

HOUSE BILL NO. 519

INTRODUCED BY E. GREEF

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A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF CORRECTIONS TO TERMINATE CERTAIN CONTRACTS WITH PRIVATE INDUSTRY FOR PROCESSING WOOD INTO LUMBER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, the Department of Corrections operates a correctional enterprises prison industries training program pursuant to section 53-30-131, MCA, for the purposes of training individuals serving felony criminal sentences at the Montana State Prison in a skill or trade; and

WHEREAS, as part of the training program, the Department of Corrections has entered into at least one contract under which individuals serving felony criminal sentences process wood into lumber for use by the commercial supplier of that wood; and

WHEREAS, because the Department relies upon prison labor to process the wood for the supplier under the contract, the supplier of the wood is able to have the wood processed into lumber at a much less expensive rate for the labor involved than the same labor would cost the supplier if the supplier had to purchase that labor on the open market; and

WHEREAS, because the supplier of the wood products to the Department of Corrections for processing into lumber pays less for the required labor, the supplier is able to sell the lumber at a price much lower than that charged by commercial processors of lumber for the same product; and

WHEREAS, because of that price difference, at least one commercial producer of the same type of lumber has suffered financial loss as a direct result of the lumber produced with prison labor and has therefore had to lay off workers who would otherwise have remained employed; and

WHEREAS, there is a need for individuals serving felony criminal sentences at the Montana State Prison to be trained in skills that can help them reintegrate into society upon their release from prison but that training should not come at the expense of jobs of persons employed in the private sector with which the prison industries training program is in direct competition; and

WHEREAS, the contract under which the Department of Corrections processes the wood into lumber for the supplier using prison labor provides for a minimum notice of 4 months by either party if either party chooses to terminate the contract; and



1 WHEREAS, even if the contract did not provide for termination upon 4 months' notice, the Montana
2 Supreme Court has held in such cases as *Seven Up Pete Venture v. State*, 2005 MT 146, 327 Mont. 306, 114
3 P.3d 1009 (2005) that despite the language of Article II, section 31, of the Montana Constitution prohibiting
4 impairment of the obligations of contracts, contracts may be impaired by state law if the law is reasonably related
5 to a legitimate and significant public purpose; and

6 WHEREAS, even though the contract between the supplier and the Department of Corrections may be
7 terminated on 4 months' notice and there is therefore no need to invoke the state's power to terminate the
8 contract any earlier as the Montana Supreme Court indicated the state could do under the circumstances in the
9 *Seven Up Pete* opinion, it should still be the policy of state government not to train prison labor to the detriment
10 of the economic health or survivability of businesses and jobs in the private sector.

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 NEW SECTION. **Section 1. Department directed to terminate contracts -- department to give**
15 **notice.** (1) The department of corrections shall terminate any contract that may be terminated, according to the
16 terms of the contract, by giving the minimum notice required under the contract pursuant to which the department
17 processes a wood product into lumber using prison labor as part of its correctional enterprises prison industries
18 training program.

19 (2) The department shall give notice of termination of a contract referred to in subsection (1) to the other
20 party to the contract on [the effective date of this act].

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22 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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24 NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the
25 meaning of 1-2-109, to contracts entered into before [the effective date of this act] for the processing of wood into
26 lumber by the department of corrections using prison inmate labor in the correctional enterprises prison industries
27 training program that provide for termination of the contract by either party to the contract with 120 days' notice.

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