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## H.R. 4100

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# 'Free market' slave labor for U.S. prisons

by Marianna Wertz

On June 19, Rep. Bill McCollum (R-Fla.) introduced "The Free Market Prison Industries Reform Act of 1998," H.R. 4100. The purpose of the bill is to eliminate all restrictions to the operation of private firms in America's Federal, and ultimately state, prisons, employing the 1.8 million prisoners for profit. The bill is still in the process of committee hearings.

To understand the full import of H.R. 4100, one must first know the history of prison industries in this country. Full-scale use of prisoners as a source of cheap labor began in the United States following the Civil War, when freed slaves were routinely imprisoned in the South and put to work on chain gangs and other convict labor programs. The horrendous conditions for these prisoners, including being worked to death, became so notorious that a movement to ban the practice grew nationwide. With the Great Depression of the 1930s, this prison reform movement intersected a growing

fight in the nascent trade union movement, to stop the use of prison labor from competing with increasingly desperate free labor in the nation.

The Hawes Cooper Act of 1929 made it illegal to produce goods in prisons for private sale across state lines. In 1935, the Sumner-Amherst Act made it illegal to transport goods produced by prisoners for sale in the private sector, and the Walsh-Healy Act banned the use of convict labor in Federal procurement contracts of more than \$10,000.

In 1934, the Federal Prison Industries program, also known by its trade name, UNICOR, was established, shortly after the creation of the Bureau of Prisons (BOP). FPI is a wholly owned government corporation, managed by the BOP. FPI's enabling statute included numerous features designed to allow Federal prisoners to work for a small salary, but to minimize FPI's impact on the private sector. With the mushrooming of the prison population, FPI has also grown. Today it markets about 150 types of products and services to Federal agencies, which, under current law, must purchase certain specified products from FPI as a "mandatory source preference." FPI has grown to net sales of about \$512 million annually (1997), with products including furniture, textiles, and electronic components, and services including data entry, engine repair, and furniture refinishing.

### The growing prison industry

A compromise with the restrictions on prison-made goods being sold through interstate commerce was first legislated in

## Who is Bill McCollum?

In Congress since 1980, McCollum is chairman of the House Judiciary Committee's Subcommittee on Crime, and has long been a spokesman for the really criminal elements in the Department of Justice and the George Bush apparatus. McCollum owes his seat in Congress to one of the dirtiest operations of the Justice Department permanent bureaucracy.



McCollum ran against incumbent Rep. Richard Kelly in the 1980 primary election. Veteran Florida newsmen say McCollum was initially laughed at because he was a political unknown, while Kelly was an established figure.

But when McCollum entered the election race, the FBI was already running an "Abscam" sting operation against Kelly. A young man who had been let off after being arrested for international cocaine smuggling, had been planted in Kelly's office as chief of staff, and had coordinated a 13-month campaign to make Kelly appear to commit some indictable offense. The operation was leaked to the press, Kelly was ruined, and McCollum was elected. Kelly was sent to prison for "accepting a bribe," after refusing the judge's offer to declare it a case of entrapment, if Kelly would admit to "corrupt intent."

McCollum then became a prominent Congressional defender of illegal government acts centered on the George Bush-Oliver North "Contras" program. And McCollum chose the spokesman for the Bush administration's Justice Department, Paul McNulty, as chief counsel for his Crime Subcommittee.

McCollum enjoys a rare 100% rating with the Christian Coalition and the National Security Index of the American Security Council; the AFL-CIO's Committee on Political Education gives him a 13% rating.

—Anton Chaitkin and Marianna Wertz

1979, through the Prison Industry Enhancement (PIE) Certification Program, under the Justice System Improvement Act. The PIE program is a foot-in-the-door to the kind of full introduction of private industry which McCollum's bill envisions. It authorizes correctional agencies to engage in the interstate shipment of prison-made goods for private business use if: 1) inmates are paid at a rate not less than that paid for work of a similar nature in the locality in which the work takes place; 2) prior to the initiation of a project, local unions are consulted; and 3) the employment of inmates does not result in the displacement of employed workers outside the prison, does not occur in occupations in which there is a surplus of labor in the locality, and does not impair existing contracts for services.

