

THE PRISON INDUSTRY ENHANCEMENT (PIE) CERTIFICATION PROGRAM

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Background:

History Before PIE:

The debate surrounding private sector involvement in prison work pits fears about the exploitation of prisoners on the one hand, against fears about unfair competition with free world workers and companies on the other. Those fears are not without merit. Prisoners were used to break strikes and to compete at unfair wage levels in our history. And prison workers were exploited, first under the contract lease system, where they were turned over to private contractors to work in various types of agricultural and industrial production, and later under the contract system under which a company would bring into the prisons raw materials, machinery, and foremen necessary for production and use prisoner workers as their labor force. In both systems, prisoner workers suffered from long hours and abusive treatment, and in both systems competition with local business and labor was unfair.

Because of this troublesome history, the relationship between prison labor and private sector business has been tightly regulated. To curb existing unfair competition, state and federal legislation was enacted in the late 1920s that essentially shut the door on private sector involvement in prison work. The Hawes-Cooper Act of 1929¹ declared that prisoner-made goods transported from one state to another were subject to the laws of the importing state once the goods entered its borders. The effect of this law was to permit a state to prohibit the sale of prisoner-made goods, whether made in other states or within its own borders.

Then, in 1935, the Ashurst-Sumners Act² was passed, making it a federal offense to ship prisoner-made goods into a state where state law prohibits the receipt, possession, sale, or use of such goods. Ashurst-Sumners was a federal attempt to aid those states which, pursuant to Hawes-Cooper, had banned the sale of prisoner-made goods. But the introduction of federal sanctions proved insufficient to ease the fears of business and labor organizations, since states could still permit commerce in prisoner-made goods.

In 1948, closing the circle, Congress passed the Sumners-Ashurst Act³ making it a federal criminal offense to transport in interstate commerce prisoner-made goods for private use, regardless of the laws of the importing state. Congress had also banned convict labor on federal procurement contracts in amounts over \$10,000 under the Walsh-Healy Act of 1936⁴. Thus, by the late 1940s, Congress had restricted prison work to what came to be known as the “state-use market”—the provision of goods to state and local government agencies.

¹ 49 U.S.C. 11507 (1929).

² 49 Stat. 494 (1935).

³ 18 U.S.C. 1761(c).

⁴ 49 Stat 2036 (1936).

The exploitation of prison labor continued under the state use system, as wages for prisoner workers were either non-existent or set at a token level, and workers had no employment rights or benefits. This was the only option for correctional industries until the passage of new federal legislation in 1979.

PIE History: The Modern Federal Response:

By 1979, tremendous growth in the prison population and increasing concern about the cost of incarceration renewed the interest of prison administrators and policy makers in expanding the use of correctional industries to reduce idleness and its attendant violence. Violent prison riots at Attica and elsewhere had awakened the interest of the Congress as well. In response to these concerns, the Senate enacted an amendment to existing federal legislation, releasing restrictions on the interstate commerce of prisoner-made goods provided certain conditions were met. Under the amendment, named for its sponsor, Senator Charles Percy of Illinois, those conditions included -

- 1 Inmates working in private-sector prison industries must be paid at a rate not less than that paid for work of a similar nature in the locality in which the work takes place, the “locally prevailing wage” requirement;
- 2 prior to the initiation of a project, local union organizations must be consulted; and
- 3 the employment of inmates must not result in the displacement of [locally] employed workers outside the prison, must not occur in occupations in which there is a surplus of labor in the locality, and must not impair existing contracts for service.

The Percy Amendment also authorized deductions of up to 80% of a participating inmate’s gross wages for taxes, room and board, family support, and contributions to the state’s victim compensation fund. Finally, it provided that inmates could not be denied, on the basis of their status as inmates, other state and federal employment benefits such as workers’ compensation, and that their work must be voluntarily obtained.

Because the legislation amended criminal statutes regulating the interstate commerce of prisoner-made goods, the U.S. Justice Department became the administrative agency in charge of developing regulations for participating jurisdictions. The Bureau of Justice Assistance (BJA), the program arm of the US Department of Justice, was to oversee the development of the new program.⁵ BJA created what became known as the Private Sector Prison Industry Enhancement Program, or PIE. Over time, Congress expanded the number of private sector projects allowed under the PIE program, and BJA developed a program Guideline that clarified and expanded program regulations such that any state or county with appropriate authorizing legislation could participate in the program if it met the federal statutory requirements.

