

Union Calendar No. 342

109TH CONGRESS
2^D SESSION

H. R. 2965

[Report No. 109-591]

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 other public service programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2005

Mr. HOEKSTRA (for himself, Mr. FRANK of Massachusetts, Mrs. MALONEY, Mr. SENSENBRENNER, Mr. CONYERS, Mr. COBLE, Mr. MANZULLO, Mr. NADLER, Mr. EHLERS, Mr. TOM DAVIS of Virginia, Mr. DINGELL, Mr. JENKINS, Mr. EVERETT, Mr. RANGEL, Mr. HOSTETTLER, Mr. FEENEY, Mr. KINGSTON, Ms. BALDWIN, Mr. INGLIS of South Carolina, Mr. UPTON, Mr. EMANUEL, Mr. BARTLETT of Maryland, Mr. KNOLLENBERG, Mr. FORBES, Mr. FLAKE, Mr. SESSIONS, Mr. OLVER, Mr. LOBIONDO, Mrs. MYRICK, Mr. ROYCE, Mr. LANTOS, Mr. MCGOVERN, Mr. PENCE, Mr. SOUDER, Mr. CAMP, Mr. DOYLE, Mr. BOEHNER, Mr. NEY, Mr. CARTER, Mr. NUSSLE, Mr. WEINER, Mr. NORWOOD, Mr. ROGERS of Michigan, Mr. BRADY of Pennsylvania, Mr. DUNCAN, Mr. MCCOTTER, Mr. MCKEON, Ms. HART, Mr. KUCINICH, Mr. THORNBERRY, Mr. RYAN of Wisconsin, Mr. LATHAM, Mrs. MILLER of Michigan, Mr. LEACH, Mr. SHADEGG, Ms. WOOLSEY, Mrs. BLACKBURN, Mr. CULBERSON, Mr. GINGREY, Mr. TERRY, Mr. WAMP, Mr. FERGUSON, Mrs. MUSGRAVE, Mr. CHOCOLA, Mr. BEAUPREZ, Mr. PORTER, Mr. OSBORNE, Mr. TIBERI, Mrs. BIGGERT, Mr. WILSON of South Carolina, Mr. SHUSTER, Mr. MORAN of Kansas, Mr. HAYES, Mr. KING of Iowa, Mrs. WILSON of New Mexico, Mr. BARRETT of South Carolina, Mr. PLATTS, and Mr. CANTOR)

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

JULY 21, 2006

Additional sponsors: Mr. GONZALEZ, Mrs. NORTHUP, Mr. FRANKS of Arizona, Mr. OXLEY, Mr. NUNES, Mrs. CUBIN, Ms. PRYCE of Ohio, Mr. TIAHRT, Mr. BRADY of Texas, Mr. GOHMERT, Mr. WATT, Mr. ENGLISH of Pennsylvania, Mr. GOODE, Mr. SMITH of New Jersey, Mr. MARCHANT, Ms. WATERS, and Mr. GEORGE MILLER of California

JULY 21, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 17, 2005]

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 other public service programs, and for other purposes.

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

2 (a) *SHORT TITLE.*—*This Act may be cited as the*
 3 *“Federal Prison Industries Competition in Contracting Act*
 4 *of 2006”.*

5 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 6 *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 In-
 dustries.*

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 Re-entry employment preparation through work-based training and ap-
 prenticeship.*

Sec. 12 Restructuring the Board of Directors.

*Sec. 13 Providing additional management flexibility to Federal Prison Indus-
 tries operations.*

Sec. 14 Transitional personnel management authority.

Sec. 15 Federal Prison Industries report to Congress.

Sec. 16 Definitions.

Sec. 17 Implementing regulations and procedures.

Sec. 18 Rules of construction.

Sec. 19 Effective date and applicability.

Sec. 20 Clerical amendments.

7 **SEC. 2. GOVERNMENTWIDE PROCUREMENT POLICY RELAT-**
 8 **ING TO PURCHASES FROM FEDERAL PRISON**
 9 **INDUSTRIES.**

10 *Section 4124 of title 18, United States Code, is amend-*
 11 *ed to read as follows:*

1 **“§ 4124. Governmentwide procurement policy relating**
2 **to purchases from Federal Prison Indus-**
3 **tries**

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

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

20 “(B) *The requirements of subparagraph (A) shall also*
21 *apply to a procurement that a Federal department or agen-*
22 *cy intends to meet by placing an order against a contract*
23 *maintained by the General Services Administration under*
24 *the Multiple Award Schedule Contracts Program.*

25 “(C) *Federal Prison Industries, upon its request, shall*
26 *be listed on any Schedule, referred to in subparagraph (B),*

1 *as offering products or services which Federal Prison Indus-*
2 *tries believes to be comparable to those products and services*
3 *being offered by commercial contractors through the Mul-*
4 *tiple Award Schedule Contracts Program.*

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

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

15 “(A) *Federal Prison Industries cannot reason-*
16 *ably expect fair consideration to receive the contract*
17 *award on a competitive basis; and*

18 “(B) *the contract award is necessary to main-*
19 *tain work opportunities otherwise unavailable at the*
20 *penal or correctional facility at which the contract is*
21 *to be performed to prevent circumstances that could*
22 *reasonably be expected to significantly endanger the*
23 *safe and effective administration of such facility.*

24 “(4) *Except in the case of an award to be made pursu-*
25 *ant to paragraph (3), a contract award shall be made with*

1 *Federal Prison Industries only if the contracting officer for*
2 *the procurement activity determines that—*

3 “(A) *the specific product or service to be fur-*
4 *nished will meet the requirements of the procurement*
5 *activity (including any applicable prequalification*
6 *requirements and all specified commercial or govern-*
7 *mental standards pertaining to quality, testing, safe-*
8 *ty, serviceability, and warranties);*

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

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

13 “(5) *A determination by the Attorney General pursu-*
14 *ant to paragraph (3) shall be—*

15 “(A) *supported by specific findings by the war-*
16 *den of the penal or correctional institution at which*
17 *a Federal Prison Industries workshop is scheduled to*
18 *perform the contract;*

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

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

1 “(6) If the Attorney General has not made the deter-
2 mination described in paragraph (3) within 30 days after
3 Federal Prison Industries has been informed of a con-
4 tracting opportunity by a procurement activity, the pro-
5 curement activity may proceed to conduct a procurement
6 for the product or service in accordance with the procedures
7 generally applicable to such procurements by the procure-
8 ment activity.

9 “(7) A contract award may be made to Federal Prison
10 Industries using other than competitive procedures if such
11 product or service is only available from Federal Prison
12 Industries and the contract may be awarded under the au-
13 thority of section 2304(c)(1) of title 10 or section 303(c)
14 of the Federal Property and Administrative Services Act
15 of 1949 (41 U.S.C. 253(c)(1)), as may be applicable, and
16 pursuant to the justification and approval requirements re-
17 lating to such noncompetitive procurements specified by law
18 and the Governmentwide Federal Acquisition Regulation.

19 “(8) A contract award may be made to Federal Prison
20 Industries using other than competitive procedures by the
21 Federal Bureau of Prisons.

22 “(9) A solicitation for a contract shall first be made
23 to Federal Prison Industries using other than competitive
24 procedures if the product or service to be acquired would

1 *otherwise be furnished by a contractor performing the work*
2 *outside of the United States.*

3 “(c) *OFFERS FROM FEDERAL PRISON INDUSTRIES.—*

4 *(1) A timely offer received from Federal Prison Industries*
5 *to furnish a product or service to a Federal department or*
6 *agency shall be considered for award without limitation as*
7 *to the dollar value of the proposed purchase, unless the con-*
8 *tract opportunity has been reserved for competition exclu-*
9 *sively among small business concerns pursuant to section*
10 *15(a) of the Small Business Act (15 U.S.C. 644(a)) and*
11 *its implementing regulations.*

12 “(2)(A) *Any offer made by Federal Prison Industries*
13 *to furnish a product or service may exclude from the offer*
14 *the price of the following:*

15 “(i) *The costs related to security of the facilities*
16 *at which the contract will be performed.*

17 “(ii) *The costs of educating and training the*
18 *prison work force performing the contract.*

19 “(iii) *Excess capital costs of machinery and ex-*
20 *cess inventories used within a prison environment*
21 *that are the result of the unique environment of pris-*
22 *on life.*

23 “(iv) *Other costs of performing the contract re-*
24 *sulting from the unique environment of prison facili-*
25 *ties.*

1 “(d) *PERFORMANCE BY FEDERAL PRISON INDUS-*
2 *TRIES.—Federal Prison Industries shall perform its con-*
3 *tractual obligations under a contract awarded by a Federal*
4 *department or agency to the same extent as any other con-*
5 *tractor.*

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

11 “(2)(A) *The Chief Operating Officer of Federal Prison*
12 *Industries may protest a decision by a contracting officer*
13 *not to award a contract to Federal Prison Industries pursu-*
14 *ant to subsection (b)(4), in accordance with section 33.103,*
15 *(Protests to the agency) of the Federal Acquisition Regula-*
16 *tion (48 C.F.R. part 33.103).*

17 “(B) *In the event of an adverse decision of a protest*
18 *filed pursuant to subparagraph (A), the Assistant Attorney*
19 *General for Administration may request a reconsideration*
20 *of such adverse decision by the head of the Federal agency*
21 *or department, which shall be considered de novo and the*
22 *decision issued by such agency head on a non-delegable*
23 *basis. Such decision upon reconsideration by the agency*
24 *head shall be final.*

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

4 “(A) *alternative means of dispute resolution pur-*
5 *suant to subchapter IV of chapter 5 of title 5; or*

6 “(B) *final resolution by the board of contract ap-*
7 *peals having jurisdiction over the procurement activi-*
8 *ty’s contract performance disputes pursuant to the*
9 *Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).*

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

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

1 “(h) *COMPLIANCE WITH STANDARDS.—Federal Prison*
2 *Industries shall be subject to Federal occupational, health,*
3 *and safety standards with respect to the operation of its*
4 *industrial operations.”.*

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

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

10 (1) *by redesignating paragraph (6) as para-*
11 *graph (13); and*

12 (2) *by striking paragraphs (4) and (5) and in-*
13 *serting the following new paragraphs:*