As is apparent from Edward Spannaus's report on the Virginia Correctional Enterprises program (see accompanying article), the PIE rules are ignored as often as they are honored.

Both UNICOR and PIE programs today are still relatively limited, with about 6% of the 1.6 million state prison inmates and 18% of the 110,000 Federal prisoners currently employed in prison industries. Total sales in 1994 in the PIE programs reached \$1.4 billion.

But the state prison industry programs have been expanding rapidly since 1990, with the Gingrich Congress and Conservative Revolution wins in state legislatures. Thirty states have established PIE programs, legalizing the contracting of prison labor to private companies that set up operations inside state prisons. A sample list of items being produced in these programs today was given by AFL-CIO Public Policy Director David A. Smith, in testimony opposing H.R. 4110:

- In the Oregon State Prison System, prisoners are producing Prison Blues, a line of jeans, T-shirts, and other recreational clothing, in direct competition with textile workers.
- In Texas, prisoners in a private prison owned by the Wackenhut Corp. make and fix electronic circuit boards for IBM.
- In Colorado, prisoners do telemarketing for AT&T.
- In South Carolina, Victoria's Secret lingerie and Jostens' graduation gowns are made by prisoners.
- In Wisconsin, the Fabray Glove Company reduced its private sector work force by about 85 employees and now employs about 140 Wisconsin state prisoners at two facilities.

### What H.R. 4110 will do

McCollum's bill will basically wipe out every existing limitation on the use of prison labor for private profit, and return the nation's prisoners to the status of convict labor after the Civil War. As McCollum said, in his press statement announcing the bill on June 19, "The main thrust of the bill is to encourage more private sector participation in the Federal prison industry program. Goods that are manufactured by these companies would be sold on the open market, and eventually all prison industry programs will be operated by private

industry and compete in the commercial marketplace" (emphasis in the original). He also noted that "expanding inmate employment in the states would save states billions of dollars in prison operations costs."

Other provisions of the bill, in McCollum's words, include:

"Phasing out the 'mandatory source preferences' which require the government to buy from Federal prison industries;

"Generating increased revenue for victim restitution, support to inmates' families, and the cost of incarcerating prisoners;

"Encouraging the BOP to award contracts to companies who bring back to the U.S. work lost to foreign countries;

"Lifting the Federal restrictions on the interstate transportation of goods made in state prison industry programs operated by private industry; and

"Requiring the Attorney General to submit a plan to transfer the operation of Federal prison industry programs to a non-government corporation."

McCollum noted that "the Attorney General would determine the amount of the compensation to be distributed as wages to inmates working in the industry"—i.e., it needn't be minimum wage. The prisoners will receive whatever is left over after payment goes to victim restitution, to inmates' families, and for "room and board."

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## Documentation

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### Testimony vs. H.R. 4100

*A June 25 hearing before the House Judiciary Committee's Subcommittee on Crime took testimony from representatives of organized labor and industry affected by competition with prison labor. The groups that testified endorsed H.R. 2758, a bipartisan bill known as the "Federal Prison Industries Competition in Contracting Act of 1997," introduced by Congressmen Hoekstra, Frank, Collins, and Maloney earlier this year, which would reform the FPI without introducing privatization.*

**David A. Smith**, director of the AFL-CIO's Public Policy Department, gave the testimony excerpted here, and endorsed H.R. 2758.

The issue before you reflects an unprecedented combination of circumstances: growing prison population, the costs associated with that growth, the interest of many employers in finding new sources of low-wage labor.

The AFL-CIO and its affiliated unions, nationally and in the states, have consistently supported efforts to provide training opportunities for prisoners to help in their rehabilita-

tion, and to reduce recidivism, but always with caution that prisoners should never be used in competition with free labor or to replace free labor.

