

HOUSE BILL REPORT

HB 2004

As Reported By House Committee On:
Corrections
Capital Budget

Title: An act relating to criminal sentencing and correctional industries.

Brief Description: Changing provisions relating to criminal sentencing and correctional industries.

Sponsors: Representatives Morris, Long and Springer.

Brief History:

Reported by House Committee on:
Corrections, March 3, 1993, DPS;
Capital Budget, March 8, 1993, DPS(COR-A CB).

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Morris, Chair; Mastin, Vice Chair; Long, Ranking Minority Member; L. Johnson; Ogden; and Riley.

Minority Report: Do not pass. Signed by 2 members: Representatives G. Cole; and Padden.

Staff: Antonio Sanchez (786-7383).

Background:

CORRECTIONAL INDUSTRIES

The Division of Correctional Industries is responsible for developing and implementing programs designed to offer inmates employment, work experience and training, and to reduce the tax burden of corrections. Products and services provided by the Division of Correctional Industries' programs are offered to the public, governmental agencies, non-profit organizations, and to the correctional system itself using sound fundamental business principles.

Under authority of the Corrections Reform Act of 1981, the Division of Correctional Industries operates five classes of work programs:

1) Class I - Free Venture Industries. This program allows private sector companies to set up factories within the corrections institutions. Under the Class I Program, goods or services are produced for sale to both the public and private sector. Inmate employees working in class I are paid at least \$4.25 an hour up to comparable wage determined by the Department of Employment Security.

In 1992 class I industries employed **less than 3 percent** (227 inmates) of the inmate population; those employed were paid a total of **\$1.32 million in wages**. Of these total wages paid, 56 percent went to inmate accounts, 16 percent was paid to taxes, industrial insurance and family support, 15 percent was paid for cost of corrections (room and board), 6 percent went into mandatory savings, 5 percent was for victims compensation, and 2 percent was paid directly to the offenders' legal financial obligations. After all required deductions, each inmate earned approximately \$3,700 for their personal use.

2) Class II - Tax Reduction Industries. This program is state owned and managed directly by the Department of Corrections (DOC) to reduce the costs of goods and services for tax supported agencies and for non-profit organizations. The sale of Class II Program goods and services is restricted by current law. These products and services may only be sold to public agencies, to non-profit organizations, and to private contractors when the goods purchased will be ultimately used by a public agency or a non-profit organization. In addition, state agencies are mandated to purchase all articles or products required which are produced or provided in whole or in part from class II inmate programs. Criteria are established that insure fair competition with the private sector. Every new class II industry developed by the Department of Corrections is required first to consider the effect the new industry will have on business and labor in the state. Wages for inmates working in this class is \$0.30 to \$0.90 per hour, however, asbestos removal pays \$4.25 an hour. These wages are paid through a revolving fund generated by the sale of goods and services. **Class II industries sold almost \$15 million in goods and services in 1992.**

In 1992 class II industries employed a total of **675** offenders, representing **7 percent** of the total inmates. These working offenders earned a total of **\$915,524** in 1992.

3) Class III - Institutional Support Services. This program is designed to provide jobs that are vital to the day-to-day operation of the prison. This class does not sell goods or services but instead employs inmates in jobs that maintain the operations of the institution such as food

or janitorial services. This class pays offenders \$30 - \$50 per month. These wages are paid by the prison directly from operating funds.

Class III industries employ the highest number of offenders. In 1992, **33 percent** of the inmate population (3,288 offenders), worked in class III jobs and were paid, by "gratuity," \$1,310,309 for their services. This amounts to an average of approximately \$400 per offender per year.

4) Class IV - Community Work Industries. This program allows public agencies, the poor or infirm, and non-profit agencies to hire a class IV inmate to provide services in the community at a reduced cost. This class offers only inmates at minimum security or work release centers an opportunity to work in their communities.

In 1992, 481 offenders (5 percent), participated in class IV work. They received a total of \$237,299 in wages.

5) Class V - Community Service Program. This program allows offenders to perform work, without compensation, for the benefit of the community.

OFFENDER OBLIGATIONS

Currently, the secretary of the Department of Corrections is authorized to develop a formula which can be used to determine how much is deducted from an inmates wages while working in prison. The deduction is used to pay for the cost of corrections, including the cost to develop and implement correctional industries programs. The secretary can set the amount the working offender must pay, provided that it does not discourage the offenders incentive to work. The amount deducted from an inmates wages is required to go into: the general fund, crime victims compensation account, restitution, savings, and family support. The following is the formula that is being used:

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| 20 percent | of gross income to DOC for cost of incarceration; |
| 20 percent | of gross income towards legal financial obligations, child support, and amounts owed to DOC; and |
| 10 percent | of gross income placed in trust fund until a balance of \$500 is reached, dedicated to a prison savings account to be used when released from prison. |
| 50 PERCENT | TOTAL DEDUCTION FROM GROSS INCOME UNDER CURRENT POLICY |

A recent study conducted by the Department of Corrections indicated that the Division of Correctional Industries has less than 1 percent of the state's business and labor markets. In addition, data indicate that these programs contribute more to Washington's economy than the private sector would by manufacturing the same product with the same profit motive and the same labor to capital mix. This is due to the benefits taxpayers receive in the form of reduced cost of corrections and reduced recidivism.

