

H.R. 2965

**Hoekstra-Frank-Maloney-Sensenbrenner-Conyers-Coble
FEDERAL PRISON INDUSTRIES COMPETITION IN CONTRACTING ACT OF 2005**

**Proposal for Comprehensive Fundamental Reform
of Federal Prison Industries (FPI)**

What: Government-owned corporation of the Federal Bureau of Prisons

Number of Factories (2004): 102 located at 71 Correctional Facilities

Number of Inmate Workers: 19,337 (13%; other 87% assigned to institutional work)

Sales (2004): \$802.7 million (up from \$666.8 in 2003, which made FPI 49th among Top 100 Federal Contractors, ahead of UNISYS Corporation. FPI's sales growth, all through non-competitive contracts, has been formidable: \$546 million in 2000, \$339 million in FY 1990, up from \$117 million in 1980, and \$29 million in 1960.

Products and Services Offered:

FPI offers over 250 broad classes of products and services through its eight Business Groups: (1) Clothing and Textiles; (2) Electronics; (3) Fleet Management and Vehicular Components; (4) Furniture; (5) Graphics; (6) Industrial Products; (7) Recycled Electronics Products and Services; and (8) Services.

Proposed FPI expansions (both the authority to offer of a new class of products or to expand production of a currently authorized product) are proposed by FPI's career staff, subject to review and approval by FPI's Board of Directors under procedures that afford businesses (and their non-inmate workers) likely to be adversely affected with little-more than cosmetic opportunities to persuade the Board to reject or moderate the proposed expansion. Under current law and Board procedures, service firms and their workers are deprived of any opportunity to comment on proposed FPI expansions in services.

FPI claims authority to act as a subcontractor or supplier to private commercial firms performing as Federal contractors or subcontractors, without being able to cite any statutory or any other specific authority to do so.

Since February 1998, FPI has claimed to have authority to sell services in the commercial market without limitation.

FPI's Current "Mandatory Source" Status

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Under FPI's 1934 authorizing statute, if a Federal agency has a need for a product authorized for sale by FPI, it must make the award to FPI or obtain FPI's permission, a "waiver", to solicit competitive offers from the private sector.

FPI, rather than the buying agency, determines whether -

- FPI's offered product meets the mission needs of the buying agency;
- FPI's proposed delivery schedule meets the buying agency's needs; and
- FPI's quoted price is fair and reasonable.

[the only limitation is that FPI's offered price cannot exceed the highest offered price from commercial supplier for a comparable item, even if no purchases have been made at that price]

H.R. 2965 amends FPI's authorizing statute to -

- require FPI to compete for contracts to provide services as well as products;
- enhance public participation in the process by which FPI Board of Directors considers a proposed FPI expansion and extends the process to services;
- provide clear standards under which the Board authorizes FPI expansions;
- prohibit FPI from selling services in the commercial market by making explicit that the 65 year-old statutory prohibition on the commercial sale of the results of inmate labor applies to services as well as to products, reversing a flimsy 1998 "re-interpretation" of the statute's legislative history which granted unrestricted access for the first time in nearly 65 years;
- authorize FPI to produce products or provide services to be donated to meet public needs that will not be met by private-sector for-profit businesses;
- provide additional opportunities for vocational and remedial education opportunities to better prepare inmates for a successful return to society;
- enhance deductions from the wages of inmate workers to pay restitution to their crime victims, support the inmate's family, and help accumulate a "gate fund" to facilitate reintegration into society upon release; and
- fundamentally restructure the composition of FPI's Board of Directors, providing for a seven member comprised of representatives of business, labor, and individuals with special expertise in inmate rehabilitation programs, appointed by the President and subject to Senate confirmation.

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[As of: 8 August 05]

Supporting Organizations representing Business and Federal Managers

**American Apparel and Footwear Association
American Congress on Surveying and Mapping
American Furniture Manufacturers Association
American Society of Interior Designers
American Subcontractors Association
American Traffic Safety Services Association
Associated Builders and Contractors
Associated General Contractors of America
Business and Institutional Managers Association (BIFMA International)
Coalition for Government Procurement
Contract Services Association of America
Council on Federal Procurement of Architectural & Engineering Services
Federal Managers Association
Independent Office Products & Furniture Dealers Association
International Sign Association
Management Association for Private Photogrammetric Surveyors
National Association of Manufacturers
National Defense Industrial Association
National Federation of Independent Business
Professional Services Council
Small Business Legislative Council
Textile Rental Services Association
Uniform & Textile Service Association
U.S. Chamber of Commerce**

AND

the "**Federal Prison Industries Competition in Contracting Coalition**"
with members across the Nation, including individual companies hit by unfair competition from FPI,
local chambers of commerce, and other regional business associations.