Current Status, PIE Participants & Products: Today, 45 jurisdictions have met PIE requirements and have been certified to participate, including not only states but also counties and Federal Prison

⁵ BJA selected the National Correctional Industries Association (NCIA) as its PIE technical assistance contractor. NCIA processes applications for participation, provides technical advice and assistance, and performs compliance assessments for BJA. In addition, NCIA collects performance data on a quarterly basis and posts that information on its website. See, nationalcia.org/PIECP.

Industries (UNICOR) as well. There are active PIE programs in 29 jurisdictions as of March 31, 2020,⁶ operating 216 separate projects. Collectively they employ more than 5,000 prisoner workers.

PIE projects produce a wide variety of goods:

Arizona (utility cargo trailers, custom thermal acoustic insulation products, metal utility trailers)

Arkansas (wire harnesses)

California (circuit boards, assembly/manufacture of evaporator coils, electronic remanufacturing, computer programming and web development)

Colorado (fiberglass products, furniture, leather goods, cutting, sewing, embroidery, flags, institutional furnishings)

Florida (boxes, printing, textiles, wood, metal, eyeglasses, dental lab, food products manufacturing, cleaning supplies manufacturing and processing)

Georgia (metal products, signs, printing, wood products, embroidered items, sewn products, stock clerk/order fillers)

Idaho (cooked potato products)

Indiana (air filters, wire harnesses and sub-assemblies, metal products, sewing, small item cases)

Iowa (industrial and garment textiles, screen printing, molded plastic parts, metal work, steel trailers, precast concrete products)

Kansas (wire harnesses, agricultural equipment, sports apparel, sewing, leather goods, wood doors, balloons, pet products, cloth bags, metal components, transportation seating, fulfillment for mailouts)

Maine (upholstery)

Maryland (fabrication, painting and assembly of switch gear components)

Minnesota (balloons, assembly and packaging, furniture, telecommunications, metal fabrication, wood products, cut and sew, plastic products assembly, assembly and manufacture of various items, sub-contract and assembly)

Mississippi (garments, embroidered products, metal and wood fabrication)

Montana (sewing, wading boots)

Nebraska (metal assembly, cabinet and drawer boxes, windsock duck decoys, wood storage cases, scrapbooking machines and dies)

Nevada (garments, book re-binding, limo parts, furniture, hybrid mattresses)

Stratford County New Hampshire (product assembly, packing, packing components)

North Carolina (janitorial products, packing commissary items)

⁶ According to NCIA's PIE statistical reports.

North Dakota (furniture, assembly and paint, multi sports products)

Oklahoma (metal fabrication, retail metal)

Oregon (custom sewing, garments, metal, word processing)

South Carolina (electronic cables, signs, cut and sew golf shirts, printing and vinyl products, pressed plywood, hard wood flooring, picture frames, wood products)

South Dakota (textiles, boat docks, truck suspensions, fence stakes)

Tennessee (print, contract sewing, distressed hardwood flooring, wood cabinets, wall paneling)

Texas (brass valves and fittings, electronic circuit boards and wire harnesses)

Utah County (temporary staffing, manufacturing and assembly)

Utah (contract sewing, road signs, cold weather gear)

UNICOR (textile garments, wire harnesses)

Currently Approved but Inactive PIE Jurisdictions:

Sixteen additional jurisdictions have met all the PIE criteria and have been certified by BJA for participation in PIE, but are not active at this time: Alabama, Alaska, Connecticut, Hawaii, Kentucky, Louisiana, Michigan, Hennepin County Minnesota, New Mexico, Ohio, Vermont, Virginia, Washington State, West Virginia, Wisconsin, and Wyoming.⁷ Additional states and counties may join the program if they meet the federal requirements for participation.

PIE Results to date:

The PIE program remains relatively small despite successes, primarily because potential business partners remain wary of joint ventures with prisons and jails, uncomfortable with potential negative public reactions.

Compared with traditional prison industries, the PIE benefits of providing real world work to prisoners while they are incarcerated are nothing short of remarkable. Correctional and business leaders have shown what can be achieved. PIE jobs have provided the rare opportunity for developing the self-respect that working provides, and made possible a healthy interaction between prisoners and their supervisors--perhaps the best chance to engage in rehabilitating activity a prisoner will have. Savings generated from PIE jobs enable prisoners upon release to buy the time they need to pursue appropriate work on their own terms, as part of the transition to civilian life—the best re-entry program. Workers learn specific skills, and they learn to work, a singularly important part of any possible post-release employment success.

