

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 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 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



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21 with a private employer for the employment of offenders; and (2) revises provisions
22 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:

1 **Section 1.** NRS 209.459 is hereby amended to read as follows:
2 209.459 1. The Director shall :

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

10 (1) *The Department of Employment, Training and*
11 *Rehabilitation;*
12 (2) *The Department of Business and Industry;*
13 (3) *The Office of Economic Development; and*
14 (4) *Representatives of organized labor in this State.*

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

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

25 **Sec. 1.3.** NRS 209.461 is hereby amended to read as follows:

26 209.461 1. The Director shall:

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

29 (b) Except as otherwise provided in this section, to the extent
30 practicable, require each offender, except those whose behavior is
31 found by the Director to preclude participation, to spend 40 hours
32 each week in vocational training or employment, unless excused for
33 a medical reason or to attend educational classes in accordance with
34 NRS 209.396. The Director shall require as a condition of
35 employment that an offender sign an authorization for the
36 deductions from his or her wages made pursuant to NRS 209.463.
37 Authorization to make the deductions pursuant to NRS 209.463 is
38 implied from the employment of an offender and a signed



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1 authorization from the offender is not required for the Director to
2 make the deductions pursuant to NRS 209.463.

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

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

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

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

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

18 (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.*

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

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

30 (a) Employ the maximum number of offenders possible;

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

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

36 (d) Provide occupational training for offenders.

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

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

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

42 4. Each fiscal year, the cumulative profits and losses, if any, of
43 the programs for the employment of offenders established by the
44 Director must result in a profit for the Department. The following



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1 must not be included in determining whether there is a profit for the
2 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.

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

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

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

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

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

36 **[6.1] 7. Before entering into any contract with a private**
37 **employer for the employment of offenders pursuant to subsection**
38 **1, the Director shall obtain from the private employer:**

39 (a) A personal guarantee to secure an amount fixed by the
40 Director but not less than 100 percent of the prorated annual
41 amount of the contract, a surety bond made payable to the State of
42 Nevada in an amount fixed by the Director but not less than 100
43 percent of the prorated annual amount of the contract and
44 conditioned upon the faithful performance of the contract in
45 accordance with the terms and conditions of the contract, or a



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1 *security agreement to secure any debt, obligation or other liability*
2 *of the private employer under the contract, including, without*
3 *limitation, lease payments, wages earned by offenders and*
4 *compensation earned by personnel of the Department.*

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

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

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

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

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

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

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

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

28 209.4817 1. The Committee on Industrial Programs is hereby
29 created.

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

34 (a) Two members of the Senate.
35 (b) Two members of the Assembly.
36 (c) Two persons who represent manufacturing in this State.
37 (d) One person who represents business in this State.
38 (e) ~~One person~~ *Two persons* who ~~represents~~ *represent*
39 organized labor in this State.

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

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



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

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

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

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

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

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

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

24 6. Except during a regular or special session of the Legislature,
25 each Legislator who is a regular member or an alternate member of
26 the Committee is entitled to receive the compensation provided for a
27 majority of the members of the Legislature during the first 60 days
28 of the preceding regular session for each day or portion of a day
29 during which the Legislator attends a meeting of the Committee or
30 is otherwise engaged in the work of the Committee. Each
31 nonlegislative regular member or alternate member appointed by the
32 Interim Finance Committee or the Chair of the Committee on
33 Industrial Programs is entitled to receive compensation for the
34 member's service on the Committee on Industrial Programs in the
35 same amount and manner as the legislative regular members or
36 alternate members whether or not the Legislature is in session. Each
37 nonlegislative regular member or alternate member of the
38 Committee is entitled to receive the per diem allowance and travel
39 expenses provided for state officers and employees generally. Each
40 Legislator who is a regular member or an alternate member of the
41 Committee is entitled to receive the per diem allowance provided
42 for state officers and employees generally and the travel expenses
43 provided pursuant to NRS 218A.655. All compensation, allowances
44 and travel expenses must be paid from the Fund for Prison
45 Industries.



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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,

20 ~~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.