14 “(4)(A) *Federal Prison Industries is authorized to offer*
15 *a new specific product or furnish a new specific service in*
16 *response to a competitive solicitation or other purchase re-*
17 *quest issued by a Federal department or agency. No subse-*
18 *quent offering of such product or service may be made by*
19 *Federal Prison Industries until the board of directors has*
20 *approved the offering for sale of such new specific product*
21 *or new specific service, in conformance with the require-*
22 *ments of paragraphs (5) through (9).*

23 “(B) *Federal Prison Industries may produce a product*
24 *or furnish a service in excess of the authorized level of pro-*
25 *duction for such product or service, in response to an order*

1 *placed pursuant to an existing contract with a Federal de-*
2 *partment or agency, if the agency's need for the product*
3 *or service is of such an urgency that it would justify the*
4 *use of procedures other than competitive procedures pursu-*
5 *ant to section 2304(c)(2) of title 10 or section 303(c)(2) of*
6 *the Federal Property and Administrative Services Act of*
7 *1949 (41 U.S.C. 253(c)(2)), as may be applicable.*

8 “(5) *A decision to authorize Federal Prison Industries*
9 *to offer a new specific product or specific service or to ex-*
10 *pand the production of an existing product or service for*
11 *sale to the Federal Government shall be made by its board*
12 *of directors in conformance with the requirements of sub-*
13 *sections (b), (c), (d), and (e) of section 553 of title 5, and*
14 *this chapter.*

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

1 “(B)(i) *The analysis required by subparagraph (A)*
2 *shall be performed by an interagency team on a reimburs-*
3 *able basis or by a private contractor paid by Federal Prison*
4 *Industries.*

5 “(ii) *If the analysis is to be performed by an inter-*
6 *agency team, such team shall be led by the Administrator*
7 *of the Small Business Administration or the designee of*
8 *such officer with representatives of the Department of*
9 *Labor, the Department of Commerce, and the Federal Pro-*
10 *curement Data Center.*

11 “(iii) *If the analysis is to be performed by a private*
12 *contractor, the selection of the contractor and the adminis-*
13 *tration of the contract shall be conducted by one of the enti-*
14 *ties referenced in clause (ii) as an independent executive*
15 *agent for the board of directors. Maximum consideration*
16 *shall be given to any proposed statement of work furnished*
17 *by the Chief Operating Officer of Federal Prison Industries.*

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

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

23 “(ii) *the proportion of the Federal Government*
24 *market for the specific product or specific service cur-*

1 *rently furnished by small businesses during the pre-*
2 *vious 3 fiscal years;*

3 *“(iii) the share of the Federal market for the spe-*
4 *cific product or specific service projected for Federal*
5 *Prison Industries for the fiscal year in which produc-*
6 *tion or performance will commence or expand and the*
7 *subsequent 4 fiscal years;*

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

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

12 *“(II) has a rate of unemployment for work-*
13 *ers that has consistently shown an increase dur-*
14 *ing the previous 5 years;*

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

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

21 *“(vii) the projected growth or decline in the de-*
22 *mand of the Federal Government for the specific prod-*
23 *uct or specific service;*

24 *“(viii) the capability of the projected demand of*
25 *the Federal Government for the specific product or*

1 *service to sustain both Federal Prison Industries and*
2 *private vendors; and*

3 *“(ix) whether authorizing the production of the*
4 *new product or performance of a new service will pro-*
5 *vide inmates with the maximum opportunity to ac-*
6 *quire knowledge and skill in trades and occupations*
7 *that will provide them with a means of earning a*
8 *livelihood upon release.*

9 *“(D)(i) The board of directors may not approve a pro-*
10 *posal to authorize the production and sale of a new specific*
11 *product or continued sale of a previously authorized prod-*
12 *uct unless—*

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

15 *“(II) the service to be furnished is to be per-*
16 *formed by inmate workers.*

17 *“(ii) The board of directors may not approve a pro-*
18 *posal to authorize the production and sale of a new prison-*
19 *made product or to expand production of a currently au-*
20 *thorized product if the product is—*

21 *“(I) produced in the private sector by an indus-*
22 *try which has reflected during the previous year an*
23 *unemployment rate above the national average; or*

24 *“(II) an import-sensitive product.*

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

4 “(I) *personal or financial information about in-*
5 *dividual private citizens, including information relat-*
6 *ing to such person’s real property, however described,*
7 *without giving prior notice to such persons or class*
8 *of persons to the greatest extent practicable;*

9 “(II) *geographic data regarding the location of*
10 *surface and subsurface infrastructure providing com-*
11 *munications, water and electrical power distribution,*
12 *pipelines for the distribution of natural gas, bulk pe-*
13 *troleum products and other commodities, and other*
14 *utilities; or*

15 “(III) *data that is classified.*

16 “(iv)(I) *Federal Prison Industries is prohibited from*
17 *furnishing through inmate labor construction services, un-*
18 *less to be performed within a Federal correctional institu-*
19 *tion pursuant to the participation of an inmate in an ap-*
20 *prenticeship or other vocational education program teach-*
21 *ing the skills of the various building trades.*

22 “(II) *For purposes of this clause, the term ‘construc-*
23 *tion’ has the meaning given such term by section 2.101 of*
24 *the Federal Acquisition Regulation (48 C.F.R. part 2.101),*

1 *as in effect on June 1, 2004, including the repair, alter-*
2 *ation, or maintenance of real property in being.*

3 “(7) *To provide further opportunities for participation*
4 *by interested parties, the board of directors shall—*

5 “(A) *give additional notice of a proposal to au-*
6 *thorize the production and sale of a new product or*
7 *service, or expand the production of a currently au-*
8 *thorized product or service, in a publication designed*
9 *to most effectively provide notice to private vendors*
10 *and labor unions representing private sector workers*
11 *who could reasonably be expected to be affected by ap-*
12 *proval of the proposal, which notice shall offer to fur-*
13 *nish copies of the analysis required by paragraph (6)*
14 *and shall solicit comment on the analysis;*

15 “(B) *solicit comments on the analysis required*
16 *by paragraph (6) from trade associations representing*
17 *vendors and labor unions representing private sector*
18 *workers who could reasonably be expected to be af-*
19 *ected by approval of the proposal to authorize the*
20 *production and sale of a new product or service (or*
21 *expand the production of a currently authorized prod-*
22 *uct or service); and*

23 “(C) *afford an opportunity, on request, for a*
24 *representative of an established trade association,*
25 *labor union, or other private sector representatives to*

1 *present comments on the proposal directly to the*
2 *board of directors.*

3 *“(8) The board of directors shall be provided copies of*
4 *all comments received on the expansion proposal.*

5 *“(9) Based on the comments received on the initial ex-*
6 *pansion proposal, the Chief Operating Officer of Federal*
7 *Prison Industries may provide the board of directors a re-*
8 *vised expansion proposal. If such revised proposal provides*
9 *for expansion of inmate work opportunities in an industry*
10 *different from that initially proposed, such revised proposal*
11 *shall reflect the analysis required by paragraph (6)(C) and*
12 *be subject to the public comment requirements of paragraph*
13 *(7).*

14 *“(10) The board of directors shall consider a proposal*
15 *to authorize the sale of a new specific product or specific*
16 *service (or to expand the volume of sales for a currently*
17 *authorized product or service) and take any action with re-*
18 *spect to such proposal, during a meeting that is open to*
19 *the public, unless closed pursuant to section 552(b) of title*
20 *5.*

21 *“(11) In conformance with the requirements of para-*
22 *graph (10) of this subsection, the board of directors may—*

23 *“(A) authorize the donation of products produced*
24 *or services furnished by Federal industries and avail-*
25 *able for sale;*

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

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

8 “(i) a Federal agency or department, pur-
9 chasing such product or service, has requested
10 that Federal Prison Industries be authorized to
11 furnish such product or service in amounts that
12 are needed by such agency or department; or

13 “(ii) the proposal is justified for other good
14 cause and supported by at least two-thirds of the
15 appointed members of the board.”.

16 **SEC. 4. TRANSITIONAL MANDATORY SOURCE AUTHORITY.**

17 (a) *IN GENERAL.*—Notwithstanding the requirements
18 of section 4124 of title 18, United States Code (as amended
19 by section 2 of this Act), a Federal department or agency
20 having a requirement for a product that is authorized for
21 sale by Federal Prison Industries and is listed in its catalog
22 (referred to in section 4124(g) of title 18, United States
23 Code) shall first solicit an offer from Federal Prison Indus-
24 tries and make purchases on a noncompetitive basis in ac-
25 cordance with this section or in accordance with section

1 *2410n of title 10, United States Code, or section 318 of title*
2 *III of the Federal Property and Administrative Services Act*
3 *of 1949 (as added by subsection (i)).*

4 *(b) PREFERENTIAL SOURCE STATUS.—Subject to the*
5 *limitations of subsection (d), a contract award shall be*
6 *made on a noncompetitive basis to Federal Prison Indus-*
7 *tries if the contracting officer for the procurement activity*
8 *determines that—*

9 *(1) the product offered by Federal Prison Indus-*
10 *tries will meet the requirements of the procurement*
11 *activity (including commercial or governmental*
12 *standards or specifications pertaining to design, per-*
13 *formance, testing, safety, serviceability, and warran-*
14 *ties as may be imposed upon a private sector supplier*
15 *of the type being offered by Federal Prison Indus-*
16 *tries);*

17 *(2) timely performance of the contract by Fed-*
18 *eral Prison Industries can be reasonably expected;*
19 *and*

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

22 *(c) CONTRACTUAL TERMS.—The terms and conditions*
23 *of the contract and the price to be paid to Federal Prison*
24 *Industries shall be determined by negotiation between Fed-*
25 *eral Prison Industries and the Federal agency making the*

1 *purchase. The negotiated price shall not exceed a fair and*
2 *reasonable price determined in accordance with the proce-*
3 *dures of the Federal Acquisition Regulation.*

4 *(d) PERFORMANCE OF CONTRACTUAL OBLIGATIONS.—*

5 *(1) IN GENERAL.—Federal Prison Industries*
6 *shall perform the obligations of the contract nego-*
7 *tiated pursuant to subsection (c).*

8 *(2) PERFORMANCE DISPUTES.—If the head of the*
9 *contracting activity and the Chief Operating Officer*
10 *of Federal Prison Industries are unable to resolve a*
11 *contract performance dispute to their mutual satisfac-*
12 *tion, such dispute shall be resolved pursuant to sec-*
13 *tion 4124(e)(3) of title 18, United States Code (as*
14 *added by section 2 of this Act).*

