(I)(C), which permits the Advisory Committee to request and consider additional application materials after the deadline has passed. **The Lee Board failed to raise this argument to the State Board and, therefore, failed to preserve this issue for appellate review.** This Court has a limited scope of review and cannot consider issues that were not raised to and ruled on by the administrative agency. *Kiawah Resort Assoc. v. South Carolina Tax Comm'n*, 318 S.C. 502, 458 S.E.2d 542 (1995). [emphasis supplied].

As the record makes clear, Gatewood did not articulate such a claim in his Step 1, Step 2, or amended grievance, and his failure to do so means that he did not preserve his due process claim for review either by the ALC, which sat as an appellate court to which Gatewood challenged SCDC's denial of his lawful net wage claim, or by this Court.

Gatewood's prior and on-going failure to recognize the differences between § 24-3-40(A)'s deductions and the deductions set forth in the fourth, fifth, and sixth provisos simply does not excuse his failure to preserve a due process claim concerning his net wages during the grievance proceedings conducted by SCDC.

b) Gatewood's appeal of SCDC's final decision to the ALC.

Gatewood appealed SCDC's denial of his grievance to the ALC on May 20, 2007, and, of the eight (8) supporting grounds he identified in his notice, the following four (4) apply to SCDC's instant analysis (R. p. 45):

- 3 Applying [paragraph 13.1 of Policy GA-01.12] to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits [Gatewood's] Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/[negotiated] wages.
- ...
7. To extent [Gatewood] worked OT he is entitled to it under SCDC policy.

By his fifth ground, Gatewood preserved for the ALC's review the net wages claims he presented to SCDC in his Step 1 and 2, in which he explicitly invoked § 24-3-430, impliedly invoked § 24-3-430(D)'s "prevailing wage" language, and acknowledged that the provisos enacted beginning in 2001 ended his ability to demand the "prevailing wage" (i.e. "negotiated wages"). By his fourth ground, Gatewood preserved for review the net wage claims he articulated in the February 3, 2006 amendment to his grievance, in which he explicitly claimed that § 24-3-40(A)'s deductions applied to the gross earnings attributable to him to that date.

Due process was clearly at the front of Gatewood's mind when, by his third ground, he preserved for review by the ALC the claim that SCDC had deprived him of due process in the manner by which it interpreted and applied paragraph 13.1 of Policy GA-01.12 to his grievance.

However, Gatewood simply failed to preserve for review the claim that SCDC deprived him of due process by remitting unlawful amounts of net wages to him and by continuing to remit to him unlawful amounts of net wages in his notice of appeal to the ALC. No other document in the record so clearly reflects Gatewood's glaring failure to preserve his due process

claim concerning the amount of net wages SCDC had been and continued to remit to him.

Gatewood's counsel briefed Gatewood's claim that SCDC had deprived him of due process in the manner by which it interpreted and applied paragraph 13.1 of Policy GA-01.12 in the brief Gatewood's counsel filed with the ALC in *Ackerman*. (R. p. 91 – 92).

In the conclusion of the brief he filed February 19, 2014 with the ALC (R. p. 124), Gatewood clearly demanded that SCDC remit to him lawful amounts of net wages by advising the ALC to “[c]alculate [his] back wages at \$4.00 per hour, less any deductions under §24-3-40(A) applicable to [him], from his gross \$4.00 wage.” However, Gatewood did not present any argument whatsoever in his brief to the ALC in which he asserted that SCDC deprived him of due process, either procedural due process or substantive due process, by the amount of net wages it had previously remitted to him. (R. pp. 113 – 126).

Gatewood created the same irreconcilable problem for himself before the ALC concerning his demand for overtime pay. Unlike the due process claim concerning his net wages that he failed to preserve with the ALC, Gatewood, by the seventh ground in his notice of appeal, asserted that he was entitled to overtime pay (R. p. 45), and he presented argument to the ALC supporting his demand for overtime pay. (R. p. 119). The ALC ruled as follows regarding Gatewood's claim for overtime pay (R. p. 37):

[Gatewood] argues that he is entitled to overtime pay. However, this issue was not included in [Gatewood's] Step 1 and Step 2 Grievances **and is therefore not preserved for appellate review**. [See *Wilder Corp. v. Wilke*, 497 S.E.2d 731, 733 (S.C. 1998)] (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [factfinder] to be preserved for appellate review.”). [emphasis supplied].

This Court *affirmed* the ALC's above-quoted ruling on Gatewood's claim for overtime

pay in the fifth issue, *Id.*, at *9, and, in doing so, this Court ruled as follows, *Id.*, at *10:⁵⁰

An issue that is not raised to an administrative agency is not preserved for appellate review by the ALC. [*Cf. Kiawah Resort Assocs. v. S.C. Tax Comm'n*, 458 S.E.2d 542, 544 (S.C. 1995)] (“In reviewing a final decision of an administrative agency under [§ 1-23-280], the circuit court essentially sits as an appellate court to review alleged errors committed by the agency. As such, the circuit court, like this [c]ourt, has a limited scope of review, and **cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency.**” (citations omitted)). Even if the issue has been addressed by the agency, it is not preserved if the appellant did not raise it. [*Cf. Wierszewski v. Tokarick*, 418 S.E.2d 557, 559, n. 2 (S.C. Ct. App. 1992)] (“An issue is not preserved for appeal merely because the trial court mentions it.”). In *Wierszewski*, the family court judge “suggested at the hearing that attorney’s fees might be authorized under” a certain statute. *Id.* This court declined to address the point “because it was not raised in the petition or addressed in the order.” *Id.* [emphasis supplied].

In the immediately preceding section, SCDC relied upon *Bowers* and *Lee County*, respectively. Just as this Court relied upon *Kiawah Resort* in the above-quoted paragraph, our Supreme Court relied upon *Kiawah Resort* in its decision in *Lee County*.

In affirming the ALC’s decision that Gatewood did not preserve his overtime pay claim for review, this Court, *Id.*, at *10, also relied upon our Supreme Court’s ruling in *S.C. Dep’t of Transp. v. First Carolina Corp. of S.C.*, 641 S.E. 903, 907 (S.C. 2007):

(“[I]t is a litigant’s duty to bring to the court’s attention any perceived error, and the failure to do so amounts to a waiver of the alleged error.”); [*First Carolina Corp.*, 641 S.E.2d at 907] (“There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised *by the appellant*, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity.” (emphasis added) (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed.2002))). [emphasis supplied].

Under the authorities cited by this Court, including *First Carolina Corp. of S.C.*,

⁵⁰ Gatewood challenged the Court’s ruling on the fifth issue in his petition for rehearing. See Gatewood’s Petition, pp. 4 – 5. Rather obviously, SCDC does not challenge the Court’s ruling on the fifth issue.

Gatewood failed to preserve any claim that SCDC deprived him of due process by not remitting to him lawful net wages for his labor.

As asserted above, the ALC's retroactive application of § 24-1-295 to his gross earnings simply did not launch Gatewood's claim that SCDC had not remitted lawful amounts of net wages to him, because Gatewood's claim for lawful net wages was inherent in the demand for back wages he articulated in his Step 1, Step 2, and amended grievance.

Therefore, this Court should eliminate the inconsistency in its opinion (i.e. ruling that Gatewood did not fail to preserve a due process claim associated with his net wages, while ruling that he failed to preserve his overtime pay claim) by ruling that Gatewood failed to preserve a due process claim associated with his net wages.

B. GATEWOOD WAS NOT DEPRIVED OF DUE PROCESS

To the extent that this Court rejects SCDC's argument that Gatewood failed to preserve his claim that SCDC deprived him of due process by the net wages it remitted to him, SCDC respectfully submits that the Court misapprehended its due process analysis.

The Court undertook an examination of the merits of Gatewood's due process argument, and, in doing so, the Court stated it was "necessary to determine whether the statute in question is remedial or procedural in evaluating the ALC's retroactive application of [§ 24-1-295] to [Gatewood's] wages earned prior to August 1, 2007." 2016 WL 912672, at *8.

After articulating standards for remedial and procedural statutes, the Court observed, *Id.*, that the standards it articulated "dovetail with [Gatewood's] argument that retroactive application of [§ 24-1-295] violates due process by divesting his vested right to earn a certain net wage prior to the effective date of [§ 24-1-295]," and, to evaluate Gatewood's argument, it first need to

examine his “right to wages, then determine how the implementation of [§ 24-1-295] should have affected his net wages.”

The Court then observed that “[p]rior to August 1, 2007, [Gatewood] had a right to wages pursuant to (1) the budget provisos for fiscal years 2004-05, 2005-06, and 2006-07 and (2) as to July 2007, [§ 24-3-430(D)] and [§ 24-3-315].” *Id.* The Court determined that Gatewood’s “right to a certain wage became vested as soon as earned that wage.” [citation omitted]. *Id.*

The Court continued with its analysis, *Id.*, at *9:

Prior to the effective date of [§ 24-1-295], the appropriation bills for the fiscal years 2004-05, 2005-06, and 2006-07 governed deductions from [Gatewood’s] gross earnings until the month of July 2007; during July 2007, [§ 24-3-40] governed deductions from [Gatewood’s] gross earnings. When [§ 24-1-295] became effective, the “other required deductions” language supplemented those deductions already required by [§ 24-3-40]. In other words, [§ 24-3-40] does not accommodate “any other required deductions.” Unlike [§ 24-1-295], [§ 24-3-40] does not add such a catch-all phrase to the specifically numerated deductions. Further, [§ 24-3-40] requires SCDC to use the balance remaining after all other listed deductions are taken to pay federal and state taxes, which reduces the participating inmate’s tax debts. Therefore, the increase in deductions authorized by [§ 24-1-295] beginning on August 1, 2007, theoretically resulted in less net income to [Gatewood]. [footnote omitted].

The Court then concluded, *Id.*, at *9, that “[a]pplying this increase in deductions retroactively to gross wages earned during July 2007 would divest [Gatewood’s] vested right to a higher net wage for that month, i.e., his gross wages less only those deductions authorized by [§ 24-3-40], and, therefore, would violate his due process rights.” [citations omitted]. In the footnote associated with the above-quoted passage, *Id.*, at *9, n. 15, the Court expanded its conclusion as follows:

Likewise, applying [§ 24-1-295] retroactively to [Gatewood’s] gross wages earned prior to July 2007, when the provisos for fiscal years 2004-05, 2005-06, and 2006-07 would otherwise govern deductions, would violate due process to the extent that imposing the deductions authorized by [§ 24-1-295] would reduce [Gatewood’s] net wages from what they

would have been as a result of taking the deductions allowed by the provisos.

By concluding that the ALC's retroactive application of § 24-1-295 to Gatewood's gross earnings prior to August 1, 2007 deprived him of due process, the Court reversed the ALC's ruling on the fourth issue. *Id.*, at *9.

However, the Court did not specify whether the ALC's action deprived Gatewood of procedural due process or substantive due process. SCDC assumes, for the sake of expediency, the Court ruled that the ALC's action deprived him of substantive due process.

In *Sloan*, 636 S.E.2d at 614, our Supreme Court offered the relevant standard:

No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, 1; S.C. Const. art. I, 3. In order to prove a denial of substantive due process, **a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law.** [*Sunset Cay, LLC v. City of Folly Beach*, 593 S.E.2d 462, 470 (S.C. 2004)]; [*Worsley Companies, Inc. v. Town of Mt. Pleasant*, 528 S.E.2d 657 (S.C. 2000)]. [emphasis supplied].

