

FEDERAL PRISON INDUSTRIES COMPETITION IN  
CONTRACTING ACT OF 2003

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SEPTEMBER 25, 2003.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. SENSENBRENNER, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1829]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1829) to amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of non-profit organizations, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
The Amendment .....	2
Purpose and Summary .....	14
Background and Need for the Legislation .....	18
Hearings .....	23
Committee Consideration .....	23

Vote of the Committee .....	23
Committee Oversight Findings .....	25
New Budget Authority and Tax Expenditures .....	25
Congressional Budget Office Cost Estimate .....	25
Committee Response to Congressional Budget Office Cost Estimate .....	29
Performance Goals and Objectives .....	34
Constitutional Authority Statement .....	34
Section-by-Section Analysis and Discussion .....	34
Changes in Existing Law Made by the Bill, as Reported .....	50
Markup Transcript .....	63
Dissenting Views .....	177

## THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Federal Prison Industries Competition in Contracting Act of 2003”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Governmentwide procurement policy relating to purchases from Federal Prison Industries.
Sec. 3. Public participation regarding expansion proposals by Federal Prison Industries.
Sec. 4. Transitional mandatory source authority.
Sec. 5. Authority to perform as a Federal subcontractor.
Sec. 6. Inmate wages and deductions.
Sec. 7. Clarifying amendment relating to services.
Sec. 8. Conforming amendment.
Sec. 9. Rules of construction relating to chapter 307.
Sec. 10. Providing additional rehabilitative opportunities for inmates.
Sec. 11. Restructuring the Board of Directors.
Sec. 12. Providing additional management flexibility to Federal Prison Industries operations.
Sec. 13. Transitional personnel management authority.
Sec. 14. Federal Prison Industries report to Congress.
Sec. 15. Independent study to determine the effects of eliminating the Federal Prison Industries mandatory source authority.
Sec. 16. Sense of Congress.
Sec. 17. Definitions.
Sec. 18. Implementing regulations and procedures.
Sec. 19. Rule of construction.
Sec. 20. Effective date and applicability.
Sec. 21. Clerical amendments.

### SEC. 2. GOVERNMENTWIDE PROCUREMENT POLICY RELATING TO PURCHASES FROM FEDERAL PRISON INDUSTRIES.

Section 4124 of title 18, United States Code, is amended to read as follows:

#### “§ 4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries

“(a) IN GENERAL.—Purchases from Federal Prison Industries, Incorporated, a wholly owned Government corporation, as referred to in section 9101(3)(E) of title 31, may be made by a Federal department or agency only in accordance with this section.

“(b) SOLICITATION AND EVALUATION OF OFFERS AND CONTRACT AWARDS.—(1) If a procurement activity of a Federal department or agency has a requirement for a specific product or service that is authorized to be offered for sale by Federal Prison Industries, in accordance with section 4122 of this title, and is listed in the catalog referred to in subsection (g), the procurement activity shall solicit an offer from Federal Prison Industries, if the purchase is expected to be in excess of the micro-purchase threshold (as defined by section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f))).

“(2) A contract award for such product or service shall be made using competitive procedures in accordance with the applicable evaluation factors, unless a determination is made by the Attorney General pursuant to paragraph (3) or an award using other than competitive procedures is authorized pursuant to paragraph (7).

“(3) The procurement activity shall negotiate with Federal Prison Industries on a noncompetitive basis for the award of a contract if the Attorney General determines that—

“(A) Federal Prison Industries cannot reasonably expect fair consideration to receive the contract award on a competitive basis; and

“(B) the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is

to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility.

“(4) Except in the case of an award to be made pursuant to paragraph (3), a contract award shall be made with Federal Prison Industries only if the contracting officer for the procurement activity determines that—

“(A) the specific product or service to be furnished will meet the requirements of the procurement activity (including any applicable prequalification requirements and all specified commercial or governmental standards pertaining to quality, testing, safety, serviceability, and warranties);

“(B) timely performance of the contract can be reasonably expected; and

“(C) the contract price does not exceed a current market price.

“(5) A determination by the Attorney General pursuant to paragraph (3) shall be—

“(A) supported by specific findings by the warden of the penal or correctional institution at which a Federal Prison Industries workshop is scheduled to perform the contract;

“(B) supported by specific findings by Federal Prison Industries regarding why it does not expect to win the contract on a competitive basis; and

“(C) made and reported in the same manner as a determination made pursuant to section 303(c)(7) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(7)).

“(6) If the Attorney General has not made the determination described in paragraph (3) within 30 days after Federal Prison Industries has been informed of a contracting opportunity by a procurement activity, the procurement activity may proceed to conduct a procurement for the product or service in accordance with the procedures generally applicable to such procurements by the procurement activity.

“(7) A contract award may be made to Federal Prison Industries using other than competitive procedures if such product or service is only available from Federal Prison Industries and the contract may be awarded under the authority of section 2304(c)(1) of title 10 or section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(1)), as may be applicable, and pursuant to the justification and approval requirements relating to such noncompetitive procurements specified by law and the Governmentwide Federal Acquisition Regulation.

“(c) OFFERS FROM FEDERAL PRISON INDUSTRIES.—A timely offer received from Federal Prison Industries to furnish a product or service to a Federal department or agency shall be considered for award without limitation as to the dollar value of the proposed purchase.

“(d) PERFORMANCE BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries shall perform its contractual obligations under a contract awarded by a Federal department or agency to the same extent as any other contractor.

“(e) FINALITY OF CONTRACTING OFFICER’S DECISION.—(1) A decision by a contracting officer regarding the award of a contract to Federal Prison Industries or relating to the performance of such contract shall be final, unless reversed on appeal pursuant to paragraph (2) or (3).

“(2) The Chief Executive Officer of Federal Prison Industries may appeal to the head of a Federal department or agency a decision by a contracting officer not to award a contract to Federal Prison Industries pursuant to subsection (b)(4). The decision of the head of a Federal department or agency on appeal shall be final.

“(3) A dispute between Federal Prison Industries and a procurement activity regarding performance of a contract shall be subject to—

“(A) alternative means of dispute resolution pursuant to subchapter IV of chapter 5 of title 5; or

“(B) final resolution by the board of contract appeals having jurisdiction over the procurement activity’s contract performance disputes pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

“(f) REPORTING OF PURCHASES.—Each Federal department or agency shall report purchases from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))) in the same manner as it reports to such System any acquisition in an amount in excess of the simplified acquisition threshold (as defined by section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

“(g) CATALOG OF PRODUCTS.—Federal Prison Industries shall publish and maintain a catalog of all specific products and services that it is authorized to offer for sale. Such catalog shall be periodically revised as products and services are added or deleted by its board of directors (in accordance with section 4122(b) of this title).

“(h) COMPLIANCE WITH STANDARDS.—Federal Prison Industries shall comply with Federal occupational, health, and safety standards with respect to the operation of its industrial operations.”.

**SEC. 3. PUBLIC PARTICIPATION REGARDING EXPANSION PROPOSALS BY FEDERAL PRISON INDUSTRIES.**

Section 4122(b) of title 18, United States Code, is amended—

(1) by redesignating paragraph (6) as paragraph (12); and

(2) by striking paragraphs (4) and (5) and inserting the following new paragraphs:

“(4) A decision to authorize Federal Prison Industries to offer a new specific product or specific service or to expand the production of an existing product or service shall be made by its board of directors in conformance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, and this chapter.

“(5)(A) Whenever Federal Prison Industries proposes to offer for sale a new specific product or specific service or to expand production of a currently authorized product or service, the Chief Operating Officer of Federal Prison Industries shall submit an appropriate proposal to the board of directors and obtain the board’s approval before initiating any such expansion. The proposal submitted to the board shall include a detailed analysis of the probable impact of the proposed expansion of sales within the Federal market by Federal Prison Industries on private sector firms and their non-inmate workers.

“(B)(i) The analysis required by subparagraph (A) shall be performed by an interagency team on a reimbursable basis or by a private contractor paid by Federal Prison Industries.

“(ii) If the analysis is to be performed by an interagency team, such team shall be led by the Administrator of the Small Business Administration or the designee of such officer with representatives of the Department of Labor, the Department of Commerce, and the Federal Procurement Data Center.

“(iii) If the analysis is to be performed by a private contractor, the selection of the contractor and the administration of the contract shall be conducted by one of the entities referenced in clause (ii) as an independent executive agent for the board of directors. Maximum consideration shall be given to any proposed statement of work furnished by the Chief Operating Officer of Federal Prison Industries.

“(C) The analysis required by subparagraph (A) shall identify and consider—

“(i) the number of vendors that currently meet the requirements of the Federal Government for the specific product or specific service;

“(ii) the proportion of the Federal Government market for the specific product or specific service currently furnished by small businesses during the previous 3 fiscal years;

“(iii) the share of the Federal market for the specific product or specific service projected for Federal Prison Industries for the fiscal year in which production or performance will commence or expand and the subsequent 4 fiscal years;

“(iv) whether the industry producing the specific product or specific service in the private sector—

“(I) has an unemployment rate higher than the national average; or

“(II) has a rate of unemployment for workers that has consistently

shown an increase during the previous 5 years;

“(v) whether the specific product is an import-sensitive product;

“(vi) the requirements of the Federal Government and the demands of entities other than the Federal Government for the specific product or service during the previous 3 fiscal years;

“(vii) the projected growth or decline in the demand of the Federal Government for the specific product or specific service;

“(viii) the capability of the projected demand of the Federal Government for the specific product or service to sustain both Federal Prison Industries and private vendors; and

“(ix) whether authorizing the production of the new product or performance of a new service will provide inmates with the maximum opportunity to acquire knowledge and skill in trades and occupations that will provide them with a means of earning a livelihood upon release.

“(D)(i) The board of directors may not approve a proposal to authorize the production and sale of a new specific product or continued sale of a previously authorized product unless—

“(I) the product to be furnished is a prison-made product; or

“(II) the service to be furnished is to be performed by inmate workers.

“(ii) The board of directors may not approve a proposal to authorize the production and sale of a new prison-made product or to expand production of a currently authorized product if the product is—

“(I) produced in the private sector by an industry which has reflected during the previous year an unemployment rate above the national average; or

“(II) an import-sensitive product.

“(iii) The board of directors may not approve a proposal for inmates to provide a service in which an inmate worker has access to—

“(I) personal or financial information about individual private citizens, including information relating to such person’s real property, however described, without giving prior notice to such persons or class of persons to the greatest extent practicable;

“(II) geographic data regarding the location of surface and subsurface infrastructure providing communications, water and electrical power distribution, pipelines for the distribution of natural gas, bulk petroleum products and other commodities, and other utilities; or

“(III) data that is classified.

“(iv)(I) Federal Prison Industries is prohibited from furnishing through inmate labor construction services, unless to be performed within a Federal correctional institution pursuant to the participation of an inmate in an apprenticeship or other vocational education program teaching the skills of the various building trades.

“(II) For purposes of this clause, the term ‘construction’ has the meaning given such term by section 2.101 of the Federal Acquisition Regulation (48 CFR part 2.101), as in effect on June 1, 2002, including the repair, alteration, or maintenance of real property in being.

“(6) To provide further opportunities for participation by interested parties, the board of directors shall—

“(A) give additional notice of a proposal to authorize the production and sale of a new product or service, or expand the production of a currently authorized product or service, in a publication designed to most effectively provide notice to private vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal, which notice shall offer to furnish copies of the analysis required by paragraph (5) and shall solicit comment on the analysis;

“(B) solicit comments on the analysis required by paragraph (5) from trade associations representing vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal to authorize the production and sale of a new product or service (or expand the production of a currently authorized product or service); and

“(C) afford an opportunity, on request, for a representative of an established trade association, labor union, or other private sector representatives to present comments on the proposal directly to the board of directors.

“(7) The board of directors shall be provided copies of all comments received on the expansion proposal.

“(8) Based on the comments received on the initial expansion proposal, the Chief Operating Officer of Federal Prison Industries may provide the board of directors a revised expansion proposal. If such revised proposal provides for expansion of inmate work opportunities in an industry different from that initially proposed, such revised proposal shall reflect the analysis required by paragraph (5)(C) and be subject to the public comment requirements of paragraph (6).

“(9) The board of directors shall consider a proposal to authorize the sale of a new specific product or specific service (or to expand the volume of sales for a currently authorized product or service) and take any action with respect to such proposal, during a meeting that is open to the public, unless closed pursuant to section 552(b) of title 5.

“(10) In conformity with the requirements of paragraphs (5) through (9) of this subsection, the board of directors may—

“(A) authorize the donation of products produced or services furnished by Federal industries and available for sale;

“(B) authorize the production of a new specific product or the furnishing of a new specific service for donation; or

“(C) authorize a proposal to expand production of a currently authorized specific product or specific service in an amount in excess of a reasonable share of the market for such product or service, if—

“(i) a Federal agency or department, purchasing such product or service, has requested that Federal Prison Industries be authorized to furnish such product or service in amounts that are needed by such agency or department; or

“(ii) the proposal is justified for other good cause and supported by at least eight members of the board.”.

#### SEC. 4. TRANSITIONAL MANDATORY SOURCE AUTHORITY.

(a) IN GENERAL.—Notwithstanding the requirements of section 4124 of title 18, United States Code (as amended by section 2 of this Act), a Federal department or agency having a requirement for a product that is authorized for sale by Federal

Prison Industries and is listed in its catalog (referred to in section 4124(g) of title 18, United States Code) shall first solicit an offer from Federal Prison Industries and make purchases on a noncompetitive basis in accordance with this section.

(b) PREFERENTIAL SOURCE STATUS.—Subject to the limitations of subsection (d), a contract award shall be made on a noncompetitive basis to Federal Prison Industries if the contracting officer for the procurement activity determines that—

(1) the product offered by Federal Prison Industries will meet the requirements of the procurement activity (including commercial or governmental standards or specifications pertaining to design, performance, testing, safety, serviceability, and warranties as may be imposed upon a private sector supplier of the type being offered by Federal Prison Industries);

(2) timely performance of the contract by Federal Prison Industries can be reasonably expected; and

(3) the negotiated price does not exceed a fair and reasonable price.

(c) CONTRACTUAL TERMS.—The terms and conditions of the contract and the price to be paid to Federal Prison Industries shall be determined by negotiation between Federal Prison Industries and the Federal agency making the purchase. The negotiated price shall not exceed a fair and reasonable price determined in accordance with the procedures of the Federal Acquisition Regulation.

(d) PERFORMANCE OF CONTRACTUAL OBLIGATIONS.—

(1) IN GENERAL.—Federal Prison Industries shall perform the obligations of the contract negotiated pursuant to subsection (c).

(2) PERFORMANCE DISPUTES.—If the head of the contracting activity and the Chief Operating Officer of Federal Prison Industries are unable to resolve a contract performance dispute to their mutual satisfaction, such dispute shall be resolved pursuant to section 4124(e)(3) of title 18, United States Code (as added by section 2 of this Act).

(e) LIMITATIONS ON USE OF AUTHORITY.—

(1) IN GENERAL.—As a percentage of the sales made by Federal Prison Industries during the base period, the total dollar value of sales to the Government made pursuant to subsection (b) and subsection (c) of this section shall not exceed—

- (A) 90 percent in fiscal year 2005;
- (B) 85 percent in fiscal year 2006;
- (C) 70 percent in fiscal year 2007;
- (D) 55 percent in fiscal year 2008; and
- (E) 40 percent in fiscal year 2009.

(2) SALES WITHIN VARIOUS BUSINESS SECTORS.—Use of the authority provided by subsections (b) and (c) shall not result in sales by Federal Prison Industries to the Government that are in excess of its total sales during the base year for each business sector.

(3) LIMITATIONS RELATING TO SPECIFIC PRODUCTS.—Use of the authorities provided by subsections (b) and (c) shall not result in contract awards to Federal Prison Industries that are in excess of its total sales during the base period for such product.

(4) CHANGES IN DESIGN SPECIFICATIONS.—The limitations on sales specified in paragraphs (2) and (3) shall not be affected by any increases in the unit cost of production of a specific product arising from changes in the design specification of such product directed by the buying agency.

(f) DURATION OF AUTHORITY.—The preferential contracting authorities authorized by subsection (b) may not be used on or after October 1, 2009, and become effective on the effective date of the final regulations issued pursuant to section 18.

(g) DEFINITIONS.—For the purposes of this section—

(1) the term “base period” means the total sales of Federal Prison Industries during the period October 1, 2001, and September 30, 2002 (Fiscal Year 2002);

(2) the term “business sectors” means the eight product/service business groups identified in the 2002 Federal Prison Industries annual report as the Clothing and Textiles Business Group, the Electronics Business Group, the Fleet Management and Vehicular Components Business Group, the Graphics Business Group, the Industrial Products Business Group, the Office Furniture Business Group, the Recycling Activities Business Group, and the Services Business Group; and

(3) the term “fair and reasonable price” shall be given the same meaning as, and be determined pursuant to, part 15.8 of the Federal Acquisition Regulation (48 C.F.R. 15.8).

(h) FINDING BY ATTORNEY GENERAL WITH RESPECT TO PUBLIC SAFETY.—(1) Not later than 60 days prior to the end of each fiscal year specified in subsection (e)(1), the Attorney General shall make a finding regarding the effects of the percentage

limitation imposed by such subsection for such fiscal year and the likely effects of the limitation imposed by such subsection for the following fiscal year.

(2) The Attorney General's finding shall include a determination whether such limitation has resulted or is likely to result in a substantial reduction in inmate industrial employment and whether such reductions, if any, present a significant risk of adverse effects on safe prison operation or public safety.

(3) If the Attorney General finds a significant risk of adverse effects on either safe prison management or public safety, he shall so advise the Congress.

(4) In advising the Congress pursuant to paragraph (3), the Attorney General shall make recommendations for additional authorizations of appropriations to provide additional alternative inmate rehabilitative opportunities and additional correctional staffing, as may be appropriate.

**SEC. 5. AUTHORITY TO PERFORM AS A FEDERAL SUBCONTRACTOR.**

(a) **IN GENERAL.**—Federal Prison Industries is authorized to enter into a contract with a Federal contractor (or a subcontractor of such contractor at any tier) to produce products as a subcontractor or supplier in the performance of a Federal procurement contract. The use of Federal Prison Industries as a subcontractor or supplier shall be a wholly voluntary business decision by the Federal prime contractor or subcontractor, subject to any prior approval of subcontractors or suppliers by the contracting officer which may be imposed by the Federal Acquisition Regulation or by the contract.

(b) **COMMERCIAL SALES PROHIBITED.**—The authority provided by subsection (a) shall not result, either directly or indirectly, in the sale in the commercial market of a product or service resulting from the labor of Federal inmate workers in violation of section 1761(a) of title 18, United States Code. A Federal contractor (or subcontractor at any tier) using Federal Prison Industries as a subcontractor or supplier in furnishing a commercial product pursuant to a Federal contract shall implement appropriate management procedures to prevent introducing an inmate-produced product into the commercial market.

(c) **PROHIBITIONS ON MANDATING SUBCONTRACTING WITH FEDERAL PRISON INDUSTRIES.**—Except as authorized under the Federal Acquisition Regulation, the use of Federal Prison Industries as a subcontractor or supplier of products or provider of services shall not be imposed upon prospective or actual Federal prime contractors or a subcontractors at any tier by means of—

- (1) a contract solicitation provision requiring a contractor to offer to make use of Federal Prison Industries, its products or services;
- (2) specifications requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract;
- (3) any contract modification directing the use of Federal Prison Industries, its products or services; or
- (4) any other means.

**SEC. 6. INMATE WAGES AND DEDUCTIONS.**

Section 4122(b) of title 18, United States Code (as amended by section 3 of this Act), is further amended by adding after paragraph (10) a new paragraph (11) as follows:

“(11)(A) The Board of Directors of Federal Prison Industries shall prescribe the rates of hourly wages to be paid inmates performing work for or through Federal Prison Industries. The Director of the Federal Bureau of Prisons shall prescribe the rates of hourly wages for other work assignments within the various Federal correctional institutions.

“(B) The various inmate wage rates shall be reviewed and considered for increase on not less than a biannual basis.

“(C) Wages earned by an inmate worker shall be paid in the name of the inmate. Deductions, aggregating to not more than 80 percent of gross wages, shall be taken from the wages due for—

- “(i) applicable taxes (Federal, State, and local);
- “(ii) payment of fines and restitution pursuant to court order;
- “(iii) payment of additional restitution for victims of the inmate's crimes (at a rate not less than 10 percent of gross wages);
- “(iv) allocations for support of the inmate's family pursuant to statute, court order, or agreement with the inmate;
- “(v) allocations to a fund in the inmate's name to facilitate such inmate's assimilation back into society, payable at the conclusion of incarceration; and
- “(vi) such other deductions as may be specified by the Director of the Bureau of Prisons.

“(D) Each inmate worker working for Federal Prison Industries shall indicate in writing that such person—

“(i) is participating voluntarily; and  
 “(ii) understands and agrees to the wages to be paid and deductions to be taken from such wages.”.

**SEC. 7. CLARIFYING AMENDMENT RELATING TO SERVICES.**

(a) **IN GENERAL.**—Section 1761 of title 18, United States Code, is amended in subsection (a), by striking “any goods, wares, or merchandise manufactured, produced, or mined” and inserting “products manufactured, services furnished, or minerals mined”.

(b) **COMPLETION OF EXISTING AGREEMENTS.**—Any prisoner work program operated by a prison or jail of a State or local jurisdiction of a State which is providing services for the commercial market through inmate labor on October 1, 2002, may continue to provide such commercial services until—

(1) the expiration date specified in the contract or other agreement with a commercial partner on October 1, 2002, or

(2) until September 30, 2005, if the prison work program is directly furnishing the services to the commercial market.

(c) **APPROVAL REQUIRED FOR LONG-TERM OPERATION.**—A prison work program operated by a correctional institution operated by a State or local jurisdiction of a State may continue to provide inmate labor to furnish services for sale in the commercial market after the dates specified in subsection (b) if such program has been certified pursuant to section 1761(c)(1) of title 18, United States Code, and is in compliance with the requirements of such subsection and its implementing regulations.

**SEC. 8. CONFORMING AMENDMENT.**

Section 4122(a) of title 18, United States Code, is amended by striking “production of commodities” and inserting “production of products or furnishing of services”.

**SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER 307.**

Chapter 307 of title 18, United States Code, is further amended by adding the following:

**“§ 4130. Construction of provisions**

“Nothing in this chapter shall be construed—

“(1) to establish an entitlement of any inmate to—

“(A) employment in a Federal Prison Industries facility; or

“(B) any particular wage, compensation, or benefit on demand, except as otherwise specifically provided by law or regulation;

“(2) to establish that inmates are employees for the purposes of any law or program; or

“(3) to establish any cause of action by or on behalf of any inmate against the United States or any officer, employee, or contractor thereof.”.

**SEC. 10. PROVIDING ADDITIONAL REHABILITATIVE OPPORTUNITIES FOR INMATES.**

(a) **ADDITIONAL EDUCATIONAL, TRAINING, AND RELEASE-PREPARATION OPPORTUNITIES.**—

(1) **PROGRAM ESTABLISHED.**—There is hereby established the Enhanced In-Prison Educational and Vocational Assessment and Training Program within the Federal Bureau of Prisons.

(2) **COMPREHENSIVE PROGRAM.**—In addition to such other components as the Director of the Bureau of Prisons deems appropriate to reduce inmate idleness and better prepare inmates for a successful reentry into the community upon release, the program shall provide—

(A) in-prison assessments of inmates’ needs and aptitudes;

(B) a full range of educational opportunities;

(C) vocational training and apprenticeships; and

(D) comprehensive release-readiness preparation.

(3) **AUTHORIZATION OF APPROPRIATIONS.**—For the purposes of carrying out the program established by paragraph (1), \$75,000,000 is authorized for each fiscal year after fiscal year 2003, to remain available until expended. Funds shall be allocated from the gross profits within the Federal Prison Industries Fund, and, to the extent such amounts are inadequate, from the General Treasury.

(4) **SCHEDULE FOR IMPLEMENTATION.**—All components of the program shall be established—

(A) in at least 25 percent of all Federal prisons not later than 2 years after the date of the enactment of this Act;

(B) in at least 50 percent of all Federal prisons not later than 4 years after such date of enactment;



(C) in at least 75 percent of all Federal prisons not later than 6 years after such date of enactment; and

(D) in all Federal prisons not later than 8 years after such date of enactment.

(b) INMATE WORK OPPORTUNITIES IN SUPPORT OF NOT-FOR-PROFIT ENTITIES.—

(1) PROPOSALS FOR DONATION PROGRAMS.—The Chief Operating Officer of Federal Prison Industries shall develop and present to the Board of Directors of Federal Prison Industries proposals to have Federal Prison Industries donate products and services to eligible entities that provide goods or services to low-income individuals who would likely otherwise have difficulty purchasing such products or services in the commercial market.

(2) SCHEDULE FOR SUBMISSION AND CONSIDERATION OF DONATION PROGRAMS.—

(A) INITIAL PROPOSALS.—The Chief Operating Officer shall submit the initial group of proposals for programs of the type described in paragraph (1) within 180 days after the date of the enactment of this Act. The Board of Directors of Federal Prison Industries shall consider such proposals from the Chief Operating Officer not later than the date that is 270 days after the date of the enactment of this Act.

(B) ANNUAL OPERATING PLAN.—The Board of Directors of Federal Prison Industries shall consider proposals by the Chief Operating Officer for programs of the type described in paragraph (1) as part of the annual operating plan for Federal Prison Industries.

(C) OTHER PROPOSALS.—In addition to proposals submitted by the Chief Operating Officer, the Board of Directors may, from time to time, consider proposals presented by prospective eligible entities.

(3) DEFINITION OF ELIGIBLE ENTITIES.—For the purposes of this subsection, the term “eligible entity” means an entity—

(A) that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code and that has been such an organization for a period of not less than 36 months prior to inclusion in a proposal of the type described in paragraph (1), or

(B) that is a religious organization described in section 501(d) of such Code and exempt from taxation under section 501(a) of such Code.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$7,000,000 for each of the fiscal years 2004 through 2008 for the purposes of paying the wages of inmates and otherwise carrying out programs of the type described in paragraph (1).

(c) MAXIMIZING INMATE REHABILITATIVE OPPORTUNITIES THROUGH COGNITIVE ABILITIES ASSESSMENTS.—

(1) DEMONSTRATION PROGRAM AUTHORIZED.—

(A) IN GENERAL.—There is hereby established within the Federal Bureau of Prisons a program to be known as the “Cognitive Abilities Assessment Demonstration Program”. The purpose of the demonstration program is to determine the effectiveness of a program that assesses the cognitive abilities and perceptual skills of Federal inmates to maximize the benefits of various rehabilitative opportunities designed to prepare each inmate for a successful return to society and reduce recidivism. The demonstration program shall be undertaken by a contractor with a demonstrated record of enabling the behavioral and academic improvement of adults through the use of research-based systems that maximize the development of both the cognitive and perceptual capabilities of a participating individual, including adults in a correctional setting.

(B) SCOPE OF DEMONSTRATION PROGRAM.—The demonstration program shall to the maximum extent practicable, be—

(i) conducted during a period of three consecutive fiscal years, commencing during fiscal year 2004;

(ii) conducted at 12 Federal correctional institutions; and

(iii) offered to 6,000 inmates, who are categorized as minimum security or less, and are within five years of release.

(C) REPORT ON RESULTS OF PROGRAM.—Not later than 60 days after completion of the demonstration program, the Director shall submit to Congress a report on the results of the program. At a minimum, the report shall include an analysis of employment stability, stability of residence, and rates of recidivism among inmates who participated in the program after 18 months of release.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$3,000,000 in each of the three fiscal years after fiscal year 2003, to re-

main available until expended, for the purposes of conducting the demonstration program authorized by subsection (a).

(d) PRERELEASE EMPLOYMENT ASSISTANCE.—

(1) IN GENERAL.—The Director of the Federal Bureau of Prisons shall, to the maximum extent practicable, afford to inmates opportunities to participate in programs and activities designed to help prepare such inmates to obtain employment upon release.

(2) PRERELEASE EMPLOYMENT PLACEMENT ASSISTANCE.—Such prerelease employment placement assistance required by subsection (a) shall include—

- (A) training in the preparation of resumes and job applications;
- (B) training in interviewing skills;
- (C) training and assistance in job search techniques;
- (D) conduct of job fairs; and
- (E) such other methods deemed appropriate by the Director.

(3) PRIORITY PARTICIPATION.—Priority in program participation shall be accorded to inmates who are participating in work opportunities afforded by Federal Prison Industries and are within 24 months of release from incarceration.

#### SEC. 11. RESTRUCTURING THE BOARD OF DIRECTORS.

Section 4121 of title 18, United States Code, is amended to read as follows:

##### “§ 4121. Federal Prison Industries; Board of Directors: executive management

“(a) Federal Prison Industries is a government corporation of the District of Columbia organized to carry on such industrial operations in Federal correctional institutions as authorized by its Board of Directors. The manner and extent to which such industrial operations are carried on in the various Federal correctional institutions shall be determined by the Attorney General.

“(b)(1) The corporation shall be governed by a board of 11 directors appointed by the President.

“(2) In making appointments to the Board, the President shall assure that 3 members represent the business community, 3 members represent organized labor, 1 member shall have special expertise in inmate rehabilitation techniques, 1 member represents victims of crime, 1 member represents the interests of Federal inmate workers, and 2 additional members whose background and expertise the President deems appropriate. The members of the Board representing the business community shall include, to the maximum extent practicable, representation of firms furnishing services as well as firms producing products, especially from those industry categories from which Federal Prison Industries derives substantial sales. The members of the Board representing organized labor shall, to the maximum practicable, include representation from labor unions whose members are likely to be most affected by the sales of Federal Prison Industries.

“(3) Each member shall be appointed for a term of 5 years, except that of members first appointed—

“(A) 2 members representing the business community shall be appointed for a term of 3 years;

“(B) 2 members representing labor shall be appointed for a term of 3 years;

“(C) 2 members whose background and expertise the President deems appropriate for a term of 3 years;

“(D) 1 member representing victims of crime shall be appointed for a term of 3 years;

“(E) 1 member representing the interests of Federal inmate workers shall be appointed for a term of 3 years;

“(F) 1 member representing the business community shall be appointed for a term of 4 years;

“(G) 1 member representing the business community shall be appointed for a term of 4 years; and

“(H) the members having special expertise in inmate rehabilitation techniques shall be appointed for a term of 5 years.

“(4) The President shall designate 1 member of the Board as Chairperson. The Chairperson may designate a Vice Chairperson.

“(5) Members of the Board may be reappointed.

“(6) Any vacancy on the Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed for the remainder of that term.

“(7) The members of the Board shall serve without compensation. The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter 1 of chapter 57 of title 5, United States Code, to attend meetings of the Board and, with the ad-

vance approval of the Chairperson of the Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Board.

“(8)(A) The Chairperson of the Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.

“(B) Upon request of the Chairperson of the Board, a Federal agency may detail a Federal Government employee to the Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

“(9) The Chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

“(c) The Director of the Bureau of Prisons shall serve as Chief Executive Officer of the Corporation. The Director shall designate a person to serve as Chief Operating Officer of the Corporation.”.

**SEC. 12. PROVIDING ADDITIONAL MANAGEMENT FLEXIBILITY TO FEDERAL PRISON INDUSTRIES OPERATIONS.**

Section 4122(b)(3) of title 18, United States Code, is amended—

(1) by striking “(3)” and inserting “(3)(A)”; and

(2) by adding at the end the following new paragraphs:

“(B) Federal Prison Industries may locate more than one workshop at a Federal correctional facility.

“(C) Federal Prison Industries may operate a workshop outside of a correctional facility if all of the inmates working in such workshop are classified as minimum security inmates.”.

**SEC. 13. TRANSITIONAL PERSONNEL MANAGEMENT AUTHORITY.**

Any correctional officer or other employee of Federal Prison Industries being paid with nonappropriated funds who would be separated from service because of a reduction in the net income of Federal Prison Industries during any fiscal year specified in section 4(e)(1) shall be—

(1) eligible for appointment (or reappointment) in the competitive service pursuant to title 5, United States Code;

(2) registered on a Bureau of Prisons reemployment priority list; and

(3) given priority for any other position within the Bureau of Prisons for which such employee is qualified.

**SEC. 14. FEDERAL PRISON INDUSTRIES REPORT TO CONGRESS.**

Section 4127 of title 18, United States Code, is amended to read as follows:

**“§ 4127. Federal Prison Industries report to Congress**

“(a) IN GENERAL.—Pursuant to chapter 91 of title 31, the board of directors of Federal Prison Industries shall submit an annual report to Congress on the conduct of the business of the corporation during each fiscal year and the condition of its funds during the fiscal year.

“(b) CONTENTS OF REPORT.—In addition to the matters required by section 9106 of title 31, and such other matters as the board considers appropriate, a report under subsection (a) shall include—

“(1) a statement of the amount of obligations issued under section 4129(a)(1) of this title during the fiscal year;

“(2) an estimate of the amount of obligations that will be issued in the following fiscal year;

“(3) an analysis of—

“(A) the corporation’s total sales for each specific product and type of service sold to the Federal agencies and the commercial market;

“(B) the total purchases by each Federal agency of each specific product and type of service;

“(C) the corporation’s share of such total Federal Government purchases by specific product and type of service; and

“(D) the number and disposition of disputes submitted to the heads of the Federal departments and agencies pursuant to section 4124(e) of this title;

“(4) an analysis of the inmate workforce that includes—

“(A) the number of inmates employed;

“(B) the number of inmates utilized to produce products or furnish services sold in the commercial market;

“(C) the number and percentage of employed inmates by the term of their incarceration; and

“(D) the various hourly wages paid to inmates employed with respect to the production of the various specific products and types of services authorized for production and sale to Federal agencies and in the commercial market; and

“(5) data concerning employment obtained by former inmates upon release to determine whether the employment provided by Federal Prison Industries during incarceration provided such inmates with knowledge and skill in a trade or occupation that enabled such former inmate to earn a livelihood upon release.

“(c) PUBLIC AVAILABILITY.—Copies of an annual report under subsection (a) shall be made available to the public at a price not exceeding the cost of printing the report.”.

**SEC. 15. INDEPENDENT STUDY TO DETERMINE THE EFFECTS OF ELIMINATING THE FEDERAL PRISON INDUSTRIES MANDATORY SOURCE AUTHORITY.**

(a) STUDY REQUIRED.—The Comptroller General shall undertake to have an independent study conducted on the effects of eliminating the Federal Prison Industries mandatory source authority.

(b) SOLICITATION OF VIEWS.—The Comptroller General shall ensure that in developing the statement of work and the methodology for the study, the views and input of private industry, organized labor groups, Members and staff of the relevant Congressional committees, officials of the executive branch, and the public are solicited.

(c) SUBMISSION.—Not later than June 30, 2004, the Comptroller General shall submit the results of the study to Congress, including any recommendations for legislation.

**SEC. 16. SENSE OF CONGRESS.**

It is the sense of Congress that it is important to study the concept of implementing a “good time” release program for non-violent criminals in the Federal prison system.

**SEC. 17. DEFINITIONS.**

Chapter 307 of title 18, United States Code, is amended by adding at the end the following new section:

**“§ 4131. Definitions**

“As used in this chapter—

“(1) the term ‘assembly’ means the process of uniting or combining articles or components (including ancillary finished components or assemblies) so as to produce a significant change in form or utility, without necessarily changing or altering the component parts;

“(2) the term ‘current market price’ means, with respect to a specific product, the fair market price of the product within the meaning of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), at the time that the contract is to be awarded, verified through appropriate price analysis or cost analysis, including any costs relating to transportation or the furnishing of any ancillary services;

“(3) the term ‘import-sensitive product’ means a product which, according to Department of Commerce data, has experienced competition from imports at an import to domestic production ratio of 25 percent or greater;

“(4) the term ‘labor-intensive manufacture’ means a manufacturing activity in which the value of inmate labor constitutes at least 10 percent of the estimate unit cost to produce the item by Federal Prison Industries;

“(5) the term ‘manufacture’ means the process of fabricating from raw or prepared materials, so as to impart to those materials new forms, qualities, properties, and combinations;

“(6) the term ‘reasonable share of the market’ means a share of the total purchases by the Federal departments and agencies, as reported to the Federal Procurement Data System for—

“(A) any specific product during the 3 preceding fiscal years, that does not exceed 20 percent of the Federal market for the specific product; and

“(B) any specific service during the 3 preceding fiscal years, that does not exceed 5 percent of the Federal market for the specific service; and

“(7) the term ‘services’ has the meaning given the term ‘service contract’ by section 37.101 of the Federal Acquisition Regulation (48 C.F.R. 36.102), as in effect on July 1, 2002.”.

**SEC. 18. IMPLEMENTING REGULATIONS AND PROCEDURES.**

(a) FEDERAL ACQUISITION REGULATION.—

(1) PROPOSED REVISIONS.—Proposed revisions to the Governmentwide Federal Acquisition Regulation to implement the amendments made by this Act shall be published not later than 60 days after the date of the enactment of this Act and provide not less than 60 days for public comment.

(2) **FINAL REGULATIONS.**—Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of publication.

(3) **PUBLIC PARTICIPATION.**—The proposed regulations required by subsection (a) and the final regulations required by subsection (b) shall afford an opportunity for public participation in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

(b) **BOARD OF DIRECTORS.**—

(1) **IN GENERAL.**—The Board of Directors of Federal Prison Industries shall issue regulations defining the terms specified in paragraph (2).

(2) **TERMS TO BE DEFINED.**—The Board of Directors shall issue regulations for the following terms:

- (A) Prison-made product.
- (B) Prison-furnished service.
- (C) Specific product.
- (D) Specific service.

(3) **SCHEDULE FOR REGULATORY DEFINITIONS.**—

(A) Proposed regulations relating to the matter described in subsection (b)(2) shall be published not later than 60 days after the date of enactment of this Act and provide not less than 60 days for public comment.

(B) Final regulations relating to the matters described in subsection (b)(2) shall be published not less than 180 days after the date of enactment of this Act and shall be effective on the date that is 30 days after the date of publication.

(4) **ENHANCED OPPORTUNITIES FOR PUBLIC PARTICIPATION AND SCRUTINY.**—

(A) **ADMINISTRATIVE PROCEDURE ACT.**—Regulations issued by the Board of Directors shall be subject to notice and comment rulemaking pursuant to section 553 of title 5, United States Code. Unless determined wholly impracticable or unnecessary by the Board of Directors, the public shall be afforded 60 days for comment on proposed regulations.

(B) **ENHANCED OUTREACH.**—The Board of Directors shall use means designed to most effectively solicit public comment on proposed regulations, procedures, and policies and to inform the affected public of final regulations, procedures, and policies.

(C) **OPEN MEETING PROCESSES.**—The Board of Directors shall take all actions relating to the adoption of regulations, operating procedures, guidelines, and any other matter relating to the governance and operation of Federal Prison Industries based on deliberations and a recorded vote conducted during a meeting open to the public, unless closed pursuant to section 552(b) of title 5, United States Code.

#### **SEC. 19. RULES OF CONSTRUCTION.**

(a) **AGENCY BID PROTESTS.**—Subsection (e) of section 4124 of title 18, United States Code, as amended by section 2, is not intended to alter any rights of any offeror other than Federal Prison Industries to file a bid protest in accordance with other law or regulation in effect on the date of the enactment of this Act.

(b) **JAVITS-WAGNER-O'DAY ACT.**—Nothing in this Act is intended to modify the Javits-Wagner-O'Day Act (41 U.S.C. 46, et seq.).

#### **SEC. 20. EFFECTIVE DATE AND APPLICABILITY.**

(a) **EFFECTIVE DATE.**—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) **APPLICABILITY.**—Section 4124 of title 18, United States Code, as amended by section 2, shall apply to any requirement for a product or service offered by Federal Prison Industries needed by a Federal department or agency after the effective date of the final regulations issued pursuant to section 18(a)(2), or after September 30, 2004, whichever is earlier.

