

By: McReynolds, Christian

H.B. No. 1914

A BILL TO BE ENTITLED

AN ACT

relating to abolishing the Private Sector Prison Industries Oversight Authority and to the certification and operation of private sector prison industries programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 492, Government Code, is amended by adding Section 492.0011 to read as follows:

Sec. 492.0011. PRIVATE SECTOR PRISON INDUSTRIES PROGRAM MANAGEMENT. (a) The board shall approve, certify, and supervise private sector prison industries programs operated by the department, the Texas Youth Commission, and county correctional facilities in accordance with Subchapter C, Chapter 497.

(b) This section 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 Subsection (a).

SECTION 2. Sections 492.003(a) and (c), Government Code, are amended to read as follows:

(a) Each member of the board must be representative of the general public. A person is not eligible for appointment as a member if the person or the person's spouse:

(1) is a person, other than a judge participating in the management of a community supervision and corrections department, who is employed by or participates in the management of

1 a business entity or other organization regulated by the department
2 or receiving funds from the department;

3 (2) owns, or controls directly or indirectly, more
4 than a 10 percent interest in a business entity or other
5 organization regulated by the department or receiving funds from
6 the department, including an entity or organization with which the
7 department contracts under Subchapter C, Chapter 497; [ex]

8 (3) uses or receives a substantial amount of tangible
9 goods, services, or funds from the department, other than
10 compensation or reimbursement authorized by law for board
11 membership, attendance, or expenses; or

12 (4) owns, controls directly or indirectly, or is
13 employed by a business entity or other organization with which the
14 department contracts concerning a private sector prison industries
15 program approved and certified by the board under Subchapter C,
16 Chapter 497.

17 (c) A person may not be a member of the board and may not be a
18 department employee employed in a "bona fide executive,
19 administrative, or professional capacity," as that phrase is used
20 for purposes of establishing an exemption to the overtime
21 provisions of the federal Fair Labor Standards Act of 1938 (29
22 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

23 (1) the person is an officer, employee, or paid
24 consultant of a Texas trade association in the field of criminal
25 justice or private sector prison industries; or

26 (2) the person's spouse is an officer, manager, or paid
27 consultant of a Texas trade association in the field of criminal

1 justice or private sector prison industries.

2 SECTION 3. Section 492.0031, Government Code, is amended by
3 adding Subsections (b-1) and (d) to read as follows:

4 (b-1) In addition to the information described by
5 Subsection (b), the training program must provide the person with
6 information regarding:

7 (1) the legislative history of Subchapter C, Chapter
8 497;

9 (2) the history and operation of programs under that
10 subchapter; and

11 (3) any applicable federal law concerning the
12 operation or certification of a program under that subchapter.

13 (d) A person who is a member of the board on September 1,
14 2009, shall complete the training described by Subsection (b-1) not
15 later than January 1, 2010. This subsection expires September 1,
16 2011.

17 SECTION 4. Section 497.004(a), Government Code, is amended
18 to read as follows:

19 (a) The board may develop by rule and the department may
20 administer an incentive pay scale for work program participants
21 consistent with rules adopted by the board [~~Private Sector Prison~~
22 ~~Industries Oversight Authority~~] under Subchapter C. Prison
23 industries may be financed through contributions donated for this
24 purpose by private businesses contracting with the department. The
25 department shall apportion pay earned by a work program participant
26 in the same manner as is required by rules adopted by the board
27 [~~Private Sector Prison Industries Oversight Authority~~] under

1 Section 497.0581.

2 SECTION 5. Section 497.006(c), Government Code, is amended
3 to read as follows:

4 (c) A contract for the provision of services under this
5 section must:

6 (1) be certified by the board [~~Private Sector Prison~~
7 ~~Industries Oversight Authority~~] as complying with all requirements
8 of the Private Sector/Prison Industry Enhancement Certification
9 Program operated by the Bureau of Justice Assistance and authorized
10 by 18 U.S.C. Section 1761, other than a requirement relating to the
11 payment of prevailing wages, so long as the contract requires
12 payment of not less than the federal minimum wage;

13 (2) be certified by the board [~~authority~~], under rules
14 adopted under Section 497.059, that the contract would not cause
15 the loss of existing jobs of a specific type provided by any
16 employer [~~the contracting party~~] in this state; and

17 (3) be approved by the board.