MARKETING ENHANCEMENT OF CLASS II CORRECTIONAL INDUSTRIES

All state agencies are currently required to purchase articles or products produced or provided by class II inmate work programs operated by the Department of Corrections. State agencies are given the opportunity to purchase non-class II products if the Department of General Administration finds:

- 1) **The articles or products do not meet the reasonable requirements of the agency or department;**
- 2) **The products are not of equal or better quality; and**
- 3) **The price of the product or service is higher than that produced by the private sector.**

These three qualifiers are currently being used in a fashion that would eliminate the possibility of obtaining a guaranteed market and have been used, according to the department, to limit their full participation in this market. In the abstract, such qualifiers may serve as a means for ensuring fair competition with the open market. Under the present purchasing system, correctional industries must be competitive to meet these price, delivery, and quality requirements as defined by the purchaser.

Every new class II industry contemplated for development is first evaluated to determine the effect the new industry will have on business and labor in the state. Traditionally, the markets chosen are labor intensive, where a need is not being met by Washington manufacturers or market share can be obtained from expected growth in the industry.

ASBESTOS ABATEMENT AND UNDERGROUND STORAGE REMOVAL

ASBESTOS ABATEMENT:

The Department of Corrections began offender asbestos abatement training and services in 1990 at McNeil Island Corrections Center. The program has received very favorable

reviews from regulatory agencies and safety consultants. During 1991, the programs expanded beyond McNeil Island to provide abatement services for other DOC institutions. Approximately 10 inmates are employed in the asbestos abatement industry. Managers provided all the required training and supervision.

During the next biennium the state is expected to spend approximately \$9 million on asbestos abatement projects on state owned properties.

UNDERGROUND STORAGE TANK REMOVAL:

The 1989 Legislature charged the Department of Ecology with establishing a comprehensive underground storage tank program. The program required that tank owners obtain a permit. In 1992, the Department of Ecology began enforcement orders for the removal of tanks that are an existing or imminent threat to human health or the environment.

During the next biennium the state is expected to spend approximately \$11 million on the removal and replacement of underground storage tanks and associated site cleanup.

The Department of Corrections currently does not conduct underground storage tank removal or training for the removal as part of the correctional industries program.

Summary of Substitute Bill:

MARKETING ENHANCEMENT OF CLASS II CORRECTIONAL INDUSTRIES

The Department of Corrections and the Department of General Administration are required to develop and implement administrative rules providing for the preferential purchase of correctional goods and services through a state contract by all departments including the Legislature. The qualifiers of meeting the demand and quality are maintained, however, the definition of under what circumstances a department cannot purchase correctional industries products are now required to be established by departmental rule. The Correctional Industries Board is required to approve the rules prior to their adoption.

The industry representative on the Correctional Industries Board of Directors must be selected from a list provided by an array of statewide business organizations.

The Department of Corrections is required to establish a data gathering system for tracking information about offender participation in correctional industries jobs. In

addition, the Department of Corrections and the Department of General Administration are required to jointly submit yearly reports to the Legislature on the purchase of all correctional industries goods and services.

ASBESTOS ABATEMENT AND UNDERGROUND STORAGE REMOVAL

The definition of goods and services is expanded to include the removal of asbestos and leaking underground storage tanks on state owned property. The Correctional Industries Board of Directors is required to expand the removal of asbestos and leaking underground storage tanks by qualified offender teams based on business case analysis prepared by the correctional industries director and using other relevant data. All state agencies are required to contract with the Department of Corrections for this type of work authorized in the capitol budget, provided that the approved offender work teams can meet the demand for such work.

CORRECTIONAL INDUSTRIES ENHANCEMENTS AND OFFENDER OBLIGATIONS

The Department of Corrections is required to increase inmate participation in class I and class II work programs to 20 percent by 1997 and to 30 percent by the year 2000 based on 1993 benchmark data.

The department is further required to develop, by rule, the administrative process for recovering inmate wages. All offenders working in class I inmate work programs are required to deduct 20 percent of their wages to cover the cost of incarceration. The funds deducted for the cost of incarceration must be used to enhance and maintain the Correctional Industries Program until December 31, 2010. Thereafter, the funds must be deposited in the general fund. Of the wages, 10 percent must be deposited in an inmate savings account until it reaches \$1,500. No less than 5 percent nor more than 20 percent can be deducted from an inmate's wages for the crime victims compensation fund. Additional deductions for offenders' legal financial obligations are to be determined by the secretary of corrections.