In *Dunes West Golf Club, LLC v. Town of Mount Pleasant*, 737 S.E.2d 601, 609 (S.C. 2013),⁵¹ our Supreme Court again relied upon *Sunset Cay* in offering the relevant standard:

"In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." [*Harbit v. City of Charleston*, 675 S.E.2d 776, 782 (S.C. Ct. App. 2009)] [citing *Sunset Cay*, 593 S.E.2d at 470]. "The State's deprivation of the property interest must fall so far beyond the outer boundaries of legitimate governmental authority that no process could remedy the deficiency." *Id.* [emphasis supplied].

⁵¹ The *Dunes West* Court, 737 S.E.2d at 612, n. 11, also offered the following ruling applicable to SCDC's argument that Gatewood failed to preserve his due process claim for review:

Further, Appellant argues for the first time to this Court that its title to the Golf Course Property, rather than its specific right to use and develop the property, forms the requisite property interest upon which a substantive due process challenge may be based. Appellant cannot present this argument for the first time on appeal. [*See Atlantic Coast Builders & Contractors, LLC v. Lewis*, 730 S.E.2d 282, 287 (S.C. 2012)] ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

Gatewood cannot sustain a viable substantive due process claim associated with the net earnings SCDC remitted to him during the entirety of the time he was engaged in the service work project at Lieber, because he was not “arbitrarily and capriciously deprived of a cognizable property interest rooted in state law” as required under *Sloan*, *Dunes West*, and *Sunset Cay*. Stated plainly, SCDC remitted lawful amounts of net earnings to Gatewood while he was engaged in the service work project.

As it illustrated above, SCDC did not have to pay Gatewood § 24-3-430(D)’s “prevailing wage,” nor did it have to apply § 24-3-40(A)’s deductions to Gatewood’s gross wages during July 2007. Instead, SCDC lawfully paid Gatewood “less than the prevailing wage” during July 2007, and, under the provisions of S. 182, § 2 (a/k/a § 24-1-295), any deductions it applied to Gatewood’s gross earnings during July 2007 for security costs and overhead conformed to the “in addition to any other required deductions” language from S. 182, § 2 (a/k/a § 24-1-295).

As SCDC also illustrated above, the legislature never intended for the provisions of any statute from Chapter 3, Article 3 of Title 24 (i.e. § 24-3-430(D)) or any statute that applied only to projects operated by SCDC under Article 3 of Title 24 (i.e. § 24-3-40(A)) to apply to the gross earnings of inmates engaged in service work projects after it enacted the first proviso for 2001-2002. Therefore, deductions for security costs and overhead from the gross earnings of inmates engaged in service work projects have been lawful since the first proviso’s enactment in 2001.

As it remitted lawful amounts of net earnings to him during the three (3) fiscal years covered by the fourth, fifth, and sixth provisos (i.e. 2004-2005, 2005-2006, and 2006-2007), as well as July 2007 (i.e. the period of time in which the legislature intended for all three (3) sections of S. 182 to apply), SCDC did not divest Gatewood of any net wages attributable to him at any time he participated in the service work project at Lieber.

Accordingly, SCDC did not subject Gatewood to any deprivation of his right to substantive due process. While it may not have engaged in the above-provided analysis when it concluded that § 24-1-295 and its deductions applied to Gatewood's gross earnings prior to August 1, 2007, SCDC respectfully asserts that the ALC reached the correct result by doing so, and SCDC respectfully urges the Court to "affirm in result" the ALC's ruling on the fourth issue.

IV. CONCLUSION

In light of the foregoing analysis and argument, SCDC respectfully petitions the Court to withdraw its original opinion and substitute a new opinion for the instant appeal.

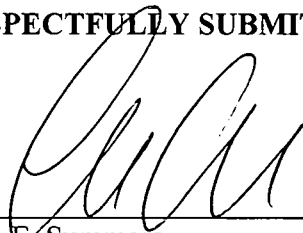
SCDC respectfully urges the Court to "affirm in result" the ALC's ruling on the second issue in its new opinion. SCDC respectfully urges the Court to modify its ruling on the third issue to reflect that SCDC could have both lawfully paid Gatewood "less than the prevailing wage" during July 2007 and lawfully applied deductions for security costs and overhead to his gross earnings during July 2007 in its new opinion. SCDC respectfully urges the Court to "affirm in result" the ALC's ruling on the fourth issue in its new opinion. SCDC respectfully urges the Court to affirm the ALC's ruling on the sixth issue in its new opinion.

As SCDC acknowledged in its instant petition, Gatewood submitted a petition for rehearing by which he challenged the Court's rulings on the first, second, third, fifth, seventh, and eighth issues on appeal. SCDC directly addressed Gatewood's arguments regarding the third and fifth issues,⁵² and its analysis and arguments concerning the Court's second issue serve as its return to Gatewood's petition on the same.

Gatewood offered no material fact or principle of law in his petition that the Court overlooked or disregarding in its rulings on the first, seventh, and eighth issues, and SCDC respectfully asserts that no basis exists upon which the Court should rehear these issues.

⁵² See notes 47 – 50 above.

RESPECTFULLY SUBMITTED,



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Counsel for the Respondent

Columbia, South Carolina
March 31, 2016

List of 4 Editor's and Revisor's Notes for § 24-1-290. Employment of inmates through pr...

Editor's and Revisor's Notes (4)

CODE COMMISSIONER'S NOTE

This section was redesignated from § 21-1-285 at the direction of the Code Commissioner.

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, § 5(D) (1), effective July 1, 2015.

EDITOR'S NOTE

2007 Act No. 68, § 3 , provides as follows:

"The provisions of this act supercede and are controlling over any provision to the contrary in paragraph 37.36, Part IB of the 2007-2008 General Appropriations Bill."

List of 3 Editor's and Revisor's Notes for § 24-1-295. Employment of inmates for work l...

Editor's and Revisor's Notes (3)

CODE COMMISSIONER'S NOTE

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EDITOR'S NOTE

2007 Act No. 68, § 3, provides as follows:

"The provisions of this act supercede and are controlling over any provision to the contrary in paragraph 37.36, Part IB of the 2007-2008 General Appropriations Bill."

§ 24-3-40(A)	S. 182, § 2 (a/k/a § 24-1-295)
(A) Unless otherwise provided by law, the employer of a prisoner authorized to work ... in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to [SCDC]. The Director of [SCDC] shall deduct the following amounts from the gross wages of the prisoner: (1) If restitution to a particular victim or victims has been ordered by the court, then [20%] must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to [§ 17-25-322], the [20%] must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use [20%] to meet the payment schedule so imposed. (2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the [20%] referred to in subsection (1) must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404, if the prisoner is engaged in work at paid employment in the community. If the prisoner is employed in a prison industry program, then the [20%] referred to in subsection (1) must be directed to the State Office of Victim Assistance for use in training, program development, victim compensation, and general administrative support pursuant to [§ 16-3-1410]. (3) [35%] must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then [25%] must be used by [SCDC] to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then [10%] must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to subsection (4). This is in addition to the [10%] used for the same purpose in subsection (4). (4) [10%] must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice. (5) [10%] must be held in an interest bearing escrow account for the benefit of the prisoner. (6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to subsection (4).	The Director of [SCDC] may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, service work is defined as any work that includes repair, replacement of original manufactured items, packaging, sorting, recycling, labeling, or similar work that is not original equipment manufacturing. [SCDC] may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector. However, the Director of [SCDC] shall deduct the following from the gross earnings of the inmates engaged in prison industry service work in addition to any other required deductions: [NOTHING OMITTED] (1) If restitution to a particular victim or victims has been ordered by a court of appropriate jurisdiction, then [20%] must be used to fulfill the restitution obligation. (2) If restitution to a particular victim or victims has not been ordered by a court of appropriate jurisdiction, or if the court ordered restitution to a particular victim or victims has been satisfied, then [20%] must be applied to the South Carolina Victim's Compensation Fund. (3) [35%] must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then [25%] must be used by [SCDC] to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then [10%] must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to item (4). This is in addition to the [10%] used for the same purpose in item (4). (4) [10%] must be made available to the inmate during his incarceration for the purchase of incidentals. 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G.A. Bill H. 3687 § 37.31 (CORR: Prison Industry Service Contracts) June 27, 2001 – June 30, 2002	G.A. Bill H. 4878 § 37.25 (CORR: Prison Industry Service Contracts) July 1, 2002 – June 30, 2003	G.A. Bill H. 3749 § 37.23 (CORR: Prison Industry Service Contracts) July 1, 2003 – May 24, 2004	G.A. Bill H. 4925 § 37.23 (CORR: Prison Industry Service Contracts) May 25, 2004 – May 16, 2005	G.A. Bill H. 3716 § 37.22 (CORR: Prison Industry Service Contracts) May 17, 2005 – June 30, 2006	G.A. Bill H. 4810 § 37.22 (CORR: Prison Industry Service Contracts) July 1, 2006 – June 30, 2007
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[NOTHING OMITTED]	[SENTENCE OMITTED]	[SENTENCE OMITTED]	[SENTENCE OMITTED]	[SENTENCE OMITTED]	[SENTENCE OMITTED]
[SCDC] 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.	[SCDC] may negotiate the wage to be paid for inmate labor provided under this provision, and such wages may be less than the prevailing wage for work of a similar nature in the private sector.	[SCDC] 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.	[SCDC] 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.	[SCDC] 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.	[SCDC] 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.
NO DEDUCTIONS	NO DEDUCTIONS	SEE PAGE 2 FOR DEDUCTIONS	SEE PAGE 2 FOR DEDUCTIONS	SEE PAGE 2 FOR DEDUCTIONS	SEE PAGE 2 FOR DEDUCTIONS

G.A. Bill H. 3687 § 37.31 (CORR: Prison Industry Service Contracts) June 27, 2001 – June 30, 2002	G.A. Bill H. 4878 § 37.25 (CORR: Prison Industry Service Contracts) July 1, 2002 – June 30, 2003	G.A. Bill H. 3749 § 37.23 (CORR: Prison Industry Service Contracts) July 1, 2003 – May 24, 2004	G.A. Bill H. 4925 § 37.23 (CORR: Prison Industry Service Contracts) May 25, 2004 – May 16, 2005	G.A. Bill H. 3716 § 37.22 (CORR: Prison Industry Service Contracts) May 17, 2005 – June 30, 2006	G.A. Bill H. 4810 § 37.22 (CORR: Prison Industry Service Contracts) July 1, 2006 – June 30, 2007
NO DEDUCTIONS ARTICULATED IN 1 ST PROVISIO	NO DEDUCTIONS ARTICULATED IN 2 ND PROVISIO	Provided, however, that [SCDC] shall deduct the following from the gross earnings of the inmates engaged in Prison Industry service work. (1) If restitution to a particular victim or victims has been court ordered by the court, then [20%] must be used to fulfill the restitution obligation. If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then [10%] must be applied to the South Carolina Victims' Compensation Fund. (2) [10%] must be retained by [SCDC] to defray the cost of the inmate's room and board.	Provided, however, that [SCDC] shall deduct the following from the gross earnings of the inmates engaged in Prison Industry service work. (1) If restitution to a particular victim or victims has been court ordered by the court, then [20%] must be used to fulfill the restitution obligation. If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then [10%] must be applied to the South Carolina Victims' Compensation Fund. (2) [10%] must be retained by [SCDC] to defray the cost of the inmate's room and board.	Provided, however, that [SCDC] shall deduct the following from the gross earnings of the inmates engaged in Prison Industry service work. (1) If restitution to a particular victim or victims has been court ordered by the court, then [20%] must be used to fulfill the restitution obligation. If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then [10%] must be applied to the South Carolina Victims' Compensation Fund. (2) [10%] must be retained by [SCDC] to defray the cost of the inmate's room and board.	Provided, however, that [SCDC] shall deduct the following from the gross earnings of the inmates engaged in Prison Industry service work. (1) If restitution to a particular victim or victims has been court ordered by the court, then [20%] must be used to fulfill the restitution obligation. If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then [10%] must be applied to the South Carolina Victims' Compensation Fund. (2) [10%] must be retained by [SCDC] to defray the cost of the inmate's room and board.
		FINAL PARAGRAPH OMITTED	END OF PROVISIO	SEE PAGE 3 FOR FINAL SECTION	SEE PAGE 3 FOR FINAL SECTION

