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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 2498** Session of  
2008

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INTRODUCED BY MCGEEHAN, BISHOP, CALTAGIRONE, CRUZ, FRANKEL,  
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SOLOBAY, WALKO, WATERS AND YOUNGBLOOD, MAY 2, 2008

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REFERRED TO COMMITTEE ON JUDICIARY, MAY 2, 2008

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AN ACT

1 Establishing the Prison Industry Enhancement Certification  
2 Program and the Prison Industry Enhancement Certification  
3 Board; providing for employment of inmates by private  
4 industry and for subcontracts with correctional agencies;  
5 establishing guidelines for inmate compensation; and  
6 providing for location of private sector prison industry.

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5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Prison  
9 Industry Enhancement Certification Program Act.

10 Section 2. Intent.

11 It is the intent of the General Assembly that joint ventures  
12 between correctional facilities and private industry be  
13 established so that inmates incarcerated in correctional  
14 facilities be productively engaged. Private industry in this  
15 Commonwealth will become more competitive in the marketplace  
16 while not displacing job opportunities for civilian labor in the  
17 community. It is further the intent of the General Assembly to  
18 structure the use and availability of inmate labor and regulate  
19 its use to assure that inmate labor not be used to replace work  
20 opportunities for unemployed or underemployed residents of this  
21 Commonwealth. The private sector prison industry will not result  
22 in bargaining agreements for civilian laborers. Inmates who  
23 volunteer and are deemed eligible for these jobs will be better  
24 able to:

25 (1) Develop positive work habits that will assist them  
26 in securing and holding gainful employment in the public and  
27 private sectors subsequent to their release from  
28 incarceration.

29 (2) Pay a reasonable portion of the room and board in a  
30 correctional facility.

1 (3) Accept responsibility for the consequences of their  
2 actions by compensating victims of crime through deductions  
3 from their earnings.

4 (4) Provide financial assistance to their dependents,  
5 thus strengthening and promoting family ties while reducing  
6 the likelihood that their families may eventually have to  
7 rely upon public assistance.

8 Section 3. Definitions.

9 The following words and phrases when used in this act shall  
10 have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Board." The Prison Industry Enhancement Certification Board  
13 established under section 4.

14 "Certification." Certification of the Commonwealth or a unit  
15 of local government under the Justice Assistance Act of 1984  
16 (Public Law 98-473, 98 Stat. 2077).

17 "Correctional facility" or "correctional institution." Any  
18 jail, prison or detention facility operated by the Commonwealth  
19 or by a county or jointly by more than one county and used for  
20 the detention and confinement of persons convicted and under  
21 sentence or violations of the criminal laws of this  
22 Commonwealth. For purposes of this act, the term shall also  
23 include any motivational boot camp as defined in section 3 of  
24 the act of December 19, 1990 (P.L.1391, No.215), known as the  
25 Motivational Boot Camp Act. The term does not include any  
26 correctional facility used for the detention and confinement of  
27 juvenile offenders.

28 "Counsel." A licensed attorney within the Department of  
29 Corrections.

30 "County commissioners." Elected county commissioners or the

1 equivalent governing body of any county, regardless of form of  
2 government.

3 "Department." The Department of Corrections of the  
4 Commonwealth.

5 "Director of correctional industries." An individual with  
6 the express and assigned duties to operate and manage the Prison  
7 Industry Enhancement Certification Program under the direct  
8 supervision of the Secretary of Corrections and the Prison  
9 Industry Enhancement Certification Board.

10 "Inmate." An individual who has been convicted of an  
11 indictable offense and is serving a sentence in a correctional  
12 facility or correctional institution.

13 "Justice Assistance Act of 1984." The Justice Assistance Act  
14 of 1984 (Public Law 98-473, 98 Stat. 2077).

15 "Municipality." A municipal corporation or quasi-municipal  
16 corporation, including counties.

17 "Office." The Office of Victims' Services.

18 "Open market." An unrestricted stream of commerce within  
19 this Commonwealth and outside the borders of this Commonwealth  
20 in interstate commerce.

21 "Private business," "private enterprise" or "nonprofit  
22 entity." An individual, firm, partnership, corporation or other  
23 lawful commercial enterprise or nonprofit organization that,  
24 under this act, operates a private sector prison industry and  
25 employs State or county inmates.