Substitute Bill Compared to Original Bill: Language is removed that required the Department of Corrections and the Department of General Administration to establish a plan for the purchase of class II correctional goods and services. The substitute bill modifies the process by eliminating the requirement for a purchasing plan for correctional industries goods and services and in its place requires that rules are established for governing how class II correctional industries will be contracted to state agencies

and the Legislature. The Correctional Industries Board of Directors is given additional duties by requiring them to also approve the administrative rules for contracting. Language is added that requires that the industry representative on the Correctional Industries Board of Directors must be selected from a list provided by an array of statewide business organizations. The Department of Corrections is required to establish a data gathering system for tracking information about offender participation in correctional industries jobs.

Sections are repealed to eliminate language that is no longer required due to application of administrative rules. Underground storage tank removal and asbestos removal is added to the definition of correctional industries goods and services. Language is removed that mandated inmate work crews receive training and the state must contract with correctional industries for all asbestos removal and the removal of underground storage tanks on state owned property. In its place, the Correctional Industries Board of Directors is required to expand asbestos and leaking underground storage tank removal by qualified offender teams based on business case analysis prepared by the correctional industries director and using other relevant data. All state agencies are required to contract with the Department of Corrections for this type of work authorized in the capitol budget, provided that the approved inmate teams can meet the demand.

Reductions are made to the amount of inmates mandated to work in class I and II work industries jobs by the year 1997 and 2000 and the formula for deducting inmate wages is modified to reduce the amount the inmate must contribute toward the cost of their incarceration.

Fiscal Note: Requested February 18, 1993.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Work programs are a positive way to address the problem of recidivism. It will allow us to recover additional funds for the state at a time when we need them.

Testimony Against: Expanding the purchase of class II products and services by the state will have a negative impact on the labor and business community. This will be especially true if our contracts for asbestos removal and the removal of underground storage tanks are done by inmate work crews. If the department is required to expand correctional industries beyond its capabilities, it will be difficult and expensive. Inmate wages should only be

reduced to the extent that it will not discourage the offender from working.

Witnesses: Mike Redman, Washington Association of Prosecuting Attorneys (pro); Janeen Wadsworth, Department of Corrections (con); Robert Dilger, Washington State Building Trades (con); Noel McMurtray (con); Jim King and Bill Walker, RESTEC (con); Tim Ozog, TLH Abatement, Inc. (con); Julia Porter, Association of Washington Business; Gary Smith, Independent Business Association (con as written); James Aldrich, A. A. Contractors, Inc. (con); and Ted Boskovich, Jr., Head and Frost Insulators and Asbestos Workers Local #7.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill by Committee on Corrections be substituted therefor and the substitute bill as amended by Committee on Capital Budget do pass. Signed by 9 members: Representatives Wang, Chair; Ogden, Vice Chair; Brough; Eide; Jacobsen; Jones; Ludwig; Romero; and Sommers.

Minority Report: Do not pass. Signed by 6 members: Representatives Sehlin, Ranking Minority Member; Morton, Assistant Ranking Minority Member; R. Fisher; Heavey; Silver; and Thomas.

Staff: Karl Herzog (786-7271).

Summary of Recommendation of Committee on Capital Budget Compared to Recommendation of Committee on Corrections: Additional requirements are added to the rules governing the preferential purchase of goods and services from correctional industries by state agencies. The rules must reference the requirements of timeliness of delivery, quality, and cost-effectiveness. The preference provided under the rules is limited to 10 percent of the total bid amount.

An additional qualification is established for class II goods and services purchased by state agencies. The goods and services must meet agency demands of cost in addition to the quantity and quality demands established in the substitute bill.

Two other requirements are also added. First, the correctional industries teams for asbestos abatement and underground storage tank removal, replacement, and cleanup must be available to contract for work with state agencies. Second, agencies must consider several factors when

contracting for asbestos abatement and underground storage tank removal, replacement, and cleanup: the cost and complexity of the project, the qualifications of the bidders, project time constraints, and the availability of work crews.

Finally, language is modified to add clarity and consistency to references to asbestos abatement and underground storage tank projects in the substitute bill.

Fiscal Note: Available. New fiscal note requested on March 5, 1993.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Increasing inmate participation in correctional industries programs will create a budget savings for the state.

Testimony Against: None.

Witnesses: Representative Betty Sue Morris, prime sponsor (pro); and Janeen Wadsworth, Department of Corrections (neutral on substitute bill).