15 *(e) LIMITATIONS ON USE OF AUTHORITY.—*

16 *(1) IN GENERAL.—As a percentage of the sales*
17 *made by Federal Prison Industries during the base*
18 *period, the total dollar value of sales to the Govern-*
19 *ment made pursuant to subsection (b) and subsection*
20 *(c) of this section shall not exceed—*

21 *(A) 90 percent in fiscal year 2007;*

22 *(B) 85 percent in fiscal year 2008;*

23 *(C) 70 percent in fiscal year 2009;*

24 *(D) 55 percent in fiscal year 2010; and*

25 *(E) 40 percent in fiscal year 2011.*

1 (2) *SALES WITHIN VARIOUS BUSINESS SEC-*
2 *TORS.—Use of the authority provided by subsections*
3 *(b) and (c) shall not result in sales by Federal Prison*
4 *Industries to the Government that are in excess of its*
5 *total sales during the base year for each business sec-*
6 *tor.*

7 (3) *LIMITATIONS RELATING TO SPECIFIC PROD-*
8 *UCTS.—Use of the authorities provided by subsections*
9 *(b) and (c) shall not result in contract awards to Fed-*
10 *eral Prison Industries that are in excess of its total*
11 *sales during the base period for such product.*

12 (4) *CHANGES IN DESIGN SPECIFICATIONS.—If a*
13 *buying agency directs a change to the design speci-*
14 *fication for a specific product, the costs associated*
15 *with the implementation of such specification change*
16 *by Federal Prison Industries shall not be considered*
17 *for the purposes of computing sales by Federal Prison*
18 *Industries for the purposes of paragraphs (2) and (3).*

19 (f) *ADDITIONAL AUTHORITY TO SUSTAIN INMATE EM-*
20 *PLOYMENT.—During the period specified in subsection (g),*
21 *the authority of section 4122(b)(11)(C)(ii) of title 18,*
22 *United States Code (as added by section 3), may be used*
23 *by the Board to sustain inmate employment.*

24 (g) *DURATION OF AUTHORITY.—The preferential con-*
25 *tracting authorities authorized by subsection (b) may not*

1 *be used on or after October 1, 2011, and become effective*
2 *on the effective date of the final regulations issued pursuant*
3 *to section 17.*

4 *(h) DEFINITIONS.—For the purposes of this section—*

5 *(1) the term “base period” means the total sales*
6 *of Federal Prison Industries during the period Octo-*
7 *ber 1, 2003, and September 30, 2004 (Fiscal Year*
8 *2004);*

9 *(2) the term “business sectors” means the seven*
10 *product/service business groups identified in the 2004*
11 *Federal Prison Industries annual report as the Cloth-*
12 *ing and Textiles Business Group, the Electronics*
13 *Business Group, the Fleet Management and Vehicular*
14 *Components Business Group, the Industrial Products*
15 *Business Group, the Office Furniture Business Group,*
16 *the Recycling Activities Business Group, and the*
17 *Services Business Group; and*

18 *(3) the term “fair and reasonable price” shall be*
19 *given the same meaning as, and be determined pursu-*
20 *ant to, part 15.8 of the Federal Acquisition Regula-*
21 *tion (48 C.F.R. 15.8).*

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

1 *effects of the percentage limitation imposed by such sub-*
2 *section for such fiscal year and the likely effects of the limi-*
3 *tation imposed by such subsection for the following fiscal*
4 *year.*

5 (2) *The Attorney General's finding shall include a de-*
6 *termination whether such limitation has resulted or is like-*
7 *ly to result in a substantial reduction in inmate industrial*
8 *employment and whether such reductions, if any, present*
9 *a significant risk of adverse effects on safe prison operation*
10 *or public safety.*

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

14 (4) *In advising the Congress pursuant to paragraph*
15 *(3), the Attorney General shall make recommendations for*
16 *additional authorizations of appropriations to provide ad-*
17 *ditional alternative inmate rehabilitative opportunities and*
18 *additional correctional staffing, as may be appropriate.*

19 (j) *PROCEDURAL REQUIREMENTS FOR CIVILIAN AGEN-*
20 *CIES RELATING TO PRODUCTS OF FEDERAL PRISON INDUS-*
21 *TRIES.—Title III of the Federal Property and Administra-*
22 *tive Services Act of 1949 (41 U.S.C. 251 et seq.) is amended*
23 *by adding at the end the following new section:*

1 **“SEC. 318. PRODUCTS OF FEDERAL PRISON INDUSTRIES:**
2 **PROCEDURAL REQUIREMENTS.**

3 “(a) *MARKET RESEARCH.*—Before purchasing a prod-
4 uct listed in the latest edition of the Federal Prison Indus-
5 tries catalog under section 4124(g) of title 18, United States
6 Code, the head of an executive agency shall conduct market
7 research to determine whether the Federal Prison Industries
8 product is comparable to products available from the pri-
9 vate sector that best meet the executive agency’s needs in
10 terms of price, quality, and time of delivery.

11 “(b) *COMPETITION REQUIREMENT.*—If the head of the
12 executive agency determines that a Federal Prison Indus-
13 tries product is not comparable in price, quality, or time
14 of delivery to products available from the private sector that
15 best meet the executive agency’s needs in terms of price,
16 quality, and time of delivery, the agency head shall use
17 competitive procedures for the procurement of the product
18 or shall make an individual purchase under a multiple
19 award contract. In conducting such a competition or mak-
20 ing such a purchase, the agency head shall consider a timely
21 offer from Federal Prison Industries.

22 “(c) *IMPLEMENTATION BY HEAD OF EXECUTIVE AGEN-*
23 *CY.*—The head of an executive agency shall ensure that—

24 “(1) the executive agency does not purchase a
25 Federal Prison Industries product or service unless a
26 contracting officer of the agency determines that the

1 *product or service is comparable to products or serv-*
2 *ices available from the private sector that best meet*
3 *the agency’s needs in terms of price, quality, and time*
4 *of delivery; and*

5 “(2) *Federal Prison Industries performs its con-*
6 *tractual obligations to the same extent as any other*
7 *contractor for the executive agency.*

8 “(d) *MARKET RESEARCH DETERMINATION NOT SUB-*
9 *JECT TO REVIEW.—A determination by a contracting offi-*
10 *cer regarding whether a product or service offered by Fed-*
11 *eral Prison Industries is comparable to products or services*
12 *available from the private sector that best meet an executive*
13 *agency’s needs in terms of price, quality, and time of deliv-*
14 *ery shall not be subject to review pursuant to section*
15 *4124(b) of title 18.*

16 “(e) *PERFORMANCE AS A SUBCONTRACTOR.—(1) A*
17 *contractor or potential contractor of an executive agency*
18 *may not be required to use Federal Prison Industries as*
19 *a subcontractor or supplier of products or provider of serv-*
20 *ices for the performance of a contract of the executive agency*
21 *by any means, including means such as—*

22 “(A) *a contract solicitation provision requiring*
23 *a contractor to offer to make use of products or serv-*
24 *ices of Federal Prison Industries in the performance*
25 *of the contract;*

1 “(B) a contract specification requiring the con-
2 tractor to use specific products or services (or classes
3 of products or services) offered by Federal Prison In-
4 dustries in the performance of the contract; or

5 “(C) any contract modification directing the use
6 of products or services of Federal Prison Industries in
7 the performance of the contract.

8 “(2) In this subsection, the term ‘contractor’, with re-
9 spect to a contract, includes a subcontractor at any tier
10 under the contract.

11 “(f) *PROTECTION OF CLASSIFIED AND SENSITIVE IN-*
12 *FORMATION.—The head of an executive agency may not*
13 *enter into any contract with Federal Prison Industries*
14 *under which an inmate worker would have access to—*

15 “(1) any data that is classified;

16 “(2) any geographic data regarding the location
17 of—

18 “(A) surface and subsurface infrastructure
19 providing communications or water or electrical
20 power distribution;

21 “(B) pipelines for the distribution of nat-
22 ural gas, bulk petroleum products, or other com-
23 modities; or

24 “(C) other utilities; or

1 “(3) *any personal or financial information*
2 *about any individual private citizen, including infor-*
3 *mation relating to such person’s real property how-*
4 *ever described, without the prior consent of the indi-*
5 *vidual.*

6 “(g) *DEFINITIONS.—In this section:*

7 “(1) *The term ‘competitive procedures’ has the*
8 *meaning given such term in section 4(5) of the Office*
9 *of Federal Procurement Policy Act (41 U.S.C.*
10 *403(5)).*

11 “(2) *The term ‘market research’ means obtaining*
12 *specific information about the price, quality, and*
13 *time of delivery of products available in the private*
14 *sector through a variety of means, which may in-*
15 *clude—*

16 “(A) *contacting knowledgeable individuals*
17 *in government and industry;*

18 “(B) *interactive communication among in-*
19 *dustry, acquisition personnel, and customers;*
20 *and*

21 “(C) *interchange meetings or pre-solicita-*
22 *tion conferences with potential offerors.”.*

1 **SEC. 5. AUTHORITY TO PERFORM AS A FEDERAL SUBCON-**
2 **TRACTOR.**

3 (a) *IN GENERAL.*—*Federal Prison Industries is au-*
4 *thorized to enter into a contract with a Federal contractor*
5 *(or a subcontractor of such contractor at any tier) to*
6 *produce products as a subcontractor or supplier in the per-*
7 *formance of a Federal procurement contract. The use of*
8 *Federal Prison Industries as a subcontractor or supplier*
9 *shall be a wholly voluntary business decision by the Federal*
10 *prime contractor or subcontractor, subject to any prior ap-*
11 *proval of subcontractors or suppliers by the contracting offi-*
12 *cer which may be imposed by the Federal Acquisition Regu-*
13 *lation or by the contract.*

14 (b) *LIMITATIONS ON USE.*—*Federal Prison Industries*
15 *is prohibited from being a subcontractor or supplier at any*
16 *tier if—*

17 (1) *the product or service is to be acquired by a*
18 *Federal department or agency pursuant to section 3*
19 *of the Javits-Wagner-O'Day Act (41 U.S.C. 48); or*

20 (2) *the product to be acquired by the Federal de-*
21 *partment or agency is subject to section 2533a of title*
22 *10, United States Code.*