G.A. Bill H. 3687 § 37.31 (CORR: Prison Industry Service Contracts) June 27, 2001 – June 30, 2002	G.A. Bill H. 4878 § 37.25 (CORR: Prison Industry Service Contracts) July 1, 2002 – June 30, 2003	G.A. Bill H. 3749 § 37.23 (CORR: Prison Industry Service Contracts) July 1, 2003 – May 24, 2004	G.A. Bill H. 4925 § 37.23 (CORR: Prison Industry Service Contracts) May 25, 2004 – May 16, 2005	G.A. Bill H. 3716 § 37.22 (CORR: Prison Industry Service Contracts) May 17, 2005 – June 30, 2006	G.A. Bill H. 4810 § 37.22 (CORR: Prison Industry Service Contracts) July 1, 2006 – June 30, 2007
NO SUCH LANGUAGE IN 1 ST PROVISIO	NO SUCH LANGUAGE IN 2 ND PROVISIO	NO SUCH LANGUAGE IN 3 RD PROVISIO	NO SUCH LANGUAGE IN 4 TH PROVISIO	[SCDC], in conjunction with the Department of Commerce, shall develop and maintain a marketing plan to attract private sector businesses for the employment of inmates through the prison industries program. The marketing plan must include, but not be limited to, provisions of public advertising to establish a prison based industry and a certification by the Department of Commerce that each new contract does not create an unfair competitive wage disadvantage to the local economy. The negotiation of new contracts and the renewal of existing contracts with private sector entities must be consummated in accordance with procedures established jointly by the Department of Commerce and [SCDC]. The procedures shall be drafted to ensure fairness and consistency in establishing contracts with private sector entities seeking to establish or continue prison based operations whenever the wage to be paid is less than the Federally established minimum wage. The marketing plan and the procedures for negotiating new contracts and contract renewals must be submitted to and approved by the Budget and Control Board prior to implementation. [SCDC] shall annually submit an audit report of the program to the Senate Corrections and Penology Committee and the House Medical, Military, Public and Municipal Affairs Committee. The provisions of the section shall not be construed to apply to traditional prison industries as authorized in [§ 24-3-320].	[SCDC], in conjunction with the Department of Commerce, shall develop and maintain a marketing plan to attract private sector businesses for the employment of inmates through the prison industries program. The marketing plan must include, but not be limited to, provisions of public advertising to establish a prison based industry and a certification by the Department of Commerce that each new contract does not create an unfair competitive wage disadvantage to the local economy. The negotiation of new contracts and the renewal of existing contracts with private sector entities must be consummated in accordance with procedures established jointly by the Department of Commerce and [SCDC]. The procedures shall be drafted to ensure fairness and consistency in establishing contracts with private sector entities seeking to establish or continue prison based operations whenever the wage to be paid is less than the Federally established minimum wage. The marketing plan and the procedures for negotiating new contracts and contract renewals must be submitted to and approved by the Budget and Control Board prior to implementation. [SCDC] shall annually submit an audit report of the program to the Senate Corrections and Penology Committee and the House Medical, Military, Public and Municipal Affairs Committee. The provisions of the section shall not be construed to apply to traditional prison industries as authorized in [§ 24-3-320].

South Carolina Governor's Veto Message, 6/27/2007, South Carolina Governor's Veto...

These sections direct the Department of Commerce to pass-through \$100,000 to the World Trade Center out of its operating budget. Although this project is aimed at the worthy goal of economic development, we do not believe the state should be in the business of picking one entity over another. As well, the idea should be explored of funding items like this should be funded on a competitive basis based upon projected rates of return, rather than on a line-item basis with no expected or measurable results.

Veto 64 Part 1B, Section 27.36, Department of Commerce, page 405; Economic Development Organizations.

This new proviso directs \$3,000,000 toward six Regional Economic Development Organizations. While these organizations are in many cases doing a fine job in complementing the efforts of the Department of Commerce, funding them equally at the state level cuts against the notion of having a coordinated, statewide approach to economic development because each Alliance has a different mission that does not represent all areas of the state. In addition, there are counties that are not represented at all within these groups such as Beaufort, Jasper and Colleton.

Veto 65 Part 1B, Section 30.17, Judicial Department, page 407; Fathers and Families Initiative.

I'm vetoing this item for the same reason I vetoed its companion Part 1A Appropriation. While this private, non-profit organization's stated goals are laudable, we believe that state government should not be in the business of picking winners and losers by funding one non-profit over another. As well, we believe any investment in the private sector by the public sector ought to be made based upon anticipated and measurable outcomes. In this case, the funding is not tied to any specific expected outcome on the part of this initiative and is not something we should be asking the taxpayers to fund.

Veto 66 Part 1B, Section 37.21, Department of Corrections, page 423; Prison Industry Service Contracts.

I am vetoing this proviso because the language is no longer necessary after I signed S. 182, the Prison Industries legislation. This proviso conflicts with the statutory changes and is unneeded.

Veto 67 Part 1B, Section 37.33, Department of Corrections, page 425; R&E Units Medical Services.

This proviso authorizes the Department of Corrections to expend excess funds from the Prison Industries Account or the Canteen Account to contract for medical services and/or provide financial incentives to medical staff who work within the Reception and Evaluation Units of the department. According to the agency, this proviso is unnecessary since the appropriations bill funds the expansion of Reception and Evaluation services. It also encourages annualization problems by spending new revenues, which vary from year to year, on recurring expenses.

Veto 68 Part 1B, Section 37.34, Department of Corrections, page 425; Death Sentenced Prisoners.

South Carolina Governor's Veto Message, 6/27/2007, South Carolina Governor's Veto...

I am vetoing this proviso as it is completely unnecessary. The Department of Corrections has operated a death row in this state since the reinstitution of the death penalty.

Veto 69**Part 1B, Section 37.36, Department of Corrections, page 425; Quota Elimination**

I am vetoing this proviso because I have concerns about the impact that this will have on the Department of Corrections. Throughout the course of this session, we have worked to try to reach an agreement with all parties involved to ensure a smooth and seamless transition of prisoners held at the local level to the Department of Corrections. However, this proviso gives the Department little flexibility in accepting prisoners from around the state. In addition, this mandate will require an additional \$1.2 million above the requested amount for Fiscal Year 2007-2008. However, this proviso supersedes all funding requirements and, in light of the fact that the Department of Corrections was not appropriately funded, I am left with little choice but to veto this proviso.

Veto 70**Part 1B, Section 39.20, Department of Juvenile Justice, page 430; ACES.**

This new proviso directs the Department of Juvenile Justice to use \$250,000 to conduct a pilot project using the Attitude, Communication, Emotions, Situations (ACES) Program to provide services to at-risk juveniles and their families. DJJ did not request this funding and it is yet another example of the state picking one non-profit program to the exclusion of others.

Veto 71**Part 1B, Section 41.5, Commission on Minority Affairs, page 431; Student Achievement and Vision Education.**

This proviso mirrors new funding item that would direct the Commission to duplicate a number of functions already performed by the Department of Social Services, Department of Education, and the Employment Security Commission, and complemented by a number of non-profit organizations' efforts. While the goal of this proposal may have merit, taxpayers would be better-served by these other state agencies finding a way to accomplish this goal using their existing resources or by partnering with a non-profit entity.

Veto 72**Part 1B, Section 47.3, Department of Insurance, page 433; Agency Head Salary.**

This proviso was amended in the Senate to ensure that salary of the Director of the Department of Insurance was set at a lower level than approved by the Budget and Control Board. The process of setting salaries requires approval by the Agency Head Salary Review Commission and the Budget and Control Board, as was the case here. Given the changing world of insurance in the post-Hurricane Katrina era, we felt it was important to draw in someone like Scott Richardson who carries a good deal of knowledge about the industry and could work closely with the General Assembly to adjust to changes in the volatile insurance market. The results speak for themselves. Just three weeks ago, I signed legislation that brought market-based reforms to the Coastal Property Insurance market.

This proviso is a mean-spirited attempt to undermine the process established by the General Assembly because one person

G.A. Bill H. 4810 § 37.22 (CORR: Prison Industry Service Contracts)	G.A. Bill H. 3620 § 37.21 (CORR: Prison Industry Service Contracts)	S. 182, § 2 "Employment of inmates for work involving exportation of products; deductions from wages."
July 1, 2006 – June 30, 2007	<i>July 1, 2007 – June 30, 2008</i>	§ 24-1-295
6TH PROVISIO	(Vetoed June 27, 2007) (Veto Sustained June 28 or 29, 2007)	Ratified June 8, 2007 Approved June 13, 2007
[SCDC] may enter into contracts with private sector entities that would allow for inmate labor to be provided for prison industry service work and work that involves exportation of products. 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. [SENTENCE OMITTED] [SCDC] 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.	[SCDC] may enter into contracts with private sector entities that would allow for inmate labor to be provided for prison industry service work and work that involves exportation of products. 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. [SENTENCE OMITTED] [SCDC] 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.	[SCDC] may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, service work is defined as any work that includes repair, replacement of original manufactured items, packaging, sorting, recycling, labeling, or similar work that is not original equipment manufacturing. [NOTHING OMITTED] [SCDC] may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector.
SEE PAGE 2 FOR DEDUCTIONS	SEE PAGE 2 FOR DEDUCTIONS	SEE PAGE 2 FOR DEDUCTIONS

G.A. Bill H. 4810 § 37.22 (CORR: Prison Industry Service Contracts)	G.A. Bill H. 3620 § 37.21 (CORR: Prison Industry Service Contracts)	S. 182, § 2 "Employment of inmates for work involving exportation of products; deductions from wages."
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FINAL PARAGRAPH CODIFIED BY ENACTMENT OF § 24-1-290 SEE PAGE 3	FINAL PARAGRAPH CODIFIED BY ENACTMENT OF § 24-1-290 SEE PAGE 3	NO FURTHER PROVISIONS