#### **SEC. 21. CLERICAL AMENDMENTS.**

The table of sections for chapter 307 of title 18, United States Code, is amended—

(1) by amending the item relating to section 4121 to read as follows:

“4121. Federal Prison Industries; Board of Directors: executive management.”;

(2) by amending the item relating to section 4124 to read as follows:

“4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries.”;

(3) by amending the item relating to section 4127 to read as follows:

“4127. Federal Prison Industries report to Congress.”;

and

(4) by adding at the end the following new items:

<sup>4130</sup>. Construction of provisions.  
<sup>4131</sup>. Definitions.”

#### PURPOSE AND SUMMARY

H.R. 1829, the “Federal Prison Industries Competition in Contracting Act of 2003,” fundamentally and comprehensively reforms the 1934 authorizing statute of Federal Prison Industries, Inc. (FPI). The bill redefines the relationship between FPI and its currently captive Federal agency “customers,” by empowering Federal agency managers to use competitive contracting procedures to acquire products and services from FPI to improve the prospects of getting “best value” for the taxpayer dollars.

Under H.R. 1829, the buying Federal agency, rather than FPI, will now determine whether the product or service being offered by FPI best meets the agency’s needs in terms of quality and time of delivery. The buying agency, rather than FPI, will now determine the reasonableness of FPI’s offered price. The buying agency will now be able to require FPI to fully and timely perform its contractual obligations in the same manner as it can currently do with any private sector contractor. Like any other supplier to the Government, FPI will now have to be cost-effective and reliable.

H.R. 1829 opens to competition Federal contracting opportunities now reserved for FPI. Private sector firms, and their non-inmate workers, will, for the first time, be able to bid on these Federal business opportunities funded with their tax dollars.

Under current law (18 U.S.C. 4124(a)), FPI has the status of a mandatory supplier under the Government-wide Federal Acquisition Regulation (FAR) in FAR Subpart 8.6 (Acquisition from Federal Prison Industries, Inc.) (48 CFR 8.6). A Federal agency is currently required to acquire from FPI, on a sole-source basis, any product of the type listed in the Schedule of Products published by FPI. In order to make a purchase from a source other than FPI, FAR 8.605 (Clearances) requires the buying agency to obtain FPI’s authorization, referred to by FPI as a “waiver.”

Under FPI’s current waiver procedures, the decision to grant a waiver is made unilaterally by FPI. FPI, rather than the buying agency, determines whether the FPI-offered product meets the buying agency’s needs. Similarly, FPI, rather than the buying agency, determines if FPI’s proposed delivery schedule meets the buying agency’s needs. Finally, FPI, rather than the buying agency, determines the reasonableness of FPI’s price. FPI’s price must simply meet the statutory standard of “current market.” This standard is met if FPI’s offered price does not exceed the highest price offered to the Government for a comparable item, even if no actual sales have been made to the Government at that price.

Under H.R. 1829, FPI will generally have to competitively win its contracts to provide products or services to Federal agencies. To enable FPI to adjust to the requirement that it obtain its contracts on a competitive basis, H.R. 1829 provides FPI with a 5-year transitional period to phase-out its sole-source dealings with its Federal agency customers. Under the transitional authority, Federal agencies are authorized to contract with FPI on a non-competitive basis, subject to annually declining caps on the use of the transitional preferential contracting authority. During the first transitional year, FY 2005, Federal agencies may make noncompetitive awards

to FPI in amounts not to exceed 90 percent of FPI's total sales in FY 2002. The authorized aggregate levels of noncompetitive awards decrease to 85 percent in FY 2006, to 70 percent in FY 2007, to 55 percent in FY 2008, and to 40 percent in the final transitional year, FY 2009.

During the transitional period, the bill requires the Attorney General to annually assess the impact of the phase-out on the number of inmates being employed by FPI and to determine whether such reductions, if any, "present a significant risk of adverse effects on safe prison operation or public safety." If the Attorney General makes such a finding, he shall advise the Congress and make recommendations "for additional authorizations of appropriations to provide additional alternative inmate rehabilitative opportunities and additional correctional staffing, as may be appropriate."

H.R. 1829 also contains permanent authority for a Federal agency to make a sole-source award of an individual contract to FPI, if the Attorney General determines that "the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility." This provision is designed to be an institutional "safety valve" to protect correctional officers, other staff, and inmates. To prevent abuse, the determinations must be made on a contract-by-contract basis and be supported by findings by the warden of the affected correctional facility.

To further help FPI to maintain inmate work opportunities, H.R. 1829, for the first time, provides statutory authority for FPI to enter into a contract with a Federal contractor or subcontractor at any tier to produce products as a subcontractor or supplier in the performance of a Federal contract. The bill makes explicit that Federal prime contractors or subcontractors may not be compelled to use FPI as a subcontractor or supplier.

H.R. 1829, when fully implemented, will generally require FPI to compete for its Federal business opportunities. However, the bill does not alter a broad array of advantages that FPI now enjoys in comparison to private sector firms. Inmate workers of FPI will continue to be paid at wage rates substantially less than the Federal minimum wage, prescribed by the Fair Labor Standards Act. Currently, FPI's highest wage is \$1.15 per hour. The bill does not alter the current situation in which FPI's factory space is provided by the host correctional institution and is constructed at taxpayer expense. Similarly, FPI will continue to receive its utilities from the host institution. As a Government corporation, FPI has a preferential status to receive, without cost, industrial equipment deemed to be in excess of the needs of the various Federal departments and agencies, including the substantial quantities of industrial equipment returned to the Department of Defense by its contractors. As a Government-owned corporation, FPI is exempt from any Federal and State income tax, gross receipts tax, excise tax, or State and local sales taxes on any of its purchases. Finally, FPI has had a \$20 million line-of-credit from the U.S. Treasury on an interest-free basis since 1988.

H.R. 1829 builds upon the improvements made during the Committee's consideration of H.R. 1577 during the 107th Congress to

expand inmates' access to alternative rehabilitative opportunities. The bill reflects the improved access to educational opportunities, both remedial and modern "hands-on" vocational programs, which were added to H.R. 1577 through a Conyers-Frank amendment. That amendment established an Enhanced In-Prison Educational and Vocational Assessment and Training Program and provided \$ 75 million annually to fund it. The bill also authorizes a "Cognitive Abilities Assessment Demonstration Program" within the Federal Bureau of Prisons. Use of such assessment techniques in the special adult education setting has shown important results in better matching education and training programs with needs of the individual. H.R. 1829 retains the pre-release employment assistance program first added to H.R. 1577 at the suggestion of the AFL-CIO.

H.R. 1829, for the first time, establishes statutory prioritization regarding authorized deductions from inmate wages. The provision places an increased focus on deductions associated with restorative justice, such as increased deductions for victim restitution, and to help the inmate make a successful return to society, such as authorization for so-called "gate funds," savings payable at the end of the term of incarceration. These provisions were first added to H.R. 1577 based on testimony provided by the President of the Justice Fellowship, the public policy arm of Prison Fellowship Ministries.

H.R. 1829 improves the process through which FPI's Board of Directors considers expansion proposals from FPI's career management staff. It improves, and makes independent, the process for evaluating the impact on the private sector of a staff-proposed expansion. It increases the opportunity for public comment on proposed expansions and assures that the Board will have direct access to the public comments received. Most importantly, the assessment and public comment process is applied to expansion proposals to offer a new service or a product as well as to expand substantially the production of a currently offered product or service. Finally, the bill provides clearer standards to guide the Board's deliberations regarding a staff-proposed expansion.

H.R. 1829 substantially modifies the structure of FPI's Board of Directors. Currently, the Board is composed of six members, appointed by the President. Two are public members, one representing the Attorney General and the other representing the Secretary of Defense. Of the four private sector members, representing industry, labor, agriculture; and retailers and consumers.

H.R. 1829 replaces the current board with an 11-member board, with three members representing business, three members representing labor, one member with special expertise in inmate rehabilitation techniques, one member representing victims of crime, one member representing inmate workers, and two additional members "whose background and expertise the President deems appropriate." The restructuring of the Board was modeled after the Internal Revenue Service Oversight Board.

Most importantly, the bill imposes a requirement that the Board deliberate and take actions in public and on the record, a fundamental change. Although repeatedly called upon to impose such a requirement upon itself by administrative action, no FPI Board of Directors has deemed it appropriate to do so.

H.R. 1829 mandates improvements in the scope of the matters contained in FPI's annual report to the Congress. These improve-



ments to provide more relevant information to facilitate oversight by the Congress. The bill also seeks to preserve public access to the annual report.

H.R. 1829 contains a provision making explicit that the statutory prohibition on the sale of the results of inmate labor in interstate commerce or foreign commerce, 18 U.S.C. 1761(a), applies equally to services as well as products. For 65 years, this statute was consistently interpreted to prohibit the commercial sale of the results of inmate labor, products as well as services, although the statute does not explicitly mention services, which is not surprising given that a broad service economy did not exist in the 1930's.

A statutory exception to the broad statutory prohibition was provided in 1979 when Congress established the Prison Industry Enhancement (PIE) Program, codified at 18 U.S.C. 1761(c). Under the PIE Program, a State and local prison industry authorized to sell prison-made products and inmate-furnished services, after receiving approval, referred to as "certification," from the Bureau of Justice Assistance within the Department of Justice (DOJ), for each individual project.

Eager to provide services in the commercial market, FPI got a new interpretation of 18 U.S.C. 1761(a) in February 1998 finding no statutory prohibition on the commercial sale of inmate furnished services. The new interpretation did not come in the usual form of a formal legal opinion from DOJ's Office of Legal Counsel, but in a legal memorandum from a special counsel in the Office of Enforcement Operations in DOJ's Criminal Division, which provides legal services to FPI and the Bureau of Prisons.

This "new" interpretation provided FPI and the prison industries of the States and their local governments, authority to sell inmate-furnished services, either directly or in partnerships with private sector firms, without meeting the standards for PIE certification. Notable among the restrictions that could now be bypassed are the prohibition against displacement of non-inmate workers to provide jobs for inmate workers and the requirement to pay inmate workers providing products or services to the commercial market at rates comparable to wages being paid non-inmate workers of private firms providing the same types of products or services. Without the protection of a comparable wage requirement, with a floor of the minimum wage set by the Fair Labor Standards Act, private sector firms using non-inmate workers faced unfair competition from firms using inmate workers being paid inmate wages.

When FPI announced its Commercial Services Market Initiative in August 1998, the business community and labor raised strong objections. The Subcommittee on Oversight and Investigations of the Committee on Education and the Workforce held a hearing on September 20, 2000. Efforts to persuade the Executive Office of the President to call for a legal review of the new interpretation of 18 U.S.C. 1761(a) and to impose a moratorium on any additional use by FPI have been ignored.

A number of States have reasonably relied upon the new interpretation of 18 U.S.C. 1761(a) emanating from DOJ and begun offering inmate-furnished services to the commercial market, either directly or in partnership with private firms. Recognizing this, H.R. 1829, like the reported version of H.R. 1577, contains a "grandfathering" provision, which permits the completion of any ex-

isting agreement with a private sector partner or gives a State program making direct sales a 2-year grace period, after which the activity can only be operated pursuant to a PIE Program certification.

BACKGROUND AND NEED FOR THE LEGISLATION  
INMATE WORK PROGRAMS

Prison systems at all levels use work opportunities to combat idleness and to impart basic work skills that contribute to an inmate's successful return to society upon release. In the Federal Bureau of Prisons (BOP), as in most State prison systems, the vast majority of inmates work at jobs directly related to the operation and maintenance of the correctional facility. Work assignments encompass the full gamut of activities providing basic services, such as kitchens, laundries, plumbing, and work repairs, performing carpentry, painting, and groundskeeping to help maintain the Federal correctional institution.

A much smaller percentage of inmates have work assignments in prison industry programs, which assemble products or furnish services which are generally sold exclusively to governmental agencies. Within the BOP, only about 18 percent of the inmates work for FPI. The remaining 82 percent of the able-bodied inmates within BOP are engaged in institutional work assignments. It should be noted that the percentages of inmates employed by prison industry programs at the State and local levels are substantially lower than the percentage employed by FPI.

Proponents of FPI often assert that participating in FPI helps reduce recidivism. The data underlying that assertion are drawn from the Post Release Employment Project (PREP) study. Since in 1983, BOP has conducted a on going study of the effects of vocational training and inmate work experiences on post-release success. The most recent analysis of the Post Release Employment Project (PREP) data covering 1984 through 1987, issued in 1997, shows that work experiences result in a 24% reduction in recidivism. What is infrequently cited is that same PREP data showed that vocational and remedial education programs have an result in a larger 33% reduction in recidivism.

Recognizing the PREP study's finding regarding the superiority of vocational and remedial education to reduce recidivism, H.R. 1829 contains a broad provision to expand such programs within the Federal prison system. This provision was added to H.R. 1577 by a Conyers-Frank amendment in the 107th Congress.

Further, the legislation supplements these programs with a demonstration program of cognitive ability assessment techniques which improve the application of educational and training resources to maximize the benefits to the recipients in this case Federal inmates. Such programs have a persuasive record of success in the special needs adult education setting.

To further enhance the prospects of Federal inmates making a successful return to society, H.R. 1829 makes available pre-release assistance to improve their prospects of finding and keeping a job upon release. Research has consistently shown that being able to find and maintain employment paying a liveable wage is central to

avoiding a return to criminal activity and ultimately returning to prison.

*Competition from Prison Industry Programs*

While prison industry programs at the State level presently employ only small percentages of able-bodied inmates, when added to the substantial Federal Government sales of FPI, prison industry programs are estimated to have generated total sales of almost \$1.5 billion during 2001, according to statistics reported for 2002 by the National Correctional Industries Association (NCIA). These NCIA statistics do not include the sales of the prison industry programs operated by the Nation's jails.

All of these sales by prison industry programs, Federal, State, and local, are potential Government business opportunities foreclosed to private sector firms, and their non-inmate workers. Yet, all of those foregone Government business opportunities were funded with the tax dollars of those workers and those businesses.

During 2002, FPI had \$678.7 million in "sales" to Federal agencies up from \$583.5 million during 2001. With such Federal "sales," FPI would rank as the 32nd largest Federal contractor among the 100 largest Federal contractors listed in the annual report of the Federal Procurement Data Center, but FPI's "sales" are considered "interagency transfers" and not procurement contract awards that must be reported to the Federal Procurement Data System. To put FPI's Federal sales in context, FPI's Federal "sales" exceeded those of Exxon-Mobil Corporation and General Motors Corporation.

During 2002, FPI operated a centrally-managed chain of 111 factories located at 71 institutions across the Nation. At the end of 2002, FPI provided work assignments to 21,778 inmates. FPI offers over 250 broad categories of products and services through what FPI refers to as its eight "Business Groups." They are: (a) the Clothing and Textiles Business Group; (b) the Electronics Business Group; (c) the Fleet Management and Vehicular Components Business Group; (d) the Graphics Business Group; (e) the Industrial Products Business Group; (f) Office Furniture Business Group; (g) the Recycling Business Group; and (h) the Services Business Group.

FPI has been expanding its offerings by entering into contractual partnerships with private sector firms, who are able to market their products to Federal agencies on a non-competitive basis under the authority of FPI's mandatory source status. Such contractual arrangements are helping FPI to improve the quality of the end-products being delivered to the Federal agencies and the timeliness of those deliveries.

Such arrangements raise substantial questions regarding the amount of inmate labor actually represented in the products being furnished. In these situations, contract between FPI and its various contractual partners generally provides some indication of the amount of inmate labor. Most provide simply for some inmate assembly from complete kits furnished by the contractual partner.

Somewhat mirroring the growth of the Federal inmate population, FPI's sales have grown exponentially since the mid-1980's. FPI's sales were \$29 million in 1960. They reached \$117 million in 1980. By 1985, they had grown to \$240 million. FPI's sales grew to \$339 million in 1990, while total Federal procurement expendi-

tures began dropping. By 1995, FPI had grown to \$459.1 million in sales. By 2000, FPI had sales of \$546.3 million. By the next year, FPI sales were \$583.5 million.

From the viewpoint of those supporting fundamental and comprehensive reform of FPI's preferential status within the Federal procurement system, growth in FPI sales simply diminishes Federal business opportunities for private sector firms and their non-inmate workers. Such diminished Government sales opportunities reduce work opportunities for their law-abiding workers. FPI's unfair competition can be especially job threatening in the context of a "specific product" targeted for an FPI expansion, in which FPI may ultimately take 100 percent of the Federal market.

#### *Mandatory Source Status*

FPI's sales growth would be praiseworthy, if these contract opportunities were won competitively. They are not. Rather they are won because FPI has been granted extraordinary preferential treatment in dealing with its Federal agency "customers" as a mandatory source.

#### *Preferential Status Regarding Contract Performance*

In addition to being able to take contract opportunities on a non-competitive basis, FPI's authorizing statute also empowers FPI, rather than its Federal agency "customers" to determine the adequacy of FPI's own contract performance. Under FPI's statute, if any dispute as to "price, quality, character, or suitability" of an FPI-furnished product arises it must be referred to a high-level arbitration panel comprised of the President (delegated to the Director of the Office of Management and Budget), the Attorney General, and the Administrator of General Services. According to the General Accounting Office (GAO), this Arbitration Board had not met since the 1930's, until it was reactivated at the request of FPI in 1998. At that time, the jurisdiction of the arbitration board was focused exclusively on reviewing appeals of a denial of a waiver request. FPI refers to the arbitration board as the "Waiver Review Panel."

#### *Unique Pricing Standard*

FPI's authorizing statute requires that the price FPI charges its Federal agency customers cannot exceed a "current market price." The statute and the FAR do not define current market price. Rather FPI operates on the basis of a 1931 Arbitration Board decision that says that FPI's price meets the statutory "current market price" standard, if the price FPI intends to charge its Federal agency customer does not exceed the highest price at which a comparable product was offered to the Government. FPI determines the comparability of products as well as the time-period for which any price survey it may conduct remains valid.

#### *Over-Pricing as the Source of FPI's Asserted Self-sufficiency*

Those advocating reform of FPI's authorizing statute assert that this unique standard permits FPI to charge prices that exceed prices that an agency customer could obtain for comparable or higher quality products furnished by private sector vendors with better performance records of timeliness and compliance with speci-

fications. FPI routinely asserts that it is wholly self-sufficient based on its sales. Proponents of reform respond that FPI's asserted self-sufficiency is founded upon its ability to overcharge its agency customers for products of lesser quality insulated from any means of effective challenge by the aggrieved buying agency.

With regard to over-pricing, corroboration is provided by a 1991 report by the DOD Inspector General and GAO reports in 1993 and 1998. On October 11, 1991, the DOD IG issued Audit Report No. 92-005, DOD PROCUREMENTS FROM FEDERAL PRISON INDUSTRIES. The DOD IG reviewed a sample of FPI contracts, over a 7-year period (FY84 to FY90) to supply electronic and electrical cables to DOD. The audit report found overpricing in 89% of the contracts that averaged 15%.

On October 5, 1998, the DOD IG issued Audit Report No. 99-001, DEFENSE LOGISTICS AGENCY PROCUREMENTS FROM FEDERAL PRISON INDUSTRIES, INC. The DOD IG reviewed 1,786 contracts awarded during FY96 and FY97 for items, 87% of the textiles, for which DLA made purchases from FPI and commercial sources. Even for textiles, items for which FPI is especially competitive due to its lower labor costs, FPI's prices were higher than commercial vendors in 42% of the contracts reviewed.

On July 7, 1993, GAO issued Report No. GGD 93-51R, entitled FPI SYSTEMS FURNITURE. In accessing FPI pricing for systems furniture, the GAO compared FPI's pricing with the prices available from commercial vendors through the GSA's Multiple Award Schedule Program. FPI's prices were higher than the offered prices of 9 of the 11 commercial systems furniture vendors under the MAS Program. FPI's prices averaged 15% higher than the prices of the three commercial vendors whose sales in 1992 aggregated to 60% of the systems furniture sales under the MAS Program. Further, the three most successful commercial suppliers were not simply "low-end product" vendors.

#### *Late Deliveries*

FPI's captive Federal agency customers have consistently complained about the timeliness of FPI's deliveries. On July 31, 1998, GAO issued FEDERAL PRISON INDUSTRIES: DELIVERY PERFORMANCE IMPROVING BUT PROBLEMS REMAIN (GAO/GGD-98-118; June 30, 1998) that provides current support for such criticism.

#### *Quality Problems*

While FPI asserts that it only provides quality products to its Federal agency customers, on time, and at fair prices, these assertions are routinely challenged by those supporting fundamental and comprehensive reform of FPI's authorizing statute. A 1998 report by GAO, FEDERAL PRISON INDUSTRIES: LIMITED DATA AVAILABLE ON CUSTOMER SATISFACTION (GAO/GGD-98-50; March 16, 1998) calls into question FPI's ability to substantiate their assertions of being a quality contractor. GAO found that "FPI lacks sufficient data to support any overall conclusions about whether Federal customers who buy and use its products and services are satisfied with their timeliness, price, and quality. FPI's management systems are not designed to systematically collect and analyze Federal customers' views about its products and services."

With regard to those who question FPI's assertion that it only deliver to its Federal agency customers products that meets their specifications, persuasive corroboration is provided in a comprehensive 1992 report by the DOD Inspector General, QUALITY ASSURANCE ACTIONS RESULTING FROM ELECTRONIC COMPONENT SCREENING, Report No. 92-099. During a review of DOD quality assurance programs for accessing the quality of electronic components and cables furnished to DOD during FY 88-90, the DOD IG found that among the top-20 suppliers of electronic components, FPI ranked 8th in terms of sales, but first in number of Product Quality Deficiency Reports (PQDRs) identified, 106 out of 170. Among all the contractors furnishing electronic components and cables to DOD during the review period, the DOD IG identified the contractors with most PQDRs. Three FPI factories were among the top-15 poor performers, with 100 PQDRs out of 245, or 40.1% of the total. The seriousness of these quality deficiencies by the DOD IG is amplified when it is recognized that many contracting officers don't even bother to cite FPI for quality deficiencies, since, in practical terms, FPI determines the validity of any quality delinquency report made against any FPI product.

The Federal Prison Industries Competition in Contracting Act of 2003 thoroughly restructures the relationship between FPI and its Federal agency customers. The bill empowers them to use competitive contracting procedures to obtain "best value" for the taxpayer dollars being expended. Similarly, H.R. 1829 assures that the buying agencies will be able to avail themselves of generally-applicable contract administration tools currently available for use with respect to any private sector supplier. Finally, such a fundamental restructuring of the relationship between the Federal agencies and FPI will provide opportunities for private sector firms, and their non-inmate workers, to compete for Federal contracting opportunities funded with their tax dollars.

#### HEARINGS

No hearings were held on H.R. 1829 in this Congress. However, H.R. 1829 is substantially identical to H.R. 1577, as reported by the Committee in the 107th Congress. The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on H.R. 1577 on April 26, 2001.

#### COMMITTEE CONSIDERATION

On July 25, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 1829 with an amendment by voice vote, a quorum being present.

#### VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that the following votes occurred during the Committee's consideration of H.R. 1829.

#### GREEN AMENDMENT

Mr. Green of Wisconsin offered an amendment which was defeated by a roll-call vote of 8 ayes to 19 noes. The Green amend-

ment would have empowered the Attorney General to suspend FPI's transition to competition by making certain findings.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde .....			
Mr. Coble .....		X	
Mr. Smith .....			
Mr. Gallegly .....			
Mr. Goodlatte .....	X		
Mr. Chabot .....	X		
Mr. Jenkins .....		X	
Mr. Cannon .....		X	
Mr. Bachus .....	X		
Mr. Hostettler .....		X	
Mr. Green .....	X		
Mr. Keller .....		X	
Ms. Hart .....		X	
Mr. Flake .....		X	
Mr. Pence .....		X	
Mr. Forbes .....		X	
Mr. King .....		X	
Mr. Carter .....		X	
Mr. Feeney .....		X	
Mrs. Blackburn .....		X	
Mr. Conyers .....		X	
Mr. Berman .....			
Mr. Boucher .....			
Mr. Nadler .....		X	
Mr. Scott .....	X		
Mr. Watt .....		X	
Ms. Lofgren .....	X		
Ms. Jackson Lee .....	X		
Ms. Waters .....	X		
Mr. Meehan .....			
Mr. Delahunt .....			
Mr. Wexler .....			
Ms. Baldwin .....			
Mr. Weiner .....			
Mr. Schiff .....		X	
Ms. Sánchez .....		X	
Mr. Sensenbrenner, Chairman .....		X	
Total .....	8	19	

WATERS AMENDMENT

Ms. Waters offered an amendment which was defeated on a roll-call vote of 5 ayes to 22 noes. The amendment would have mandated a minimum wage of \$2.50 for inmates with work assignments with Federal Prison Industries, Inc.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde .....			
Mr. Coble .....		X	
Mr. Smith .....		X	
Mr. Gallegly .....			
Mr. Goodlatte .....		X	
Mr. Chabot .....		X	
Mr. Jenkins .....		X	
Mr. Cannon .....		X	
Mr. Bachus .....		X	

## ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Hostettler .....		X	
Mr. Green .....		X	
Mr. Keller .....		X	
Ms. Hart .....		X	
Mr. Flake .....		X	
Mr. Pence .....		X	
Mr. Forbes .....		X	
Mr. King .....		X	
Mr. Carter .....		X	
Mr. Feeney .....		X	
Mrs. Blackburn .....		X	
Mr. Conyers .....	X		
Mr. Berman .....			
Mr. Boucher .....			
Mr. Nadler .....			
Mr. Scott .....		X	
Mr. Watt .....	X		
Ms. Lofgren .....	X		
Ms. Jackson Lee .....	X		
Ms. Waters .....	X		
Mr. Meehan .....			
Mr. Delahunt .....			
Mr. Wexler .....			
Ms. Baldwin .....			
Mr. Weiner .....			
Mr. Schiff .....		X	
Ms. Sánchez .....		X	
Mr. Sensenbrenner, Chairman .....		X	
Total .....	5	22	

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1829, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:



U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, September 17, 2003.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1829, the Federal Prison Industries Competition in Contracting Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.  
 Ranking Member

*H.R. 1829—Federal Prison Industries Competition in Contracting Act of 2003.*

SUMMARY

The proposed legislation would amend the laws that authorize the Federal Prison Industries (FPI), a Government-owned corporation that produces goods and services for the Federal Government with prison labor. Under current law, Federal agencies are required to purchase products from FPI if products are available to meet the agencies' needs and the cost would not exceed current market prices. Such products include office furniture, textiles, vehicle tags, and fiber optics. Under the proposed legislation, this requirement would be reduced over the next several years, and the share of the Federal market that FPI holds for the products and services it provides would be limited to 20 percent and 5 percent, respectively.

CBO estimates that implementing H.R. 1829 would cost \$587 million over the 2004–2008 period, subject to appropriation of the necessary amounts. The bill also would affect direct spending by FPI, but CBO estimates that net changes in direct spending would be insignificant for each year. Major elements of that cost estimate are summarized below.

The legislation would direct FPI to establish a program that would produce products that would be donated to nonprofit organizations. It would authorize the appropriation of \$7 million a year for fiscal years 2004 through 2008 to carry out the new donation program. Assuming the appropriation of the authorized amounts, CBO estimates that implementing this program would cost about \$35 million over the 2004–2008 period. All costs of the donation program would be subject to appropriation action.

Section 10 would authorize the Attorney General to establish a Federal Enhanced In-Prison Vocational Assessment and Training Program in Federal institutions and would authorize the appropriation of \$75 million each year beginning in 2004 for such training. Assuming the appropriation of the specified amounts, CBO es-

estimates that implementing this new program would cost \$366 million over the 2004–2008 period.

As FPI operations decline under the legislation, additional security costs paid for with appropriated funds would be incurred. CBO estimates that the Federal Bureau of Prisons would initially need about 300 security officers to guard the inmates that would no longer be working at FPI facilities as a result of the legislation. (Some security costs are paid for now out of FPI's direct spending.) We estimate that implementing H.R. 1829 would cost \$21 million in 2004 and \$177 million over the 5-year period for the salaries and benefits of security officers, assuming the appropriation of the necessary amounts.

H.R. 1829 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates the cost to State, local, and tribal governments for complying with this mandate would be insignificant and thus well below the threshold established in the act (\$59 million in 2003, adjusted for inflation). This bill contains no new private-sector mandates as defined in UMRA.

#### ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the amendment is shown in the following table. The cost of this legislation falls within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
FPI Donation Program					
Authorization Level	7	7	7	7	7
Estimated Outlays	7	7	7	7	7
Enhanced Vocational Assessment and Training					
Authorization Level	75	75	75	75	75
Estimated Outlays	66	75	75	75	75
Cognitive Abilities Assessment Demonstration Program					
Authorization Level	3	3	3	0	0
Estimated Outlays	2	3	3	1	0
Additional Discretionary Security Costs					
Estimated Authorization Level	24	30	37	43	49
Estimated Outlays	21	30	36	42	48
Total Changes					
Estimated Authorization Level	109	115	122	125	131
Estimated Outlays	96	115	121	125	130

CBO assumes that the proposed legislation would be enacted near the beginning of fiscal year 2004 and that the authorized amounts will be appropriated for each year. We estimate that implementing the programs authorized in section 10 of H.R. 1829 would cost \$410 million over the 2004–2008 period. In addition, CBO estimates that implementing H.R. 1829 would cost the Federal Bureau of Prisons \$21 million in 2004 and about \$177 million over the 5-year period for additional security officers to supervise inmates that would no longer be working as a result of enacting this legislation. The costs to implement the bill's provisions would be subject to appropriation of the necessary amounts.

*FPI Donation Program*

The legislation would authorize the Attorney General to establish a new FPI program in Federal institutions that, subject to appropriation of the necessary amounts, would produce goods and services to be donated to nonprofit organizations instead of being offered for purchase to the Federal Government. It would authorize the appropriation of \$7 million in fiscal year 2004 and \$35 million over the 2004–2008 period to operate the new donation program in Federal institutions. Costs would include inmate and civilian salaries, raw materials, maintenance, and other expenses to convert manufacturing facilities to produce products desirable to nonprofit organizations.

*Enhanced In-Prison Vocational Assessment and Training*

Section 10 would authorize the Attorney General to establish a Federal Enhanced In-Prison Vocational Assessment and Training Program in Federal institutions and would authorize the appropriation of \$75 million each year after 2003 for such program. Federal institutions currently participate in vocational assessment and training programs, and we assume that the program that would be authorized by the amendment would be an expanded version of the current program. Assuming the appropriation of the specified amounts, CBO estimates that the enhanced program would cost \$366 million over the 2004–2008 period to increase the number of inmates who participate in the training and to expand the services provided by the program.

*Cognitive Abilities Assessment Demonstration Program*

Section 10 also would authorize the appropriation of \$3 million in fiscal years 2004, 2005, and 2006 to the Bureau to establish the Cognitive Abilities Assessment Demonstration Program in 12 Federal institutions. The project would assess inmate cognitive abilities and perceptual skills to determine what rehabilitative activities would be most successful for the project's participants. CBO estimates that this provision would cost \$9 million over the 2004–2008 period, assuming the appropriation of the authorized amounts.

*Additional Discretionary Security Costs*

The bill would restrict the portion of the Federal market for goods and services that FPI can serve and reduce the requirement for Federal agencies to purchase such goods and services from FPI. Based on information from the Department of Justice (DOJ) and major Federal customers of FPI, we expect that FPI's total sales to the Federal Government would decrease under the bill by 20 percent of projected sales in 2004 and that such sales would continue to decline—eroding by 40 percent of anticipated sales by 2008. Because of the reduction in Federal sales, CBO expects there would be a corresponding reduction in the number of inmates employed by FPI.

Because the demand for FPI goods and services is expected to decline under H.R. 1829, FPI would provide security for fewer inmates during work hours. The costs of FPI operations, including security, are directly financed from the sale of its goods and services.

No discretionary costs are incurred to provide security to prisoners participating in FPI programs during work hours.

Based on information from DOJ about the number of prison security personnel needed to guard the prison population, CBO estimates that the Federal Bureau of Prisons would need to increase discretionary spending to pay for 300 security officers to supervise prisoners no longer supervised by FPI during the work day. We estimate the number of guards required would grow to 600 by 2008 as the operations of FPI decline. We estimate that implementing H.R. 1829 would cost \$21 million in 2004 and \$177 million over the 5-year period for the salaries and benefits of such officers, assuming the appropriation of the necessary amounts.

#### *Changes in FPI Direct Spending*

The legislation would limit the portion of the Federal market for any product or service that FPI can provide to the Government to 20 percent and 5 percent, respectively. For example, FPI provides 94 percent of all mail carrier bag repair for the U.S. Postal Service. The legislation would prevent FPI from providing more than 5 percent of that service. In addition, it would gradually reduce the requirement for Federal agencies to purchase FPI products and services. Based on information from the DOJ, and major Federal customers of FPI, we expect that FPI's total sales to the Federal Government would decrease by 20 percent of projected sales in 2004 and that such sales would continue to decline—eroding by 40 percent of anticipated sales by 2008.

The cost to Federal Prison Industries to manage and produce products for the Federal Government is currently funded entirely by collections from the agencies that purchase FPI products. Those current collections and FPI's spending are considered direct spending. CBO estimates that the total amount collected by FPI would decrease over the 5-year period under the proposed legislation as agencies procure fewer FPI products. But that reduction in collections would be offset by a reduction in the cost to produce such products. Therefore, CBO estimates that enacting this legislation would result in no significant net change in direct spending for each year.

#### ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1829 contains an intergovernmental mandate as defined in UMRA because it would require work programs in State and local prisons that provide services in interstate commerce to obtain Federal certification in order to continue operating after September 2005 or the end of their current contract. CBO estimates that the administrative cost to obtain this certification would be insignificant and well below the threshold established in UMRA (\$59 million in 2003, adjusted annually for inflation). This bill would impose no other significant costs on State, local, or tribal governments.

#### ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill contains no new private-sector mandates as defined in UMRA.

## ESTIMATE PREPARED BY:

Federal Costs: Lanette J. Walker (226–2860)  
Impact on State, Local, and Tribal Governments: Melissa Merrell  
(225–3220)  
Impact on the Private Sector: Paige Piper/Bach (226–2940)

## ESTIMATE APPROVED BY:

Peter H. Fontaine  
Deputy Assistant Director for Budget Analysis

COMMITTEE RESPONSE TO  
CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee disagrees with the cost estimate prepared by the Congressional Budget Office (CBO) relating to the reported text of H.R. 1829. This response will address matters that the cost estimate fails to address and matters in which CBO's conclusions regarding the impact of the bill are not supported by the provisions of the bill as reported.

First, the CBO cost estimate fails to acknowledge the savings that can be expected from the use of competitive procurement procedures required by the bill rather than sole-source contracting procedures that federal agencies now must use in buying from Federal Prison Industry (FPI).

Use of competitive procurement techniques to obtain goods and services, rather than relying on non-competitive contract awards to a sole-source supplier, have consistently resulted in procurement savings of between 10 and 30 percent. This standard was first established through the substantial work done by the U.S. General Accounting Office (GAO) during the mid-1980s in response to the case of egregious spare parts overpricing confronted by the Department of Defense. The benefits of competitive acquisition techniques have been consistently validated through subsequent work by GAO and the various Inspectors General (IG), most notably the DOD IG. Some of this subsequent work suggests savings at the higher end of the range.

The Committee understands that CBO has highlighted the benefits of competitive acquisition techniques in estimates related to various legislative proposals relating to reforms of the Federal procurement process. Similarly, the Committee understands that CBO has highlighted the benefits of a competitive procurement in other work. Inexplicably, the CBO cost estimate with respect to H.R. 1829 failed to do so.

In FY 2002, FPI had sales of \$678.7 million, up from \$583.5 in FY 2001. Such sales make FPI the 32d largest contractor to the Federal Government. All of FPI sales to the Federal agencies are on a non-competitive basis.

H.R. 1829 empowers FPI's currently captive Federal agency customers to regularly use competitive procurement techniques. Based on FPI's sales in FY 2002 that means that potential savings in acquisition costs in the range of \$6.9 million to \$203.6 are predictable and should have been acknowledged by CBO.

Further, competitive procurement techniques have been consistently shown to improve the quality of the products being offered. They, too, should have been acknowledged.

Competitive procurement techniques also improve the timeliness of deliveries by vendors who know that their past performance records will have a significant impact on the likelihood of winning future business. Timely deliveries can result in savings through cost avoidance. If a Federal agency does not have to extend on a month-to-month basis the lease on its current space because late deliveries preclude the occupancy of its new leased space, the agency avoids paying taxpayer money for space that cannot be occupied. Such cost avoidances, too, are real savings and should have been, at least, acknowledged.

Next, the CBO makes a series of conclusions regarding the impact of H.R. 1829 that are directly contradicted by express provisions of the bill, as reported, or ignore other provisions that provide alternative inmate work opportunities or rehabilitative opportunities that also combat idleness and better prepare inmates for a successful return to society.

The cost estimate concludes that FPI operations will “decline under the legislation”, necessitating the hiring of additional correctional officers “to guard the inmates that would no longer be working at FPI facilities as a result of the legislation.” Specifically, CBO asserts that FPI’s sales will decline due to the enactment of H.R. 1829 by 20 percent in FY 2004, the year of enactment. CBO goes on to assert that such reduced sales will require the hiring of 300 additional correctional officers in FY 2004 at an estimated cost of \$21 million. The CBO-forecasted decline in FPI Federal sales and the resulting projected need for additional correctional officers in FY 2004 projected by CBO have no basis. They are contradicted by the provisions of the reported bill. Under Section 20 (Effective Date and Applicability) of the bill, there is no change to FPI’s status as a mandatory source to its captive Federal agency customers during the year following the date of enactment. FY 2004 is devoted to the promulgation of modifications to the Government-wide Federal Acquisition Regulation (FAR) and associated rule-making by the FPI Board of Directors, with ample opportunity for public comment, as prescribed by Section 18 (Implementing Regulations and Procedures).

The CBO cost estimate goes on to assert that FPI’s sales will continue to decline, “eroding by 40 percent” by FY 2008. CBO offers two reasons to support its forecasted 40 percent decline in the FPI sales.

First, the cost estimate erroneously asserts that H.R. 1829 would “restrict the portion of the federal market for goods and services that FPI can serve”, to 20 percent and 5 percent respectively. The CBO estimate specifically cites as an example the fact that FPI provides 94 percent of the mail bag repair for the U.S. Postal Services (USPS). CBO then states that “the legislation would prevent FPI from providing more than 5 percent of that service.”

Again, the plain text of the bill, as reported, contradicts the basis for CBO’s assertion. As introduced, the bill defined the term “reasonable share of the market,” specifying that a 20 percent market share for a specific product and 5 percent market share for a specific service. As introduced, the bill precluded the FPI Board of Di-

rectors from authorizing FPI sales of a specific product or a specific service in amounts in excess of a “reasonable share of the market”. To address the example cited by CBO, the Chairman, joined by the Ranking Democratic Member, offered an amendment that provided flexibility to the Board to authorize FPI sales of specific products and services at amounts in excess of market shares of 20 percent and 5 percent respectively. Such higher sales could be authorized when requested by the buying agency, such as the USPS. The provision also provided a broader “for good cause shown” standard, that is restricted only by the necessity of being approved by eight members of the eleven-member Board rather than a simple majority.

Second, the CBO erroneously asserts that H.R. 1829 would “reduce the requirement for federal agencies to purchase goods and services from FPI.” Again, the text of the bill contradicts CBO’s assertion.

