



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**PRISON INDUSTRIES: LET INMATES  
WORK FOR PRIVATE BUSINESSES**

**House Bill 4464 with committee  
amendments  
First Analysis (4-4-95)**

**Sponsor: Rep. Michael E. Nye  
Committee: Judiciary and Civil Rights**

***THE APPARENT PROBLEM:***

The virtual explosion in the prison population during the 1980s has prompted consideration of ways to reduce crime rates, including ways to reduce rates of so-called repeat offenders. One issue that has come under discussion has been the role of prisons in rehabilitating prisoners, and the fact that incarceration, rather than rehabilitation, has often been seen as the primary purpose to which prisons should be relegated. There are some who believe that the emphasis on incarceration without any accompanying attempts at rehabilitating the incarcerated prisoners is giving way -- indeed, some say, must give way -- to the view that rehabilitation should be a goal toward which the correctional system must eventually move. To this end, a number of proposals for increasing the opportunities for rehabilitation have begun to be taken seriously.

For example, a November, 1989, report by the House Republican Task Force on Prison Initiatives noted that the state of Michigan has for some time moved away from focusing on the rehabilitation of prisoners and instead has concentrated primarily on locking people up. However, since the majority of prisoners will be released from prison back into society, unless these prisoners are given opportunities to be rehabilitated and enabled to take their place as productive members of society when they are released from prison, they often revert once again to crime as a way of life. The task force recommended several initiatives to help break the chain of repeated criminal behavior, one of which focused on expanding the scope of prison industries. With the cooperation of the private sector, the recommendation envisions a scheme to produce products and provide services, helping to rehabilitate prisoners by giving them skills that they could use to become productive members of society once they were released from prison. Legislation

has been introduced that would begin just such a process.

***THE CONTENT OF THE BILL:***

The Correctional Industries Act (Public Act 15 of 1968) regulates correctional industries. It requires that the requisitioning and disbursement of correctional industries products and services be done directly through established state authorities "without possibility of private profits and without any intermediating financial considerations, appropriations, or expenditures." Correctional industries are allowed to operate in a manner as similar as possible to similar private industrial operations, but are restricted with regard to whom they may sell their products: their products may be sold, exchanged, or bought only by federal, state, and local governmental institutions and agencies and by federal tax-exempt organizations. (Agricultural products not used within the correctional system or sold to government institutions or agencies or tax-exempt organizations must be made available for free to nonprofit charitable food distribution programs and to the Department of Social Services.) The act also prohibits the use of inmate labor for private or corporate profit or for any purpose other than the construction, maintenance, or operation of public works, ways, or property.

The bill would amend the act to allow the use of inmate labor in certain private enterprises under certain conditions. The bill also would specify which inmates would be eligible to be assigned to such work, require that these inmates be paid minimum state wages and regulate the distribution of these wages, and specify certain contract requirements.

House Bill 4464 (4-4-95)

Eligible products and services. Under the bill, inmates could be assigned to work in private manufacturing or service enterprises under the following circumstances:

(1) The enterprise made a product that wasn't made in Michigan -- and more than 80 percent of the particular product sold in this country was manufactured outside of the country -- or rendered a service that wasn't otherwise performed in Michigan (as determined by the Department of Corrections, in conjunction with the Advisory Council for Correctional Industries);

(2) The enterprise was suitably designed to use inmate labor and was located either within ten miles of the correctional facility or actually within the facility under a lease agreement between the Department of Corrections and the private enterprise;

(3) There would be at least one employee of the private enterprise for every three inmates assigned to work in the enterprise.

In addition, if the private enterprise was located within a correctional facility, it would be required to pay to the local taxing authority (in lieu of ad valorem property taxes) the amount of money it otherwise would have had to pay in property taxes had it been located outside the correctional facility.

Eligible inmates. Only inmates housed in facilities with the least restrictive security designation (Level I) who weren't serving life sentences would be eligible to be assigned to work in private manufacturing or service enterprises.

Wages. The contract between the Department of Corrections and the private enterprise would have to ensure that the wage paid to the inmate would have to be at least the state minimum wage (as established by the state Minimum Wage Law). The bill also would specify the order in which an inmate's wages would be distributed. First, the department would be required to withhold and pay the inmate's applicable state and local income taxes and federal income, Social Security, and Medicare taxes. Then, of the remaining balance, the following order of distribution would be required:

(1) If the inmate had been ordered by the court to pay restitution to the victim of his or her crime, 20 percent would be paid for that restitution, on the

inmate's behalf and in accordance with the court order, until the amount of the restitution had been paid off.

(2) If the inmate had a spouse or children, 20 percent of his or her wages would be paid to his or her spouse or children for family support. If the inmate's spouse or children received Aid to Families with Dependent Children or general assistance while the inmate was incarcerated, the 20 percent of his or her wages designated for family support would be deposited with the state treasurer and credited to the state general fund until the aid or assistance was repaid.