G.A. Bill H. 4810 § 37.22 (CORR: Prison Industry Service Contracts)	G.A. Bill H. 3620 § 37.21 (CORR: Prison Industry Service Contracts)	S. 182, § 1 "Employment of inmates through prison industries program; development of marketing plan; certification by Department of Commerce as to unfair competitive wage disadvantage; publication of notice."
July 1, 2006 – June 30, 2007	July 1, 2007 – June 30, 2008	§ 24-1-290
6 TH PROVISIO	Vetoed June 27, 2007 Veto Sustained June 28 or 29, 2007	Ratified June 8, 2007 Approved June 13, 2007
[SCDC], in conjunction with the Department of Commerce, shall develop and maintain a marketing plan to attract private sector businesses for the employment of inmates through the prison industries program. [NOTHING OMITTED] The marketing plan must include, but not be limited to, provisions of public advertising to establish a prison based industry and a certification by [Commerce] that each new contract does not create an unfair competitive wage disadvantage to the local economy. [NOTHING OMITTED] The negotiation of new contracts and the renewal of existing contracts with private sector entities must be consummated in accordance with procedures established jointly by [Commerce] and [SCDC]. The procedures shall be drafted to ensure fairness and consistency in establishing contracts with private sector entities seeking to establish or continue prison based operations whenever the wage to be paid is less than the Federally established minimum wage. The marketing plan and the procedures for negotiating new contracts and contract renewals must be submitted to and approved by the Budget and Control Board prior to implementation. [SCDC] shall annually submit an audit report of the program to the Senate Corrections and Penology Committee and the House Medical, Military, Public and Municipal Affairs Committee. The provisions of the section shall not be construed to apply to traditional prison industries as authorized in [§ 24-3-320].	[SCDC], in conjunction with the Department of Commerce, shall develop and maintain a marketing plan to attract private sector businesses for the employment of inmates through the prison industries program. [NOTHING OMITTED] The marketing plan must include, but not be limited to, provisions of public advertising to establish a prison based industry and a certification by [Commerce] that each new contract does not create an unfair competitive wage disadvantage to the local economy. [NOTHING OMITTED] The negotiation of new contracts and the renewal of existing contracts with private sector entities must be consummated in accordance with procedures established jointly by [Commerce] and [SCDC]. The procedures shall be drafted to ensure fairness and consistency in establishing contracts with private sector entities seeking to establish or continue prison based operations whenever the wage to be paid is less than the Federally established minimum wage. The marketing plan and the procedures for negotiating new contracts and contract renewals must be submitted to and approved by the Budget and Control Board prior to implementation. [SCDC] shall annually submit an audit report of the program to the Senate Corrections and Penology Committee and the House Medical, Military, Public and Municipal Affairs Committee. The provisions of the section shall not be construed to apply to traditional prison industries as authorized in [§ 24-3-320].	(A) [SCDC], in conjunction with the Department of Commerce, shall develop and maintain a marketing plan to attract private sector service businesses for the employment of inmates through the prison industries program. (B) Prior to entering into new contracts and renewals of existing contracts with private sector service entities that want to hire inmates through the prison industries program, [SCDC] must provide public notice of its intention to establish or continue a prison-based industry at a particular facility and receive certification by [Commerce] that an unfair competitive wage disadvantage to the local economy is not created by each new contract for prison labor. [(B)(1)] The public notice required in this subsection must be forwarded to a newspaper of general circulation in the county where the prison-based industry is or will be located, with a request that it be published at least once a week for two consecutive weeks. The notice must include a description of the work to be performed, the intent to contract for inmate labor, and provide that objections to the proposed hiring of prison labor may be filed with [Commerce] within thirty days of the last date that the notice appears. [(B)(1)(a)] [Commerce] must maintain a copy of any objections filed for a period of three years from the date that the objections were received. [(B)(1)(b)] Advertising costs associated with the publication of notice must be borne by the entity seeking to contract for prison labor. [(B)(2)] The certification required by this subsection must be based upon objections to the establishment of a prison-industry program provided for in item [(B)(1)]. (C) No contract may be negotiated or executed prior to forty days after the last date that the notice required by subsection (A) appears. New contracts and renewals of existing contracts between private sector entities and [SCDC] must be negotiated in accordance with procedures established jointly by [Commerce] and [SCDC]. The procedures must be drafted to ensure fairness and consistency in establishing contracts with private sector entities seeking to establish or continue prison-based operations whenever the wage to be paid is less than the federally established minimum wage. (D) The marketing plan and the procedures for negotiating new contracts and contract renewals must be submitted to and approved by the Department of Administration prior to implementation. [SCDC] shall annually submit an audit report of the program to the Senate Corrections and Penology Committee and the House Medical, Military, Public and Municipal Affairs Committee. The provisions of the section may not be construed to apply to traditional prison industries as authorized [§ 24-3-320].

S. 180 (Word version) -- Senator Knotts: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 42-1-220 SO AS TO ELIMINATE CERTAIN WORKERS' COMPENSATION BENEFITS DIRECTLY TO AN ILLEGAL ALIEN, TO PROHIBIT THE WORKERS' COMPENSATION FUND FROM MAKING A PAYMENT TO AN INJURED ILLEGAL ALIEN CLAIMANT IF THE PAYMENT IS FOR SALARY, SUPPLEMENT, BENEFIT, LIVING SUSTENANCE, OR OTHER PAYMENTS RELATED TO AN INJURY EXPERIENCED ON THE JOB, AND TO REQUIRE THE ALIEN TO PROVIDE PROPER DOCUMENTATION TO WORKERS' COMPENSATION OFFICIALS TO PROVE HE IS LEGALLY RESIDING IN THE UNITED STATES AT THE TIME OF THE INJURY TO RECEIVE CERTAIN NONMEDICAL BENEFITS.

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Prefiled and referred to the Committee on Judiciary.

Read the first time and referred to the Committee on Judiciary.

S. 181 (Word version) -- Senator Fair: A BILL TO AMEND SECTION 24-13-210 AND 24-13-230, BOTH AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO GOOD BEHAVIOR, WORK, AND ACADEMIC CREDITS, SO AS TO REQUIRE THE DEPARTMENT OF CORRECTIONS TO DEVELOP POLICIES, PROCEDURES, AND GUIDELINES TO ALLOW CERTAIN PRISONERS TO RECEIVE A REDUCTION IN THEIR SENTENCES AND TO REVISE THE MAXIMUM AMOUNT OF TIME THAT MAY BE REDUCED FROM A SENTENCE; TO AMEND SECTION 24-27-200, RELATING TO THE FORFEITURE OF WORK, EDUCATION, OR GOOD CONDUCT CREDITS, SO AS TO PROVIDE THAT A REDUCTION IN THESE CREDITS MAY BE IMPLEMENTED PURSUANT TO AN ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION; AND TO AMEND SECTION 30-4-40, AS AMENDED, RELATING TO MATTERS EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, SO AS TO PROVIDE THAT CERTAIN ARCHITECTURAL PLANS, DRAWINGS, OR SCHEMATICS OR LAW ENFORCEMENT POLICIES WHOSE DISCLOSURE WOULD REASONABLY BE USED TO FACILITATE AN ESCAPE FROM LAWFUL CUSTODY MAY BE EXEMPT FROM DISCLOSURE.

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Prefiled and referred to the Committee on Corrections and Penology.

Read the first time and referred to the Committee on Corrections and Penology.

S. 182 (Word version) -- Senators Fair and Campsen: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-1-285 SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS IN CONJUNCTION WITH THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR BUSINESSES FOR THE EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM; AND BY ADDING SECTION 24-1-290 SO AS TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF THE INMATES ENGAGED IN PRISON INDUSTRY SERVICE WORK.

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Prefiled and referred to the Committee on Corrections and Penology.

POLICIES WHOSE DISCLOSURE WOULD REASONABLY BE USED TO FACILITATE AN ESCAPE FROM LAWFUL CUSTODY MAY BE EXEMPT FROM DISCLOSURE.

The Senate proceeded to a consideration of the Bill, the question being the third reading of the Bill.

The Bill was read the third time, passed and ordered sent to the House of Representatives with amendments.

CARRIED OVER

S. 157 (Word version) -- Senators McConnell, Vaughn, Campsen, Courson, Richardson, Hayes, Mescher, McGill, Knotts, Elliott, Cleary, Leatherman, Alexander, Verdin, Fair, Setzler and Peeler: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "SOUTH CAROLINA TEACHER PROTECTION ACT OF 2007", BY ADDING SECTION 59-25-900, SO AS TO PROVIDE THAT A TEACHER MAY BRING A CIVIL ACTION AGAINST A STUDENT WHO COMMITS A CRIMINAL OFFENSE AGAINST THE TEACHER IF THE OFFENSE OCCURS ON SCHOOL GROUNDS OR AT A SCHOOL-RELATED EVENT, OR IF THE OFFENSE IS DIRECTLY RELATED TO THE TEACHER'S PROFESSIONAL RESPONSIBILITIES, AND TO PROVIDE THAT NO TEACHER HAS CIVIL LIABILITY TO A STUDENT OR TO A PARTY ACTING IN THE INTEREST OF THE STUDENT FOR AN ACT OR OMISSION BY THE TEACHER THAT OCCURS WHILE THE TEACHER IS ACTING ON BEHALF OF THE SCHOOL; AND TO AMEND SECTION 16-3-612, RELATING TO THE OFFENSE OF A STUDENT COMMITTING ASSAULT AND BATTERY AGAINST A PERSON AFFILIATED WITH A SCHOOL IN AN OFFICIAL CAPACITY, SO AS TO REDEFINE INTO THREE OFFENSES WITH SEPARATE PENALTIES FOR EACH, INCLUDING ESTABLISHING THE MOST SERIOUS OFFENSE AS A FELONY.

The Senate proceeded to a consideration of the Bill, the question being the second reading of the Bill.

On motion of Senator HUTTO, the Bill was carried over.

COMMITTEE AMENDMENT ADOPTED READ THE SECOND TIME

S. 182 (Word version) -- Senators Fair, Campsen, Richardson, Hayes and Elliott: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-1-285 SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS IN CONJUNCTION WITH THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR BUSINESSES FOR THE EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM; AND BY ADDING SECTION 24-1-290 SO AS TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF THE INMATES ENGAGED IN PRISON INDUSTRY SERVICE WORK.

The Senate proceeded to a consideration of the Bill, the question being the adoption of the amendment proposed by the Committee on Corrections and Penology.

The Committee on Corrections and Penology proposed the following amendment (SWB\5083CM07), which was adopted:

Amend the bill, as and if amended, by striking SECTION 2 on page 2 in its entirety, and inserting:

/ SECTION 2. Chapter 1, Title 24 of the 1976 Code is amended by adding:

"Section 24-1-290. The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, service work is defined as any work that includes 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 export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector." /

Renumber sections to conform.

Amend title to conform.

Senator FAIR explained the committee amendment.

The committee amendment was adopted.

Amendment No. 1

Senator JACKSON proposed the following amendment (182-DJ):

Amend the bill, as and if amended, page 1, line 39 to read:

/ similar nature in the private sector, but may not be less than the minimum wage as required by the Fair Labor Standards Act." /

Renumber sections to conform.

Amend title to conform.

Senator JACKSON explained the amendment.

Motion Adopted

On motion of Senator GROOMS, with unanimous consent, the members of the Senate Transportation Subcommittee were granted leave to attend a meeting, be counted in any quorum calls and be granted leave to vote from the balcony.

Senator JACKSON explained the amendment.

Senator JACKSON asked unanimous consent to make a motion to perfect the amendment as follows.

There was no objection.

Amendment No. 1A

Senator JACKSON proposed the following Amendment No. 1A, which was tabled:

Amend the bill, as and if amended, page 1, line 39 to read:

/ similar nature in the private sector, but may not be less than fifty percent of the minimum wage as required by the Fair Labor Standards Act." /

Renumber sections to conform.