23 (c) *COMMERCIAL SALES PROHIBITED.*—*The authority*
24 *provided by subsection (a) shall not result, either directly*
25 *or indirectly, in the sale in the commercial market of a*
26 *product or service resulting from the labor of Federal in-*

1 *mate workers in violation of section 1761(a) of title 18,*
2 *United States Code. A Federal contractor (or subcontractor*
3 *at any tier) using Federal Prison Industries as a subcon-*
4 *tractor or supplier in furnishing a commercial product pur-*
5 *suant to a Federal contract shall implement appropriate*
6 *management procedures to prevent introducing an inmate-*
7 *produced product into the commercial market.*

8 *(d) PROHIBITIONS ON MANDATING SUBCONTRACTING*
9 *WITH FEDERAL PRISON INDUSTRIES.—Except as author-*
10 *ized under the Federal Acquisition Regulation, the use of*
11 *Federal Prison Industries as a subcontractor or supplier*
12 *of products or provider of services shall not be imposed upon*
13 *prospective or actual Federal prime contractors or a sub-*
14 *contractors at any tier by means of—*

15 *(1) a contract solicitation provision requiring a*
16 *contractor to offer to make use of Federal Prison In-*
17 *dustries, its products or services;*

18 *(2) specifications requiring the contractor to use*
19 *specific products or services (or classes of products or*
20 *services) offered by Federal Prison Industries in the*
21 *performance of the contract;*

22 *(3) any contract modification directing the use*
23 *of Federal Prison Industries, its products or services;*
24 *or*

25 *(4) any other means.*

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

2 *Section 4122(b) of title 18, United States Code (as*
3 *amended by section 3 of this Act), is further amended by*
4 *adding after paragraph (11) a new paragraph (12) as fol-*
5 *lows:*

6 *“(12)(A) The Board of Directors of Federal Prison In-*
7 *dustries shall prescribe the rates of hourly wages to be paid*
8 *inmates performing work for or through Federal Prison In-*
9 *dustries. The Director of the Federal Bureau of Prisons*
10 *shall prescribe the rates of hourly wages for other work as-*
11 *signments within the various Federal correctional institu-*
12 *tions. In the case of an inmate whose term of imprisonment*
13 *is to expire in not more than 2 years, wages shall be earned*
14 *at an hourly rate of not less than \$2.50, but paid at the*
15 *same rate and in the same manner as to any other inmate,*
16 *and any amount earned but not paid shall be held in trust*
17 *and paid only upon the actual expiration of the term of*
18 *imprisonment.*

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

22 *“(C) The Board of Directors of Federal Prison Indus-*
23 *tries shall—*

24 *“(i) not later than September 30, 2008, increase*
25 *the maximum wage rate for inmates performing work*
26 *for or through Federal Prison Industries to an*

1 *amount equal to 50 percent of the minimum wage*
2 *prescribed by section 6(a)(1) of the Fair Labor Stand-*
3 *ards Act of 1938 (29 U.S.C. 206(a)(1)); and*

4 *“(i) not later than September 30, 2013, increase*
5 *such maximum wage rate to an amount equal to such*
6 *minimum wage.*

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

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

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

14 *“(iii) payment of additional restitution for vic-*
15 *tims of the inmate’s crimes (at a rate not less than*
16 *10 percent of gross wages);*

17 *“(iv) allocations for support of the inmate’s fam-*
18 *ily pursuant to statute, court order, or agreement*
19 *with the inmate;*

20 *“(v) allocations to a fund in the inmate’s name*
21 *to facilitate such inmate’s assimilation back into soci-*
22 *ety, payable at the conclusion of incarceration; and*

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

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

3 “(i) is participating voluntarily; and

4 “(ii) understands and agrees to the wages to be
5 paid and deductions to be taken from such wages.”.

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

7 (a) *IN GENERAL.*—Section 1761 of title 18, United
8 States Code, is amended in subsection (a) and (c) by strik-
9 ing “goods, wares, or merchandise manufactured, produced,
10 or mined” each place it appears and inserting “products
11 manufactured, services furnished, or minerals mined”.

12 (b) *COMPLETION OF EXISTING AGREEMENTS.*—Any
13 prisoner work program operated by a prison or jail of a
14 State or local jurisdiction of a State which is providing
15 services for the commercial market through inmate labor on
16 October 1, 2004, may continue to provide such commercial
17 services until—

18 (1) the expiration date specified in the contract
19 or other agreement with a commercial partner on Oc-
20 tober 1, 2004, or

21 (2) until September 30, 2010, if the prison work
22 program is directly furnishing the services to the com-
23 mercial market.

24 (c) *APPROVAL REQUIRED FOR LONG-TERM OPER-*
25 *ATION.*—A prison work program operated by a correctional

1 *institution operated by a State or local jurisdiction of a*
2 *State may continue to provide inmate labor to furnish serv-*
3 *ices for sale in the commercial market after the dates speci-*
4 *fied in subsection (b) if such program has been certified*
5 *pursuant to section 1761(c)(1) of title 18, United States*
6 *Code, and is in compliance with the requirements of such*
7 *subsection and its implementing regulations.*

8 *(d) EXISTING WORK OPPORTUNITIES FOR FEDERAL*
9 *INMATES.—Any private for-profit business entity having*
10 *an agreement with Federal Prison Industries in effect on*
11 *the date of enactment of this Act, under which Federal in-*
12 *mates are furnishing services that are being introduced into*
13 *the commercial market, may continue to furnish such serv-*
14 *ices for the duration of the term of such agreement.*

15 *(e) ADDITIONAL AMENDMENT.—Section 1761 of title*
16 *18, United States Code, is further amended—*

17 *(1) by redesignating subsection (d) as subsection*
18 *(e); and*

19 *(2) by inserting after subsection (c) the following*
20 *new subsection:*

21 *“(d) This section shall not apply to services performed*
22 *as part of an inmate work program conducted by a State*
23 *or local government to disassemble, scrap, and recycle prod-*
24 *ucts, other than electronic products, that would otherwise*

1 *be disposed of in a landfill. Recovered scrap from such pro-*
2 *gram may be sold.”.*

3 **SEC. 8. CONFORMING AMENDMENT.**

4 *Section 4122(a) of title 18, United States Code, is*
5 *amended by striking “production of commodities” and in-*
6 *serting “production of products or furnishing of services”.*

7 **SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER**
8 **307.**

9 *Chapter 307 of title 18, United States Code, is further*
10 *amended by adding at the end the following:*

11 **“§ 4130. Construction of provisions**

12 *“Nothing in this chapter shall be construed—*

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

15 *“(A) employment in a Federal Prison In-*
16 *dustries facility; or*

17 *“(B) any particular wage, compensation, or*
18 *benefit on demand, except as otherwise specifi-*
19 *cally provided by law or regulation;*

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

22 *“(3) to establish any cause of action by or on be-*
23 *half of any inmate against the United States or any*
24 *officer, employee, or contractor thereof.”.*

1 **SEC. 10. PROVIDING ADDITIONAL REHABILITATIVE OPPOR-**
2 **TUNITIES FOR INMATES.**

3 (a) *ADDITIONAL EDUCATIONAL, TRAINING, AND RE-*
4 *LEASE-PREPARATION OPPORTUNITIES.*—

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

9 (2) *COMPREHENSIVE PROGRAM.*—*In addition to*
10 *such other components as the Director of the Bureau*
11 *of Prisons deems appropriate to reduce inmate idle-*
12 *ness and better prepare inmates for a successful re-*
13 *entry into the community upon release, the program*
14 *shall provide—*

15 (A) *in-prison assessments of inmates' needs*
16 *and aptitudes;*

17 (B) *a full range of educational opportuni-*
18 *ties;*

19 (C) *vocational training and apprentice-*
20 *ships; and*

21 (D) *comprehensive release-readiness prepa-*
22 *ration.*

23 (3) *AUTHORIZATION OF APPROPRIATIONS.*—*For*
24 *the purposes of carrying out the program established*
25 *by paragraph (1), \$75,000,000 is authorized for each*
26 *fiscal year after fiscal year 2008, to remain available*

1 *until expended. It is the sense of Congress that Fed-*
 2 *eral Prison Industries should use some of its net earn-*
 3 *ings to accomplish the purposes of the program.*

4 (4) *SCHEDULE FOR IMPLEMENTATION.—All com-*
 5 *ponents of the program shall be established—*

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

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

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

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

17 (b) *ADDITIONAL INMATE WORK OPPORTUNITIES*
 18 *THROUGH PUBLIC SERVICE ACTIVITIES.—*

19 (1) *IN GENERAL.—Chapter 307 of title 18,*
 20 *United States Code, is further amended by inserting*
 21 *after section 4124 the following new section:*

22 **“§4124a. Additional inmate work opportunities**
 23 ***through public service activities***

24 “(a) *IN GENERAL.—Inmates with work assignments*
 25 *within Federal Prison Industries may perform work for an*

1 *eligible entity pursuant to an agreement between such enti-*
2 *ty and the Inmate Work Training Administrator in accord-*
3 *ance with the requirements of this section.*

4 “(b) *DEFINITION OF ELIGIBLE ENTITIES.*—*For the*
5 *purposes of this section, the term ‘eligible entity’ means an*
6 *entity—*

7 “(1) *that is an organization described in section*
8 *501(c)(3) of the Internal Revenue Code of 1986 and*
9 *exempt from taxation under section 501(a) of such*
10 *Code and that has been such an organization for a*
11 *period of not less than 36 months prior to inclusion*
12 *in an agreement under this section;*

13 “(2) *that is a religious organization described in*
14 *section 501(d) of such Code and exempt from taxation*
15 *under section 501(a) of such Code; or*

16 “(3) *that is a unit of local government, a school*
17 *district, or another special purpose district.*

18 “(c) *INMATE WORK TRAINING ADMINISTRATOR.*—
19 *There is hereby established the position of Inmate Work*
20 *Training Administrator, who shall be responsible for fos-*
21 *tering the creation of alternative inmate work opportunities*
22 *authorized by this section. The Administrator shall be des-*
23 *ignated by the Chief Executive Officer of Federal Prison*
24 *Industries, with the approval of the Board of Directors, and*

1 *be under the supervision of the Chief Operating Officer, but*
2 *may directly report to the Board.*

