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HOUSE BILL 3026

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State of Washington

58th Legislature

2004 Regular Session

By Representatives O'Brien, Mielke, Darneille, Ahern, Pearson, Nixon and Linville

Read first time 01/26/2004. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to fair competition in correctional industries;  
2 amending RCW 72.09.070, 72.09.100, 72.09.460, 72.09.015, 34.05.030, and  
3 34.05.030; reenacting and amending RCW 72.09.100 and 28B.10.029; adding  
4 a new section to chapter 72.09 RCW; providing effective dates; and  
5 providing expiration dates.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 72.09.070 and 1994 sp.s. c 7 s 535 are each amended to  
8 read as follows:

9 (1) There is created a correctional industries board of directors  
10 which shall have the composition provided in RCW 72.09.080.

11 (2) Consistent with general department of corrections policies and  
12 procedures pertaining to the general administration of correctional  
13 facilities, the board shall establish and implement policy for  
14 correctional industries programs designed to:

15 (a) Offer inmates meaningful employment, work experience, and  
16 training in vocations that are specifically designed to reduce  
17 recidivism and thereby enhance public safety by providing opportunities  
18 for legitimate means of livelihood upon their release from custody;

1 (b) Provide industries which will reduce the tax burden of  
2 corrections and save taxpayers money through production of goods and  
3 services for sale and use;

4 (c) Operate correctional work programs in an effective and  
5 efficient manner which are as similar as possible to those provided by  
6 the private sector;

7 (d) Encourage the development of and provide for selection of,  
8 contracting for, and supervision of work programs with participating  
9 private enterprise firms;

10 (e) Develop and (~~design~~) select correctional industries work  
11 programs that do not unfairly compete with Washington businesses;

12 (f) Invest available funds in correctional industries enterprises  
13 and meaningful work programs that minimize the impact on in-state jobs  
14 and businesses.

15 (3) The board of directors shall at least annually review the work  
16 performance of the director of correctional industries division with  
17 the secretary.

18 (4) The director of correctional industries division shall review  
19 and evaluate the productivity, funding, and appropriateness of all  
20 correctional work programs and report on their effectiveness to the  
21 board and to the secretary.

22 (5) The board of directors shall have the authority to identify and  
23 establish trade advisory or apprenticeship committees to advise them on  
24 correctional industries work programs. The secretary shall appoint the  
25 members of the committees.

26 Where a labor management trade advisory and apprenticeship  
27 committee has already been established by the department pursuant to  
28 RCW 72.62.050 the existing committee shall also advise the board of  
29 directors.

30 (6) The board shall develop a strategic yearly marketing plan that  
31 shall be consistent with and work towards achieving the goals  
32 established in the six-year phased expansion of class I and class II  
33 correctional industries established in RCW 72.09.111. This marketing  
34 plan shall be presented to the appropriate committees of the  
35 legislature by January 17 of each calendar year until the goals set  
36 forth in RCW 72.09.111 are achieved.

1       **Sec. 2.** RCW 72.09.100 and 2002 c 175 s 49 are each amended to read  
2 as follows:

3       It is the intent of the legislature to vest in the department the  
4 power to provide for a comprehensive inmate work program and to remove  
5 statutory and other restrictions which have limited work programs in  
6 the past. It is also the intent of the legislature to ensure that the  
7 correctional industries board of directors, in developing and selecting  
8 correctional industries work programs, does not encourage the  
9 development of, or provide for selection of or contracting for, the  
10 significant expansion of new or existing class I, class II, class III,  
11 or class IV correctional industries work programs that unfairly compete  
12 with Washington businesses. The legislature intends that the  
13 requirements relating to fair competition in the correctional  
14 industries work programs be liberally construed to protect Washington  
15 businesses from unfair competition.

16       For purposes of establishing such a comprehensive program, the  
17 legislature recommends that the department consider adopting any or  
18 all, or any variation of, the following classes of work programs:

19       (1) CLASS I: FREE VENTURE INDUSTRIES.

20       (a) The employer model industries in this class shall be operated  
21 and managed in total or in part by any profit or nonprofit organization  
22 pursuant to an agreement between the organization and the department.  
23 The organization shall produce goods or services for sale to both the  
24 public and private sector.

25       (b) The customer model industries in this class shall be operated  
26 and managed by the department to provide Washington state manufacturers  
27 or businesses with products or services currently produced or provided  
28 by out-of-state or foreign suppliers.

29       (c) The correctional industries board of directors shall review  
30 these proposed industries, including any potential new class I  
31 industries work program or the expansion of an existing class I  
32 industries work program, before the department contracts to provide  
33 such products or services. The review shall include ((an)) the  
34 analysis ((of the potential impact of the proposed products and  
35 services on the Washington state business community and labor market))  
36 required under section 4 of this act to determine if the proposed  
37 correctional industries work program will compete with any Washington  
38 business. An agreement for a new class I correctional industries work

1 program, or an agreement for a significant expansion of an existing  
2 class I correctional industries work program, that unfairly competes  
3 with any Washington business is prohibited.

4 (d) The department of corrections shall supply appropriate security  
5 and custody services without charge to the participating firms.