WITH THE ACTIVE SUPPORT OF ORGANIZED LABOR:

**IAM (International Association of Machinists and Aerospace Workers)
UNITE-HERE! (Union of Needletrades, Industrial, and Textile Employees -
Hotel Employees and Restaurant Employees International Union)
UAW (United Automobile, Aerospace and Agricultural Implement Workers of America)
UFCW (United Food and Commercial Workers International Union)
IBT (International Brotherhood of Teamsters) and
CJA (United Brotherhood of Carpenters and Joiners of America)**

**AFL-CIO supported the bill in the 107th and 108th Congress,
but is unable to support the bill in the 109th Congress
due to AFGE (American Federation of Government Employees)
changing its position from one of neutrality to opposition
on behalf of its Council of Prison Locals representing Federal correctional officers**



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Pat Nolan
President

April 10, 2006

Hon. Peter Hoekstra
U.S. House of Representatives
Washington, DC 20515-2202

Dear Representative Hoekstra:

Prison Fellowship and Justice Fellowship are pleased to express out strong support for your legislation, H.R. 2965, the **Federal Prison Industries Competition in Contracting Act of 2005**, as amended, which would authorize a work-based employment preparation program for Federal inmates. We applaud you for your intrepid leadership and perseverance in working to bring fundamental reform to FPI.

Our ministries advocate work programs because they are a benefit to both society and inmates. Over 95% of the inmates who are currently incarcerated will be released back to our communities. Do we want them unskilled and angry after years of forced idleness?

Idleness is destructive, and it is imperative that inmates are trained in needed skills and learn good work habits to prepare them to lead healthy, productive lives after they are released. Prison work programs are an essential part of changing prisoners' lives so that they leave prison better than they enter. The provisions in HR 2965 will give inmates marketable skills that will help them make the transition to leading productive lives in the free world.

The apprenticeship program will allow private businesses to operate work-based employment preparation programs that will give inmates real world work experience, skills and habits that will help them make a successful re-entry into society.

We have consistently supported your efforts, spanning many years, to bring fundamental and comprehensive reform to Federal Prison Industries (FPI). The current FPI model leaves much to be desired in its ability to rehabilitate Federal inmates and effectively prepare them to find employment upon release. We, too, believe that FPI's current business model, with its reliance upon its mandatory source status, deprives



*"My people will live in peaceful communities
in secure homes and in tranquil places of rest"*

- Isaiah 32:8

Federal agencies from getting the best value for the taxpayer dollars being spent with FPI. Similarly, we agree that FPI's continuing mandatory source status unfortunately generates hostility toward work-based inmate employment preparation when non-inmate workers and the firms that employ them are not able to bid on Federal contracts funded with their tax dollars.

You have steadily improved the bill over several Congresses to attain our mutual goal: preparing inmates to make a successful return to society. Successful work preparation programs are not only beneficial to the individual inmate, but to all of society.

Your bill has long provided alternative inmate work opportunities in support of non-profit organizations. In the last Congress, you added the opportunity for additional inmate work opportunities through the performance of public service activities for local governments and school districts. Such authorizations have proven to provide new inmate work opportunities in several state systems, including those of Ohio and Michigan. The bill has long reflected modifications to provide Federal inmates with increased access to both remedial and vocational educational opportunities and other release preparation programs. The bill has long contained provisions that we recommended related to wages earned by Federal inmates, a statutory foundation for an inmate's "gate fund" and increased allocations to victim restitution in keeping with Restorative Justice.

We appreciate the cooperation we have consistently received from you personally, as well as from your staff, during the many years that we have been working to bring fundamental change to the work-based rehabilitative opportunities provided to Federal inmates by FPI. We are pleased to be able to now give our unequivocal support to H.R. 2965. We look forward to working with you to pass this important legislation.