3 “(d) *PROPOSED AGREEMENTS.*—*An eligible entity*
4 *seeking to enter into an agreement pursuant to subsection*
5 *(a) shall submit a detailed proposal to the Inmate Work*
6 *Training Administrator. Each such agreement shall speci-*
7 *fy—*

8 “(1) *types of work to be performed;*

9 “(2) *the proposed duration of the agreement,*
10 *specified in terms of a base year and number of op-*
11 *tion years;*

12 “(3) *the number of inmate workers expected to be*
13 *employed in the specified types of work during the*
14 *various phases of the agreement;*

15 “(4) *the wage rates proposed to be paid to var-*
16 *ious classes of inmate workers; and*

17 “(5) *the facilities, services and personnel (other*
18 *than correctional personnel dedicated to the security*
19 *of the inmate workers) to be furnished by Federal*
20 *Prison Industries or the Bureau of Prisons and the*
21 *rates of reimbursement, if any, for such facilities,*
22 *services, and personnel.*

23 “(e) *REPRESENTATIONS.*—

24 “(1) *ELEEMOSYNARY WORK ACTIVITIES.*—*Each*
25 *proposed agreement shall be accompanied by a writ-*

1 *ten certification by the chief executive officer of the el-*
2 *igible entity that—*

3 *“(A) the work to be performed by the in-*
4 *mate workers will be limited to the eleemosynary*
5 *work of such entity in the case of an entity de-*
6 *scribed in paragraph (1) or (2) of subsection (b);*

7 *“(B) the work would not be performed in*
8 *the United States but for the availability of the*
9 *inmate workers; and*

10 *“(C) the work performed by the inmate*
11 *workers will not result, either directly or indi-*
12 *rectly, in the production of a new product or the*
13 *furnishing of a service that is to be offered for*
14 *other than resale or donation by the eligible enti-*
15 *ty or any affiliate of the such entity.*

16 *“(2) PROTECTIONS FOR NON-INMATE WORK-*
17 *ERS.—Each proposed agreement shall also be accom-*
18 *panied by a written certification by the chief execu-*
19 *tive officer of the eligible entity that—*

20 *“(A) no non-inmate employee (including*
21 *any person performing work activities for such*
22 *governmental entity pursuant to section 607 of*
23 *subchapter IV of the Social Security Act (42*
24 *U.S.C. 607)) of the eligible entity (or any affil-*
25 *iate of the entity) working in the United States*

1 *will have his or her job abolished or work hours*
2 *reduced as a result of the entity being authorized*
3 *to utilize inmate workers; and*

4 *“(B) the work to be performed by the in-*
5 *mate workers will not supplant work currently*
6 *being performed in the United States by a con-*
7 *tractor of the eligible entity.*

8 “(f) *APPROVAL BY BOARD OF DIRECTORS.—*

9 *“(1) IN GENERAL.—Each such proposed agree-*
10 *ment shall be presented to the Board of Directors, be*
11 *subject to the same opportunities for public comment,*
12 *and be publicly considered and acted upon by the*
13 *Board in a manner comparable to that required by*
14 *paragraphs (7) and (8) of section 4122(b).*

15 *“(2) MATTERS TO BE CONSIDERED.—In deter-*
16 *mining whether to approve a proposed agreement, the*
17 *Board shall—*

18 *“(A) give priority to an agreement that*
19 *provides inmate work opportunities that will*
20 *provide participating inmates with the best pros-*
21 *pects of obtaining employment paying a livable*
22 *wage upon release;*

23 *“(B) give priority to an agreement that*
24 *provides for maximum reimbursement for in-*
25 *mate wages and for the costs of supplies and*

1 *equipment needed to perform the types of work*
2 *to be performed;*

3 “(C) *not approve an agreement that will re-*
4 *sult in the displacement of non-inmate workers*
5 *contrary to the representations required by sub-*
6 *section (e)(2) as determined by the Board or by*
7 *the Secretary of Labor (pursuant to subsection*
8 *(i)); and*

9 “(D) *not approve an agreement that will re-*
10 *sult, either directly or indirectly, in the produc-*
11 *tion of a new product or the furnishing of a serv-*
12 *ice for other than resale by an eligible entity de-*
13 *scribed in paragraph (1) or (2) of subsection (b)*
14 *or donation.*

15 “(g) *WAGE RATES AND DEDUCTIONS FROM INMATE*
16 *WAGES.—*

17 “(1) *IN GENERAL.—Inmate workers shall be paid*
18 *wages for work under the agreement at a basic hourly*
19 *rate to be negotiated between the eligible entity and*
20 *Federal Prison Industries and specified in the agree-*
21 *ment. The wage rates set by the Director of the Fed-*
22 *eral Bureau of Prisons to be paid inmates for various*
23 *institutional work assignments are specifically au-*
24 *thorized.*

1 “(2) *PAYMENT TO INMATE WORKER AND AU-*
2 *THORIZED DEDUCTIONS.*—*Wages shall be paid and*
3 *deductions taken pursuant to section 4122(b)(12)(D).*

4 “(3) *VOLUNTARY PARTICIPATION BY INMATE.*—
5 *Each inmate worker to be utilized by an eligible enti-*
6 *ty shall indicate in writing that such person—*

7 “(A) *is participating voluntarily; and*

8 “(B) *understands and agrees to the wages to*
9 *be paid and deductions to be taken from such*
10 *wages.*

11 “(h) *ASSIGNMENT TO WORK OPPORTUNITIES.*—*As-*
12 *signment of inmates to work under an approved agreement*
13 *with an eligible entity shall be subject to the Bureau of Pris-*
14 *ons Program Statement Number 1040.10 (Non-Discrimina-*
15 *tion Toward Inmates), as contained in section 551.90 of*
16 *title 28 of the Code of Federal Regulations (or any successor*
17 *document).*

18 “(i) *ENFORCEMENT OF PROTECTIONS FOR NON-IN-*
19 *MATE WORKERS.*—

20 “(1) *PRIOR TO BOARD CONSIDERATION.*—*Upon*
21 *request of any interested person, the Secretary of*
22 *Labor may promptly verify a certification made pur-*
23 *suant subsection (e)(2) with respect to the displace-*
24 *ment of non-inmate workers so as to make the results*
25 *of such inquiry available to the Board of Directors*

1 *prior to the Board’s consideration of the proposed*
2 *agreement. The Secretary and the person requesting*
3 *the inquiry may make recommendations to the Board*
4 *regarding modifications to the proposed agreement.*

5 “(2) *DURING PERFORMANCE.*—

6 “(A) *IN GENERAL.*—*Whenever the Secretary*
7 *deems appropriate, upon request or otherwise,*
8 *the Secretary may verify whether the actual per-*
9 *formance of the agreement is resulting in the dis-*
10 *placement of non-inmate workers or the use of*
11 *inmate workers in a work activity not author-*
12 *ized under the approved agreement.*

13 “(B) *SANCTIONS.*—*Whenever the Secretary*
14 *determines that performance of the agreement*
15 *has resulted in the displacement of non-inmate*
16 *workers or employment of an inmate worker in*
17 *an unauthorized work activity, the Secretary*
18 *may—*

19 “(i) *direct the Inmate Work Training*
20 *Administrator to terminate the agreement*
21 *for default, subject to the processes and ap-*
22 *peals available to a Federal contractor*
23 *whose procurement contract has been termi-*
24 *nated for default; and*

1 “(ii) initiate proceedings to impose
2 upon the person furnishing the certification
3 regarding non-displacement of non-inmate
4 workers required by subsection (d)(2)(B)
5 any administrative, civil, and criminal
6 sanctions as may be available.”.

7 (2) *AUTHORIZATION OF APPROPRIATION.*—There
8 is authorized to be appropriated \$5,000,000 for each
9 of the fiscal years 2008 through 2012 for the purposes
10 of paying the wages of inmates and otherwise under-
11 taking the maximum number of agreements with eli-
12 gible entities pursuant to section 4124a of title 18,
13 United States Code, as added by paragraph (1).

14 (3) *SENSE OF CONGRESS.*—For purposes of sec-
15 tions 4124a and 4124b of title 18, United States
16 Code, as added by sections 10(b) and 11, respectively,
17 it is the sense of Congress that an inmate training
18 wage that is at least 50 percent of the minimum wage
19 prescribed pursuant to section 6(a)(1) of the Fair
20 Labor Standards Act of 1938 (29 U.S.C. 206(a)(1))
21 will facilitate successful achievement of the goals of
22 the work-based training and apprenticeship program
23 authorized under such section 4124a.

24 (c) *INMATE WORK OPPORTUNITIES IN SUPPORT OF*
25 *NOT-FOR-PROFIT ENTITIES.*—

1 (1) *PROPOSALS FOR DONATION PROGRAMS.*—*The*
2 *Chief Operating Officer of Federal Prison Industries*
3 *shall develop and present to the Board of Directors of*
4 *Federal Prison Industries proposals to have Federal*
5 *Prison Industries donate products and services to eli-*
6 *gible entities that provide goods or services to low-in-*
7 *come individuals who would likely otherwise have dif-*
8 *ficulty purchasing such products or services in the*
9 *commercial market.*

10 (2) *SCHEDULE FOR SUBMISSION AND CONSIDER-*
11 *ATION 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 Directors*
17 *of Federal Prison Industries shall consider such*
18 *proposals from the Chief Operating Officer not*
19 *later than the date that is 270 days after the*
20 *date of the enactment of this Act.*

21 (B) *ANNUAL OPERATING PLAN.*—*The Board*
22 *of Directors of Federal Prison Industries shall*
23 *consider proposals by the Chief Operating Officer*
24 *for programs of the type described in paragraph*

1 (1) *as part of the annual operating plan for Fed-*
2 *eral Prison Industries.*

3 (C) *OTHER PROPOSALS.—In addition to*
4 *proposals submitted by the Chief Operating Offi-*
5 *cer, the Board of Directors may, from time to*
6 *time, consider proposals presented by prospective*
7 *eligible entities.*

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

11 (A) *that is an organization described in sec-*
12 *tion 501(c)(3) of the Internal Revenue Code of*
13 *1986 and exempt from taxation under section*
14 *501(a) of such Code and that has been such an*
15 *organization for a period of not less than 36*
16 *months prior to inclusion in a proposal of the*
17 *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 such*
21 *Code.*

22 (4) *AUTHORIZATION OF APPROPRIATIONS.—*
23 *There are authorized to be appropriated \$7,000,000*
24 *for each of the fiscal years 2008 through 2012 for the*
25 *purposes of paying the wages of inmates and other-*

