

---

**Criminal Justice & Corrections  
Committee**

---

**HB 3026**

**Brief Description:** Revising provisions relating to correctional industries.

**Sponsors:** Representatives O'Brien, Mielke, Darneille, Ahern and Pearson.

**Brief Summary of Bill**

- Requires the Correctional Industries Board to conduct a threshold analysis, a business impact analysis, and a public hearing for any new or the expansion of an existing class I, II, III, or IV correctional industry work program to determine if the proposed program will compete with any Washington business.
- Prohibits the Department of Corrections from contracting or approving any agreement for a new class I, II, III or IV work program or the expansion of an existing class I, II, III, or IV work program, that competes with any Washington business.
- Prohibits any inmate with a release date that is more than 10 years in the future from participating in a class I correctional industry.

**Hearing Date:** 1/27/04

**Staff:** Yvonne Walker (786-7841).

**Background:**

The corrections system in Washington is designed to accomplish several stated objectives, such as to punish offenders, discourage recidivism, reflect the values of the community, avoid idleness, provide opportunities for self improvement, and provide for restitution.

Correctional Industries Board of Directors. The Department of Corrections (Department) provides inmate work programs through the Correctional Industries Board of Directors (Board). The Board develops and implements programs that offer inmates employment, work experience and training, and that reduce the cost of housing inmates. To achieve these goals, the Board operates five classes of correctional industry work programs. All inmates working in class I - IV employment receive financial compensation for their work. Class V jobs are court ordered community work that is preformed for the benefit of the community without financial compensation.

The Board is required to review all proposed class I and II correctional industry programs prior to the Department agreeing to provide such products and services. The Board is not required to approve other classes of correctional industry work programs (classes III, IV, or V work programs) prior to recruiting and employing inmates.

Class I Industries. Inmates working in class I ("free venture") industries are paid according to the prevailing wage for comparable work in that locality. There are two models for class I industries authorized under state law — an employer model and a customer model.

Employer model industries are operated and managed by for-profit or nonprofit organizations under contract with the Department. They produce goods and services for sale to both the public and private sector. Customer model class I industries are operated and managed by the Department to produce and provide Washington businesses with products or services currently produced only by out-of-state or foreign suppliers. There are currently no customer model class I industries operating in the state.

Inmates working in free venture industries do so at their own choice and are paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located (ranging from \$7.16 to \$14.76 per hour). The production of window blinds, metal fabrication, upholstery, concrete work, water-jet cutting, sewing, cabiners, and multi-packaging services, are examples of jobs found in the class I industries work program. Security and custody services are supplied to the participating firm without charge.

An inmate's release date does not preclude specific inmates from working in a class I industry program.

Class II Industries. Class II ("tax reduction") industries are state-owned and operated industries designed to reduce the costs for goods and services for public agencies and nonprofit organizations. Industries in this class must be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit. The products and services of this industry, including purchased products and services necessary for a complete product line, may only be sold to public agencies, nonprofit organizations, and to private contractors when the goods purchased will ultimately be used by a public agency or a nonprofit organization. However, to avoid waste or spoilage, by-products and surpluses of timber, agricultural, and animal husbandry enterprises may be sold at private sale or donated to nonprofit organizations, when there is no public sector market for such goods.

Inmates working in tax reduction industries do so at their own choice and are paid a gratuity which can not exceed the wage paid for work of a similar nature in the locality in which the industry is located. Class II gratuities range from 35 cents to \$1.10 per hour and includes such jobs as producing aluminum signs, license plates and tabs, mattresses, asbestos abatement, meat processing, optical lab, engraving, pheasant raising, furniture manufacturing, screen printing and embroidery, industrial sewing, and laundry. Security and custody services are provided without charge by the Department.

Class III Industries. Class III ("Institutional Support") industries are solely operated by the Department with the objective being to offset tax and other public support costs. Except for inmates who work in training programs, inmates in this class are paid a gratuity ranging between

\$30 to \$55 per month. All supervision, management, and custody services are solely provided by the Department.