18 SECTION 6. The heading to Subchapter C, Chapter 497,
19 Government Code, is amended to read as follows:

20 SUBCHAPTER C. PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS [~~OVERSIGHT~~
21 ~~AUTHORITY~~]

22 SECTION 7. Section 497.051, Government Code, is amended to
23 read as follows:

24 Sec. 497.051. PURPOSE; DEFINITIONS [~~DEFINITION~~]. (a) The
25 board shall [~~Private Sector Prison Industries Oversight Authority~~
26 ~~is created to~~] approve, certify, and supervise [~~oversee~~] the
27 operation of private sector prison industries programs in the

department, the Texas Youth Commission, and in county correctional facilities in compliance with the federal prison enhancement certification program established under 18 U.S.C. Section 1761. The board may use board and department employees to ~~[executive director shall]~~ provide the ~~[authority with]~~ clerical and technical support ~~[as]~~ necessary for the board ~~[authority]~~ to perform the board's duties under ~~[imposed on the authority by]~~ this subchapter and shall ensure that the department implements the policies adopted by the board ~~[authority]~~ that relate to the operation of private sector prison industries programs.

(a-1) The board shall ensure that private sector prison industries programs are operated under this subchapter in a manner that is designed to avoid the loss of existing jobs for employees in this state who are not incarcerated or imprisoned.

(b) In this subchapter:

(1) "Governmental entity" means the department, the Texas Youth Commission, and any county that operates a private sector prison industries program under this subchapter.
~~["Authority" means the Private Sector Prison Industries Oversight Authority.]~~

(2) "Participant" means a participant in a private sector prison industries program.

(c) This subchapter 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 Subsection (a).

SECTION 8. Section 497.0527, Government Code, is amended to

1 read as follows:

2 Sec. 497.0527. COMPLAINTS. (a) The board [~~authority~~]
3 shall maintain a file on each written complaint filed with the board
4 in relation to a private sector prison industries program
5 [~~authority~~]. The file must include:

6 (1) the name of the person who filed the complaint;

7 (2) the date the complaint is received by the board
8 [~~authority~~];

9 (3) the subject matter of the complaint;

10 (4) the name of each person contacted in relation to
11 the complaint;

12 (5) a summary of the results of the review or
13 investigation of the complaint; and

14 (6) an explanation of the reason the file was closed,
15 if the board [~~authority~~] closed the file without taking action
16 other than to investigate the complaint.

17 (b) The board [~~authority~~] shall provide to the person filing
18 the complaint and to each person who is a subject of the complaint a
19 copy of the board's [~~authority's~~] policies and procedures relating
20 to complaint investigation and resolution.

21 (c) The board [~~authority~~], at least quarterly until final
22 disposition of the complaint, shall notify the person filing the
23 complaint and each person who is a subject of the complaint of the
24 status of the investigation, unless the notice would jeopardize an
25 undercover investigation.

26 SECTION 9. The heading to Section 497.056, Government Code,
27 is amended to read as follows:

Sec. 497.056. PRIVATE SECTOR PRISON INDUSTRIES ~~[EXPANSION]~~
ACCOUNT.

SECTION 10. Sections 497.056(b) and (c), Government Code,
are amended to read as follows:

(b) The ~~[To construct more facilities and increase the
number of participants, the]~~ private sector prison industry
~~[expansion]~~ account is created as an account in the general revenue
fund. Money in the account may be appropriated only to:

(1) [construct work facilities,] recruit corporations
to participate as private sector industries programs;

(2) [—and] pay costs of the board ~~[authority]~~ and
department in implementing this subchapter, including the cost to
the department in reimbursing board ~~[authority]~~ members ~~[and the
employer liaison]~~ for expenses; and

(3) pay costs associated with the storage of evidence:

(A) containing biological material and used in
the prosecution and conviction of an offense; or

(B) of a sexual assault or other sex offense.

(c) On each certification by the department that an amount
has been deposited to the credit of the general revenue fund from
deductions from participants' wages under Section 497.0581, the
comptroller shall transfer an equivalent amount from the general
revenue fund to the private sector prison industry ~~[expansion]~~
account, until the balance in the account is \$1 ~~[\$2]~~ million. The
balance of the account may not exceed \$1 million ~~[On a certification
occurring when the balance in the account is more than \$2 million,
the comptroller shall transfer to the account an amount equal to~~

1 ~~one-half of the amount deposited to the credit of the general~~
2 ~~revenue fund from deductions from participants' wages].~~

3 SECTION 11. Section 497.057, Government Code, is amended to
4 read as follows:

5 Sec. 497.057. RULES. The board ~~[authority]~~ shall adopt
6 rules as necessary to ensure that the private sector prison
7 industries program authorized by this subchapter is in compliance
8 with the federal prison enhancement certification program
9 established under 18 U.S.C. Section 1761.