26 "Private sector prison industry." A private business,  
27 private enterprise or nonprofit entity that produces goods or  
28 services employing inmate labor in or on the property of a State  
29 or county correctional facility.

30 "Program." The Prison Industry Enhancement Certification

1 Program established under the Justice Assistance Act of 1984  
2 (Public Law 98-473, 98 Stat. 2077).

3 "Secretary." The Secretary of Corrections of the  
4 Commonwealth.

5 "Superintendent." The person in primary charge of a State  
6 correctional facility.

7 "Warden." The person in primary charge of the administration  
8 and management of a county or multicounty correctional  
9 institution.

10 Section 4. Prison Industry Enhancement Certification Board.

11 (a) Establishment.--There is hereby established a board to  
12 be known as the Prison Industry Enhancement Certification Board.

13 (b) Composition.--The board shall consist of seven members  
14 as follows:

15 (1) The secretary or a designee who shall serve as  
16 chairman.

17 (2) The director of correctional industries.

18 (3) One representative from organized labor appointed by  
19 the Governor from a list submitted by the Statewide labor  
20 organizations in this Commonwealth.

21 (4) One county commissioner nominated by the County  
22 Commissioners Association of Pennsylvania and appointed by  
23 the Governor.

24 (5) One warden appointed by the Governor.

25 (6) One representative from the business community  
26 appointed by the Governor from a list submitted by the  
27 business community.

28 (7) One department counsel appointed by the secretary.

29 (c) Terms.--Terms for members shall be as follows:

30 (1) Three years for the county commissioner.

1           (2) Two years for the representative from the business  
2 community.

3           (3) Two years for the warden.

4           (4) Two years for the representative from organized  
5 labor.

6           (5) The secretary, director and counsel shall serve  
7 continuously.

8           (d) Reappointment.--A member of the board may be eligible  
9 for reappointment. A member shall continue to serve after the  
10 expiration of the member's term until a successor is appointed.

11          (e) Vacancies.--A vacancy shall be filled by the original  
12 appointing authority for the remainder of the expired term. A  
13 vacancy shall be filled within 90 days of the occurrence of the  
14 vacancy.

15          (f) Meetings.--The board shall meet biannually and upon the  
16 request of the chairman or three or more members. All meetings  
17 may or may not be open to the public at the discretion of the  
18 secretary or the board.

19          (g) Quorum.--For the transaction of general business of the  
20 board, four members shall constitute a quorum. A majority vote  
21 of the members present will be necessary for a private sector  
22 prison industry application to be approved. Each approval of a  
23 private sector prison industry application shall be made by a  
24 vote at a duly constituted meeting of the board.

25          (h) Compensation.--Members shall receive no compensation for  
26 their services on the board, but shall be reimbursed by the  
27 department for all reasonable and necessary expenses in  
28 accordance with the rules of the board.

29 Section 5. Powers and duties of board.

30          The board shall have the powers and duties to:

1           (1) Apply to the United States Department of Justice for  
2 certification of the Commonwealth or assist a unit of local  
3 government in applying for certification.

4           (2) Act as an intermediary between a correctional agency  
5 in this Commonwealth and the United States Department of  
6 Justice in complying with the mandatory criteria for the  
7 program of private sector prison industries in this  
8 Commonwealth.

9           (3) Establish procedures for determining whether a  
10 prospective private sector prison industry proposed by the  
11 department or any county correctional agency complies with  
12 the requirements of the program and other State law not  
13 inconsistent with this act.

14           (4) Approve or disapprove a prospective private sector  
15 prison industry for inclusion or continuation in the program.

16           (5) Monitor a private sector prison industry to ensure  
17 continuing compliance with this act and the Justice  
18 Assistance Act of 1984 and forward any complaints or notices  
19 of violations to the appropriate enforcement authority.

20           (6) Designate which services to be performed or articles  
21 manufactured or assembled by inmates are conforming to the  
22 program regulations and can be sold on the open market.