Sincerely,



Pat Nolan

President, Justice Fellowship

H.R. 2965

Hoekstra-Frank-Maloney-Sensenbrenner-Conyers-Coble

FEDERAL PRISON INDUSTRIES COMPETITION IN CONTRACTING ACT OF 2005

[June 17, 2005]

S U M M A R Y

The **FEDERAL PRISON INDUSTRIES COMPETITION IN CONTRACTING ACT OF 2005** protects law-abiding workers, and the firms that employ them, from fundamentally unfair competition by Federal Prison Industries, Inc. (FPI), a Government-owned corporation. FPI's Depression-era statutory charter confers the status of a mandatory source of supply, under which FPI's captive Federal agency "customers" must buy FPI-offered products on a non-competitive basis, depriving private-sector firm of even the opportunity to bid on Federal contracts funded with their tax dollars and those of their non-inmate workers.

H. R 2865 is substantially identical to H.R. 1829 which passed the House in the 108th Congress by a rollcall vote of 350-65.

H.R. 2965 will bring fundamental and comprehensive reform by-

- **requiring FPI to simply compete for its Federal contracts** rather than being able to take them on a non-competitive basis;
- **protecting taxpayer dollars** and the operating budgets of FPI's currently captive Federal agency "customers" by giving Federal contracting officer access to same authorities to access the value of FPI's offered product or service, FPI's offered price, and to hold FPI to the same performance standards required of any private-sector firm that has won a Federal contract,
- **assuring the safety of prison guards** by authorizing the Attorney General to direct the sole-source award of a specific contract to FPI, based upon a finding by the warden of the correctional facility at which the contract's work is to be performed, that the inmate work is necessary "to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility."
- **providing a "soft landing" for FPI** through a "phase-out" of FPI's mandatory source status, a five-year transition period during which FPI can adjust to competing for its contract opportunities rather than simply taking them; and
- **providing alternative inmate work opportunities**, by --
 - authorizing FPI to produce products or provide services to be donated to meet public needs that will not be met by private-sector for-profit businesses;

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- providing a structured program through which FPI inmate workers may work in support of public service activities of non-profit organizations and units of local government or special purpose districts, such as a schoolboard; and
- providing statutory authority for a Federal prime contractor or subcontractor to use FPI as subcontractor or supplier, with appropriate safeguards against any “backdoor” entry into the commercial market.
- **enhancing educational and release preparation programs to better prepare inmates for a successful return to society**, through -
 - enhanced access to educational opportunities, including remedial and “hands-on” vocational programs, and a pilot program using cognitive ability assessment techniques to maximize benefits from programs;
 - an expanded pre-release employment assistance program; and
 - specifying the use of inmate wage deductions to increase amounts for crime-victim restitution, maintaining contact with family, and to accumulate a "gate fund" for use after release.

H.R. 2965 will also -

- restore the prohibition on the sale of inmate-furnished services in the commercial market by making explicit that the statutory prohibition on the commercial sale of the results of inmate labor applies to services as well as to products, reversing a 1998 FPI-initiated statutory “re-interpretation,” that changed 65 years of precedent and provided unlimited access of all inmate-furnished services to the commercial market bypassing statutory protections such as -
 - prohibiting the displacement of non-inmate workers to provide jobs for inmate workers, and
 - requiring that inmate workers be paid wages comparable to the market-driven wages paid non-inmate workers doing the same type of work;
- enhance substantially the opportunity for public participation in the process by which FPI is authorized to produce a new product (or expand its production of a currently authorized product), and extend the process to services;
- provide clear standards under which FPI’s Board of Directors may authorize an expansion of FPI’s production of a product or its furnishing of a service; and
- restructure fundamentally the interests represented on FPI’s Board of Directors, providing for an eleven-member Board primarily comprised of representatives of business and labor, with individuals with special expertise in inmate rehabilitation programs, all appointed by the President.

Changes Since the 108th Congress (Passed 350-65)