Amend title to conform.

Senator JACKSON explained the amendment.

Senator FAIR argued contra to the adoption of Amendment No. 1A.

Senator FAIR moved to lay the amendment on the table.

The amendment was laid on the table.

The question then was the second reading of the Bill.

Senator PINCKNEY spoke on the Bill.

There being no further amendments, the Bill was read the second time, passed and ordered to a third reading.

Recorded Vote

Senators FORD and JACKSON desired to be recorded as voting against the motion to table the amendment.

AMENDMENT PROPOSED, DEBATE ADJOURNED

S. 142 (Word version) -- Senators Malloy, McConnell, Ford, Rankin, Knotts, Cleary, Campsen, Richardson, Hayes, Vaughn, Mescher, Setzler, Fair, Alexander and Lourie: A BILL TO AMEND SECTION 23-3-620, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO OFFENDERS BEING REQUIRED TO SUBMIT SAMPLES FOR INCLUSION IN THE DNA DATABASE, SO AS TO REQUIRE SAMPLES UPON LAWFUL CUSTODIAL ARREST RATHER THAN FOLLOWING SENTENCING AND AT THE TIME OF INTAKE AT A JAIL OR PRISON, AND TO REQUIRE SAMPLES TO BE PROVIDED BEFORE A PERSON IS RELEASED ON PAROLE, RELEASED FROM CONFINEMENT, OR RELEASED FROM AN AGENCY'S JURISDICTION; TO AMEND SECTION 23-3-630, RELATING TO PERSONS AUTHORIZED TO TAKE DNA SAMPLES AND THEIR IMMUNITY FROM LIABILITY, SO AS TO DELETE REQUIREMENTS THAT THE PERSONS AUTHORIZED MUST BE CERTAIN TYPES OF HEALTH PROFESSIONALS AND TO PROVIDE THAT ONLY THEY MUST BE APPROPRIATELY TRAINED; TO AMEND SECTION 23-3-650 SO AS TO PROVIDE FOR COORDINATION BETWEEN SLED AND LOCAL LAW ENFORCEMENT AGENCIES TO PREVENT COLLECTION AND PROCESSING OF DUPLICATE DNA SAMPLES; AND TO AMEND SECTIONS 23-3-660 AND 23-3-670, RELATING TO EXPUNGEMENTS AND FEES FOR DNA SAMPLES, SO AS TO PROVIDE FOR EXPUNGEMENT WHEN CHARGES ARE DISMISSED OR NOLLE PROSSED, TO PROVIDE THAT THE STATE WILL PAY FOR THE COSTS OF COLLECTING AND PROCESSING A DNA SAMPLE, AND TO PROVIDE THAT FEES COLLECTED FROM CONVICTED PERSONS SHALL BE REMITTED TO THE GENERAL FUND OF THE STATE AND CREDITED TO THE STATE LAW ENFORCEMENT DIVISION.

The Senate proceeded to a consideration of the Bill, the question being the adoption of Amendment No. 1 (JUD0142.012) proposed by Senator HUTTO and previously printed in the Journal of Wednesday, January 31, 2007.

On motion of Senator McCONNELL, the Bill was carried over.

THE SENATE PROCEEDED TO A CALL OF THE CONTESTED STATEWIDE AND LOCAL CALENDAR.

**AMENDED, READ THE THIRD TIME
SENT TO THE HOUSE**

S. 182 (Word version) -- Senators Fair, Campsen, Richardson, Hayes and Elliott: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-1-285 SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS IN CONJUNCTION WITH THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR BUSINESSES FOR THE EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM; AND BY ADDING SECTION 24-1-290 SO AS TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF THE INMATES ENGAGED IN PRISON INDUSTRY SERVICE WORK.

The Senate proceeded to a consideration of the Bill, the question being the third reading of the Bill.

Motion Under Rule 26B Adopted

Senator FAIR asked unanimous consent to make a motion to take up further amendments pursuant to the provisions of Rule 26B.

There was no objection.

Amendment No. 1

Senator FAIR proposed the following Amendment No. 1 (182R001.MLF), which was adopted:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Chapter 1, Title 24 of the 1976 Code is amended by adding:

"Section 24-1-285. The Department of Corrections, in conjunction with the Department of Commerce, shall develop and maintain a marketing plan to attract private sector businesses for the employment of inmates through the prison industries program. The marketing plan must include, but not be limited to, provisions of public advertising to establish a prison-based industry and a certification by the Department of Commerce that each new contract does not create an unfair competitive wage disadvantage to the local economy. The negotiation of new contracts and the renewal of existing contracts with private sector entities must be consummated in accordance with procedures established jointly by the Department of Commerce and the Department of Corrections. The procedures must be drafted to ensure fairness and consistency in establishing contracts with private sector entities seeking to establish or continue prison-based operations whenever the wage to be paid is less than the federally established minimum wage. The marketing plan and the procedures for negotiating new contracts and contract renewals must be submitted to and approved by the Budget

and Control Board prior to implementation. The Department of Corrections shall annually submit an audit report of the program to the Senate Corrections and Penology Committee and the House Medical, Military, Public and Municipal Affairs Committee. The provisions of the section may not be construed to apply to traditional prison industries as authorized in Section 24-3-320."

SECTION 2. Chapter 1, Title 24 of the 1976 Code is amended by adding:

"Section 24-1-290. The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, service work is defined as any work that includes 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 export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector. However, the Director of the Department of Corrections shall deduct the following from the gross earnings of the inmates engaged in prison industry service work in addition to any other required deductions:

- (1) If restitution to a particular victim or victims has been ordered by a court of appropriate jurisdiction, then twenty percent must be used to fulfill the restitution obligation.
- (2) If restitution to a particular victim or victims has not been ordered by a court of appropriate jurisdiction, or if the court-ordered restitution to a particular victim or victims has been satisfied, then twenty percent must be applied to the South Carolina Victim's Compensation Fund.
- (3) Ten percent must be retained by the Department of Corrections to defray the costs of the inmates room and board."

SECTION 3. This act takes effect upon approval by the Governor./

Renumber sections to conform.

Amend title to conform.

The amendment was adopted.

There being no further amendments, the Bill was read the third time, passed and ordered sent to the House of Representatives with amendments.

CARRIED OVER

S. 157 (Word version) -- Senators McConnell, Vaughn, Campsen, Courson, Richardson, Hayes, Mescher, McGill, Knotts, Elliott, Cleary, Leatherman, Alexander, Verdin, Fair, Setzler, Peeler and Williams: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "SOUTH CAROLINA TEACHER PROTECTION ACT OF 2007", BY ADDING SECTION 59-25-900, SO AS TO PROVIDE THAT A TEACHER MAY BRING A CIVIL ACTION AGAINST A STUDENT WHO COMMITS A CRIMINAL OFFENSE AGAINST THE TEACHER IF THE OFFENSE OCCURS ON SCHOOL GROUNDS OR AT A SCHOOL-RELATED EVENT, OR IF THE OFFENSE IS DIRECTLY RELATED TO THE TEACHER'S PROFESSIONAL

Rep. HAGOOD explained the Bill.

The Bill, as amended, was read the second time and ordered to third reading.

S. 182--AMENDED AND ORDERED TO THIRD READING

The following Bill was taken up:

S. 182 (Word version) -- Senators Fair, Campsen, Richardson, Hayes and Elliott: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-1-285 SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS IN CONJUNCTION WITH THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR BUSINESSES FOR THE EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM; AND BY ADDING SECTION 24-1-290 SO AS TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF THE INMATES ENGAGED IN PRISON INDUSTRY SERVICE WORK.

The Judiciary Committee proposed the following Amendment No. 1 (Doc Name COUNCIL\MS\7323AHB07), which was adopted:

Amend the bill, as and if amended, by deleting Section 24-1-290, as contained in SECTION 2, beginning on page 2, beginning on line 19, and inserting:

/ "Section 24-1-290. The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, service work is defined as any work that includes 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 export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector. However, the Director of the Department of Corrections shall deduct the following from the gross earnings of the inmates engaged in prison industry service work in addition to any other required deductions:

- (1) If restitution to a particular victim or victims has been ordered by a court of appropriate jurisdiction, then twenty percent must be used to fulfill the restitution obligation.
- (2) If restitution to a particular victim or victims has not been ordered by a court of appropriate jurisdiction, or if the court-ordered restitution to a particular victim or victims has been satisfied, then twenty percent must be applied to the South Carolina Victim's Compensation Fund.
- (3) Ten percent must be retained by the Department of Corrections to defray the costs of the inmates room and board.
- (4) Thirty-five percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court-ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty-five percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board. This twenty-five percent is in addition

to the ten percent used for the same purpose in subsection (3). Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals. This is in addition to the ten percent used for the same purpose in subsection (5).

(5) Ten percent must be made available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(6) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(7) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to subsection (5)." /

Renumber sections to conform.

Amend title to conform.

Rep. HAGOOD explained the amendment.

The amendment was then adopted.

The Bill, as amended, was read the second time and ordered to third reading.

S. 391--AMENDED AND ORDERED TO THIRD READING

The following Bill was taken up:

S. 391 (Word version) -- Senators Knotts, Elliott, Grooms, Drummond, Ford, Anderson, McGill and Mescher: A BILL TO AMEND SECTION 17-5-50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO VACANCIES IN THE OFFICE OF CORONER, SO AS TO REVISE THE MANNER IN WHICH A VACANCY IS FILLED AND FOR THE MANNER IN WHICH THE DUTIES OF THE CORONER SHALL BE PERFORMED; TO AMEND SECTION 17-5-70, AS AMENDED, RELATING TO THE APPOINTMENT OF DEPUTIES BY THE COUNTY CORONER, SO AS TO PERMIT THE COUNTY CORONER TO ALSO APPOINT INVESTIGATORS AS WELL AS DEPUTIES AND TO MAKE THESE APPOINTMENTS DISCRETIONARY RATHER THAN MANDATORY; TO AMEND SECTION 17-7-10, RELATING TO ORDERING OF AUTOPSIES, SO AS TO REQUIRE THE CORONER AND MEDICAL EXAMINER TO IMMEDIATELY REQUEST AN AUTOPSY IF A CHILD'S DEATH IS UNATTENDED; TO AMEND SECTION 20-7-5915, AS AMENDED, RELATING TO THE PURPOSES AND DUTIES OF THE STATE LAW ENFORCEMENT DIVISION IN REGARD TO INVESTIGATING CHILD DEATHS, SO AS TO FURTHER PROVIDE FOR THE MANNER IN WHICH AND CONDITIONS UNDER WHICH AUTOPSIES ARE PERFORMED IN THESE CIRCUMSTANCES; TO AMEND SECTION 20-7-5920, AS AMENDED, RELATING TO THE DUTIES OF THE STATE CHILD FATALITY ADVISORY COMMITTEE, SO AS TO PROVIDE THAT THE COMMITTEE ALSO SHALL MEET WITH THE CORONER FROM THE COUNTY IN WHICH CHILD DEATHS OCCUR; AND TO REPEAL SECTION 17-5-80 RELATING TO A MAGISTRATE ACTING AS A CORONER IN CERTAIN CASES.