10 SECTION 12. Section 497.058(a), Government Code, is amended
11 to read as follows:

12 (a) The board ~~[authority]~~ by rule shall require that
13 participants at each private sector prison industries program be
14 paid not less than the prison industry enhancement certification
15 program (PIECP) wage as computed by the Texas Workforce Commission,
16 except that:

17 (1) the board ~~[authority]~~ may permit employers to pay
18 a participant the federal minimum wage for the two-month period
19 beginning on the date participation begins; and

20 (2) the minimum wage for participants committed to
21 ~~[under the supervision of]~~ the Texas Youth Commission, because of
22 the age of the participants and the extensive training component of
23 their employment, is the federal minimum wage.

24 SECTION 13. Section 497.0581, Government Code, is amended
25 to read as follows:

26 Sec. 497.0581. PARTICIPANT CONTRIBUTIONS; ASSISTANCE
27 ACCOUNT. (a) The board ~~[authority]~~ by rule shall determine the

1 amount of deductions to be taken from wages received by the
 2 participant under this subchapter and the disbursement of those
 3 deductions. The board [~~authority~~] may establish deductions for
 4 participants committed to [~~under the supervision of~~] the Texas
 5 Youth Commission that are different than deductions established for
 6 other participants in the program. In determining the amount of
 7 deductions under this section, the board [~~authority~~] shall ensure
 8 that the deductions do not place the private sector prison
 9 industries programs in the department in noncompliance with the
 10 federal prison enhancement certification program established under
 11 18 U.S.C. Section 1761.

12 (b) The private sector prison industry crime victims
 13 assistance account is created as an account in the general revenue
 14 fund. Money in the account may be appropriated only to the board
 15 [~~authority~~] for the purpose of aiding victims of crime, under rules
 16 adopted by the board [~~authority~~].

17 SECTION 14. The heading to Section 497.059, Government
 18 Code, is amended to read as follows:

19 Sec. 497.059. LIMITING IMPACT OF CERTIFICATION ON
 20 NON-PRISON INDUSTRY.

21 SECTION 15. Sections 497.059(a) and (b), Government Code,
 22 are amended to read as follows:

23 (a) The board [~~authority~~] may not grant initial
 24 certification to a private sector prison industries program if the
 25 board [~~authority~~] determines that the operation of the program
 26 would result in the loss of existing jobs provided by any [~~the~~]
 27 employer in this state.

1 (b) The board [~~authority~~] shall adopt rules to determine
2 whether a program would cause the loss of existing jobs of a
3 specific type provided by an [~~the~~] employer in this state.

4 SECTION 16. Subchapter C, Chapter 497, Government Code, is
5 amended by adding Sections 497.0595 and 497.0596 to read as
6 follows:

7 Sec. 497.0595. LIMITATION ON CONTRACTS. (a) A
8 governmental entity may not enter into a contract or renew a
9 contract with an employer for a private sector prison industries
10 program under this subchapter if the board determines that the
11 contract has negatively affected or would negatively affect any
12 employer in this state, including through the loss of existing jobs
13 provided by the employer to employees in this state who are not
14 incarcerated or imprisoned.

15 (b) The board shall adopt rules that establish a procedure
16 to be used in making the determination described by Subsection (a).
17 The procedure must allow an aggrieved employer in this state to
18 submit a sworn statement to the board alleging that the employer has
19 been or would be negatively affected by the contract to be entered
20 into or renewed.

21 (c) For the purposes of this section, a contract does not
22 negatively affect an employer if the only negative effect alleged
23 in a sworn statement by the employer is the loss of existing jobs
24 that, at the time the sworn statement is submitted to the board, are
25 performed by workers in a foreign country.

