

Amendment No. 687

Assembly Amendment to Senate Bill No. 478 First Reprint (BDR 16-1202)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

NCA/BAW



Date: 5/22/2013

S.B. No. 478—Revises provisions relating to the employment of offenders.
(BDR 16-1202)



SENATE BILL NO. 478—COMMITTEE ON FINANCE

MARCH 25, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the employment of offenders.
(BDR 16-1202)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to offenders; requiring the Director of the Department of Corrections to provide certain information to the Committee on Industrial Programs; requiring private employers who enter into contracts for the employment of offenders to comply with certain requirements; revising the membership of the Committee; revising the duties of the Committee; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Director of the Department of Corrections to establish programs for the employment of offenders who are committed to the custody of the Department. (NRS 209.459, 209.461) **Section 1** of this bill requires ~~the~~ the Director to: (1) provide to the Committee on Industrial Programs certain information concerning the potential impacts the employment of offenders may have on private employers and labor in this State; and (2) submit any contract regarding such employment to the State Board of Examiners for approval. Section 1.3 of this bill additionally requires: (1) the Director to submit to the Director of the Legislative Counsel Bureau a report every 5 years concerning contracts with private employers for the employment of offenders and the impacts such employment may have on private industry; (2) the Director to appear before the Committee ~~on Industrial Programs~~ and submit certain information if a state-sponsored program for the employment of offenders does not operate profitably under certain circumstances; and (3) all private employers who contract for the employment of offenders to comply with certain requirements.

Existing law establishes the Committee on Industrial Programs and directs the Committee to review and report on certain issues relating to programs for the employment of offenders. (NRS 209.4817, 209.4818) Section 1.7 of this bill adds to the Committee an additional member representing organized labor in this State. **Section 2** of this bill: (1) requires the Committee to review and make recommendations on certain information concerning any proposed new contract with a private employer for the employment of offenders; and (2) revises provisions relating to the review of state-sponsored industrial programs for profitability.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 209.459 is hereby amended to read as follows:

209.459 1. The Director shall:

(a) Submit a report to the Committee on Industrial Programs identifying the potential impacts of any new program for the employment of offenders on private employers and labor in this State. In preparing such a report, the Director shall include any information required pursuant to paragraph (b) of subsection 7 of NRS 209.461 and must perform due diligence in obtaining such information from:

(1) The Department of Employment, Training and Rehabilitation;

(2) The Department of Business and Industry;

(3) The Office of Economic Development; and

(4) Representatives of organized labor in this State.

(b) Seek and present the recommendations of the Committee on Industrial Programs to the Board of State Prison Commissioners and, with the approval of the Board of State Prison Commissioners, establish and carry out a program for the employment of offenders in services and manufacturing conducted by institutions of the Department or by private employers.

2. Before any new program for the employment of offenders is established pursuant to this section, the Director shall submit any contract related to the employment of such offenders to the State Board of Examiners for approval.

~~[Section 1.]~~ **Sec. 1.3.** NRS 209.461 is hereby amended to read as follows:

209.461 1. The Director shall:

(a) To the greatest extent possible, approximate the normal conditions of training and employment in the community.

(b) Except as otherwise provided in this section, to the extent practicable, require each offender, except those whose behavior is found by the Director to preclude participation, to spend 40 hours each week in vocational training or employment, unless excused for a medical reason or to attend educational classes in accordance with NRS 209.396. The Director shall require as a condition of employment that an offender sign an authorization for the deductions from his or her wages made pursuant to NRS 209.463. Authorization to make the deductions pursuant to NRS 209.463 is implied from the employment of an offender and a signed authorization from the offender is not required for the Director to make the deductions pursuant to NRS 209.463.

(c) Use the earnings from services and manufacturing conducted by the institutions and the money paid by private employers who employ the offenders to offset the costs of operating the prison system and to provide wages for the offenders being trained or employed.

(d) Provide equipment, space and management for services and manufacturing by offenders.

(e) Employ craftsmen and other personnel to supervise and instruct offenders.

(f) Contract with governmental agencies and private employers for the employment of offenders, including their employment on public works projects under contracts with the State and with local governments.

(g) Contract for the use of offenders' services and for the sale of goods manufactured by offenders.

