

BILL ANALYSIS

C.S.H.B. 1914
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Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Prison Industry Enhancement (PIE) program, administered by the U.S. Department of Justice's Bureau of Justice Assistance, was established in 1979 to provide prisoners with employment opportunities, skills development, and workplace experience. Texas has been a participant in PIE programs since the bureau awarded Texas its first PIE contract in 1993. PIE programs, also known as cost accounting centers, are currently regulated through the Texas Private Sector Industries Oversight Authority. PIE programs are partnerships between a private company desiring to use incarcerated labor and the Texas Department of Criminal Justice, the Texas Youth Commission, or county correctional facilities. Under this program, participating inmates apply their salaries to a combination of the cost of their incarceration, restitution to crime victims, income and social security taxes, and dependent support. The program has operated relatively smoothly through the years; however, there has recently been public scrutiny of the program revealing the need to rewrite certain provisions of the law.

C.S.H.B. 1914 abolishes the Texas Private Sector Industries Oversight Authority and transfers its duties to the Texas Board of Criminal Justice. The bill creates new requirements for entities requesting to participate with the state in private sector prison industries programs. Safeguards are put in place to prevent prison labor from overly competing with other existing jobs in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority previously granted to the Private Sector Prison Industries Oversight Authority is transferred to the Texas Board of Criminal Justice in SECTIONS 11, 12, 13, 15, and 17 of this bill and that rulemaking authority is expressly granted to the Texas Board of Criminal Justice in SECTIONS 16 and 18 and to the Texas Workforce Commission in SECTIONS 19 and 22 of this bill.

ANALYSIS

C.S.H.B. 1914 amends the Government Code to abolish the Private Sector Prison Industries Oversight Authority on the date on which the Texas Board of Criminal Justice is designated as the certificate holder for Texas by the Bureau of Justice Assistance and makes conforming changes. The bill transfers all powers, duties, obligations, rights, contracts, appropriations, records, real or personal property, and personnel of the authority to the Texas Board of Criminal Justice on that date and provides for the continuing effect of a rule, policy, procedure, or decision of the authority until repealed or otherwise superseded by an act of the board. The bill specifies that a reference in law to the Private Sector Prison Industries Oversight Authority means the Texas Board of Criminal Justice on or after that date.

C.S.H.B. 1914 requires the board to approve, certify, and supervise private sector prison industries programs operated by the Texas Department of Criminal Justice (TDCJ), the Texas Youth Commission, and county correctional facilities in accordance with state law relating to private sector prison industries programs. The bill specifies that such requirement on the board does not authorize the board to direct the general operations of or to govern the Texas Youth

Commission or county correctional facilities in any manner not specifically described by the bill. The bill includes among the persons who are ineligible for appointment as a board member a person who owns or controls or whose spouse owns or controls directly or indirectly more than a 10 percent interest in a private sector prison industries program business or other organization with which TDCJ contracts and a person who owns, controls directly or indirectly, or is employed by or whose spouse owns, controls, or is employed by a business entity or other organization with which TDCJ contracts concerning a private sector prison industries program approved and certified by the board. The bill includes among those prohibited from being a board member or a salaried TDCJ employee a person who is an officer, employee, or paid consultant or whose spouse is an officer, employee, or paid consultant of a Texas trade association in the field of private sector prison industries. The bill expands the training program requirements for members of the board to include information regarding the legislative history of provisions relating to the private sector prison industries programs, the history and operation of programs under those provisions, and any applicable federal law concerning the operation or certification of a program under those provisions. The bill sets forth a temporary provision, set to expire September 1, 2011, requiring a person who is a member of the board on September 1, 2009, to complete the additional training requirements not later than January 1, 2010.

C.S.H.B. 1914 authorizes the board to use board and TDCJ employees to provide clerical and technical support for private sector prison industries programs and requires the board to ensure that the programs are operated in a manner that is designed to avoid the loss of existing jobs for Texas employees who are not incarcerated or imprisoned. The bill specifies that provisions relating to private sector prison industries programs do not authorize the board to direct the general operations of or to govern the Texas Youth Commission or county correctional facilities in any manner not specifically described in the bill.