26 Sec. 497.0596. NOTICE CONCERNING CERTAIN CONTRACTS. (a)
27 Not later than the 60th day before the date a governmental entity

1 intends to enter into a contract with an employer for a private
2 sector prison industries program under this subchapter, the
3 governmental entity shall notify:

4 (1) the state senator and state representative in
5 whose district the program covered by the contract is or will be
6 located;

7 (2) the executive heads of the Texas AFL-CIO, the
8 Texas Association of Manufacturers, the National Federation of
9 Independent Business/Texas, the Texas Association of Business, and
10 the Texas Association of Workforce Boards;

11 (3) the chamber of commerce in any municipality or
12 county in which the program covered by the contract is or will be
13 located; and

14 (4) any employer that employs persons in this state
15 who are not incarcerated or imprisoned and who, as determined under
16 rules adopted by the Texas Workforce Commission to implement this
17 subdivision:

18 (A) perform work in the same job descriptions as
19 participants in the program covered by the contract will perform;
20 or

21 (B) are otherwise engaged in the manufacture of
22 the same or a substantially similar product as will be manufactured
23 under the contract.

24 (b) The notice required by Subsection (a) must include a
25 specific description, in plain language and in an easily readable
26 and understandable format, of any product that will be manufactured
27 under the contract.

1 (c) A governmental entity that provides notice under
2 Subsection (a) may charge the employer with whom the governmental
3 entity intends to enter into the contract for the cost of providing
4 that notice.

5 SECTION 17. Sections 497.060, 497.061, and 497.062,
6 Government Code, are amended to read as follows:

7 Sec. 497.060. WORKERS' COMPENSATION. The board ~~[authority]~~
8 by rule shall require private sector prison industries program
9 employers to meet or exceed all federal requirements for providing
10 compensation to participants injured while working.

11 Sec. 497.061. RECIDIVISM STUDIES. The board ~~[authority,~~
12 ~~with the cooperation of the Criminal Justice Policy Council,~~] shall
13 gather data to determine whether participation in a private sector
14 prison industries program is a factor that reduces recidivism among
15 participants.

16 Sec. 497.062. LIMITATION ON NUMBER OF PARTICIPANTS AND COST
17 ACCOUNTING CENTERS ~~[, GOALS]~~. (a) The board ~~[authority]~~ may
18 certify ~~[any number of]~~ private sector prison industries programs
19 that meet or exceed the requirements of federal law and the rules of
20 the board. Except as provided by Subsection (b), the board may not
21 allow ~~[authority, but in no event may the authority permit]~~ more
22 than 750 ~~[5,000]~~ participants in the program at any one time or
23 authorize the operation of more than 11 cost accounting centers at
24 any one time.

25 (b) The board may allow more than 750 participants in the
26 program at one time on a temporary basis if:

27 (1) 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

(2) the board determines that there is good cause to temporarily allow more than 750 participants in the program
~~[authority shall establish as a goal that the program have at least 1,800 participants by January 1, 2006].~~

SECTION 18. Subchapter C, Chapter 497, Government Code, is amended by adding Sections 497.063 and 497.064 to read as follows:

Sec. 497.063. CONTRACT REQUIREMENTS. (a) The board shall adopt rules requiring a contract entered into by a governmental entity concerning a private sector prison industries program operated under this subchapter to:

(1) include specific job descriptions for any work that will be performed by participants under the contract;

(2) 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; and

(3) 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.

(b) For the purposes of Subsection (a), "fair market value" means an amount or rate that is equal to or greater than the average amount or rate paid by the state for the lease of substantially similar property.

Sec. 497.064. AVAILABILITY OF CERTAIN INFORMATION ON INTERNET. The board shall make the following information available

1 on any publicly accessible Internet website that is maintained by
2 the board and contains any information concerning the private
3 sector prison industries programs operated under this subchapter:

4 (1) a copy of each current contract entered into by a
5 governmental entity;

6 (2) a list of hourly wages paid to participants under
7 each contract described by Subdivision (1); and

8 (3) minutes of any meeting of the board in which the
9 board discusses or takes action concerning:

10 (A) the board's powers and duties under this
11 subchapter; or

12 (B) one or more private sector prison industries
13 programs operated under this subchapter.

14 SECTION 19. Subchapter A, Chapter 302, Labor Code, is
15 amended by adding Section 302.016 to read as follows:

16 Sec. 302.016. RULES REGARDING PRIVATE SECTOR PRISON
17 INDUSTRIES PROGRAMS. The commission shall adopt rules necessary to
18 implement Section 497.0596(a)(4), Government Code.

19 SECTION 20. Sections 497.009, 497.052, 497.0521, 497.0522,
20 497.0523, 497.0524, 497.0525, 497.0526, 497.053, 497.054, and
21 497.055, Government Code, are repealed.