⁷ According to NCIA's PIE statistical reports.

PIE financial benefits depend upon the payment of a comparable wage not less than that paid for similar work in the locality where the work is performed. The primary beneficiary of PIE's comparable wage, other than the prisoner worker, is the department of corrections as the recipient of the room and board deduction. More than 30% of PIE prisoner wages go to the room and board deduction which participating jurisdictions use to cover the cost of prison operations or in some cases, to increase general revenue.⁸ Income tax payments go to the federal government (a percentage of which is refunded to the worker depending upon annual income). Victim deductions go to victim compensation funds or victim assistance organizations, and family support deductions go, either voluntarily or by court order, to the workers' families.

In the decade, 2002 to 2012, total program annual gross wages for a work force of roughly 5,000, averaged approximately \$40,000,000. Annual deductions, which by federal statute may not exceed 80% of gross wages, had annual averages as follows: room and board, approximately \$14,000,000 (35%); total taxes, approximately \$4,000,000 (10% before refunds); victims' programs, approximately \$4,000,000 (10%); and family support approximately \$2,000,000 (5%) . The remaining 40%, about \$16,000,000 was received by the inmate workers, roughly \$3,200 per year per FTE position. In some cases workers are required to save specified percentages, and in other cases these earnings are still tapped to pay fines, court costs, and other debts.

PIE workers have had post-release success.⁹ But few participating jurisdictions currently have the capacity to track PIE workers' post-release employment experience separately from other correctional industries workers, or in some cases from prisoners in general. An expanded PIE program would have to include funding to evaluate PIE workers in contrast to these two groups.

The PIE Experience for its Stakeholders:¹⁰

Private Sector Partners

Security & Workspace: In addition to their concerns about negative public reaction, also the safety of

their civilian employees and the availability of quality manufacturing space are the major concerns for

private sector partners when considering PIE projects. The safety of private sector personnel is a high

priority for PIE managers as well, and they have taken steps to diminish the likelihood of harm to civilian

⁸ According to NCIA's quarterly statistical reports.

⁹ "A National Evaluation of the Effects of the Prison Industry Enhancement Certification Program," Cindy J. Smith, Ph.D., April 30, 2002.

¹⁰ The information in this section is derived both from interviews the writer conducted with PIE managers for NCIA and from the writer's multi-year experience with the PIE program.

workers. In some cases, private sector staff take part in prison security training to ensure they understand and can conform to prison security requirements. Companies are encouraged to place only civilian workers who will react appropriately to the unique social pressures of the prison workforce, preferably experienced supervisors who are at ease with a variety of employees. Anecdotal evidence has been positive on this issue; few incidents have been reported.

Space considerations vary by prison and can be complex. Most of the nation's prisons are overcrowded, which may mean that space is at a premium. Solutions have included adding prefabricated buildings within the prison fence but outside the normal prison industry workspace, or bringing in trailers, or even constructing new industrial space as a joint venture with the prison. Space is an ongoing challenge.

Organized Labor and Competitor Manufacturers:

The PIE legislation anticipated resistance from both organized labor and competitor manufacturers. While the legislation includes strict prohibitions on the displacement of existing workers in the locality where the work would be done, as well as a comparable wage requirement and pre-notification of local business and labor bodies, it took time for participating departments of corrections to prove to these two groups that PIE projects would conform to the law. Businesses and labor have remained cautious, but over the long life of the program relatively few serious conflicts with local business or labor have occurred. When conflicts did arise, problems were usually resolved through negotiations among the affected parties. Over the 40-year life of the program, there were only five occasions when the parties failed to negotiate a successful solution, resulting in the closing or the non-opening of a PIE operation, testimony to the need for careful project development, but also to the effectiveness of the legislative and administrative framework now in place.¹¹

Creative departments of corrections have established PIE advisory boards that include union and chamber of commerce representatives and have provided relevant information prior to any business development taking place. In some cases, offering union apprenticeship programs has added to the program's appeal for organized labor, as has the development of BJA's program requirement that state departments of economic security certify, prior to the establishment of a new PIE project, that no displacement will result in the locality in question.