Unfortunately, today, prison labor is increasingly being used in both the states and by the Federal government to perform work in both the private and public sectors ordinarily done by free workers. Twenty-one states have statutes that compel prisoners to work, and others enforce policies that penalize inmates who refuse to work. Prison laborers are generally denied coverage under minimum wage, unemployment compensation, workers' compensation, collective bargaining and other worker protection laws.

I should note that the use of inmate labor in this manner appears to violate Convention No. 105, adopted by the International Labor Organization in 1957 and ratified by the United States in 1991, which prohibits the use of forced prison labor for economic development. . . .

Prisoners are not just another market resource. Free market principles simply do not apply to a prison population that can be compelled to work for below-standard wages and without having to provide the working conditions or labor standards that private enterprise must. . . .

The proposed legislation calls for repeal of Section 4123 of Title 18, the provision of FPI's authorizing statute that calls for "maximum opportunities to acquire a knowledge and skill in trades and occupations which will provide them with a means of earning a livelihood upon release." Incredibly, this bill would also undercut the rehabilitative benefits of inmate work opportunities when more opportunities are needed.

### Textile industry devastated

**Larry Martin**, *president of the American Apparel Manufacturers Association (AAMA), the central trade association for American companies that manufacture clothing, in direct competition with the FPI system, also opposed H.R. 4100 and endorsed H.R. 2758, in the testimony excerpted here:*

AAMA is the central trade association for American companies which manufacture clothing. . . . Our Government Contracts committee is comprised of about 50 companies, all of which have vital interests in your deliberations and in the future of Prison Industries.

As we have pointed out before, these government contracting companies have few options. They have little or no experience in the already overcrowded commercial marketplace. Half of that market already has been taken by imports, while the other half is contested by about 12,000 domestic firms. Moreover, the apparel industry in the United States is shrinking dramatically. In the last five years, we have lost 220,000 jobs.

Also, we cannot overemphasize the importance of maintaining a warm industrial base in the United States. If the companies which manufacture for the Department of Defense go out of business, who is going to expand production in the event of a sudden military buildup, such as we witnessed

during the Gulf War? We seriously doubt that FPI will ever have that capability. . . .

Moreover, if FPI is to compete in the commercial marketplace, it should do so on even terms. It should be subject to minimum wage laws and to a true accounting of its overhead costs.

## Private prisons are U.S. 'growth industry'

by Marianna Wertz

In addition to privately run industries within state and Federal prisons, the newest and undoubtedly most dangerous innovation in the American prison system is the booming private prison business. More than 150 prisons and jails are being entirely run today by private companies—18 of them at last count—whose entire existence is devoted to making a profit by running a correctional facility.

Private prisons are one of the biggest "growth spots" on Wall Street. The *Public Investor* newsletter says that it is "so bullish" on this sector for one reason: "the possibilities of high growth year after year." Prudential Securities puts it another way: The only "drag on profits" for private prisons is "low occupancy."

In other words, as long as crime continues to rise, or as long as our nation continues to mete out long prison sentences, private prisons will be making a nice profit for their investors.

Therein lies the fundamental human rights question: Since the ultimate human right is freedom, which is guaranteed by our Constitution, should Americans be incarcerated in prisons under the operation of private companies whose major concern is to make a profit, in which they can only succeed if their wards are kept in prison? Should those who have a private interest in incarcerating people, be in charge of their incarceration?

As *EIR* has documented (see April 10, 1998; March 6, 1998; Oct. 17, 1997; Sept. 5, 1997), the levels of murder, rape, abuse, and escape are higher per capita in private prisons than in government-run facilities, and, under existing law in most states, it is the taxpayer who ends up paying for the damages wrought by the private prison company. In addition, the only real reason these companies exist is their claim to save money for states and municipalities. But, as **Figure 1** demonstrates, even this claim is not true.

Nevertheless, privately run prisons today manage approximately 5% of the nation's prisons and jails, with 105,000 beds. They are projected to grow to more than 320,000 beds by 2002.