H.R. 1829 places an affirmative responsibility on a buying agency to solicit an offer from FPI whenever it has a requirement to purchase a product or service authorized to be offered by sale by FPI and listed in its catalog of offerings. Private sector vendors to the Federal Government must find their contracting opportunities on their own. FPI’s offer is considered under the same evaluation criteria as a product or service offered by a private sector offeror. Award of a contract to the offeror, whether FPI or a private-sector offeror, is made after being determined by the buying agency’s contracting officer to represent the “best value” to the taxpayer on the basis of the offered-purchase price, past performance evaluation, and other price-related selection criteria.

What is changed by H.R. 1829 is that FPI must now offer a product or service that represents the “best value” for the taxpayer dollars being spent and to fully and timely perform its contractual obligations as required of all other Federal contractors. As CBO notes, under FPI’s existing statute, Federal agencies are by statute required to purchase products offered by FPI that “meet their requirements”, are “available” to meet those needs, and are offered at prices that do “not exceed a current market price”.

Under the implementing FAR regulations that essentially created FPI’s status as a mandatory source of supply and FPI’s procedures and practices regarding the exercise of that status, FPI, rather than the buying agency, makes the key buying decisions. FPI, rather than the buying agency, determines whether the FPI-offered product meets the buying agency’s needs. FPI, rather than the buying agency, determines if FPI’s proposed delivery schedule meets the buying agency’s needs. FPI, rather than the buying agency, determines the reasonableness of FPI’s price.

Today, FPI’s price meets “current market” standard, if FPI’s offered price does not exceed the highest price offered to the Government for a comparable item. There is no requirement that actual purchases have been made by a Federal agency at that price.

The amount of FPI’s sales to the various Federal agencies, like the sales volume of any private sector contractor, will be determined by the extent that FPI is able to provide a high quality product, when needed, at the best price, all tested in the crucible of competition.

If FPI's sales fall, it confirms that FPI's captive Federal agency customers have been forced by FPI's mandatory source status to accept products and contract performance at prices that are not even an approximation of "best value". In essence, these currently captive federal agencies have been involuntarily subsidizing FPI's operations with the taxpayer dollars appropriated for the conduct of their missions on behalf of the public.

The CBO cost estimate also ignores that H.R. 1829 provides a five-year period during which FPI can phase-out its sole dealings with its federal agency customers and adjust to the requirement that it obtain its contracts on a competitive basis. Under the transitional authority, Federal agencies are authorized to contract with FPI on a non-competitive basis, subject to annually declining caps on the use of the transitional preferential contracting authority. During the first transitional year, FY 2005, Federal agencies may make noncompetitive awards to FPI in amounts not to exceed 90 percent of FPI's total sales in FY 2002. The authorized aggregate levels of noncompetitive awards decreases to 85 percent in FY 2006, to 70 percent in FY 2007, to 55 percent in FY 2008, and 40 percent in the final transitional year, FY 2009.

This transitional authority raises additional substantial questions regarding the validity of CBO's dire estimates regarding the loss of FPI sales during the period FY 2004 through FY 2008. Obviously, the CBO estimates about additional correctional staff that will be required are without basis if their estimate regarding declining sales lacks a credible basis.

The CBO cost estimate fails to even acknowledge the potential to provide alternative inmate work opportunities in performing work for non-profit organizations. Inmates derive no benefit from the corrosive manner in which FPI is currently able to compel its captive Federal agencies to purchase products offered by FPI. Inmates benefit equally in terms of reduced idleness and rehabilitation whether they are doing work for non-profit organizations or doing traditional industrial work that has to be sold in the same competitive economic environment in which they will have to operate upon release.

Similarly, CBO has chosen to ignore the benefits of the alternative inmate rehabilitative opportunities provided by the bill. Such programs help combat idleness as well. Further, the Bureau of Prisons' own Post Release Employment Project (PREP) study confirms that inmates participating in focused remedial and vocational educational programs are 32 percent less likely to return to prison than those who participate in traditional industrial programs who are 24 percent less likely to recidivate.

Finally, the CBO cost estimate erroneously asserts that H.R. 1829 establishes a new intergovernmental mandate and it does not. Rather, it clarifies that long-existing law, which has been called into question by an erroneous legal opinion, still applies. There is nothing new in that clarification.

Section 1761(a) of Title 18, United States Code, prohibits the results of inmate labor from being sold in interstate or foreign commerce. This prohibition applies equally to inmates incarcerated by State and local governments and the Federal Bureau of Prisons.

Section 1761(c) of Title 18, first enacted in 1979, provides the principal exception to the general prohibition on the commercial



sale of the results of inmate labor contained in 18 U.S.C. 1761(a). It authorizes the Prison Industry Enhancement (PIE) Program under which a State-sponsored prison industry program may be authorized to sell in the commercial market, either directly or through a private-sector partner, products produced, or services furnished, by inmates incarcerated by the State or one of its units of local government. Each proposed PIE project must apply for PIE certification from the Bureau of Justice Assistance (BJA) at the Department of Justice. Application is voluntary. Obtaining PIE Certification requires the PIE-certified program to make quarterly reports to BJA during the term of the program's operation.

These reports are compiled for BJA by the National Correctional Industries Association (NCIA). A review of those NCIA reports reflects that programs in which State or local inmates are furnishing services for sale in the commercial market have sought and been granted PIE certification, since the PIE Program's expansion to all 50 States, which was statutorily authorized in 1990.

As previously described, Section 7 (Clarifying Amendment Relating to Services) of H.R. 1829 makes explicit that the statutory prohibition on the sale of the results of inmate labor in interstate commerce or foreign commerce contained in 18 U.S.C. 1761(a) applies equally to services as well as products. For 65 years, this statute was consistently interpreted to prohibit the commercial sale of inmate-furnished services as well as inmate-produced products.

In February, 1998, FPI obtained a "new" interpretation of 18 U.S.C. 1761(a) finding no statutory prohibition on the commercial sale of inmate furnished services. The "new" interpretation did not come in the usual form of a formal legal opinion from DOJ's Office of Legal Counsel, but in a legal memorandum from a special counsel in the Office of Enforcement Operations in DOJ's Criminal Division, which provides legal services to FPI and the Bureau of Prisons.

This "new" interpretation provided FPI and the prison industries of the States and their local governments, authority to sell inmate-furnished services, either directly or in partnerships with private sector firms, without meeting the standards for PIE certification. Notable among the restrictions that could now be bypassed are the prohibition against displacement of non-inmate workers to provide jobs for inmate workers and the requirement to pay inmate workers providing products or services to the commercial market at creates comparable to wages being paid non-inmate workers of private firms providing the same types of products or services. Without the protection of a comparable wage requirement, with a floor of the minimum wage set by the Fair Labor Standards Act, private sector firms using non-inmate workers faced unfair competition from firms using inmate workers being paid inmate wages.

A number of States have reasonably relied upon the new interpretation of 18 U.S.C. 1761(a) emanating from DOJ and began offering inmate-furnished services to the commercial market, either directly or in partnership with private firms. Recognizing this, Section 7 contains a "grandfathering" provision, which permits the completion of any existing agreement with a private sector partner or gives a state program making direct sales a 2-year grace period. The provision makes explicit that after the expiration of the specified "grace periods," a State-sponsored prison industry program

wishing to offer for commercial sale inmate furnished services do so pursuant to the existing requirements of the PIE Program.

Making explicit the continuing application of the prescriptions of 18 U.S.C. 1761(c), and its implementing procedures on this provision, CBO appears to base its assertion that H.R. 1829 establishes a new intergovernmental mandate on this provision Committee respectfully disagrees.

For the foregoing reasons, the Committee believes the analysis provided in the CBO cost estimate suffers from several fundamental flaws that undermine its conclusions.

#### PERFORMANCE GOALS AND OBJECTIVES

In compliance with clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee makes the following statement of performance goals and objectives.

H.R. 1829 provides authorizations of appropriations for programs relating to improving the prospects for Federal inmates to make a successful return to society thus reducing the current levels of recidivism within the Federal Bureau of Prisons. Section 10(a)(3) provides \$75 million annually, beginning in FY 2004, to support the Enhanced In-Prison Educational and Vocational Assessment and Training Program, authorized by section 10(a)(1). Section 10(b)(4) provides \$7 million for each of the fiscal years 2004 through 2008 in support of the inmate work opportunities in support of not-for-profit entities authorized by section 10(b) principally to pay the wages of inmates performing work for such entities on a non-reimbursable basis. Section 10(c)(2) provides \$3 million annually in fiscal year 2004 through 2006 to support the Cognitive Abilities Assessment Demonstration Program established by section 10(c)(1)(A). Various provisions of the bill provide for on-going monitoring and assessment of the reforms contemplated by the legislation by the Attorney General as well as other external monitoring under the direction of the Comptroller General of the United States. Taken together, these monitoring requirements as well as the enhanced statutorily-mandate annual reports to the Congress regarding FPI's activities, impacts, and benefits will provide the Congress with adequate information to conduct effective oversight of the various improvements made by H.R. 1829.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

##### *Sec. 1. Short Title; Table of Contents*

Subsection (a) of this section establishes the bill's citation as the "Federal Prison Industries Competition in Contracting Act of 2003."

Subsection (b) sets forth a table of contents of headings of the various sections of the bill.

*Sec. 2. Government-wide Procurement Policy Relating to Purchases From Federal Prison Industries*

Section 2 contains a revised section 4124 of title 18. Subsection (a) of revised section 4124, makes explicit that a purchase of a product or service from Federal Prison Industries, Inc. (FPI) by a Federal agency shall be purchased through a procurement made on a competitive basis, except to the extent that an other than competitive award is expressly authorized.

Revised section 4124 is intended to change the mandatory source relationship between a Federal agency and FPI and realign that relationship to mirror the business relationship that exists between a Federal agency and a private sector supplier and eliminate the revised section 4124 also makes explicit that services obtained from FPI by a Federal agency must be obtained through procurement contracts.

The proposed substitution of the terms “Federal departments and agencies,” defined in 18 U.S.C. 5, for the terms “Federal departments, agencies, and all other institutions of the United States” is not intended to alter the overall reach of the current statute.

New subsection (b) of revised section 4124 addresses the solicitation of offers from FPI by the various Federal agencies and the subsequent award of a contract to FPI on either a competitive or sole-source basis.

New paragraph (1) of subsection (b) places an affirmative responsibility on the various Federal agencies to solicit an offer from FPI when making a purchase, above \$ 2,500, for any product or service authorized by FPI’s Board of Directors to be offered for sale by FPI and listed in it’s Schedule of Products.

New paragraph (2) of subsection (b) requires the use of competitive procedures for the solicitation and award of the contract, unless the use of other than competitive procedures is authorized by paragraph (3) or by section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C 253(c)). The contract shall be awarded to FPI, if the contracting officer determines that FPI’s offer represents the “best value.”

New paragraph (3) of subsection (b) requires the non-competitive negotiation of a contract award to FPI, if the Attorney General makes a determination that: (i) there is no reasonable expectation that FPI will win the contract award competitively, and (ii) the inmate work opportunities provided by the contract are necessary “to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration” of the correctional facility at which the contract is to be performed.

New paragraph (4) of subsection (b) makes explicit the authority of the contracting officer to evaluate FPI’s offer with respect to whether: (i) FPI’s offered product or service will meet the agency’s requirements; (ii) timely performance by FPI can reasonably be expected; and (iii) the price offered by FPI represents a current market price. These authorities of the contracting officer apply equally whether the contract is for a product or a service, is to be awarded after a competition or on a sole-source basis, unless the award is made pursuant to new paragraph (3) of subsection (b).

New paragraph (4) of subsection (b) is intended to make explicit that any product or service offered by FPI must comply with the full range of performance and specifications that would be de-

manded of a product or service furnished by a private sector offeror. For example, FPI or its product or service would have to comply with any pre-qualification requirements, such as a QML (Qualified Manufacturers List) or QPL (Qualified Products List). Similarly, design specifications (relating to quality of materials used or manner of manufacture) or performance specifications (relating to durability, serviceability, or interoperability) would have to be met. Further, products furnished by FPI should be required to conform to the same commercial or governmental standards and tests required of products furnished by private sector vendors. Finally, any product furnished by FPI should carry a warranty that affords the Federal Government protection equal to that provided the Federal Government by a private sector vendor. FPI's current status as a preferred source of supply should not diminish, in any degree, its responsibility to furnish to a Federal agency a quality product or service that meets the agency's needs to the same extent as a product or service furnished by a private sector supplier.

New paragraph (4) of subsection (b) is also intended to make of explicit the contracting officer's authority regarding the time of performance being offered by FPI. Timely performance is frequently as important as the quality of the product or service being furnished. Under the new provision the contracting officer may independently evaluate promises of timely performance being made by FPI. Pursuant to section 1091 of Public Law 103-355, the "Federal Acquisition Streamlining Act of 1994," and implementing FAR coverage, a contracting officer is now required to accord substantial weight to each offeror's history of timely performance with respect to prior contracts, especially for the product or service being offered, when making the decision to award a new contract. Such an evaluation on the basis of "past performance" now applies equally to FPI.

New subsection (b)(4) is further intended to make explicit the contracting officer's authority to make an independent determination as to whether the price being offered by FPI represents a current market price. This applies equally with regard to whether FPI is offering a product or service. Currently, the term "current market price" is not defined in FPI's authorizing statute or in the Government-wide Federal Acquisition Regulation (FAR) provisions pertaining to purchases from FPI. Section 17(2) of the bill adds such a definition. The proposed definition includes explicit recognition of the contracting officer's authority to employ generally available price analysis or cost analysis techniques to determine whether FPI's offered price meets the standard.

The provisions of revised section 4124, making explicit a contracting officer's authority in dealing with FPI, are intended to overturn a sweeping legal opinion by the Assistant Attorney General for the Office of Legal Counsel. Issued on September 13, 1993, the opinion, *Application of the Federal Acquisition Regulations to Procurement from Federal Prison Industries*, unequivocally holds that FPI is not subject to the Federal Acquisition Regulation (FAR), except the FAR provisions relating to FPI as a mandatory source of supply. A Federal agency cannot compel FPI, like a private contractor, to meet the agency's contractual terms and conditions regarding: (i) quality of product delivered or services furnished; (ii) the reasonableness of offered prices (or require the jus-

tification of any price increases); or (iii) delivery schedules for products (or performance schedule for a service).

The legal opinion was issued at FPI's request to respond to a 1991 report by the Inspector General of the Department of Defense. In *DOD Procurements from Federal Prison Industries*, (Audit Report No. 92-005; October 11, 1991), overpricing, averaging 15 percent, was identified in 48 of 54 contracts (89%) awarded to FPI by various DOD buying centers for electronic and electrical cables during a 7-year period, FY 1984 through FY 1990. Although the contracts were awarded on a non-competitive basis, FPI did not provide the current, accurate, and complete cost data or pricing data needed by the contracting officer to determine whether the Government is being charged a fair and reasonable price. Further, FPI was found to lack the accounting systems to generate reliable cost or pricing data. DOD recommended that FPI refund the overpricing.

The legal opinion specifically held that "DOD lacks the necessary contracting freedom to make FPI accept the FAR's constraints." "[A]s a matter of law, it [FPI] retains ultimate statutory authority to set its own prices, subject to arbitration" by a statutorily-specified board composed of the President (delegated to the Director of the Office of Management and Budget), the Attorney General, and the Administrator of General Services, which according to the GAO last met in the 1930's.

New paragraph (5) of subsection (b) requires that the Attorney General's determination made pursuant to subsection (b)(3) must be supported by two specific findings. First, the warden of the correctional institution containing the factory scheduled to perform the work required by the contract must provide substantiated findings that without the work the "safe and effective administration of such facility" would be "significantly endangered." Second, FPI's chief operating officer must provide substantiated findings regarding why FPI "does not expect to win the contract on a competitive basis."

The requirements proposed in new section 4124(b)(5) mirror the current requirements applicable to the Department of Justice in order to make a sole-source purchase under the authority of section 303(c)(7) of the Federal Property and Administrative Services Act of 1947 (41 U.S.C. 253(c)(7)), which requires the Attorney General to make a personal determination that a contract award cannot be made competitively, but is "necessary in the public interest."

New paragraph (6) of subsection (b) provides that the buying agency may resume its generally applicable contract solicitation and award procedures, if the Attorney General has not authorized a sole source negotiation pursuant to new section 4124(b)(3), within 30 days.

It is anticipated that any notice of a contracting opportunity published prior to the release of a solicitation for competitive offers will specify that an offer is required to be solicited from FPI and that the Attorney General may determine that the contracting opportunity must be negotiated non-competitively with FPI.

New paragraph (7) of subsection (b) provides further authority for a Federal agency to make a purchase from FPI on an other than competitive basis when the buying agency determines that the needed product or service is currently only available from FPI.

New subsection (c) of revised section 4124 makes explicit that a competitive offer timely received from FPI will always be considered, even if the competition is restricted, such as in the case of a so-called “small business set-aside,” a competition exclusively among small firms conducted pursuant to section 15(a) of the Small Business Act (15 U.S.C. 644(a)), and its implementing regulations.

New subsection (d) of revised section 4124 codifies the fundamental principle that FPI is required to perform its contractual obligations to the same extent as any private sector contractor. Attainment of FPI’s prison management and inmate-rehabilitation objectives do not authorize FPI to furnish non-conforming products or services, perform late, or unilaterally increase prices to the detriment of Federal agency customers who require timely performance of the services or delivery of products to attain their missions and program objectives.

It is intended that the implementation of this provision through the Government-wide Federal Acquisition Regulation (FAR) will afford to an agency contracting officer administering a contract with FPI the same array of contract administration techniques, authorities, and remedies available when administering a contract with a private contractor. Disputes between the administrative contracting officer and FPI regarding whether FPI’s performance conforms to the terms of the contract would be subject to appeal rights granted to FPI pursuant to new subsection (e) of revised section 4124.

New subsection (e) of revised section 4124 is intended to eliminate the existing bias in favor of FPI in the resolution of disputes arising during the negotiation of a sole-source contract award to FPI or during the subsequent performance of the contract by FPI.

Under current section 4124(b), and the FAR provisions implementing the statute, any dispute relating to the “price, quality, character, or suitability of such [FPI] products shall be arbitrated by an arbitration board consisting of the President (delegated to the Director of the Office of Management and Budget), the Attorney General, and the Administrator of General Services. “Their decision shall be final and binding upon all parties.” This statutory disputes resolution provision gives FPI total dominance over its Federal agency customers in practical business terms.

First, if a contracting officer seeks to obtain a FPI-offered product from an alternative source, the contracting officer must obtain FPI’s permission through a waiver process. FPI will grant the waiver only if the contracting officer proves to FPI’s satisfaction that: (i) the FPI-offered product does not meet the agency’s requirements; (ii) FPI’s delivery schedule will not meet the agency’s mission requirements, or (iii) FPI’s price does not represent a “current market price.”

FPI’s waiver process has no statutory basis. However, it discourages contracting officers from scrutinizing FPI’s offers since disagreements are settled by FPI. Only with respect to FPI must a Government buyer meet the seller’s standards, and, in the event of a disagreement, live by the seller’s decisions regarding what performance the Government may expect under the contract.

FPI is accorded the same superior position with respect to disputes arising during the performance of the contract. FPI’s decision regarding the adequacy of its performance prevails unless over-

turned by a decision of the arbitration board. Like the waiver process during the contract-award phase, FPI's statutorily-sanctioned dominance makes futile a contracting officer's demand for timely performance or fully conforming products or services. Except with respect to FPI, a contracting officer's final decision regarding contract performance is otherwise binding with respect to a private sector contractor, unless over-turned on appeal by an administrative board of contract appeals or a court-forums available for the independent review of such contract performance disputes.

New paragraph (1) of subsection (e) specifies that the decision of a contracting officer regarding the award of a contract to FPI or relating to the performance of a contract awarded to FPI shall be final unless the decision is overturned pursuant to new procedures regarding the disposition of an appeal made by FPI. The intent of the proposed amendments is to eliminate any appeal processes other than those specified in paragraphs (2) and (3) of revised section 4124(e).

New paragraph (2) of subsection (e) authorizes FPI's Chief Executive Officer to appeal to the agency head an adverse decision of the agency contracting officer relating to the award of a contract to FPI pursuant to new section 4124(b)(4). The decision of the departmental secretary or agency head shall be final.

Such a final resolution by the departmental secretary or agency head mirrors current procedures under the Small Business Act authorizing an appeal by the Administrator of the Small Business Administration relating to a decision by an agency contracting officer that a specific contracting opportunity is not suitable for award to a small business through a competition restricted to small firms.

It is intended that a protest regarding an adverse decision relating to a contracting officer's decision not to make an award to FPI will be handled through the agency protest procedures established and conducted pursuant to FAR Part 33.103 (48 C.F.R. 33.103). Authority for FPI to file a protest with the General Accounting Office was specifically not granted.

New paragraph (3) of subsection (e) gives FPI the right to have an adverse decision by the agency contracting officer regarding the adequacy of FPI's contract performance subjected to an independent review.

FPI can have an adverse decision decided through one of the various forms of alternative disputes resolution provided in subchapter IV of title 5 which were made permanent by Pub. L. No. 104-320, the "Administrative Dispute Resolution Act of 1996." Such alternative means include mediation or binding arbitration by an independent neutral party. To assure the impartiality of the selected neutral, both parties must agree to the use of an alternative disputes resolution technique.

FPI has the right to appeal an adverse contracting officer's decision relating to FPI's performance of a contract to one of the independent administrative boards of contract appeals, already established pursuant the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*), to resolve contract performance disputes between an agency and a private contractor. Thirteen boards currently exist. Certain departments and agencies with very substantial procurement activities, such as the Department of Defense and the General Services Administration, maintain their own boards. Other agen-

cies, with very limited procurement activities, have entered into agreements to have their contract performance disputes handled by another agency's board.

Given the intra-governmental character of the dispute between FPI and one of its agency customers, an appeal to the Court of Federal Claims or the United States District Court is expressly not made available to FPI. Similarly, the decision of the independent board of contract appeals is final.

New subsection (f) of revised section 4124 requires each Federal agency and department reporting to the Government-wide Federal Procurement Data System (FPDS) to report all acquisitions from Federal Prison Industries in the same manner it reports purchases from private sector vendors in excess of the simplified acquisition threshold as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11), \$100,000. Section 2901 of the "Crime Control Act of 1990," Pub. L. No. 101-647, amended 18 U.S.C. 4124 to provide for the reporting of all purchases from FPI. This provision is intended to make explicit the reporting format and level of detail.

Until the 1990 amendment, there was no requirement that purchases from FPI be reported to the FPDS by the various Executive agencies because the purchases are considered to be non-reportable interagency transfers rather than contracts. The absence of full FPDS data on Federal agency purchases from FPI has made virtually unworkable market-share determinations relating to the FPI Board's consideration of proposals to approve new products to be offered for sale by FPI or to expand production of currently approved products, pursuant to current section 4122(b). The validity of the market share analyses prepared by FPI staff are generally questioned by the private vendor community because of the inability to compare agency purchases from private sector sources and those made from FPI.

New subsection (g) of revised section 4124 requires FPI to publish and keep current its UNICOR Schedule of Products which lists the products and services it offers.

### *Sec. 3. Public Participation Regarding Expansion Proposals by Federal Prison Industries*

This section amends section 4122(b) of title 18, relating to the procedures for approving the addition of a new product or service to be offered for sale by Federal Prison Industries (FPI) or the expansion of production or performance of a currently approved product or service. The amendments will: (i) conform the public participation processes used by FPI's Board with those currently used by a similar Federal preference program for purchases from rehabilitative work centers employing the blind and severely handicapped; (ii) clarify the analytical process to determine if an adverse private-sector impact will result from the approval of an expansion proposal; and (iii) distinguish more clearly between the analytical and advisory responsibilities of FPI's career staff and the decision-making authorities of the FPI Board.

New paragraph (4) of amended section 4122(b) would apply the public notice and comment requirements of the Administrative Procedure Act to the procedures used by FPI's Board when considering a new product or service for authorized sale or any significant ex-



pansion of the production or performance of a currently approved product or service. These APA requirements, currently apply to almost identical decisions made by the Committee for Purchase from the Blind and Other Severely Handicapped.

New paragraph (5) of amended section 4122(b) specifies the analytical requirements that must accompany an expansion proposal from FPI's career management staff. Rather than being conducted by FPI as is presently done, new section (b)(5) would require that the impact analysis be conducted by an independent entity—either an interagency team or a private contractor.

The interagency team would consist of representatives of the Department of Labor, the Department of Commerce, and the Federal Procurement Data Center, led by a representative of the Small Business Administration. If the impact analysis is to be conducted by a private contractor, the selection of the contractor and the administration of the contract is to be handled by one of the statutorily designated Federal agencies, operating as an independent executive agent of the FPI Board. To maintain independence, the participation of FPI staff would be limited to submitting to the buying agency contracting officer a proposed statement of work for the contractor.

New subparagraph (C) of revised section 4122(b)(5) specifies the matters to be considered in conducting the impact analysis relating to the expansion proposed by FPI staff.

New subparagraph (D) of revised section 4122(b)(5) sets forth limitations on the authority of the FPI Board to authorize or expand the production of a product or service.

First, the provision would preclude the Board from approving a proposal for a new product (or continued sale of a previously authorized product) unless the product is a “prison-made product.” Prison industry programs are justified, in part, on the basis that they keep inmates occupied through labor-intensive work.

Second, the provision would preclude the Board from approving a proposal for a new product or expansion with respect to products that are “import-sensitive products” or which are produced by an industry with chronic high unemployment. “Import-sensitive products” are designated by the Department of Commerce for other statutory purposes. The Department of Labor currently identifies such industries for other statutory purposes.

Third, the provision would preclude the Board from approving a proposal to authorize inmates to perform a service if such work would provide inmate workers with access to personal or financial information about individual private citizens. It would also preclude inmates performing a service that would give them access to geographic data regarding the location of surface and subsurface infrastructure providing communications, water and electrical power distribution, pipelines for the distribution of natural gas, bulk petroleum products, and other commodities, as well as other utilities.

Fourth, the provision would preclude the Board from authorizing FPI from furnishing construction services to Federal agencies. The provision adopts the definition of “construction” that has been a part of the Government-wide Federal Acquisition Regulation for more than two decades. Construction services, almost always provided on the owner's property, are manifestly unsuitable for per-

formance by prison labor. The provision would not preclude Federal prisoners from continuing to provide maintenance, repair, or even minor alteration of the prison facilities in which they are incarcerated.

New paragraph (6) of amended section 4122(b) places in a separate paragraph the “outreach” mechanisms specified in section 4122(b)(4) of current law, to emphasize that they are “supplemental” techniques to broaden participation by known interested parties.

New paragraph (7) of amended section 4122(b) specifies in a separate paragraph the requirement in section 4122(b)(4) of current law that the FPI staff’s final recommendation to FPI’s Board specify how the staff’s initial production proposal was modified in response to public comments received and the supporting analysis for those modifications.

New paragraph (8) of amended section 4122(b) requires the FPI Board to consider and act upon a recommendation to authorize new or increased production of products or services at a meeting open to the public.

New paragraph (9) of amended section 4122(b) provides the Board authority to authorize the donation rather than sale of products produced by FPI factories. Such a decision by the FPI Board would be subject to the analytical, public participation, and other safeguards applicable to a decision to authorize production a new product or expansion.

New paragraph (10) of amended section 4122(b) empowers the FPI Board to authorize the donation of products or services. Implementation of this authority is specified in section 10(b) of the bill.

New paragraph (10)(C) empowers the Board to authorize an expansion that could be expected to result in FPI’s share of the Federal market exceeding a “reasonable share of the market,” as that term is defined in section 17(6) of the bill. Such authority could be used if such an expansion was specifically requested by the Federal agency having a need for the product or service or is justified for “other good cause.” Eight members of FPI’s eleven-Member Board would have to support an expansion above a reasonable share of the market justified on the basis of “other good cause.”

#### *Sec. 4. Transitional Mandatory Source Authority*

Subsection (a) provides authority to the various Executive agencies to make purchases from FPI on a non-competitive basis during a 5-year transition period. This transitional period is intended to provide a period during which FPI adjusts to the requirement that it obtain its business opportunities on a competitive basis rather than a non-competitive basis through its status as a mandatory source. Subsequent subsections provide direction to the buying agencies regarding the use of this special authority.

Subsection (b) makes clear that the buying agency, rather than FPI, is empowered to determine the product offered by FPI meets the needs of the buying agency. The FPI-offered product is expected to meet the same standards and specifications as the buying agency would apply to a product being offered by a private sector supplier. Similarly, the buying agency is empowered to determine if timely performance by FPI can be reasonably expected before entering into a sole-source negotiation with FPI. Finally, the buying

agency need not make a sole-source award to FPI if the buying agency determines that the award price will exceed a “fair and reasonable price.”

Subsection (c) makes explicit that Subpart 15.4 (Contract Pricing) of the Government-wide Federal Acquisition Regulation (FAR) shall guide the buying agency’s determination of “fair and reasonable price.”

Subsection (d) makes explicit that, despite the award of the contract pursuant to the special sole-source authority, FPI remains responsible for fully performing its contractual obligations. Performance disputes between the buying agency and FPI are to be resolved pursuant to 18 U.S.C. 4124(e)(3), as added by section 2 of the bill.

Subsection (e) imposes a number of limitations on the buying agencies’ use of the transitional sole-source authority during the 5-year “phase-out” of FPI’s reliance on contracts awarded on a sole-source basis pursuant to FPI’s mandatory source status. In general, these limitations are intended to assure that FPI’s sales expand on the basis of competitive awards and by taking advantage of this transitional sole-source authority.

First, contract awards to FPI through use of the transitional sole-source authority cannot exceed a specified percentage of FPI’s total sales during the base year of fiscal year 2002. During the first year of the 5-year transitional period, fiscal year 2005, use of the special sole source contracting authority cannot aggregate to more than 90 percent of FPI’s total sales during the base year. The percentage decreases to 85 percent in fiscal year 2006, to 70 percent in fiscal year 2007, to 55 percent in fiscal year 2008, and to 40 percent during the final transition year, fiscal year 2009.

Second, use of the special transitional sole-source contract authority cannot result in sales by any of FPI’s eight business groups that are in excess of the total sales for each such business group during the base year. Similarly, the use of the transitional authority is prohibited from increasing FPI’s sales for a specific product over its total sales of such products during the base year. Because FPI, rather than the buying agency, will have access to information regarding the dollar value of various awards made to FPI pursuant to the transitional authority, the implementing FAR provision relating to this provision should empower the buying agency’s contracting officer to obtain an appropriate compliance certification from FPI prior to contract award.

The limitations with respect to specific products or business groups may be waived in the event that the buying agency has modified the design specification of one or more specific products, which has increased the unit cost of production. FPI’s compliance certification associated with the implementing FAR provisions should require FPI to identify the source and specify the cost associated with design-specification based deviations.

Subsection (f) specifies this special 5-year transition sole-source authority may not be used by an buying agency on or after October 1, 2009. The provision also makes clear that its use is contingent upon issuance of the essential implementing FAR provisions, pursuant to section 18 of the bill.

Subsection (g) defines terms relating to this section.

Subsection (h) requires the Attorney General to monitor FPI's transition from obtaining work exclusively through sole-source awards pursuant to its mandatory source authority to obtaining them from Federal procurement contracts obtained on a competitive basis. Specifically, the subsection requires the Attorney General to make a determination regarding whether the limitations on the use of the special transitional sole-source authority has resulted, or is likely to result, in a substantial reduction in inmate work opportunities with FPI and "whether such reductions, if any, present a significant risk of adverse effects on safe prison operations or public safety." Such a determination and finding is to be made annually, 60 days prior to the end of each of the five fiscal years of the transition period.

If the Attorney General finds a significant risk of adverse effects on either safe prison management or public safety, the Attorney General is required to advise Congress. In advising Congress, the Attorney General is required to make recommendations for additional funding to provide additional alternative inmate rehabilitative opportunities and additional correctional staffing, as may be appropriate.

*Sec. 5. Authority To Perform as a Federal Subcontractor*

Subsection (a) of this section provides, for the first time, explicit statutory authority for FPI to perform as a subcontractor or supplier to private-sector firm performing a Federal contract as a prime contractor or a subcontractor at any tier. This provision was included to provide FPI a clear path to the inmate work opportunities that are available from producing products for the Federal subcontract market.

FPI's authorizing statute is silent with respect to its authority to act as a subcontractor or supplier. At various times during the 1990's, proposals were advanced to grant FPI specific authority to operate as a subcontractor. Section 4122(a) only specifically authorizes FPI "to produce commodities for consumption in such institutions or for sale to the departments of agencies of the United States, but not for sale to the public in competition with private enterprise."

FPI currently acts as a subcontractor to a number of major prime contractors (or major subsystem subcontractors) furnishing equipment to the Department of Defense. FPI also provides inmate-furnished services to these firms.

At various times, FPI has claimed an inherent authority to operate as a subcontractor derived from 18 U.S.C. 4124(a). When challenged by the Department of Justice Inspector General, FPI cited the authority granted by a World War II-era Attorney General's opinion (40 Op. Atty Gen. 207 (1942)). Entitled "Procurement of War Materials from Federal and State Prisons," it was issued on May 6, 1942 by Attorney General Francis Biddle in response to an inquiry from President Franklin D. Roosevelt regarding "whether industrial facilities at the prisons of the United States can be utilized in the production of essential war materials," despite the prohibition of the Hawes-Cooper Act of 1920, relating to selling convict-made goods in interstate or foreign commerce.

Given the critical need to maximize the Nation's total productive capacity for the War effort, Attorney General Biddle found that

FPI, and the various States prison industry programs, could operate as a subcontractor. Subsequently, on June 20, 1942, Assistant Solicitor General Oscar Cox wrote to the Chairman of the War Production Board further clarifying the authority granted by the opinion of the Attorney General. In pertinent part, he found that a prison industry program could function as a subcontractor or supplier only if “there is no other source of supply readily available to him [the Government prime contractor] on the open [commercial] market.

Given long-prevailing competitive market conditions among subcontractors on Federal contracts, it is highly unlikely that this explicit limitation on the World War II authority could be met today. Further, the authority cited by FPI was based on the Nation’s exigent productions needs during the Second World War.

Subsection (b) makes explicit that exercise of the authority to perform as a subcontractor or supplier on a Federal contract shall not result, either directly or indirectly, in the sale in the commercial market of a product or service resulting from the labor of Federal inmate workers in violation of 18 U.S.C. 1761(a). A Federal contractor or subcontractor using FPI to perform a Federal contract to furnish a commercial product is required to have in place management procedures to prevent the introduction of an inmate-produced product into the commercial market.

Subsection (c) makes explicit that the use of FPI as a subcontractor or supplier is to be a voluntary business decision of the Federal prime contractor or subcontractor. It explicitly prohibits imposing on a Federal prime contractor or subcontractor, directly or indirectly, any requirement to make use of FPI, its products, or services.

#### *Sec. 6. Inmate Wages and Deductions*

This section provides explicit statutory authority for the FPI Board to prescribe the rates of hourly wages to be paid inmates with work assignments at FPI. Similarly, it makes explicit the authority of the Director of the Federal Bureau of Prisons to specify the hourly wages for inmates with institutional and other work assignments other than with FPI.

The provision requires a review of inmate wage rates, both those for FPI and others, on not less than a biannual basis. Such reviews are expected to result in increases in inmate wages, recognizing that just compensation is a core element of the work ethic that such work assignments seek to develop as a necessary preparation for a successful return to society. Similarly, the provision requires that the wages earned be paid in the name of the inmate. Finally, the provision provides explicit statutory authorization to establish a savings account, often referred to as a “gate fund,” payable to the inmate upon release.

The section also establishes a statutory priority for deductions that are to be taken from wages earned. Enhanced priority is given to deductions for the payment of restitution to the victims of the inmates crime. A increased allocation rate for this purpose is specified in furtherance of the concepts of restorative justice.

The provision also contemplates that the inmate may have deductions from wages taken for the purpose of maintaining contact with the inmate’s family during the term of incarceration. Travel

and even telephone costs can be substantial, especially if the inmate is incarcerated a long distance from where the inmate's family resides.

*Sec. 7. Clarifying Amendment Relating to Services*

Subsection (a) of this section makes explicit that the statutory prohibition on the sale of the results of inmate labor in interstate commerce or foreign commerce, codified at 18 U.S.C. 1761(a), applies equally to services as well as products. For 65 years, this statute was consistently interpreted to prohibit the commercial sale of the results of inmate labor, products as well as services. Section 1761(a) does not include the word "service," which is not surprising given that a broad service economy did not exist at the time of enactment in the 1930's. However, it seems implausible that a provision, enacted during the Great Depression, to protect workers against unfair competition from low-cost prison labor would have been intended to afford no protection to workers providing services in the commercial market.

A statutory exception to the broad statutory prohibition was provided in 1979 when Congress established the Prison Industry Enhancement (PIE) Program, codified at 18 U.S.C. 1761(c). Under the PIE Program, a State and local prison industry program may be authorized to sell prison-made products and inmate-furnished services, after receiving approval, commonly referred to as "certification," from the Bureau of Justice Assistance for each individual project.

FPI sought and obtained a new interpretation of 18 U.S.C. 1761 (a) in February 1998. This interpretation provided FPI, and the prison industries of the States and their local governments, authority to sell inmate-furnished services, either directly or in partnerships with private sector firms, without meeting the standards for PIE certification. Among the restrictions associated with the PIE Program that could now be bypassed is the prohibition against displacement of non-inmate workers to provide jobs for inmate workers. Similarly, there would no longer be any requirement to pay inmate workers providing services to the commercial market at rates comparable to wages being paid non-inmate workers of private firms providing the same types of services. Without the protection of a comparable wage requirement, with a floor of the minimum wage, private sector firms using non-inmate workers were faced unfair competition from firms using inmate workers being paid inmate wages.

Subsection (b) of this section provides a "grandfathering" provision, to provide relief to State prison industry programs that reasonably relied upon the new interpretation of 18 U.S.C. 1761(a) emanating from DOJ and began offering inmate-furnished services to the commercial market. First, the provision permits the completion of an agreement between a private sector firm and a State or local prison industry program, for whatever term of years is specified in their agreement on October 1, 2002. Similarly, it permits a State program making direct sales to continue until September 30, 2005, after which the activity can only be operated pursuant to a PIE Program certification.

Subsection (c) makes explicit that any inmate work program operated by a State or a local jurisdiction of a State may continue to

provide inmate labor to furnish services for sale in the commercial market if such program has obtained certification pursuant to the PIE Program.

*Sec. 8. Conforming Amendment*

This section provides FPI with explicit statutory authority to offer services to the various Federal departments and agencies. Presently, FPI's authorizing statute only specifically addresses the sale of products.

*Sec. 9. Rules of Construction Relating to Chapter 307*

This section adds a new section 4130 to chapter 307 of title 18, which establishes a series of rules of construction for such chapter. First, it would make explicit that no inmate has a right to a work assignment with FPI or the payment any particular wage except as provided by law or regulation. Next, the provision makes explicit that no inmate worker has the status of an employee for the purposes of any law or regulation. Finally, the new section makes explicit that nothing in chapter 307 establishes any cause of action against the United States by or on behalf of any inmate.

*Sec. 10. Providing Additional Rehabilitative Opportunities for Inmates*

H.R. 1829 builds upon the improvements made during the Committee's consideration of H.R. 1577 during the 107th Congress to expand inmates' access to alternative rehabilitative opportunities. The bill reflects the improved access to educational opportunities, both remedial and modern "hands-on" vocational programs, which were added to H.R. 1577 through a Conyers-Frank amendment establishing an Enhanced In-Prison Educational and Vocational Assessment and Training Program and providing \$75 million annually to fund it. The bill also authorizes a "Cognitive Abilities Assessment Demonstration Program" within the Federal Bureau of Prisons. H.R. 1829 retains the pre-release employment assistance program first added to H.R. 1577 at the suggestion of the AFL-CIO.