(3) Ten percent would be paid to the inmate for his or her personal use while incarcerated.

(4) Ten percent would be held by the department in an escrow account for the inmate and would be returned to the inmate when he or she was released.

(5) The balance remaining after the above deductions would be deposited with the state treasurer and credited to the general fund as partial reimbursement to the state for the cost of the inmate's imprisonment and care. If the inmate didn't have a spouse or children, instead of 20 percent going to family support, ten percent of his or her wages would be deposited to the inmate's escrow account and ten percent would be deposited -- in addition to the balance mentioned under this subsection -- with the state treasurer and credited to the state general fund toward reimbursement for the state's cost of the inmate's imprisonment and care.

Other contract requirements. The bill would specify that, in addition to the above wage provisions, contracts between the Department of Corrections and private businesses would contain provisions that did the following:

(1) Required the department (which would remain the formal employer of inmates who produced goods or services for private enterprises under the bill's provisions) to pay the employer's share of federal Social Security and Medicare taxes and state worker's disability compensation payments or contributions;

(2) Required the private business to reimburse the department both (a) for the wages paid by the

department for inmates working for private enterprises under contracts established under the bill's provisions and (b) for the payments by the department for federal Social Security and Medicare taxes and state worker's disability compensation payments or contributions for these inmates; and

(3) Required private businesses to pay the department an annual administrative fee equal to one percent of the total amount they paid annually to the department for inmate wages, federal Social Security and Medicare taxes, and state worker's disability compensation payments and contributions.

Other provisions. The bill would make other changes to the act necessary to implement the new provisions.

\* The bill would amend the definition of "correctional industries products" to explicitly exempt from the definition products manufactured, or services rendered, by inmate labor in a private enterprise under the bill's provisions.

\* The bill would explicitly allow the Department of Corrections to enter into any agreements necessary for assigning inmates to employment in private enterprises under the bill (adding this to the existing list of activities the Department of Corrections is allowed under the act).

\* The bill would exempt inmate goods and services produced or provided under the bill's provisions both from the act's prohibition against using inmate labor for private or corporate profit and from the act's requirement that money from inmate labor be deposited into the Correctional Industries revolving fund.

\* The bill would add labor assignments in private enterprises as allowed by the bill to the current list of kinds of employment that the Department of Corrections is required to provide ("as fully as practicable").

The bill also would amend the act's section on legislative intent, saying that it is the intent of the act, in addition to the existing provisions, to provide means for inmates to earn wages to support their families, to reimburse the state for part of the cost of their imprisonment, to pay restitution to crime victims, and for "other purposes consistent with their imprisonment." In addition, the bill would amend two existing provisions regarding the act's legislative

intent. Currently the act says that it is intended, in part, to "provide adequate, regular, diversified, and suitable employment for inmates of the state consistent with proper penal purposes" and to "utilize the labor of inmates exclusively for self-maintenance and for reimbursing the state for expenses incurred by reason of their crimes and imprisonment." The bill would say, instead, that the act, in part, is intended to "provide adequate, regular, diversified, and suitable employment for inmates of the state for the purpose of enhancing job skills consistent with proper penal purposes" and to "utilize the labor of inmates for self-maintenance and for reimbursing the state for expenses incurred by reason of their crimes and imprisonment, and for employment in private manufacturing or service enterprises established under [the bill]."

Finally, the bill would add foreign governments or agencies to the list of institutions that could buy, exchange, or sell correctional industries products.

MCL 800.322 et al.

### **BACKGROUND INFORMATION:**

Prison industries in Michigan. According to a Michigan Department of Corrections publication dated October 1994, state prisoners were a source of cheap labor to private industry in Michigan at least as far back as 1843, when private businesses began a contract labor system under which they paid the state prison at Jackson sums ranging from 34 cents to 56 cents a day for each prisoner who worked for them, though the prisoners themselves received none of the money.

Besides supplying the prisoners, Jackson prison also supplied the building for the industry if it was to be run behind the prison walls, though the private manufacturer brought in the equipment and supplies. Under this system, prisoners made harnesses and other farm equipment, woolen and cotton goods, carpeting, farm tools, saddle trees and trimmings, steam engines and boilers, barrels and copper ware. Other contracts were established for the manufacture of shoes and laundry products. Over the years, Michigan prisoners also have mined coal, manufactured bricks and tile, cement, cigars, tombstones, and binder twine, and, beginning in 1910, license plates (these early license plates were made of leather with metal house numbers). In 1918 the prison near Jackson first began producing automobile license plates, along with street and

road signs. Currently, Michigan prison workers produce wooden and metal furniture, road signs and decals, shoes, steel frame chairs, corrugated cartons, work garments and officers' uniforms, brushes and brooms, textiles for garment factories, vinyl-covered three ring binders, innerspring mattresses and box springs, janitorial supplies, license plates and tabs, and cushions. In addition, prison workers refinish furniture, launder clothing for hospitals and other institutions, and, at one facility, work on data processing.

