

**ESSB 5048** - H AMD TO H AMD (H-2540.1/17) **372**

By Representative Pike

**NOT ADOPTED 03/30/2017**

1 On page 116, after line 3, insert the following:

2 "The appropriations in this subsection are subject to the  
3 following conditions and limitations: In addition to the requirements  
4 of RCW 72.09.100, the department of corrections shall elect workers'  
5 compensation and pay any workers' compensation premiums or costs due  
6 for offenders under the custody of the department working or  
7 performing services for a local government or nonprofit organization  
8 under a class IV or class V correctional industries work program  
9 adopted by the department. \$193,000 of the general fund-state  
10 appropriation for fiscal year 2018 and \$210,000 of the general fund-  
11 state appropriation for fiscal year 2019 are provided solely for these  
12 purposes.

13 (a) In addition to the requirements of RCW 51.12.045, when an  
14 offender under the department's jurisdiction provides services to a  
15 public benefit nonprofit or local government entity, the department's  
16 payment of offender labor and industries workers' compensation  
17 premiums does not in any way establish the department as the employer  
18 for department of labor and industries purposes and statutes.  
19 Therefore, the department will not be required to behave as the  
20 employer, which includes, but is not limited to, supervising the work  
21 performed by offenders, training offenders for a specific work  
22 project, or ensuring work site compliance with department of labor and  
23 industries workplace safety standards.

24 (b) The legislature intends to make these changes to correctional  
25 industries practice permanent in future biennia in order to allow the  
26 department of corrections to maintain cost-effective business  
27 practices, provide cost-saving work services to local communities, and

1 continue to effectively reduce recidivism by allowing maximum  
2 statewide participation in correctional industries work programs."

3  
4 On page 284, after line 21, insert the following:

5 "Sec. 961. RCW 51.12.045 and 2002 c 175 s 40 are each amended to  
6 read as follows:

7 (~~Offenders performing community restitution pursuant to court  
8 order or under RCW 13.40.080 may be deemed employees and/or workers  
9 under this title at the option of the state, county, city, town, or  
10 nonprofit organization under whose authorization the community  
11 restitution is performed.~~) With the exception of an offender who is  
12 under the custody of the state, ((A)) any premiums or assessments due  
13 under this title for community restitution work shall be the  
14 obligation of and be paid for by the ((state agency,)) county, city,  
15 town, or nonprofit organization for which the offender performed the  
16 community restitution. In the case of an offender who is under the  
17 custody of the state, any premiums or assessments due under this  
18 title for community work shall be the obligation of and be paid for  
19 by the state agency that has custody of the offender. Coverage  
20 commences when ((a)) the state agency, county, city, town, or  
21 nonprofit organization has given notice to the director that it  
22 ((wishes to cover)) is covering offenders performing community  
23 restitution before the occurrence of an injury or contraction of an  
24 occupational disease."

25  
26 Renumber remaining sections consecutively and correct internal  
27 references.

28  
29 On page 298, after line 28, insert the following:

30 "Sec. 965. RCW 72.09.100 and 2012 c 220 s 2 are each amended to  
31 read as follows:

32 It is the intent of the legislature to vest in the department  
33 the power to provide for a comprehensive inmate work program and to  
34 remove statutory and other restrictions which have limited work

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

14 (1) CLASS I: FREE VENTURE INDUSTRIES.

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

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

24 (c) The department shall review these proposed industries,  
25 including any potential new class I industries work program or the  
26 significant expansion of an existing class I industries work  
27 program, before the department contracts to provide such products or  
28 services. The review shall include the analysis required under RCW  
29 72.09.115 to determine if the proposed correctional industries work  
30 program will compete with any Washington business. An agreement for  
31 a new class I correctional industries work program, or an agreement  
32 for a significant expansion of an existing class I correctional  
33 industries work program, that unfairly competes with any Washington  
34 business is prohibited.

1 (d) The department shall supply appropriate security and custody  
2 services without charge to the participating firms.

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

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

14 (2) CLASS II: TAX REDUCTION INDUSTRIES.

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

18 (b)(i) The industries selected for development within this class  
19 shall, as much as possible, match the available pool of inmate work  
20 skills and aptitudes with the work opportunities in the free  
21 community. The industries shall be closely patterned after private  
22 sector industries but with the objective of reducing public support  
23 costs rather than making a profit.

24 (ii) Except as provided in \*RCW 43.19.534(3) and this section,  
25 the products and services of this industry, including purchased  
26 products and services necessary for a complete product line, may be  
27 sold to the following:

28 (A) Public agencies;

29 (B) Nonprofit organizations;

30 (C) Private contractors when the goods purchased will be  
31 ultimately used by a public agency or a nonprofit organization;

32 (D) An employee and immediate family members of an employee of  
33 the department;

34

1 (E) A person under the supervision of the department and his or  
2 her immediate family members; and

3 (F) A licensed health professional for the sole purpose of  
4 providing eyeglasses to enrollees of the state medical program at no  
5 more than the health professional's cost of acquisition.