6 (e) Inmates who work in free venture industries shall do so at  
7 their own choice. They shall be paid a wage comparable to the wage  
8 paid for work of a similar nature in the locality in which the industry  
9 is located, as determined by the director of correctional industries.  
10 If the director cannot reasonably determine the comparable wage, then  
11 the pay shall not be less than the federal minimum wage.

12 (f) An inmate who is employed in the class I program of  
13 correctional industries shall not be eligible for unemployment  
14 compensation benefits pursuant to any of the provisions of Title 50 RCW  
15 until released on parole or discharged.

16 (2) CLASS II: TAX REDUCTION INDUSTRIES.

17 (a) Industries in this class shall be state-owned and operated  
18 enterprises designed to reduce the costs for goods and services for  
19 tax-supported agencies and for nonprofit organizations.

20 (b) The industries selected for development within this class  
21 shall, as much as possible, match the available pool of inmate work  
22 skills and aptitudes with the work opportunities in the free community.  
23 The industries shall be closely patterned after private sector  
24 industries but with the objective of reducing public support costs  
25 rather than making a profit. The products and services of this  
26 industry, including purchased products and services necessary for a  
27 complete product line, may be sold to public agencies, to nonprofit  
28 organizations, and to private contractors when the goods purchased will  
29 be ultimately used by a public agency or a nonprofit organization.  
30 Clothing manufactured by an industry in this class may be donated to  
31 nonprofit organizations that provide clothing free of charge to low-  
32 income persons.

33 (c)(i) Class II correctional industries products and services,  
34 including any potential new class II correctional industries work  
35 program or the expansion of an existing class II correctional  
36 industries work program, shall be reviewed by the correctional  
37 industries board of directors before offering such products and  
38 services for sale to private contractors. The review shall include the

1 analysis required under section 4 of this act to determine if the  
2 proposed correctional industries work program will compete with any  
3 Washington business. An agreement for a new class II correctional  
4 industries work program, or an agreement for a significant expansion of  
5 an existing class II correctional industries work program, that  
6 unfairly competes with any Washington business is prohibited.

7 (ii) The board of directors shall conduct a yearly marketing review  
8 of the products and services offered under this subsection. ((Such  
9 review shall include an analysis of the potential impact of the  
10 proposed products and services on the Washington state business  
11 community.)) To avoid waste or spoilage and consequent loss to the  
12 state((~~7~~)) when there is no public sector market for such goods,  
13 byproducts and surpluses of timber, agricultural, and animal husbandry  
14 enterprises may be sold to private persons, at private sale. Surplus  
15 byproducts and surpluses of timber, agricultural and animal husbandry  
16 enterprises that cannot be sold to public agencies or to private  
17 persons may be donated to nonprofit organizations. All sales of  
18 surplus products shall be carried out in accordance with rules  
19 prescribed by the secretary.

20 (d) Security and custody services shall be provided without charge  
21 by the department of corrections.

22 (e) Inmates working in this class of industries shall do so at  
23 their own choice and shall be paid for their work on a gratuity scale  
24 which shall not exceed the wage paid for work of a similar nature in  
25 the locality in which the industry is located and which is approved by  
26 the director of correctional industries.

27 (f) Subject to approval of the correctional industries board,  
28 provisions of RCW 41.06.380 prohibiting contracting out work performed  
29 by classified employees shall not apply to contracts with Washington  
30 state businesses entered into by the department of corrections through  
31 class II industries.

32 (3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

33 (a) Industries in this class shall be operated by the department of  
34 corrections. They shall be designed and managed to accomplish the  
35 following objectives:

36 ((~~a~~)) (i) Whenever possible, to provide basic work training and  
37 experience so that the inmate will be able to qualify for better work

1 both within correctional industries and the free community. It is not  
2 intended that an inmate's work within this class of industries should  
3 be his or her final and total work experience as an inmate.

4 ~~((b))~~ (ii) Whenever possible, to provide forty hours of work or  
5 work training per week.

6 ~~((e))~~ (iii) Whenever possible, to offset tax and other public  
7 support costs.

8 (b) Class III correctional industries products, services, work  
9 crews, and labor camps, including any potential new class III  
10 correctional industries work program or the expansion of an existing  
11 class III correctional industries work program, shall be reviewed by  
12 the correctional industries board of directors. The review shall  
13 include the analysis required under section 4 of this act to determine  
14 if the proposed correctional industries work program will compete with  
15 any Washington business. An agreement for a new class III correctional  
16 industries work program, or an agreement for a significant expansion of  
17 an existing class III correctional industries work program, that  
18 unfairly competes with any Washington business is prohibited.

19 (c) Supervising, management, and custody staff shall be employees  
20 of the department.

21 (d) All able and eligible inmates who are assigned work and who are  
22 not working in other classes of industries shall work in this class.

23 (e) Except for inmates who work in work training programs, inmates  
24 in this class shall be paid for their work in accordance with an inmate  
25 gratuity scale. The scale shall be adopted by the secretary of  
26 corrections.

27 (4) CLASS IV: COMMUNITY WORK INDUSTRIES.

28 (a) Industries in this class shall be operated by the department of  
29 corrections. They shall be designed and managed to provide services in  
30 the inmate's resident community at a reduced cost. The services shall  
31 be provided to public agencies, to persons who are poor or infirm, or  
32 to nonprofit organizations.

