

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 provide certain information; 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 209.461) **Section 1** of this bill 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 provide certain information to the Department.

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 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.



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

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

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

(a) Employ the maximum number of offenders possible;



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(b) Except as otherwise provided in NRS 209.192, provide for the use of money produced by the program to reduce the cost of maintaining the offenders in the institutions;

(c) Have an insignificant effect on the number of jobs available to the residents of this State; and

(d) Provide occupational training for offenders.

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

(a) Telemarket or conduct opinion polls by telephone; or

(b) Acquire, review, use or have control over or access to personal information concerning any person who is not incarcerated.

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

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

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

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

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

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



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

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

~~16-1~~ 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, surety bond in the sum of \$1,000,000 made payable to the State of Nevada or 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.*



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

2 209.4818 1. The Committee on Industrial Programs shall:

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

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

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

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

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

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

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

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

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

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