- The changes to the bill since it was voted on in the 108th Congress are the result of long hours trying to achieve a compromise with the Department of Justice on FPI and negotiation with Prison Fellowship.
- At the end of the day, Prison Fellowship endorsed the bill and we reached an impasse on two points with DOJ/FPI. There are a number of provisions included here at the specific request of DOJ that will benefit FPI and make the transition from mandatory source even easier for FPI.
- At the core of the modifications since the 108th is the authorization of a new Work-based Employment Preparation Program for Federal inmates. Under this program, private-sector firms can enter into agreements with FPI to prepare inmates for re-entry through real-world work coupled with structured apprenticeship-like training.
- To avoid unfair competition with non-inmate workers, and the firms that employ them, the Work-based Employment Training Program would be restricted to products or services for which there is no domestic production.
- To make the re-entry preparation program more viable, the Secretary of Labor, in consultation with the Attorney General, is directed to issue an inmate training wage under the authority of the Fair Labor Standards Act, which along with other similar special wage rates would be less than the Federal Minimum Wage.
- H.R.2965 includes a provision that would allow FPI to be listed as providing goods and services comparable to private-sector firms holding contracts under Multiple Award Schedules (MAS) Program administered by the General Services Administration, although Government corporations are ineligible to be a MAS Program contract holders.
- H.R.2965 also give FPI authority to file agency bid protests, if FPI feels the Federal buyer has not evaluated fairly FPI's offer. No other Government corporation has this authority.
- During the five-year period of transition, H.R.2965 permits the FPI Board of Directors to allow FPI to take more than a reasonable share of the market for an authorized product or service, if needed to maintain inmate employment.
- H.R.2965 "grandfathers" all of FPI's current agreements with private-sector firms that result in the introduction of inmate-furnished services in the commercial market. Thereafter, the firms can apply to participate in the Work-based Employment Preparation Program.
- H.R. 2965 grandfathers state or local prison industry programs to complete their existing agreements. Thereafter, they can continue their programs under the PIE (Prison Industry Enhancement) Program, which has provided entry into the commercial market for state or local prison-made products or inmate-furnished services, since 1979.
- H.R. 2965 allows the current FPI Board of Directors to immediately take actions to implement the bill by continuing the current Board's authority for one year or until a majority of the new Board has been appointed by the President, whichever is earlier.

Major Provisions of H.R. 2965

- HR 2965 would fundamentally alter the 1934 authorizing statute of Federal Prison Industries ("FPI"), requiring that FPI compete for its business opportunities and no longer be able to take them on a sole-source basis.
- Currently, all Federal agencies must purchase products offered by FPI, which is commonly referred to as FPI's "mandatory source" status. FPI, rather than the buying agency, determines if FPI's offered product and delivery schedule meets the mission needs of the buying agency. FPI, rather than the buying agency, determines the reasonableness of FPI's offered price.
- This bill would gradually phase out the exclusive right of FPI, deemed "mandatory source," to sell goods on an exclusively non-competitive basis to federal agencies by October 1, 2011.
- The bill also changes the manner in which FPI sells its products and services to Federal departments and agencies. During the phase-out period, FPI would be required to provide the agencies with a product that meets its needs at a "fair and reasonable price" in a timely manner.
- To assure that the loss of a contract by FPI does not endanger the safety of a Federal Correctional Institution (FCI), H.R.2965 permits the Attorney General to authorize a sole source contract award to prevent idleness "that could reasonably be expected to significantly endanger the safe and effective administration" of the FCI at which the work required by the contract is scheduled to be performed.
- H.R. 2965 improves the process by which FPI's Board of Directors considers proposals from FPI's staff to authorize production expansion. It increases the opportunities for public comment on the proposed expansions and assures that the Board has direct access to those comments. H.R. 2965 also modifies the structure of FPI's Board of Directors.
- The legislation includes provisions that expand, substantially, alternative rehabilitative opportunities for more Federal inmates to better prepare them for a successful return to society.
- The legislation provides increased opportunities for fundamental remedial education and hands-on vocational training and authorizes alternative inmate work opportunities in support of non-profit, community service organizations.
- The legislation creates a new Work-Based Employment Preparation Program under which private-sector firms can enter into agreements with FPI to prepare inmates for re-entry through real-world work coupled with structured apprenticeship-like training. The byproducts of this work based training programs, which may be sold in the commercial market, would be restricted to products or services for which there is no domestic production.

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Helping FPI adjust to competition and fostering safety of staff

The bill, which is substantively identical to H.R. 1829 which passed the House in the 108th Congress by a rollcall vote of 350-65, provides -

- a "phase-out" of FPI's status as a "mandatory source," a five-year transition period to help FPI to adjust to competing for its contracts, during which --
 - • agencies can continue to buy from FPI on a non-competitive basis if the buying agency (rather than FPI) determines that the FPI-offered product meets the agency's mission need, will be delivered when needed by the buying agency, and FPI's price approximates a fair market price;

- • use of the authority capped at a gradually reducing fixed percentage of FPI sales during the baseline year of FY 2002 -

- • 90 percent in FY 2007,
- • 85 percent in FY 2008,
- • 70 percent in FY 2009,
- • 55 percent in FY 2010, and
- • 40 percent in FY 2011;

while assuring that -

- • FPI cannot grow beyond its total sales in FY 2004, except through contracts won on a competitive basis; and

- statutory authority for a Government contractor or subcontractor to voluntarily use FPI as a subcontract supplier in the performance of a Government contract, with restrictions on "backdoor" entry into the commercial market.