1 *wise carrying out programs of the type described in*
2 *paragraph (1).*

3 *(d) 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 Abilities*
9 *Assessment Demonstration Program”. The pur-*
10 *pose of the demonstration program is to deter-*
11 *mine the effectiveness of a program that assesses*
12 *the cognitive abilities and perceptual skills of*
13 *Federal inmates to maximize the benefits of var-*
14 *ious rehabilitative opportunities designed to pre-*
15 *pare each inmate for a successful return to soci-*
16 *ety and reduce recidivism. The demonstration*
17 *program shall be undertaken by a contractor*
18 *with a demonstrated record of enabling the be-*
19 *havioral and academic improvement of adults*
20 *through the use of research-based systems that*
21 *maximize the development of both the cognitive*
22 *and perceptual capabilities of a participating*
23 *individual, including adults in a correctional*
24 *setting.*

1 (B) *SCOPE OF DEMONSTRATION PRO-*
2 *GRAM.—The demonstration program shall to the*
3 *maximum extent practicable, be—*

4 (i) *conducted during a period of three*
5 *consecutive fiscal years, commencing during*
6 *fiscal year 2008;*

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 (C) *REPORT ON RESULTS OF PROGRAM.—*
13 *Not later than 60 days after completion of the*
14 *demonstration program, the Director shall sub-*
15 *mit to Congress a report on the results of the*
16 *program. At a minimum, the report shall in-*
17 *clude an analysis of employment stability, sta-*
18 *bility of residence, and rates of recidivism*
19 *among inmates who participated in the program*
20 *after 18 months of release.*

21 (2) *AUTHORIZATION OF APPROPRIATIONS.—*
22 *There is authorized to be appropriated \$3,000,000 in*
23 *each of the three fiscal years after fiscal year 2007,*
24 *to remain available until expended, for the purposes*

1 of conducting the demonstration program authorized
2 by subsection (a).

3 (e) *PRERELEASE EMPLOYMENT ASSISTANCE.*—

4 (1) *IN GENERAL.*—*The Director of the Federal*
5 *Bureau of Prisons shall, to the maximum extent prac-*
6 *ticable, afford to inmates opportunities to participate*
7 *in programs and activities designed to help prepare*
8 *such inmates to obtain employment upon release.*

9 (2) *PRERELEASE EMPLOYMENT PLACEMENT AS-*
10 *SISTANCE.*—*Such prerelease employment placement*
11 *assistance required by subsection (a) shall include—*

12 (A) *training in the preparation of resumes*
13 *and job applications;*

14 (B) *training in interviewing skills;*

15 (C) *training and assistance in job search*
16 *techniques;*

17 (D) *conduct of job fairs; and*

18 (E) *such other methods deemed appropriate*
19 *by the Director.*

20 (3) *PRIORITY PARTICIPATION.*—*Priority in pro-*
21 *gram participation shall be accorded to inmates who*
22 *are participating in work opportunities afforded by*
23 *Federal Prison Industries and are within 24 months*
24 *of release from incarceration.*

1 **SEC. 11. RE-ENTRY EMPLOYMENT PREPARATION THROUGH**
2 **WORK-BASED TRAINING AND APPRENTICE-**
3 **SHIP.**

4 (a) *IN GENERAL.*—Chapter 307 of title 18, United
5 States Code, is further amended by inserting after section
6 4124a, as added by section 10(b), the following new section:

7 **“§4124b. Re-entry employment preparation through**
8 **work-based training and apprenticeship.**

9 “(a) *PARTICIPATION AUTHORIZED.*—A private for-
10 profit business entity shall be an eligible entity for partici-
11 pation in the program authorized by section 4124a of this
12 title, if such participation conforms with the requirements
13 and limitations of this section.

14 “(b) *REQUIREMENTS RELATING TO PRODUCTS AND*
15 *SERVICES.*—A private for-profit business entity is eligible
16 for such participation if such business entity proposes to
17 train participating inmates, pursuant to subsection (c), by
18 producing a product or performing a service, if such prod-
19 uct or service is of a type for which there is no production
20 or performance within the United States by noninmate
21 workers.

22 “(c) *REQUIREMENTS RELATING TO TRAINING.*—

23 “(1) *IN GENERAL.*—For purposes of this section,
24 the training of participating inmates shall be work-
25 based training that provides to a participating in-
26 mate apprenticeship training or a functionally equiv-

1 *alent structured program that combines hands-on*
2 *work experience with conceptual understanding of the*
3 *work being performed. Other inmates with regular*
4 *work assignments within Federal Prison Industries*
5 *may be assigned to support the program.*

6 *“(2) DOCUMENTATION OF PROGRAM PARTICIPA-*
7 *TION.—*

8 *“(A) Each inmate who successfully com-*
9 *pletes participation in training undertaken pur-*
10 *suant to this section shall be provided a certifi-*
11 *cate or other written document memorializing*
12 *such successful completion, providing a market-*
13 *able summary of the skills learned and an over-*
14 *all assessment of performance.*

15 *“(B) Copies of such documents shall be fur-*
16 *nished to perspective employers upon the request*
17 *of the participant for a period of not less than*
18 *24 months from the date of such participant’s re-*
19 *lease from incarceration.*

20 *“(3) DOCUMENTS REQUIRED FOR EMPLOY-*
21 *MENT.—The Federal Bureau of Prisons, in coopera-*
22 *tion with a business entity providing an inmate*
23 *work-based training at the time of his or her sched-*
24 *uled release, shall make every reasonable effort to help*
25 *the inmate timely obtain such documentation (includ-*

1 *ing a State government-issued photo identification*
2 *card) as a person may be required to provide to a*
3 *prospective employer, after such person completes an*
4 *Employment Eligibility Verification (ICE Form I-9).*

5 “(d) *WAGE RATES.*—

6 “(1) *IN GENERAL.*—*Business entities partici-*
7 *parting in the program authorized by subsection (a)*
8 *shall propose wages for inmates participating in the*
9 *program at rates not less than the inmate training*
10 *wage promulgated pursuant to section 17(c) of the*
11 *Federal Prison Industries Competition in Contracting*
12 *Act of 2006.*

13 “(2) *INMATE TRAINING WAGE.*—*Not more than*
14 *30 days after the date of enactment of this section, the*
15 *Board of Directors of Federal Prison Industries shall*
16 *request the Secretary of Labor to promulgate an in-*
17 *mate training wage pursuant to section 14(a) of the*
18 *Fair Labor Standards Act of 1938 (29 U.S.C.*
19 *214(a)).*

20 “(e) *SUPPORT FOR OTHER RELEASE PREPARATION*
21 *PROGRAMS.*—*In addition to the matters listed in section*
22 *4124a(d) of this title, a proposal for an agreement referred*
23 *to in such section submitted by an eligible business entity*
24 *shall specify an amount of any supplemental funding, spec-*
25 *ified as a per-capita amount for each inmate participating*

1 *pursuant to the agreement, that the business entity will pro-*
2 *vide for the purpose of supporting remedial, vocational, and*
3 *other release preparation programs for other nonpartici-*
4 *pating inmates.*

5 “(f) *ADDITIONAL STANDARDS APPLICABLE.—In con-*
6 *sidering a proposed agreement pursuant to section*
7 *4124a(f)(1) of this title, the Board of Directors shall—*

8 “(1) *give preference to an agreement that pro-*
9 *poses—*

10 “(A) *work-based training opportunities that*
11 *provide the participating inmate the best pros-*
12 *pects for obtaining employment paying a livable*
13 *wage upon release;*

14 “(B) *the highest per-capita amount pursu-*
15 *ant to subsection (e) relating to providing finan-*
16 *cial support for release preparation for other in-*
17 *mates; and*

18 “(C) *the highest inmate wage rates;*

19 “(2) *not approve any agreement with respect to*
20 *furnishing services of the type described in section*
21 *4122(b)(6)(D)(iii) of this title;*

22 “(3) *not approve any agreement with respect to*
23 *furnishing construction services described in section*
24 *4122(b)(6)(D)(iv) of this title, unless to be performed*
25 *within a Federal correctional institution;*

1 “(4) not approve an agreement that does not
2 meet the standards of subsection (b); and

3 “(5) request a determination from the Inter-
4 national Trade Commission (and such other executive
5 branch entities as may be appropriate), regarding
6 whether a product or service is of the type being pro-
7 duced or performed in the United States by non-
8 inmate workers, whenever the Board determines that
9 such an additional assessment is warranted, includ-
10 ing upon a request from an interested party pre-
11 senting information that the Board deems to warrant
12 such additional assessment prior to the Board’s con-
13 sideration of the proposed agreement.

14 “(g) LIMITATIONS ON THE USE OF THE AUTHORITY.—

15 “(1) NO SALES BY FEDERAL PRISON INDUS-
16 TRIES.—Federal Prison Industries is prohibited from
17 directly offering for commercial sale products pro-
18 duced or services furnished by Federal inmates, in-
19 cluding through any form of electronic commerce.

20 “(2) DURATION.—

21 “(A) No proposed agreement pursuant to
22 this subsection may be approved by the Board of
23 Directors after September 30, 2016.

24 “(B) Performance of all such agreements
25 shall be concluded prior to October 1, 2021.”.