(h) On or before January 1, 2014, and every 5 years thereafter, submit a report to the Director of the Legislative Counsel Bureau for distribution to the Committee on Industrial Programs. The report must include, without limitation,

1 *an analysis of existing contracts with private employers for the employment of*
2 *offenders and the potential impact of those contracts on private industry in this*
3 *State.*

4 *(i) Submit a report to each meeting of the Interim Finance Committee*
5 *identifying any accounts receivable related to a program for the employment of*
6 *offenders.*

7 2. Every program for the employment of offenders established by the Director
8 must:

9 (a) Employ the maximum number of offenders possible;
10 (b) Except as otherwise provided in NRS 209.192, provide for the use of
11 money produced by the program to reduce the cost of maintaining the offenders in
12 the institutions;
13 (c) Have an insignificant effect on the number of jobs available to the residents
14 of this State; and

15 (d) Provide occupational training for offenders.

16 3. An offender may not engage in vocational training, employment or a
17 business that requires or permits the offender to:

18 (a) Telemarket or conduct opinion polls by telephone; or
19 (b) Acquire, review, use or have control over or access to personal information
20 concerning any person who is not incarcerated.

21 4. Each fiscal year, the cumulative profits and losses, if any, of the programs
22 for the employment of offenders established by the Director must result in a profit
23 for the Department. The following must not be included in determining whether
24 there is a profit for the Department:

25 (a) Fees credited to the Fund for Prison Industries pursuant to NRS 482.268,
26 any revenue collected by the Department for the leasing of space, facilities or
27 equipment within the institutions or facilities of the Department, and any interest or
28 income earned on the money in the Fund for Prison Industries.

29 (b) The selling expenses of the Central Administrative Office of the programs
30 for the employment of offenders. As used in this paragraph, "selling expenses"
31 means delivery expenses, salaries of sales personnel and related payroll taxes and
32 costs, the costs of advertising and the costs of display models.

33 (c) The general and administrative expenses of the Central Administrative
34 Office of the programs for the employment of offenders. As used in this paragraph,
35 "general and administrative expenses" means the salary of the Deputy Director of
36 Industrial Programs and the salaries of any other personnel of the Central
37 Administrative Office and related payroll taxes and costs, the costs of telephone
38 usage, and the costs of office supplies used and postage used.

39 5. *If any state-sponsored program incurs a net loss for 2 consecutive fiscal*
40 *years, the Director shall appear before the Committee on Industrial Programs to*
41 *explain the reasons for the net loss and provide a plan for the generation of a*
42 *profit in the next fiscal year. If the program does not generate a profit in the third*
43 *fiscal year, the Director shall take appropriate steps to resolve the issue.*

44 6. Except as otherwise provided in subsection 3, the Director may, with the
45 approval of the Board:

46 (a) Lease spaces and facilities within any institution of the Department to
47 private employers to be used for the vocational training and employment of
48 offenders.

49 (b) Grant to reliable offenders the privilege of leaving institutions or facilities
50 of the Department at certain times for the purpose of vocational training or
51 employment.

~~6-1~~ 7. Before entering into any contract with a private employer for the employment of offenders pursuant to subsection 1, the Director shall obtain from the private employer:

(a) A personal guarantee ~~to~~ to secure an amount fixed by the Director but not less than 100 percent of the prorated annual amount of the contract, a surety bond made payable to the State of Nevada in an amount fixed by the Director but not less than ~~50~~ 100 percent of the prorated annual amount of the contract and conditioned upon the faithful performance of the contract in accordance with the terms and conditions of the contract, or a security agreement to secure any debt, obligation or other liability of the private employer under the contract, including, without limitation, lease payments, wages earned by offenders and compensation earned by personnel of the Department.

(b) A detailed written analysis on the estimated impact of the contract on private industry in this State. The written analysis must include, without limitation:

(1) The number of private companies in this State currently providing the types of products and services offered in the proposed contract.

(2) The number of residents of this State currently employed by such private companies.

(3) The number of offenders that would be employed under the contract.

(4) The skills that the offenders would acquire under the contract.

~~(c) Proof of the publication of the intent to provide the types of products and services offered in the proposed contract in an industry or trade publication designed to most effectively provide notice to private companies that may be impacted by the contract.~~

~~(d) Written assurances that the private employer has performed due diligence in meeting with all labor organizations and local private companies that may be impacted by the contract.~~

8. The provisions of this chapter do not create a right on behalf of the offender to employment or to receive the federal or state minimum wage for any employment and do not establish a basis for any cause of action against the State or its officers or employees for employment of an offender or for payment of the federal or state minimum wage to an offender.

9. As used in this section, "state-sponsored program" means a program for the vocational training or employment of offenders which does not include a contract of employment with a private employer.

Sec. 1.7. NRS 209.4817 is hereby amended to read as follows:

209.4817 1. The Committee on Industrial Programs is hereby created.