Inmates working in class III industries provide maintenance and operation of the Department's institution. Ground keepers, barbers, dental assistants, truck drivers, fork lift operators, mechanics, library aides, typists, and interpreters, are examples of jobs found in the class III industries work program.

Class IV Industries. Class IV ("Community Work") industries are operated by the Department and are designed to provide services in the inmate's resident community. Inmates working in class IV industries provide services at a reduced cost to other state agencies, county and local government, to persons who are poor or infirm, and nonprofit organizations. Local governments that hire inmates must provide supervision service without charge to the state and must pay the inmate a gratuity.

Janitorial services, grounds keeping, litter control, institutional kitchen support, special event seating set-up, wheelchair cleaning, tree planting, forest maintenance, and fire suppression are examples of jobs found in the class IV industries work program.

Inmate Wage Deductions. The Department is required by statute to take certain mandatory deductions from the gross wages and gratuities of each inmate working in class I through class IV correctional industry programs.

For inmates working in class I industries (and others earning at least minimum wage), the Department takes a minimum of 55 percent of the inmates' income. The 55 percent is divided into:

- 5 percent for crime victims' compensation;
- 10 percent for an inmate savings account;
- 20 percent to the Department for costs of incarceration; and
- 20 percent for any owed legal financial obligations (LFOs) which can also include restitution for the victim.

In addition, in instances where an offender works for a class I industry and owes child support, the Division of Child Support (DCS) has two options: 1) to send a payroll deduction notice directly through the employer to have child support payments withdrawn from the inmate's paycheck each pay period prior to the inmate receiving the paycheck; or 2) the DCS may issue an order to withhold and deliver child support payments from any inmate who owes child support. Once the Department of Corrections receives the order, the funds in the inmate's savings account are sent to the DCS.

For inmates working in class II industries, the Department takes 65 percent of the inmate's income. The 65 percent is divided into:

- 5 percent for crime victims compensation;
- 10 percent for an inmate savings account;
- 15 percent to the Department for costs of incarceration;
- 15 percent for any child support owed; and
- 20 percent for any owed LFOs.

For inmates working in class III industries, the Department takes 5 percent of the inmate's income for the purpose of crime victim's compensation and 15 percent for any child support owed under a support order.

For inmates working in class IV industries, the Department takes 5 percent of the inmate's income to contribute to the cost of incarceration and 15 percent for any child support owed under a support order.

Universities & Other Institutions of Higher Education. The Department of General Administration establishes requirements for the purchasing activities of all state agencies. State agencies, and the Legislature are required to purchase all goods and services that are produced from class II inmate work programs operated by the Department of Corrections through state contract. These goods and services cannot be purchased from any other source, unless upon application by the agency: (1) it finds the article or products do not meet the reasonable requirements of the agency; 2) the goods are not of equal or better quality; or (3) the price of the product or service is higher than that produced by the private sector.

There is an exception for institutions of higher learning. If an institution of higher education can demonstrate to the Office of Financial Management that the costs of compliance are greater than the benefits, then it is exempt from requirements for: purchases from inmate programs; energy conservation requirements for leases; and clean fuel vehicles.

#### **Summary of Bill:**

It is the intent of the Legislature to ensure that the Correctional Industries Board of Directors, in developing and designing correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, the significant expansion of new or existing class I, II, III, or IV correctional industries work programs that unfairly compete with Washington businesses. Furthermore, the requirements relating to fair competition in the correctional industries work programs are to be liberally construed to protect Washington businesses from unfair competition.

Correctional Industries Board of Directors. The Board must develop and select (instead of design) correctional industries work programs that do not unfairly compete with businesses in Washington. In addition, the Board must continue to review any potential new class I or II industry programs, however the Board's duties is expanded to also required them to review any new class III and IV industry work program or the expansion of an existing work program. The review for all classes of correctional industries must include a threshold analysis to determine if any proposed correctional industry work program will compete with any Washington business. The Department is prohibited from contracting or approving any agreement for a new class I, II, III, or IV work program or the significant expansion of an existing class I, II, III, or IV work program, that unfairly competes with any Washington business.

A class IV correctional industry program is exempt from the Board's review and any threshold or business impact analysis if, the program operates in the form of a work camp that employs prisoners in farming, reforestation, wood-cutting, land clearing, processing of foods in canneries, forest fire fighting, forest fire suppression and prevention, stream clearance, watershed improvement, development of parks and recreational areas, and other work to conserve the

natural resources and protect and improve the public domain and construction of water supply facilities to state institutions.

Threshold & Business Analysis. For all other correctional industry programs, the Board must prepare a threshold analysis for any proposed new class I, II, III, or IV Correctional Industries work program or the significant expansion of an existing class I, II, III, or IV correctional industries work program before the Department enters into an agreement to provide such products or services. The analysis must state whether the proposed new or expanded program will impact any Washington business and must be based on information sufficient to evaluate the impact on Washington business.

If the threshold analysis determines that a proposed new or expanded class I, II, III, or IV Correctional Industries work program will impact a Washington business, the Board must complete a business impact analysis before the Department enters into an agreement to provide such products or services. The business impact analysis must include:

- A detailed statement identifying the scope and types of impacts caused by the proposed new or expanded correctional industries work program on Washington businesses; and
- A detailed statement of the actual business costs of the proposed correctional industries work program compared to the costs of the impacted Washington businesses.

The completed threshold analysis and any completed business impact analysis with all supporting documents must be shared in a meaningful and timely manner with affected chambers of commerce, trade or business associations, local and state labor union organizations, and government entities before a finding is made (regarding whether the work program will or will not compete with any Washington business) on the proposed new or expanded class I, II, III, or IV Correctional Industries work program.

Public Hearing. If a business impact analysis is completed, the Correctional Industries Board of Directors must conduct a public hearing to take public testimony on the business impact analysis. The Department must provide notice to each Washington business assigned the same three-digit standard industrial classification code, or the corresponding North American industry classification system code, as the organization seeking the class I, II, III, or IV Correctional Industries work program contract. The notice must include the date, time, and place of the public hearing.

Following the public hearing, the Board must adopt a finding that the proposed new or expanded class I, II, III, or IV Correctional Industries work program: (1) will not compete with any Washington business; (2) will not compete unfairly with any Washington business; or (3) will compete unfairly with any Washington business and is therefore prohibited. Public hearings conducted by the Board are exempt from the requirements for adjudicative proceedings under the Administrative Procedure Act.

Judicial review of a decision made by the Department or Board, including the adequacy of the threshold analysis or the business impact statement, is de novo.

"Significant expansion" includes any expansion into a new product line or service or an increase in production of the same product or service.

"Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including but not limited to labor costs, financing, rent,

marketing costs, tax advantages, utility costs, and other overhead costs. In order to determine net competitive advantage, the board must review any legitimate quantifiable expenses unique to operating a for-profit business inside a prison.

"Washington business" is defined as a business subject to business and occupation tax.

Class I Industries. Any inmate with a release date that is more than 10 years in the future, and who is not participating in a class I industry on the effective date of this act, is precluded from participating in a class I correctional industry.

Universities & Other Institutions of Higher Education. Institutions of higher education are no longer exempt from purchasing its products and services from the Department. Similar to other state agencies, all institutions of higher education are required to purchase its goods and services from class II inmate work programs operated by the Department through state contract. These goods and services cannot be purchased from any other source, unless upon application by the agency: (1) it finds the article or products do not meet the reasonable requirements of the Department; (2) the goods are not of equal or better quality; or (3) the price of the product or service is higher than that produced by the private sector.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.