33 (b) Class IV correctional industries products, services, work  
34 crews, and labor camps, including any potential new class IV  
35 correctional industries work program or the expansion of an existing  
36 class IV correctional industries work program, shall be reviewed by the  
37 correctional industries board of directors. The review shall include  
38 the analysis required under section 4 of this act to determine if the

1 proposed correctional industries work program will compete with any  
2 Washington business. An agreement for a new class IV correctional  
3 industries work program, or an agreement for a significant expansion of  
4 an existing class IV correctional industries work program, that  
5 unfairly competes with any Washington business is prohibited. Class IV  
6 correctional industries operated in work camps established pursuant to  
7 RCW 72.64.050 are exempt from the requirements and prohibitions of this  
8 subsection (4)(b).

9 (c) Inmates in this program shall reside in facilities owned by,  
10 contracted for, or licensed by the department of corrections. A unit  
11 of local government shall provide work supervision services without  
12 charge to the state and shall pay the inmate's wage.

13 (d) The department of corrections shall reimburse participating  
14 units of local government for liability and workers compensation  
15 insurance costs.

16 (e) Inmates who work in this class of industries shall do so at  
17 their own choice and shall receive a gratuity which shall not exceed  
18 the wage paid for work of a similar nature in the locality in which the  
19 industry is located.

20 (5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

21 (a) Programs in this class shall be subject to supervision by the  
22 department of corrections. The purpose of this class of industries is  
23 to enable an inmate, placed on community supervision, to work off all  
24 or part of a community restitution order as ordered by the sentencing  
25 court.

26 (b) Employment shall be in a community restitution program operated  
27 by the state, local units of government, or a nonprofit agency.

28 (c) To the extent that funds are specifically made available for  
29 such purposes, the department of corrections shall reimburse nonprofit  
30 agencies for workers compensation insurance costs.

31 **Sec. 3.** RCW 72.09.100 and 2002 c 354 s 238 and 2002 c 175 s 49 are  
32 each reenacted and amended to read as follows:

33 It is the intent of the legislature to vest in the department the  
34 power to provide for a comprehensive inmate work program and to remove  
35 statutory and other restrictions which have limited work programs in  
36 the past. It is also the intent of the legislature to ensure that the  
37 correctional industries board of directors, in developing and selecting

1 correctional industries work programs, does not encourage the  
2 development of, or provide for selection of or contracting for, the  
3 significant expansion of new or existing class I, class II, class III,  
4 or class IV correctional industries work programs that unfairly compete  
5 with Washington businesses. The legislature intends that the  
6 requirements relating to fair competition in the correctional  
7 industries work programs be liberally construed to protect Washington  
8 businesses from unfair competition. For purposes of establishing such  
9 a comprehensive program, the legislature recommends that the department  
10 consider adopting any or all, or any variation of, the following  
11 classes of work programs:

12 (1) CLASS I: FREE VENTURE INDUSTRIES.

13 (a) The employer model industries in this class shall be operated  
14 and managed in total or in part by any profit or nonprofit organization  
15 pursuant to an agreement between the organization and the department.  
16 The organization shall produce goods or services for sale to both the  
17 public and private sector.

18 (b) The customer model industries in this class shall be operated  
19 and managed by the department to provide Washington state manufacturers  
20 or businesses with products or services currently produced or provided  
21 by out-of-state or foreign suppliers.

22 (c) The correctional industries board of directors shall review  
23 these proposed industries, including any potential new class I  
24 industries work program or the expansion of an existing class I  
25 industries work program, before the department contracts to provide  
26 such products or services. The review shall include ((an)) the  
27 analysis ((of the potential impact of the proposed products and  
28 services on the Washington state business community and labor market))  
29 required under section 4 of this act to determine if the proposed  
30 correctional industries work program will compete with any Washington  
31 business. An agreement for a new class I correctional industries work  
32 program, or an agreement for a significant expansion of an existing  
33 class I correctional industries work program, that unfairly competes  
34 with any Washington business is prohibited.

35 (d) The department of corrections shall supply appropriate security  
36 and custody services without charge to the participating firms.

37 (e) Inmates who work in free venture industries shall do so at  
38 their own choice. They shall be paid a wage comparable to the wage



1 paid for work of a similar nature in the locality in which the industry  
2 is located, as determined by the director of correctional industries.  
3 If the director cannot reasonably determine the comparable wage, then  
4 the pay shall not be less than the federal minimum wage.

5 (f) An inmate who is employed in the class I program of  
6 correctional industries shall not be eligible for unemployment  
7 compensation benefits pursuant to any of the provisions of Title 50 RCW  
8 until released on parole or discharged.

9 (2) CLASS II: TAX REDUCTION INDUSTRIES.

10 (a) Industries in this class shall be state-owned and operated  
11 enterprises designed to reduce the costs for goods and services for  
12 tax-supported agencies and for nonprofit organizations.