2. The Committee consists of the Director of the Department, the Administrator of the Purchasing Division of the Department of Administration and ~~eight~~ nine regular members appointed by the Interim Finance Committee as follows:

(a) Two members of the Senate.

(b) Two members of the Assembly.

(c) Two persons who represent manufacturing in this State.

(d) One person who represents business in this State.

(e) ~~One person~~ Two persons who ~~represents~~ represent organized labor in this State.

3. The regular members of the Committee shall select a Chair from among their membership.

4. Each regular member of the Committee appointed by the Interim Finance Committee must be appointed to a term of 2 years and may be reappointed.

5. At the first meeting of the Committee following each regular session of the Legislature, the Chair of the Committee may appoint ~~eight~~ nine alternate members to serve in the place of regular members who are unable to attend a meeting or perform their duties, as follows:

(a) Two members of the Senate, each of whom may serve in the place of a member of the Senate appointed pursuant to paragraph (a) of subsection 2.

(b) Two members of the Assembly, each of whom may serve in the place of a regular member of the Assembly appointed pursuant to paragraph (b) of subsection 2.

(c) Two persons who represent manufacturing in this State, each of whom may serve in the place of a person appointed pursuant to paragraph (c) of subsection 2.

(d) One person who represents business in this State, who may serve in the place of the person appointed pursuant to paragraph (d) of subsection 2.

(e) ~~One person~~ Two persons who ~~represent~~ represent organized labor in this State, ~~who~~ each of whom may serve in the place of ~~the~~ a person appointed pursuant to paragraph (e) of subsection 2.

Each alternate member appointed by the Chair must be appointed to a term of 2 years and may be reappointed.

6. Except during a regular or special session of the Legislature, each Legislator who is a regular member or an alternate member of the Committee is entitled to receive the compensation provided for a majority of the members of the Legislature during the first 60 days of the preceding regular session for each day or portion of a day during which the Legislator attends a meeting of the Committee or is otherwise engaged in the work of the Committee. Each nonlegislative regular member or alternate member appointed by the Interim Finance Committee or the Chair of the Committee on Industrial Programs is entitled to receive compensation for the member's service on the Committee on Industrial Programs in the same amount and manner as the legislative regular members or alternate members whether or not the Legislature is in session. Each nonlegislative regular member or alternate member of the Committee is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally. Each Legislator who is a regular member or an alternate member of the Committee is entitled to receive the per diem allowance provided for state officers and employees generally and the travel expenses provided pursuant to NRS 218A.655. All compensation, allowances and travel expenses must be paid from the Fund for Prison Industries.

Sec. 2. NRS 209.4818 is hereby amended to read as follows:

209.4818 1. The Committee on Industrial Programs shall:

(a) Be informed on issues and developments relating to industrial programs for correctional institutions;

(b) Submit a semiannual report to the Interim Finance Committee before July 1 and December 1 of each year on the status of current and proposed industrial programs for correctional institutions;

(c) Report to the Legislature on any other matter relating to industrial programs for correctional institutions that it deems appropriate;

(d) Meet at least quarterly and at the call of the Chair to review the operation of current and proposed industrial programs;

(e) Recommend three persons to the Director for appointment as the Deputy Director for Industrial Programs whenever a vacancy exists;

(f) Before any new industrial program is established by the Director, ~~in an institution of the Department,~~ review the proposed program for compliance with the requirements of subsections 2, 3, ~~and~~ 4 and 7 of NRS 209.461 and submit to the Director its recommendations concerning the proposed program; and

(g) Review each *state-sponsored* industry program established pursuant to subsection 2 of NRS 209.461 to determine whether the program is operating profitably. ~~within 3 years after its establishment.~~ If the Committee determines that a program ~~is not operating profitably within 3 years after its establishment.~~ *has incurred a net loss in 3 consecutive fiscal years,* the Committee shall report its finding to the Director with a recommendation regarding whether the program should be continued or terminated. *If the Director does not accept the recommendation of the Committee, the Director shall submit a written report to the Committee setting forth his or her reasons for rejecting the recommendation.*

2. Upon the request of the Committee on Industrial Programs, the Director and the Deputy Director for Industrial Programs shall provide to the Committee any information that the Committee determines is relevant to the performance of the duties of the Committee.

3. *As used in this section, "state-sponsored industry program" means a program for the vocational training or employment of offenders which does not include a contract of employment with a private employer.*

Sec. 3. This act becomes effective on July 1, 2013.