23 Section 6. Employment of inmates by private industry.

24           (a) Contract and supervision.--Upon the approval of the  
25 board, the department or a county correctional facility, with  
26 the approval of its governing board, may enter into contracts  
27 with a private business, private enterprise or nonprofit  
28 organization to permit the employment of inmates to perform  
29 designated work. The department shall remain responsible for the  
30 custody of a department inmate employed in a private sector

1 prison industry, however, all supervision of the inmate employee  
2 that is related to the inmate's employment is the sole  
3 responsibility of the private sector prison industry. The county  
4 facility shall remain responsible for the custody of a county  
5 inmate employed in a private sector prison industry, however,  
6 all supervision of the inmate employee that is related to that  
7 inmate's employment is the sole responsibility of the private  
8 sector prison industry. The contractual arrangement authorized  
9 by this act shall not create any third-party rights in any  
10 inmate.

11 (b) Status of inmate.--No inmate compensated for  
12 participation in the program shall be considered to be an  
13 employee of the Commonwealth or the county nor shall the inmate  
14 be afforded the rights and privileges of Commonwealth or county  
15 employees.

16 (c) Certain rights preserved.--Nothing contained in this  
17 section shall be deemed to restore, in whole or in part, the  
18 civil rights of participating inmates, however, participating  
19 inmates shall be afforded the protection of the Fair Labor  
20 Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et seq.),  
21 Title VII of the Civil Rights Act of 1964 (Public Law 88-352, 78  
22 Stat. 241), the Occupational Safety and Health Act of 1970  
23 (Public Law 91-596, 29 U.S.C. § 651 et seq.), the Age  
24 Discrimination Act of 1975 (Public Law 94-135, 42 U.S.C. § 6101  
25 et seq.), the Americans with Disabilities Act of 1990 (Public  
26 Law 101-336, 104 Stat. 327), the act of June 2, 1915 (P.L.736,  
27 No.338), known as the Workers' Compensation Act, the act of  
28 October 27, 1955 (P.L.744, No.222), known as the Pennsylvania  
29 Human Relations Act, the act of July 14, 1961 (P.L.637, No.329),  
30 known as the Wage Payment and Collection Law, and the act of



1 January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act  
2 of 1968, solely to the extent that they apply to the private  
3 sector prison industry employment relationship.

4 (d) Consent to deduction.--An inmate may participate in the  
5 program established under this act only on a voluntary basis and  
6 must consent, in advance, to the specific deductions from gross  
7 wages, as set forth under section 8.

8 Section 7. Minimum requirements of private sector prison  
9 industry.

10 (a) Requirements enumerated.--A private business, private  
11 enterprise or nonprofit organization may not enter into a  
12 contract under section 6 unless it demonstrates all of the  
13 following:

14 (1) The private business, private enterprise or  
15 nonprofit organization, the department or the governing  
16 authority of the county correctional system, whichever is  
17 applicable, consulted with local union central bodies and  
18 with local businesses that may be affected by the private  
19 business, private enterprise or nonprofit organization  
20 participating in the program.

21 (2) The private business, private enterprise or  
22 nonprofit organization has verified with the Department of  
23 Labor and Industry that its participation in the program will  
24 not:

25 (i) demonstrably result in the displacement of  
26 employees in the surrounding community;

27 (ii) be applied in skills, crafts or trades in which  
28 there is a surplus of available gainful labor in the  
29 locality; or

30 (iii) impair existing contracts for goods and

1 services. Further, a contract shall not be executed by or  
2 with a private sector prison industry employer that will  
3 permit the employment of inmates in the same job  
4 classifications or similar work duties or assignments as  
5 individuals who are on strike, as defined in the act of  
6 June 1, 1937 (P.L.1168, No.294), known as the  
7 Pennsylvania Labor Relations Act, or who are otherwise  
8 involved in a labor dispute as that term is defined by  
9 Federal or State law, including, but not limited to, a  
10 lockout.

11 (3) All inmate employment shall be voluntary.

12 (b) Priorities.--When reviewing a potential private sector  
13 prison industry, the board shall consider the impact on the  
14 employment of persons in the private business sector of this  
15 Commonwealth and consider establishing joint ventures that will  
16 retain or reclaim jobs in this Commonwealth, support emerging  
17 Commonwealth industries or create jobs for a deficient labor  
18 market.