13 (b) The industries selected for development within this class  
14 shall, as much as possible, match the available pool of inmate work  
15 skills and aptitudes with the work opportunities in the free community.  
16 The industries shall be closely patterned after private sector  
17 industries but with the objective of reducing public support costs  
18 rather than making a profit. The products and services of this  
19 industry, including purchased products and services necessary for a  
20 complete product line, may be sold to public agencies, to nonprofit  
21 organizations, and to private contractors when the goods purchased will  
22 be ultimately used by a public agency or a nonprofit organization.  
23 Clothing manufactured by an industry in this class may be donated to  
24 nonprofit organizations that provide clothing free of charge to low-  
25 income persons.

26 (c)(i) Class II correctional industries products and services,  
27 including any potential new class II correctional industries work  
28 program or the expansion of an existing class II correctional  
29 industries work program, shall be reviewed by the correctional  
30 industries board of directors before offering such products and  
31 services for sale to private contractors. The review shall include the  
32 analysis required under section 4 of this act to determine if the  
33 proposed correctional industries work program will compete with any  
34 Washington business. An agreement for a new class II correctional  
35 industries work program, or an agreement for a significant expansion of  
36 an existing class II correctional industries work program, that  
37 unfairly competes with any Washington business is prohibited.

1        (ii) The board of directors shall conduct a yearly marketing review  
2 of the products and services offered under this subsection. ((Such  
3 review shall include an analysis of the potential impact of the  
4 proposed products and services on the Washington state business  
5 community.)) To avoid waste or spoilage and consequent loss to the  
6 state, when there is no public sector market for such goods, byproducts  
7 and surpluses of timber, agricultural, and animal husbandry enterprises  
8 may be sold to private persons, at private sale. Surplus byproducts  
9 and surpluses of timber, agricultural and animal husbandry enterprises  
10 that cannot be sold to public agencies or to private persons may be  
11 donated to nonprofit organizations. All sales of surplus products  
12 shall be carried out in accordance with rules prescribed by the  
13 secretary.

14        (d) Security and custody services shall be provided without charge  
15 by the department of corrections.

16        (e) Inmates working in this class of industries shall do so at  
17 their own choice and shall be paid for their work on a gratuity scale  
18 which shall not exceed the wage paid for work of a similar nature in  
19 the locality in which the industry is located and which is approved by  
20 the director of correctional industries.

21        (f) Subject to approval of the correctional industries board,  
22 provisions of RCW 41.06.142 shall not apply to contracts with  
23 Washington state businesses entered into by the department of  
24 corrections through class II industries.

25        (3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

26        (a) Industries in this class shall be operated by the department of  
27 corrections. They shall be designed and managed to accomplish the  
28 following objectives:

29        ~~((a))~~ (i) Whenever possible, to provide basic work training and  
30 experience so that the inmate will be able to qualify for better work  
31 both within correctional industries and the free community. It is not  
32 intended that an inmate's work within this class of industries should  
33 be his or her final and total work experience as an inmate.

34        ~~((b))~~ (ii) Whenever possible, to provide forty hours of work or  
35 work training per week.

36        ~~((c))~~ (iii) Whenever possible, to offset tax and other public  
37 support costs.

1       (b) Class III correctional industries products, services, work  
2 crews, and labor camps, including any potential new class III  
3 correctional industries work program or the expansion of an existing  
4 class III correctional industries work program, shall be reviewed by  
5 the correctional industries board of directors. The review shall  
6 include the analysis required under section 4 of this act to determine  
7 if the proposed correctional industries work program will compete with  
8 any Washington business. An agreement for a new class III correctional  
9 industries work program, or an agreement for a significant expansion of  
10 an existing class III correctional industries work program, that  
11 unfairly competes with any Washington business is prohibited.

12       (c) Supervising, management, and custody staff shall be employees  
13 of the department.

14       (d) All able and eligible inmates who are assigned work and who are  
15 not working in other classes of industries shall work in this class.

16       (e) Except for inmates who work in work training programs, inmates  
17 in this class shall be paid for their work in accordance with an inmate  
18 gratuity scale. The scale shall be adopted by the secretary of  
19 corrections.

20       (4) CLASS IV: COMMUNITY WORK INDUSTRIES.

21       (a) Industries in this class shall be operated by the department of  
22 corrections. They shall be designed and managed to provide services in  
23 the inmate's resident community at a reduced cost. The services shall  
24 be provided to public agencies, to persons who are poor or infirm, or  
25 to nonprofit organizations.

26       (b) Class IV correctional industries products, services, work  
27 crews, and labor camps, including any potential new class IV  
28 correctional industries work program or the expansion of an existing  
29 class IV correctional industries work program, shall be reviewed by the  
30 correctional industries board of directors. The review shall include  
31 the analysis required under section 4 of this act to determine if the  
32 proposed correctional industries work program will compete with any  
33 Washington business. An agreement for a new class IV correctional  
34 industries work program, or an agreement for a significant expansion of  
35 an existing class IV correctional industries work program, that  
36 unfairly competes with any Washington business is prohibited. Class IV  
37 correctional industries operated in work camps established pursuant to

1 RCW 72.64.050 are exempt from the requirements and prohibitions of this  
2 subsection (4)(b).

3 (c) Inmates in this program shall reside in facilities owned by,  
4 contracted for, or licensed by the department of corrections. A unit  
5 of local government shall provide work supervision services without  
6 charge to the state and shall pay the inmate's wage.