C.S.H.B. 1914 revises provisions on the private sector prison industry account to provide that money in the account may be appropriated only to recruit corporations to participate as private sector industries programs. The bill removes language providing that the purpose of the creation of the private sector prison industry account is to construct more facilities and increase the number of participants in the program and authorizing money in the account to be appropriated to construct work facilities. The bill requires the comptroller of public accounts to transfer an equivalent amount from the general revenue fund to the private sector prison industry account until the balance in the account is \$1 million, rather than \$2 million, on each certification by TDCJ that an amount has been deposited to the credit of the general revenue fund from participants' wage deductions. The bill prohibits the balance of the account from exceeding \$1 million and makes a conforming change to that prohibition. The bill includes the determination, by rule, of the disbursement of deductions taken from wages received by a participant in a private sector prison industries program among the board's duties.

C.S.H.B. 1914 prohibits a governmental entity from entering into a contract or renewing a contract with an employer for a private sector prison industries program if the board determines that the contract has negatively affected or would negatively affect any Texas employer, including through the loss of existing jobs provided by the employer to Texas employees who are not incarcerated or imprisoned. The bill requires the board to adopt rules that establish a procedure to be used in making such a determination and requires this procedure to allow an aggrieved Texas employer to submit a sworn statement to the board alleging that the employer has been or would be negatively affected by the contract that is to be entered into or renewed. The bill establishes that a contract does not negatively affect an employer if the only negative effect alleged in a sworn statement by the employer is the loss of existing jobs that, at the time the sworn statement is submitted to the board, are performed by workers in a foreign country.

C.S.H.B. 1914 requires a governmental entity, not later than the 60th day before the entity intends to enter into a contract with an employer for a private sector prison industries program, to notify the state senator and state representative in whose district the program covered by the contract is or will be located; the executive heads of the Texas AFL-CIO, the Texas Association

of Manufacturers, the National Federation of Independent Business/Texas, the Texas Association of Business, and the Texas Association of Workforce Boards; the chamber of commerce in any municipality or county in the which the program covered by the contract is or will be located; and any employer that employs persons in Texas who are not incarcerated or imprisoned and who, as determined under rules adopted by the Texas Workforce Commission, perform work in the same job descriptions as participants in the program covered by the contract or who are otherwise engaged in the manufacture of the same or a substantially similar product as will be manufactured under the contract. The bill requires the notice to include a specific description, in plain language and in an easily readable and understandable format, of any product that will be manufactured under the contract. The bill authorizes a governmental entity that provides the notice of the contract to charge the employer with whom the entity intends to enter into the contract, for the cost of providing that notice.

C.S.H.B. 1914 reduces from 5,000 to 750 the maximum number of participants the board is authorized to allow in the private sector prison industries program at any one time, and prohibits the board from authorizing the operation of more than 11 cost accounting centers at any one time. The bill authorizes the board to allow more than 750 participants in the program at one time on a temporary basis if an employer that operates a private sector prison industries program requests in writing that the board temporarily allow more than 750 participants in the program and the board determines that there is good cause to temporarily allow more than 750 participants in the program.

C.S.H.B. 1914 requires the board to adopt rules requiring a contract entered into by a governmental entity concerning a private sector prison industries program to include specific job descriptions for any work that will be performed by participants under the contract, to include a specific description, in plain language and in easily readable and understandable format, of any product that will be manufactured under the contract, and to charge a private sector prison industries employer or other participating entity the fair market value for the lease of any property owned by the governmental entity and leased to the employer or entity under the contract. The bill defines "fair market value" for purposes of this provision.

C.S.H.B. 1914 requires the board to make the following information available on any publicly accessible website that is maintained by the board and contains any information concerning the private sector prison industries programs: a copy of each current contract entered into by a governmental entity; a list of hourly wages paid to participants under each contract; and minutes of any meeting of the board in which the board discusses or takes action concerning one more private sector prison industries programs or the board's powers and duties as they relate to the programs. The bill repeals a requirement that TDCJ or the Texas Correctional Industries on behalf of TDCJ prepare and issue a certification that a corporation requires to establish eligibility for the franchise tax credit for wages paid to work program participants or employees who were work program participants and repeals provisions relating to the operations and procedures of the private sector prison industries oversight authority. The bill defines "governmental entity." The bill makes numerous conforming and nonsubstantive changes.