¹¹ A proposed meat packing plant in Arizona, a proposed glove manufacturing plant in Wisconsin, a micro-jet operation in Washington State, a proposed golf cart operation in South Carolina, and a hardwood flooring operation in Tennessee.

The General Public:

Concerns have been expressed about the security of private information that could be compromised by PIE workers in telecommunication projects with access to credit card or other personal data. There have been attempts by prisoner workers to access such information. As a result, correctional industries organizations have developed various work arounds to segregate items of personal identifying information, making it impossible for the worker to connect separate bits of information and thus to identify a given individual. This is an area of rapid expansion for correctional industries generally—a topic to watch in the future, but not a significant issue for PIE today. As of March 31, 2020, only two states—California and Minnesota—have telecommunication PIE projects.

Correctional Industry Directors/Departments of Corrections:

Correctional industry directors, who typically manage PIE projects, are concerned primarily with the recruitment of PIE partners. They need to find PIE partners that can both adjust to the prison's institutional requirements, and that fit within the manufacturing capacity and goals of the correctional industries operation. Prisons function on predictable routines while businesses require flexibility in response to rapidly changing conditions. In some PIE projects, there have been disagreements with respect to the movement of prisoners between work and the institution. Solutions might include feeding prisoners on the job (to avoid having to return to cells, counts, etc.), authorizing additional work shifts, scheduling legal and medical visits outside work hours, or even housing PIE workers separately.

The ability of directors to effectively market the PIE program to attract appropriate private sector partners is handicapped by budgetary limitations and limited marketing staff. These challenges are exacerbated in times of economic recession when concerns about unfair competition are at their highest. But PIE managers have been creative in responding to the marketing challenge.

Some approach companies with limited access to other sources of labor; or low-tech, labor-intensive companies; or companies in transition (expanding, adding new product lines, changing existing operations). Some look for companies that will consider hiring PIE workers upon release. For several PIE managers, products now being made offshore have been a focus, as has emphasis on the value of the "made in America" label that prison-made products can claim. Products that can be "re-shored" and fall outside the interests of organized labor are of special interest. Marketing strategies vary by location, but in general PIE managers tend to avoid aggressive approaches out of concerns about negative reaction from local business or labor. This is an area that would be greatly helped by strong federal and state support that would help to normalize the idea of private sector/prison industries partnerships.

Prisoner Workers:

In addition to the opportunity to develop work skills and contacts, PIE program workers are attracted to PIE jobs because the pay is significantly higher than for other correctional industries jobs—at least the federal or state minimum wage, whichever is higher. The PIE legislation requires that workers be paid at a rate not less than that paid for work of a similar nature in the locality where the work is performed, what BJA labels the "comparable wage." Wage levels are determined by state departments of economic

security, using appropriate SOC codes,¹² so that tasks performed by prisoner workers can be easily equated with the same tasks performed by civilian workers and paid accordingly. BJA has required that PIE worker wages not fall below the 10th percentile wage for workers in any given SOC code.¹³

With wages at the minimum wage or above, workers generate salaries subject to the PIE deduction scheme which allows deductions for room and board, taxes, victims' compensation, and family support. While PIE workers may resent many of these deductions, the family support deduction—which can be mandatory under child support orders, or voluntary—is a source of pride to many. Workers may send a portion of their earnings home, thus relieving some financial burden on their families. Even when monies are not sent home, the families of PIE workers are relieved of the burden of financial support for their incarcerated family members.

Is PIE the Right Vehicle for Prison Reform?:

At this moment in our history, with widespread agreement on the need to address racial and social inequality, we may be on the precipice of real cultural change. We have an opportunity to attack the unresolved problems of inequality that permeate our criminal justice system by bringing prisoner workers into the national workforce, their work to be valued and recompensed at the same level as other similarly situated workers. Such a change would be transformative.

PIE could take the lead in such a transformation. The percentage of correctional industries workers now participating in PIE projects is relatively small, typically between 10 and 20 percent of all correctional industries workers. Clearly there is great room to expand PIE to include more correctional industries workers as well as unemployed prisoners in our nation's prisons and jails. This would decrease overall idleness and the cost of prison operations since those workers would no longer need alternative programming for the hours they are employed.