7 (d) The department of corrections shall reimburse participating  
8 units of local government for liability and workers compensation  
9 insurance costs.

10 (e) Inmates who work in this class of industries shall do so at  
11 their own choice and shall receive a gratuity which shall not exceed  
12 the wage paid for work of a similar nature in the locality in which the  
13 industry is located.

14 (5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

15 (a) Programs in this class shall be subject to supervision by the  
16 department of corrections. The purpose of this class of industries is  
17 to enable an inmate, placed on community supervision, to work off all  
18 or part of a community restitution order as ordered by the sentencing  
19 court.

20 (b) Employment shall be in a community restitution program operated  
21 by the state, local units of government, or a nonprofit agency.

22 (c) To the extent that funds are specifically made available for  
23 such purposes, the department of corrections shall reimburse nonprofit  
24 agencies for workers compensation insurance costs.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 72.09 RCW  
26 to read as follows:

27 (1) The correctional industries board of directors must prepare a  
28 threshold analysis for any proposed new class I, class II, class III,  
29 or class IV correctional industries work program or the significant  
30 expansion of an existing class I, class II, class III, or class IV  
31 correctional industries work program before the department enters into  
32 an agreement to provide such products or services. The analysis must  
33 state whether the proposed new or expanded program will impact any  
34 Washington business and must be based on information sufficient to  
35 evaluate the impact on Washington business.

36 (2) If the threshold analysis determines that a proposed new or  
37 expanded class I, class II, class III, or class IV correctional

1 industries work program will impact a Washington business, the  
2 correctional industries board of directors must complete a business  
3 impact analysis before the department enters into an agreement to  
4 provide such products or services. The business impact analysis must  
5 include:

6 (a) A detailed statement identifying the scope and types of impacts  
7 caused by the proposed new or expanded correctional industries work  
8 program on Washington businesses; and

9 (b) A detailed statement of the actual business costs of the  
10 proposed correctional industries work program compared to the costs of  
11 the impacted Washington businesses.

12 (3) The completed threshold analysis and any completed business  
13 impact analysis with all supporting documents must be shared in a  
14 meaningful and timely manner with affected chambers of commerce, trade  
15 or business associations, local and state labor union organizations,  
16 and government entities before a finding required under subsection (4)  
17 of this section is made on the proposed new or expanded class I, class  
18 II, class III, or class IV correctional industries work program.

19 (4) If a business impact analysis is completed, the correctional  
20 industries board of directors must conduct a public hearing to take  
21 public testimony on the business impact analysis. The department must  
22 provide notice to each Washington business assigned the same three-  
23 digit standard industrial classification code, or the corresponding  
24 North American industry classification system code, as the organization  
25 seeking the class I, class II, class III, or class IV correctional  
26 industries work program agreement of the date, time, and place of the  
27 hearing. Following the public hearing, the board shall adopt a finding  
28 that the proposed new or expanded class I, class II, class III, or  
29 class IV correctional industries work program: (a) Will not compete  
30 with any Washington business; (b) will not compete unfairly with any  
31 Washington business; or (c) will compete unfairly with any Washington  
32 business and is therefore prohibited under this act. Hearings  
33 conducted under this subsection are exempt from the requirements for  
34 adjudicative proceedings under chapter 34.05 RCW.

35 **Sec. 5.** RCW 72.09.460 and 1998 c 244 s 10 are each amended to read  
36 as follows:

37 (1) The legislature intends that all inmates be required to

1 participate in department-approved education programs, work programs,  
2 or both, unless exempted under subsection (4) of this section.  
3 Eligible inmates who refuse to participate in available education or  
4 work programs available at no charge to the inmates shall lose  
5 privileges according to the system established under RCW 72.09.130.  
6 Eligible inmates who are required to contribute financially to an  
7 education or work program and refuse to contribute shall be placed in  
8 another work program. Refusal to contribute shall not result in a loss  
9 of privileges. The legislature recognizes more inmates may agree to  
10 participate in education and work programs than are available. The  
11 department must make every effort to achieve maximum public benefit by  
12 placing inmates in available and appropriate education and work  
13 programs.

14 (2) The department shall provide access to a program of education  
15 to all offenders who are under the age of eighteen and who have not met  
16 high school graduation or general equivalency diploma requirements in  
17 accordance with chapter 28A.193 RCW. The program of education  
18 established by the department and education provider under RCW  
19 28A.193.020 for offenders under the age of eighteen must provide each  
20 offender a choice of curriculum that will assist the inmate in  
21 achieving a high school diploma or general equivalency diploma. The  
22 program of education may include but not be limited to basic education,  
23 prevocational training, work ethic skills, conflict resolution  
24 counseling, substance abuse intervention, and anger management  
25 counseling. The curriculum may balance these and other rehabilitation,  
26 work, and training components.

27 (3) The department shall, to the extent possible and considering  
28 all available funds, prioritize its resources to meet the following  
29 goals for inmates in the order listed:

30 (a) Achievement of basic academic skills through obtaining a high  
31 school diploma or its equivalent and achievement of vocational skills  
32 necessary for purposes of work programs and for an inmate to qualify  
33 for work upon release;

34 (b) Additional work and education programs based on assessments and  
35 placements under subsection (5) of this section; and

36 (c) Other work and education programs as appropriate.

