

# SENATE BILL REPORT

## E2SHB 3026

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As Reported By Senate Committee On:  
Children & Family Services & Corrections, February 26, 2004  
Ways & Means, March 1, 2004

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

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

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives O'Brien, Mielke, Darneille, Ahern, Pearson, Nixon and Linville).

**Brief History:**

**Committee Activity:** Children & Family Services & Corrections: 2/20/04, 2/26/04 [DPA-WM].  
Ways & Means: 3/1/04 [DPA].

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### SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Stevens, Chair; Parlette, Vice Chair; Carlson, Deccio, Hargrove, McAuliffe and Regala.

**Staff:** Lilah Amos (786-7429)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended.

Signed by Senators Zarelli, Chair; Hewitt, Vice Chair; Parlette, Vice Chair; Carlson, Doumit, Fairley, Fraser, Hale, Honeyford, Johnson, Pflug, Rasmussen, Regala, Roach, Sheahan, B. Sheldon and Winsley.

**Staff:** Chelsea Buchanan (786-7446)

**Background:** The Department of Corrections (DOC), through the Correctional Industries Board of Directors, operates five classes of correctional industry work programs. Inmates working in class I-IV programs receive financial compensation for their work, while class V programs involve court-ordered community work without financial compensation.

Class I industries are operated and managed by for-profit and nonprofit corporations. Inmates working in these industries do so voluntarily 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.

Class II industries are state-owned and state-operated industries designed to reduce the costs paid by public and nonprofit entities for products which can be produced by inmates. The products of these industries may be sold, with few exceptions, only to state agencies and

nonprofit corporations. Inmates work in class II industries by 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 III "institutional support industries" include work such as janitorial duties and food preparation. Class IV "community work industries" include work crews and labor camps performing functions such as litter control and fighting forest fires.

Wages paid to inmates in class I and II industries are subject to mandatory deductions which are used to satisfy inmate obligations to crime victims' compensation, costs of incarceration, child support, legal-financial obligations, and to create an inmate savings account. Wages paid to inmates in class III industries are subject to deductions for crime victims' compensation, and wages for inmates in class IV industries are subject to deductions for the cost of incarceration.

Concern exists that some class I correctional industries work programs compete unfairly with Washington businesses.

**Summary of Amended Bill:** Class I correctional industries work programs cannot be newly established and existing class I work programs cannot be significantly expanded unless the board of directors determines that the new business or expansion will not compete unfairly with any existing Washington business. Unfair competition is defined as any net competitive advantage that a business may acquire as a result of a correctional industries contract, labor costs, rent, tax advantages, utility rates, and other overhead costs. The fair competition requirement is to be liberally construed by the Correctional Industries Board of Directors. Significant expansion is defined as any expansion into a new product line or service resulting from an increase in benefits provided by DOC.

For class I work programs, the board of directors must make a threshold analysis of whether the proposed new or expanded program will impact any Washington business. If a Washington business will be impacted, the board of directors must complete a business impact analysis before the board permits the establishment of the new business or significant expansion of the existing business. The analysis must include detailed statements identifying the scope and types of impact and the actual business costs of the proposed work program compared to the costs of the impacted Washington business. The completed threshold analysis and any completed impact analysis must be shared with local chambers of commerce, trade or business associations, labor unions, and government entities before the impact analysis is completed.

Upon completion of the business impact analysis, the board of directors must conduct a public hearing and take public testimony. Notification of the public hearing may be by a publicly accessible DOC website. The board must then determine if the proposed change or expansion will unfairly impact any Washington business existing on the effective date of this act. A proposed new or expanded class I industry which will compete unfairly with any Washington business is prohibited.

Business impact analyses are not required for class II, III and IV correctional industries. The correctional industries board of directors will set policies for class III capital programs or community work crews and for class IV work crews (except those operated in work camps)

and must be provided quarterly detail statements regarding these work crews. The board can also review class III and IV programs at the board's discretion.

Inmates with a release date more than 10 years in the future cannot comprise more than 10 percent of inmates working in a new class I correctional industry.

A schedule containing targets for expansion of inmate employment in class I and II work programs is implemented. By June 30, 2005, DOC is permitted to increase inmate participation in class I and II work programs by at least 200 inmates compared to the level of inmates working in such programs on June 30, 2003. Gradually increasing targets are provided, with DOC permitted to increase the number of participating inmates by at least 1500 by June 30, 2010 over the number employed on June 30, 2003. The expansion must occur within funds appropriated for that purpose.

Institutions of higher education must convene the correctional industries business development advisory committee and work collaboratively with correctional industries to develop plans to increase purchases of correctional industries products. The plan and its implementation must be reported to the Legislature by January 30, 2005. Institutions of higher education are directed to set targets to purchase 1 percent of their total yearly requirement of goods and services from Class II inmate work programs by June 30, 2006, and to purchase 2 percent of their total yearly requirement of goods and services from those programs by June 30, 2008.

**Ways & Means Amended Bill Compared to Children & Family Services & Corrections**

**Amended Bill:** Language is clarified regarding reaching inmate employment targets within available funding. The revised language encompasses both appropriated and non-appropriated funding sources specifically for the correctional industries program.

**Children & Family Services & Corrections Amended Bill Compared to Second**

**Substitute Bill:** A procedure is adopted to work with institutions of higher education to increase purchases from class II industries. New class I industries can employ up to 10 percent of employees from a pool of inmates with more than 10 years left on their sentences. Targets for expansion of inmate employment are subject to implementation within available funds for that specific purpose. The board of directors is the entity directed to liberally construe the unfair competition provisions. The board of directors can review any class III or IV work programs. Records obtained during the business impact analysis are exempt from public disclosure. Washington businesses are defined as those existing on the effective date of the act.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** It is important to prevent unfair competition in the correctional industries business. The bill has been significantly modified since introduction after input from many interested parties and has bipartisan support.

**Testimony Against:** Correctional industry businesses struggle to survive. Operating a business in prison is very difficult. If a significant advantage existed, more businesses would be operated as class I industries. While the changes in the bills have been helpful, there remains a significant question whether class I businesses have a strong and viable future.

**Testified:** PRO: Representative Al O'Brien, prime sponsor; Howard Yarborough, DOC; Mark Johnson, NFIB. CON: Jerry Farley, Private Industries in Prison.