*Sec. 11. Restructuring the Board of Directors*

This section fundamentally restructures FPI's governing Board of Directors. It replaces the current 6-member Board, unchanged since 1934, with an eleven-member Board. The Board's members would continue to be appointed by the President, but not be subject to Senate confirmation.

The current six-member Board has two public members and four private sector members. One of the public members represents the Attorney General and the other represents the Secretary of Defense. Of the four private sector members, one represents industry, one represents labor, one represents agriculture and one represents retailers and consumers.

Under this section, the new 11-member Board would be comprised of three members representing business, three members representing labor, one member with special expertise in inmate rehabilitation techniques, one member representing victims of crime, one member representing inmate workers, and two additional members "whose background and expertise the President deems appropriate."

The provision establishes procedures for the initial appointment of each of the eleven members, with staggered terms, and provides for their reappointment. It also provides for the filling of any Board vacancies that may occur.

The section empowers the President to designate a Chairperson, who in turn is empowered to designate the Vice Chairperson.

To provide the Board with needed staff support, in addition to the staff of the corporation, the provision authorizes the Chairperson to procure temporary and intermittent personal services and to utilize Federal detailees on a non-reimbursable basis.

The provision recognizes the Director of the Bureau of Prisons as the Chief Executive Officer of the corporation and empowers the Director to designate a person as the Chief Operating Officer of the Corporation. The Chief Operating Officer need not necessarily be the incumbent Assistant Director of the Federal Bureau of Prisons for Industries, Education, and Vocational Training, which has been the past practice.

*Sec. 12. Providing Additional Management Flexibility to Federal Prison Industries Operations*

This section makes explicit FPI's authority to locate more than one factory at a single Federal correction institution. It also provides statutory authority for FPI to operate a factory outside of a correctional institution if all of its inmate workers are classified as minimum security inmates.

*Sec. 13. Transitional Personnel Management Authority*

This section provides some relief to correctional officers and other staff whose salaries are paid from the revenues of the corporation and who might be separated from service due to a reduction in the income derived from FPI activities. Such reductions might arise from an unexpectedly rapid shift to alternative rehabilitative work opportunities with non-profit entities, which may maintain inmate work opportunities but result in reduced corporate income. Under the provision, such correctional officers and other staff would be eligible for appointment or reappointment in the competitive services and given priority for placement for available positions within the Federal Bureau of Prisons through a priority placement list.

*Sec. 14. Federal Prison Industries Report to Congress*

This section amends section 4127 of title 18, to substantially enhance the existing requirement for FPI's Annual Report to the Congress. It adds specificity to the information to be reported regarding FPI sales of products and services and FPI's resulting share of the total Federal Government market. For the first time, it requires FPI to report some data regarding the inmates with rehabilitative work opportunities with FPI and their post-release employment. Finally, the provision seeks to maintain the guarantee of public access to the annual report.

*Sec. 15. Independent Study To Determine the Effects of Eliminating the Federal Prison Industries mandatory Source Authority*

Subsection (a) of this section directs the Comptroller General of the United States to have undertaken an independent study of the effects of eliminating the mandatory source authority of FPI. This



study may be conducted by the General Accounting Office or by another entity selected by the Comptroller General, provided that the Comptroller General warrants that the conduct of the study by such other entity can reasonably be expected to result in an assessment that meets statutory standard of being “independent.”

Subsection (b) requires the Comptroller General to develop the statement of work and assessment methodology for the conduct of the study, whether the resulting study is conducted by the General Accounting Office or by another entity. It is intended that in developing the statement of work and the assessment methodology for the study, the Comptroller General will, to the maximum extent practicable, provide for suggestions by the general public, organizations representing business organizations and labor unions, especially those adversely affected by FPI’s current status as a mandatory source of supply. Similarly, the provision expects that the Comptroller General will solicit, and carefully consider, suggestions submitted by the Congress, and by representatives of the Executive Branch.

Subsection (c) prescribes June 30, 2004 as the date by which the Comptroller General must submit to the Congress a report on the results of the study, including such recommendations for legislation as deemed appropriate.

#### *Sec. 16. Sense of Congress*

This section expresses the sense of the Congress that it is timely and important to undertake a review of the concept of again implementing a program for good time early release program for Federal inmates incarcerated for non-violent offenses. Currently, the term of incarceration of any inmate within the Federal system is not subject to being reduced on the basis of the quality of the inmate’s conduct during the term of incarceration.

#### *Sec. 17. Definitions*

This section amends chapter 307 of title 18, by adding a new section 4130 specifying definitions for key terms used in sections 4122 and 4124.

Paragraph (1) of proposed new section 4130 adds a definition of the term “assembly” derived from Department of Labor regulations implementing the Walsh-Healey Public Contracts Act (41 U.S.C. 35).

Paragraph (2) of proposed new section 4130 adds a definition of the term “current market price.” The definition equates the term “current market price” to the term “fair market price” as defined in the Small Business Act (15 U.S.C. 644(a)), which is the standard that must be met by a small business concern selling to the Government.

Paragraph (3) of proposed new section 4130 adds a definition of the term “import-sensitive product” derived from a standard used by the Office of the United States Trade Representative.

Paragraph (4) of proposed new section 4130 adds a definition of the term “labor-intensive manufacture” derived from a standard used by the Bureau of Economic Analysis at the Department of Commerce.

Paragraph (5) of proposed new section 4130 adds a definition of the term “manufacture” derived from Department of Labor regula-

tions implementing the Walsh-Healey Public Contracts Act (41 U.S.C. 35)

Paragraph (7) of proposed new section 4130 adds a definition of the term “reasonable share of the market.” FPI’s share of the Federal market for a specific product would be recognized as a “reasonable share of the market,” if FPI’s share of the total Federal purchases for a specific product, averaged over a 3-year period, does not exceed 20 percent.

It should be noted that new section 4122(b)(10)(C), added by section 3, provides to the FPI Board limited authority to approve, on a case-by-case basis, a proposed FPI expansion that would result in FPI sales in excess of percentages specified.

Paragraph (8) of proposed new section 4130 adds a definition of the term “services” through a cross-reference to the Government-wide Federal Acquisition Regulation (FAR).

#### *Sec. 18. Implementation Regulations and Procedures*

Subsection (a) of this section requires regulatory implementation through the Government-wide Federal Acquisition Regulation (FAR), specifying a schedule for the publication of proposed and final regulations and their effective date. The provision provides for 60 days for public comment on the proposed regulations.

Subsection (b) directs the FPI Board to issue, through a notice and comment rulemaking, definitions relating to four terms: (a) “prison-made product;” (b) “prison-furnished service;” (c) “specific product;” and “specific service.” The public is accorded 60 days to comment on the Board’s proposals.

Subsection (b)(4)(C) also requires that the Board act on the basis of deliberations and a recorded vote conducted during a public meeting unless the meeting is closed pursuant to the standards of the Administrative Procedure Act. This requirement applies to the full range of regulations, procedures, and guidelines relating to the governance of the corporation.

#### *Sec. 19. Rule of Construction*

This section set forth a rule of construction relating to new section 4124(e)(2), added by section 2. New section 4124(e)(2) specifies FPI’s right to appeal an adverse decision by an agency contracting officer regarding an agency’s decision not to make a contract award to FPI. This provision applies exclusively to FPI. There is no intention to alter the existing bid protest processes available to a private sector vendor with the agency making the purchase, the U.S. General Accounting Office, or the Federal courts.

#### *Sec. 20. Effective Date and Applicability*

This section establishes the effective dates for the various provisions of H.R. 1829.

#### *Sec. 21. Clerical Amendments*

This section makes clerical amendments to the table of sections for chapter 307 of title 18.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## TITLE 18, UNITED STATES CODE

\* \* \* \* \*

### PART I—CRIMES

\* \* \* \* \*

#### CHAPTER 85—PRISON-MADE GOODS

\* \* \* \* \*

#### § 1761. Transportation or importation

(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States **【any goods, wares, or merchandise manufactured, produced, or mined】** *products manufactured, services furnished, or minerals mined*, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution, shall be fined under this title or imprisoned not more than two years, or both.

\* \* \* \* \*

### PART III—PRISONS AND PRISONERS

\* \* \* \* \*

#### CHAPTER 307—EMPLOYMENT

Sec.

**【4121. Federal Prison Industries; board of directors.】**

4121. *Federal Prison Industries; Board of Directors: executive management.*

\* \* \* \* \*

**【4124. Purchase of prison-made products by Federal departments.】**

4124. *Governmentwide procurement policy relating to purchases from Federal Prison Industries.*

\* \* \* \* \*

**【4127. Prison Industries report to Congress.】**

4127. *Federal Prison Industries report to Congress.*

\* \* \* \* \*

4130. *Construction of provisions.*

4131. *Definitions.*

\* \* \* \* \*

#### **【§ 4121. Federal Prison Industries; board of directors**

**【**“Federal Prison Industries”, a government corporation of the District of Columbia, shall be administered by a board of six directors, appointed by the President to serve at the will of the President without compensation.

**【**The directors shall be representatives of (1) industry, (2) labor, (3) agriculture, (4) retailers and consumers, (5) the Secretary of Defense, and (6) the Attorney General, respectively.**】**

**§4121. Federal Prison Industries; Board of Directors: executive management**

(a) *Federal Prison Industries is a government corporation of the District of Columbia organized to carry on such industrial operations in Federal correctional institutions as authorized by its Board of Directors. The manner and extent to which such industrial operations are carried on in the various Federal correctional institutions shall be determined by the Attorney General.*

(b)(1) *The corporation shall be governed by a board of 11 directors appointed by the President.*

(2) *In making appointments to the Board, the President shall assure that 3 members represent the business community, 3 members represent organized labor, 1 member shall have special expertise in inmate rehabilitation techniques, 1 member represents victims of crime, 1 member represents the interests of Federal inmate workers, and 2 additional members whose background and expertise the President deems appropriate. The members of the Board representing the business community shall include, to the maximum extent practicable, representation of firms furnishing services as well as firms producing products, especially from those industry categories from which Federal Prison Industries derives substantial sales. The members of the Board representing organized labor shall, to the maximum practicable, include representation from labor unions whose members are likely to be most affected by the sales of Federal Prison Industries.*

(3) *Each member shall be appointed for a term of 5 years, except that of members first appointed—*

(A) *2 members representing the business community shall be appointed for a term of 3 years;*

(B) *2 members representing labor shall be appointed for a term of 3 years;*

(C) *2 members whose background and expertise the President deems appropriate for a term of 3 years;*

(D) *1 member representing victims of crime shall be appointed for a term of 3 years;*

(E) *1 member representing the interests of Federal inmate workers shall be appointed for a term of 3 years;*

(F) *1 member representing the business community shall be appointed for a term of 4 years;*

(G) *1 member representing the business community shall be appointed for a term of 4 years; and*

(H) *the members having special expertise in inmate rehabilitation techniques shall be appointed for a term of 5 years.*

(4) *The President shall designate 1 member of the Board as Chairperson. The Chairperson may designate a Vice Chairperson.*

(5) *Members of the Board may be reappointed.*

(6) *Any vacancy on the Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.*

(7) *The members of the Board shall serve without compensation. The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5,*

*United States Code, to attend meetings of the Board and, with the advance approval of the Chairperson of the Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Board.*

*(8)(A) The Chairperson of the Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.*

*(B) Upon request of the Chairperson of the Board, a Federal agency may detail a Federal Government employee to the Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.*

*(9) The Chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.*

*(c) The Director of the Bureau of Prisons shall serve as Chief Executive Officer of the Corporation. The Director shall designate a person to serve as Chief Operating Officer of the Corporation.*

**§ 4122. Administration of Federal Prison Industries**

(a) Federal Prison Industries shall determine in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions for the ~~production of commodities~~ *production of products or furnishing of services* for consumption in such institutions or for sale to the departments or agencies of the United States, but not for sale to the public in competition with private enterprise.

(b)(1) \* \* \*

\* \* \* \* \*

**[(3)]** (3)(A) Federal Prison Industries shall diversify its products so that its sales are distributed among its industries as broadly as possible.

*(B) Federal Prison Industries may locate more than one workshop at a Federal correctional facility.*

*(C) Federal Prison Industries may operate a workshop outside of a correctional facility if all of the inmates working in such workshop are classified as minimum security inmates.*

**[(4)]** Any decision by Federal Prison Industries to produce a new product or to significantly expand the production of an existing product shall be made by the board of directors of the corporation. Before the board of directors makes a final decision, the corporation shall do the following:

**[(A)]** The corporation shall prepare a detailed written analysis of the probable impact on industry and free labor of the plans for new production or expanded production. In such written analysis the corporation shall, at a minimum, identify and consider—

**[(i)]** the number of vendors currently meeting the requirements of the Federal Government for the product;

**[(ii)]** the proportion of the Federal Government market for the product currently served by small businesses, small disadvantaged businesses, or businesses operating in labor surplus areas;

**[(iii)]** the size of the Federal Government and non-Federal Government markets for the product;

[(iv) the projected growth in the Federal Government demand for the product; and

[(v) the projected ability of the Federal Government market to sustain both Federal Prison Industries and private vendors.

[(B) The corporation shall announce in a publication designed to most effectively provide notice to potentially affected private vendors the plans to produce any new product or to significantly expand production of an existing product. The announcement shall also indicate that the analysis prepared under subparagraph (A) is available through the corporation and shall invite comments from private industry regarding the new production or expanded production.

[(C) The corporation shall directly advise those affected trade associations that the corporation can reasonably identify the plans for new production or expanded production, and the corporation shall invite such trade associations to submit comments on those plans.

[(D) The corporation shall provide to the board of directors—

[(i) the analysis prepared under subparagraph (A) on the proposal to produce a new product or to significantly expand the production of an existing product,

[(ii) comments submitted to the corporation on the proposal, and

[(iii) the corporation's recommendations for action on the proposal in light of such comments.

In addition, the board of directors, before making a final decision under this paragraph on a proposal, shall, upon the request of an established trade association or other interested representatives of private industry, provide a reasonable opportunity to such trade association or other representatives to present comments directly to the board of directors on the proposal.

[(5) Federal Prison Industries shall publish in the manner specified in paragraph (4)(B) the final decision of the board with respect to the production of a new product or the significant expansion of the production of an existing product.]

*(4) A decision to authorize Federal Prison Industries to offer a new specific product or specific service or to expand the production of an existing product or service shall be made by its board of directors in conformance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, and this chapter.*

*(5)(A) Whenever Federal Prison Industries proposes to offer for sale a new specific product or specific service or to expand production of a currently authorized product or service, the Chief Operating Officer of Federal Prison Industries shall submit an appropriate proposal to the board of directors and obtain the board's approval before initiating any such expansion. The proposal submitted to the board shall include a detailed analysis of the probable impact of the proposed expansion of sales within the Federal market by Federal Prison Industries on private sector firms and their non-inmate workers.*

*(B)(i) The analysis required by subparagraph (A) shall be performed by an interagency team on a reimbursable basis or by a private contractor paid by Federal Prison Industries.*

(ii) *If the analysis is to be performed by an interagency team, such team shall be led by the Administrator of the Small Business Administration or the designee of such officer with representatives of the Department of Labor, the Department of Commerce, and the Federal Procurement Data Center.*

(iii) *If the analysis is to be performed by a private contractor, the selection of the contractor and the administration of the contract shall be conducted by one of the entities referenced in clause (ii) as an independent executive agent for the board of directors. Maximum consideration shall be given to any proposed statement of work furnished by the Chief Operating Officer of Federal Prison Industries.*

(C) *The analysis required by subparagraph (A) shall identify and consider—*

(i) *the number of vendors that currently meet the requirements of the Federal Government for the specific product or specific service;*

(ii) *the proportion of the Federal Government market for the specific product or specific service currently furnished by small businesses during the previous 3 fiscal years;*

(iii) *the share of the Federal market for the specific product or specific service projected for Federal Prison Industries for the fiscal year in which production or performance will commence or expand and the subsequent 4 fiscal years;*

(iv) *whether the industry producing the specific product or specific service in the private sector—*

(I) *has an unemployment rate higher than the national average; or*

(II) *has a rate of unemployment for workers that has consistently shown an increase during the previous 5 years;*

(v) *whether the specific product is an import-sensitive product;*

(vi) *the requirements of the Federal Government and the demands of entities other than the Federal Government for the specific product or service during the previous 3 fiscal years;*

(vii) *the projected growth or decline in the demand of the Federal Government for the specific product or specific service;*

(viii) *the capability of the projected demand of the Federal Government for the specific product or service to sustain both Federal Prison Industries and private vendors; and*

(ix) *whether authorizing the production of the new product or performance of a new service will provide inmates with the maximum opportunity to acquire knowledge and skill in trades and occupations that will provide them with a means of earning a livelihood upon release.*

(D)(i) *The board of directors may not approve a proposal to authorize the production and sale of a new specific product or continued sale of a previously authorized product unless—*

(I) *the product to be furnished is a prison-made product; or*

(II) *the service to be furnished is to be performed by inmate workers.*

(ii) *The board of directors may not approve a proposal to authorize the production and sale of a new prison-made product or to expand production of a currently authorized product if the product is—*

(I) produced in the private sector by an industry which has reflected during the previous year an unemployment rate above the national average; or

(II) an import-sensitive product.

(iii) The board of directors may not approve a proposal for inmates to provide a service in which an inmate worker has access to—

(I) personal or financial information about individual private citizens, including information relating to such person's real property, however described, without giving prior notice to such persons or class of persons to the greatest extent practicable;

(II) geographic data regarding the location of surface and subsurface infrastructure providing communications, water and electrical power distribution, pipelines for the distribution of natural gas, bulk petroleum products and other commodities, and other utilities; or

(III) data that is classified.

(iv)(I) Federal Prison Industries is prohibited from furnishing through inmate labor construction services, unless to be performed within a Federal correctional institution pursuant to the participation of an inmate in an apprenticeship or other vocational education program teaching the skills of the various building trades.

(II) For purposes of this clause, the term "construction" has the meaning given such term by section 2.101 of the Federal Acquisition Regulation (48 CFR part 2.101), as in effect on June 1, 2002, including the repair, alteration, or maintenance of real property in being.

(6) To provide further opportunities for participation by interested parties, the board of directors shall—

(A) give additional notice of a proposal to authorize the production and sale of a new product or service, or expand the production of a currently authorized product or service, in a publication designed to most effectively provide notice to private vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal, which notice shall offer to furnish copies of the analysis required by paragraph (5) and shall solicit comment on the analysis;

(B) solicit comments on the analysis required by paragraph (5) from trade associations representing vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal to authorize the production and sale of a new product or service (or expand the production of a currently authorized product or service); and

(C) afford an opportunity, on request, for a representative of an established trade association, labor union, or other private sector representatives to present comments on the proposal directly to the board of directors.

(7) The board of directors shall be provided copies of all comments received on the expansion proposal.

(8) Based on the comments received on the initial expansion proposal, the Chief Operating Officer of Federal Prison Industries may provide the board of directors a revised expansion proposal. If



*such revised proposal provides for expansion of inmate work opportunities in an industry different from that initially proposed, such revised proposal shall reflect the analysis required by paragraph (5)(C) and be subject to the public comment requirements of paragraph (6).*

*(9) The board of directors shall consider a proposal to authorize the sale of a new specific product or specific service (or to expand the volume of sales for a currently authorized product or service) and take any action with respect to such proposal, during a meeting that is open to the public, unless closed pursuant to section 552(b) of title 5.*

*(10) In conformity with the requirements of paragraphs (5) through (9) of this subsection, the board of directors may—*

*(A) authorize the donation of products produced or services furnished by Federal industries and available for sale;*

*(B) authorize the production of a new specific product or the furnishing of a new specific service for donation; or*

*(C) authorize a proposal to expand production of a currently authorized specific product or specific service in an amount in excess of a reasonable share of the market for such product or service, if—*

*(i) a Federal agency or department, purchasing such product or service, has requested that Federal Prison Industries be authorized to furnish such product or service in amounts that are needed by such agency or department; or*

*(ii) the proposal is justified for other good cause and supported by at least eight members of the board.*

*(11)(A) The Board of Directors of Federal Prison Industries shall prescribe the rates of hourly wages to be paid inmates performing work for or through Federal Prison Industries. The Director of the Federal Bureau of Prisons shall prescribe the rates of hourly wages for other work assignments within the various Federal correctional institutions.*

*(B) The various inmate wage rates shall be reviewed and considered for increase on not less than a biannual basis.*

*(C) Wages earned by an inmate worker shall be paid in the name of the inmate. Deductions, aggregating to not more than 80 percent of gross wages, shall be taken from the wages due for—*

*(i) applicable taxes (Federal, State, and local);*

*(ii) payment of fines and restitution pursuant to court order;*

*(iii) payment of additional restitution for victims of the inmate's crimes (at a rate not less than 10 percent of gross wages);*

*(iv) allocations for support of the inmate's family pursuant to statute, court order, or agreement with the inmate;*

*(v) allocations to a fund in the inmate's name to facilitate such inmate's assimilation back into society, payable at the conclusion of incarceration; and*

*(vi) such other deductions as may be specified by the Director of the Bureau of Prisons.*

*(D) Each inmate worker working for Federal Prison Industries shall indicate in writing that such person—*

*(i) is participating voluntarily; and*

*(ii) understands and agrees to the wages to be paid and deductions to be taken from such wages.*

[(6)] (12) Federal Prison Industries shall publish, after the end of each 6-month period, a list of sales by the corporation for that 6-month period. Such list shall be made available to all interested parties.

\* \* \* \* \*

**§ 4124. Purchase of prison-made products by Federal departments**

[(a)] The several Federal departments and agencies and all other Government institutions of the United States shall purchase at not to exceed current market prices, such products of the industries authorized by this chapter as meet their requirements and may be available.

[(b)] Disputes as to the price, quality, character, or suitability of such products shall be arbitrated by a board consisting of the Attorney General, the Administrator of General Services, and the President, or their representatives. Their decision shall be final and binding upon all parties.

[(c)] Each Federal department, agency, and institution subject to the requirements of subsection (a) shall separately report acquisitions of products and services from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act) in the same manner as it reports other acquisitions. Each report published by the Federal Procurement Data System that contains the information collected by the System shall include a statement to accompany the information reported by the department, agency, or institution under the preceding sentence as follows: "Under current law, sales by Federal Prison Industries are considered intragovernmental transfers. The purpose of reporting sales by Federal Prison Industries is to provide a complete overview of acquisitions by the Federal Government during the reporting period."

[(d)] Within 90 days after the date of the enactment of this subsection, Federal Prison Industries shall publish a catalog of all products and services which it offers for sale. This catalog shall be updated periodically to the extent necessary to ensure that the information in the catalog is complete and accurate.】

**§ 4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries**

(a) *IN GENERAL.*—Purchases from Federal Prison Industries, Incorporated, a wholly owned Government corporation, as referred to in section 9101(3)(E) of title 31, may be made by a Federal department or agency only in accordance with this section.

(b) *SOLICITATION AND EVALUATION OF OFFERS AND CONTRACT AWARDS.*—(1) If a procurement activity of a Federal department or agency has a requirement for a specific product or service that is authorized to be offered for sale by Federal Prison Industries, in accordance with section 4122 of this title, and is listed in the catalog referred to in subsection (g), the procurement activity shall solicit an offer from Federal Prison Industries, if the purchase is expected to be in excess of the micro-purchase threshold (as defined by section

32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f)).

(2) A contract award for such product or service shall be made using competitive procedures in accordance with the applicable evaluation factors, unless a determination is made by the Attorney General pursuant to paragraph (3) or an award using other than competitive procedures is authorized pursuant to paragraph (7).

(3) The procurement activity shall negotiate with Federal Prison Industries on a noncompetitive basis for the award of a contract if the Attorney General determines that—

(A) Federal Prison Industries cannot reasonably expect fair consideration to receive the contract award on a competitive basis; and

(B) the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility.

(4) Except in the case of an award to be made pursuant to paragraph (3), a contract award shall be made with Federal Prison Industries only if the contracting officer for the procurement activity determines that—

(A) the specific product or service to be furnished will meet the requirements of the procurement activity (including any applicable prequalification requirements and all specified commercial or governmental standards pertaining to quality, testing, safety, serviceability, and warranties);

(B) timely performance of the contract can be reasonably expected; and

(C) the contract price does not exceed a current market price.

(5) A determination by the Attorney General pursuant to paragraph (3) shall be—

(A) supported by specific findings by the warden of the penal or correctional institution at which a Federal Prison Industries workshop is scheduled to perform the contract;

(B) supported by specific findings by Federal Prison Industries regarding why it does not expect to win the contract on a competitive basis; and

(C) made and reported in the same manner as a determination made pursuant to section 303(c)(7) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(7)).

(6) If the Attorney General has not made the determination described in paragraph (3) within 30 days after Federal Prison Industries has been informed of a contracting opportunity by a procurement activity, the procurement activity may proceed to conduct a procurement for the product or service in accordance with the procedures generally applicable to such procurements by the procurement activity.

(7) A contract award may be made to Federal Prison Industries using other than competitive procedures if such product or service is only available from Federal Prison Industries and the contract may be awarded under the authority of section 2304(c)(1) of title 10 or section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(1)), as may be applicable, and

*pursuant to the justification and approval requirements relating to such noncompetitive procurements specified by law and the Governmentwide Federal Acquisition Regulation.*

*(c) OFFERS FROM FEDERAL PRISON INDUSTRIES.—A timely offer received from Federal Prison Industries to furnish a product or service to a Federal department or agency shall be considered for award without limitation as to the dollar value of the proposed purchase.*

*(d) PERFORMANCE BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries shall perform its contractual obligations under a contract awarded by a Federal department or agency to the same extent as any other contractor.*

*(e) FINALITY OF CONTRACTING OFFICER'S DECISION.—(1) A decision by a contracting officer regarding the award of a contract to Federal Prison Industries or relating to the performance of such contract shall be final, unless reversed on appeal pursuant to paragraph (2) or (3).*

*(2) The Chief Executive Officer of Federal Prison Industries may appeal to the head of a Federal department or agency a decision by a contracting officer not to award a contract to Federal Prison Industries pursuant to subsection (b)(4). The decision of the head of a Federal department or agency on appeal shall be final.*

*(3) A dispute between Federal Prison Industries and a procurement activity regarding performance of a contract shall be subject to—*

*(A) alternative means of dispute resolution pursuant to subchapter IV of chapter 5 of title 5; or*

*(B) final resolution by the board of contract appeals having jurisdiction over the procurement activity's contract performance disputes pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).*

*(f) REPORTING OF PURCHASES.—Each Federal department or agency shall report purchases from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))) in the same manner as it reports to such System any acquisition in an amount in excess of the simplified acquisition threshold (as defined by section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).*

*(g) CATALOG OF PRODUCTS.—Federal Prison Industries shall publish and maintain a catalog of all specific products and services that it is authorized to offer for sale. Such catalog shall be periodically revised as products and services are added or deleted by its board of directors (in accordance with section 4122(b) of this title).*

*(h) COMPLIANCE WITH STANDARDS.—Federal Prison Industries shall comply with Federal occupational, health, and safety standards with respect to the operation of its industrial operations.*

\* \* \* \* \*

#### **§ 4127. Prison Industries report to Congress**

¶ The board of directors of Federal Prison Industries shall submit an annual report to the Congress on the conduct of the business of the corporation during each fiscal year, and on the condition of its funds during such fiscal year. Such report shall include a statement of the amount of obligations issued under section

4129(a)(1) during such fiscal year, and an estimate of the amount of obligations that will be so issued in the following fiscal year.】

**§ 4127. Federal Prison Industries report to Congress**

(a) *IN GENERAL.*—Pursuant to chapter 91 of title 31, the board of directors of Federal Prison Industries shall submit an annual report to Congress on the conduct of the business of the corporation during each fiscal year and the condition of its funds during the fiscal year.

(b) *CONTENTS OF REPORT.*—In addition to the matters required by section 9106 of title 31, and such other matters as the board considers appropriate, a report under subsection (a) shall include—

(1) a statement of the amount of obligations issued under section 4129(a)(1) of this title during the fiscal year;

(2) an estimate of the amount of obligations that will be issued in the following fiscal year;

(3) an analysis of—

(A) the corporation's total sales for each specific product and type of service sold to the Federal agencies and the commercial market;

(B) the total purchases by each Federal agency of each specific product and type of service;

(C) the corporation's share of such total Federal Government purchases by specific product and type of service; and

(D) the number and disposition of disputes submitted to the heads of the Federal departments and agencies pursuant to section 4124(e) of this title;

(4) an analysis of the inmate workforce that includes—

(A) the number of inmates employed;

(B) the number of inmates utilized to produce products or furnish services sold in the commercial market;

(C) the number and percentage of employed inmates by the term of their incarceration; and

(D) the various hourly wages paid to inmates employed with respect to the production of the various specific products and types of services authorized for production and sale to Federal agencies and in the commercial market; and

(5) data concerning employment obtained by former inmates upon release to determine whether the employment provided by Federal Prison Industries during incarceration provided such inmates with knowledge and skill in a trade or occupation that enabled such former inmate to earn a livelihood upon release.

(c) *PUBLIC AVAILABILITY.*—Copies of an annual report under subsection (a) shall be made available to the public at a price not exceeding the cost of printing the report.

\* \* \* \* \*

**§ 4130. Construction of provisions**

Nothing in this chapter shall be construed—

(1) to establish an entitlement of any inmate to—

(A) employment in a Federal Prison Industries facility;

or

- (B) any particular wage, compensation, or benefit on demand, except as otherwise specifically provided by law or regulation;
- (2) to establish that inmates are employees for the purposes of any law or program; or
- (3) to establish any cause of action by or on behalf of any inmate against the United States or any officer, employee, or contractor thereof.

### **§4131. Definitions**

As used in this chapter—

(1) the term “assembly” means the process of uniting or combining articles or components (including ancillary finished components or assemblies) so as to produce a significant change in form or utility, without necessarily changing or altering the component parts;

(2) the term “current market price” means, with respect to a specific product, the fair market price of the product within the meaning of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), at the time that the contract is to be awarded, verified through appropriate price analysis or cost analysis, including any costs relating to transportation or the furnishing of any ancillary services;

(3) the term “import-sensitive product” means a product which, according to Department of Commerce data, has experienced competition from imports at an import to domestic production ratio of 25 percent or greater;

(4) the term “labor-intensive manufacture” means a manufacturing activity in which the value of inmate labor constitutes at least 10 percent of the estimate unit cost to produce the item by Federal Prison Industries;

(5) the term “manufacture” means the process of fabricating from raw or prepared materials, so as to impart to those materials new forms, qualities, properties, and combinations;

(6) the term “reasonable share of the market” means a share of the total purchases by the Federal departments and agencies, as reported to the Federal Procurement Data System for—

(A) any specific product during the 3 preceding fiscal years, that does not exceed 20 percent of the Federal market for the specific product; and

(B) any specific service during the 3 preceding fiscal years, that does not exceed 5 percent of the Federal market for the specific service; and

(7) the term “services” has the meaning given the term “service contract” by section 37.101 of the Federal Acquisition Regulation (48 C.F.R. 36.102), as in effect on July 1, 2002.

\* \* \* \* \*

MARKUP TRANSCRIPT  
**BUSINESS MEETING**  
**FRIDAY, JULY 25, 2003**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:40 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. The last bill on the agenda is H.R. 1829, and pursuant to notice I now call up the bill H.R. 1829, the "Federal Prison Industries Competition in Contracting Act of 2003," for purposes of markup and move its favorable recommendation to the House.

Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 1829, follows:]

108TH CONGRESS  
1ST SESSION

# H. R. 1829

To amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of non-profit organizations, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 2003

Mr. HOEKSTRA (for himself, Mr. FRANK of Massachusetts, Mr. COLLINS, Mrs. MALONEY, Mr. SENSENBRENNER, Mr. CONYERS, Mr. COBLE, Mr. WATT, Mr. MANZULLO, Ms. VELÁZQUEZ, Mr. BOEHNER, Mr. GEORGE MILLER of California, Mr. TOM DAVIS of Virginia, Mr. RANGEL, Mr. TOOMEY, Mr. NADLER, Mr. EHLERS, Mr. DINGELL, Mr. LOBIONDO, Mr. CANTOR, Ms. BALDWIN, Mr. NORWOOD, Ms. WOOLSEY, Mr. SOUDER, Mr. FERGUSON, Ms. SCHAKOWSKY, Mr. SHADEGG, Mr. KINGSTON, Ms. HART, Ms. LEE, Mr. HOSTETTLER, Mr. FILNER, Mr. BARTLETT of Maryland, Mr. OXLEY, Mr. ENGLISH, Mr. MCINTYRE, Mr. DEMINT, Mr. FLAKE, Mr. SMITH of New Jersey, Mr. RYAN of Wisconsin, Mr. CULBERSON, Mr. EMANUEL, Mr. FORBES, Mr. GOODE, Mrs. NORTHUP, Mr. OLVER, Mr. BLUNT, Ms. PRYCE of Ohio, Mrs. MILLER of Michigan, Mr. CRAMER, Mr. CAMP, Mr. ROGERS of Michigan, Mr. LEACH, Mr. PENCE, Mr. HILL, Mr. UPTON, Mr. MCCOTTER, Mr. LANGEVIN, Mr. NETHERCUTT, Mr. OSBORNE, Mr. HAYES, Mr. WAMP, Mr. TERRY, Mr. KLECZKA, Mrs. MYRICK, Mr. NEY, Mr. BRADY of Pennsylvania, Mr. BRADY of Texas, Mrs. JONES of Ohio, Mr. JONES of North Carolina, Mr. SESSIONS, Mrs. CUBIN, Mrs. CAPITO, Mr. BURR, Mr. CLAY, Mr. KNOLLENBERG, Mr. MORAN of Kansas, Mr. TIBERI, Mr. PORTER, Mr. MCGOVERN, Mr. BALLENGER, Mr. DEAL of Georgia, Mr. EVERETT, Mr. KENNEDY of Rhode Island, Mr. MCKEON, Mr. ISAKSON, Mr. LATOURETTE, Mr. THORNBERRY, Mrs. WILSON of New Mexico, Mr. ROYCE, Mr. KLINE, Mr. KUCINICH, Mr. DUNCAN, Mr. TIAHRT, Mr. QUINN, Mr. WILSON of South Carolina, Mr. DOOLITTLE, Mr. MCDERMOTT, Mrs. BIGGERT, Mrs. MUSGRAVE, Mr. CHOCOLA, Mr. GINGREY, Mr. NUNES, and Mr. BURNS)



introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of non-profit organizations, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5 “Federal Prison Industries Competition in Contracting  
6 Act of 2003”.

7       (b) TABLE OF CONTENTS.—The table of contents for  
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Governmentwide procurement policy relating to purchases from Federal  
Prison Industries.

Sec. 3. Public participation regarding expansion proposals by Federal Prison  
Industries.

- Sec. 4. Transitional mandatory source authority.
- Sec. 5. Authority to perform as a Federal subcontractor.
- Sec. 6. Inmate wages and deductions.
- Sec. 7. Clarifying amendment relating to services.
- Sec. 8. Conforming amendment.
- Sec. 9. Rules of construction relating to chapter 307.
- Sec. 10. Providing additional rehabilitative opportunities for inmates.
- Sec. 11. Restructuring the Board of Directors.
- Sec. 12. Providing additional management flexibility to Federal Prison Industry operations.
- Sec. 13. Transitional personnel management authority.
- Sec. 14. Federal Prison Industries report to Congress.
- Sec. 15. Independent study to determine the effects of eliminating the Federal Prison Industries mandatory source authority.
- Sec. 16. Definitions.
- Sec. 17. Implementing regulations and procedures.
- Sec. 18. Rule of construction.
- Sec. 19. Effective date and applicability.
- Sec. 20. Clerical amendments.

1 **SEC. 2. GOVERNMENTWIDE PROCUREMENT POLICY RELAT-**  
 2 **ING TO PURCHASES FROM FEDERAL PRISON**  
 3 **INDUSTRIES.**

4 Section 4124 of title 18, United States Code, is  
 5 amended to read as follows:

6 **“§ 4124. Governmentwide procurement policy relat-**  
 7 **ing to purchases from Federal Prison In-**  
 8 **dustries**

9 “(a) IN GENERAL.—Purchases from Federal Prison  
 10 Industries, Incorporated, a wholly owned Government cor-  
 11 poration, as referred to in section 9101(3)(E) of title 31,  
 12 may be made by a Federal department or agency only in  
 13 accordance with this section.

14 “(b) SOLICITATION AND EVALUATION OF OFFERS  
 15 AND CONTRACT AWARDS.—(1) If a procurement activity  
 16 of a Federal department or agency has a requirement for

1 a specific product or service that is authorized to be of-  
2 fered for sale by Federal Prison Industries, in accordance  
3 with section 4122 of this title, and is listed in the catalog  
4 referred to in subsection (g), the procurement activity  
5 shall solicit an offer from Federal Prison Industries, if the  
6 purchase is expected to be in excess of the micro-purchase  
7 threshold (as defined by section 32(f) of the Office of Fed-  
8 eral Procurement Policy Act (41 U.S.C. 428(f))).

9 “(2) A contract award for such product or service  
10 shall be made using competitive procedures in accordance  
11 with the applicable evaluation factors, unless a determina-  
12 tion is made by the Attorney General pursuant to para-  
13 graph (3) or an award using other than competitive proce-  
14 dures is authorized pursuant to paragraph (7).

15 “(3) The procurement activity shall negotiate with  
16 Federal Prison Industries on a noncompetitive basis for  
17 the award of a contract if the Attorney General determines  
18 that—

19 “(A) Federal Prison Industries cannot reason-  
20 ably expect fair consideration to receive the contract  
21 award on a competitive basis; and

22 “(B) the contract award is necessary to main-  
23 tain work opportunities otherwise unavailable at the  
24 penal or correctional facility at which the contract is  
25 to be performed to prevent circumstances that could

1 reasonably be expected to significantly endanger the  
2 safe and effective administration of such facility.

3 “(4) Except in the case of an award to be made pur-  
4 suant to paragraph (3), a contract award shall be made  
5 with Federal Prison Industries only if the contracting offi-  
6 cer for the procurement activity determines that—

7 “(A) the specific product or service to be fur-  
8 nished will meet the requirements of the procure-  
9 ment activity (including any applicable  
10 prequalification requirements and all specified com-  
11 mercial or governmental standards pertaining to  
12 quality, testing, safety, serviceability, and warran-  
13 ties);

14 “(B) timely performance of the contract can be  
15 reasonably expected; and

16 “(C) the contract price does not exceed a cur-  
17 rent market price.

18 “(5) A determination by the Attorney General pursu-  
19 ant to paragraph (3) shall be—

20 “(A) supported by specific findings by the war-  
21 den of the penal or correctional institution at which  
22 a Federal Prison Industries workshop is scheduled  
23 to perform the contract;

1           “(B) supported by specific findings by Federal  
2     Prison Industries regarding why it does not expect  
3     to win the contract on a competitive basis; and

4           “(C) made and reported in the same manner as  
5     a determination made pursuant to section 303(c)(7)  
6     of the Federal Property and Administrative Services  
7     Act of 1949 (41 U.S.C. 253(c)(7)).

8           “(6) If the Attorney General has not made the deter-  
9     mination described in paragraph (3) within 30 days after  
10    Federal Prison Industries has been informed of a con-  
11    tracting opportunity by a procurement activity, the pro-  
12    curement activity may proceed to conduct a procurement  
13    for the product or service in accordance with the proce-  
14    dures generally applicable to such procurements by the  
15    procurement activity.

16          “(7) A contract award may be made to Federal Pris-  
17    on Industries using other than competitive procedures if  
18    such product or service is only available from Federal  
19    Prison Industries and the contract may be awarded under  
20    the authority of section 2304(c)(1) of title 10 or section  
21    303(c) of the Federal Property and Administrative Serv-  
22    ices Act of 1949 (41 U.S.C. 252(c)(1)), as may be applica-  
23    ble, and pursuant to the justification and approval re-  
24    quirements relating to such noncompetitive procurements

1 specified by law and the Governmentwide Federal Acquisi-  
2 tion Regulation.