37 (4) The department shall establish, by rule, objective medical  
38 standards to determine when an inmate is physically or mentally unable

1 to participate in available education or work programs. When the  
2 department determines an inmate is permanently unable to participate in  
3 any available education or work program due to a medical condition, the  
4 inmate is exempt from the requirement under subsection (1) of this  
5 section. When the department determines an inmate is temporarily  
6 unable to participate in an education or work program due to a medical  
7 condition, the inmate is exempt from the requirement of subsection (1)  
8 of this section for the period of time he or she is temporarily  
9 disabled. The department shall periodically review the medical  
10 condition of all temporarily disabled inmates to ensure the earliest  
11 possible entry or reentry by inmates into available programming.

12 (5) The department shall establish, by rule, standards for  
13 participation in department-approved education and work programs. The  
14 standards shall address the following areas:

15 (a) Assessment. The department shall assess all inmates for their  
16 basic academic skill levels using a professionally accepted method of  
17 scoring reading, math, and language skills as grade level equivalents.  
18 The department shall determine an inmate's education history, work  
19 history, and vocational or work skills. The initial assessment shall  
20 be conducted, whenever possible, within the first thirty days of an  
21 inmate's entry into the correctional system, except that initial  
22 assessments are not required for inmates who are sentenced to life  
23 without the possibility of release, assigned to an intensive management  
24 unit within the first thirty days after entry into the correctional  
25 system, are returning to the correctional system within one year of a  
26 prior release, or whose physical or mental condition renders them  
27 unable to complete the assessment process. The department shall track  
28 and record changes in the basic academic skill levels of all inmates  
29 reflected in any testing or assessment performed as part of their  
30 education programming;

31 (b) Placement. The department shall follow the policies set forth  
32 in subsection (1) of this section in establishing criteria for placing  
33 inmates in education and work programs. The department shall, to the  
34 extent possible, place all inmates whose composite grade level score  
35 for basic academic skills is below the eighth grade level in a combined  
36 education and work program. The placement criteria shall include at  
37 least the following factors:

1 (i) An inmate's release date and custody level(~~(, except)~~). An  
2 inmate shall not be precluded from participating in an education or  
3 work program solely on the basis of his or her release date, except  
4 that an inmate with a release date that is more than ten years in the  
5 future, and who is not participating in a class I correctional industry  
6 on the effective date of this section, is precluded from participating  
7 in a class I correctional industry;

8 (ii) An inmate's education history and basic academic skills;

9 (iii) An inmate's work history and vocational or work skills;

10 (iv) An inmate's economic circumstances, including but not limited  
11 to an inmate's family support obligations; and

12 (v) Where applicable, an inmate's prior performance in department-  
13 approved education or work programs;

14 (c) Performance and goals. The department shall establish, and  
15 periodically review, inmate behavior standards and program goals for  
16 all education and work programs. Inmates shall be notified of  
17 applicable behavior standards and program goals prior to placement in  
18 an education or work program and shall be removed from the education or  
19 work program if they consistently fail to meet the standards or goals;

20 (d) Financial responsibility. (i) The department shall establish  
21 a formula by which inmates, based on their ability to pay, shall pay  
22 all or a portion of the costs or tuition of certain programs. Inmates  
23 shall, based on the formula, pay a portion of the costs or tuition of  
24 participation in:

25 (A) Second and subsequent vocational programs associated with an  
26 inmate's work programs; and

27 (B) An associate of arts or baccalaureate degree program when  
28 placement in a degree program is the result of a placement made under  
29 this subsection;

30 (ii) Inmates shall pay all costs and tuition for participation in:

31 (A) Any postsecondary academic degree program which is entered  
32 independently of a placement decision made under this subsection; and

33 (B) Second and subsequent vocational programs not associated with  
34 an inmate's work program.

35 Enrollment in any program specified in (d)(ii) of this subsection  
36 shall only be allowed by correspondence or if there is an opening in an  
37 education or work program at the institution where an inmate is



1 incarcerated and no other inmate who is placed in a program under this  
2 subsection will be displaced; and

3 (e) Notwithstanding any other provision in this section, an inmate  
4 sentenced to life without the possibility of release:

5 (i) Shall not be required to participate in education programming;  
6 and

7 (ii) May receive not more than one postsecondary academic degree in  
8 a program offered by the department or its contracted providers.

9 If an inmate sentenced to life without the possibility of release  
10 requires prevocational or vocational training for a work program, he or  
11 she may participate in the training subject to this section.

12 (6) The department shall coordinate education and work programs  
13 among its institutions, to the greatest extent possible, to facilitate  
14 continuity of programming among inmates transferred between  
15 institutions. Before transferring an inmate enrolled in a program, the  
16 department shall consider the effect the transfer will have on the  
17 inmate's ability to continue or complete a program. This subsection  
18 shall not be used to delay or prohibit a transfer necessary for  
19 legitimate safety or security concerns.