Provisions to Protect Correctional Institutions and their Staff

- The bill retains the "anti-prison riot" provision from H.R. 1829, which -
 - • empowers the Attorney General to authorize a sole-source award of a contract to FPI,

- • when the warden of the correctional facility at which the contract's work is to be performed has determined that the work is needed to avoid inmate idleness that could "reasonably be expected to significantly endanger the safe and effective administration of such facility."

- Bill also requires the Attorney General to make an annual determination if the loss of inmate work opportunities is impairing institutional safety with the requirement to notify Congressional Committees on the Judiciary with recommendations for legislative action.

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Preparing inmates for a successful return to society

The bill, as introduced, is substantively identical to the bill in the 108th Congress (H.R. 1829), which passed the House by a rollcall vote of 350-65. The bill continues to reflect broad range of improvements that provide Federal inmates greater access to alternative rehabilitate opportunities that have been shown to better prepare a motivated inmate to get a job paying a living wage upon release. These provisions are principally derived from a Conyers-Frank amendment adopted during the Judiciary Committee's mark-up of the bill in the 107th Congress (H.R. 1577). These provisions were further enhanced during the Committee's consideration of H.R. 2965.

The bill authorizes -

- increased access to educational opportunities, including remedial and modern "hands-on" vocational programs, which have been shown to be more effective in reducing recidivism (33%) than traditional prison inmate work programs (24%);
- a demonstration program to provide federal inmates cognitive ability assessments shown to maximize the beneficial affects of release-preparation programs in state and local correctional settings;
- expanded access to job-hunting skills and pre-release job fairs, targeted to inmates within 24 months of release;
- increases the wages to paid to inmate workers, especially to those within 24 months of release, to increase their "gatefund" to foster successful reentry;
- providing a new priority for wage deductions, which would -
 - increase inmates ability to support and stay in touch with their families during their term of incarceration,
 - help accumulate a "gate fund" to help survive upon release, and
 - increase the amounts allocated to victim restitution;
- providing alternative inmate work opportunities by-
 - producing products for donation;
 - providing a structured program through which inmates may work in support of the public service activities of non-profit organizations and units of local government or special purpose districts, such as school districts;

As reported, the bill also includes a new provision establishing a structured **Work-based Employment Preparation Program** through which for-profit businesses may train inmates through the actual production of products or the furnishing of services not currently produced in the U.S. and authorizes the firm to sell the results in the commercial market.

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Conflicting Assertions from Federal Prison Industries (FPI) -

- FPI only provides its Federal agency customers “quality products”, when needed, at “competitive prices.”
- FPI will be unable to compete, if its “mandatory source” status is eliminated.

Competitive Advantages

Inmate Wage Rates	Less than Minimum Wage (currently \$.23 - \$1.15 per hour)
Inmate Worker Benefits	No contributions for Social Security or unemployment compensation No employee benefits paid
Factory Space	Furnished by host prison (During FY 2005, Federal Bureau of Prisons is planning to invest \$51.7 Million in appropriated construction funds for the improvement and construction on f FPI facilities.)(FPI Annual Report, FY04)
Equipment	Free access to broad range of equipment that is excess to other Federal agencies, including production equipment turned-in by contractors to DOD and other agencies.
Utilities	Furnished by host prison
Taxes	Exempt from Federal and state income tax, gross receipts tax, excise tax, and state and local sales taxes on purchases, as a Government-owned corporation.
Insurance	Claims for personal injury or property damage are paid by the U.S. Government.
Workplace Health and Safety Requirements	Self-certify compliance with Federal standards, such as OSHA's. Exempt from inspections or fines by various Federal, state or local enforcement agencies that regulate all private sector suppliers to the Federal Government.
Access to Capital	Statutory line-of-credit from U.S. Treasury for \$20 million at 0% interest, (5.5% only if the cash balance in FPI's Operating Fund in the Treasury is less than the loan balance), which is partially invested in Federal securities generating interest income to FPI.