3 “(c) OFFERS FROM FEDERAL PRISON INDUS-  
4 TRIES.—A timely offer received from Federal Prison In-  
5 dustries to furnish a product or service to a Federal de-  
6 partment or agency shall be considered for award without  
7 limitation as to the dollar value of the proposed purchase.

8 “(d) PERFORMANCE BY FEDERAL PRISON INDUS-  
9 TRIES.—Federal Prison Industries shall perform its con-  
10 tractual obligations under a contract awarded by a Fed-  
11 eral department or agency to the same extent as any other  
12 contractor.

13 “(e) FINALITY OF CONTRACTING OFFICER’S DECI-  
14 SION.—(1) A decision by a contracting officer regarding  
15 the award of a contract to Federal Prison Industries or  
16 relating to the performance of such contract shall be final,  
17 unless reversed on appeal pursuant to paragraph (2) or  
18 (3).

19 “(2) The Chief Executive Officer of Federal Prison  
20 Industries may appeal to the head of a Federal depart-  
21 ment or agency a decision by a contracting officer not to  
22 award a contract to Federal Prison Industries pursuant  
23 to subsection (b)(4). The decision of the head of a Federal  
24 department or agency on appeal shall be final.

1       “(3) A dispute between Federal Prison Industries  
2 and a procurement activity regarding performance of a  
3 contract shall be subject to—

4           “(A) alternative means of dispute resolution  
5 pursuant to subchapter IV of chapter 5 of title 5;  
6 or

7           “(B) final resolution by the board of contract  
8 appeals having jurisdiction over the procurement ac-  
9 tivity’s contract performance disputes pursuant to  
10 the Contract Disputes Act of 1978 (41 U.S.C. 601  
11 et seq.).

12       “(f) REPORTING OF PURCHASES.—Each Federal de-  
13 partment or agency shall report purchases from Federal  
14 Prison Industries to the Federal Procurement Data Sys-  
15 tem (as referred to in section 6(d)(4) of the Office of Fed-  
16 eral Procurement Policy Act (41 U.S.C. 405(d)(4))) in the  
17 same manner as it reports to such System any acquisition  
18 in an amount in excess of the simplified acquisition thresh-  
19 old (as defined by section 4(11) of the Office of Federal  
20 Procurement Policy Act (41 U.S.C. 403(11))).

21       “(g) CATALOG OF PRODUCTS.—Federal Prison In-  
22 dustries shall publish and maintain a catalog of all specific  
23 products and services that it is authorized to offer for sale.  
24 Such catalog shall be periodically revised as products and

1 services are added or deleted by its board of directors (in  
2 accordance with section 4122(b) of this title).

3 “(h) COMPLIANCE WITH STANDARDS.—Federal Pris-  
4 on Industries shall comply with Federal occupational,  
5 health, and safety standards with respect to the operation  
6 of its industrial operations.”.

7 **SEC. 3. PUBLIC PARTICIPATION REGARDING EXPANSION**  
8 **PROPOSALS BY FEDERAL PRISON INDUS-**  
9 **TRIES.**

10 Section 4122(b) of title 18, United States Code, is  
11 amended—

12 (1) by redesignating paragraph (6) as para-  
13 graph (12); and

14 (2) by striking paragraphs (4) and (5) and in-  
15 serting the following new paragraphs:

16 “(4) A decision to authorize Federal Prison Indus-  
17 tries to offer a new specific product or specific service or  
18 to expand the production of an existing product or service  
19 shall be made by its board of directors in conformance  
20 with the requirements of subsections (b), (c), (d), and (e)  
21 of section 553 of title 5, and this chapter.

22 “(5)(A) Whenever Federal Prison Industries pro-  
23 poses to offer for sale a new specific product or specific  
24 service or to expand production of a currently authorized  
25 product or service, the Chief Operating Officer of Federal



1 Prison Industries shall submit an appropriate proposal to  
2 the board of directors and obtain the board's approval be-  
3 fore initiating any such expansion. The proposal submitted  
4 to the board shall include a detailed analysis of the prob-  
5 able impact of the proposed expansion of sales within the  
6 Federal market by Federal Prison Industries on private  
7 sector firms and their non-inmate workers.

8       “(B)(i) The analysis required by subparagraph (A)  
9 shall be performed by an interagency team on a reimburs-  
10 able basis or by a private contractor paid by Federal Pris-  
11 on Industries.

12       “(ii) If the analysis is to be performed by an inter-  
13 agency team, such team shall be led by the Administrator  
14 of the Small Business Administration or the designee of  
15 such officer with representatives of the Department of  
16 Labor, the Department of Commerce, and the Federal  
17 Procurement Data Center.

18       “(iii) If the analysis is to be performed by a private  
19 contractor, the selection of the contractor and the admin-  
20 istration of the contract shall be conducted by one of the  
21 entities referenced in clause (ii) as an independent execu-  
22 tive agent for the board of directors. Maximum consider-  
23 ation shall be given to any proposed statement of work  
24 furnished by the Chief Operating Officer of Federal Prison  
25 Industries.

1       “(C) The analysis required by subparagraph (A) shall  
2 identify and consider—

3           “(i) the number of vendors that currently meet  
4 the requirements of the Federal Government for the  
5 specific product or specific service;

6           “(ii) the proportion of the Federal Government  
7 market for the specific product or specific service  
8 currently furnished by small businesses during the  
9 previous 3 fiscal years;

10          “(iii) the share of the Federal market for the  
11 specific product or specific service projected for Fed-  
12 eral Prison Industries for the fiscal year in which  
13 production or performance will commence or expand  
14 and the subsequent 4 fiscal years;

15          “(iv) whether the industry producing the spe-  
16 cific product or specific service in the private  
17 sector—

18           “(I) has an unemployment rate higher  
19 than the national average; or

20           “(II) has a rate of unemployment for  
21 workers that has consistently shown an increase  
22 during the previous 5 years;

23          “(v) whether the specific product is an import-  
24 sensitive product;

1           “(vi) the requirements of the Federal Govern-  
2           ment and the demands of entities other than the  
3           Federal Government for the specific product or serv-  
4           ice during the previous 3 fiscal years;

5           “(vii) the projected growth or decline in the de-  
6           mand of the Federal Government for the specific  
7           product or specific service;

8           “(viii) the capability of the projected demand of  
9           the Federal Government for the specific product or  
10          service to sustain both Federal Prison Industries  
11          and private vendors; and

12          “(ix) whether authorizing the production of the  
13          new product or performance of a new service will  
14          provide inmates with the maximum opportunity to  
15          acquire knowledge and skill in trades and occupa-  
16          tions that will provide them with a means of earning  
17          a livelihood upon release.

18          “(D)(i) The board of directors may not approve a  
19          proposal to authorize the production and sale of a new  
20          specific product or continued sales of a previously author-  
21          ized product unless—

22                 “(I) the product to be furnished is a prison-  
23                 made product; or

24                 “(II) the service to be furnished is to be per-  
25                 formed by inmate workers.

1       “(ii) The board of directors may not approve a pro-  
2       posal to authorize the production and sale of a new prison-  
3       made product or to expand production of a currently au-  
4       thorized product if the product is—

5               “(I) produced in the private sector by an indus-  
6       try which has reflected during the previous year an  
7       unemployment rate above the national average; or

8               “(II) an import-sensitive product.

9       “(iii) The board of directors may not approve a pro-  
10      posal for inmates to provide a service in which an inmate  
11      worker has access to—

12              “(I) personal or financial information about in-  
13      dividual private citizens, including information relat-  
14      ing to such person’s real property, however de-  
15      scribed, without giving prior notice to such persons  
16      or class of persons to the greatest extent practicable;

17              “(II) geographic data regarding the location of  
18      surface and subsurface infrastructure providing com-  
19      munications, water and electrical power distribution,  
20      pipelines for the distribution of natural gas, bulk pe-  
21      troleum products and other commodities, and other  
22      utilities; or

23              “(III) data that is classified.

24      “(iv)(I) Federal Prison Industries is prohibited from  
25      furnishing through inmate labor construction services, un-

1 less to be performed within a Federal correctional institu-  
2 tion pursuant to the participation of an inmate in an ap-  
3 prenticeship or other vocational education program teach-  
4 ing the skills of the various building trades.

5 “(II) For purposes of this clause, the term ‘construc-  
6 tion’ has the meaning given such term by section 2.101  
7 of the Federal Acquisition Regulation (48 CFR part  
8 2.101), as in effect on June 1, 2002, including the repair,  
9 alteration, or maintenance of real property in being.

10 “(6) To provide further opportunities for participa-  
11 tion by interested parties, the board of directors shall—

12 “(A) give additional notice of a proposal to au-  
13 thorize the production and sale of a new product or  
14 service, or expand the production of a currently au-  
15 thorized product or service, in a publication designed  
16 to most effectively provide notice to private vendors  
17 and labor unions representing private sector workers  
18 who could reasonably be expected to be affected by  
19 approval of the proposal, which notice shall offer to  
20 furnish copies of the analysis required by paragraph  
21 (5) and shall solicit comment on the analysis;

22 “(B) solicit comments on the analysis required  
23 by paragraph (5) from trade associations rep-  
24 resenting vendors and labor unions representing pri-  
25 vate sector workers who could reasonably be ex-

1 pected to be affected by approval of the proposal to  
2 authorize the production and sale of a new product  
3 or service (or expand the production of a currently  
4 authorized product or service); and

5 “(C) afford an opportunity, on request, for a  
6 representative of an established trade association,  
7 labor union, or other private sector representatives  
8 to present comments on the proposal directly to the  
9 board of directors.

10 “(7) The board of directors shall be provided copies  
11 of all comments received on the expansion proposal.

12 “(8) Based on the comments received on the initial  
13 expansion proposal, the Chief Operating Officer of Federal  
14 Prison Industries may provide the board of directors a re-  
15 vised expansion proposal. If such revised proposal provides  
16 for expansion of inmate work opportunities in an industry  
17 different from that initially proposed, such revised pro-  
18 posal shall reflect the analysis required by paragraph  
19 (5)(C) and be subject to the public comment requirements  
20 of paragraph (6).

21 “(9) The board of directors shall consider a proposal  
22 to authorize the sale of a new specific product or specific  
23 service (or to expand the volume of sales for a currently  
24 authorized product or service) and take any action with  
25 respect to such proposal, during a meeting that is open

1 to the public, unless closed pursuant to section 552(b) of  
2 title 5.

3 “(10) In conformity with the requirements of para-  
4 graphs (5) through (9) of this subsection, the board of  
5 directors may—

6 “(A) authorize the donation of products pro-  
7 duced or services furnished by Federal industries  
8 and available for sale; or

9 “(B) authorize the production of a new specific  
10 product or the furnishing of a new specific service  
11 for donation.”.

12 **SEC. 4. TRANSITIONAL MANDATORY SOURCE AUTHORITY.**

13 (a) **IN GENERAL.**—Notwithstanding the require-  
14 ments of section 4124 of title 18, United States Code (as  
15 amended by section 2 of this Act), a Federal department  
16 or agency having a requirement for a product that is au-  
17 thorized for sale by Federal Prison Industries and is listed  
18 in its catalog (referred to in section 4124(g) of title 18,  
19 United States Code) shall first solicit an offer from Fed-  
20 eral Prison Industries and make purchases on a non-  
21 competitive basis in accordance with this section.

22 (b) **PREFERENTIAL SOURCE STATUS.**—Subject to  
23 the limitations of subsection (d), a contract award shall  
24 be made on a noncompetitive basis to Federal Prison In-

1 dustries if the contracting officer for the procurement ac-  
2 tivity determines that—

3 (1) the product offered by Federal Prison In-  
4 dustries will meet the requirements of the procure-  
5 ment activity (including commercial or governmental  
6 standards or specifications pertaining to design, per-  
7 formance, testing, safety, serviceability, and warran-  
8 ties as may be imposed upon a private sector sup-  
9 plier of the type being offered by Federal Prison In-  
10 dustries);

11 (2) timely performance of the contract by Fed-  
12 eral Prison Industries can be reasonably expected;  
13 and

14 (3) the negotiated price does not exceed a fair  
15 and reasonable price.

16 (c) CONTRACTUAL TERMS.—The terms and condi-  
17 tions of the contract and the price to be paid to Federal  
18 Prison Industries shall be determined by negotiation be-  
19 tween Federal Prison Industries and the Federal agency  
20 making the purchase. The negotiated price shall not ex-  
21 ceed a fair and reasonable price determined in accordance  
22 with the procedures of the Federal Acquisition Regulation.

23 (d) PERFORMANCE OF CONTRACTUAL OBLIGA-  
24 TIONS.—



1           (1) IN GENERAL.—Federal Prison Industries  
2 shall perform the obligations of the contract nego-  
3 tiated pursuant to subsection (c).

4           (2) PERFORMANCE DISPUTES.—If the head of  
5 the contracting activity and the Chief Operating Of-  
6 ficer of Federal Prison Industries are unable to re-  
7 solve a contract performance dispute to their mutual  
8 satisfaction, such dispute shall be resolved pursuant  
9 to section 4124(e)(3) of title 18, United States Code  
10 (as added by section 2 of this Act).

11 (e) LIMITATIONS ON USE OF AUTHORITY.—

12           (1) IN GENERAL.—As a percentage of the sales  
13 made by Federal Prison Industries during the base  
14 period, the total dollar value of sales to the Govern-  
15 ment made pursuant to subsection (b) and sub-  
16 section (c) of this section shall not exceed—

17                   (A) 90 percent in fiscal year 2005;

18                   (B) 85 percent in fiscal year 2006;

19                   (C) 70 percent in fiscal year 2007;

20                   (D) 55 percent in fiscal year 2008; and

21                   (E) 40 percent in fiscal year 2009.

22           (2) SALES WITHIN VARIOUS BUSINESS SEC-  
23 TORS.—Use of the authority provided by subsections  
24 (b) and (c) shall not result in sales by Federal Pris-  
25 on Industries to the Government that are in excess

1 of its total sales during the base year for each busi-  
2 ness sector.

3 (3) LIMITATIONS RELATING TO SPECIFIC PROD-  
4 UCTS.—Use of the authorities provided by sub-  
5 sections (b) and (c) shall not result in contract  
6 awards to Federal Prison Industries that are in ex-  
7 cess of its total sales during the base period for such  
8 product.

9 (4) CHANGES IN DESIGN SPECIFICATIONS.—  
10 The limitations on sales specified in paragraphs (2)  
11 and (3) shall not be affected by any increases in the  
12 unit cost of production of a specific product arising  
13 from changes in the design specification of such  
14 product directed by the buying agency.

15 (f) DURATION OF AUTHORITY.—The preferential  
16 contracting authorities authorized by subsection (b) may  
17 not be used on or after October 1, 2009, and become effec-  
18 tive on the effective date of the final regulations issued  
19 pursuant to section 17.

20 (g) DEFINITIONS.—For the purposes of this  
21 section—

22 (1) the term “base period” means the total  
23 sales of Federal Prison Industries during the period  
24 October 1, 2001, and September 30, 2002 (Fiscal  
25 Year 2002);

1           (2) the term “business sectors” means the eight  
2     product/service business groups identified in the  
3     2002 Federal Prison Industries annual report as the  
4     Clothing and Textile Business Group, the Elec-  
5     tronics Business Group, the Fleet Management and  
6     Vehicular Components Business Group, the Graphics  
7     Business Group, the Industrial Products Business  
8     Group, the Office Furniture Business Group, the  
9     Recycling Activities Business Group, and the Serv-  
10    ices Business Group; and

11           (3) the term “fair and reasonable price” shall  
12    be given the same meaning as, and be determined  
13    pursuant to, part 15.8 of the Federal Acquisition  
14    Regulation (48 C.F.R. 15.8).

15           (h) FINDING BY ATTORNEY GENERAL WITH RE-  
16    SPECT TO PUBLIC SAFETY.—(1) Not later than 60 days  
17    prior to the end of each fiscal year specified in subsection  
18    (e)(1), the Attorney General shall make a finding regard-  
19    ing the effects of the percentage limitation imposed by  
20    such subsection for such fiscal year and the likely effects  
21    of the limitation imposed by such subsection for the fol-  
22    lowing fiscal year.

23           (2) The Attorney General’s finding shall include a de-  
24    termination whether such limitation has resulted or is like-  
25    ly to result in a substantial reduction in inmate industrial

1 employment and whether such reductions, if any, present  
2 a significant risk of adverse effects on safe prison oper-  
3 ation or public safety.

4 (3) If the Attorney General finds a significant risk  
5 of adverse effects on either safe prison management or  
6 public safety, he shall so advise the Congress.

7 (4) In advising the Congress pursuant to paragraph  
8 (3), the Attorney General shall make recommendations for  
9 additional authorizations of appropriations to provide ad-  
10 ditional alternative inmate rehabilitative opportunities and  
11 additional correctional staffing, as may be appropriate.

12 **SEC. 5. AUTHORITY TO PERFORM AS A FEDERAL SUBCON-**  
13 **TRACTOR.**

14 (a) IN GENERAL.—Federal Prison Industries is au-  
15 thorized to enter into a contract with a Federal contractor  
16 (or a subcontractor of such contractor at any tier) to  
17 produce products as a subcontractor or supplier in the per-  
18 formance of a Federal procurement contract. The use of  
19 Federal Prison Industries as a subcontractor or supplier  
20 shall be a wholly voluntary business decision by the Fed-  
21 eral prime contractor or subcontractor, subject to any  
22 prior approval of subcontractors or suppliers by the con-  
23 tracting officer which may be imposed by the Federal Ac-  
24 quisition Regulation or by the contract.

1           (b) COMMERCIAL SALES PROHIBITED.—The author-  
2 ity provided by subsection (a) shall not result, either di-  
3 rectly or indirectly, in the sale in the commercial market  
4 of a product or service resulting from the labor of Federal  
5 inmate workers in violation of section 1762(a) of title 18,  
6 United States Code. A Federal contractor (or subcon-  
7 tractor at any tier) using Federal Prison Industries as a  
8 subcontractor or supplier in furnishing a commercial prod-  
9 uct pursuant to a Federal contract shall implement appro-  
10 priate management procedures to prevent introducing an  
11 inmate-produced product into the commercial market.

12           (c) PROHIBITIONS ON MANDATING SUBCONTRACTING  
13 WITH FEDERAL PRISON INDUSTRIES.—Except as author-  
14 ized under the Federal Acquisition Regulation, the use of  
15 Federal Prison Industries as a subcontractor or supplier  
16 of products or provider of services shall not be imposed  
17 upon prospective or actual Federal prime contractors or  
18 a subcontractors at any tier by means of—

19                   (1) a contract solicitation provision requiring a  
20 contractor to offer to make use of Federal Prison  
21 Industries, its products or services;

22                   (2) specifications requiring the contractor to  
23 use specific products or services (or classes of prod-  
24 ucts or services) offered by Federal Prison Indus-  
25 tries in the performance of the contract;

1           (3) any contract modification directing the use  
2           of Federal Prison Industries, its products or serv-  
3           ices; or

4           (4) any other means.

5 **SEC. 6. INMATE WAGES AND DEDUCTIONS.**

6           Section 4122(b) of title 18, United States Code (as  
7           amended by section 3 of this Act), is further amended by  
8           adding a new paragraph (11) as follows:

9           “(11)(A) The Board of Directors of Federal Prison  
10           Industries shall prescribe the rates of hourly wages to be  
11           paid inmates performing work for or through Federal  
12           Prison Industries. The Director of the Federal Bureau of  
13           Prisons shall prescribe the rates of hourly wages for other  
14           work assignments within the various Federal correctional  
15           institutions.

16           “(B) The various inmate wage rates shall be reviewed  
17           and considered for increase on not less than a biannual  
18           basis.

19           “(C) Wages earned by an inmate worker shall be paid  
20           in the name of the inmate. Deductions, aggregating to not  
21           more than 80 percent of gross wages, shall be taken from  
22           the wages due for—

23           “(i) applicable taxes (Federal, State, and local);

24           “(ii) payment of fines and restitution pursuant  
25           to court order;

1           “(iii) payment of additional restitution for vic-  
2           tims of the inmate’s crimes (at a rate not less than  
3           10 percent of gross wages);

4           “(iv) allocations for support of the inmate’s  
5           family pursuant to statute, court order, or agree-  
6           ment with the inmate;

7           “(v) allocations to a fund in the inmate’s name  
8           to facilitate such inmate’s assimilation back into so-  
9           ciety, payable at the conclusion of incarceration; and

10           “(vi) such other deductions as may be specified  
11           by the Director of the Bureau of Prisons.

12           “(D) Each inmate worker working for Federal Prison  
13 Industries shall indicate in writing that such person—

14           “(i) is participating voluntarily; and

15           “(ii) understands and agrees to the wages to be  
16           paid and deductions to be taken from such wages.”.

17 **SEC. 7. CLARIFYING AMENDMENT RELATING TO SERVICES.**

18           (a) IN GENERAL.—Section 1761 of title 18, United  
19 States Code, is amended in subsection (a), by striking  
20 “any goods, wares, or merchandise manufactured, pro-  
21 duced, or mined” and inserting “products manufactured,  
22 services furnished, or minerals mined”.

23           (b) COMPLETION OF EXISTING AGREEMENTS.—Any  
24 prisoner work program operated by a prison or jail of a  
25 State or local jurisdiction of a State which is providing

1 services for the commercial market through inmate labor  
2 on October 1, 2002, may continue to provide such com-  
3 mercial services until—

4 (1) the expiration date specified in the contract  
5 or other agreement with a commercial partner on  
6 October 1, 2002, or

7 (2) until September 30, 2005, if the prison  
8 work program is directly furnishing the services to  
9 the commercial market.

10 (c) APPROVAL REQUIRED FOR LONG-TERM OPER-  
11 ATION.—A prison work program operated by a correc-  
12 tional institution operated by a State or local jurisdiction  
13 of a State may continue to provide inmate labor to furnish  
14 services for sale in the commercial market after the dates  
15 specified in subsection (b) if such program has been cer-  
16 tified pursuant to section 1761(c)(1) of title 18, United  
17 States Code, and is in compliance with the requirements  
18 of such subsection and its implementing regulations.

19 **SEC. 8. CONFORMING AMENDMENT.**

20 Section 4122(a) of title 18, United States Code, is  
21 amended by striking “production of commodities” and in-  
22 serting “production of products or furnishing of services”.



1 **SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER**

2 **307.**

3 Chapter 307 of title 18, United States Code, is fur-  
4 ther amended by adding the following:

5 **“§ 4130. Construction of provisions**

6 “Nothing in this chapter shall be construed—

7 “(1) to establish an entitlement of any inmate  
8 to—

9 “(A) employment in a Federal Prison In-  
10 dustries facility; or

11 “(B) any particular wage, compensation,  
12 or benefit on demand, except as otherwise spe-  
13 cifically provided by law or regulation;

14 “(2) to establish that inmates are employees for  
15 the purposes of any law or program; or

16 “(3) to establish any cause of action by or on  
17 behalf of any inmate against the United States or  
18 any officer, employee, or contractor thereof.”.

19 **SEC. 10. PROVIDING ADDITIONAL REHABILITATIVE OPPOR-**  
20 **TUNITIES FOR INMATES.**

21 (a) **ADDITIONAL EDUCATIONAL, TRAINING, AND RE-**  
22 **LEASE-PREPARATION OPPORTUNITIES.—**

23 (1) **PROGRAM ESTABLISHED.—**There is hereby  
24 established the Enhanced In-Prison Educational and  
25 Vocational Assessment and Training Program within  
26 the Bureau of Prisons.

1           (2) COMPREHENSIVE PROGRAM.—In addition to  
2 such other components as the Director of the Bu-  
3 reau of Prisons deems appropriate to reduce inmate  
4 idleness and better prepare inmates for a successful  
5 reentry into the community upon release, the pro-  
6 gram shall provide—

7                   (A) in-prison assessments of inmates’  
8 needs and aptitudes;

9                   (B) a full range of educational opportuni-  
10 ties;

11                   (C) vocational training and apprentice-  
12 ships; and

13                   (D) comprehensive release-readiness prepa-  
14 ration.

15           (3) AUTHORIZATION OF APPROPRIATIONS.—For  
16 the purposes of carrying out the program established  
17 by paragraph (1), \$75,000,000 is authorized for  
18 each fiscal year after fiscal year 2003, to remain  
19 available until expended. Funds shall be allocated  
20 from the gross profits within the Federal Prison In-  
21 dustries Fund, and, to the extent such amounts are  
22 inadequate, from the General Treasury.

23           (b) INMATE WORK OPPORTUNITIES IN SUPPORT OF  
24 NOT-FOR-PROFIT ENTITIES.—

1           (1) PROPOSALS FOR DONATION PROGRAMS.—  
2     The Chief Operating Officer of Federal Prison In-  
3     dustries shall develop and present to the Board of  
4     Directors of Federal Prison Industries proposals to  
5     have Federal Prison Industries donate products and  
6     services to eligible entities that provide goods or  
7     services to low-income individuals who would likely  
8     otherwise have difficulty purchasing such products  
9     or services in the commercial market.

10          (2) SCHEDULE FOR SUBMISSION AND CONSID-  
11     ERATION OF DONATION PROGRAMS.—

12           (A) INITIAL PROPOSALS.—The Chief Oper-  
13     ating Officer shall submit the initial group of  
14     proposals for programs of the type described in  
15     paragraph (1) within 180 days after the date of  
16     the enactment of this Act. The Board of Direc-  
17     tors of Federal Prison Industries shall consider  
18     such proposals from the Chief Operating Officer  
19     not later than the date that is 270 days after  
20     the date of the enactment of this Act.

21           (B) ANNUAL OPERATING PLAN.—The  
22     Board of Directors of Federal Prison Industries  
23     shall consider proposals by the Chief Operating  
24     Officer for programs of the type described in

1 paragraph (1) as part of the annual operating  
2 plan for Federal Prison Industries.

3 (C) OTHER PROPOSALS.—In addition to  
4 proposals submitted by the Chief Operating Of-  
5 ficer, the Board of Directors may, from time to  
6 time, consider proposals presented by prospec-  
7 tive eligible entities.

8 (3) DEFINITION OF ELIGIBLE ENTITIES.—For  
9 the purposes of this subsection, the term “eligible  
10 entity” means an entity—

11 (A) that is an organization described in  
12 section 501(c)(3) of the Internal Revenue Code  
13 of 1986 and exempt from taxation under sec-  
14 tion 501(a) of such Code and that has been  
15 such an organization for a period of not less  
16 than 36 months prior to inclusion in a proposal  
17 of the type described in paragraph (1), or

18 (B) that is a religious organization de-  
19 scribed in section 501(d) of such Code and ex-  
20 empt from taxation under section 501(a) of  
21 such Code.

22 (4) AUTHORIZATION OF APPROPRIATIONS.—  
23 There are authorized to be appropriated \$7,000,000  
24 for each of the fiscal years 2004 through 2008 for  
25 the purposes of paying the wages of inmates and

1 otherwise carrying out programs of the type de-  
2 scribed in paragraph (1).

3 (c) MAXIMIZING INMATE REHABILITATIVE OPPORTU-  
4 NITIES THROUGH COGNITIVE ABILITIES ASSESSMENTS.—

5 (1) DEMONSTRATION PROGRAM AUTHORIZED.—

6 (A) IN GENERAL.—There is hereby estab-  
7 lished within the Federal Bureau of Prisons a  
8 program to be known as the “Cognitive Abili-  
9 ties Assessment Demonstration Program”. The  
10 purpose of the demonstration program is to de-  
11 termine the effectiveness of a program that as-  
12 sesses the cognitive abilities and perceptual  
13 skills of Federal inmates to maximize the bene-  
14 fits of various rehabilitative opportunities de-  
15 signed to prepare each inmate for a successful  
16 return to society and reduce recidivism. The  
17 demonstration program shall be undertaken by  
18 a contractor with a demonstrated record of en-  
19 abling the behavioral and academic improvement  
20 of adults through the use of research-based sys-  
21 tems that maximize the development of both the  
22 cognitive and perceptual capabilities of a par-  
23 ticipating individual, including adults in a cor-  
24 rectional setting.

1 (B) SCOPE OF DEMONSTRATION PRO-  
2 GRAM.—The demonstration program shall to  
3 the maximum extent practicable, be—

4 (i) conducted during a period of three  
5 consecutive fiscal years, commencing dur-  
6 ing fiscal year 2004;

7 (ii) conducted at 12 Federal correc-  
8 tional institutions; and

9 (iii) offered to 6,000 inmates, who are  
10 categorized as minimum security or less,  
11 and are within five years of release.

12 (2) AUTHORIZATION OF APPROPRIATIONS.—  
13 There is authorized to be appropriated \$3,000,000  
14 in each of the three fiscal years after fiscal year  
15 2003, to remain available until expended, for the  
16 purposes of conducting the demonstration program  
17 authorized by subsection (a).

18 (d) PRERELEASE EMPLOYMENT ASSISTANCE.—

19 (1) IN GENERAL.—The Director of the Bureau  
20 of Prisons shall, to the maximum extent practicable,  
21 afford to inmates opportunities to participate in pro-  
22 grams and activities designed to help prepare such  
23 inmates to obtain employment upon release.

24 (2) PRERELEASE EMPLOYMENT PLACEMENT  
25 ASSISTANCE.—Such prerelease employment place-

1 ment assistance required by subsection (a) shall  
2 include—

3 (A) training in the preparation of resumes  
4 and job applications;

5 (B) training in interviewing skills;

6 (C) training and assistance in job search  
7 techniques;

8 (D) conduct of job fairs; and

9 (E) such other methods deemed appro-  
10 priate by the Director of the Bureau of Prisons.

11 (3) PRIORITY PARTICIPATION.—Priority in pro-  
12 gram participation shall be accorded to inmates who  
13 are participating in work opportunities afforded by  
14 Federal Prison Industries and are within 24 months  
15 of release from incarceration.

16 (e) PROVIDING ADDITIONAL OPPORTUNITIES FOR  
17 POST INCARCERATION VOCATIONAL AND REMEDIAL EDU-  
18 CATIONAL OPPORTUNITIES FOR INMATES.—

19 (1) FEDERAL REENTRY CENTER DEMONSTRATION.—  
20

21 (A) AUTHORITY AND ESTABLISHMENT OF  
22 DEMONSTRATION PROJECT.—From funds made  
23 available to carry out this subsection, the Attor-  
24 ney General, in consultation with the Director  
25 of the Administrative Office of the United

1 States Courts, shall establish the Federal Re-  
2 entry Center Demonstration project. The  
3 project shall involve appropriate prisoners from  
4 the Federal prison population and shall utilize  
5 community corrections facilities, home confine-  
6 ment, and a coordinated response by Federal  
7 agencies to assist participating prisoners in pre-  
8 paring for and adjusting to reentry into the  
9 community.

10 (B) PROJECT ELEMENTS.—The project au-  
11 thorized by subparagraph (A) shall include the  
12 following core elements:

13 (i) A Reentry Review Team for each  
14 prisoner, consisting of representative from  
15 the Bureau of Prisons, the United States  
16 Probation System, the United States Pa-  
17 role Commission, and the relevant commu-  
18 nity corrections facility, who shall initially  
19 meet with the prisoner to develop a reentry  
20 plan tailored to the needs of the prisoner.

21 (ii) A system of graduated levels of  
22 supervision within the community correc-  
23 tions facility to promote community safety,  
24 provide incentives for prisoners to complete  
25 the reentry plan, including victim restituti-



1           tion, and provide a reasonable method for  
2           imposing sanctions for a prisoner’s viola-  
3           tion of the conditions of participation in  
4           the project.

5           (iii) Substance abuse treatment and  
6           aftercare, mental and medical health treat-  
7           ment and aftercare, vocational and edu-  
8           cational training, life skills instruction,  
9           conflict resolution skills training, batterer  
10          intervention programs, assistance obtaining  
11          suitable affordable housing, and other pro-  
12          gramming to promote effective reintegra-  
13          tion into the community as needed.

14          (C) PROBATION OFFICERS.—From funds  
15          made available to carry out this subsection, the  
16          Director of the Administrative Office of the  
17          United States Courts shall assign one or more  
18          probation officers from each participating judi-  
19          cial district to the Reentry Demonstration  
20          project. Such officers shall be assigned to and  
21          stationed at the community corrections facility  
22          and shall serve on the Reentry Review Teams.

23          (D) PROJECT DURATION.—The Reentry  
24          Center Demonstration project shall begin not  
25          later than 6 months following the availability of

1 funds to carry out this subsection, and shall  
2 last 3 years.

3 (2) DEFINITIONS.—For the purposes of this  
4 subsection, the term “appropriate prisoner” shall  
5 mean a person who is considered by prison  
6 authorities—

7 (A) to pose a medium to high risk of com-  
8 mitting a criminal act upon reentering the com-  
9 munity; and

10 (B) to lack the skills and family support  
11 network that facilitate successful reintegration  
12 into the community.

13 (3) AUTHORIZATION OF APPROPRIATIONS.—To  
14 carry out this subsection, there are authorized to be  
15 appropriated, to remain available until expended—

16 (A) to the Federal Bureau of Prisons—

17 (i) \$1,375,000 for fiscal year 2004;

18 (ii) \$1,110,000 for fiscal year 2005;

19 (iii) \$1,130,000 for fiscal year 2006;

20 (iv) \$1,155,000 for fiscal year 2007;

21 and

22 (v) \$1,230,000 for fiscal year 2008;

23 and

24 (B) to the Federal Judiciary—

25 (i) \$3,380,000 for fiscal year 2004;

- 1 (ii) \$3,540,000 for fiscal year 2005;  
2 (iii) \$3,720,000 for fiscal year 2006;  
3 (iv) \$3,910,000 for fiscal year 2007;  
4 and  
5 (v) \$4,100,000 for fiscal year 2008.

6 **SEC. 11. RESTRUCTURING THE BOARD OF DIRECTORS.**

7 Section 4121 of title 18, United States Code, is  
8 amended to read as follows:

9 **“§ 4121. Federal Prison Industries; Board of Direc-**  
10 **tors: executive management**

11 “(a) Federal Prison Industries is a government cor-  
12 poration of the District of Columbia organized to carry  
13 on such industrial operations in Federal correctional insti-  
14 tutions as authorized by its Board of Directors. The man-  
15 ner and extent to which such industrial operations are car-  
16 ried on in the various Federal correctional institutions  
17 shall be determined by the Attorney General.

18 “(b)(1) The corporation shall be governed by a board  
19 of 11 directors appointed by the President.

20 “(2) In making appointments to the Board, the  
21 President shall assure that 3 members represent the busi-  
22 ness community, 3 members represent organized labor, 1  
23 member shall have special expertise in inmate rehabilita-  
24 tion techniques, 1 member represents victims of crime, 1  
25 member represents the interests of Federal inmate work-

1 ers, and 2 additional members whose background and ex-  
2 pertise the President deems appropriate. The members of  
3 the Board representing the business community shall in-  
4 clude, to the maximum extent practicable, representation  
5 of firms furnishing services as well as firms producing  
6 products, especially from those industry categories from  
7 which Federal Prison Industries derives substantial sales.  
8 The members of the Board representing organized labor  
9 shall, to the maximum practicable, include representation  
10 from labor unions whose members are likely to be most  
11 affected by the sales of Federal Prison Industries.

12 “(3) Each member shall be appointed for a term of  
13 5 years, except that of members first appointed—

14 “(A) 2 members representing the business com-  
15 munity shall be appointed for a term of 3 years;

16 “(B) 2 members representing labor shall be ap-  
17 pointed for a term of 3 years;

18 “(C) 2 members whose background and exper-  
19 tise the President deems appropriate for a term of  
20 3 years;

21 “(D) 1 member representing victims of crime  
22 shall be appointed for a term of 3 years;

23 “(E) 1 member representing the interests of  
24 Federal inmate workers shall be appointed for a  
25 term of 3 years;

1           “(F) 1 member representing the business com-  
2           munity shall be appointed for a term of 4 years;

3           “(G) 1 member representing the business com-  
4           munity shall be appointed for a term of 4 years; and

5           “(H) the members having special expertise in  
6           inmate rehabilitation techniques shall be appointed  
7           for a term of 5 years.

8           “(4) The President shall designate 1 member of the  
9           Board as Chairperson. The Chairperson may designate a  
10          Vice Chairperson.

11          “(5) Members of the Board may be reappointed.

12          “(6) Any vacancy on the Board shall be filled in the  
13          same manner as the original appointment. Any member  
14          appointed to fill a vacancy occurring before the expiration  
15          of the term for which the member’s predecessor was ap-  
16          pointed shall be appointed for the remainder of that term.

17          “(7) The members of the Board shall serve without  
18          compensation. The members of the Board shall be allowed  
19          travel expenses, including per diem in lieu of subsistence,  
20          at rates authorized for employees of agencies under sub-  
21          chapter I of chapter 57 of title 5, United States Code,  
22          to attend meetings of the Board and, with the advance  
23          approval of the Chairperson of the Board, while otherwise  
24          away from their homes or regular places of business for  
25          purposes of duties as a member of the Board.

1       “(8)(A) The Chairperson of the Board may appoint  
2 and terminate any personnel that may be necessary to en-  
3 able the Board to perform its duties.

4       “(B) Upon request of the Chairperson of the Board,  
5 a Federal agency may detail a Federal Government em-  
6 ployee to the Board without reimbursement. Such detail  
7 shall be without interruption or loss of civil service status  
8 or privilege.

9       “(9) The Chairperson of the Board may procure tem-  
10 porary and intermittent services under section 3109(b) of  
11 title 5, United States Code.

12       “(c) The Director of the Bureau of Prisons shall  
13 serve as Chief Executive Officer of the Corporation. The  
14 Director shall designate a person to serve as Chief Oper-  
15 ating Officer of the Corporation.”.

16 **SEC. 12. PROVIDING ADDITIONAL MANAGEMENT FLEXI-**  
17 **BILITY TO FEDERAL PRISON INDUSTRY OP-**  
18 **ERATIONS.**

19       Section 4122(b)(3) of title 18, United States Code,  
20 is amended—

21             (1) by striking “(3)” and inserting “(3)(A)”;  
22       and

23             (2) by adding at the end the following new  
24       paragraphs:

1       “(B) Federal Prison Industries may locate more than  
2 one workshop at a Federal correctional facility.

3       “(C) Federal Prison Industries may operate a work-  
4 shop outside of a correctional facility if all of the inmates  
5 working in such workshop are classified as minimum secu-  
6 rity inmates.”.

7 **SEC. 13. TRANSITIONAL PERSONNEL MANAGEMENT AU-**  
8 **THORITY.**

9       Any correctional officer or other employee of Federal  
10 Prison Industries being paid with nonappropriated funds  
11 who would be separated from service because of a reduc-  
12 tion in the net income of Federal Prison Industries during  
13 any fiscal year specified in section 4(e)(1) shall be—

14           (1) eligible for appointment (or reappointment)  
15       in the competitive service pursuant to title 5, United  
16       States Code;

17           (2) registered on a Bureau of Prisons reemploy-  
18       ment priority list; and

19           (3) given priority for any other position within  
20       the Bureau of Prisons for which such employee is  
21       qualified.

22 **SEC. 14. FEDERAL PRISON INDUSTRIES REPORT TO CON-**  
23 **GRESS.**

24       Section 4127 of title 18, United States Code, is  
25 amended to read as follows:

1 **“§ 4127. Federal Prison Industries report to Congress**

2       “(a) IN GENERAL.—Pursuant to chapter 91 of title  
3 31, the board of directors of Federal Prison Industries  
4 shall submit an annual report to Congress on the conduct  
5 of the business of the corporation during each fiscal year  
6 and the condition of its funds during the fiscal year.