1 **(b) REVIEW AND REPORTING BY THE ATTORNEY GEN-**
2 *ERAL.—Not less than biannually, beginning in fiscal year*
3 *2008, the Attorney General shall meet in person jointly with*
4 *the Chairman of the Board of Directors and the Chief Exec-*
5 *utive Officer of Federal Prison Industries to review the*
6 *progress that Federal Prison Industries is making in maxi-*
7 *mizing the use of the authority provided by sections 4124a*
8 *and 4124b of title 18, United States Code. The Attorney*
9 *General shall provide annually a written report to the Com-*
10 *mittees on the Judiciary and Appropriations of the House*
11 *of Representatives and the Senate addressing such progress*
12 *by Federal Prison Industries.*

13 **(c) GAO ASSESSMENT OF WORK-BASED TRAINING**
14 *PROGRAM.—*

15 **(1) IN GENERAL.—***The Comptroller General of*
16 *the United States shall undertake an on-going assess-*
17 *ment of the authority granted by section 4124b of title*
18 *18, United States Code, as added by subsection (a).*

19 **(2) MATTERS TO BE ASSESSED.—***In addition to*
20 *such other matters as the Comptroller General deems*
21 *appropriate, the assessment shall include—*

22 **(A)** *efforts to recruit private for-profit busi-*
23 *ness entities to participate;*

24 **(B)** *the quality of training provided to in-*
25 *mates;*

1 (C) the amounts and types of products and
2 services that have been produced incident to the
3 work-based training programs;

4 (D) the types of worksite arrangement that
5 encourage business concerns to voluntarily enter
6 into such partnerships;

7 (E) the extent and manner of the participa-
8 tion of supervisory, quality assurance, and other
9 management employees of the participating busi-
10 ness entity in worksites within correctional fa-
11 cilities of various levels of security;

12 (F) the extent of the facilities, utilities,
13 equipment, and personnel (other than security
14 personnel) provided by the host correctional
15 agency, and extent to which such resources are
16 provided on a nonreimbursable basis;

17 (G) the rates of wages paid to inmate work-
18 ers and the effect that such wage rates have on
19 willingness of business entities to participate;

20 (H) any complaints filed regarding the dis-
21 placement of noninmate workers or of inmate
22 workers being paid less than required wages and
23 the disposition of those complaints;

24 (I) any sanctions recommended relating to
25 displacement of noninmate workers or payment

1 *of less than the required wages, and the disposi-*
2 *tion of such proposed sanctions;*

3 *(J) the extent to which the new authority*
4 *provided additional inmate work opportunities*
5 *assisting the Bureau of Prisons in attaining its*
6 *objective of providing 25 percent of the work-eli-*
7 *gible inmates with work opportunities within*
8 *Federal Prison Industries;*

9 *(K) measures of any adverse impacts of im-*
10 *plementation of the new authority on business*
11 *concerns using noninmate workers that are en-*
12 *gaged in providing similar types of products and*
13 *services in direct competition; and*

14 *(L) a compilation of data relating work op-*
15 *portunities for Federal inmates with work as-*
16 *signments with Federal Prison Industries pro-*
17 *vided by—*

18 *(i) sales to Federal agencies pursuant*
19 *to the status of Federal Prison Industries as*
20 *a mandatory source of supply during the*
21 *period fiscal year 1990 through fiscal year*
22 *2007;*

23 *(ii) sales to Federal agencies of serv-*
24 *ices, both through non-competitive inter-*
25 *agency transfers and as a result of direct*

1 *competition from private-sector offerors dur-*
2 *ing the period fiscal year 1990 through fiscal*
3 *year 2007;*

4 *(iii) performance as a subcontractor to*
5 *a Federal prime contractor or Federal sub-*
6 *contractor at a higher tier beginning in fis-*
7 *cal year 1990;*

8 *(iv) introduction of inmate-furnished*
9 *services into the commercial market, begin-*
10 *ning in the second quarter of fiscal year*
11 *1998;*

12 *(v) alternative inmate work opportuni-*
13 *ties, beginning in fiscal year 2007, provided*
14 *by agreements with—*

15 *(I) non-profit organizations, pur-*
16 *suant to section 4124a(b)(1) of title 18,*
17 *United States Code, as added by sec-*
18 *tion 10(b), and section 10(c);*

19 *(II) religious organizations, pur-*
20 *suant to section 4124a(b)(2) of title 18,*
21 *United States Code;*

22 *(III) units of local governments,*
23 *school districts, or other special pur-*
24 *pose districts, pursuant to section*

1 4124a(b)(3) of title 18, United States
2 Code;

3 (IV) work-based Employment
4 Preparation Programs for Federal in-
5 mates, pursuant to section 4124b of
6 title 18, United States Code, as added
7 by section 11; or

8 (V) other means.

9 (3) OPPORTUNITY FOR PUBLIC COMMENT.—The
10 Comptroller General shall provide an opportunity for
11 public comment on the proposed scope and method-
12 ology for the assessment required by paragraph (1),
13 making such modifications in response to such com-
14 ments as he deems appropriate.

15 (4) REPORTS AND RECOMMENDATIONS.—

16 (A) IN GENERAL.—The Comptroller General
17 shall submit to the Congress in accordance with
18 this subsection two interim reports and a final
19 report of the assessment of implementation of the
20 new authority, including such recommendations
21 as the Comptroller General may deem appro-
22 priate.

23 (B) INTERIM REPORTS.—The two interim
24 reports shall encompass the assessment of the im-
25 plementation of the new authority—

1 (i) from the effective date of the author-
2 ity through the end of fiscal year 2007; and

3 (ii) from the effective date of the au-
4 thority through the end of fiscal year 2010.

5 (C) *FINAL REPORT.*—*The final report shall*
6 *assess the implementation of the new authority*
7 *from the effective date of the authority through*
8 *the end of fiscal year 2013.*

9 (D) *SUBMISSION TO CONGRESS.*—*The*
10 *Comptroller General shall submit the reports re-*
11 *quired by this paragraph within 6 months after*
12 *the end of the fiscal years referred to in subpara-*
13 *graphs (B) and (C).*

14 (d) *CONFORMING AMENDMENT.*—*Section 1761 of title*
15 *18, United States Code, as amended by section 7, is further*
16 *amended—*

17 (1) *by redesignating subsection (e) as subsection*
18 *(f); and*

19 (2) *inserting after subsection (d) the following*
20 *new subsection:*

21 “(e) *This section shall not apply to products produced*
22 *or services furnished with inmate labor incidental to the*
23 *work-based training program authorized pursuant to sec-*
24 *tion 4124b of this title.*”.

1 **SEC. 12. RESTRUCTURING THE BOARD OF DIRECTORS.**

2 (a) *IN GENERAL.*—Section 4121 of title 18, United
3 States Code, is amended to read as follows:

4 **“§ 4121. Federal Prison Industries; Board of Directors:**
5 ***executive management***

6 “(a) *Federal Prison Industries is a government cor-*
7 *poration of the District of Columbia organized to carry on*
8 *such industrial operations in Federal correctional institu-*
9 *tions as authorized by its Board of Directors. The manner*
10 *and extent to which such industrial operations are carried*
11 *on in the various Federal correctional institutions shall be*
12 *determined by the Attorney General.*

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

15 “(2) *In making appointments to the Board, the Presi-*
16 *dent shall assure that 3 members represent the business*
17 *community, 3 members represent organized labor, 1 member*
18 *shall have special expertise in inmate rehabilitation tech-*
19 *niques, 1 member represents victims of crime, 1 member*
20 *represents the interests of Federal inmate workers, and 2*
21 *additional members whose background and expertise the*
22 *President deems appropriate. The members of the Board*
23 *representing the business community shall include, to the*
24 *maximum extent practicable, representation of firms fur-*
25 *nishing services as well as firms producing products, espe-*
26 *cially from those industry categories from which Federal*

1 *Prison Industries derives substantial sales. The members of*
2 *the Board representing organized labor shall, to the max-*
3 *imum practicable, include representation from labor unions*
4 *whose members are likely to be most affected by the sales*
5 *of Federal Prison Industries.*

6 “(3) *Each member shall be appointed for a term of*
7 *5 years, except that of members first appointed—*

8 “(A) *2 members representing the business com-*
9 *munity shall be appointed for a term of 3 years;*

10 “(B) *2 members representing labor shall be ap-*
11 *pointed for a term of 3 years;*

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

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

17 “(E) *1 member representing the interests of Fed-*
18 *eral inmate workers shall be appointed for a term of*
19 *3 years;*

20 “(F) *1 member representing the business commu-*
21 *nity shall be appointed for a term of 4 years;*

22 “(G) *1 member representing the business commu-*
23 *nity shall be appointed for a term of 4 years; and*

1 “(H) the members having special expertise in in-
2 mate rehabilitation techniques shall be appointed for
3 a term of 5 years.

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

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

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

13 “(7) The members of the Board shall serve without
14 compensation. The members of the Board shall be allowed
15 travel expenses, including per diem in lieu of subsistence,
16 at rates authorized for employees of agencies under sub-
17 chapter I of chapter 57 of title 5, United States Code, to
18 attend meetings of the Board and, with the advance ap-
19 proval of the Chairperson of the Board, while otherwise
20 away from their homes or regular places of business for pur-
21 poses of duties as a member of the Board.

22 “(8)(A) The Chairperson of the Board may appoint
23 and terminate any personnel that may be necessary to en-
24 able the Board to perform its duties.

1 “(B) Upon request of the Chairperson of the Board,
2 a Federal agency may detail a Federal Government em-
3 ployee to the Board without reimbursement. Such detail
4 shall be without interruption or loss of civil service status
5 or privilege.

6 “(9) The Chairperson of the Board may procure tem-
7 porary and intermittent services under section 3109(b) of
8 title 5, United States Code.

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

13 (b) CONTINUED GOVERNANCE.—The members of the
14 Board of Directors serving on the date of enactment of this
15 Act, and the person selected by them as Chairman, shall
16 continue to exercise the duties and responsibilities of the
17 Board until the earlier of—

18 (1) the date on which the President has ap-
19 pointed at least 6 members of the Board and des-
20 ignated a new Chairman, pursuant to section 4121 of
21 title 18, United States Code (as added by section
22 12(a) of this Act); or

23 (2) the date that is 365 days after the date of en-
24 actment of this Act.