19 Section 8. Inmate wages and deductions.

20 (a) Wages.--All inmates shall be compensated by the private  
21 business, private enterprise or nonprofit organization at a rate  
22 that is comparable to wages paid for work of a similar nature in  
23 private industry in the locality in which the project is  
24 located, as determined after consultation with the Department of  
25 Labor and Industry. An inmate may not receive compensation that  
26 is less than the minimum wage established by Federal or State  
27 law unless the lesser compensation is consistent with Federal  
28 and State law. Wages shall be paid no less frequently than  
29 biweekly. Any wages remaining after the deductions under  
30 subsection (b) shall be maintained by the appropriate

1 correctional authority in a fund in the inmate's name. The  
2 amount remaining shall be returned to the inmate at the time of  
3 release. The correctional authority may, however, permit the  
4 inmate to draw a portion of the money for other purposes deemed  
5 to be appropriate by the correctional authority.

6 (b) Deductions.--An inmate shall have deducted from any  
7 compensation received:

8 (1) Federal, State and local taxes.

9 (2) Any court-ordered financial obligation, including  
10 victim restitution, fines, costs or other amounts in  
11 accordance with 42 Pa.C.S. § 9728 (relating to collection of  
12 restitution, reparation, fees, costs, fines and penalties).  
13 This amount may not be less than 5% nor more than 20% of  
14 gross wages and shall be paid to the office. All funds  
15 collected by the office shall be used to compensate crime  
16 victims in the manner provided under 42 Pa.C.S. § 9728.

17 (3) A reasonable portion of the room and board and  
18 administrative costs for the inmate in a correctional  
19 facility as determined by the department or the governing  
20 body of the county correctional agency.

21 (4) An allocation for support of the inmate's immediate  
22 family under statute or court order or under any other  
23 financial obligation acknowledged in writing by the inmate.

24 No other deductions shall be permitted unless otherwise  
25 permitted pursuant to Federal or State law. Deductions shall not  
26 in the aggregate exceed 80% of gross wages. Each inmate employed  
27 shall receive a written statement of the description and amount  
28 of each deduction.

29 (c) Workers' compensation.--The provision of benefits and  
30 compensation to inmates for injuries sustained in the course of

1 employment provided for under this act shall be subject to any  
2 limitations set forth under the act of June 2, 1915 (P.L.736,  
3 No.338), known as the Workers' Compensation Act.

4 (d) Unemployment insurance.--No inmate may qualify for  
5 unemployment insurance payments.

6 Section 9. Administrative support.

7 The department shall provide the board with reasonable  
8 administrative and clerical support services subject to the  
9 availability of funds.

10 Section 10. Immunities not waived.

11 No provision of this act waives or impairs any sovereign,  
12 government, qualified or other immunity from or defense against  
13 suit available to the Commonwealth and its departments, boards,  
14 officers, employees and agents or the political subdivisions of  
15 this Commonwealth and their agencies, officers and employees.

16 Section 11. Inmate civil actions.

17 No inmate may bring a civil action before any court,  
18 independent commission or board of this Commonwealth against the  
19 board, the Commonwealth or its agencies, officers or employees  
20 or the political subdivisions of this Commonwealth and their  
21 agencies, officers and employees based upon a contractual  
22 arrangement authorized under this act.

23 Section 12. Construction of act.

24 No provision of this act may be construed as creating a civil  
25 cause of action against the board, the Commonwealth or its  
26 agencies, officers or employees or the political subdivisions of  
27 this Commonwealth and their agencies, officers and employees.

28 Nothing in this act may create an enforceable right in any  
29 person to obtain or retain employment in the private sector  
30 prison industry. Nothing in this act shall require the

1 department or any county to propose or permit a private sector  
2 prison industry within the correctional facility.

3 Section 13. Monetary limitations.

4 There shall be no monetary limitations on the amount of goods  
5 and services supplied to the open market unless otherwise stated  
6 by the board.

7 Section 14. Repeals.

8 All acts and parts of acts are repealed insofar as they are  
9 inconsistent with this act. This act shall not, however, affect  
10 or change the method or manner of inmate work assignments within  
11 a correctional facility or correctional institution or the  
12 statutory authority to compel the labor on behalf of the  
13 Commonwealth or any political subdivision thereof.

14 Section 15. Effective date.

15 This act shall take effect in 90 days.