20 (7) Before construction of a new correctional institution or  
21 expansion of an existing correctional institution, the department shall  
22 adopt a plan demonstrating how cable, closed-circuit, and satellite  
23 television will be used for education and training purposes in the  
24 institution. The plan shall specify how the use of television in the  
25 education and training programs will improve inmates' preparedness for  
26 available work programs and job opportunities for which inmates may  
27 qualify upon release.

28 (8) The department shall adopt a plan to reduce the per-pupil cost  
29 of instruction by, among other methods, increasing the use of volunteer  
30 instructors and implementing technological efficiencies. The plan  
31 shall be adopted by December 1996 and shall be transmitted to the  
32 legislature upon adoption. The department shall, in adoption of the  
33 plan, consider distance learning, satellite instruction, video tape  
34 usage, computer-aided instruction, and flexible scheduling of offender  
35 instruction.

36 (9) Following completion of the review required by section 27(3),  
37 chapter 19, Laws of 1995 1st sp. sess. the department shall take all

1 necessary steps to assure the vocation and education programs are  
2 relevant to work programs and skills necessary to enhance the  
3 employability of inmates upon release.

4 **Sec. 6.** RCW 72.09.015 and 1995 1st sp.s. c 19 s 3 are each amended  
5 to read as follows:

6 The definitions in this section apply throughout this chapter.

7 (1) "Base level of correctional services" means the minimum level  
8 of field services the department of corrections is required by statute  
9 to provide for the supervision and monitoring of offenders.

10 (2) "Contraband" means any object or communication the secretary  
11 determines shall not be allowed to be: (a) Brought into; (b) possessed  
12 while on the grounds of; or (c) sent from any institution under the  
13 control of the secretary.

14 (3) "County" means a county or combination of counties.

15 (4) "Department" means the department of corrections.

16 (5) "Earned early release" means earned (~~early~~) release as  
17 authorized by RCW 9.94A.728.

18 (6) "Extended family visit" means an authorized visit between an  
19 inmate and a member of his or her immediate family that occurs in a  
20 private visiting unit located at the correctional facility where the  
21 inmate is confined.

22 (7) "Good conduct" means compliance with department rules and  
23 policies.

24 (8) "Good performance" means successful completion of a program  
25 required by the department, including an education, work, or other  
26 program.

27 (9) "Immediate family" means the inmate's children, stepchildren,  
28 grandchildren, great grandchildren, parents, stepparents, grandparents,  
29 great grandparents, siblings, and a person legally married to an  
30 inmate. "Immediate family" does not include an inmate adopted by  
31 another inmate or the immediate family of the adopted or adopting  
32 inmate.

33 (10) "Indigent inmate," "indigent," and "indigency" mean an inmate  
34 who has less than a ten-dollar balance of disposable income in his or  
35 her institutional account on the day a request is made to utilize funds  
36 and during the thirty days previous to the request.

1 (11) "Inmate" means a person committed to the custody of the  
2 department, including but not limited to persons residing in a  
3 correctional institution or facility and persons released on furlough,  
4 work release, or community custody, and persons received from another  
5 state, state agency, county, or federal jurisdiction.

6 (12) "Privilege" means any goods or services, education or work  
7 programs, or earned early release days, the receipt of which are  
8 directly linked to an inmate's (a) good conduct; and (b) good  
9 performance. Privileges do not include any goods or services the  
10 department is required to provide under the state or federal  
11 Constitution or under state or federal law.

12 (13) "Secretary" means the secretary of corrections or his or her  
13 designee.

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

17 (15) "Superintendent" means the superintendent of a correctional  
18 facility under the jurisdiction of the Washington state department of  
19 corrections, or his or her designee.

20 ((+15+)) (16) "Unfair competition" means any net competitive  
21 advantage that a business may acquire as a result of a correctional  
22 industries contract, including but not limited to labor costs,  
23 financing, rent, marketing costs, tax advantages, utility costs, and  
24 other overhead costs. To determine net competitive advantage, the  
25 correctional industries board shall review any legitimate quantifiable  
26 expenses unique to operating a for-profit business inside a prison.

27 (17) "Washington business" means a person subject to chapter 82.04  
28 RCW.

29 (18) "Work programs" means all classes of correctional industries  
30 jobs authorized under RCW 72.09.100.

31 **Sec. 7.** RCW 28B.10.029 and 1998 c 344 s 5 and 1998 c 111 s 2 are  
32 each reenacted and amended to read as follows:

33 (1) An institution of higher education may exercise independently  
34 those powers otherwise granted to the director of general  
35 administration in chapter 43.19 RCW in connection with the purchase and  
36 disposition of all material, supplies, services, and equipment needed  
37 for the support, maintenance, and use of the respective institution of

1 higher education. Property disposition policies followed by  
2 institutions of higher education shall be consistent with policies  
3 followed by the department of general administration. Purchasing  
4 policies and procedures followed by institutions of higher education  
5 shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and  
6 RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917, 43.19.1937,  
7 43.19.534, 43.19.685, 43.19.700 through 43.19.704, and 43.19.560  
8 through 43.19.637. The community and technical colleges shall comply  
9 with RCW 43.19.450. Except for the University of Washington,  
10 institutions of higher education shall comply with RCW ((~~43.19.1935,~~  
11 ~~43.19.19363,~~ and ~~43.19.19368~~)) 43.41.310, 43.41.290, and 43.41.350. If  
12 an institution of higher education can satisfactorily demonstrate to  
13 the director of the office of financial management that the cost of  
14 compliance is greater than the value of benefits from any of the  
15 following statutes, then it shall be exempt from them: RCW  
16 43.19.685(~~(; 43.19.534;)~~) and 43.19.637. Any institution of higher  
17 education that chooses to exercise independent purchasing authority for  
18 a commodity or group of commodities shall notify the director of  
19 general administration. Thereafter the director of general  
20 administration shall not be required to provide those services for that  
21 institution for the duration of the general administration contract  
22 term for that commodity or group of commodities.