C.S.H.B. 1914 amends the Labor Code to require the Texas Workforce Commission to adopt rules necessary to implement the process for a governmental entity providing notice to employers that employ certain persons as soon as practicable after the effective date of the bill and not later than January 1, 2010.

C.S.H.B. 1914 repeals the following sections in the Government Code:

- Section 497.009
- Section 497.052
- Section 497.0521
- Section 497.0522
- Section 497.0523

- Section 497.0524
- Section 497.0525
- Section 497.0526
- Section 497.053
- Section 497.054
- Section 497.055

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1914 adds provisions not in the original specifying the date on which the Private Sector Prison Industries Oversight Board is abolished and on which other actions relating to the abolishment occur. The substitute removes a provision from the original transferring all funds in the private sector prison industries expansion account to the office of the attorney general and authorizing these funds to be used only to compensate victims of crime under the Crime Victims' Compensation Act. The substitute adds provisions not in the original specifying that the provisions relating to the Texas Board of Criminal Justice duties in operating and managing private sector prison industries programs do not authorize the board to direct the general operations of or to govern the Texas Youth Commission or county correctional facilities in any manner not specifically described under the bill. The substitute adds provisions not in the original relating to additional training program requirements for a person who is appointed to the board. The substitute adds provisions not in the original requiring the comptroller to transfer a certain amount from the general revenue fund to the private sector prison industry account until the balance in the account is \$1 million, prohibiting the balance of the account from exceeding \$1 million, and removing constructing more facilities and increasing the number of program participants as purposes for the account.

C.S.H.B. 1914 differs from the original by changing the deadline by which a governmental entity is required to provide notice regarding a contract to certain state legislators, from the 30th day, as in the original, to the 60th day, before the governmental entity intends to enter into a contract, rather than enter into or renew a contract, with an employer for a private sector prison industries program. The substitute adds the executive heads of certain state and federal business and labor organizations, the chamber of commerce in applicable municipalities or counties, and certain employers to the list of entities to which the governmental entity is required to send such notice by the deadline. The substitute adds a provision not in the original requiring the Texas Workforce Commission to adopt rules relating to the requirement of a governmental entity to provide notice to any employer that employs persons, who are not incarcerated or imprisoned, who perform work in the same job description or manufacture the same or similar product as participants in the program covered by the contract. The substitute adds a provision not in the original authorizing a governmental entity to charge the employer with whom the entity is entering into the contract for the cost of providing the notice.

C.S.H.B. 1914, in a provision that currently sets the number of participants the board is authorized to allow in the private sector prison industries program at 5,000, changes the number of allowed participants to 750, rather than 400 as in the original. The substitute adds a provision not in the original authorizing the board to allow more than 750 participants in the program at one time on a temporary basis if certain conditions exist.

C.S.H.B. 1914 differs from the original by requiring the board to make available on any publicly accessible website that is maintained by the board and that contains any information concerning the private sector prison industries programs a list of hourly wages, rather than a list of wages, as in the original, paid to participants under each contract entered into by a governmental entity.

C.S.H.B. 1914 differs from the original by omitting the repeal of Section 497.056, Government Code, relating to the private sector prison industries account, from the list of repealed sections in the original.

C.S.H.B. 1914 differs from the original in a transition provision by applying provisions relating to the limitation on and the notice concerning certain contracts only to a contract entered into or renewed in connection with a private sector prison industries program that is certified on or after the effective date of the bill or a private sector prison industries program that was certified before the effective date but is not in operation on the effective date, whereas the original applies those provisions only to a contract that is entered into or renewed on or after the effective date of the bill. The substitute adds transition provisions not in the original relating to the board's duty to ensure that private sector prison industries programs are operated in a manner designed to avoid the loss of existing jobs and relating to a rule adopted by the board regarding contract requirements.