6 (iii) The department shall authorize the type and quantity of  
7 items that may be purchased and sold under (b)(ii)(D) and (E) of  
8 this subsection.

9 (iv) It is prohibited to purchase any item purchased under  
10 (b)(ii)(D) and (E) of this subsection for the purpose of resale.

11 (v) Clothing manufactured by an industry in this class may be  
12 donated to nonprofit organizations that provide clothing free of  
13 charge to low-income persons.

14 (c) Under no circumstance shall offenders under the custody of  
15 the department of corrections make or assemble uniforms to be worn  
16 by correctional officers employed with the department.

17 (d)(i) Class II correctional industries products and services  
18 shall be reviewed by the department before offering such products  
19 and services for sale to private contractors.

20 (ii) The secretary shall conduct a yearly marketing review of  
21 the products and services offered under this subsection. Such review  
22 shall include an analysis of the potential impact of the proposed  
23 products and services on the Washington state business community. To  
24 avoid waste or spoilage and consequent loss to the state, when there  
25 is no public sector market for such goods, by-products and surpluses  
26 of timber, agricultural, and animal husbandry enterprises may be  
27 sold to private persons, at private sale. Surplus by-products and  
28 surpluses of timber, agricultural and animal husbandry enterprises  
29 that cannot be sold to public agencies or to private persons may be  
30 donated to nonprofit organizations. All sales of surplus products  
31 shall be carried out in accordance with rules prescribed by the  
32 secretary.

33 (e) Security and custody services shall be provided without  
34 charge by the department.

1 (f) Inmates working in this class of industries shall do so at  
2 their own choice and shall be paid for their work on a gratuity  
3 scale which shall not exceed the wage paid for work of a similar  
4 nature in the locality in which the industry is located and which is  
5 approved by the director of correctional industries.

6 (g) Provisions of RCW 41.06.142 shall not apply to contracts  
7 with Washington state businesses entered into by the department  
8 through class II industries.

9 (3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

10 (a) Industries in this class shall be operated by the  
11 department. They shall be designed and managed to accomplish the  
12 following objectives:

13 (i) Whenever possible, to provide basic work training and  
14 experience so that the inmate will be able to qualify for better  
15 work both within correctional industries and the free community. It  
16 is not intended that an inmate's work within this class of  
17 industries should be his or her final and total work experience as  
18 an inmate.

19 (ii) Whenever possible, to provide forty hours of work or work  
20 training per week.

21 (iii) Whenever possible, to offset tax and other public support  
22 costs.

23 (b) Class III correctional industries shall be reviewed by the  
24 department to set policy for work crews. The department shall  
25 prepare quarterly detail statements showing where work crews worked,  
26 what correctional industry class, and the hours worked.

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

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

32 (e) Except for inmates who work in work training programs,  
33 inmates in this class shall be paid for their work in accordance  
34

1 with an inmate gratuity scale. The scale shall be adopted by the  
2 secretary of corrections.

3 (4) CLASS IV: COMMUNITY WORK INDUSTRIES.

4 (a) Industries in this class shall be operated by the  
5 department. They shall be designed and managed to provide services  
6 in the inmate's resident community at a reduced cost. The services  
7 shall be provided to public agencies, to persons who are poor or  
8 infirm, or to nonprofit organizations.

9 (b) Class IV correctional industries shall be reviewed by the  
10 department to set policy for work crews. The department shall  
11 prepare quarterly detail statements showing where work crews worked,  
12 what correctional industry class, and the hours worked. Class IV  
13 correctional industries operated in work camps established pursuant  
14 to RCW 72.64.050 are exempt from the requirements of this subsection  
15 (4)(b).

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

20 ~~(d) ((The department shall reimburse participating units of  
21 local government for liability and workers compensation insurance  
22 costs.~~

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

27 (5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

28 (a) Programs in this class shall be subject to supervision by  
29 the department. The purpose of this class of industries is to enable  
30 an inmate, placed on community supervision, to work off all or part  
31 of a community restitution order as ordered by the sentencing court.

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

1        ~~((c) To the extent that funds are specifically made available~~  
2 ~~for such purposes, the department shall reimburse nonprofit agencies~~  
3 ~~for workers compensation insurance costs.)) "~~

4

5        Renumber remaining sections consecutively and correct internal  
6 references.

7

8        Correct the title.

EFFECT: Requires the Department of Corrections to pay workers' compensation premiums for inmates participating in class IV or V correctional industries programs. Provisos a total of \$403,000 general-fund state dollars for these purposes.

FISCAL IMPACT: No net change to appropriated levels.

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