22 SECTION 21. (a) On the date on which the Texas Board of
23 Criminal Justice is designated as the certificate holder for this
24 state by the Bureau of Justice Assistance, the Private Sector
25 Prison Industries Oversight Authority is abolished and all powers,
26 duties, obligations, rights, contracts, appropriations, records,
27 real or personal property, and personnel of the Private Sector

1 Prison Industries Oversight Authority are transferred to the Texas
2 Board of Criminal Justice in accordance with Subchapter C, Chapter
3 497, Government Code, as amended by this Act. Notwithstanding any
4 other provision of this Act, before the date on which the Texas
5 Board of Criminal Justice is designated as the certificate holder
6 for this state by the Bureau of Justice Assistance, the Private
7 Sector Prison Industries Oversight Authority shall continue to
8 fulfill all duties and exercise all powers given to the authority
9 under Subchapter C, Chapter 497, Government Code, as that law
10 existed immediately before the effective date of this Act, and the
11 former law is continued in effect for that purpose.

12 (b) A rule, policy, procedure, or decision of the Private
13 Sector Prison Industries Oversight Authority continues in effect as
14 a rule, policy, procedure, or decision of the Texas Board of
15 Criminal Justice until repealed or otherwise superseded by an act
16 of the board.

17 (c) On or after the date on which the Texas Board of Criminal
18 Justice is designated as the certificate holder for this state by
19 the Bureau of Justice Assistance, a reference in law to the Private
20 Sector Prison Industries Oversight Authority means the Texas Board
21 of Criminal Justice.

22 SECTION 22. (a) Except as provided by Section 492.0031(d),
23 Government Code, as added by this Act, Sections 492.003(c) and
24 492.0031(b-1), Government Code, as amended by this Act, apply only
25 to a member of the Texas Board of Criminal Justice who is appointed
26 on or after the effective date of this Act. Except as provided by
27 Section 492.0031(d), Government Code, as added by this Act, a

1 member who is appointed to the board before the effective date of
2 this Act is governed by the law in effect when the member was
3 appointed, and the former law is continued in effect for that
4 purpose.

5 (b) As soon as practicable after the effective date of this
6 Act and not later than January 1, 2010, the Texas Workforce
7 Commission shall adopt rules as required by Section 302.016, Labor
8 Code, as added by this Act.

9 (c) Section 497.051(a-1), Government Code, as added by this
10 Act, applies only to the operation of a private sector prison
11 industries program that is certified on or after the effective date
12 of this Act or to a private sector prison industries program that
13 was certified before the effective date of this Act but is not in
14 operation on the effective date of this Act. Section 497.051(a-1),
15 Government Code, as added by this Act, does not apply to the
16 operation of a private sector prison industries program that was
17 certified before the effective date of this Act and is in operation
18 on the effective date of this Act. The operation of that program is
19 governed by the law in effect when the program was certified, and
20 the former law is continued in effect for that purpose.

21 (d) Section 497.059, Government Code, as amended by this
22 Act, applies only to the certification of a private sector prison
23 industries program that occurs on or after the effective date of
24 this Act. The certification of a private sector prison industries
25 program that occurs before the effective date of this Act is
26 governed by the law in effect when the program was certified, and
27 the former law is continued in effect for that purpose.

1 (e) Sections 497.0595 and 497.0596, Government Code, as
2 added by this Act, apply only to a contract that is entered into or
3 renewed in connection with a private sector prison industries
4 program that is certified on or after the effective date of this Act
5 or a private sector prison industries program that was certified
6 before the effective date of this Act but is not in operation on the
7 effective date of this Act. A contract that is entered into or
8 renewed in connection with a private sector prison industries
9 program that was certified before the effective date of this Act and
10 is in operation on the effective date of this Act is governed by the
11 law in effect when the program was certified, and the former law is
12 continued in effect for that purpose.

13 (f) A rule adopted by the Texas Board of Criminal Justice
14 under Section 497.063, Government Code, as added by this Act,
15 applies only to a contract in connection with a private sector
16 prison industries program that is certified on or after the
17 effective date of this Act or to a contract in connection with a
18 private sector prison industries program that was certified before
19 the effective date of this Act but is not in operation on the
20 effective date of this Act.

21 SECTION 23. This Act takes effect immediately if it
22 receives a vote of two-thirds of all the members elected to each
23 house, as provided by Section 39, Article III, Texas Constitution.
24 If this Act does not receive the vote necessary for immediate
25 effect, this Act takes effect September 1, 2009.