7       “(b) CONTENTS OF REPORT.—In addition to the  
8 matters required by section 9106 of title 31, and such  
9 other matters as the board considers appropriate, a report  
10 under subsection (a) shall include—

11               “(1) a statement of the amount of obligations  
12 issued under section 4129(a)(1) of this title during  
13 the fiscal year;

14               “(2) an estimate of the amount of obligations  
15 that will be issued in the following fiscal year;

16               “(3) an analysis of—

17                       “(A) the corporation’s total sales for each  
18 specific product and type of service sold to the  
19 Federal agencies and the commercial market;

20                       “(B) the total purchases by each Federal  
21 agency of each specific product and type of  
22 service;

23                       “(C) the corporation’s share of such total  
24 Federal Government purchases by specific prod-  
25 uct and type of service; and



1           “(D) the number and disposition of dis-  
2           putes submitted to the heads of the Federal de-  
3           partments and agencies pursuant to section  
4           4124(e) of this title;

5           “(4) an analysis of the inmate workforce that  
6           includes—

7                   “(A) the number of inmates employed;

8                   “(B) the number of inmates utilized to  
9                   produce products or furnish services sold in the  
10                  commercial market;

11                  “(C) the number and percentage of em-  
12                  ployed inmates by the term of their incarcer-  
13                  ation; and

14                  “(D) the various hourly wages paid to in-  
15                  mates employed with respect to the production  
16                  of the various specific products and types of  
17                  services authorized for production and sale to  
18                  Federal agencies and in the commercial market;  
19                  and

20           “(5) data concerning employment obtained by  
21           former inmates upon release to determine whether  
22           the employment provided by Federal Prison Indus-  
23           tries during incarceration provided such inmates  
24           with knowledge and skill in a trade or occupation

1 that enabled such former inmate to earn a livelihood  
2 upon release.

3 “(c) PUBLIC AVAILABILITY.—Copies of an annual re-  
4 port under subsection (a) shall be made available to the  
5 public at a price not exceeding the cost of printing the  
6 report.”.

7 **SEC. 15. INDEPENDENT STUDY TO DETERMINE THE EF-**  
8 **FECTS OF ELIMINATING THE FEDERAL PRIS-**  
9 **ON INDUSTRIES MANDATORY SOURCE AU-**  
10 **THORITY.**

11 (a) STUDY REQUIRED.—The Comptroller General  
12 shall undertake to have an independent study conducted  
13 on the effects of eliminating the Federal Prison Industries  
14 mandatory source authority.

15 (b) SOLICITATION OF VIEWS.—The Comptroller Gen-  
16 eral shall ensure that in developing the statement of work  
17 and the methodology for the study, the views and input  
18 of private industry, organized labor groups, Members and  
19 staff of the relevant Congressional committees, officials of  
20 the executive branch, and the public are solicited.

21 (c) SUBMISSION.—Not later than January 31, 2005,  
22 the Comptroller General shall submit the results of the  
23 study to Congress, including any recommendations for leg-  
24 islation.

1 **SEC. 16. DEFINITIONS.**

2 Chapter 307 of title 18, United States Code, is  
3 amended by adding at the end the following new section:

4 **“§ 4131. Definitions**

5 “As used in this chapter—

6 “(1) the term ‘assembly’ means the process of  
7 uniting or combining articles or components (includ-  
8 ing ancillary finished components or assemblies) so  
9 as to produce a significant change in form or utility,  
10 without necessarily changing or altering the compo-  
11 nent parts;

12 “(2) the term ‘current market price’ means,  
13 with respect to a specific product, the fair market  
14 price of the product within the meaning of section  
15 15(a) of the Small Business Act (15 U.S.C. 644(a)),  
16 at the time that the contract is to be awarded, veri-  
17 fied through appropriate price analysis or cost anal-  
18 ysis, including any costs relating to transportation  
19 or the furnishing of any ancillary services;

20 “(3) the term ‘import-sensitive product’ means  
21 a product which, according to Department of Com-  
22 merce data, has experienced competition from im-  
23 ports at an import to domestic production ratio of  
24 25 percent or greater;

25 “(4) the term ‘labor-intensive manufacture’  
26 means a manufacturing activity in which the value

1 of inmate labor constitutes at least 10 percent of the  
2 estimate unit cost to produce the item by Federal  
3 Prison Industries;

4 “(5) the term ‘manufacture’ means the process  
5 of fabricating from raw or prepared materials, so as  
6 to impart to those materials new forms, qualities,  
7 properties, and combinations;

8 “(6) the term ‘reasonable share of the market’  
9 means a share of the total purchases by the Federal  
10 departments and agencies, as reported to the Fed-  
11 eral Procurement Data System for—

12 “(A) any specific product during the 3 pre-  
13 ceding fiscal years, that does not exceed 20 per-  
14 cent of the Federal market for the specific  
15 product; and

16 “(B) any specific service during the 3 pre-  
17 ceding fiscal years, that does not exceed 5 per-  
18 cent of the Federal market for the specific serv-  
19 ice; and

20 “(7) the term ‘services’ has the meaning given  
21 the term ‘service contract’ by section 37.101 of the  
22 Federal Acquisition Regulation (48 C.F.R. 36.102),  
23 as in effect on July 1, 2002.”.

24 **SEC. 17. IMPLEMENTING REGULATIONS AND PROCEDURES.**

25 (a) FEDERAL ACQUISITION REGULATION.—

1           (1) PROPOSED REVISIONS.—Proposed revisions  
2 to the Governmentwide Federal Acquisition Regula-  
3 tion to implement the amendments made by this Act  
4 shall be published not later than 60 days after the  
5 date of the enactment of this Act and provide not  
6 less than 60 days for public comment.

7           (2) FINAL REGULATIONS.—Final regulations  
8 shall be published not later than 180 days after the  
9 date of the enactment of this Act and shall be effec-  
10 tive on the date that is 30 days after the date of  
11 publication.

12           (3) PUBLIC PARTICIPATION.—The proposed  
13 regulations required by subsection (a) and the final  
14 regulations required by subsection (b) shall afford  
15 an opportunity for public participation in accordance  
16 with section 22 of the Office of Federal Procurement  
17 Policy Act (41 U.S.C. 418b).

18           (b) BOARD OF DIRECTORS.—

19           (1) IN GENERAL.—The Board of Directors of  
20 Federal Prison Industries shall issue regulations de-  
21 fining the terms specified in paragraph (2).

22           (2) TERMS TO BE DEFINED.—The Board of Di-  
23 rectors shall issue regulations for the following  
24 terms:

25           (A) Prison-made product.

1 (B) Prison-furnished service.

2 (C) Specific product.

3 (D) Specific service.

4 (3) SCHEDULE FOR REGULATORY DEFINI-  
5 TIONS.—

6 (A) Proposed regulations relating to the  
7 matter described in subsection (b)(2) shall be  
8 published not later than 60 days after the date  
9 of enactment of this Act and provide not less  
10 than 60 days for public comment.

11 (B) Final regulations relating to the mat-  
12 ters described in subsection (b)(2) shall be pub-  
13 lished not less than 180 days after the date of  
14 enactment of this Act and shall be effective on  
15 the date that is 30 days after the date of publi-  
16 cation.

17 (4) ENHANCED OPPORTUNITIES FOR PUBLIC  
18 PARTICIPATION AND SCRUTINY.—

19 (A) ADMINISTRATIVE PROCEDURE ACT.—  
20 Regulations issued by the Board of Directors  
21 shall be subject to notice and comment rule-  
22 making pursuant to section 553 of title 5,  
23 United States Code. Unless determined wholly  
24 impracticable or unnecessary by the Board of

1 Directors, the public shall be afforded 60 days  
2 for comment on proposed regulations.

3 (B) ENHANCED OUTREACH.—The Board  
4 of Directors shall use means designed to most  
5 effectively solicit public comment on proposed  
6 regulations, procedures, and policies and to in-  
7 form the affected public of final regulations,  
8 procedures, and policies.

9 (C) OPEN MEETING PROCESSES.—The  
10 Board of Directors shall take all actions relat-  
11 ing to the adoption of regulations, operating  
12 procedures, guidelines, and any other matter re-  
13 lating to the governance and operation of Fed-  
14 eral Prison Industries based on deliberations  
15 and a recorded vote conducted during a meeting  
16 open to the public, unless closed pursuant to  
17 section 552(b) of title 5, United States Code.

18 **SEC. 18. RULE OF CONSTRUCTION.**

19 Subsection (e) of section 4124 of title 18, United  
20 States Code, as amended by section 2, is not intended to  
21 alter any rights of any offeror other than Federal Prison  
22 Industries to file a bid protest in accordance with other  
23 law or regulation in effect on the date of the enactment  
24 of this Act.

1 **SEC. 19. EFFECTIVE DATE AND APPLICABILITY.**

2 (a) EFFECTIVE DATE.—Except as provided in sub-  
3 section (b), this Act and the amendments made by this  
4 Act shall take effect on the date of enactment of this Act.

5 (b) APPLICABILITY.—Section 4124 of title 18, United  
6 States Code, as amended by section 2, shall apply to any  
7 requirement for a product or service offered by Federal  
8 Prison Industries needed by a Federal department or  
9 agency after the effective date of the final regulations  
10 issued pursuant to section 17(a)(2), or after September  
11 30, 2004, whichever is earlier.

12 **SEC. 20. CLERICAL AMENDMENTS.**

13 The table of sections for chapter 307 of title 18,  
14 United States Code, is amended—

15 (1) by amending the item relating to section  
16 4121 to read as follows:

“4121. Federal Prison Industries; Board of Directors: executive management.”;

17 (2) by amending the item relating to section  
18 4124 to read as follows:

“4124. Governmentwide procurement policy relating to purchases from Federal  
Prison Industries.”;

19 (3) by amending the item relating to section  
20 4127 to read as follows:

“4127. Federal Prison Industries report to Congress.”;

21 and

22 (4) by adding at the end the following new  
23 items:



113

50

“4130. Construction of provisions.  
“4131. Definitions.”

○

Chairman SENSENBRENNER. The Chair recognizes himself briefly to explain this bill.

This bill is similar to legislation which the Committee reported in the last Congress and includes improvements agreed to by the Committee last year.

Today we take up the issue of reform of Federal Prison Industries. FPI enjoys a mandatory market for its goods, a facility to produce them and a large workforce that can be forced to manufacture them. They pay their workers less than the minimum wage, and they force the workers to work for the profit of Federal Prison Industries. The result is that Federal Prison Industries is able to drive tax-paying, law-abiding small businesses out of the market.

At a time when we are facing a recovering economy, driving small business out of the marketplace and costing the economy jobs is not the thing that we want to do.

One of the reasons that FPI is able to do what it does is that for nondefense contracting, it allows FPI to have mandatory source supply for Government agencies that are in the market to buy things that are produced by the Federal Prison Industries. And even when a private sector firm makes a low bid, Federal Prison Industries can match the bid and then require that the Federal Government procure the goods from FPI rather than the low bidder.

Now, if this type of bid-rigging was done anyplace else, it would probably land those who were responsible in jail. I think most Members of the Committee have received complaints about Federal Prison Industries going into markets that have been well served by small businesses within their constituency. It is my hope that we can pass this legislation not to put FPI out of business, but to level the playing field so that FPI is able to compete with small business on an even playing field, and that would be a victory for labor, for business, for industry and for the American taxpayer.

And I yield back the balance of my time.

The gentleman from Michigan Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

This bill presents one of the more difficult problems. How do you take people who have been imprisoned and engage them in the kinds of activity behind prison walls that will rehabilitate? Now, that is not an easy job in some of our prisons where there may be as much errant conduct going on within the prison as without a prison, and so we have been struggling with this.

One way was through the idea of retraining people incarcerated; that is to say that they learn skills that they did not possess. I think most people realize how little education, formal education, that many people incarcerated have. It is abysmal, and so what we were trying to do in this measure—and this started in the last Congress—was to come up with constructive activity in terms of preparing people to return to our communities. And so it was with that generally in mind that the Federal Prison Industries was conceived as a way to do this.

What it involves is taking realtime work and having prisoners trained, and then having their products, which are absolute products, brought back into the market. Well, there is where the problems began, because what we have to do then is determine what the relationship of Prison Industries is to the rest of the commer-

cial market in America. Prison Industries, I think, pays about \$1 an hour.

Then there was some exclusivity in terms of the contracts, another problem. And then to really make things unnecessarily difficult, we began to have the Federal Prison Industries bidding on competitive contracts against businesses that do not have the benefit of \$1-an-hour workers, and the program grew from 29 million to 675 million. And they were sole-source sales, and so we had a problem that we have tried to resolve in 1989.

The amendment that has been worked out by the Chairman of this Committee, and the Subcommittee Chairman, and Ranking Member and many of the Members of Judiciary, and with the prison systems correctional leaders themselves, and I think with CURE and Mr. Charlie Sullivan and other groups that work in this area, we have come up with a plan to establish a reentry demonstration project for inmates to prepare their successful return to society, a vocational education training program, \$75 million toward educating inmates and teaching vocational skills, and to provide the Federal Prison Industries program with the resources to construct and donate industry profits to not-for-profit organizations. So this is a very important new direction that I think that we are all heading to take care of the problems that exist.

Now, all of that being said, there is a much larger challenge facing us. The prison systems in America are in—and especially the Federal prisons—need a lot of assistance. We need far more attention than is being given them at this point. And so for those who think that this is the only way we can—may I get an additional minute?

Chairman SENSENBRENNER. Without objection.

Mr. CONYERS. For those who think that the only way you can rehabilitate inmates is through the Federal Prison Industries is seriously mistaken. There are many other ways. There are many training and educational activities and programs that can be introduced into the prison system, and so this is a small, modest step towards the Industries' component of this, and I am hoping that our colleagues will join in in getting this back onto the—out of the Committee and onto the floor and to get the other body's approval.

Thank you, Mr. Chairman.

[Intervening business.]

[The prepared statement of Mr. Coble follows:]

PREPARED STATEMENT OF THE HONORABLE HOWARD COBLE, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman and Members of the Committee,

Current federal statute authorizes Federal Prison Industries (FPI), the government corporation that employs federal inmates, to sell the goods and services produced by these inmates to federal agencies but not to the public in competition with the private sector. Federal law also mandates that federal agencies purchase FPI products. This requirement is generally referred to as "FPI's mandatory source status."

While I support efforts to train prisoners to become productive members of society, I strongly believe that such efforts should take great care not to threaten the jobs of hard-working taxpayers. This issue is especially important to the 6th Congressional District of North Carolina, home to more than 40,000 textile and furniture workers, since two major classes of items produced by FPI are textiles and furniture. The mandatory source status gives FPI an unfair advantage over private manufacturers contending for federal contracts. Therefore, many of my constituents are deprived of employment opportunities in order to give work to federal inmates.

The furniture industry in North Carolina is already competing with an increasing number of furniture imports arriving to the U.S. from countries such as China. In addition, the North Carolina textile industry has suffered over 10,000 job losses in the past year.

For these reasons, I am greatly concerned about FPI's proposal to begin selling inmate-furnished services in the commercial marketplace. It is my opinion that FPI is in need of reform before it is allowed to expand.

I am a strong proponent of H.R. 1829 because it does just that—eliminates FPI's mandatory source advantage. It also limits FPI's ability to enter the commercial market which I believe may have an adverse effect on private companies not able to compete with the low wages and cost benefits enjoyed by FPI. Further, the bill incorporates vocational and educational programs to teach inmates job-hunting and professional skills and coordinates funding to help inmates transition back into society.

In my opinion, these are real and necessary reforms that will preserve FPI's goal of providing inmates with essential skills while allowing for a better marketplace for competition. I have cosponsored legislation similar to H.R. 1829 in past Congress and will continue to be a strong and vocal proponent of eliminating mandatory source privileges and reforming FPI.

Hardworking, taxpaying citizens of the 6th District of North Carolina who are employed in the furniture and textile industries can compete with anyone in the world. They should not have to compete with their own government which is using their tax dollars to train federal prisoners how to be textile and furniture workers. It is not fair and is not right.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS

I would like to thank Chairman Sensenbrenner and Ranking Member Conyers for convening this Full Committee Markup opportunity concerning "Federal Prison Industries." Prison reform is an important matter that deserves serious review by this Subcommittee.

Over 2 million offenders are incarcerated in the nation's prisons and jails. At mid-year 2002, 665,475 inmates were held in the Nation's local jails, up from 631,240 at midyear 2001. Projections indicate that the inmate population will unfortunately continue to rise over the years to come.

The Bureau of Prisons of the U.S. Department of Justice administers the federal prison system. Clearly, the Bureau is expanding the capacity of the federal system in anticipating of accommodating an inmate population exceeding 178,000 by the year 2006. Clearly, the overcrowding of prisons is a serious matter.

To illustrate the impact that this bill will potentially have on Texas, the Federal prison population for the years 2000, 2001, and 2002 reached 39,679, 36,138, and 36,635 persons respectively; the State prison population for the same years reached 20,200, 20,898, and 23,561 persons. These numbers have grown since 2002, so the impact is indeed significant and the State of Texas is an important stakeholder.

In 1934, Congress established Federal Prison Industries (FPI). FPI is a government corporation that employs offenders incarcerated in federal prisons. FPI provides job-training opportunities to federal inmates in the form of goods production and services for federal agencies. Currently, the state of Texas alone employs 7,700 inmates in prison industries. Nationally, 25% of those held in federal prisons are employed by FPI. Items produced by inmates include furniture, metal products, textile items, optical and plastic hardware, and electronic cable assemblies. Inmates are also able to use automated systems to prepare data and information aids.

By statute, FPI products and services must be purchased by federal agencies (a requirement referred to as a "mandatory source" or "sole source") and not available for sale in interstate commerce or to non-federal entities. Federal agencies can obtain products from the private sector through a waiver issued by FPI if the corporation is unable to make the needed product or provide the required service.

FPI is a self-supporting government operation. Revenue generated by the corporation is used to purchase equipment and raw materials, pay wages to inmates and staff, and expand facilities. Last year, FPI generated over \$566 million in revenue, \$418 million of which went to purchasing goods and services from the private sector, 74% of which went to small and minority owned businesses in local communities across this country.

The Bureau of Prisons clearly appreciates the advantage the program can have on inmates and society at large. First, there is some security benefit to FPI system because inmates are productively occupied. Second, FPI programs are said to pro-

vide inmates with training and experience that develop job skills and a strong work ethic. This is certainly important.

On the other hand, there are some groups that represent working Americans that suggest that job opportunities, particularly jobs needed by low-income families, are lost because FPI receives federal contracts. However, current law prohibits FPI from dominating the federal market, and there are currently congressional mandates placed on FPI to “avoid capturing more than a reasonable share of the market” among federal agencies, departments, and institutions for any specific product, determining the appropriate share of the federal market remains contentious. Nevertheless, we must endeavor to take into account the concerns by working Americans across the nation so that we can pass a bill that simultaneously protects jobs and keeps inmates productive.

The bill before us today provides for a five-year phase-out of mandatory source preference by granting to FPI’s Federal agency customer’s authority to first solicit on a non-competitive basis. However, at the end of the phase-out period there is no existing substitute for the services and program. Looking to the states, there simply is not enough program participation to accommodate the 25% that is currently accommodated under FPI.

Mr. Chairman, while there other initiatives which may accomplish the goal of eliminating the mandatory source preference more quickly, I believe we can work together to reach a compromise that is both timely and also enhances opportunities for U.S. workers. We may not all agree on the specific phase-in period but let us try to find a workable solution on this critical issue.

[The prepared statement of Mr. King follows:]

PREPARED STATEMENT OF THE HONORABLE STEVE KING, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF IOWA

Chairman Sensenbrenner, Thank you for holding a markup for this important piece of legislation of which I am pleased to co-sponsor.

Federal Prison Industries (“FPI”) is a government agency in desperate need of reform. The special mandatory source preference in the government procurement process, given only to FPI, forces government agencies to buy from FPI—without the benefit of competition. I am appalled by the fact that government agencies are forced to buy these products and services from FPI even though the private sector can better meet the needs of agencies with better products at a cheaper price.

I believe in the private sector. As a small business owner for over 28 years, I know the challenges that small businesses face and their value to the US economy. Business owners must deal with a myriad of regulations and laws. However, FPI is not held to those same standards. FPI pays its inmate workers between 23 cents and \$1.15 an hour, is exempt from OSHA, taxes and does not have to provide employee benefits. Private sector entrepreneurs cannot compete with this! There is no justification or excuse for undermining small business with a government subsidized competitor on an uneven playing field. FPI should have to compete for its contracts just like everyone else.

I urge you to vote for HR 1829. Thank you Mr. Chairman.

Chairman SENSENBRENNER. Consideration now resumes of the bill H.R. 1829, the “Federal Prison Industries Competition in Contracting Act of 2003,” and the Chair has a manager’s amendment at the desk which the clerk will report.

The CLERK. Amendment to H.R. 1829 offered by Chairman Sensenbrenner for himself and Mr. Conyers. Page 12, line 20, strike sales and—

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read.

[The amendment follows:]

**AMENDMENT TO H.R. 1829**  
**OFFERED BY MR. SENSENBRENNER (FOR HIMSELF**  
**AND MR. CONYERS)**

Page 12, line 20, strike “sales” and insert “sale”.

Page 16, line 8, strike “or”.

Page 16, strike line 11 and insert the following:

1       for donation; or  
2               “(C) authorize a proposal to expand production  
3       of a currently authorized specific product or specific  
4       service in an amount in excess of a reasonable share  
5       of the market for such product or service, if—  
6               “(i) a Federal agency or department, pur-  
7       chasing such product or service, has requested  
8       that Federal Prison Industries be authorized to  
9       furnish such product or service in amounts that  
10       are needed by such agency or department; or  
11               “(ii) the proposal is justified for other good  
12       cause and supported by at least eight members  
13       of the board.”.

Page 20, line 4, strike “Textile” and insert “Textiles”.

Page 26, line 26, insert “Federal” before “Bureau”.

Page 31, line 19, insert “Federal” before “Bureau”.

Page 32, line 10, strike “of the Bureau of Prisons”.

Page 32, strike line 16 and all that follows through page 36, line 5.

Page 48, line 18, strike “**RULE**” and insert “**RULES**”.

Page 48, line 19, insert “(a) AGENCY BID PROTESTS.—” before “Subsection”.

Page 48, insert after line 24 the following:

1       (b) JAVITS-WAGNER-O’DAY ACT.—Nothing in this  
2 Act is intended to modify the Javits-Wagner-O’Day Act  
3 (41 U.S.C. 46, et seq.).

Chairman SENSENBRENNER. And the Chair recognizes himself for 5 minutes to strike the last word.

I offer this amendment for myself and Mr. Conyers. The amendment makes a notable improvement to the bill as introduced and makes a number of clarifications. First, the amendment empowers the FPI Board of Directors to authorize an expansion with respect to a specific product or a specific service offered by FPI in excess of the maximum specified by the bill. Under current law the FPI Board may not authorize FPI to make more than a reasonable share of the market for any specific product. Currently neither term is defined in the FPI's authorizing statute or any implementing regulations.

The bill as introduced provides a statutory definition of reasonable share of the markets, that of 20 percent of the Federal market for a specific item and 5 percent for a specific service. The bill requires the Board of Directors to issue a regulatory definition to a specific product subject to the full notice and comment rulemaking procedures under the Administrative Procedure Act.

Critics note that the base bill would force FPI to forego service work that it is currently performing for Federal agencies. Most often cited is the fact that the FPI now provides the U.S. Postal Service with 90 percent of its needs for the service of repairing mail bags. Under the amendment the Board would be given the flexibility to permit FPI to provide a specific product or a specific service in excess of the reasonable share of the market under two circumstances: First, that the Board was requested by a Federal agency to be able to offer such quantities as are needed to meet the buying agency's requirements; and secondly, the Board could authorize higher sales levels for other good cause, but it requires the approval of 8 members of the 11-member Board rather than a simple majority. Such Board actions would be subject to the enhanced analytical and public participation requirements in the base bill.

Second, the amendment clarifies that the bill as introduced makes no changes to the Javits-Wagner-O'Day Act, which provides work opportunities for the blind and other severely handicapped persons. This clarification has been requested by the National Industries for the Blind and is appropriate. I would note that the NIB is especially supportive of the provisions of this bill that protect Federal contractors from being forced to use FPI as a subcontractor.

Finally, the amendment makes a series of word changes and other textual clarifications.

That describes the amendment. I yield back the balance of my time.

The gentleman from Virginia Mr. Scott.

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I just wanted to say a word about the Federal Prison Industries program, or FPI. It has been around since the 1930's. Under the law Federal agencies are required to buy needed products from FPI if FPI can meet their orders. The purpose of the program is to teach prisoners real work skills so that when they are released from prison, they will be able to find



and hold a job to support themselves, their families, and they will be less likely to commit more crimes.

It is clear that the program works to do just that. Follow-up studies covering as much as 16 years of data have shown that inmates who participate in Prison Industries are more likely to be employed and less likely to commit crimes than others who did not participate in the program. This certainly benefits offenders and their families. That is beside the point from a public policy perspective. The real benefit is to the rest of us, as a result of the program, we will be less likely to be victims of crime.

Now, we are prepared to spend billions of dollars in prison construction and prisoner upkeep in order to reduce crime. This is a program which reduces crime and pays for itself in the process. The total revenues from FPI represent a very small percentage, currently about one-fourth of 1 percent of Federal agency procurement dollars. Furniture and apparel industries are the two industries in which the FPI does most of its work, and when asked, representatives of those industries conceded that FPI sales represent an insignificant and negligible portion of their industries.

If such industries are having problems, it is clearly not due to FPI. In textiles, for example, I was told that 600,000 jobs have been lost over the last 10 years. There are approximately 7,000 prisoners working in textiles, in FPI. Certainly you can't blame a few thousand prisoners for the loss of 600,000 jobs.

The program generates almost as much business as it takes in by pumping about three-quarters of its revenues back into the economy to purchase—to make purchases, to a large extent from small, minority and women-owned businesses by buying raw materials and services it needs to produce its products. FPI has received awards for spending in excess of 40 percent of expenditures in this sector of the economy.

All able-bodied inmates in the Federal system are required by law to work. Few offenders in a prison have marketable work skills. The vast majority don't even have credible work habits, such as showing up for work on time, working cooperatively and productively with others; but such habits are required to maintain an FPI job. With the elimination of parole, good conduct credits, Pell Grants and other incentives, the prison system has very little to offer an inmate as an incentive for self-development.

One shining exception is FPI. Non-FPI inmates get paid about 12 cents to 30 cents an hour, while FPI jobs pay about \$1.25. Now, to hold down an FPI job, an inmate must have completed high school or be making steady progress towards obtaining a GED and maintain a record of good behavior. This is not only for those who are already on FPI jobs, but also for those on the waiting list, as well as those seeking to establish eligibility to be placed on the waiting list.

As some suggest, the vocational education is a good substitute for FPI work. Now, while vocational education is important and ought to be available to all inmates, no amount of education and course work can substitute for real-world work experience on the job. The average sentence for prisoners in the Federal system is about 8 years. Vocational educational programs typically runs 2 years or less and is generally thought to be better towards the end of a sentence. In any case, the question comes what do you do to the other

6 years on average of the sentence prior to or after the completion of the vocational education program?

Now, I am the first to concede there are problems with FPI which should be fixed, but a small business is making a single client product such as Army helmets, it depends on DOD contracts for its operations, FPI should not be able to take that business away. But this bill should be fixing the program, not gutting it by taking away all of the primary source of business all at once.

While the bill suggests that the lack of competition is a problem, the bill seeks to stranglehold FPI as a competitor by not only strengthening the prohibition against activities in the commercial market, but also in the Government market as well. We are already seeing the effects of the DOD restrictions on FPI procurement passed last year. Information I have obtained from the program indicates that it has had to close 13 factories and eliminate 1,700 inmate jobs. They expect to eliminate 500 additional jobs before the end of the year, and this is at a time when the prison population is growing, so we need more jobs, not fewer.

The viability of the program at the rate we are going is already at risk even without this bill—

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. SCOTT. Could I ask unanimous consent for 30 more seconds?

Chairman SENSENBRENNER. Without objection.

Mr. SCOTT. We should fix the problems, and we should be able to do it in a way that ensures the viability of this vital crime-reducing program. With additional prisons scheduled to come online for the next few years, we can ill afford to diminish the successful crime reduction program. But for their crime and imprisonment, prisoners are indistinguishable from the rest of us. Treating them as if they are foreign competitors and viewing work of FPI as a business, a private business, should not be the policy of the Committee with oversight responsibility for the safe and efficient operation of our prisoners and the rehabilitation and productive return of the prisoners to our society.

Mr. Chairman, we can do better than this, and I think we should. So I would hope that we would defeat the bill when the final passage comes up. I yield back.

Mr. CONYERS. Mr. Chairman, could the gentleman be given an additional minute?

Chairman SENSENBRENNER. Without objection.

Mr. CONYERS. And would he yield to me, please?

I wanted to make it clear that the gentleman from Virginia has worked harder on this issue and longer than anyone I know in the Congress, and we have been working on a variety of approaches here. And I don't think we have reached the end of the road yet, and so I wanted to urge my colleague to continue to give us the benefit of the viewpoints that—of his that have already been incorporated in the bill and hope that we can continue to make further progress.

I would also like to note, Mr. Chairman, that our former colleague from Cleveland, Ohio, Mary Rose Oakar, is in the Judiciary Committee room, and I know a lot of us remember her long and faithful service to the Congress.

Chairman SENSENBRENNER. The gentleman's time is expired.

For what purpose does the gentleman from Wisconsin seek recognition?

Mr. GREEN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I will be brief.

First I would like to associate myself with the remarks of the gentleman from Virginia. I had to get that out on the table because I don't think I have actually said that before, but I do associate myself with his remarks, because I think on this subject he is right on the mark, and I think it demonstrates the interesting dynamics on this issue. Those who support the Federal Prison Industries program come from all parts of the political spectrum, from Mr. Scott, to myself, to Mr. Hyde, the distinguished former Chairman of this Committee who could not be here, but wanted to express his support for some of the amendments, the amendment I will be bringing forward, and his opposition to the underlying legislation.

And outside of these halls a variety of groups and a variety of observers support Federal Prison Industries, and some of you have on your desk today a copy of a Los Angeles Times editorial from yesterday strongly in favor of Federal Prison Industries and strongly opposed to the underlying legislation that is before us.

In my case the support for FPI is because of some of the subjects that Mr. Conyers talked about, my support for the work ethic as a means of rehabilitation and prison management. It offers a chance to reinforce the work ethic and to teach the work ethic to some inmates who may not have had the opportunity previously. It is a chance for them to learn valuable skills. It is also a chance to create some restitution for victims.

It is important to remember that every dollar of FPI goes back to the private sector, something that is often lost in this debate. Seventy-four percent is spent on the purchase of raw materials, equipment, services and supplies from private sector companies. Sixty-two percent of those purchases are made from small and disadvantaged businesses owned by women and minorities. Twenty percent is paid to the staff, most of whom spend that money in the local community near the prison, and only 6 percent is paid to inmates. But that money is used to pay fines, child support and victim restitution. So the money is in that sense very well spent.

So, Mr. Chairman, I am one of those who believes that we have to find ways to continue to make FPI work. It is a very important part of our prison system management, and it is a very important part of ensuring that those who will leave the prison system one day, as nearly every single inmate will. They have some of the experience, some of the skills and some of the values that they will need to avoid being back in prison someday, and with that I yield back.

Chairman SENSENBRENNER. Can we do the manager's amendment first?

The question is on agreeing to the manager's amendment. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The manager's amendment is agreed to.

Are there further amendments to the bill?

The gentleman from New York moves to strike the last word and is recognized for 5 minutes.

Mr. NADLER. I won't speak 5 minutes.

Mr. Chairman, I support this legislation. I support the Federal Prison Industries, but the fact is that we have to be very careful in this society about generating substandard wage and condition competition with American workers. Federal Prison Industries pays inmates between 23 cents and \$1.15 an hour. It is exempt from OSHA regulations, from Federal, State gross receipts and excise taxes, and does not provide any benefits to its workers. FPI carries no insurance and pays no Social Security taxes. It goes without saying that many businesses cannot compete with this, but what is worse, they are not even allowed to try to compete since FPI gets Federal preferential status in Government procurement.

Now, I work very closely with the members of UNITE in my district. The garment workers in New York are hurting, and they have suffered huge job losses in recent years, especially in Chinatown in the aftermath of 9/11. We should do everything we can to allow them to compete for Government contracts to make uniforms and other items purchased by the U.S. Government. We need to be doing much more, frankly, to support manufacturing in this country. In fact, we have lost about 10 percent of manufacturing jobs in the country in the last 3 years, in case anyone hadn't noticed, and I am disappointed that the trade deals we approved this past few days will probably do considerably more harm to our industrial workers than this bill will do to help them.

Some people have portrayed this legislation as an attempt to put voiceless prisoners out of work. I don't see the issue in those terms. The prison population should be allowed to work, obviously, and to study, both to improve their own lives and to make it easier for prison guards to do their jobs. And we should appropriate, frankly, considerably more money for opportunities for vocational training and study and other training for prisoners in jail, but we should not be doing so in a way that enabled—that gives a preference to prison materials, to prison products at the expense of driving down wages and driving down standards in society at large.

You know, from the days—frankly, from the days of the chain gangs in some of the southern States which were used to keep down wages and the population out of prison, this is a step—this is a different form of the same thing. We need ways for prisoners to work. We need ways for them to get educated so that they can better their condition and so that when they get out of prison, they can become more productive members of society, but we must not do it at the expense of driving down wages and working conditions for our population. And the way—I think this bill strikes a better balance than the current law, and that is why I support it, and I yield back the balance of my time.

Mr. GREEN. Would the gentleman yield?

Mr. NADLER. Yes, I will.

Mr. GREEN. You are not meaning to suggest that those who participate in Prison Industries these days are similar to the chain gangs and forced labor of years gone by?

Mr. NADLER. Well, in two ways they are similar.

Mr. GREEN. So you are—

Mr. NADLER. Let me just say, in two ways they are similar. In other ways—in all other ways, they are not. They are similar that they are both prisoners, and that is one way. And secondly, they are similar in that the labor of what they do makes products and makes available their work—their work in the one case and their products at the other—at much substandard wages, and therefore drives down wages and working conditions for everyone else. Now, in that way they are similar.

In other ways certainly—I would oppose chain gangs as evil institutions where its present work is a good institution, but the economic effect outside goes in the same direction. Therefore, I said I would rather, frankly, have education programs and work programs even if we don't sell those products outside in competition, even if we—

Mr. GREEN. I just wanted to make sure we were using the same terminology here.

Mr. NADLER. I think we are, sir.

Chairman SENSENBRENNER. Are there amendments?

Ms. JACKSON LEE. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from North Carolina Mr. Coble.

Mr. COBLE. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. COBLE. Mr. Chairman, the gentleman from Wisconsin and the gentleman from Virginia make compelling arguments, as do you. I am in favor of this bill, however, and I think it is important to note that just because one may speak out in favor of the bill does not mean that he is an opponent to FPI. I worked on this bill, Mr. Chairman, in excess of a decade, and I will admit I come to the table subjectively, because I represent a significant textile and furniture workforce in my district, and I believe these two private sector industries are exposed to unfair competition as a result of mandatory sourcing. I think mandatory sourcing obviously gives FPI a leg up.

I believe furthermore, Mr. Chairman, that your manager's amendment addresses a situation that may afford relief to the FPI through the mail bag exception that appears in your manager's amendment, but I do think it is important to note that we don't need to have another Federal entity opposing private sector and probably costing jobs in the private sector, and I am referring specifically to textiles and furniture.

And with that, Mr. Chairman, I yield back.

Ms. JACKSON LEE. Mr. Chairman.

Chairman SENSENBRENNER. Are there amendments?

The gentlewoman from Texas.

Ms. JACKSON LEE. Mr. Chairman, I would like to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the Chairman very much.

I think what is before us—and certainly appreciate the work of my colleague in the manager's amendment of Mr. Sensenbrenner and Mr. Conyers—is a real dilemma. A few weeks ago I visited one of our Federal prisons in the Beaumont area. It was the minimum

security prison, of course, and it was a large complex that had three levels, medium and maximum security. And one of the dilemmas of those facilities is the budget cuts that the Federal Bureau of Prisons has experienced over the years and the lack of activities, educational activities, training activities and even work activities, for the persons incarcerated. These are the very same persons that, of course, we are punishing under the mandatory sentencing structure, but the very same persons that may ultimately be released into society.

And I am reading an article that talks about the degree of recidivism in our prison inmate population and as well a particular note that says that 74 percent of the prison's 679 million in sales in 2002 went back into the private sector for the purchase of tools, goggles and other equipment. These are the same individuals that we are suggesting are undermining small, minority and women-owned businesses, which I think is an issue.

But we have another dilemma in this Committee, and that is that in our past legislative actions—maybe before I came to this Committee, we started to dumb down the prisons as it relates to physical exercise equipment, because that was too luxurious. Of course, televisions were thrown out. I think I saw one or two there, but I saw a huge population of incarcerated persons for nonviolent offenses idly sitting down in extreme frustration, losing a great deal of their talent.

So I am sort of at a mixed point on this legislation, because I certainly have great sensitivities for small, medium and minority-owned businesses and women-owned businesses, to the extent that I have amended several pieces of legislation on that to provide opportunities for them, particularly in the science areas. But what do we do with this huge and growing population in our Federal system of prisoners who need something to do?

Might I also say to my colleagues—and when I say that, again, I focused on large numbers of nonviolent criminals for a variety of offenses who are under the mandatory sentencing structure. I would hope that my colleagues in this Committee would entertain a proposal that I expect to offer in the coming weeks, coming months, a proposal that has been similarly presented in the Senate. Senator Sessions, I believe, has presented legislation, and I believe Senator Hatch has made comments about the burdensomeness of the mandatory sentencing and the fact that the Federal prison system does not have a good-time proposal. And I believe we should be looking at, with the Federal system growing to 200,000, with the financial burden on this Administration—excuse me, on this Government being excessive and growing, particularly with the population aging, getting older, requiring the degree of medical services such as kidney transplants, amputations for diabetics, treatment for cancer in our aging prison population, to look at the concept of a good-time program. A day of good time for a day of—a day of good time equals a day off of one's sentence.

We are afraid of that. We are afraid of being called light on crime. We are afraid of the idea of releasing violent perpetrators out on our society in this time of homeland security. We are, if you will, frozen in our steps. But I believe that we are going to have to look at this in a lot of different ways; and certainly presenting a proposal that diminishes further the opportunity for these indi-

viduals to work, to feel productive, to be rehabilitated, to respond to our civilian population is a Catch-22, and, frankly, I don't know where we come down in this dilemma, because it is important to release individuals back into our mainstream, into our families and communities who have a sense of purpose and have a sense that they have something to live for, to do other than——

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Ms. JACKSON LEE. I hope my colleagues will consider this proposal.

Chairman SENSENBRENNER. Are there amendments?

The gentleman from California Mr. Schiff. Gentleman from California Mr. Schiff has an amendment.

Mr. SCHIFF. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Does the gentleman have two amendments that he wishes to offer en bloc?

Mr. SCHIFF. Well, I think perhaps I should offer them singly, Mr. Chairman, unless the Chair has guidance for me on that.

Chairman SENSENBRENNER. The Chair suggests that the gentleman offer them en bloc.

Mr. SCHIFF. I would be glad to offer them en bloc, Mr. Chairman.

Chairman SENSENBRENNER. Clerk will report the amendments.

The CLERK. Amendments to H.R. 1829 offered by Mr. Schiff en bloc. Page 27, insert after line 22——

Mr. SCHIFF. Mr. Chairman request that——

Chairman SENSENBRENNER. Without objection, the amendments will be considered en bloc. Without objection, the amendments are considered as read, and the gentleman from California is recognized for 5 minutes.