23 (2) An institution of higher education may exercise independently  
24 those powers otherwise granted to the public printer in chapter 43.78  
25 RCW in connection with the production or purchase of any printing and  
26 binding needed by the respective institution of higher education.  
27 Purchasing policies and procedures followed by institutions of higher  
28 education shall be in compliance with chapter 39.19 RCW. Any  
29 institution of higher education that chooses to exercise independent  
30 printing production or purchasing authority shall notify the public  
31 printer. Thereafter the public printer shall not be required to  
32 provide those services for that institution.

33 **Sec. 8.** RCW 34.05.030 and 1994 c 39 s 1 are each amended to read  
34 as follows:

- 35 (1) This chapter shall not apply to:  
36 (a) The state militia, or  
37 (b) The board of clemency and pardons, or

1 (c) The department of corrections or the indeterminate sentencing  
2 review board with respect to persons who are in their custody or are  
3 subject to the jurisdiction of those agencies.

4 (2) The provisions of RCW 34.05.410 through 34.05.598 shall not  
5 apply:

6 (a) To adjudicative proceedings of the board of industrial  
7 insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

8 (b) Except for actions pursuant to chapter 46.29 RCW, to the  
9 denial, suspension, or revocation of a driver's license by the  
10 department of licensing;

11 (c) To the department of labor and industries where another statute  
12 expressly provides for review of adjudicative proceedings of a  
13 department action, order, decision, or award before the board of  
14 industrial insurance appeals;

15 (d) To actions of the Washington personnel resources board, the  
16 director of personnel, or the personnel appeals board; (~~(e)~~)

17 (e) To the extent they are inconsistent with any provisions of  
18 chapter 43.43 RCW; or

19 (f) To hearings conducted by the correctional industries board  
20 under section 4(4) of this act.

21 (3) Unless a party makes an election for a formal hearing pursuant  
22 to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not  
23 apply to a review hearing conducted by the board of tax appeals.

24 (4) The rule-making provisions of this chapter do not apply to  
25 reimbursement unit values, fee schedules, arithmetic conversion  
26 factors, and similar arithmetic factors used to determine payment rates  
27 that apply to goods and services purchased under contract for clients  
28 eligible under chapter 74.09 RCW.

29 (5) All other agencies, whether or not formerly specifically  
30 excluded from the provisions of all or any part of the Administrative  
31 Procedure Act, shall be subject to the entire act.

32 **Sec. 9.** RCW 34.05.030 and 2002 c 354 s 225 are each amended to  
33 read as follows:

34 (1) This chapter shall not apply to:

35 (a) The state militia, or

36 (b) The board of clemency and pardons, or

1 (c) The department of corrections or the indeterminate sentencing  
2 review board with respect to persons who are in their custody or are  
3 subject to the jurisdiction of those agencies.

4 (2) The provisions of RCW 34.05.410 through 34.05.598 shall not  
5 apply:

6 (a) To adjudicative proceedings of the board of industrial  
7 insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

8 (b) Except for actions pursuant to chapter 46.29 RCW, to the  
9 denial, suspension, or revocation of a driver's license by the  
10 department of licensing;

11 (c) To the department of labor and industries where another statute  
12 expressly provides for review of adjudicative proceedings of a  
13 department action, order, decision, or award before the board of  
14 industrial insurance appeals;

15 (d) To actions of the Washington personnel resources board or the  
16 director of personnel; (~~(e)~~)

17 (e) To the extent they are inconsistent with any provisions of  
18 chapter 43.43 RCW; or

19 (f) To hearings conducted by the correctional industries board  
20 under section 4(4) of this act.

21 (3) Unless a party makes an election for a formal hearing pursuant  
22 to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not  
23 apply to a review hearing conducted by the board of tax appeals.

24 (4) The rule-making provisions of this chapter do not apply to  
25 reimbursement unit values, fee schedules, arithmetic conversion  
26 factors, and similar arithmetic factors used to determine payment rates  
27 that apply to goods and services purchased under contract for clients  
28 eligible under chapter 74.09 RCW.

29 (5) All other agencies, whether or not formerly specifically  
30 excluded from the provisions of all or any part of the Administrative  
31 Procedure Act, shall be subject to the entire act.

32 NEW SECTION. Sec. 10. (1) Section 3 of this act takes effect July  
33 1, 2005.

34 (2) Section 9 of this act takes effect July 1, 2006.

35 NEW SECTION. Sec. 11. (1) Section 2 of this act expires July 1,

1 2005.

2 (2) Section 8 of this act expires July 1, 2006.

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