The current economic crisis has hit correctional industries hard, and PIE programs have been impacted as well. A significant expansion in the program would be challenging but could provide a permanent solution to the vulnerable economic conditions that stem from dependence on the state-use market.

How Can We Grow PIE?:

To grow the PIE program into a national vehicle for criminal justice reform, we will need strong federal and state leadership. High level political support is the key ingredient for success: PIE managers cannot sell the program to wary business and labor groups without the clear endorsement of state and federal leaders. To date, we have not seen enough of it. The PIE legislation was a response to a set of criminal justice dilemmas not so different from those we face today. Senator Percy garnered broad bipartisan support, reaching out to liberal and conservative senators with his clear depiction of both the problems of prison violence and prison costs on the one hand, and the potential solution of real world work at real

¹² The Standard Occupational Classification System is used by the U.S. Government to classify occupations.

¹³ Because it is critical that there be public trust in the process for determining PIE worker wages, BJA conducts regular compliance assessments using professional prison and jail industries compliance assessors under NCIA's direction.

world wages for prisoners on the other. Today we again need a strong bi-partisan coalition to excite business and the public about the possibilities of what is now a proven program--PIE. State and local correctional leaders know that it can work, know how to make it work, and will support its expansion if they have the political support to open the necessary doors. At the federal administrative level, BJA has supported the program for more than 40 years, knows what has been accomplished, and could help to market it to the corrections community.

Legislative and Administrative Change Needed to Grow the Program:

After 40 years of experimenting with PIE under the 1979 statute, we can knowledgeably assess the underlying legislative structure necessary for a successful PIE program. The PIE statutory framework has proved sufficiently strong to ensure program participation that is fair to private sector companies, civilian labor, and prisoner workers. BJA's Guideline has added the necessary administrative framework for program participants at the local, state and federal levels. But significant changes should be made if we are serious about growing the program:

- The Walsh-Healey Act should be repealed, allowing the production of prison-made goods to be sold to the federal government without restrictions. That alone would create a huge market for prison-made goods.
- The PIE statute itself should be amended to clarify several areas of confusion. First, the current statute regulates only goods, not services. At the time the statute was written, the explosion of the service economy had not yet occurred and there was no perceived need to include services within the purview of the program. Today, services make up a significant portion of our economy, and service work—especially electronically produced business-- is work that should be included under the PIE statute. Doing so would eliminate the current practice of prisoner workers performing service work for private sector companies outside the PIE program, at sub-minimum wages, as is sometimes the case. To the extent Congress has the power to do so, it should create a new prohibition against the provision of services by prisoners using electronic means of interstate commerce unless the conditions included in the PIE legislation are met.
- Second, there is confusion as to who is and is not an “employee” and an “employer” under the current statute, and therefore what work-related benefits accrue to PIE workers and what responsibilities accrue to private sector partners. In particular, confusion exists about the requirements surrounding work benefits such as Social Security and Workers’ Compensation. If PIE workers were classified as employees, whether they work directly for a private sector company or manufacture goods for a private sector company under correctional industry auspices, that confusion would be eliminated and the program would be strengthened. If we want to create a fair and equitable world of work for prisoners, then they must be included in all the protections offered to their civilian counterparts.
- Finally, the current BJA requirement that state departments of economic security determine in advance that a proposed PIE project will not displace local civilian workers should be clarified and strengthened. Federal leadership is required to bring together the Department of Justice, where the PIE program is located, and the Department of Labor, which has the expertise and

authority to regulate labor issues. It must be clearly understood, and accepted within the local business and labor community, that PIE jobs are a part of our joint commitment to criminal justice reform.

Barbara Auerbach has more than forty years of experience in the field of prison labor. She has participated in and directed multiple national research and demonstration project for the Bureau of Justice Assistance (BJA) and the National Institute of Justice (NIJ) of the U.S. Department of Justice, focused on prison-based public/private partnerships. She served as a consultant to the National Correctional Industries Association (NCIA), the technical assistance provider for BJA's Prison Industry Enhancement Certification Program. In that capacity, Ms. Auerbach designed, conducted, and analyzed project compliance reviews; provided assistance to BJA in the development of policies and procedures for the program; provided advice to practitioners on how to establish partnerships within the bounds of federal and state statutes governing prison labor; and worked with the Justice Department's Office of General Counsel to resolve legal issues and develop compliance plans for participating jurisdictions.