Although a total of 517 of the 625 prisoners at Jackson were employed under a contract in 1869, by 1900 the practice reportedly was nearly nonexistent. Then in 1922, the state began to operate its own prison factories, but continued to sell the products on the open market. In 1935, Congress passed the Hawes-Cooper Bill, which prohibited the shipment of prison-made goods in interstate commerce, and in 1937, the Michigan legislature adopted legislation that limited the sale of prison products to state institutions and departments and other wholly tax-supported agencies (apparently mostly in reaction to Depression conditions, in order to protect free industry and labor). There was a 1948 Michigan Prison Industries Act that was subsequently repealed and replaced by the current Corrections Industries Act, Public Act 15 of 1968.

Originally, part of the legislative intent of the Corrections Industries Act (as specified in section 11) was "to eliminate all competitive relationships between inmate labor or correctional industries products and free labor or private industry," though this provision was repealed by a 1980 amendment to the act (Public Act 245 of 1980, enrolled House Bill 4240) that also added to the list of legislative intent provisions that the act "permit the management of correctional industries to operate in a manner as similar as possible to similar private industrial operations" and that, within five years after the amendment took effect, required that correctional industries be changed from a system that required "intermediating financial assistance" (i.e. funding from the state) to "a total self-supporting system."

According to the department's 1994 fiscal year-end review, the Michigan State Industries (MSI), as the correctional industries program is known, employed nearly 2,400 prisoners annually in full-time jobs (about 1,200 prisoners at any given time) at sixteen state prisons and one camp. Prisoner workers were paid an average of \$6.03 a day during fiscal 1993,

and sales during that year were expected to reach \$27 million.

The federal Prison Industries Enhancement (PIE) Certification Program. There is a federal Prison Industrial Enhancement Certification Program (known by the acronym "PIE") that is managed by the Bureau of Justice Assistance in the federal Department of Justice, that reportedly requires voluntary participation by inmates and the payment to them of the prevailing wage or the federal minimum wage. The PIE certification program, which began under the Safe Streets Reauthorization Act of 1979, lifted the prohibition on the retail sale of prisoner-produced goods across interstate lines. There apparently is an extensive certification application process with many of the same requirements that appear in the bill, including the wage distribution requirements, though in order to qualify for the federal program, Michigan would have to apply to the federal government. The bill itself would not qualify Michigan for the federal program.

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports that there would be indeterminate revenues to the state and local governments, and no costs to either. By requiring that a certain percentage of wages inmates earned under the bill's provisions be used for family support or AFDC/general assistance reimbursement and for partial reimbursement to the state for the cost of the inmate's imprisonment and care, the bill could increase state income tax revenues, AFDC and general assistance reimbursements, and general fund revenues by probably minimal amounts. The requirement that private enterprises located in a correctional facility pay local property taxes also could increase local revenues. (3-30-95)

### ***ARGUMENTS:***

#### ***For:***

While protecting private sector interests, the bill would benefit the prisoners and businesses involved, as well as state taxpayers, the families of prisoners, and, possibly, members of the free workforce. First and foremost, the bill would give certain inmates -- those at minimum-security correctional facilities and without life sentences -- the opportunity to learn basic work habits and, in some cases, specific work skills. Many of the people currently incarcerated at a young age never have had the opportunity or



experience of working at a job, and so haven't developed even the most elementary skills necessary to get and hold a job -- skills such as showing up on time or getting along with fellow workers and supervisors. The bill could provide such people with, literally, their first real job experience, and enable them to develop skills that would enable them to get and keep jobs once they were released from prison. Having a marketable skill increases the likelihood that such prisoners would increase the taxpayer base while decreasing recidivism. Such work also would instill a sense of dignity, self-worth, and responsibility in prisoners, and, since only well-behaved prisoners would be eligible for these desirable assignments, it would serve as a great management incentive in prisons. Thus the bill likely would increase institutional security, both by decreasing idleness and by resulting in better-behaved prisoners.

In addition to enabling some prisoners to become taxpayers, the bill also would reduce the costs of their imprisonment and care by requiring that some of their wages be used to reimburse the state for the costs of their incarceration. For prisoners with families, some of their wages also would go to pay family support or to reimburse the state for AFDC or general assistance paid to those families.