[The amendments follow:]

**AMENDMENT TO H.R. 1829**  
**OFFERED BY MR. SCHIFF**

Page 27, insert after line 22 the following:

- 1           (4) SCHEDULE FOR IMPLEMENTATION.—All  
2 components of the program shall be established—  
3           (A) in at least 25 percent of all Federal  
4 prisons not later than 2 years after the date of  
5 the enactment of this Act;  
6           (B) in at least 50 percent of all Federal  
7 prisons not later than 4 years after such date  
8 of enactment;  
9           (C) in at least 75 percent of all Federal  
10 prisons not later than 6 years after such date  
11 of enactment; and  
12           (D) in all Federal prisons not later than 8  
13 years after such date of enactment.



**AMENDMENT TO H.R. 1829**  
**OFFERED BY MR. SCHIFF**

Page 31, insert after line 11 the following:

1           (C) REPORT ON RESULTS OF PROGRAM.—  
2           Not later than 60 days after completion of the  
3           demonstration program, the Director shall sub-  
4           mit to Congress a report on the results of the  
5           program. At a minimum, the report shall in-  
6           clude an analysis of employment stability, sta-  
7           bility of residence, and rates of recidivism  
8           among inmates who participated in the program  
9           after 18 months of release.

Mr. SCHIFF. Thank you, Mr. Chairman.

As the Ranking Member indicated, this is a difficult issue. On the one hand we want to ensure that good law-abiding citizens and employees are not at a competitive disadvantage with those that break the law and participate in Prison Labor Industries. At the same time, we want to make sure that we satisfy the rehabilitative goals. We recognize the fact that two-thirds of those in prison are going to get out—or two-thirds of them are going to recidivate after they get out, and we have got to attack that problem by making sure that people get the skills they need to be meaningfully employed once they are released from custody.

There is a trade-off in the bill that addresses this issue; and the trade-off is in exchange for taking away the competitive advantage for prison labor, we strengthen the rehabilitative programs, the educational vocational programs within prison. The amendments that I am offering are designed both to ensure that that trade-off is a real one, that is, that we have meaningful timetables to ensure that these enhanced in-prison educational, vocational assessment and training programs are actually implemented, and that we have an after-the-fact assessment to make sure they do the job they are intended to do.

My amendment would ensure that all the components of the program, the in-prison assessments of inmate needs and aptitudes, the full range of educational opportunities, vocational training and apprenticeships, comprehensive release readiness preparation, are actually established in a timely basis in all Federal prisons. This provides a phase-in schedule for the establishment of these important rehabilitative components within a responsible period of time.

To the effect that at least 25 percent of all Federal prisons not later than 2 years after the date of the act should have established each of the components of the program—

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. SCHIFF. I would be delighted to yield, Mr. Chairman.

Chairman SENSENBRENNER. I believe that both of these amendments are very worthwhile, and I am prepared to accept them. One, it establishes a schedule for implementation. The other establishes a report by the Director of the Bureau of Prisons on the results of the program. I think that both of these constructive additions—

Mr. CONYERS. Would the gentleman yield?

Mr. SCHIFF. I would be delighted to yield.

Mr. CONYERS. I would just join with the Chairman in accepting these amendments. I like the part that at least 25 percent of all Federal prisons not later than 2 years after the date of enactment will have this kind of an accounting mechanism that you have brought in, and I think this is very important coming from the gentleman from California, because as a previous U.S. attorney, you had some experience with what happens to people who violate the law and are sent to prison to be improved, and frequently that doesn't happen. And so I am happy that you have joined with us in this consideration.

Mr. WATT. Would the gentleman yield?

Mr. SCHIFF. Yes.

Mr. WATT. I have some reservations, but I won't even state them. The question I have was on the second amendment, 055, line 6 and

7, where you are asking the Director to report on the stability of residents. I am just trying to figure out what the rationale for that is. Our society is so mobile, I am wondering whether we are asking the Director to report on something that is meaningless, really. What is the rationale for that particular part of the study?

Mr. SCHIFF. The rationale is that according to the participants and the stakeholders in these rehabilitative efforts, there are several indicia of likely success in attacking the problem of recidivism. Stability and employment is certainly an obvious one, but also stability of residence, that people have a stake in a community, that they are not continually drifting from place to place, that they have a place of residence that they can come back to, and that also tends to be an indicia of likelihood of success.

I do agree with the gentleman that probably of the three that we have mentioned, it is the least significant, but as the language points out, these are minimal requirements. We would expect the analysis to go much further. And the main point of the amendment is that I think really with every effort of this kind, we ought to have a rigorous assessment component to make sure that what we think will work is actually, in fact, working. But that, at least according to the experts we have consulted in the area, is why this is included.

Mr. WATT. Thank the gentleman for yielding.

Mr. SCHIFF. I thank the Chair and Ranking Member for their support and yield back whatever time I have remaining.

Chairman SENSENBRENNER. The question is on the Schiff amendments en bloc. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The Schiff amendments en bloc are agreed to.

Are there further amendments?

Mr. CHABOT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Ohio.

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

I won't use the entire 5 minutes, but I just wanted to respond to something that the gentelady from Texas said in her statement. She mentioned some of the things that occurred in the Federal prisons lately. One thing that she referred to that she felt was a negative thing was the removal of the exercise or weight-lifting equipment in the Federal prisons and is one of the principal sponsors of that along with Congresswoman Deborah Pryce some years back. I wanted to again remind folks as to why many of us thought that that action was appropriate.

We had many of our prisoners who spent significant amounts of time building themselves up and were becoming quite dangerous. We had the case of an Ohio woman who, after a Federal prisoner got out and had built himself up and was, you know, weight-lifting a considerable amount of time while he was in prison, overpowered her and repeatedly raped her, and this is something that she is still obviously dealing with and will for the rest of her life. She testified before our Committee.

Mr. CHABOT. Secondly, another case that happened in my State in Ohio in the Lucasville Prison riots that happened some years back, a number of the prisoners who were rioting used the barbells and the weight lifting equipment to break through concrete walls to get at some of the guards who were waiting for reinforcements to come in and they did break through the walls and got to one of the guards and murdered him and that particular—the one who instigated that is on death row and waiting execution for having done that. But there was, I think, very good reason for us to take that action in taking away the weight lifting equipment from some of these prisoners who became particularly dangerous.

And secondly, I wanted to associate myself with the comments of the gentleman of Wisconsin, Mr. Green, who I think very articulately stated the reason that some of us have some real concerns with this legislation, and I think that the Prison Industries is a very important program and whereas I would agree that there are things that could be reformed and could be made better, I think it is important that we do allow these prisoners—and again I want to associate myself with the gentleman from Virginia as well. We do need to rehabilitate these folks to the degree that we are able to. Most of them will come out some day and they will be our fellow citizens and we have to make sure they do have job skills.

Ms. JACKSON LEE. Would the gentleman yield? My comment was in no way to suggest that there had not been some valid reasons for bringing forth that legislation. My point is that as we incarcerate these individuals, regularly we should review the circumstances. This legislation is an attempt to review the circumstances. I tend to agree with the comments made earlier about the difficulty of the choice because they need to be rehabilitated. And my point was that we also need to assess this growing population, if you will, and whether or not there can be some relief for these nonviolent minimum security individuals who are under mandatory sentencing and whether or not this Committee needs to review this question.

Mr. CHABOT. Reclaiming my time, I just conclude by saying, as I said, these folks are going to be out, most of them, on the street again, and while they are in there they ought to be getting skills to the extent that we are able to assist them in doing that, and their time ought to be productively spent. And if it is making furniture, whatever it might be, I think that is generally important.

When I was at the local level, when I was on city council and I was county commissioner, I was very active in my community in Cincinnati and having them do all kinds of work out there, cleaning up parks, highways and many other things. And I think it is important we do this, and I yield back the balance of my time.

Chairman SENSENBRENNER. Are there amendments? Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I have an amendment at the desk, number 4.  
[The amendment follows:]

**Amendment To H.R. 1829**  
**Offered By Mr. Scott of Virginia**  
#4

On page 43, line 21, strike "January 21, 2005" and insert "June 30, 2004".

Chairman SENSENBRENNER. Clerk will report the amendment.

The CLERK. Amendment to H.R. 1829 offered by Mr. Scott of Virginia. On page 43, line 21, strike January 21, 2005 and insert June 30, 2004.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this is in the section of independent study to determine the effects of eliminating Federal Prison Industries' mandatory source authority.

Chairman SENSENBRENNER. Gentleman yield?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. I believe this is a good amendment and am prepared to accept it.

Mr. CONYERS. I commend the gentleman from Virginia on his amendment.

Mr. SCOTT. Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. Question is on the Scott amendment. Those in favor will say aye. Opposed no. The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments? Gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. Clerk will report the amendment.

The CLERK. Amendment to H.R. 1829 offered by Mr. Green of Wisconsin. Page 21—

Mr. GREEN. Unanimous consent to be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered. The gentleman is recognized for 5 minutes.

[The amendment follows:]

**AMENDMENT TO H.R. 1829**  
**OFFERED BY MR. GREEN OF WISCONSIN**

Page 21, strike lines 4 through 11 and insert the following:

1       (3) If the Attorney General finds a significant risk  
2 of adverse effects on either safe prison management or  
3 public safety, he shall so advise the Congress before the  
4 end of the fiscal year in which the finding is made, and  
5 such finding shall serve to postpone for one year any fur-  
6 ther percentage limitation under subsection (e)(1).

7       (4) Any percentage limitation postponed under para-  
8 graph (3) shall take effect in the fiscal year immediately  
9 following the fiscal year for which it is postponed, if not  
10 later than 60 days before the first day of such following  
11 fiscal year the Attorney General makes a determination  
12 under paragraph (2)—

13           (A) that such limitation is not likely to result  
14 in a substantial reduction in inmate industrial em-  
15 ployment; or

16           (B) that any such reduction will not present a  
17 significant risk of adverse effects on safe prison op-  
18 eration or public safety.

Mr. GREEN. Thank you, Mr. Chairman. Those who are pushing this legislation, 1829, mostly claim to support many of the same principles that those who are critics of this legislation have put forward. They argue that this legislation will not end the FPI program. They argue that it will not hurt materially or diminish the FPI program. In fact they maintain and they argue that this legislation will merely make FPI more competitive and stronger in the long run.

Mr. Chairman, I respectfully disagree with their assessment. This amendment that I offer on behalf of myself and the former Chairman of this Committee, Congressman Hyde, offers us a way out of that disagreement as to whether or not this legislation will actually strengthen the program. The amendment that I offer does not block the plans of the bill's supporters. Instead, what it does is to provide a safety valve in case the bill doesn't work as its proponents promise. As the Member from California, Mr. Schiff, suggested just a few moments ago, it is a good thing for us to assess programs and to measure them and should try to determine whether or not they work as intended.

Well, that is really what this amendment would do with respect to the mandatory source rule and FPI. My amendment would require the Attorney General to make a determination each year about whether or not phasing out FPI's procurement preference has led to a reduction in the number of inmates working. If and only if the employment numbers are substantially lower, the Attorney General would then be required to determine whether or not this drop-off poses a significant threat to prison operations or to general public safety. If the Attorney General concludes that all of this has occurred, he may postpone the phasing out of the mandatory source—the preference for at least a year and then it would only—the phaseout would only continue when the Attorney General has determined that it is safe for it to proceed.

So my amendment says that if, in fact, this legislation were to strengthen FPI, fine, let us move forward. Many of us are afraid it will not. And if it does not work, this legislation as advertised, there could be serious risks for prison operations and for the safety of those who work in prisons. If, in fact, that significant risk appears, if in fact the Attorney General sees that it is there, then it would only be wise for us to allow the Attorney General to suspend that phaseout. And again if he or she determines that, in fact, the stability and safety has been restored, then it would continue.

What I want to do here is create a safety valve to make sure that those negative consequences that many of us fear will not in fact take place.

Mr. Chairman, I yield back.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes in opposition of the amendment. I believe this to be a cop out amendment because what the amendment proposes to do is to delegate the authority that belongs to the Congress and more specifically this Committee to the Attorney General to make a determination on whether the programs contained in this legislation are working or not.

Now one of the things I have prided myself in is doing vigorous oversight, and we will do oversight over Federal Prison Industries just like we have done oversight over practically everything else

that is under the jurisdiction of this Committee. If the programs are not working and an amendment to this law is necessary, then I believe it is the duty of this Committee to make whatever amendments to the law the oversight determines to be necessary. But I don't want to pump the ball down the street to the Justice Department and have that determination be made unilaterally by the Attorney General.

Now what this bill does is to level the playing field so that FPI would compete on the same playing field with private tax paying, job creating industry. And if FPI can't do that despite all of the preferences that it has with low wages and not paying taxes and not paying rent and all of that other stuff, then there is going to be less work for FPI to do and there will end up being fewer prisoners that are employed by FPI. And to say that if that happens because FPI can't compete, it ends up losing contracts and losing jobs that the Attorney General can say, hey, wait a minute, because they couldn't compete, then we are going to go back to the sole source procurement for the Federal Government simply blows a hole in this bill that is big enough to drive an 18-wheeler through. And I think if the bill is unworkable and it is determined in the future that we made a mistake of approving this bill, then we ought to be the ones that fix it rather than the Justice Department, and specifically the Attorney General saying, no, I didn't like that bill, so I am going to make a certification to make sure that the bills, reforms of the procurement practices don't work. In the interest of having Congress and this Committee do the job that the Constitution and the rules intend for us to do, let us keep the decision making power here rather than sending it down to the Justice Department.

I urge opposition to this amendment and yield back the balance of my time. Gentleman from New York, Mr. Nadler. Gentleman strike the last word?

Mr. NADLER. Indeed I do. Thank you, Mr. Chairman. Mr. Chairman, I cannot resist the opportunity rare as it is to speak in agreement with the Chair and there isn't much else to say. There is no reason to give the Attorney General the absolute discretion to shut down what we are doing today. The Committee can judge that. We had a debate on that subject in the last Congress. The Chairman has made the points. We will see how well it works. We will review it next year and we can reserve that judgment for this Committee.

Chairman SENSENBRENNER. Will the gentleman yield? Obviously this is not the Ways and Means Committee. Mr. Nadler and Mr. Watt are agreeing with me. Mr. Chabot and Mr. Green are agreeing with Mr. Scott, and that never happens in the Ways and Means Committee, and let us hope it never does. And I thank the gentleman for yielding. The gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. Mr. Chairman, I don't know how many Members of the Committee have been around the prisons on a daily or weekly basis. As a State Attorney General, I spent a lot of time in the prisons, I spent a lot of time prosecuting people who went to prisons, I spent a lot of time talking to prisoners. And I can tell you without a doubt, I have absolutely no doubt in my mind it is best for those prisoners to work. They want to work. They have more self-esteem. They are calmer, they are easier to manage. If they do not work in prison, when they get out of prison they are not going to work.



Now that is a broad generalization. If they work in prison, the chances of them working when they get out of prison are much greater.

I am going to share a story—this is not a story of what I learned from working around the prisoners and in my job as a State's Attorney General. This is a story that my uncle told me about 15 years ago. I was at a little hunting camp. It was a shack that he owned in south Alabama and as we left one day, somebody asked him if he was going to lock the place up and he said no. He had two neighbors that watched the place. And somebody said, well, you know, who are they? He said they are the best neighbors somebody could get. He said they have been out of prison 2 years, and we thought he was kind of joking. He said they were ex-cons. What he went on to explain is they had been out of prison 2 years, black gentlemen, and they learned how to farm when they were in prison and both of them were farmers. And he said if there were two guys you could trust, it was these two gentlemen because they spent the first 25 years of their life in prison but they had learned to farm when they were in prison. And they came out and they were farming. And there were two guys that were not going to go back to prison. One reason is they learned a craft when they were in there.

Now I am most concerned for our society and safety today. And as some of the Members have said, we are warehousing prisoners and we are putting tremendous numbers, hundreds of thousands of people, behind bars. Many of them before they went never were gainfully employed. They never knew the joy of actually going to work and earning money or making a product or accomplishing something.

I would urge this Committee not to do anything, and I think Mr. Green's amendment is a safety valve. And I think the Attorney General, if anybody—if an Attorney General in an Attorney General's Office, if anybody is going to understand other than the Bureau of Prisons, that these prisoners need to be working, it is the Attorney General's office. And the legislation—the underlying legislation scares me because if it does anything to eliminate or discourage these prisoners working every day and building self-esteem and getting experience, then I hope we don't pass the underlying legislation. But if we do, I certainly hope that we pass Mr. Green's amendment. And if we don't, it may be one of our neighbors and one of our family members that pays the price when somebody that stays in prison for 10 or 15 years and sits there and does nothing and comes out with a lot of anger and an inability or not in a habit of working, takes that frustration out on one of our loved ones, and I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the Green amendment—the gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. Let me use this amendment in the context in which I make some comments about this whole situation because I think it illustrates the points that I want to make more than any of the other amendments.

First of all, I should say that Mr. Scott and I have been friends since before we came to Congress going all the way back to the

mid-80's when he was in the State legislature and I was in the North Carolina legislature, and we have sat beside each other on this Committee ever since we have been in Congress. And when I go to the floor and debate, his phone lights up. When he goes to the floor and debates, my phone lights up because half the public thinks I am Mr. Scott and Mr. Scott is Mr. Watt. So there is seldom an occasion on which there is much light between us on a personal friendship level or on an issues level. And I have learned a long time ago that when Mr. Scott has strong opinions about something, I need to listen carefully to what he is saying and understand if I believe I have a different opinion than him. And I have listened carefully to what he has said, and today he has not said a thing that I disagree with except that he is going to vote against this bill and I am going to vote for it. I have analyzed our differences and I think they are wise in the context of this amendment more than anywhere else and in the context of a disagreement that Mr. Chabot and Ms. Jackson Lee had in the course of their debate.

I think that Prison Industries and employing people in prison is important and valuable for rehabilitative purposes and for training purposes. I do not think that Prison Industries is an appropriate means of controlling prisoners, just giving them something to do to keep them busy so they don't disrupt the prison system. And I don't like this amendment for that reason because it clearly acknowledges that that is one aspect of what this Prison Industries stuff is all about. I don't think that is an appropriate purpose to be served by Prison Industries. If we are going to put people in prison, I think we ought to give them constructive things to do without doing detriment to private enterprise, and that is where Mr. Chabot and I disagree. I think, you know, if they are exercising, they are watching television, that is fine. If they are working for the purpose of training and rehabilitation, that is wonderful, and I would be absolutely supportive of that. The problem is that the Prison Industries has lost sight of that and it has gone off in a different direction, and a lot of what they are doing has to do with just keeping people occupied so they don't make trouble. It is not about rehabilitation. It is not about preparing them to go back into society. It is about kind of keeping them out of trouble, and that is where I think the dividing line is. It is a tough dividing line.

And so I don't think this debate is about whether you support Prison Industries or not. I support Prison Industries for the purposes for which it was intended. I don't support Prison Industries for purposes other than that. And so I think the bill represents a good compromise. Mr. Schiff's amendment is going to phase it in over a period of time. Mr. Green's amendment would, as the Chairman said, allow a Mack truck to drive through it and undermine the whole purpose of the bill. I think we should defeat Mr. Green's amendment, support the bill, and I yield back.

Mr. BACHUS. Would the gentleman yield?

Mr. WATT. One additional minute.

Mr. BACHUS. Most of us I think when we were teenagers our fathers got us up and they told us we were going to work and I don't know if you all had that experience, but my father would get me up at 6 o'clock and if I wasn't in school, I was working. And I believe there were two purposes for sending me to work every morn-

ing. And I think one purpose was to teach me work ethic and a skill. I mean I learned to do something and that was a part of it, but I also think part of it was to keep me occupied.

Mr. WATT. Reclaiming my time, I acknowledge that that was probably true.

Mr. BACHUS. And I don't think they are mutually exclusive.

Mr. WATT. I don't have a problem with keeping prisoners occupied. I draw the line when I start keeping them occupied at the expense of people in the private sector, and I am the first to acknowledge that that is a difficult line to draw. But I think that may be where—I don't know. Maybe Mr. Scott has a different opinion about this, but I haven't seen much difference between where Mr. Scott and I are except on possibly that one issue.

Chairman SENSENBRENNER. Gentleman's time has once again expired. The question is on the Green amendment. Gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. First of all, with regard to the comments from the gentleman from North Carolina about these unprecedented alliances. I point out, Mr. Chairman, for the last 3 days we have been in session well past midnight and are sleep deprived and I wonder if that has anything to do with these strange alliances, but in any case we want to get to this amendment and look at the bill and look at the amendment.

The bill, if you look at page 4, says that you can grant sole source contracts if the Attorney General determines—makes certain determinations. But part of the determination is that the warden has to tell the Attorney General that he is unable to maintain safety or can't manage the prison. You can't expect a warden to publicly certify that he is unable to do his job. So that makes that provision somewhat unworkable. Without this amendment where the Attorney General can make the finding on his own, you have the situation in which the Attorney General has affirmatively concluded that there is a significant risk to public safety if we don't have a Federal Prison Industries program and there is nothing he can do about it. This amendment I think is well taken. It would give him something that he can't do to protect the public safety. I would remind the Members of, I guess, the last few sentences in the L.A. Times editorial that the gentleman, Mr. Green, mentioned. And I just—it is from a California Republican who apparently did have some experience with the prisons from the inside. He said, do we want them unskilled and angry after years of forced idleness or do we want them capable of contributing to society with skills they have learned during their confinement? How we treat them in prison will determine what kind of neighbors they will be.

Finally, Mr. Chairman, I just note that we are talking about giving inmates constructive things to do with their time. That is not really the point of Federal Prison Industries. The fact is that Prison Industries has been shown to reduce crime. And to the extent that there are other ways maybe you can do it, but we know this works. So if we get rid of Prison Industries, we will be increasing crime. I would hate to read the paper in a couple of years and see that somebody has been murdered or robbed. I would have to say H.R. 1829 is working, the crime rate is going up.

So this amendment allows the Attorney General to make the appropriate findings, and I would hope that we would adopt the amendment.

I yield to my friend from North Carolina.

Mr. WATT. I just want to focus on line 14 and 15 of Mr. Green's amendment and ask Mr. Green and Mr. Scott whether that should be the criteria, whether you have a substantial reduction in inmate industrial employment? Is that the objective or are we trying to talk about training and rehabilitation? I don't think the criteria ought to be—I think we ought to be working our way toward a situation where you are decreasing inmate industrial employment if Prison Industries is working as well as you all think it is working. Ultimately, I just don't think that should be the criteria, and I want you all to focus on that particular language. Is that the appropriate criteria that should stop reform of this program? And I will yield to Mr. Green or Mr. Scott—well, it is Mr. Scott's time.

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. Question is on the Green amendment. Those in favor will say aye. Opposed no. The knows appear to have it.

Mr. GREEN. Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from Wisconsin.

Mr. GREEN. On that I would like a rollcall vote.

Chairman SENSENBRENNER. A recorded vote will be ordered. Those in favor of the Green amendment will as your name is called answer aye. Those opposed no, and the Clerk will call the roll.

The CLERK. Mr. Hyde.

[no response.]

The CLERK. Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble votes no.

Mr. Smith.

[no response.]

The CLERK. Mr. Gallegly.

[no response.]

The CLERK. Mr. Goodlatte.

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte votes aye.

Mr. Chabot.

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot votes aye.

Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins votes no.

Mr. Cannon.

[no response.]

The CLERK. Mr. Bachus.

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus votes aye.

Mr. Hostettler.

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler votes no.

Mr. Green.

Mr. GREEN. Aye.

The CLERK. Mr. Green votes aye.

Mr. Keller.  
Mr. KELLER. No.  
The CLERK. Mr. Keller votes no.  
Ms. Hart.  
Ms. HART. No.  
The CLERK. Ms. Hart votes no.  
Mr. Flake.  
Mr. FLAKE. No.  
The CLERK. Mr. Flake votes no.  
Mr. Pence.  
Mr. PENCE. No.  
The CLERK. Mr. Pence votes no.  
Mr. Forbes.  
Mr. FORBES. No.  
The CLERK. Mr. Forbes votes no.  
Mr. King.  
Mr. KING. No.  
The CLERK. Mr. King votes no.  
Mr. Carter.  
Mr. CARTER. No.  
The CLERK. Mr. Carter votes no.  
Mr. Feeney.  
Mr. FEENEY. No.  
The CLERK. Mr. Feeney votes no.  
Mrs. Blackburn.  
Mrs. BLACKBURN. No.  
The CLERK. Mrs. Blackburn votes no.  
Mr. Conyers.  
Mr. CONYERS. No.  
The CLERK. Mr. Conyers votes no.  
Mr. Berman.  
[no response.]  
The CLERK. Mr. Boucher.  
[no response.]  
The CLERK. Mr. Nadler.  
[no response.]  
The CLERK. Mr. Scott.  
Mr. SCOTT. Aye.  
The CLERK. Mr. Scott votes aye.  
Mr. Watt.  
Mr. WATT. No.  
The CLERK. Mr. Watt votes no.  
Ms. Lofgren.  
Ms. LOFGREN. Aye.  
The CLERK. Ms. Lofgren votes aye.  
Ms. Jackson Lee.  
Ms. JACKSON LEE. Aye.  
The CLERK. Ms. Jackson Lee votes aye.  
Ms. Waters.  
Ms. WATERS. Aye.  
The CLERK. Ms. Waters votes aye.  
Mr. Meehan.  
[no response.]  
The CLERK. Mr. Delahunt.  
[no response.]

The CLERK. Mr. Wexler.  
 [no response.]  
 The CLERK. Ms. Baldwin.  
 [no response.]  
 The CLERK. Mr. Weiner.  
 [no response.]  
 The CLERK. Mr. Schiff.  
 Mr. SCHIFF. No.  
 The CLERK. Mr. Schiff votes no.  
 Ms. Sánchez.  
 Ms. SÁNCHEZ. No.  
 The CLERK. Ms. Sánchez votes no.  
 Mr. Chairman.  
 Chairman SENSENBRENNER. No.  
 The CLERK. Mr. Chairman votes no.  
 Chairman SENSENBRENNER. Members in the chamber wish to cast or change their vote. Gentleman from Utah, Mr. Cannon.  
 Mr. CANNON. No.  
 The CLERK. Mr. Cannon, no.  
 Chairman SENSENBRENNER. Gentleman from New York, Mr. Nadler.  
 Mr. NADLER. No.  
 The CLERK. Mr. Nadler, no.  
 Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If not, the Clerk will report.  
 Ms. WATERS. Mr. Chairman.  
 Chairman SENSENBRENNER. Gentlewoman, Ms. Waters, from California.  
 Ms. WATERS. I am sorry. I thought you were calling for additional amendments.  
 Chairman SENSENBRENNER. In a minute. Clerk will report.  
 The CLERK. There are 8 ayes and 19 noes.  
 Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments?  
 Chairman SENSENBRENNER. Gentlewoman from Texas, Ms. Jackson Lee.  
 Ms. JACKSON LEE. I have an amendment at the desk.  
 Chairman SENSENBRENNER. Clerk will report the amendment.  
 [The amendment follows:]

**Amendment to H.R. 1829**  
**Offered by Congresswoman Sheila Jackson Lee**

*At the end insert the following:*

It is the sense of Congress that it is important to study the concept of implementing a "good time" release program for non-violent criminals in the federal prison system.

The CLERK. Amendment to H.R. 1829 offered by Ms. Jackson Lee. At the end insert the following: It is the sense of Congress that it is important to study the concept of implementing a "good

time" release program for nonviolent criminals in the Federal prison system.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. I just want my colleagues to know, and I thank the distinguished Chairman.

Chairman SENSENBRENNER. Would the gentlewoman yield? I am happy to accept the amendment.

Ms. JACKSON LEE. I cannot thank the distinguished gentleman more. Let me just say a word, Mr. Distinguished Chairman. And I will say that word briefly. Thank you, Mr. Chairman, a sentence, and an end.

My colleagues, I recognize the role of this Committee and the role of prisons, and on behalf of the families of prisoners, many of whom are incarcerated for nonviolent offenses and many of whom have family responsibilities but many of whom would be able to come under this good conduct or good time effort, I thank you for accepting an amendment that would suggest that it is important to study a good time release program for the Federal Bureau of Prisons. I thank my colleagues.

Chairman SENSENBRENNER. And the question is on the Jackson Lee amendment. Those in favor will say aye. Opposed no. The ayes appear to have it. The ayes have it and the amendment is agreed to.

Are there further amendments? The gentlewoman from California, Ms. Waters.

Ms. WATERS. Mr. Chairman and Members, on this issue—

Chairman SENSENBRENNER. You have an amendment at the desk?

Ms. WATERS. I have an amendment at the desk.

Chairman SENSENBRENNER. Clerk will report the amendment.

[The amendment follows:]

AMENDMENT TO HR 1829  
OFFERED BY MS. WATERS

Page 23, line 15, after "institutions." insert "Such hourly wages shall not be less than \$2.50 per hour."

The CLERK. Amendment to H.R. 1829 offered by Ms. Waters. Page 23, line 15, after "institutions." insert "Such hourly wages shall not be less than \$2.50 per hour."

Chairman SENSENBRENNER. Gentlewoman is recognized for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman. I have listened as some of our Members have agonized about this legislation. And of course we have of course Members of this Committee who are long time supporters of organized labor and I am one of them. I think you will rarely find an issue where I disagree with organized labor and have worked many years to try and increase wages and benefits and create fairness in the workplace. However, I find myself in a very interesting position with this issue and I have labored with this over the years.

Today I have come to some conclusion about what I should be doing. I am offering this amendment to increase the amount of

wages for any number of reasons, number one, because of complaints by prisoners about the amount of wages. Number two, I am interested in prisoners being able to save money so that upon release they have money to be able to find shelter and food and to be able to maintain themselves until they can find employment. I also believe it is extremely important for inmates to be able to work even if the jobs seem meaningless because it is important to have a work schedule. It is important to get up knowing that you have to be someplace at a certain time and perform certain kinds of activities. It is important to know that you got to follow some rules and you got to produce something or you got to do something to earn some money. So I am not really concerned about whether or not one prisoner is making furniture or whether they are sweeping the floor. I want them working, I want them active, I want them doing something so that they are involved and they can make some money.

Now, let me tell you what is extremely important about all of this. Even after some of our inmates are trained, even after they learn a skill, I don't know how many of you understand what it is like to look for a job once you have been incarcerated. If there is one thing that just tears at my heart it is ex-felons, former inmates who are trying to go right, who are trying to do something who are begging for jobs. Can you help me find a job? The applications are torn up and they are thrown in the waste basket, and particularly in a competitive labor market where employers don't have to hire anybody less than people who are highly educated or people who have good work records, ex-felons and formerly incarcerated persons find it very, very difficult. They stand a little bit of a better chance if they have developed a skill, if they have learned something, if they are able to go and sell themselves to an employer that they know how to produce a product, they know how to operate some machinery, they understand the workplace. We are all at risk when we are turning out formerly incarcerated folks who have no money, nowhere to go and very little chances of being employed. What do you think is going to happen? We cannot control crime and recidivism if we don't think about this in ways that will help us to move those people from having been incarcerated into jobs so that they can be mainstreamed.

So while I certainly am supportive of organized labor, we may disagree on this. But on this one, I have no permanent friends or permanent enemies. I like Mr. Watt. I like Mr. Scott, but it has nothing to do with any of this. This has to do with the unprecedented number of prisoners that are hitting our streets who need to find jobs, and we are doing nothing that would help them to get into those jobs. Don't forget, every application says have you served time. And once they say yes, the chances are they are not going to get that job. The only hope again that they have is that an employer may take a chance with them if they have a skill, they have learned something and they can present themselves in ways that will help the employers to understand.

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Ms. WATERS. So I would ask that you would support the increase in hourly wages. And let me just say somebody said, well, Prison Industries won't like this because this means they have to pay out



more money. So be it. The fact of the matter is they should be more competitive, we should have more jobs, we should have more training. And I would ask for support for this amendment.

Chairman SENSENBRENNER. The Chair recognizes himself in opposition to the amendment. The amendment of the gentlewoman from California, I believe, is very well-intentioned, but will end up being counterproductive. The purpose of this bill is to reduce the mandatory sourcing of FPI sales and Federal agency procurement. This amendment does not change that policy decision that is contained in H.R. 1829. What it does do is that it makes FPI non-competitive in the nonmandatory sourcing competitive bid procurement, and thus it will end up reducing the amount of business FPI has and the amount of money that FPI can pay for its workers, the prisoners who are working in Federal Prison Industries.

The bill already allows periodic adjustment wage rates by the Board of Directors of Federal Prison Industries. To put this fixed dollar amount in is going to result in fewer jobs in the prisons and probably end up destroying Federal Prison Industries. The purpose of this bill is not to destroy FPI, but to reform it.

Ms. WATERS. Would the gentleman yield?

Chairman SENSENBRENNER. I yield to the gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman. I think it is a good idea to give prisoners more money. The money they make goes to victims, restitution, child support and fines, and that is the good part of the amendment.

Mr. Chairman, you pointed out some of the concerns because if you are not competitive, you won't get any contracts at all so there won't be any money coming in. So I am not exactly sure what impact it may have. One of the problems is that the effective labor—the labor productivity is not as effective as it is in the private sector. Private sectors don't have security guards they have to hire to look over people, the excess oversight. Some of the machinery may not be the best. And it takes, therefore, on average 4 inmates to provide the productivity of one private sector worker. If the rate is competitive, 2.50, 4, \$5 an hour for each one, it may adversely affect the number of contracts and therefore, Mr. Chairman, although I agree that the inmates ought to be making more money, I am not able to support the amendment at this time.

Chairman SENSENBRENNER. Chair yields back. Gentlewoman from California, Ms. Lofgren, is recognized for 5 minutes.

Ms. LOFGREN. I understand what my colleague from Virginia has said and obviously we don't want to impair the viability of the prison industry activity. However, you know, I have long been troubled about inmates and there are always going to be nonviolent inmates because otherwise they are not going to get out at all, get released from prison and have actually nothing. And we have set up a situation where they are just bound to face failure in the integration back into society. So I guess I am searching for a way to provide some income to people who paid their debt to society to allow them to actually stay clean and become productive Americans. And I thought the gentlelady's amendment really addressed that.

And I would like to yield to the gentlelady and address the issues.

Ms. WATERS. You are absolutely correct. Listen, Members, we can't have it all ways. We have a lot of Members who talk about law and order and how they want to make our streets safe, yet we really don't do anything to make our streets safe. We simply talk about locking people up and we wish—some of us wish we could throw the key away. But guess what, they are coming back out. We moan and groan about recidivism, but we don't prepare them to come back into our society, get jobs and become competitive. We want them to work but we have applications that say have you ever served time, are you a felon, and they answer yes, they get no job, and then we wonder why they don't work.

We can't have it all ways. We have got to do something. Now you can't love organized labor so much that you aren't willing to provide some training and work opportunities for these inmates. You can't love the prison industry so much that you aren't willing to say to them, if you have some products, be competitive. They should be market rate products. Be competitive with your products and pay enough wages where people will at least have an opportunity to have some money in their pockets so that they can rent a place and they can get some food and they can try and look for a job using those skills that they have learned working in your industries.

So I stand by my amendment. Those people who say it will drive them out of business, what you are basically saying is you want some special kind of relationship that does not require Prison Industries to charge market rate for their products. If they are making products for the Federal Government or anybody else, they should be market rate, they should be competitive. If they do a good job, they should be able to earn money, should be able to pay the prisoners more and I don't want to hear about their overhead costs. They are doing it on our property. They are doing it without having to pay for, you know, additional costs for electricity and air conditioning. Don't tell me about the guard. We already pay for the guard. We already pay for that guard. So their overhead is a lot less than it would be if they were out there having to, you know, rent venues and places and pay all of the costs that go along with it.

There is time for us for us to shed all of our political alliances and think about getting rid of crime, think about getting rid of recidivism. And if we can't explain that to our friends, we aren't worth our salt and we don't deserve to be here, and I yield back.

Ms. LOFGREN. Actually it is my time.

Chairman SENSENBRENNER. The gentlewoman has lost it.

Ms. LOFGREN. In my experience, which again is not running a Federal prison but in local government where we ran a very large facility for 14 years and had thousands of inmates engaged in very productive work, what we found is if you have a financial incentive you also end up having the bureaucracy becoming more entrepreneurial. And I think that is what the gentlelady is suggesting, is having a wage that does not undercut the private sector's part of getting to an entrepreneurial approach within the Federal Prison Industry Program. And I fear that if we don't do something to support this whole industrial effort—we have already done terrible things to our educational programs within institutions, we are just creating a whole lot of problems for society. And potentially, al-

though I am sure this is not the intent, I wouldn't even suggest this is the intent, but a whole lot of victims for when these individuals are not integrated back into society.

Chairman SENSENBRENNER. The gentlewoman's time has expired. The question is on the amendment of the gentlewoman from California, Ms. Waters. Those in favor will say aye. Opposed no. The noes appear to have it, the noes have it.

Ms. WATERS. Rollcall, please.

Chairman SENSENBRENNER. rollcall will be ordered. Those in favor of the Waters amendment will as your name is called answer aye. Those opposed no. And the Clerk will call the roll.

The CLERK. Mr. Hyde.

[no response.]

The CLERK. Mr. Coble.

[no response.]

The CLERK. Mr. Smith.

[no response.]

The CLERK. Mr. Gallegly.

[no response.]

The CLERK. Mr. Goodlatte.

[no response.]

The CLERK. Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot votes no.

Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins votes no.

Mr. Cannon.

[no response.]

The CLERK. Mr. Bachus.

[no response.]

The CLERK. Mr. Hostettler.

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler votes no.

Mr. Green.

Mr. GREEN. No.

The CLERK. Mr. Green votes no.

Mr. Keller.

[no response.]

The CLERK. Ms. Hart.

[no response.]

The CLERK. Mr. Flake.

Mr. FLAKE. No.

The CLERK. Mr. Flake votes no.

Mr. Pence.

Mr. PENCE. No.

The CLERK. Mr. Pence votes no.

Mr. Forbes.

Mr. FORBES. No.

The CLERK. Mr. Forbes votes no.

Mr. King.

Mr. KING. No.

The CLERK. Mr. King votes no.

Mr. Carter.

Mr. CARTER. No.

The CLERK. Mr. Carter votes no.  
 Mr. Feeney.  
 Mr. FEENEY. No.  
 The CLERK. Mr. Feeney votes no.  
 Mrs. Blackburn.  
 Mrs. BLACKBURN. No.  
 The CLERK. Mrs. Blackburn votes no.  
 Mr. Conyers.  
 [no response.]  
 The CLERK. Mr. Berman.  
 [no response.]  
 The CLERK. Mr. Boucher.  
 [no response.]  
 The CLERK. Mr. Nadler.  
 [no response.]  
 The CLERK. Mr. Scott.  
 Mr. SCOTT. No.  
 The CLERK. Mr. Scott votes no.  
 Mr. Watt.  
 Mr. WATT. Undecided—aye.  
 The CLERK. Mr. Watt votes aye.  
 Ms. Lofgren.  
 Ms. LOFGREN. Aye.  
 The CLERK. Ms. Lofgren votes aye.  
 Ms. Jackson Lee.  
 Ms. JACKSON LEE. Aye.  
 The CLERK. Ms. Jackson Lee votes aye.  
 Ms. WATERS.  
 Ms. WATERS. Aye.  
 The CLERK. Ms. Waters votes aye.  
 Mr. Meehan.  
 [no response.]  
 The CLERK. Mr. Delahunt.  
 [no response.]  
 The CLERK. Mr. Wexler.  
 [no response.]  
 The CLERK. Ms. Baldwin.  
 [no response.]  
 The CLERK. Mr. Weiner.  
 [no response.]  
 The CLERK. Mr. Schiff.  
 Mr. SCHIFF. No.  
 The CLERK. Mr. Schiff votes no.  
 Ms. Sánchez.  
 Ms. SÁNCHEZ. No.  
 The CLERK. Ms. Sánchez votes no.  
 Mr. Chairman.  
 Chairman SENSENBRENNER. No.  
 The CLERK. Mr. Chairman votes no.  
 Chairman SENSENBRENNER. Members who wish to cast or change  
 their vote. Gentleman from North Carolina, Mr. Coble.  
 Mr. COBLE. No.  
 The CLERK. Mr. Coble, no.  
 Chairman SENSENBRENNER. Gentleman from Texas, Mr. Smith.  
 Mr. SMITH. I vote no.