The Judiciary Committee proposed the following Amendment No. 1 (Doc Name COUNCIL\GJK\20344SD07), which was adopted:

Amend the bill, as and if amended, by striking Section 17-5-50 of the 1976 Code, as contained in

S. 182--SENATE AMENDMENTS CONCURRED IN AND BILL ENROLLED

The Senate Amendments to the following Bill were taken up for consideration:

S. 182 (Word version) -- Senators Fair, Campsen, Richardson, Hayes and Elliott: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-1-285 SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS IN CONJUNCTION WITH THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR BUSINESSES FOR THE EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM; AND BY ADDING SECTION 24-1-290 SO AS TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF THE INMATES ENGAGED IN PRISON INDUSTRY SERVICE WORK.

Rep. HAGOOD explained the Senate Amendments.

The Senate Amendments were agreed to, and the Bill having received three readings in both Houses, it was ordered that the title be changed to that of an Act, and that it be enrolled for ratification.

S. 243--SENATE AMENDMENTS CONCURRED IN AND BILL ENROLLED

The Senate Amendments to the following Bill were taken up for consideration:

S. 243 (Word version) -- Senators Setzler, Leatherman, Fair and Elliott: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 46 TO TITLE 11 SO AS TO ESTABLISH THE "SOUTH CAROLINA HYDROGEN INFRASTRUCTURE DEVELOPMENT FUND", TO AUTHORIZE THE SOUTH CAROLINA RESEARCH AUTHORITY TO ADMINISTER SUBGRANTS FOR THE PURPOSE OF PROMOTING THE DEVELOPMENT OF HYDROGEN PRODUCTION, TO ALLOW THE FUND TO RECEIVE DONATIONS, GRANTS, AND OTHER FUNDING AS PROVIDED BY LAW, TO ALLOW A TAXPAYER WHO MAKES A CONTRIBUTION TO THE FUND TO RECEIVE A TAX CREDIT SUBJECT TO CERTAIN LIMITATIONS, TO REQUIRE THE GENERAL ASSEMBLY TO APPROPRIATE A SPECIFIC AMOUNT FROM THE GENERAL FUND OF THE STATE TO THE FUND, AND TO REQUIRE STATE AGENCIES TO CONSIDER PURCHASING EQUIPMENT AND MACHINERY OPERATED BY HYDROGEN OR FUEL CELLS OR BOTH OF THEM; BY ADDING SECTION 12-6-3630 SO AS TO ALLOW A CREDIT AGAINST THE INCOME TAX, LICENSE FEES, OR INSURANCE PREMIUM TAXES FOR QUALIFIED CONTRIBUTIONS MADE TO THE FUND; BY AMENDING SECTION 12-36-2120, AS AMENDED, RELATING TO SALES TAX EXEMPTIONS, SO AS TO ALLOW A SALES TAX EXEMPTION FOR EQUIPMENT OR MACHINERY OPERATED BY HYDROGEN OR FUEL CELLS OR USED TO DISTRIBUTE HYDROGEN AND FOR EQUIPMENT AND MACHINERY USED PREDOMINATELY FOR RESEARCH AND DEVELOPMENT INVOLVING HYDROGEN OR FUEL CELL TECHNOLOGIES, AND TO ALLOW A SALES TAX EXEMPTION FOR BUILDING MATERIALS, MACHINERY, OR EQUIPMENT USED TO CONSTRUCT A NEW OR RENOVATED BUILDING LOCATED IN A RESEARCH DISTRICT.

Rep. WHITE explained the Senate Amendments.

The Senate Amendments were agreed to, and the Bill having received three readings in both Houses, it was ordered that the title be changed to that of an Act, and that it be enrolled for ratification.

S. 243 (Word version) -- Senators Setzler, Leatherman, Fair and Elliott: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 46 TO TITLE 11 SO AS TO ESTABLISH THE "SOUTH CAROLINA HYDROGEN INFRASTRUCTURE DEVELOPMENT FUND", TO AUTHORIZE THE SOUTH CAROLINA RESEARCH AUTHORITY TO ADMINISTER SUBGRANTS FOR THE PURPOSE OF PROMOTING THE DEVELOPMENT OF HYDROGEN PRODUCTION, TO ALLOW THE FUND TO RECEIVE DONATIONS, GRANTS, AND OTHER FUNDING AS PROVIDED BY LAW, TO ALLOW A TAXPAYER WHO MAKES A CONTRIBUTION TO THE FUND TO RECEIVE A TAX CREDIT SUBJECT TO CERTAIN LIMITATIONS, TO REQUIRE THE GENERAL ASSEMBLY TO APPROPRIATE A SPECIFIC AMOUNT FROM THE GENERAL FUND OF THE STATE TO THE FUND, AND TO REQUIRE STATE AGENCIES TO CONSIDER PURCHASING EQUIPMENT AND MACHINERY OPERATED BY HYDROGEN OR FUEL CELLS OR BOTH OF THEM; BY ADDING SECTION 12-6-3630 SO AS TO ALLOW A CREDIT AGAINST THE INCOME TAX, LICENSE FEES, OR INSURANCE PREMIUM TAXES FOR QUALIFIED CONTRIBUTIONS MADE TO THE FUND; BY AMENDING SECTION 12-36-2120, AS AMENDED, RELATING TO SALES TAX EXEMPTIONS, SO AS TO ALLOW A SALES TAX EXEMPTION FOR EQUIPMENT OR MACHINERY OPERATED BY HYDROGEN OR FUEL CELLS OR USED TO DISTRIBUTE HYDROGEN AND FOR EQUIPMENT AND MACHINERY USED PREDOMINATELY FOR RESEARCH AND DEVELOPMENT INVOLVING HYDROGEN OR FUEL CELL TECHNOLOGIES, AND TO ALLOW A SALES TAX EXEMPTION FOR BUILDING MATERIALS, MACHINERY, OR EQUIPMENT USED TO CONSTRUCT A NEW OR RENOVATED BUILDING LOCATED IN A RESEARCH DISTRICT.

and has ordered the Bill enrolled for Ratification.

Very respectfully,

Speaker of the House

Received as information.

Message from the House

Columbia, S.C., June 5, 2007

Mr. President and Senators:

The House respectfully informs your Honorable Body that it concurs in the amendments proposed by the Senate to:

S. 182 (Word version) -- Senators Fair, Campsen, Richardson, Hayes and Elliott: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-1-285 SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS IN CONJUNCTION WITH THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR BUSINESSES FOR THE EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM; AND BY ADDING SECTION 24-1-290 SO AS TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF THE INMATES ENGAGED IN PRISON INDUSTRY SERVICE WORK.

and has ordered the Bill enrolled for Ratification.

Very respectfully,

Speaker of the House

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Received as information.

Message from the House

Columbia, S.C., June 5, 2007

Mr. President and Senators:

The House respectfully informs your Honorable Body that it concurs in the amendments proposed by the Senate to:

H. 3828 (Word version) -- Reps. Cato, Loftis, Alexander, Duncan, Perry, Scott, Talley, Bales, Haskins, Witherspoon, Huggins, Bedingfield, Harrison, G.R. Smith, Bannister, Barfield, Battle, Branham, Chellis, Clemmons, Cooper, Crawford, Edge, Gambrell, Hardwick, Hayes, Jennings, Leach, Limehouse, Lowe, Mahaffey, Mitchell, Ott, Pinson, Rice, Sandifer, Scarborough, W.D. Smith, Taylor, Thompson, Vick, Viers, Walker and White: A JOINT RESOLUTION TO CREATE A STUDY COMMITTEE TO EXAMINE THE FEASIBILITY OF NATURAL GAS EXPLORATION IN THE ATLANTIC OCEAN OFF THE COAST OF SOUTH CAROLINA, TO PROVIDE FOR ITS COMPOSITION, APPOINTMENT, POWERS, DUTIES, AND RESPONSIBILITIES, AND TO REQUIRE THE COMMITTEE TO MAKE A REPORT ON ITS RECOMMENDATIONS TO THE GENERAL ASSEMBLY BEFORE JANUARY 8, 2008, AT WHICH TIME IT IS DISSOLVED.

and has ordered the Resolution enrolled for Ratification.

Very respectfully,
Speaker of the House

Received as information.

Message from the House

Columbia, S.C., June 5, 2007

Mr. President and Senators:

The House respectfully informs your Honorable Body that it concurs in the amendments proposed by the Senate to:

H. 3034 (Word version) -- Reps. Brady, Haskins, Cobb-Hunter, Cotty, Funderburk, Hagood, Stavrinakis, Gullick, Bowers, Whipper, Bales and Neilson: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 48-52-690 TO THE SOUTH CAROLINA ENERGY EFFICIENCY ACT SO AS TO REQUIRE THE APPLICATION OF "GREEN BUILDING" OR COMPARABLE STANDARDS TO STANDARDS OR MEASURES OF ENERGY EFFICIENCY AND ENERGY CONSERVATION TO BUILDINGS CONSTRUCTED ON STATE PROPERTY WITH CONSTRUCTION BUDGETS OF MORE THAN FIFTEEN MILLION DOLLARS AND TO PROVIDE EXEMPTIONS OF CERTAIN STATE-FUNDED STRUCTURES.

and has ordered the Bill enrolled for Ratification.

Very respectfully,
Speaker of the House

Received as information.

http://www.scstatehouse.gov/sess117_2007-2008/sj07/20070606.htm

3/17/2016

THE PENALTIES AND TO PROVIDE AN EXCEPTION FOR THE USE OF MINORS BY LAW ENFORCEMENT UNDER CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 61-6-4080, RELATING TO THE SALE OF ALCOHOLIC LIQUORS TO MINORS, SO AS TO INCREASE THE PENALTIES FOR VIOLATIONS AND TO REQUIRE THE VIOLATOR TO COMPLETE AN ALCOHOL EDUCATION PROGRAM.

and has ordered the Bill enrolled for Ratification.

Very respectfully,
Speaker of the House

Received as information.

Message from the House

Columbia, S.C., June 7, 2007

Mr. President and Senators:

The House respectfully informs your Honorable Body that it concurs in the amendments proposed by the Senate to:

H. 3457 (Word version) -- Reps. Mack, Breeland, R. Brown, Hosey, Limehouse and Stavrinakis: A BILL TO AMEND SECTION 61-4-590, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REVOCATION OR SUSPENSION OF PERMITS AUTHORIZING THE SALE OF BEER OR WINE, SO AS TO REQUIRE NOTIFICATION TO THE LICENSEE AND AN INDEPENDENT INVESTIGATION BY THE DEPARTMENT OF REVENUE BEFORE A LICENSEE'S PERMIT MAY BE REVOKED OR SUSPENDED.

and has ordered the Bill enrolled for Ratification.

Very respectfully,
Speaker of the House

Received as information.

RATIFICATION OF ACTS

Pursuant to an invitation the Honorable Speaker and House of Representatives appeared in the Senate Chamber on June 7, 2007, at 4:30 P.M. and the following Acts and Joint Resolutions were ratified:

(R104, S. 13 (Word version)) -- Senators Hayes, Knotts, Fair and Elliott: AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT BY ADDING ARTICLE 27 TO CHAPTER 7, TITLE 20 SO AS TO ADOPT A UNIFORM ACT REVISING PROCEDURES FOR ESTABLISHING AND ENFORCING CHILD CUSTODY AND VISITATION WHEN ONE OF THE PARTIES RESIDES IN THIS STATE AND THE OTHER DOES NOT; AND TO REPEAL SUBARTICLE 2, ARTICLE 9, CHAPTER 7 OF TITLE 20 RELATING TO THE UNIFORM CHILD CUSTODY JURISDICTION ACT.