1 **SEC. 13. PROVIDING ADDITIONAL MANAGEMENT FLEXI-**
2 **BILITY TO FEDERAL PRISON INDUSTRIES OP-**
3 **ERATIONS.**

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

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

7 *and*

8 *(2) by adding at the end the following new para-*
9 *graphs:*

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

12 *“(C) Federal Prison Industries may operate a work-*
13 *shop outside of a correctional facility if all of the inmates*
14 *working in such workshop are classified as minimum secu-*
15 *rity inmates.”.*

16 **SEC. 14. TRANSITIONAL PERSONNEL MANAGEMENT AU-**
17 **THORITY.**

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

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

1 (2) *registered on a Bureau of Prisons reemploy-*
2 *ment priority list; and*

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

6 **SEC. 15. FEDERAL PRISON INDUSTRIES REPORT TO CON-**
7 **GRESS.**

8 *Section 4127 of title 18, United States Code, is amend-*
9 *ed to read as follows:*

10 **“§4127. Federal Prison Industries report to Congress**

11 “(a) *IN GENERAL.*—Pursuant to chapter 91 of title 31,
12 *the board of directors of Federal Prison Industries shall sub-*
13 *mit an annual report to Congress on the conduct of the busi-*
14 *ness of the corporation during each fiscal year and the con-*
15 *dition of its funds during the fiscal year.*

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

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

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

25 “(3) *an analysis of—*

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

4 “(B) the total purchases by each Federal
5 agency of each specific product and type of serv-
6 ice;

7 “(C) the corporation’s share of such total
8 Federal Government purchases by specific prod-
9 uct and type of service; and

10 “(D) the number and disposition of disputes
11 submitted to the heads of the Federal depart-
12 ments and agencies pursuant to section 4124(e)
13 of this title;

14 “(4) an allocation of the profits of the corpora-
15 tion, both gross and net, to—

16 “(A) educational, training, release-prepara-
17 tion opportunities for inmates;

18 “(B) opening new factories; and

19 “(C) improving the productivity and com-
20 petitiveness of existing factories;

21 “(5) an analysis of the inmate workforce that in-
22 cludes—

23 “(A) the number of inmates employed;

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

4 “(C) the number and percentage of em-
5 ployed inmates by the term of their incarcer-
6 ation; and

7 “(D) the various hourly wages paid to in-
8 mates employed with respect to the production of
9 the various specific products and types of serv-
10 ices authorized for production and sale to Fed-
11 eral agencies and in the commercial market; and

12 “(6) data concerning employment obtained by
13 former inmates upon release to determine whether the
14 employment provided by Federal Prison Industries
15 during incarceration provided such inmates with
16 knowledge and skill in a trade or occupation that en-
17 abled such former inmate to earn a livelihood upon
18 release.

19 “(c) *PUBLIC AVAILABILITY.*—Copies of an annual re-
20 port under subsection (a) shall be made available to the
21 public at a price not exceeding the cost of printing the re-
22 port.”.

23 **SEC. 16. DEFINITIONS.**

24 Chapter 307 of title 18, United States Code, is amend-
25 ed by adding at the end the following new section:

1 **“§4131. Definitions**

2 *“As used in this chapter—*

3 *“(1) the term ‘assembly’ means the process of*
4 *uniting or combining articles or components (includ-*
5 *ing ancillary finished components or assemblies) so as*
6 *to produce a significant change in form or utility,*
7 *without necessarily changing or altering the compo-*
8 *nent parts;*

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

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

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

1 “(5) the term ‘manufacture’ means the process of
2 *fabricating from raw or prepared materials, so as to*
3 *impart to those materials new forms, qualities, prop-*
4 *erties, and combinations;*

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

9 “(A) any specific product during the 3 pre-
10 *ceding fiscal years, that does not exceed 20 per-*
11 *cent of the Federal market for the specific prod-*
12 *uct; and*

13 “(B) any specific service during the 3 pre-
14 *ceding fiscal years, that does not exceed 5 percent*
15 *of the Federal market for the specific service; and*

16 “(7) the term ‘services’ has the meaning given
17 *the term ‘service contract’ by section 37.101 of the*
18 *Federal Acquisition Regulation (48 C.F.R. 36.102), as*
19 *in effect on July 1, 2004.”.*

20 **SEC. 17. IMPLEMENTING REGULATIONS AND PROCEDURES.**

21 *(a) FEDERAL ACQUISITION REGULATION.—*

22 (1) *PROPOSED REVISIONS.—Proposed revisions*
23 *to the Governmentwide Federal Acquisition Regula-*
24 *tion to implement the amendments made by this Act*
25 *shall be published not later than 60 days after the*

1 *date of the enactment of this Act and provide not less*
2 *than 60 days for public comment.*

3 (2) *FINAL REGULATIONS.—Final regulations*
4 *shall be published not later than 180 days after the*
5 *date of the enactment of this Act and shall be effective*
6 *on the date that is 30 days after the date of publica-*
7 *tion.*

8 (3) *PUBLIC PARTICIPATION.—The proposed regu-*
9 *lations required by subsection (a) and the final regu-*
10 *lations required by subsection (b) shall afford an op-*
11 *portunity for public participation in accordance with*
12 *section 22 of the Office of Federal Procurement Policy*
13 *Act (41 U.S.C. 418b).*

14 (b) *BOARD OF DIRECTORS.—*

15 (1) *IN GENERAL.—The Board of Directors of*
16 *Federal Prison Industries shall issue regulations de-*
17 *fining the terms specified in paragraph (2).*

18 (2) *TERMS TO BE DEFINED.—The Board of Di-*
19 *rectors shall issue regulations for the following terms:*

20 (A) *Prison-made product.*

21 (B) *Prison-furnished service.*

22 (C) *Specific product.*

23 (D) *Specific service.*

24 (3) *SCHEDULE FOR REGULATORY DEFINI-*
25 *TIONS.—*

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

6 (B) *Final regulations relating to the mat-*
7 *ters described in subsection (b)(2) shall be pub-*
8 *lished not less than 180 days after the date of en-*
9 *actment of this Act and shall be effective on the*
10 *date that is 30 days after the date of publication.*

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

13 (A) *ADMINISTRATIVE PROCEDURE ACT.—*
14 *Regulations issued by the Board of Directors*
15 *shall be subject to notice and comment rule-*
16 *making pursuant to section 553 of title 5, United*
17 *States Code. Unless determined wholly impracti-*
18 *cable or unnecessary by the Board of Directors,*
19 *the public shall be afforded 60 days for comment*
20 *on proposed regulations.*

21 (B) *ENHANCED OUTREACH.—The Board of*
22 *Directors shall use means designed to most effec-*
23 *tively solicit public comment on proposed regula-*
24 *tions, procedures, and policies and to inform the*

1 *affected public of final regulations, procedures,*
2 *and policies.*

3 (C) *OPEN MEETING PROCESSES.—The*
4 *Board of Directors shall take all actions relating*
5 *to the adoption of regulations, operating proce-*
6 *dures, guidelines, and any other matter relating*
7 *to the governance and operation of Federal Pris-*
8 *on Industries based on deliberations and a re-*
9 *corded vote conducted during a meeting open to*
10 *the public, unless closed pursuant to section*
11 *552(b) of title 5, United States Code.*

12 (c) *SECRETARY OF LABOR.—*

13 (1) *SCHEDULE FOR REGULATORY ACTION.—*
14 *Upon receipt of a request from the Federal Prison In-*
15 *dustry Board of Directors, pursuant to section*
16 *11(d)(2), to establish an inmate training wage pursu-*
17 *ant to section 14(a) of the Fair Labor Standards Act*
18 *of 1938 (29 U.S.C. 214(a)), the Secretary of Labor,*
19 *in consultation with the Attorney General, shall*
20 *issue—*

21 (A) *an advanced notice of proposed rule-*
22 *making within 60 days;*

23 (B) *an interim regulation with concurrent*
24 *request for public comments within 180 days;*
25 *and*

1 (C) a final regulation within 365 days.

2 (2) *ALTERNATIVE TO TIMELY ISSUANCE.*—*In the*
3 *event that the Secretary of Labor fails to issue an in-*
4 *terim inmate training wage by the date required by*
5 *paragraph (1)(B), the Federal Prison Industries*
6 *Board of Directors may prescribe an interim inmate*
7 *training wage, which shall be in an amount not less*
8 *than 50 percent of the amount of the minimum wage*
9 *prescribed pursuant to section 6(a)(1) of such Act (29*
10 *U.S.C. 206(a)(1)).*

11 (3) *CONTINUED USE OF INTERIM INMATE TRAIN-*
12 *ING WAGE.*—

13 (A) *The interim inmate training wage*
14 *issued pursuant to paragraph (1)(B) or pre-*
15 *scribed under paragraph (2) shall remain in ef-*
16 *fect until the effective date of a final regulation,*
17 *issued pursuant to paragraph (1)(C).*

18 (B) *An eligible entity having an approved*
19 *agreement with Federal Prison Industries pursu-*
20 *ant to section 4124b of title 18, United States*
21 *Code, may continue to pay participating in-*
22 *mates at the wages prescribed in the agreement*
23 *for the duration of the agreement, if those wages*
24 *comply with the standards of the interim inmate*

1 *training wage issued pursuant to paragraph*
2 *(1)(B) or prescribed under paragraph (2).*

3 (4) *EXISTING AGREEMENTS WITH NONCON-*
4 *FORMING WAGES.—Any for-profit business concern*
5 *having an agreement with Federal Prison Industries*
6 *in effect on the date of enactment of this Act, under*
7 *which Federal inmates are furnishing services that*
8 *are being introduced into the commercial market,*
9 *may continue to pay wages at rates specified in the*
10 *agreement for the duration of the term of such agree-*
11 *ment.*

12 **SEC. 18. RULES OF CONSTRUCTION.**

13 (a) *AGENCY BID PROTESTS.—Subsection (e) of section*
14 *4124 of title 18, United States Code, as amended by section*
15 *2, is not intended to alter any rights of any offeror other*
16 *than Federal Prison Industries to file a bid protest in ac-*
17 *cordance with other law or regulation in effect on the date*
18 *of the enactment of this Act.*

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

22 **SEC. 19. EFFECTIVE DATE AND APPLICABILITY.**

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

1 (b) *APPLICABILITY.*—Section 4124 of title 18, United
 2 States Code, as amended by section 2, shall apply to any
 3 requirement for a product or service offered by Federal Pris-
 4 on Industries needed by a Federal department or agency
 5 after the effective date of the final regulations issued pursu-
 6 ant to section 17(a)(2), or after September 30, 2007, which-
 7 ever is earlier.

8 **SEC. 20. CLERICAL AMENDMENTS.**

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

11 (1) by amending the item relating to section
 12 4121 to read as follows:

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

13 (2) by amending the item relating to section
 14 4124 to read as follows:

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

15 (3) by inserting after the item relating to section
 16 4124 the following new items:

“4124a. Additional inmate work opportunities through public service activities.

“4124b. Re-entry employment preparation through work-based training and ap-
 prenticeship.”;

17 (4) by amending the item relating to section
 18 4127 to read as follows:

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

19 and

20 (5) by adding at the end the following new items:

“4130. Construction of provisions.

“4131. *Definitions.*”.

Union Calendar No. 342

109TH CONGRESS
2^D SESSION

H. R. 2965

[Report No. 109-591]

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 other public service programs, and for other purposes.

JULY 21, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed