

111TH CONGRESS
1ST SESSION

S. 41

To require a 50-hour workweek for Federal prison inmates, to reform inmate work programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2009

Mr. ENSIGN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require a 50-hour workweek for Federal prison inmates, to reform inmate work programs, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prisoner Opportunity,
5 Work, and Education Requirement Act” or the “POWER
6 Act”.

1 **SEC. 2. MANDATORY WORK REQUIREMENT FOR FEDERAL**
2 **INMATES.**

3 Section 2905 of the Crime Control Act of 1990 (18
4 U.S.C. 4121 note) is amended by adding at the end the
5 following:

6 “(b) 50-HOUR WORKWEEK.—

7 “(1) IN GENERAL.—Subject to subsection (a),
8 inmates confined in Federal prisons shall engage
9 in—

10 “(A) work, for not less than 50 hours
11 weekly;

12 “(B) job training; and

13 “(C) educational and life skills preparation
14 study.

15 “(2) SUBCONTRACTING TO FEDERAL GOVERN-
16 MENT CONTRACTORS.—Federal Prison Industries
17 will utilize inmates in labor-intensive, light manufac-
18 turing activities through subcontracting with private
19 sector prime contractors.

20 “(3) USE OF WAGES.—

21 “(A) IN GENERAL.—Wages may be earned
22 by inmates engaged in the 50-hour workweek
23 program under paragraph (1), and of those
24 wages—

25 “(i) one-fourth shall be used to offset
26 the cost of incarceration of the inmate;

1 “(ii) one-fourth shall be used for vic-
2 tim restitution;

3 “(iii) one-tenth shall be held in a non-
4 interest bearing account for the individual
5 inmate and shall be paid upon release of
6 that inmate from prison;

7 “(iv) one-fourth shall be paid directly
8 to the inmate for mandatory expenses and
9 for daily basic needs while the inmate is
10 incarcerated, unless such inmate has any
11 outstanding child support obligations, in
12 which case, such money shall be paid in ac-
13 cordance with the directives of the court
14 having jurisdiction over the outstanding
15 child support obligations; and

16 “(v) the remainder shall be distrib-
17 uted to—

18 “(I) States that the Attorney
19 General determines have substantially
20 the same prison work requirements
21 and prison conditions as established
22 for Federal prisons; and

23 “(II) local jurisdictions that oper-
24 ate correctional facilities to benefit the
25 dependents of inmates.

1 “(B) NONELIGIBILITY FOR RELEASE.—If
2 an inmate is not eligible for release, the amount
3 held under subparagraph (A)(iii) shall imme-
4 diately be available for use under subparagraph
5 (A)(ii).”.

6 **SEC. 3. FEDERAL PRISON INDUSTRIES REAUTHORIZATION.**

7 (a) REPEAL.—Section 637 of division F of the Con-
8 solidated Appropriations Act of 2004 (Public Law 108–
9 199; 118 Stat. 3, 384), section 637 of division H of the
10 Consolidated Appropriations Act of 2005 (Public Law
11 108–447; 118 Stat. 2809, 3281), section 214 of division
12 B of the Consolidated Appropriations Act of 2008 (Public
13 Law 110–161), and section 2410n of title 10, United
14 States Code, are repealed.

15 (b) EFFECTIVE.—Chapter 307 of title 18, United
16 States Code, shall remain in full force and effect.

17 **SEC. 4. AUTHORITY TO CARRY OUT PILOT PROJECTS USING**
18 **FEDERAL INMATE LABOR TO REPLACE FOR-**
19 **EIGN LABOR.**

20 (a) FOREIGN LABOR SUBSTITUTE PILOT PROJECTS
21 AUTHORIZED.—Section 1761 of title 18, United States
22 Code, is amended—

23 (1) in subsection (b), by striking “This chap-
24 ter” and inserting “This section”;

1 (2) in subsection (c), by striking “this chapter”
2 and inserting “this section”;

3 (3) by redesignating subsection (d) as sub-
4 section (f); and

5 (4) by adding after subsection (c) the following
6 new subsections:

7 “(d) This section shall not apply to goods, wares, or
8 merchandise manufactured, produced, or mined by con-
9 victs or prisoners who are participating in industrial oper-
10 ations of Federal Prison Industries, including operations
11 in any pilot program or programs described in section
12 4130 of this title.

13 “(e) This section shall not apply to goods, wares, or
14 merchandise manufactured, produced, or mined by con-
15 victs or prisoners who are participating in any pilot project
16 approved as a foreign labor substitute by the Foreign
17 Labor Substitute Panel established under section 1762.”.

18 (b) FOREIGN LABOR SUBSTITUTE PANEL.—

19 (1) IN GENERAL.—Section 1762 of title 18,
20 United States Code, is amended to read as follows:

21 **“§ 1762. Foreign Labor Substitute Panel**

22 “(a) The Attorney General shall establish a panel to
23 be known as the Foreign Labor Substitute Panel (in this
24 section referred to as the ‘Panel’).

1 “(b) The Panel shall be composed of 8 members, each
2 of whom shall serve at the pleasure of the Attorney Gen-
3 eral, and who shall be appointed by the Attorney General
4 as follows:

5 “(1) 1 member who shall be an officer, em-
6 ployee, or other representative of the Department of
7 Commerce.

8 “(2) 1 member who shall be an officer, em-
9 ployee, or other representative of the Department of
10 Labor.

11 “(3) 1 member who shall be an officer, em-
12 ployee, or other representative of the International
13 Trade Commission.

14 “(4) 1 member who shall be an officer, em-
15 ployee, or other representative of the Small Business
16 Administration.

17 “(5) 2 members, each of whom shall be an offi-
18 cer, employee, or other representative of the business
19 community.

20 “(6) 2 members, each of whom shall be an offi-
21 cer, employee, or other representative of organized
22 labor.

23 “(c)(1) Members of the Panel shall not receive pay,
24 allowances, or benefits by reason of their service on the
25 Panel.

1 “(2) Each member shall receive travel expenses, in-
 2 cluding per diem in lieu of subsistence, in accordance with
 3 applicable provisions under subchapter I of chapter 57 of
 4 title 5, United States Code.

5 “(d) The Panel shall review proposals for pilot
 6 projects submitted to the Panel. For each proposal re-
 7 viewed, the Panel shall approve the pilot project as a for-
 8 eign labor substitute if, and only if, the Panel determines
 9 that the pilot project specified in the proposal satisfies
 10 each of the following requirements:

11 “(1) The pilot project is to be carried out by 1
 12 or more private United States companies.

13 “(2) The goods, wares, or merchandise pro-
 14 posed to be manufactured, produced, or mined whol-
 15 ly or in part by Federal convicts or prisoners under
 16 the pilot project would otherwise be manufactured,
 17 produced, or mined by foreign labor.

18 “(e) Any determination of the Panel under subsection
 19 (d) shall be made available to the public upon request.”.

20 (2) CHAPTER ANALYSIS.—The item relating to
 21 section 1762 in the chapter analysis for chapter 85
 22 of title 18, United States Code, is amended to read
 23 as follows:

“1762. Foreign Labor Substitute Panel.”.

1 **SEC. 5. RESTATEMENT AND IMPROVEMENT OF FEDERAL**
2 **PRISON INDUSTRIES PROGRAM.**

3 (a) IN GENERAL.—Sections 4121, 4122, and 4123
4 of title 18, United States Code, are amended to read as
5 follows:

6 **“§ 4121. Federal Prison Industries: status, mission,**
7 **and management**

8 “(a) STATUS.—Federal Prison Industries is a Gov-
9 ernment corporation. The headquarters of the corporation
10 is in the District of Columbia.

11 “(b) MISSION.—The mission of Federal Prison In-
12 dustries is to carry out industrial operations in accordance
13 with this chapter using eligible inmate workers.

14 “(c) BOARD OF DIRECTORS.—

15 “(1) IN GENERAL.—Federal Prison Industries
16 shall be administered by a board of 6 directors, ap-
17 pointed by the President to serve at the will of the
18 President without compensation.

19 “(2) REPRESENTATION.—The directors shall be
20 representatives of 1 of the following:

21 “(A) Industry.

22 “(B) Labor.

23 “(C) Agriculture.

24 “(D) Retailers and consumers.

25 “(E) The Secretary of Defense.

26 “(F) The Attorney General.

1 **“§ 4122. Federal Prison Industries: operating objec-**
2 **tives, standards, and requirements**

3 “(a) OPERATING OBJECTIVES.—Federal Prison In-
4 dustries shall carry out its industrial operations so as to
5 achieve each of the following objectives:

6 “(1) To increase public safety by reducing the
7 rate of recidivism by providing as many inmates as
8 possible with an opportunity to gain meaningful em-
9 ployment and vocational skills and improve their
10 chances of becoming productive and law-abiding citi-
11 zens after release from prison.

12 “(2) To minimize any adverse effects of the op-
13 erations on domestic companies or workers.

14 “(3) To provide meaningful employment and
15 vocational training for not less than 25 percent of el-
16 igible inmate workers.

17 “(4) To provide inmate workers with a source
18 of income with which they may facilitate their ability
19 to contribute to the discharge of their financial obli-
20 gations.

21 “(5) To generate sufficient revenue to fund
22 those operations.

23 “(6) To provide products and services that are
24 market quality and competitively priced.

25 “(b) PERFORMANCE STANDARDS.—Federal Prison
26 Industries shall carry out its industrial operations in com-

1 pliance with the following standards, as applicable to cor-
2 rectional industry programs:

3 “(1) Federal standards.

4 “(2) American Correctional Association stand-
5 ards.

6 “(3) International Labor Organization conven-
7 tions to which the United States is a signatory
8 party.

9 “(c) VOLUNTARINESS.—Federal Prison Industries
10 shall carry out its industrial operations only with inmate
11 workers who participate in those operations voluntarily.

12 “(d) WAGE RATES.—Unless otherwise provided by
13 law, each inmate worker participating in the industrial op-
14 erations of Federal Prison Industries shall be paid at a
15 wage rate prescribed by the Board of Directors of Federal
16 Prison Industries.

17 “(e) PROTECTION OF CERTAIN INFORMATION.—Fed-
18 eral Prison Industries shall carry out its industrial oper-
19 ations so as to ensure that, in the production of a product
20 or the performance of a service, inmate workers do not
21 have access to—

22 “(1) personal or financial information about
23 any citizen of the United States without prior notice
24 of the access being provided to that citizen, includ-
25 ing information relating to the citizen’s real prop-

1 erty, however described, unless that information is
2 publicly available; or

3 “(2) information that is classified in the na-
4 tional security or foreign policy interests of the
5 United States.

6 “(f) VOCATIONAL TRAINING.—At the end of each fis-
7 cal year, Federal Prison Industries shall, if the Board of
8 Directors determines that it is financially feasible to do
9 so, contribute not less than 20 percent of its net profits
10 for that fiscal year to provide for the vocational training
11 of inmates without regard to their industrial or other as-
12 signments.

13 “(g) EXEMPTION FROM PUBLIC CONTRACTING AND
14 PROCUREMENT LAWS.—Federal Prison Industries is ex-
15 empt from all laws and regulations governing public con-
16 tracting and the procurement of property or services by
17 an agency of the Federal Government.

18 “(h) LIABILITY.—The sole remedy for injury, death,
19 or loss resulting from negligence in the design or produc-
20 tion of a product, or in the performance of a service, by
21 Federal Prison Industries shall be as follows:

22 “(1) In the case of a person suffering an injury,
23 death, or loss in the performance of duties as an em-
24 ployee of the United States, chapter 81 of title 5, re-
25 lating to compensation for work-related injuries.

1 “(2) In all other cases, chapter 171 of title 28,
2 relating to tort claims.

3 **“§ 4123. Federal Prison Industries: transactions au-**
4 **thorized**

5 “(a) SALES OF CERTAIN COMMODITIES.—Federal
6 Prison Industries may carry out a program to manufac-
7 ture commodities specified in section 1761(b).

8 “(b) PARTICIPATION IN FOREIGN LABOR SUB-
9 STITUTE PILOT PROJECTS.—Subject to the requirements
10 in subsection (e), Federal Prison Industries may make
11 available inmate workers for participation in a pilot
12 project approved as a foreign labor substitute by the For-
13 eign Labor Substitute Panel, as referred to in section
14 1761(e).

15 “(c) PARTICIPATION IN BJA PILOT PROJECTS.—

16 “(1) IN GENERAL.—Subject to the require-
17 ments in subsection (e), Federal Prison Industries
18 may make available inmate workers for participation
19 in a pilot project designated by the Director of the
20 Bureau of Justice Assistance, as referred to in sec-
21 tion 1761(c).

22 “(2) WAGE RATE.—Each inmate worker par-
23 ticipating in a pilot project specified in paragraph
24 (1) shall be paid at a wage rate that complies with
25 section 1761(c).

1 “(d) REQUIREMENTS FOR CONTRACTS WITH PRI-
2 VATE COMPANIES.—In making available inmate workers
3 for participation in a pilot project under subsection (c) or
4 (d), Federal Prison Industries shall comply with the fol-
5 lowing requirements:

6 “(1) The inmate workers shall be made avail-
7 able through a contract between Federal Prison In-
8 dustries and a private United States company.

9 “(2) The contract shall—

10 “(A) require that the labor performed by
11 the inmate workers shall be carried out at a
12 Federal Prison Industries facility;

13 “(B) include a provision that prohibits the
14 company from displacing any of that company’s
15 existing domestic workers as a direct result of
16 the contract with Federal Prison Industries;
17 and

18 “(C) provide that any workforce reductions
19 carried out by the company affecting employees
20 performing work comparable to the work per-
21 formed pursuant to the contract shall first
22 apply to inmate workers employed pursuant to
23 the contract.

24 “(e) GOALS FOR CERTAIN BUSINESSES.—Federal
25 Prison Industries shall, in consultation with the Small

1 Business Administration, establish and strive to meet or
2 exceed realistic goals for entering into contracts with one
3 or more of the following:

4 “(1) A business concern that meets the applica-
5 ble size standards prescribed pursuant to section
6 3(a) of the Small Business Act (15 U.S.C. 632(a)).

7 “(2) A small business concern owned and con-
8 trolled by socially and economically disadvantaged
9 individuals, as that term is defined in section
10 8(d)(3)(C) of the Small Business Act (15 U.S.C.
11 637(d)(3)(C)).

12 “(f) JOB OPPORTUNITIES FOR BLIND AND SE-
13 VERELY DISABLED INDIVIDUALS.—Federal Prison Indus-
14 tries shall establish business partnerships with organiza-
15 tions representing domestic workers who are blind or se-
16 verely disabled, for the purpose of entering into contracts
17 with private United States companies that would create
18 job opportunities both for blind and severely disabled indi-
19 viduals and for Federal inmates.

20 “(g) DONATION OF PRODUCTS AND SERVICES.—The
21 Board of Directors may authorize—

22 “(1) the donation of a product or service of
23 Federal Prison Industries that is available for sale;
24 or

1 “(A) The overall success of the operations.

2 “(B) The effects that any reduction in the
3 purchases made under section 4124(a) has on
4 the viability of Federal Prison Industries.

5 “(C) The extent to which Federal Prison
6 Industries can successfully contract with private
7 companies without adversely affecting domestic
8 companies or workers.

9 “(D) The current status and effects of the
10 pilot program or programs described in section
11 4130.

12 “(2) VIEWS INCLUDED.—The Comptroller Gen-
13 eral shall ensure that, in the development of appro-
14 priate methodologies for the evaluation under para-
15 graph (1), the views of the Foreign Labor Substitute
16 Panel, private industry, organized labor, the Board
17 of Directors of Federal Prison Industries, and the
18 public are solicited.

19 “(3) REPORT.—Not later than March 31 of
20 each fiscal year, the Comptroller General shall sub-
21 mit to Congress a report on the evaluation of the op-
22 erations of Federal Prison Industries that was car-
23 ried out under paragraph (1) for the preceding fiscal
24 year. The report for a fiscal year shall, at a min-
25 imum, include the following:

1 “(A) The evaluation.

2 “(B) Any concerns raised about any ad-
3 verse effects on domestic companies or workers,
4 together with any actions taken in regard to the
5 concerns.

6 “(C) The extent to which Federal Prison
7 Industries maintained at least a 25 percent em-
8 ployment rate for eligible inmate workers.

9 “(D) The extent to which Federal Prison
10 Industries conducted its operations on a finan-
11 cially self-sustaining basis.

12 “(E) Any recommended legislation to im-
13 prove the administration of this chapter or the
14 effects of the administration of this chapter, in-
15 cluding any recommended legislation necessary
16 to authorize remedial actions regarding—

17 “(i) any conduct of the operations of
18 Federal Prison Industries in a manner
19 that adversely affects domestic companies
20 or workers (excluding the effects of normal
21 competitive business practices);

22 “(ii) any failure of Federal Prison In-
23 dustries to maintain at least a 25 percent
24 employment rate for eligible inmate work-
25 ers; or

1 “(iii) any failure of Federal Prison In-
2 dustries to conduct its operations on a fi-
3 nancially self-sustaining basis.

4 “(b) ANNUAL REPORT BY BOARD OF DIRECTORS.—

5 “(1) IN GENERAL.—The Board of Directors of
6 Federal Prison Industries shall, each year, report
7 under section 9106 of title 31, on the conduct of the
8 business of Federal Prison Industries and the condi-
9 tion of its funds during the preceding fiscal year.

10 “(2) MATTERS INCLUDED.—In addition to the
11 matters required by section 9106 of title 31, and
12 such other matters as the Board considers appro-
13 priate, each report for a fiscal year under paragraph
14 (1), shall include the following:

15 “(A) A statement of the amount of obliga-
16 tions issued under section 4129(a)(1) of this
17 title during that fiscal year.

18 “(B) An estimate of the amount of obliga-
19 tions that will be issued under that section dur-
20 ing the following fiscal year.

21 “(C) An analysis of—

22 “(i) the total sales by Federal Prison
23 Industries for each product and service
24 sold to Federal agencies and to private
25 United States companies;

1 “(ii) the total purchases by each Fed-
2 eral agency of each product and service;
3 and

4 “(iii) the Federal Prison Industries
5 share of the total Federal Government pur-
6 chases by product and service.

7 “(D) An analysis of the inmate workforce,
8 including—

9 “(i) the number of inmates employed;

10 “(ii) the number of inmates used to
11 produce products or perform services sold
12 to private United States companies;

13 “(iii) the number and percentage of
14 employed inmates, categorized by term of
15 incarceration; and

16 “(iv) the various hourly wages paid to
17 inmates engaged in the production of the
18 various products and the performance of
19 services authorized for production and sale
20 to Federal agencies and to private United
21 States companies.

22 “(E) Information concerning any employ-
23 ment obtained by former inmates upon release
24 that is useful in determining whether the em-
25 ployment provided by Federal Prison Industries

1 during incarceration provided those former in-
 2 mates with knowledge and skill in a trade or oc-
 3 cupation that enabled them to earn a livelihood
 4 upon release.

5 “(F) Information on the current status of
 6 the pilot program or programs described in sec-
 7 tion 4130.

8 “(3) AVAILABILITY TO PUBLIC.—The Board of
 9 Directors shall make available to the public each re-
 10 port under this subsection.”.

11 (b) CLERICAL AMENDMENT.—The item relating to
 12 section 4127 in the chapter analysis for chapter 307 of
 13 title 18, United States Code, is amended to read as fol-
 14 lows:

“4127. Periodic evaluation and reports.”.

15 **SEC. 7. RULES OF CONSTRUCTION AND DEFINITIONS.**

16 (a) IN GENERAL.—Chapter 307 of title 18, United
 17 States Code, as amended by section 4, is amended by add-
 18 ing at the end the following:

19 **“SEC. 4131. CONSTRUCTION OF PROVISIONS.**

20 “Nothing in this chapter shall be construed—

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

23 “(A) employment in a Federal Prison In-
 24 dustries facility; or

1 “(B) any particular wage, compensation,
2 or benefit on demand;

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

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

8 **“SEC. 4132. DEFINITIONS.**

9 “In this chapter:

10 “(1) The term ‘eligible inmate’ or ‘eligible in-
11 mate worker’ means a person who—

12 “(A) is committed to the custody of the
13 Bureau of Prisons pursuant to section 3621 of
14 this title;

15 “(B) is designated to a low, medium, or
16 high security facility operated by the Bureau of
17 Prisons; and

18 “(C) is physically and mentally able to
19 work.

20 “(2) The term ‘private United States company’
21 means a corporation, partnership, joint venture, or
22 sole proprietorship with a principal place of business
23 in the United States.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of chapter 307 of such title is amended
3 by adding at the end the following new items:

“Sec. 4131. Construction of provisions.

“Sec. 4132. Definitions.”.

4 **SEC. 8. CONFORMING AMENDMENT.**

5 Section 436 of title 18, United States Code, is
6 amended by striking “Whoever,” and inserting “Except
7 as otherwise provided in this title, whoever,”.

○