

SENATE BILL REPORT

SB 6489

As Reported By Senate Committee On:
Children & Family Services & Corrections, February 4, 2004
Ways & Means, February 9, 2004

Title: An act relating to fair competition in class I and class II correctional industries.

Brief Description: Revising provisions relating to correctional industries.

Sponsors: Senators Hargrove and Stevens.

Brief History:

Committee Activity: Children & Family Services & Corrections: 1/30/04, 2/4/04 [DPS-WM].

Ways & Means: 2/9/04 [DP2S].

SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6489 be substituted therefor, and the substitute bill do pass 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)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6489 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Zarelli, Chair; Hewitt, Vice Chair; Parlette, Vice Chair; Carlson, Doumit, Fairley, Hale, Honeyford, Johnson, Pflug, Prentice, 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.

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

Class I "free venture 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 "tax reduction industries" are state-owned and 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 only to state agencies and nonprofit corporations and to private contractors when the goods purchased will ultimately be used by a public agency or a nonprofit organization. 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, 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.

Summary of Second Substitute 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 Washington business. Unfair competition is defined as any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, marketing costs, tax advantages, utility costs, and other overhead costs. The Legislature's stated intent is to ensure that the board of directors does not encourage new or expanded class I , III, or IV industries that unfairly compete with Washington businesses. The fair competition requirement is to be liberally construed.

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 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 affected 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 website. The board must then determine if the proposed change or expansion will unfairly impact any Washington business.

Class III and IV work programs must be reviewed by the correctional industries board of directors but are not required to undergo a business impact analysis.

Institutions of higher education must purchase goods and services from class II work programs in the same manner as other agencies.

DOC shall implement an expansion in the number of inmates employed by class II and/or class I work programs according to an annual schedule. By June 30, 2005, DOC must have a net increase of at least 200 working inmates over the June 30, 2003 level, with further targets provided in the legislation.

In class I work programs established after the effective date of the act, the number of participating inmates who have sentences of more than ten years cannot comprise more than 10 percent of the new employment.

Second Substitute Bill Compared to Substitute Bill: "Utility costs" are revised to specify "utility rates (water, sewer, electricity, and disposal)." The definitions of "significant expansion" and "unfair competition" are limited to those specifically outlined in the bill. The implementation of the job targets and schedule outlined are limited to be "within the funds appropriated for the correctional industries program." Failure to comply with the job targets and schedule shall not create a private right of action.

Substitute Bill Compared to Original Bill: Expansion of class II work programs is not required to have a business impact analysis. Class III and IV work programs shall be reviewed by the correctional industries board of directors, but a business impact analysis is not required. Inmates with sentences of over ten years cannot comprise more than 10 percent of the inmates in new class I work programs. Institutions of higher education must purchase goods and services from class II work programs. Targets for expansion of the number of inmates employed in class I and/or II work programs are added. Definitions are clarified.

Appropriation: None.

Fiscal Note: Requested on January 23, 2004.

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

Testimony For (Children & Family Services & Corrections): Small businesses are adversely impacted by correctional industries businesses, which have an unfair competitive advantage. They have been underbid by correctional industries businesses which should not be allowed to directly compete with Washington businesses. Jobs paying good salaries are being given to inmates, putting Washington families out of work. These programs do not really prepare workers for good jobs outside prison, as evidenced by the use of noncompetition clauses.

Testimony Against (Children & Family Services & Corrections): If the bill is passed, Class I business will cease operations in DOC, resulting in a significant fiscal impact, with less money going to crime victims and payment of legal fees. These work programs provide order in prison and educate inmates for employment when released. The percentage of workers in these work programs is minuscule compared to the number of workers in

Washington. If there is such a significant competitive advantage to a business inside DOC, why are businesses leaving and none seeking to develop such a business?

Testified (Children & Family Services & Corrections): PRO: Mark Johnson, NFIB; Charles Mulcahy, Sheet Metal Workers Local 66; Sally Kirkpatrick, NAPI; Bob Abbott, Laborer's Dist. Council; Amber Balch Carter, AWB; CON: Chris Michaelson, Elliott Bay Fabricating & PIP; Ken Piel, Microjet & PIP; Jerry Farley, PIP & Private Industries; Eldon Vail, DOC; Howard Yarborough, DOC Correctional Industries.

Testimony For (Ways & Means): Correctional industries provide a valuable service by preventing inmate idleness and a way for inmates to pay restitution and crime victims' compensation, but should not engage in unfair competition. The substitute bill is an attempt to strike a balance between limiting unfair competition for class I industries and expanding jobs for inmates in class II industries with the targets included in the bill. The requirement for higher education institutions to buy all of their goods from correctional industries is aggressive, but is a work in progress. Some class I industries were going to leave prisons even without this bill.

Testimony Against (Ways & Means): Concerns: The bill has worthy goals but will have a somewhat negative impact on crime victims' compensation and restitution. Language in the bill regarding class III and IV industries is a work in progress. The Department of Corrections would prefer not to see mandates for job targets, but understands the need to create more jobs. Institutions of higher education would prefer to retain their exemption from buying goods from correctional industries. These institutions already purchase some items, but purchasing all items is not realistic for either the institutions' needs or the capacity of prisons to produce the goods. Quality and the ability of products to arrive on time are of utmost concern. Higher education institutions are willing to work with the sponsor of the bill.

Testified (Ways & Means): PRO: Senator Hargrove, sponsor; Sally Kirkpatrick, Northwest Association of Private Industry; Mark Johnson, NFIB. CONCERNS: Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs; Eldon Vail, Department of Corrections; Randy Hodgins, University of Washington; Terry Teale, University Council of Presidents; Charles Greenough, Community and Technical Colleges.