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(R105, S. 15 (Word version)) -- Senators Hayes, Campsen, Vaughn, McConnell, Mescher, Ritchie, Knotts, Cleary, Leatherman, Setzler, Fair, Elliott and Ford: AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 4, TITLE 20 ENACTING THE "UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE

ARE DISMISSED OR THE PERSON IS FOUND INNOCENT; AND BY ADDING SECTION 16-11-770 SO AS TO CREATE THE OFFENSE OF ILLEGAL GRAFFITI VANDALISM AND TO PROVIDE PENALTIES.

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(R110, S. 182 (Word version)) -- Senators Fair, Campsen, Richardson, Hayes and Elliott: AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-1-285 AND 24-1-290 SO AS TO PROVIDE THAT THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR SERVICE BUSINESSES FOR EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS MAY ENTER INTO CONTRACTS WITH PRIVATE SECTOR ENTITIES THAT ALLOW INMATE LABOR TO BE PROVIDED FOR PRISON INDUSTRY SERVICE WORK THAT INVOLVES EXPORTATION OF CERTAIN PRODUCTS UNDER CERTAIN CIRCUMSTANCES, AND PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF AN INMATE ENGAGED IN PRISON INDUSTRY SERVICE WORK IN ADDITION TO ANY OTHER REQUIRED DEDUCTIONS.

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(R111, S. 243 (Word version)) -- Senators Setzler, Leatherman, Fair and Elliott: AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 46 TO TITLE 11 SO AS TO ESTABLISH THE "SOUTH CAROLINA HYDROGEN INFRASTRUCTURE DEVELOPMENT FUND", TO AUTHORIZE THE SOUTH CAROLINA RESEARCH AUTHORITY TO ADMINISTER GRANTS FOR THE PURPOSE OF PROMOTING THE DEVELOPMENT OF HYDROGEN PRODUCTION, TO ALLOW THE FUND TO RECEIVE DONATIONS, GRANTS, AND OTHER FUNDING AS PROVIDED BY LAW, TO REQUIRE THE GENERAL ASSEMBLY TO APPROPRIATE A SPECIFIC AMOUNT FROM THE GENERAL FUND OF THE STATE TO THE FUND, AND TO REQUIRE STATE AGENCIES TO CONSIDER PURCHASING EQUIPMENT AND MACHINERY OPERATED BY HYDROGEN OR FUEL CELLS OR BOTH OF THEM; BY ADDING SECTION 12-6-3630 SO AS TO ALLOW A CREDIT AGAINST THE INCOME TAX, LICENSE FEES, OR INSURANCE PREMIUM TAXES FOR QUALIFIED CONTRIBUTIONS MADE TO THE FUND; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES TAX EXEMPTIONS, SO AS TO ALLOW A SALES TAX EXEMPTION FOR EQUIPMENT OR MACHINERY OPERATED BY HYDROGEN OR FUEL CELLS OR USED TO DISTRIBUTE HYDROGEN AND FOR EQUIPMENT AND MACHINERY USED PREDOMINATELY FOR RESEARCH AND DEVELOPMENT INVOLVING HYDROGEN OR FUEL CELL TECHNOLOGIES, AND TO ALLOW A SALES TAX EXEMPTION FOR BUILDING MATERIALS, MACHINERY, OR EQUIPMENT USED TO CONSTRUCT A NEW OR RENOVATED BUILDING LOCATED IN A RESEARCH DISTRICT; BY ADDING SECTION 12-14-80 SO AS TO ALLOW AN ECONOMIC IMPACT ZONE TAX CREDIT AGAINST THE CORPORATE INCOME TAX OR EMPLOYEES' WITHHOLDING TAX TO A MANUFACTURER THAT IS ENGAGED IN AT LEAST ONE ECONOMIC IMPACT ZONE, EMPLOYS FIVE THOUSAND OR MORE FULL-TIME WORKERS IN THIS STATE WITH A TOTAL CAPITAL INVESTMENT OF NOT LESS THAN TWO BILLION DOLLARS, AND HAS INVESTED FIVE HUNDRED MILLION DOLLARS IN THIS STATE; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES TAX EXEMPTIONS, SO AS TO ALLOW A SALES TAX EXEMPTION FOR AN AMUSEMENT PARK RIDE AND ANY PARTS, MACHINERY, AND EQUIPMENT USED TO ASSEMBLE AND MAKE UP AN AMUSEMENT

Very respectfully,
President
Received as information.

MESSAGE FROM THE SENATE

The following was received:

Columbia, S.C., June 7, 2007
Mr. Speaker and Members of the House:

The Senate respectfully informs your Honorable Body that it has appointed Senator McConnell, in lieu of Sen. Grooms, to the Committee of Conference on the part of the Senate on S. 355:

S. 355 (Word version) -- Senators Grooms, Richardson, Verdin, Campsen and Vaughn: A BILL TO AMEND SECTION 1-30-105 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEPARTMENT OF TRANSPORTATION, SO AS TO PROVIDE THAT THE COMMISSION IS ABOLISHED AND THE GOVERNING AUTHORITY OF THE DEPARTMENT OF TRANSPORTATION IS A BOARD AS PROVIDED BY LAW; TO AMEND SECTION 1-3-240, RELATING TO THE REMOVAL OF CERTAIN OFFICIALS FROM OFFICE, SO AS TO PROVIDE THAT A DEPARTMENT OF TRANSPORTATION BOARD MEMBER MAY BE REMOVED BY THE GOVERNOR FOR MALFEASANCE, MISFEASANCE, INCOMPETENCY, ABSENTEEISM, CONFLICTS OF INTEREST, MISCONDUCT, PERSISTENT NEGLECT OF DUTY IN OFFICE, OR INCAPACITY; TO AMEND CHAPTER 1, TITLE 57, RELATING TO THE DEPARTMENT OF TRANSPORTATION, SO AS TO RECONSTITUTE THE COMMISSION AS A BOARD, TO PROVIDE THAT THE BOARD SHALL BE COMPOSED OF SEVEN MEMBERS APPOINTED BY THE GOVERNOR, SCREENED BY THE JOINT TRANSPORTATION REVIEW COMMITTEE, AND SUBJECT TO THE ADVICE AND CONSENT OF THE SENATE, TO ESTABLISH THE LENGTH OF TERMS THAT BOARD MEMBERS MAY SERVE, AND DEFINE THE POWERS AND DUTIES OF THE BOARD, TO PROVIDE THAT THE BOARD EMPLOYS AN EXECUTIVE DIRECTOR WHO SERVES AT THE PLEASURE OF THE BOARD, AND TO PROVIDE THAT THE BOARD EMPLOYS A CHIEF HIGHWAY ENGINEER WHO MAY BE REMOVED BY THE BOARD FOR MALFEASANCE, MISFEASANCE, INCOMPETENCY, ABSENTEEISM, CONFLICTS OF INTEREST, MISCONDUCT, PERSISTENT NEGLECT OF DUTY IN OFFICE, OR INCAPACITY AND WHO, IN CONJUNCTION WITH THE BOARD, MUST CREATE THE STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM (STIP); AND BY ADDING ARTICLE 7 TO CHAPTER 1 OF TITLE 57, SO AS TO CREATE THE JOINT TRANSPORTATION REVIEW COMMITTEE AND TO PROVIDE FOR THE MANNER IN WHICH DEPARTMENT OF TRANSPORTATION BOARD MEMBERS ARE SCREENED.

Very respectfully,
President
Received as information.

RATIFICATION OF ACTS

At 4:30 p.m. the House attended in the Senate Chamber, where the following Acts and Joint Resolutions were duly ratified:

AVAILABLE FOR DIRECT ACCESS BY CRIMINAL JUSTICE AGENCIES, TO REQUIRE STATE, COUNTY, AND MUNICIPAL LAW ENFORCEMENT AGENCIES TO MAINTAIN A RECORD OF ALL PERSONS WHO ARE FOUND TO BE CRIMINAL GANG MEMBERS IN THE VIOLENT GANG AND TERRORIST ORGANIZATION FILE, AND TO AUTHORIZE THE STATE LAW ENFORCEMENT DIVISION TO DEVELOP AND MAINTAIN A STATEWIDE CRIMINAL GANG DATABASE; TO ESTABLISH A GANG PREVENTION STUDY COMMITTEE; TO ESTABLISH A COMMUNITY SAFETY ANTI-GANG MATCHING GRANTS PROGRAM; TO AMEND SECTION 17-1-40, RELATING TO DESTRUCTION OF CRIMINAL RECORDS, SO AS TO PROVIDE A FEE MAY NOT BE COLLECTED WHEN PROCEEDINGS ARE DISMISSED OR THE PERSON IS FOUND INNOCENT; AND BY ADDING SECTION 16-11-770 SO AS TO CREATE THE OFFENSE OF ILLEGAL GRAFFITI VANDALISM AND TO PROVIDE PENALTIES.

(R110, S. 182 (Word version)) -- Senators Fair, Campsen, Richardson, Hayes and Elliott: AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-1-285 AND 24-1-290 SO AS TO PROVIDE THAT THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR SERVICE BUSINESSES FOR EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS MAY ENTER INTO CONTRACTS WITH PRIVATE SECTOR ENTITIES THAT ALLOW INMATE LABOR TO BE PROVIDED FOR PRISON INDUSTRY SERVICE WORK THAT INVOLVES EXPORTATION OF CERTAIN PRODUCTS UNDER CERTAIN CIRCUMSTANCES, AND PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF AN INMATE ENGAGED IN PRISON INDUSTRY SERVICE WORK IN ADDITION TO ANY OTHER REQUIRED DEDUCTIONS.

(R111, S. 243 (Word version)) -- Senators Setzler, Leatherman, Fair and Elliott: AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 46 TO TITLE 11 SO AS TO ESTABLISH THE "SOUTH CAROLINA HYDROGEN INFRASTRUCTURE DEVELOPMENT FUND", TO AUTHORIZE THE SOUTH CAROLINA RESEARCH AUTHORITY TO ADMINISTER GRANTS FOR THE PURPOSE OF PROMOTING THE DEVELOPMENT OF HYDROGEN PRODUCTION, TO ALLOW THE FUND TO RECEIVE DONATIONS, GRANTS, AND OTHER FUNDING AS PROVIDED BY LAW, TO REQUIRE THE GENERAL ASSEMBLY TO APPROPRIATE A SPECIFIC AMOUNT FROM THE GENERAL FUND OF THE STATE TO THE FUND, AND TO REQUIRE STATE AGENCIES TO CONSIDER PURCHASING EQUIPMENT AND MACHINERY OPERATED BY HYDROGEN OR FUEL CELLS OR BOTH OF THEM; BY ADDING SECTION 12-6-3630 SO AS TO ALLOW A CREDIT AGAINST THE INCOME TAX, LICENSE FEES, OR INSURANCE PREMIUM TAXES FOR QUALIFIED CONTRIBUTIONS MADE TO THE FUND; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES TAX EXEMPTIONS, SO AS TO ALLOW A SALES TAX EXEMPTION FOR EQUIPMENT OR MACHINERY OPERATED BY HYDROGEN OR FUEL CELLS OR USED TO DISTRIBUTE HYDROGEN AND FOR EQUIPMENT AND MACHINERY USED PREDOMINATELY FOR RESEARCH AND DEVELOPMENT INVOLVING HYDROGEN OR FUEL CELL TECHNOLOGIES, AND TO ALLOW A SALES TAX EXEMPTION FOR BUILDING MATERIALS, MACHINERY, OR EQUIPMENT USED TO CONSTRUCT A NEW OR RENOVATED BUILDING LOCATED IN A RESEARCH DISTRICT; BY ADDING SECTION 12-14-80 SO AS TO ALLOW AN ECONOMIC IMPACT ZONE TAX CREDIT AGAINST THE CORPORATE INCOME TAX OR EMPLOYEES' WITHHOLDING TAX TO A

PRISONS, 2007 South Carolina Laws Act 68 (S.B. 182)

2007 South Carolina Laws Act 68 (S.B. 182)**SOUTH CAROLINA 2007 SESSION LAWS
REGULAR SESSION**

Additions and deletions are not identified in this document.
Vetoed provisions within tabular material are not displayed.

