

HOUSE BILL REPORT

E2SSB 6489

As Passed House - Amended:

March 4, 2004

Title: An act relating to fair competition in correctional industries.

Brief Description: Revising provisions relating to correctional industries.

Sponsors: By Senate Committee on Ways & Means (originally sponsored by Senators Hargrove and Stevens).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/25/04 [DPA];

Appropriations: 2/28/04, 3/1/04 [DPA(APP w/o CJC)s].

Floor Activity:

Passed House - Amended: 3/4/04, 94-0.

Brief Summary of Engrossed Second Substitute Bill (As Amended by House)

- Requires the Correctional Industries Board (Board) to conduct a threshold analysis, a business impact analysis, and a public hearing for new or the expansion of, an existing class I correctional industry work program to determine if the proposed program will compete with any Washington business.
- Prohibits the Department of Corrections (DOC) from contracting or approving any agreement for a new class I work program, or the expansion of an existing class I work program, that competes unfairly with any Washington business.
- Expands the Board's duties to include reviewing and setting policy for class III and class IV work crews.
- Places a limit on the number of inmates with a sentence of more than 10 years from participating in new class I Correctional Industries work programs.
- Requires higher education and correctional industries to develop a plan to increase future higher education purchases of Correctional Industries products.
- Authorizes the DOC to expand its class I and class II inmate work programs by 1,500 inmates over the next six years.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Pearson and Veloria.

Staff: Yvonne Walker (786-7841).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Criminal Justice & Corrections. Signed by 27 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Anderson, Boldt, Buck, Chandler, Clements, Cody, Conway, Cox, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Ruderman, Schual-Berke, Sump and Talcott.

Staff: Bernard Dean (786-7130).

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 DOC provides inmate work programs through the 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 DOC 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 employing inmates and providing inmate products and services.

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 DOC. 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 DOC 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 cannot 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 DOC.

Class III Industries. Class III ("Institutional Support") industries are solely operated by the DOC 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 DOC.

Inmates working in class III industries provide maintenance and operation of the DOC's institutions. 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 DOC 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 DOC 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 DOC 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 the inmate's savings account;
- 20 percent to the DOC 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 DOC receives the order, the funds in the inmate's savings account are sent to the DCS.

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

- 5 percent for crime victims compensation;
- 10 percent for the inmate's savings account;
- 15 percent to the DOC 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 DOC 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 DOC 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 and 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 DOC 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 education. 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 Amended Bill:

It is the intent of the Legislature to ensure that the Board in developing and designing Correctional Industries work programs, does not encourage the development or provide for the selection of or contracting for, the significant expansion of new or existing class I 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 by the Board of directors 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, although the Board must continue to review any potential new class I or II industry programs, the Board's duties are also expanded to review and set policy for class III and IV work crews (with the exception of those work crews operated by the Department of Natural Resources). As part of the review for class III and IV programs, the DOC must present a quarterly report to the Board showing where the crews worked, what correctional industry class performed the work, and the total hours worked. The Board may review any class III or IV work program at its discretion.

As part of the Board's review for class I industries, the DOC must conduct a threshold analysis to determine if any proposed correctional industry work program competes with any Washington business. The DOC is prohibited from contracting or approving any agreement for a new class I work program or the significant expansion of an existing class I work program, that unfairly competes with any Washington business.

Threshold and Business Analysis. The DOC must prepare a threshold analysis for any proposed new class I Correctional Industries work program or the significant expansion of an existing class I Correctional Industries work program before the DOC 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 Correctional Industries work program will impact a Washington business, the DOC must complete a

business impact analysis before the DOC enters into an agreement to provide such products or services. The business impact analysis must include a detailed statement that:

- Identifies the scope and types of impacts caused by the proposed new or expanded Correctional Industries work program on Washington businesses; and
- Includes the business costs of the proposed Correctional Industries work program compared to the business costs of the Washington businesses that may be impacted by the proposed class I correctional industry work program. Business costs of the proposed Correctional Industries work program include: rent, water, sewer, electricity, disposal, labor costs, and any other quantifiable expense unique to operating in a prison. Business costs of the impacted Washington business include: rent, water, sewer, electricity, disposal, property taxes, and labor costs including employee taxes, unemployment insurance, and workers' compensation.

The completed threshold analysis and any completed business impact analysis with all supporting documents must be shared in a meaningful and timely manner with 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 Correctional Industries work program.

All records, documents, data, and other materials obtained to complete a business or threshold analysis, from an existing Correctional Industries class I work program or an applicant for a proposed new or expanded class I industry, are confidential and exempt from public disclosure.

Public Hearing. If a business impact analysis is completed, the DOC must conduct a public hearing to take public testimony on the business impact analysis. The DOC must establish a website containing information to 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 Correctional Industries work program contract. Notice of the hearing must be posted at least 30 days prior to the hearing.