The CLERK. Mr. Smith, no.  
Chairman SENSENBRENNER. Gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. Gentleman from Utah, Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Chairman SENSENBRENNER. Gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no.

Chairman SENSENBRENNER. Gentleman from Florida, Mr. Keller.

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Chairman SENSENBRENNER. Gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye.

Chairman SENSENBRENNER. Gentlewoman from Pennsylvania, Ms. Hart.

Ms. HART. No.

The CLERK. Ms. Hart, no.

Chairman SENSENBRENNER. Further Members wish to cast or change their vote? If not, the Clerk will report.

The CLERK. Mr. Chairman, there are 5 ayes and 22 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments? Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have three amendments I would like to offer en bloc.

Chairman SENSENBRENNER. Without objection, they will be considered en bloc and the Clerk will report the amendments.

The CLERK. Amendments to H.R. 1829 offered en bloc by Mr. Scott of Virginia. Page 16, strike line 22 and all that follows; page 18.

Mr. SCOTT. I ask unanimous consent.

[The amendments follow:]

**AMENDMENT TO H.R. 1829**  
**OFFERED BY MR. SCOTT OF VIRGINIA**

Page 16, strike line 22 and all that follows through page 18, line 3.

Page 18, line 4, strike “(2)” and insert “(b)” (and adjust the margin and redesignate subsequent subsections accordingly).

Page 18, lines 15 and 16, strike “subsection (b) and subsection (c) of”.

Page 18, lines 23 and 24, and page 19, lines 4 and 5, strike “subsections (b) and (c)” and insert “this section”.

Page 19, line 15, strike “preferential”.

Page 19, line 16, strike “subsection (b)” and insert “this section”.

**AMENDMENT TO H.R. 1829**  
**OFFERED BY MR. SCOTT OF VIRGINIA**

Page 24, strike section 7 (line 17 and all that follows through page 25, line 18).

**AMENDMENT TO H.R. 1829**

**OFFERED BY MR. SCOTT OF VIRGINIA**

Page 27, insert after line 22 the following new subsection (and redesignate subsequent subsections accordingly):

1 (b) ADDITIONAL INMATE WORK OPPORTUNITIES  
2 THROUGH PUBLIC SERVICE ACTIVITIES.—

3 (1) IN GENERAL.—Chapter 307 of title 18,  
4 United States Code, is further amended by inserting  
5 after section 4124 the following new section:

6 **“§ 4124a. Additional inmate work opportunities**  
7 **through public service activities**

8 “(a) IN GENERAL.—Inmates with work assignments  
9 within Federal Prison Industries may perform work for  
10 an eligible entity pursuant to an agreement between such  
11 entity and the Inmate Work Training Administrator in ac-  
12 cordance with the requirements of this section.

13 “(b) DEFINITION OF ELIGIBLE ENTITIES.—For the  
14 purposes of this section, the term ‘eligible entity’ means  
15 an entity—

16 “(1) that is an organization described in section  
17 501(c)(3) of the Internal Revenue Code of 1986 and  
18 exempt from taxation under section 501(a) of such  
19 Code and that has been such an organization for a



1 period of not less than 36 months prior to inclusion  
2 in an agreement under this section;

3 “(2) that is a religious organization described  
4 in section 501(d) of such Code and exempt from tax-  
5 ation under section 501(a) of such Code; or

6 “(3) that is a unit of local government, a school  
7 district, or another special purpose district.

8 “(c) INMATE WORK TRAINING ADMINISTRATOR.—

9 “(1) The Federal Prison Industries Board of  
10 Directors shall designate an entity as the Inmate  
11 Work Training Administrator to administer the  
12 work-based training program authorized by this sec-  
13 tion.

14 “(2) In selecting the Inmate Work Training  
15 Administrator, the Board of Directors shall select an  
16 entity—

17 “(A) that is an organization described in  
18 section 501(c)(3) of the Internal Revenue Code  
19 of 1986 and exempt from taxation under sec-  
20 tion 501(a) of such Code; and

21 “(B) that has demonstrated, for a period  
22 of not less than 5 years, expertise in the theory  
23 and practice of fostering inmate rehabilitation  
24 through work-based programs in cooperation  
25 with private sector firms.

1           “(3) With respect to the formation and per-  
2           formance of an agreement authorized by this section,  
3           the Director of the Bureau of Prisons and the Chief  
4           Operating Officer of Federal Prison Industries shall  
5           be responsible only for—

6                   “(A) maintaining appropriate institutional  
7                   and inmate security; and

8                   “(B) matters relating to the selection and  
9                   payment of participating inmates.

10          “(d) PROPOSED AGREEMENTS.—An eligible entity  
11          seeking to enter into an agreement pursuant to subsection  
12          (a) shall submit a detailed proposal to the Inmate Work  
13          Training Administrator. Each such agreement shall  
14          specify—

15                   “(1) types of work to be performed;

16                   “(2) the proposed duration of the agreement,  
17                   specified in terms of a base year and number of op-  
18                   tion years;

19                   “(3) the number of inmate workers expected to  
20                   be employed in the specified types of work during  
21                   the various phases of the agreement;

22                   “(4) the wage rates proposed to be paid to var-  
23                   ious classes of inmate workers; and

24                   “(5) the facilities, services and personnel (other  
25                   than correctional personnel dedicated to the security

1 of the inmate workers) to be furnished by Federal  
2 Prison Industries or the Bureau of Prisons and the  
3 rates of reimbursement, if any, for such facilities,  
4 services, and personnel.

5 “(e) REPRESENTATIONS.—

6 “(1) ELEEMOSYNARY WORK ACTIVITIES.—Each  
7 proposed agreement shall be accompanied by a writ-  
8 ten certification by the chief executive officer of the  
9 eligible entity that—

10 “(A) the work to be performed by the in-  
11 mate workers will be limited to the eleemosy-  
12 nary work of such entity in the case of an enti-  
13 ty described in paragraph (1) or (2) of sub-  
14 section (b);

15 “(B) the work would not be performed but  
16 for the availability of the inmate workers;

17 “(C) the work performed by the inmate  
18 workers will not result, either directly or indi-  
19 rectly, in the production of a new product or  
20 the furnishing of a service that is to be offered  
21 for other than resale or donation by the eligible  
22 entity or any affiliate of the such entity.

23 “(2) PROTECTIONS FOR NON-INMATE WORK-  
24 ERS.—Each proposed agreement shall also be ac-

1        compared by a written certification by the chief ex-  
2        ecutive officer of the eligible entity that—

3                “(A) no non-inmate employee or volunteer  
4                of the eligible entity (or any affiliate of the enti-  
5                ty) will have his or her job abolished or work  
6                hours reduced as a result of the entity being  
7                authorized to utilize inmate workers; and

8                “(B) the work to be performed by the in-  
9                mate workers will not supplant work currently  
10              being performed by a contractor of the eligible  
11              entity.

12       “(f) APPROVAL BY BOARD OF DIRECTORS.—

13              “(1) IN GENERAL.—Each such proposed agree-  
14              ment shall be presented to the Board of Directors,  
15              be subject to the same opportunities for public com-  
16              ment, and be publicly considered and acted upon by  
17              the Board in a manner comparable to that required  
18              by paragraphs (6) and (7) of section 4122(b).

19              “(2) MATTERS TO BE CONSIDERED.—In deter-  
20              mining whether to approve a proposed agreement,  
21              the Board shall—

22              “(A) give priority to an agreement that  
23              provides inmate work opportunities that will  
24              provide participating inmates with the best

1 prospects of obtaining employment paying a liv-  
2 able wage upon release;

3 “(B) give priority to an agreement that  
4 provides for maximum reimbursement for in-  
5 mate wages and for the costs of supplies and  
6 equipment needed to perform the types of work  
7 to be performed;

8 “(C) not approve an agreement that will  
9 result in the displacement of non-inmate work-  
10 ers or volunteers contrary to the representa-  
11 tions required by subsection (e)(2) as deter-  
12 mined by the Board or by the Secretary of  
13 Labor (pursuant to subsection (i)); and

14 “(D) not approve an agreement that will  
15 result, either directly or indirectly, in the pro-  
16 duction of a new product or the furnishing of  
17 a service for other than resale or donation.

18 “(g) WAGE RATES AND DEDUCTIONS FROM INMATE  
19 WAGES.—

20 “(1) IN GENERAL.—Inmate workers shall be  
21 paid wages for work under the agreement at a basic  
22 hourly rate to be negotiated between the eligible en-  
23 tity and Federal Prison Industries and specified in  
24 the agreement. The wage rates set by the Director  
25 of the Federal Bureau of Prisons to be paid inmates

1 for various institutional work assignments are spe-  
2 cifically authorized.

3 “(2) PAYMENT TO INMATE WORKER AND AU-  
4 THORIZED DEDUCTIONS.—Wages shall be paid and  
5 deductions taken pursuant to section  
6 4122(b)(11)(C).

7 “(3) VOLUNTARY PARTICIPATION BY INMATE.—  
8 Each inmate worker to be utilized by an eligible en-  
9 tity shall indicate in writing that such person—

10 “(A) is participating voluntarily; and

11 “(B) understands and agrees to the wages  
12 to be paid and deductions to be taken from  
13 such wages.

14 “(h) ASSIGNMENT TO WORK OPPORTUNITIES.—As-  
15 signment of inmates to work under an approved agree-  
16 ment with an eligible entity shall be subject to the Bureau  
17 of Prisons Program Statement Number 1040.10 (Non-  
18 Discrimination Toward Inmates), as contained in section  
19 551.90 of title 28 of the Code of Federal Regulations (or  
20 any successor document).

21 “(i) ENFORCEMENT OF PROTECTIONS FOR NON-IN-  
22 MATE WORKERS.—

23 “(1) PRIOR TO BOARD CONSIDERATION.—Upon  
24 request of any interested person, the Secretary of  
25 Labor may promptly verify a certification made pur-

1 suant subsection (e)(2) with respect to the displace-  
2 ment of non-inmate workers so as to make the re-  
3 sults of such inquiry available to the Board of Direc-  
4 tors prior to the Board's consideration of the pro-  
5 posed agreement. The Secretary and the person re-  
6 questing the inquiry may make recommendations to  
7 the Board regarding modifications to the proposed  
8 agreement.

9 “(2) DURING PERFORMANCE.—

10 “(A) IN GENERAL.—Whenever the Sec-  
11 retary deems appropriate, upon request or oth-  
12 erwise, the Secretary may verify whether the  
13 actual performance of the agreement is result-  
14 ing in the displacement of non-inmate workers  
15 or the use of inmate workers in a work activity  
16 not authorized under the approved agreement.

17 “(B) SANCTIONS.—Whenever the Sec-  
18 retary determines that performance of the  
19 agreement has resulted in the displacement of  
20 non-inmate workers or employment of an in-  
21 mate worker in an unauthorized work activity,  
22 the Secretary may—

23 “(i) direct the Inmate Work Training  
24 Administrator to terminate the agreement  
25 for default, subject to the processes and

1 appeals available to a Federal contractor  
2 whose procurement contract has been ter-  
3 minated for default; and

4 “(ii) initiate proceedings to impose  
5 upon the person furnishing the certifi-  
6 cation regarding non-displacement of non-  
7 inmate workers required by subsection  
8 (d)(2)(B) any administrative, civil, and  
9 criminal sanctions as may be available.”.

10 (2) AUTHORIZATION OF APPROPRIATION.—

11 There is authorized to be appropriated \$5,000,000  
12 for each of the fiscal years 2004 through 2008 for  
13 the purposes of paying the wages of inmates and  
14 otherwise undertaking the maximum number of  
15 agreements with eligible entities pursuant to section  
16 4124a of title 18, United States Code, as added by  
17 paragraph (1).

18 (3) CLERICAL AMENDMENT.—The table of sec-  
19 tions for chapter 307 of title 18, United States  
20 Code, is amended by inserting after the item relating  
21 to section 4124 the following new item:

“4124a. Additional inmate work opportunities through public service activities.”.

Page 36, insert after line 5 the following (and redesi-  
gnate subsequent subsections and clerical amendments  
accordingly):



1 **SEC. 11. ADDITIONAL PILOT AUTHORITIES FOR INMATE**  
2 **WORK OPPORTUNITIES.**

3 (a) IN GENERAL.—Chapter 307 of title 18, United  
4 States Code, as amended by section 9, is further amended  
5 by adding at the end the following new section:

6 **“§ 4131. Additional pilot authorities for inmate work**  
7 **opportunities**

8 “(a) PILOT AUTHORITIES.—Federal Prison Indus-  
9 tries may contract with private or public sector entities  
10 for Federal inmates to produce products or perform serv-  
11 ices for those entities. Under these pilot authorities, and  
12 pursuant to the terms and conditions specified in section  
13 4122, Federal inmates may, under the direct supervision  
14 of Federal Prison Industries staff—

15 “(1) produce products or perform services for  
16 commercial companies which have been otherwise  
17 produced or performed for the companies by foreign  
18 labor outside the United States for at least 3 years  
19 before the proposed effective date of the business  
20 agreement;

21 “(2) produce products or perform services for  
22 commercial companies which would otherwise be per-  
23 formed for the companies by domestic labor, if avail-  
24 able; or

1           “(3) produce products or perform services for  
2       not-for-profit agencies in support of the charitable  
3       activities of those agencies.

4           “(b) LIMITATIONS ON USE OF AUTHORITIES.—(1)  
5       Federal Prison Industries is prohibited from directly offer-  
6       ing for commercial sale products produced or services fur-  
7       nished by Federal inmates, including through any form  
8       of electronic commerce.

9           “(2) The number of Federal inmates working under  
10      the pilot authority provided in subsection (a)(1) shall not  
11      exceed—

12           “(A) 4,000 during fiscal year 2005;

13           “(B) 8,000 during fiscal year 2006;

14           “(C) 12,000 during fiscal year 2007;

15           “(D) 16,000 during fiscal year 2008;

16           “(E) 20,000 during fiscal year 2009; or

17           “(F) 25 percent of the work-eligible Federal in-  
18      mate population in any fiscal year beginning after  
19      September 30, 2008.

20           “(3) The number of Federal inmates working under  
21      the pilot authority provided in subsection (a)(3) shall not  
22      exceed—

23           “(A) 2,000 during fiscal year 2005;

24           “(B) 4,000 during fiscal year 2006;

25           “(C) 6,000 during fiscal year 2007;

1 “(D) 8,000 during fiscal year 2008;

2 “(E) 10,000 during fiscal year 2009; or

3 “(F) 10 percent of the work eligible Federal in-  
4 mate population in any fiscal year beginning after  
5 September 30, 2009.

6 “(c) INMATE WAGES.—

7 “(1) IN GENERAL.—Each Federal inmate work-  
8 er participating in industrial operations authorized  
9 by the Corporation shall be paid at a wage rate pre-  
10 scribed by the Board of Directors. The Director of  
11 the Federal Bureau of Prisons shall prescribe the  
12 wage rates for other Federal inmate work assign-  
13 ments within the various Federal correctional insti-  
14 tutions. The Board shall give priority to approving  
15 Federal inmate work opportunities which maximize  
16 inmate earnings. Inmate wage rates shall be re-  
17 viewed by the Board at least biannually.

18 “(2) WORK PURSUANT TO SUBSECTION  
19 (a)(1).—For Federal inmate work performed for  
20 commercial companies pursuant to subsection (a)(1),  
21 the wage rate paid to Federal inmates must be the  
22 Federal Prison Industries wage rate in effect on the  
23 date of the enactment of this section or twice the  
24 rate paid for work of a similar nature in the foreign

1       locality in which the work would otherwise be per-  
2       formed, whichever is higher.

3               “(3) WORK PURSUANT TO SUBSECTION  
4       (a)(2).—For work performed by Federal inmates  
5       pursuant to subsection (a)(2), the wage rate paid to  
6       inmates shall be not less than the rate paid for work  
7       of a similar nature in the locality in which the work  
8       is to be performed, but in no event less than the  
9       minimum wage required pursuant to the Fair Labor  
10       Standards Act (29 U.S.C. 201 et seq). The deter-  
11       mination of this wage rate shall be approved by the  
12       Secretary of Labor or by the State or local govern-  
13       ment entity with authority to approve such deter-  
14       minations.

15               “(d) DEDUCTIONS FROM INMATE WAGES.—Inmate  
16       wages paid by commercial companies shall be paid to the  
17       Corporation in the name and for the benefit of the Federal  
18       inmate. Except as specified in subsection (e), the Corpora-  
19       tion may deduct, withhold, and disburse from the gross  
20       wages paid to inmates, aggregate amounts of not less than  
21       50 percent and not more than 80 percent of gross wages  
22       for—

23               “(1) applicable taxes (Federal, State, and  
24       local);

1           “(2) payment of fines, special assessments, and  
2 any other restitution owed by the inmate worker  
3 pursuant to court order;

4           “(3) payment of additional restitution for vic-  
5 tims of the inmate’s crimes (at a rate not less than  
6 10 percent of gross wages);

7           “(4) allocations for support of the inmate’s  
8 family pursuant to statute, court order, or agree-  
9 ment with the inmate;

10           “(5) allocations to a fund in the inmate’s name  
11 to facilitate such inmate’s assimilation back into so-  
12 ciety, payable at the conclusion of incarceration;

13           “(6) such other deductions as may be specified  
14 by the Board of Directors.

15           “(e) EXCEPTION FOR HIGHER DEDUCTIONS.—The  
16 aggregate deduction authorized in subsection (d) may,  
17 with the written consent of an inmate, exceed the max-  
18 imum limitation, if the amounts in excess of such limita-  
19 tion are for the purposes described in paragraphs (4) or  
20 (5) of that subsection.

21           “(f) CONVERSIONS.—Commercial market services au-  
22 thorized by the Federal Prison Industries Board of Direc-  
23 tors and being provided by Federal Prison Industries on  
24 the date of enactment of this section may be continued  
25 until converted to a private sector contract pursuant to

1 the authority in this Act. The Board of Directors of Fed-  
2 eral Prison Industries shall ensure these conversions occur  
3 at the earliest practicable date.

4 “(g) PROPOSALS FROM PRIVATE COMPANIES.—Fed-  
5 eral Prison Industries may solicit, receive and approve  
6 proposals from private companies for Federal inmate work  
7 opportunities. Federal Prison Industries shall establish  
8 and publish for comment criteria to be used in evaluating  
9 and approving such proposals. In developing criteria, pri-  
10 ority shall be given to those proposals which offer Federal  
11 inmates the highest wages, the most marketable skills, and  
12 the greatest prospects for post-release reintegration.

13 “(h) APPROVAL OF PROPOSALS.—The Board must  
14 approve all proposals in advance of their implementation.

15 “(i) CONTENT OF PROPOSALS.—Any business or eli-  
16 gible not-for-profit entity seeking to contract with Federal  
17 Prison Industries for Federal inmate workforce participa-  
18 tion shall submit a detailed proposal to the Chief Oper-  
19 ating Officer of Federal Prison Industries. Each such pro-  
20 posal shall specify—

21 “(1) the product or service to be produced or  
22 furnished;

23 “(2) the proposed duration of the business  
24 agreement, specified in terms of a base period and  
25 number of option period;

1           “(3) the number of Federal inmate workers ex-  
2           pected to be employed during the various phases of  
3           the agreement;

4           “(4) the number of foreign workers, if any, out-  
5           side the United States currently performing for the  
6           proposing entity the work proposed for performance  
7           by Federal inmate workers, and the wage rates paid  
8           to those workers;

9           “(5) the wage rates proposed to be paid to var-  
10          ious classes of Federal inmate workers, at not less  
11          than the rates required by subsection (c); and

12          “(6) the facilities, services and personnel (other  
13          than correctional personnel dedicated to the security  
14          of the inmate workers) to be furnished by the Fed-  
15          eral Prison Industries or the Bureau of Prisons and  
16          the rates of reimbursement for such facilities, serv-  
17          ices, and personnel, if any.

18          “(j) WRITTEN CERTIFICATION FOR PROPOSED COM-  
19          MERCIAL BUSINESS AGREEMENT.—Each proposed com-  
20          mercial business agreement shall be accompanied by a  
21          written certification by the chief executive officer of the  
22          business entity proposing the agreement that—

23                 “(1) no noninmate employee of the business (or  
24                 any affiliate) working within the United States will

1 have their job abolished or their work hours reduced  
2 as a direct result of the agreement;

3 “(2) inmate workers will be paid wages at rates  
4 in accordance with subsection (c); and

5 “(3) any domestic workforce reductions carried  
6 out by the business entity affecting employees per-  
7 forming work comparable to the work being per-  
8 formed by inmates pursuant to the agreement shall  
9 first apply to inmate workers employed pursuant to  
10 the agreement.

11 “(k) WRITTEN CERTIFICATION FOR PROPOSED  
12 AGREEMENT WITH NOT-FOR-PROFIT ENTITY.—Each pro-  
13 posed agreement with an eligible not-for-profit entity shall  
14 be accompanied by a written certification by the chief ex-  
15 ecutive officer of the eligible entity that—

16 “(1) the work to be performed by the inmate  
17 workers will be limited to the eleemosynary work of  
18 such entity;

19 “(2) the work would not be performed on a  
20 compensated basis but for the availability of the in-  
21 mate workers;

22 “(3) the work performed by the inmate workers  
23 will not result, either directly or indirectly, in the  
24 production of a product or the furnishing of a serv-



1 ice that is to be offered for commercial sale by the  
2 eligible entity or any affiliate of such entity;

3 “(4) no noninmate employees of the eligible en-  
4 tity (or any affiliate of the entity) will have their job  
5 abolished or their work hours reduced as a result of  
6 the entity entering into an agreement to utilize in-  
7 mate workers; and

8 “(5) the work to be performed by the inmate  
9 workers will not supplant work currently being per-  
10 formed by a contractor of the eligible entity.

11 “(l) PUBLIC NOTICE AND COMMENT.—

12 “(1) IN GENERAL.—The Board shall make rea-  
13 sonable attempts to provide opportunities for notice  
14 and comment to the widest audience of potentially  
15 interested parties as practicable. At a minimum, the  
16 Board shall—

17 “(A) give notice of a proposed business  
18 agreement on the Corporation’s web site and in  
19 a publication designed to most effectively pro-  
20 vide notice to private businesses and labor  
21 unions representing private sector workers who  
22 could reasonably be expected to be affected by  
23 approval of the proposed agreement, which no-  
24 tice shall offer to furnish copies of the proposal  
25 (excluding any proprietary information) and

1 chief executive certifications and shall solicit  
2 comments on same;

3 “(B) solicit comments on the business pro-  
4 posal from trade associations representing busi-  
5 nesses and labor unions representing workers  
6 who could reasonably be expected to be affected  
7 by approval of the proposal; and

8 “(C) afford an opportunity, on request, for  
9 a representative of an established trade associa-  
10 tion, labor union, or other representatives of  
11 private industry to present comments on the  
12 proposal directly to the Board of Directors.

13 “(2) COPIES.—The Board of Directors shall be  
14 provided copies of all comments received on the pro-  
15 posal.

16 “(3) REVISED PROPOSAL.—Based on the com-  
17 ments received on the initial business proposal, the  
18 business or nonprofit entity or Federal Prison In-  
19 dustries Chief Operating Officer may provide the  
20 Board of Directors a revised proposal. If the revised  
21 proposal presents new issues or potential effects on  
22 the private sector which were not addressed in the  
23 original proposal and comments received thereon,  
24 the Board shall provide another public notice and  
25 comment opportunity pursuant to paragraph (1).

1           “(4) OPEN MEETING.—The Board of Directors  
2 shall consider all inmate work opportunity proposals  
3 submitted and take any action with respect to such  
4 proposals, during a meeting that is open to the pub-  
5 lic, unless closed pursuant to section 552(b) of title  
6 5.

7           “(m) BOARD APPROVAL.—(1) In determining wheth-  
8 er to approve a proposed business agreement for Federal  
9 inmate work opportunities, the Board shall—

10           “(A) not approve any agreement that would re-  
11 sult in the displacement of noninmate workers con-  
12 trary to the certifications required in subsections (j)  
13 and(k) or pay less than the wages required by sub-  
14 section (c).

15           “(B) not approve an agreement which the  
16 Board determines contains terms and conditions  
17 which would subject domestic noninmate workers to  
18 unfair competition;

19           “(C) request a determination from the Inter-  
20 national Trade Commission, the Department of  
21 Commerce or such other Executive Branch entities  
22 as may be appropriate, whenever the Board ques-  
23 tions the representations by a commercial company  
24 or a not-for-profit entity regarding whether a par-  
25 ticular product or service has been produced by for-

1        eign labor outside the United States for the commer-  
2        cial company or not-for profit entity for at least 3  
3        years before the proposed effective date of the busi-  
4        ness agreement;

5            “(D) not approve an agreement which would  
6        cause Federal Prison Industries sales revenue de-  
7        rived from any specific industry to exceed 50 percent  
8        of Federal Prison Industries total revenue.

9            “(E) not approve any agreement which provides  
10       for direct supervision of Federal inmate workers by  
11       non-Federal Prison Industries employees; and

12           “(H) not approve any agreement which would  
13       provide for products or services produced by Federal  
14       inmates to be sold to agencies of State government  
15       without the written consent of the Governor or des-  
16       ignee.

17        “(n) REVIEW AND ENFORCEMENT.—(1) Upon re-  
18       quest of any interested person, the Secretary of Labor  
19       may promptly verify a certification pursuant to subsection  
20       (j)(1) with respect to the displacement of noninmate work-  
21       ers or a certification with respect to the wages proposed  
22       to be paid Federal inmate workers pursuant to subsection  
23       (j)(2) so as to make the results of such inquiry available  
24       to the Board of Directors prior to the Board’s consider-  
25       ation of the proposed agreement. The Secretary and the

1 person requesting the inquiry may make recommendations  
2 to the Board regarding modifications to the proposed  
3 agreement.

4 “(2) Whenever the Secretary deems appropriate, the  
5 Secretary may verify whether the actual performance of  
6 the agreement is resulting in the displacement of non-  
7 inmate workers and whether the wages being paid the  
8 Federal inmate workers meet the standards of subsection  
9 (e).

10 “(3) Whenever the Secretary determines that per-  
11 formance of the agreement has resulted in the displace-  
12 ment of noninmate workers or the payment of Federal in-  
13 mate workers at less than the required wage rates, the  
14 Secretary may—

15 “(A) direct the Chief Operating Officer of the  
16 Corporation to terminate the agreement for default,  
17 subject to the processes and appeals available to a  
18 Federal contractor whose procurement contract has  
19 been terminated for default;

20 “(B) direct that the Federal inmate workers be  
21 retroactively paid the wages that were due; and

22 “(C) initiate proceedings to impose upon the  
23 person furnishing the certifications made pursuant  
24 to subsection (j), any administrative, civil, and  
25 criminal sanctions as may be available.”.

1       (b) CLERICAL AMENDMENT.—The table of sections  
2 for chapter 307 of title 18, United States Code, is amend-  
3 ed by adding at the end the following new item:

“4131. Additional pilot authorities for inmate work opportunities.”.

Chairman SENSENBRENNER. Without objection the amendments en bloc will be considered as read and the gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, amendment No. 19 is what I call a truth in legislating amendment. It would provide for a 5-year phaseout of mandatory source, which is what the proponents say the bill does. It actually doesn't phase out anything. The fact of the matter is, Mr. Chairman, that it actually abruptly ends the program. And those that think it has a phaseout should just read page 4, line 5, where the bill says agencies shall solicit an offer, unquote, from FPI. There is nothing wrong with that but that is all it says, you shall solicit an offer. Doesn't say that they will actually be awarded an offer. Amendment No. 19 provides for a gradual phaseout over 5 years, which gives the program an opportunity to find the work.

Amendment No. 20 deals with services. The bill limits the ability of Federal Prison Industries and State Prison Industries to do services and suggest that there ought to be competition. The fact is there is no mandatory source on services, so competition is the only way they can get contracts. So in fact there is no need to have section 7 limiting access to services.

Finally, Mr. Chairman, amendment No. 23 opens up—would open up new opportunities trying to find work for charitable organizations or others. This would be a pilot project similar to the one in Ohio where work has been obtained. Last year with your support, Mr. Chairman, discussion—

Chairman SENSENBRENNER. Gentleman yield?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. I believe many of these ideas are good ones, but I don't think they have been properly vetted and I would be happy to work with the gentleman from Virginia before this bill gets to the floor to see if we could reach a happy accommodation on these ideas should he decide to withdraw the amendment.

Mr. SCOTT. Thank you, Mr. Chairman, and I appreciate your willingness to work, and I think there may be some common ground and I would be delighted to work with you and ask that the amendments be considered withdrawn.

Chairman SENSENBRENNER. Without objection, so ordered. The amendments are withdrawn.

Are there further amendments? If not, a reporting quorum is present. The question is on the motion to report the bill H.R. 1829 favorably, as amended. Those in favor will say aye. Opposed no. The ayes appear to have it. The ayes have it. And the motion to report favorably, as amended, is agreed to. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes and all Members will be given 2 days, as provided by the rules, in which to submit additional dissenting, supplemental or minority views.

The Chair would like to thank everybody for their cooperation during this markup where five bills have been reported on a very

sleep deprived day. Have a good recess, and the Committee is adjourned.

[Whereupon, at 11:30 a.m., the Committee was adjourned.]



## DISSENTING VIEWS

These views dissent from the Committee Report on H.R. 1829.

### INTRODUCTION

The Federal Prison Industries program, or FPI, has been around since the 1930's. Under the law, and based on certain conditions, Federal agencies are required to buy needed products from FPI if FPI can meet their order. The purpose of the program is to teach prisoners real work skills so that when they are released from prison they will be able to find and hold jobs to support themselves and families, and thus, be less likely to commit more crimes.

And it is clear that the program works to do just that. Followup studies covering as much as 16 years of data have shown that inmates who participate in prison industries are 14% more likely to be employed and 25% less likely to commit crimes than like cohorts who did not participate in the program. While the program certainly benefits offenders and their families, that is not the primary benefit of FPI from a public policy perspective. The real benefit to all of us is that, as a result of this program, we are less likely to be victims of crime.

### WHAT THE BILL DOES

H.R. 1829 would immediately eliminate the current "mandatory source" procurement authority for Federal agency purchases from FPI. While the bill provides for an agency option to purchase goods from FPI on a non-competitive basis which is phased out over a 5-year period, there should be no mistake—the mandatory source rule in effect today would be eliminated immediately upon this bill becoming law. The 1934 law required purchases by Federal agencies to ensure work opportunities for inmates. The law recognizes that prison work operations are necessarily less efficient, less productive and more costly to run when compared to private work conditions, given the high level of security and control that must be maintained, no or very low beginning work skills among the workforce, and the objective of labor intensive activities to maximize the number of inmates employed. It is estimated that it takes about 4 inmates to equate to the production of one private worker.

Ironically, most of the adverse impact of this bill will fall on private sector companies and their workers. FPI would not exist, and certainly could not offer quality products and services, without the direct support of private sector companies that provide the raw materials and services FPI needs to produce its products. Each of these companies responded to solicitations issued by FPI (as a Federal agency, FPI follows all the Federal procurement regulations) and were awarded the contracts through competitive procedures. In order to fulfill their contractual obligations, these companies have hired law-abiding citizens as staff, added equipment, and some

have even opened entire new plants. Many of these companies have FPI contracts which extend 5–10 years. FPI estimates that approximately 5,000 U.S. jobs, of which many are unionized, are generated by the program.

Last year, FPI spent 74 percent of its sales revenue on purchases of raw materials, equipment, supplies, and services from private sector companies, 62% of which were purchased from small businesses including women, minorities and those who are disadvantaged. These expenditures exceeded \$500 million last year. The private sector companies involved have played by the rules, competing fair and square for the contracts. They and their employees do not deserve to be on the receiving end of an unjustified animus toward inmates or FPI.

In addition to restrictions on FPI's ability to produce products for Federal agency sales, the bill severely restricts the ability of FPI to obtain service contracts. An alternative currently employed by FPI to increase Federal market share for products, one that also reduces reliance on mandatory source, is performing services for companies which are currently being performed in foreign countries (mandatory source has never applied to services). Service contracts will be prohibited under the bill, except for Federal Government service contracts competitively acquired.

The bill, which is purportedly designed to reform Federal prison industries, also prohibits state service contracts. These restrictions will also hurt private sector businesses more than prisoners. The combined impact of the Federal and state prohibitions on service contracts with private businesses will have the effect of eliminating a substantial number of Federal and state prison industries service contracts where free workers will lose their jobs. One such example involves contracts with Delco Remy wherein prisoners perform services that companies are not able to get free workers to perform such as stripping useful materials from old parts which are then reused in products constructed by free workers. In Virginia alone, it is estimated that hundreds of free workers will lose their jobs. It is likely that these jobs will end up leaving the U.S. as the services performed by inmates are moved to foreign operations where the company can find workers willing to do work only inmates will do in this country.

Further, the bill will have an unintended discriminatory effect upon small, minority and women-owned businesses. As noted above, roughly two-thirds of FPI purchases are made from small, women and minority owned and disadvantaged businesses. This is one of the highest rates among all Federal agencies. It is well established that small businesses create more jobs per dollar of revenue than large businesses. Accordingly, to the extent that FPI's sales decline, the hardest hit will be the socio-economically disadvantaged businesses which are deliberately targeted to provide them Federal procurement opportunities.

Of course, the adverse effects of program reduction will also disproportionately affect minority inmates since racial and ethnic minorities are disproportionately represented among the inmate population. Their representation in FPI jobs, however, mirrors this over-representation in the prison population. Important, research on the value to inmates of working in prison industries jobs demonstrates

that these minority inmates benefit at a higher rate than majority group members regarding their likelihood of remaining crime-free and being successfully employed upon release. Thus, job reductions in FPI of the magnitude certain to occur under the bill will fall hardest on racial and ethnic minorities.

Some suggest that vocational education is a good substitute for FPI work experience. The bill provides authority for increased vocational training programs. A vocational education program typically runs for 2 years or less and is generally thought better to be provided toward the end of the sentence. The average sentence for prisoners in the Federal system is 8 years. Whenever the vocational training is provided, the question becomes what to do with the other 6 years of the sentence prior to or after completion of what is considered a beneficial period of vocational education. Furthermore, unlike FPI, such vocational programs are in no way self-supporting.

All able-bodied inmates in the Federal system are required, by law to work. Yet, few offenders enter prison with marketable work skills. The vast majority do not have even credible work habits such as showing up for work on time each day, and working cooperatively and productively with others. Such habits are required to maintain an FPI job just as they are required to obtain and maintain a job in the free world. While vocational education is important and ought to be available to all inmates, no amount of educational course work can substitute the real world workplace experience of a job.

The bill also provides an authorization for FPI to make products and donate them to non-profit organizations as a way to maintain work opportunities for inmates. Producing products to give to charitable organizations simply means replacing the business generated from their now having to purchase the items from a private business, and it means transferring to the tax payer costs for a program that is currently wholly self-supporting. Funding for these two initiatives—increased vocational education and donating inmate made products to charitable organizations—is authorized from FPI or appropriated funds. Although it is improbable that any funding will be made available from these two sources, even with funding, the programs are not likely to make up for many of the jobs that will be lost due to elimination of the mandatory source program.

Leading up to and during markup of the bill before the full Judiciary Committee, compromises were offered by Rep. Bobby Scott and Rep. Mark Green to preserve a reasonable level of inmate work opportunities through a reformed, but viable, FPI program. Rep. Scott requested that the bill be amended to authorize the piloting of certain new sources of inmate work opportunities through FPI, including Federal “PIE” (Prison Industries Enterprise) program making products for companies that are now wholly made outside the US, to authorize contracts with charitable organizations for products and services to assist the charities, to eliminate the restrictions on service contracts and allowing a phase out of the mandatory source provision as these operations replaced it. Rep. Green offered an amendment at full committee to allow the Attorney General to re-institute mandatory source should he deem it necessary

to avoid disorder or disruption in a prison. Neither offer was accepted. Several other compromises were put forth, as well, but none was accepted and no compromise was offered by proponents of the bill that affected the basic provisions of the bill. A final offer was made by the Chairman of the Committee to further discuss a possible compromise during the pendency of the bill for floor consideration in exchange for Rep. Scott withdrawing his amendments (which he did), but no compromise has emerged.

#### FPI OPERATIONS

The total revenues of FPI represent a very small percent (currently about  $\frac{1}{4}$  of one 1%) of total Federal agency procurement dollars and only 4.5% of the overall Federal market in the approximately 250 products it produces within the Federal supply. The furniture and apparel industries are the two industries in which FPI produces the highest volume of work. When asked, representatives of these industries conceded that FPI sales represent an “insignificant” and “negligible” portion of their industries, respectively. If such industries are having problems, it is clearly not due to the impact of FPI. In textiles, for example, it is said that over 600,000 jobs were lost during the past 10 years. There are roughly 7,000 prisoners working in textiles in FPI. Clearly, the blame for the loss of 600,000 jobs cannot be a few thousand prisoners. The same is true of revenue reductions and job loss due to economic downturns in the office furniture business.

With the elimination of parole, good conduct credits, Pell grants, and other positive incentive programs, the Federal prison system has little to offer as ongoing incentives for self development. The one shining exception is FPI. Non-FPI inmate jobs pay from about \$.12 an hour to about \$.44 cents an hour. The average non-FPI inmate job pays \$.23 an hour. The majority of non-FPI inmates work for less than \$.23 per hour. FPI jobs pay from \$.23 to \$1.5 per hour with the average pay being \$.93 per hour. To hold down an FPI job, an inmate must have completed high school or be making steady progress toward obtaining a GED, and maintain a record of good behavior. This is true not only for those already in an FPI job, but also for those on the waiting list for a job, as well as those seeking to establish eligibility to be placed on the waiting list. Contributions to inmate development and prison management are important, but the least important of FPI's contributions. Reductions in crime, restitution payments to crime victims and support payments to inmate dependants are far more compelling reasons for the program. Last year, inmate workers paid more than \$3 million toward these obligations.

It is readily conceded that there are problems with FPI which should be fixed. When a small business making a single product depends upon a government contract for its operations, FPI should not be able to take that business away. But this bill should be fixing the program—not gutting it by taking away all of its primary business sources all at once. While the bill suggests that the lack of competition is the problem, the bill seeks to strangle-hold FPI as a competitor not only by strengthening the prohibition against activities in the commercial market, but in the government market, as well. We are already seeing the effects of the DoD restrictions

on FPI procurement passed last Congress. Information obtained from the program indicates that it has had to close 13 factories and eliminate over 1700 inmate jobs and expects to eliminate 500 additional inmate jobs before the end of this year.

We should fix the problems, but we should do so in ways that assure the viability of this vital crime reducing program. With additional prisons scheduled to come on line over the next few years, we can ill afford to diminish this successful crime reduction program. But for their crimes and imprisonment, prisoners are indistinguishable from the rest of us. Treating them as if they are foreign competitors and viewing contracts in FPI as contracts a private business could have, should not be the policy of the Committee with oversight responsibility for the safe and efficient operation of our prisons, or of the Congress, which ultimately has that responsibility. About 98% of prisoners serving time will eventually return to society and our oversight focus should be on their rehabilitation and productive return as a matter of public safety. We can do better than this bill, and we should.

ROBERT C. SCOTT.  
MARK GREEN.  
SHEILA JACKSON LEE.  
HENRY J. HYDE.

