

House Bill 1173

By: Representatives Powell of the 23rd and Teper of the 42nd, Post 1

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapters 1, 5, and 10 of Title 42 of the Official Code of Georgia Annotated,
2 relating respectively to general provisions relative to penal institutions, to state and county
3 correctional institutions, and correctional industries, so as to authorize use of inmates as
4 voluntary labor for privately owned profit-making employers producing goods and services
5 for sale to public and private purchasers; to authorize the Georgia Correctional Industries
6 Administration to enter into service contracts with privately owned profit-making employers
7 producing goods and services for sale to public and private purchasers; to authorize the use
8 of inmates as voluntary labor for privately owned profit-making employers producing goods
9 and services for sale to public and private purchasers; to provide that certain goods, wares,
10 or merchandise which have been created wholly or in part by inmate labor may be sold to
11 private purchasers; to provide for employment of inmates in private industries under certain
12 circumstances; to provide for legislative findings, appropriate conditions and limitations, and
13 rules and regulations; to provide for federal certification and operation by the Department
14 of Corrections of a program of voluntary inmate labor for private employers producing goods
15 and services for sale to public and private purchasers; to provide for determinations by the
16 Georgia Department of Labor as to whether inmates would be displacing other workers and
17 whether labor shortages exist; to provide for related matters; to provide for an effective date;
18 to repeal conflicting laws; and for other purposes.

19 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

20 **SECTION 1.**

21 Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to general
22 provisions relative to penal institutions, is amended in Code Section 42-1-5, relating to use
23 of inmates for private gain, by striking in its entirety subsection (d) and inserting in its place
24 the following:

25 "(d) This Code section shall not apply to:

26 (1) Work on private property because of natural disasters;

- 1 (1.1) Work on private property as a form of victim compensation in accordance with
 2 Chapter 15A of Title 17;
- 3 (2) Work or other programs or releases which have the prior approval of the board or
 4 commissioner of corrections;
- 5 (3) Community service work programs; ~~or~~
- 6 (4) Work-release programs;
- 7 (5) Work programs authorized by Article 6 of Chapter 5 of this title; or
- 8 (6) Work programs and service contracts for goods and services entered into by Georgia
 9 Correctional Industries Administration with private sector purchasers and as authorized
 10 by Article 6 of Chapter 5 of this title."

11 SECTION 2.

12 Chapter 5 of Title 42 of the Official Code of Georgia Annotated, relating to state and county
 13 correctional institutions, is amended by striking subsections (a) and (b) of Code Section
 14 42-5-60, relating to hiring out of inmates, participation of inmates in volunteer service
 15 programs, sales of products produced by inmates, disposition of proceeds, and payment to
 16 inmates for services, and inserting in lieu thereof the following:

17 "(a)(1) The board shall provide rules and regulations governing the hiring out of inmates
 18 by any penal institution under its authority to municipalities, cities, the Department of
 19 Transportation, and any other political subdivision, public authority, public corporation,
 20 agency, or state or local government, which entities are authorized by this subsection to
 21 contract for and receive the inmates. Such inmates shall not be hired out to private
 22 persons or corporations, nor shall any instrumentality of government authorized by this
 23 subsection to utilize penal labor use such labor in any business conducted for profit,
 24 except as provided in Code ~~Section~~ Sections 42-1-5 and 42-5-59; provided, however,
 25 that:

26 (A) Inmate trainees enrolled in any vocational, technical, or educational training
 27 program authorized and supported by the department may repair or otherwise utilize
 28 any privately owned property or equipment as well as any other property or equipment
 29 in connection with the activities of any such training program, so long as the repair or
 30 utilization contributes to the inmate's acquisition of any desired vocational, technical,
 31 or educational skills; and

32 (B) To the extent authorized by the rules and regulations of the board, inmates may be
 33 allowed to participate in programs of volunteer service as authorized by this
 34 subparagraph. The rules and regulations of the board shall prescribe criteria for
 35 nonprofit organizations eligible to receive volunteer services. Such criteria shall require
 36 that any participating nonprofit organization be qualified as exempt from taxation under

1 Section 501(c)(3) of the Internal Revenue Code of 1986 and shall give consideration
 2 in determining eligibility to the nonprofit organization's history of service activities and
 3 the length of time for which it has been in existence and providing such services. Any
 4 such volunteer service program shall include elements whereby the volunteer inmates
 5 provide services of benefit to the community while receiving training or work
 6 experience suitable for their rehabilitation. The board may authorize such voluntary
 7 inmate participation, notwithstanding the fact that the nonprofit organization may
 8 receive direct or indirect payment as a result of such inmate participation;
 9 notwithstanding the fact that the services rendered may provide some degree of benefit
 10 to private individuals or organizations or both; and notwithstanding the fact that some
 11 inmate participation may take place outside the confines of a penal institution.

12 (2) Notwithstanding any other provisions of this subsection, any private person,
 13 organization, or corporation with whom the commissioner has contracted for the land
 14 acquisition, design, construction, operation, maintenance, use, lease, or management of
 15 a state prison or for any services related to the custody, care, and control of inmates as
 16 authorized by Code Section 42-2-8 may utilize penal labor in the same manner as any
 17 such labor may be utilized by any other penal institution operated under the authority of
 18 the board. Agreements made pursuant to Code Section 42-2-8 for the land acquisition,
 19 design, construction, operation, maintenance, use, lease, or management of a state prison
 20 or for any services related to the care, custody, and control of inmates shall factor the
 21 value of penal labor such that the state is the only financial beneficiary of the same.

