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BILL



ANALYSIS

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House Bill 4464 (as passed by the House)

Sponsor: Representative Michael E. Nye

House Committee: Judiciary and Civil Rights

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 11-13-96

CONTENT

The bill would amend the Correctional Industries Act to allow the use of inmate labor in certain private enterprises, specify which inmates would be eligible to be assigned to such work, require that these inmates be paid at least the State minimum wage, regulate the distribution of these wages, and specify certain contract requirements.

The Correctional Industries Act currently requires that correctional industries products and services be requisitioned and disbursed 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 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 Family Independence Agency.) 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 inmates to be assigned to work in a private manufacturing or service enterprise if the enterprise made a product or rendered a service that was permitted to be manufactured or rendered using inmate labor. More than 80% of the product sold in the United States would have to be manufactured outside the United States and none manufactured in this State, or the service would have to be one that was not performed in the State, as determined by the Department of Corrections in conjunction with the advisory council for correctional industries. A determination by the Department would have to be made at the time the individual or business entity applied for approval to produce that product or render that service and could not subsequently be reconsidered.

Further, the enterprise would have to be suitably designed to use inmate labor and located either within 10 miles of the correctional facility or within the facility under a lease agreement between the Department of Corrections and the private enterprise. If the private enterprise were 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. In addition, there would have to be at least one employee of the private enterprise for every three inmates assigned to work in the enterprise.

Only inmates who were housed in facilities with a Level 1 security designation (the least restrictive designation) and who were not serving life sentences would be eligible to be assigned to work in private manufacturing or service enterprises.

The contract between the Department and the private enterprise would have to ensure that inmates would be paid at least the State minimum wage as established by the Minimum Wage Law. The contract would have to provide that the Department first would withhold and pay an inmate's applicable State and local income taxes and Federal income, Social Security, and Medicare taxes from his or her wages. The remaining balance of the inmate's wages would have to be distributed as followed:

- If the inmate had been ordered by the court to pay restitution to the victim of his or her crime, 20% would have to 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. If restitution were satisfied, or if the inmate were not subject to restitution, 10% would have to be added to the escrow account that the Department would have to establish, and 10% would have to be deposited with the State Treasurer and credited to the State General Fund.
- If the inmate had a spouse or children, 20% of his or her wages would have to be paid to the spouse or children for family support. If the inmate's spouse or children received Aid to Families with Dependent Children (AFDC) or General Assistance while the inmate was incarcerated, the 20% of his or her wages designated for family support would have to be deposited with the State Treasurer and credited to the State General Fund until the aid or assistance was repaid.
- 10% would have to be paid to the inmate for his or her personal use while incarcerated.
- 10% would have to 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.
- The balance remaining after the above deductions would have to 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.

The contract also would have to provide that the Department would pay the applicable employer's share of Federal Social Security and Medicare taxes and State workers' disability compensation payments or contributions. Moreover, the contract would have to require that the enterprise reimburse the Department for both (a) the wages paid by the Department for inmates working under contracts for private enterprises and (b) the payments by the Department for Federal Social Security and Medicare taxes and State workers' disability compensation payments or contributions. Finally, the contract would have to require the enterprise to pay to the Department an annual administrative fee equal to 1% of the total amounts paid annually to the Department by the enterprise for inmate wages, Federal Social Security and Medicare taxes, and State workers' disability compensation payments and contributions.

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

The bill also specifically would allow the Department of Corrections to enter into any agreements necessary for assigning inmates to employment in private enterprises under the bill, and would exempt inmate goods and services produced or provided under the bill 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").

Currently the Act states 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 provide, instead, that the Act was intended, in part, 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]*" (emphasis added). Further, the bill would add the intent Act to "provide means for inmates to earn wages for support of their families, reimbursement to the state for part of the cost of their imprisonment, restitution to crime victims, and other purposes consistent with their imprisonment".

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

MCL 800.322 et al.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill could result in increased revenues for state and local government. State and local revenues could increase to the extent that prisoners who worked for private entities would have parts of their wages withheld for AFDC reimbursements, partial reimbursement for the cost of incarceration, as well as withholding for State and local income taxes. The amount of revenue collected would depend on the number of inmates involved, and the amount of their actual earnings. As a point of information, there are currently approximately 2,500 prisoners with 1,300 permanent assignments involved in prison industry operations. Prisoners in prison industries are paid an average of \$6.25 per day.

Fiscal Analyst: M. Hansen

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.