Following the public hearing, the DOC must adopt a finding that the proposed new or expanded class I 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.

"Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

"Unfair competition" means any net competitive advantage that a business may acquire as a result of a Correctional Industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net

competitive advantage, the Board shall review and quantify any expenses unique to operating a for-profit business inside a prison.

"Washington business" means an in-state manufacturer or service provider, subject to business and occupation tax, existing on the effective date of the act.

Class I Industries and Inmates. Inmates with a release date of more than 120 months in the future cannot comprise more than 10 percent of the total number of inmates participating in a new class I correctional industry opening after the effective date of the act.

Universities and Other Institutions of Higher Education. The Council of Presidents and the State Board for Community and Technical Colleges must convene its Correctional Industries Business Development Advisory Committee, and work collaboratively with Correctional Industries, to:

- Reaffirm purchasing criteria and ensure that quality, service, and timely delivery result in the best value for expenditure of state dollars;
- Update the approved list of Correctional Industries products from which higher education must purchase; and
- Develop recommendations on ways to continue to build Correctional Industries' business with institutions of higher education.

Higher education and Correctional Industries must develop a plan to build higher education business with Correctional Industries to increase higher education purchases of Correctional Industries products. The plan must include the Correctional Industries' production and sales goals for higher education and an approved list of products from which higher education institutions must purchase. Higher education and Correctional Industries must report to the Legislature regarding the plan and its implementation no later than January 30, 2005.

Institutions of higher education must set as a target to contract, beginning no later than June 30, 2006, to purchase 1 percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the DOC. Institutions of higher education must set as a target to contract, beginning no later than June 30, 2008, to purchase 2 percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the DOC.

Expansion of Class I and II Work Programs. The DOC, subject to availability of funds for the Correctional Industries program, must expand its class I and class II inmate work programs according to the following schedule:

- By no later than June 30, 2005, the DOC must achieve a net increase of at least 200 in the number of inmates employed in class I or class II Correctional Industries work programs above the number so employed on June 30, 2003;
- By no later than June 30, 2006, the DOC must achieve a net increase of at least 400 in the number of inmates employed in class I or class II Correctional Industries work programs above the number so employed on June 30, 2003;

- By no later than June 30, 2007, the DOC must achieve a net increase of at least 600 in the number of inmates employed in class I or class II Correctional Industries work programs above the number so employed on June 30, 2003;
- By no later than June 30, 2008, the DOC must achieve a net increase of at least 900 in the number of inmates employed in class I or class II Correctional Industries work programs above the number so employed on June 30, 2003;
- By no later than June 30, 2009, the DOC must achieve a net increase of at least 1,200 in the number of inmates employed in class I or class II Correctional Industries work programs above the number so employed on June 30, 2003; and
- By no later than June 30, 2010, the DOC must achieve a net increase of at least 1,500 in the number of inmates employed in class I or class II Correctional Industries work programs above the number so employed on June 30, 2003.

Failure to comply with the schedule does not create a private right of action.

This act is null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except for section 3, which because of an amendment made in a previous legislative session, takes effect on July 1, 2005. However, the bill is null and void unless funded in the budget.

Testimony For: (Criminal Justice & Corrections) Long and hard hours have been put into this bill and it has been negotiated among all the necessary parties including the DOC. All concerns that have been brought up in the past have been addressed and it is hoped that there will not be any further changes to this bill as it moves its way back to the Senate.

The problems with class I industries created the need of this bill. This bill is designed to totally protect existing class I industries. All existing class I industries are grandfathered in. It solely applies to new hired inmates and new class I employers. This bill will prevent future problems down the line with new class I industries and will shed light on those potential problems upfront.

Testimony For: (Appropriations) This is an agreed upon bill between small business, labor, the Department of Corrections, and higher education. There have been 82 different versions of this bill to get it to where it is now.

The fiscal impact for this bill is the same as the House bill that passed out of the House earlier.

The bill fixes problems that were inherent in Correctional Industries. It does very little harm and a whole lot of good.

Testimony Against: (Criminal Justice & Corrections) It is not believed that there is now or that there has ever been, unfair competition in class I industries. Class I industries started off with 41 companies and now there are only eight companies left. The restrictions of working in an institution not only creates financial costs to a class I industry but also emotional costs. There is hope that this bill ends the legal harassment that surrounds class I industries.

Testimony Against: (Appropriations) None.

Persons Testifying: (Criminal Justice & Corrections) (In support) Bob Abbott, Laborers District Council; Sally Kirkpatrick, Northwest Association of Private Industry; and Howard Yarbrough, Department of Corrections, Correctional Industries.

(Opposed) Jerry Farley, Private Industries In Prisons.

Persons Testifying: (Appropriations) Sally Kirkpatrick, NW Association for Private Industry; Bob Abbott, Laborers District Council; and Representative O'Brien.

Persons Signed In To Testify But Not Testifying: (Criminal Justice & Corrections) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.