22 (b) Except as provided in Code Section 42-1-5, no goods, wares, or merchandise which
 23 have been manufactured, produced, or mined, wholly or in part, by the inmates of any state
 24 or county correctional institution operated under the jurisdiction of the board shall be sold
 25 in this state to any private person, firm, association, or corporation, except that this
 26 prohibition shall not apply to:

27 (1) Sales to private colleges and universities;

28 (2) A sale to a private contractor of goods, wares, or merchandise for use in the
 29 completion of a publicly funded project; or

30 (3) Sales to privately owned correctional facilities that house inmates from the State of
 31 Georgia.

32 Nothing in this subsection shall be construed to forbid the sale of such goods or
 33 merchandise to other political subdivisions, public authorities, municipalities, or agencies
 34 of the state or local governments to be consumed by them or to agencies of the state to be
 35 in turn sold by the agency to the public in the performance of the agency's duties as
 36 required by law. This subsection does not prohibit the sale of unprocessed agricultural
 37 products produced on state property."

SECTION 3.

Said chapter is further amended by inserting a new article to be designated Article 6 to read as follows:

"ARTICLE 6

42-5-120.

The General Assembly finds and declares that:

(1) Under the appropriate conditions and limitations, voluntary labor by inmates of state and county correctional institutions for privately owned profit-making employers producing goods or services for sale to public or private purchasers provides substantial public benefits by generating taxes from inmate income; lowering the cost of incarceration by enabling participating inmates to pay room and board; providing participating inmates income to pay fines, restitution, and family support; providing job experience and skills to participating inmates; allowing participating inmates to accumulate savings available for their use when released from the correctional institution; and lowering recidivism rates;

(2) Appropriate conditions and limitations for voluntary labor by inmates for privately owned profit-making employers producing goods and services for sale to public and private purchasers include but are not limited to: selection of participating inmates with careful attention to security issues; appropriate supervision of inmates during travel or employment outside the correctional institution; assurances that inmates are not displacing other workers and are employed only in the event of genuine labor shortages; consultations with local private employers that may be economically impacted; consultations with local labor unions and other local employee groups, especially those who have an interest in the trade or skill to be performed by the inmates; payment of inmates at the local prevailing wage for such work; and provision of benefits to participating inmates comparable to benefits provided for noninmate workers; and

(3) Requirements for the federal Prison Industry Enhancement Certification Program authorized by 18 U.S.C. Section 1761 and federal regulations are sufficient to ensure appropriate conditions and limitations in many areas of concern for programs of voluntary labor by inmates for privately owned profit-making employers producing goods and services for sale to public and private purchasers.

1 42-5-121.

2 The board is authorized to issue and promulgate rules and regulations for a program of
 3 voluntary labor by inmates for privately owned profit-making employers producing goods
 4 and services for sale to public and private purchasers or for service contracts for goods and
 5 services entered into by Georgia Correctional Industries Administration with private
 6 sectors purchasers. Such rules and regulations shall be designed to meet the published
 7 requirements of the Prison Industry Enhancement Certification Program authorized by 18
 8 U.S.C. Section 1761 and federal regulations and to provide other appropriate conditions
 9 and limitations including but not limited to those set out in Code Section 42-5-120. Such
 10 rules and regulations shall set out procedures for reimbursement of the state by employers
 11 or inmate employees for administrative and other costs of the program in compliance with
 12 Prison Industry Enhancement Certification Program requirements.

13 42-5-122.

14 The department shall seek certification under the federal Prison Industry Enhancement
 15 Certification Program authorized by 18 U.S.C. Section 1761 and federal regulations for a
 16 program of voluntary labor by inmates for privately owned profit-making employers
 17 producing goods and services for sale to public and private purchasers. After receiving
 18 certification, the department is authorized to operate one or more such programs.

19 42-5-123.

20 Following the issuance and promulgation of rules and regulations, the department is
 21 authorized to publicize the program and invite employers to participate. The department
 22 shall rely upon the Georgia Department of Labor for determining whether inmates would
 23 be displacing other workers and whether labor shortages exist, and the Georgia Department
 24 of Labor is authorized to provide such determinations to the department."

25 **SECTION 4.**

26 Chapter 10 of Title 42 of the Official Code of Georgia Annotated, relating to correctional
 27 industries, is amended by striking paragraph (5) of Code Section 42-10-4, relating to the
 28 powers of the Georgia Correctional Industries Administration, and inserting in lieu thereof
 29 the following:

30 "(5) To utilize any and all inmates who may be made available for its corporate purposes
 31 by the Department of Corrections. The administration shall not be required to make any
 32 payment to the Department of Corrections for the use of such labor and shall not
 33 compensate inmates employed in any industry or performing services at any correctional
 34 institution, except as provided in Code Section 42-1-5;"

1 **SECTION 5.**

2 This Act shall become effective on July 1, 2004.

3 **SECTION 6.**

4 All laws and parts of laws in conflict with this Act are repealed.