**Act 68
S.B. No. 182
PRISONS**

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 24-1-285 AND 24-1-290 SO AS TO PROVIDE THAT THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR SERVICE BUSINESSES FOR EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS MAY ENTER INTO CONTRACTS WITH PRIVATE SECTOR ENTITIES THAT ALLOW INMATE LABOR TO BE PROVIDED FOR PRISON INDUSTRY SERVICE WORK THAT INVOLVES EXPORTATION OF CERTAIN PRODUCTS UNDER CERTAIN CIRCUMSTANCES, AND PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF AN INMATE ENGAGED IN PRISON INDUSTRY SERVICE WORK IN ADDITION TO ANY OTHER REQUIRED DEDUCTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Employment of inmates through the prison industries program

SECTION 1. Chapter 1, Title 24 of the 1976 Code is amended by adding:

<< SC ST § 24-1-285 >>

Section 24-1-285. (A) The Department of Corrections, in conjunction with the Department of Commerce, shall develop and maintain a marketing plan to attract private sector service businesses for the employment of inmates through the prison industries program.

(B) Prior to entering into new contracts and renewals of existing contracts with private sector service entities that want to hire inmates through the prison industries program, the Department of Corrections must provide public notice of its intention to establish or continue a prison-based industry at a particular facility and receive certification by the Department of Commerce that an unfair competitive wage disadvantage to the local economy is not created by each new contract for prison labor.

(1) The public notice required in this subsection must be forwarded to a newspaper of general circulation in the county where the prison-based industry is or will be located, with a request that it be published at least once a week for two consecutive weeks. The notice must include a description of the work to be performed, the intent to contract for inmate labor, and provide that objections to the proposed hiring of prison labor may be filed with the Department of Commerce within thirty days of the last date that the notice appears.

(a) The Department of Commerce must maintain a copy of any objections filed for a period of three years from the date that the objections were received.

(b) Advertising costs associated with the publication of notice must be borne by the entity seeking to contract for prison labor.

(2) The certification required by this subsection must be based upon objections to the establishment of a prison-industry program provided for in item (1).

(C) No contract may be negotiated or executed prior to forty days after the last date that the notice required by subsection (A) appears. New contracts and renewals of existing contracts between private sector entities and the Department of Corrections

PRISONS, 2007 South Carolina Laws Act 68 (S.B. 182)

must be negotiated in accordance with procedures established jointly by the Department of Commerce and the Department of Corrections. The procedures must be drafted to ensure fairness and consistency in establishing contracts with private sector entities seeking to establish or continue prison-based operations whenever the wage to be paid is less than the federally established minimum wage.

(D) The marketing plan and the procedures for negotiating new contracts and contract renewals must be submitted to and approved by the Budget and Control Board prior to implementation. The Department of Corrections shall annually submit an audit report of the program to the Senate Corrections and Penology Committee and the House Medical, Military, Public and Municipal Affairs Committee. The provisions of the section may not be construed to apply to traditional prison industries as authorized in Section 24-3-320.

Employment of inmates for prison industry work that involves the exportation of products

SECTION 2. Chapter 1, Title 24 of the 1976 Code is amended by adding:

<< SC ST § 24-1-290 >>

Section 24-1-290. The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, service work is defined as any work that includes 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 export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector. However, the Director of the Department of Corrections shall deduct the following from the gross earnings of the inmates engaged in prison industry service work in addition to any other required deductions:

(1) If restitution to a particular victim or victims has been ordered by a court of appropriate jurisdiction, then twenty percent must be used to fulfill the restitution obligation.

(2) If restitution to a particular victim or victims has not been ordered by a court of appropriate jurisdiction, or if the court-ordered restitution to a particular victim or victims has been satisfied, then twenty percent must be applied to the South Carolina Victim's Compensation Fund.

(3) Thirty-five percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty-five percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to item (4). This is in addition to the ten percent used for the same purpose in item (4).

(4) Ten percent must be made available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to item (4).

Provisions that supercede and control over contrary provisions

SECTION 3. The provisions of this act supercede and are controlling over any provision to the contrary in paragraph 37.36, Part IB of the 2007-2008 General Appropriations Bill.

Time effective

SECTION 4. This act takes effect August 1, 2007.

Ratified the 8th day of June, 2007.

Approved the 13th day of June, 2007.

SC LEGIS 68 (2007)

End of Document

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STATUTES AT LARGE

(No. 117)

General and Permanent Laws—2007

SECTION 37 - N04 - DEPARTMENT OF CORRECTIONS

Industries Account or the Canteen Account to contract for medical services and/or provide financial incentives to medical staff who work within the Reception and Evaluation Units of the department.

**37.34. (CORR: Death Sentenced Prisoners) Of the funds appropriated for the operation of the Lieber Correctional Institution, the department shall dedicate an amount sufficient to assume and maintain physical custody of all prisoners sentenced to death.*

37.35. DELETED

***37.36. (CORR: Quota Elimination) Pursuant to Section 24-3-60 of the 1976 Code, upon notification by the county, the Department of Corrections shall accept newly sentenced inmates from each local jail and detention center.*

For sentenced inmates who the county is willing to transport, the department may limit the acceptance at the Kirkland Correctional Institution to the hours of 8:00 a.m. to 1:00 p.m., Monday through Friday, excluding holidays, and at the Perry and Lieber Correctional Institutions to the hours of 8:00 a.m. to 10:30 a.m., Monday through Friday, excluding holidays.

By mutual agreement between the Department of Corrections and a local jail or detention center, the department may establish an alternate admissions schedule for receiving inmates at the Reception and Evaluation Center.

At the time of transfer of the inmate to the department, the county shall provide the sentencing order, and if available copies of medical screening records, booking reports, and other documents to assist the department in its intake processing. Counties that have not completed medical screenings at the time of transfer shall not be required to do so.

In the event there are inadequate beds within the Reception and Evaluation Center, the Department of Corrections may create a "jail" within the Kirkland Correctional Institution using one or more of the available 192-bed housing units to accept newly sentenced state inmates who are awaiting R & E processing. The department may operate such "jail," to the extent feasible, in accordance with standards applicable to the local jails.

The department shall use the funds appropriated in this Act for "Quota Elimination" to accomplish this initiative and to open a 96-

** See note at end of Act.*

*** See note at end of Act.*

No. 117)

OF SOUTH CAROLINA
General & Permanent Laws—2007

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SECTION 37 - N04 - DEPARTMENT OF CORRECTIONS

bed unit at the MacDougall Correctional Institution and the 192-bed housing units at Kirkland Correctional Institution. The funds may not be transferred to any other program or used for any other purpose.

**SECTION 38 - N08 - DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES**

38.1. (DPPP: Offender-Related Record Information) The department is authorized to collect a fee for providing offender-related record information and for providing responses to freedom of information requests. The fee will be based on the staff time required to compile the information and the costs of supplies, photocopying and postage. The department must continue to remit fee proceeds to the general fund. Fee proceeds in excess of \$6,000 may be retained by the department to offset associated costs and be carried forward from one fiscal year to another. Further, the department may accept unconditional gifts of money or personal property.

38.2. (DPPP: Sale of Equipment) Notwithstanding any other provision of law, all revenue generated by the Department of Probation, Parole and Pardon Services from the sale of various equipment in excess of \$575, less the cost of disposition incurred by the B&C Board, Division of Operations, may be retained and carried forward into the current fiscal year and expended for the purpose of purchasing like items.

38.3. (DPPP: Restitution Center Housing and Food) The department may set, with the approval of the Budget and Control Board, the per day charge for housing and food based on the offender's ability to pay so long as the per day charge does not exceed the actual costs of those services. This fee is in addition to any supervision fees that may be imposed by the department. The revenues generated by this per day charge must be used to offset the cost of operating the restitution centers.

38.4. (DPPP: Interstate Compact Application Fee) The department may charge offenders an application fee set by the department, not to exceed \$100, to offenders applying for transfers out of state under the Interstate Compact Act. The application fee shall be retained by the department to offset the cost of the Interstate Compact Act. All unexpended funds at year-end may be retained and carried forward by the department to be expended for the same purpose.

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STATUTES AT LARGE

(No. 117)

General and Permanent Laws--2007

SECTION 73 - X91 - STATEWIDE REVENUE

73.14 of the FY 2006-07 Appropriation Act: D17-Governor's Office-OEPP Subfund 4892 Legacy Trust Fund, \$1,801; E16-State Treasurer's Office Subfund 4843 Local Option Sales Tax, \$163,568; and made pursuant to proviso 73.17 of the FY 2005-06 Appropriation Act, D17-Governor's Office-OEPP Subfund 4649 USDA-TLP, \$79,485.

73.15. (SR: Subfund 43A8 Transfer) The State Treasurer shall redirect the \$596,616 transferred to Subfund 43A8 - Barnwell Economic Development Fund pursuant to proviso 73.14 of the FY 2006-07 Appropriation Act to the following entities: \$200,000 to the Edisto Research and Education Center and \$396,616 to the Denmark Branch Library.

END OF PART IB

All acts or parts of acts inconsistent with any of the provisions of Parts IA or IB of this act are suspended for Fiscal Year 2007-2008.

Except as otherwise specifically provided, this act takes effect immediately upon its approval by the Governor.

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Ratified the 21st day of June 2007.

PLEASE NOTE

Text printed in *italic*, **boldface** indicates sections vetoed by the Governor on June 27, 2007.

*Indicates those vetoes sustained by the General Assembly on June 28 or June 29, 2007.

**Indicates those vetoes overridden by the General Assembly on June 28 or June 29, 2007.

Provisions not vetoed by the Governor took effect June 27, 2007, and generally apply for the fiscal year beginning July 1, 2007.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 31 2016

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Trial Court Case No. 07-ALJ-04-0517-AP
Appellate Case No. 2014-001199

Fred Gatewood, #289775, ... Appellant,

v.

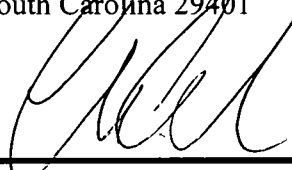
South Carolina Department of Corrections, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's **Petition for Rehearing** on the above-named Appellant by mailing a copy of it to his counsel, first class postage pre-paid, at the following address:

Douglas H. Westbrook, Esquire
Attorney at Law
23 Broad Street
Charleston, South Carolina 29401

March 31, 2016


LAKE E. SUMMERS