Businesses would benefit by having an on-call workforce available at short notice that was always available, highly motivated, and ready to compete, as well as having access to space within corrections facilities at below market costs, with free or low rent and subsidized utilities. Since the state would be the employer of record, inmate workers wouldn't be able to join the unions of private companies with unionized workforces; the prison workers would act, instead, like employees of a temporary help firm. And by having available a workforce willing to work for minimum wages, some businesses would be able to compete with other areas of the world (such as Asia) for labor, possibly even contributing to improving the trade deficit.

Finally, not only would prisoners and private sector businesses gain from this bill, private sector workers also would gain, since the bill would require at least one private sector employee for each three prisoners employed. Everyone would win under this bill.

### ***Against:***

While it certainly is desirable that prisoners learn saleable skills while they are in prison so that once released they can lead useful, productive lives, nevertheless the bill could have the effect of further eroding the position and earning power of all workers. The very descriptions used to describe how prisoners make "ideal" workers -- prisoners' virtually around-the-clock availability, their lack of such "distractions" as child-care or transportation problems, and their willingness, even eagerness, to work for minimum pay -- describe what is virtually a slave labor force. By making such a pool of labor available to private businesses, the bill would further weaken the bargaining power of a labor market already devastated by the economic recession of recent years -- a labor force that does need to earn a living wage in order to support those very family members who sometimes, contrary to the economic interests of employers, make demands on their wage-earning members. Workers in the free labor force shouldn't be forced to compete with -- and even possibly lose jobs to -- incarcerated workers for minimum wage jobs. At a time when businesses are being given unprecedented tax breaks, including reductions in unemployment insurance taxes, while workers are being penalized by reductions in their unemployment benefits, this bill would further erode the ability of the free labor market to bargain for wages that support themselves and their families. Unlike prison workers, free workers must pay mortgages or rent, groceries and utilities, and the many other living expenses, including federal, state, and local taxes. How can free workers possibly compete with prison inmates for decent paying jobs, when the prison workers are eager and willing to work for minimum wages?

Further, it should be pointed out that the bill has no provisions that would require private businesses to retain inmate workers in their employ after the inmate worker had been released from prison, and training people in industries while they are in prison could raise their expectations -- falsely, perhaps -- that they could get this work after they were released from prison.

### ***Response:***

The bill has built-in safeguards that would specify that the kinds of businesses that could participate in the proposed program would have to either provide a service that isn't already offered in Michigan or a

product that not only wasn't made in Michigan but which, for the most part, wasn't even made in this country (such as the many so-called novelty items that are produced in such Asian countries as China). With regard to skills training, it may be true that a prisoner might not be able to get a job in the same kind of industry after release from prison, but for many prisoners, the specific skill learned by working in such a program might not be as important as the more general -- and more generally transferable -- "skill" that sometimes is simply called the "work ethic" -- that is, the ability to take responsibility for showing up for work on time, with a positive attitude, and the ability to get along with one's fellow workers and supervisors. In fact, given the number of jobs that this country already has lost overseas, it could be argued that the bill has too many restrictions on the kinds of industries that would be eligible under the bill.

### ***Against***

At a time when welfare "reform" means cutting assistance to those in society who need the most help, while budgets for prison expansions continue to increase, the bill seems to go at the problem of young, unemployed, and often unemployable, people the wrong way around. Rather than wait until young, uneducated and untrained people are driven to crime, and subsequent incarceration, in order to provide them with saleable job skills, why not instead just make such job training directly available to people who need it? The bill seems to go at the problem backwards -- if, as many people believe, much criminal behavior results from a lack of education and an absence of the opportunity to work for a living wage, then the way to reduce crime -- and not just recidivism -- is to educate and train otherwise disadvantaged people for jobs that provide wages that enable them to live above the poverty level. The bill almost seems to suggest that in order to get decent job training, for minimum wage jobs, you need to go to prison!

### ***Response:***

The kinds of problems raised by this objection are real and do need to be addressed on a number of fronts, including education (in which, incidentally, some of the school reforms currently being proposed could well make a good beginning). But for those already incarcerated in a correctional system that has few opportunities for work or other kinds of education, the bill would make a sensible beginning to tackling the many barriers faced by uneducated, untrained, and often otherwise unemployable people. Surely no one would argue

that prisoners who simply sit out their terms in prison are better off when they leave than those who have the opportunity to engage in gainful employment. So long as prisons don't lose money under the bill (and they wouldn't) and prisoners could make money (which they would), then this kind of state-private enterprise should be promoted. The bill isn't a panacea, but its implementation could make a real difference in the lives of many people who desperately need alternatives to lives of crime and incarceration.

### ***POSITIONS:***

The Department of Corrections supports the bill. (3-29-95)

The Small Business Association of Michigan supports the bill. (4-3-95)

The Michigan Corrections Organization opposes the bill. (4-3-95)

The Michigan State AFL-CIO opposes the bill. (3-28-95)