

By: McReynolds, Christian

H.B. No. 1914

Substitute the following for H.B. No. 1914:

By: McReynolds

C.S.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

Section 497.0581.

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

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

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

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

(3) be approved by the board.

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

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

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

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

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

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

15 (b) In this subchapter:

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

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

23 (c) This subchapter does not authorize the board to direct
24 the general operations of or to govern the Texas Youth Commission or
25 county correctional facilities in any manner not specifically
26 described by Subsection (a).

27 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:

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

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

5 (b) The [~~To construct more facilities and increase the~~
6 ~~number of participants, the~~] private sector prison industry
7 [~~expansion~~] account is created as an account in the general revenue
8 fund. Money in the account may be appropriated only to [~~construct~~
9 ~~work facilities,~~] recruit corporations to participate as private
10 sector industries programs[~~7~~] and pay costs of the board
11 [~~authority~~] and department in implementing this subchapter,
12 including the cost to the department in reimbursing board
13 [~~authority~~] members [~~and the employer liaison~~] for expenses.

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

25 SECTION 11. Section 497.057, Government Code, is amended to
26 read as follows:

27 Sec. 497.057. RULES. The board [~~authority~~] shall adopt

1 rules as necessary to ensure that the private sector prison
2 industries program authorized by this subchapter is in compliance
3 with the federal prison enhancement certification program
4 established under 18 U.S.C. Section 1761.

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

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

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

15 (2) the minimum wage for participants committed to
16 [~~under the supervision of~~] the Texas Youth Commission, because of
17 the age of the participants and the extensive training component of
18 their employment, is the federal minimum wage.

19 SECTION 13. Section 497.0581, Government Code, is amended
20 to read as follows:

21 Sec. 497.0581. PARTICIPANT CONTRIBUTIONS; ASSISTANCE
22 ACCOUNT. (a) The board [~~authority~~] by rule shall determine the
23 amount of deductions to be taken from wages received by the
24 participant under this subchapter and the disbursement of those
25 deductions. The board [~~authority~~] may establish deductions for
26 participants committed to [~~under the supervision of~~] the Texas
27 Youth Commission that are different than deductions established for

1 other participants in the program. In determining the amount of
2 deductions under this section, the board [~~authority~~] shall ensure
3 that the deductions do not place the private sector prison
4 industries programs in the department in noncompliance with the
5 federal prison enhancement certification program established under
6 18 U.S.C. Section 1761.

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

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

14 Sec. 497.059. LIMITING IMPACT OF CERTIFICATION ON
15 NON-PRISON INDUSTRY.

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

18 (a) The board [~~authority~~] may not grant initial
19 certification to a private sector prison industries program if the
20 board [~~authority~~] determines that the operation of the program
21 would result in the loss of existing jobs provided by any [~~the~~]
22 employer in this state.

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

26 SECTION 16. Subchapter C, Chapter 497, Government Code, is
27 amended by adding Sections 497.0595 and 497.0596 to read as

1 follows:

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

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

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

21 Sec. 497.0596. NOTICE CONCERNING CERTAIN CONTRACTS. (a)
22 Not later than the 60th day before the date a governmental entity
23 intends to enter into a contract with an employer for a private
24 sector prison industries program under this subchapter, the
25 governmental entity shall notify:

26 (1) the state senator and state representative in
27 whose district the program covered by the contract is or will be

1 located;

2 (2) the executive heads of the Texas AFL-CIO, the
3 Texas Association of Manufacturers, the National Federation of
4 Independent Business/Texas, the Texas Association of Business, and
5 the Texas Association of Workforce Boards;

6 (3) the chamber of commerce in any municipality or
7 county in which the program covered by the contract is or will be
8 located; and

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

13 (A) perform work in the same job descriptions as
14 participants in the program covered by the contract will perform;
15 or

16 (B) are otherwise engaged in the manufacture of
17 the same or a substantially similar product as will be manufactured
18 under the contract.

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

23 (c) A governmental entity that provides notice under
24 Subsection (a) may charge the employer with whom the governmental
25 entity intends to enter into the contract for the cost of providing
26 that notice.

27 SECTION 17. Sections 497.060, 497.061, and 497.062,

Government Code, are amended to read as follows:

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

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

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

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

(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 ~~1,800 participants by January 1, 2006]~~.

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

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

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

10 (2) include a specific description, in plain language
11 and in an easily readable and understandable format, of any product
12 that will be manufactured under the contract; and

13 (3) charge a private sector prison industries employer
14 or other participating entity the fair market value for the lease of
15 any property owned by the governmental entity and leased to the
16 employer or entity under the contract.

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

21 Sec. 497.064. AVAILABILITY OF CERTAIN INFORMATION ON
22 INTERNET. The board shall make the following information available
23 on any publicly accessible Internet website that is maintained by
24 the board and contains any information concerning the private
25 sector prison industries programs operated under this subchapter:

26 (1) a copy of each current contract entered into by a
27 governmental entity;

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

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

5 (A) the board's powers and duties under this
6 subchapter; or

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

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

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

14 SECTION 20. Sections 497.009, 497.052, 497.0521, 497.0522,
15 497.0523, 497.0524, 497.0525, 497.0526, 497.053, 497.054, and
16 497.055, Government Code, are repealed.

17 SECTION 21. (a) On the date on which the Texas Board of
18 Criminal Justice is designated as the certificate holder for this
19 state by the Bureau of Justice Assistance, the Private Sector
20 Prison Industries Oversight Authority is abolished and all powers,
21 duties, obligations, rights, contracts, appropriations, records,
22 real or personal property, and personnel of the Private Sector
23 Prison Industries Oversight Authority are transferred to the Texas
24 Board of Criminal Justice in accordance with Subchapter C, Chapter
25 497, Government Code, as amended by this Act. Notwithstanding any
26 other provision of this Act, before the date on which the Texas
27 Board of Criminal Justice is designated as the certificate holder

1 for this state by the Bureau of Justice Assistance, the Private
2 Sector Prison Industries Oversight Authority shall continue to
3 fulfill all duties and exercise all powers given to the authority
4 under Subchapter C, Chapter 497, Government Code, as that law
5 existed immediately before the effective date of this Act, and the
6 former law is continued in effect for that purpose.

7 (b) A rule, policy, procedure, or decision of the Private
8 Sector Prison Industries Oversight Authority continues in effect as
9 a rule, policy, procedure, or decision of the Texas Board of
10 Criminal Justice until repealed or otherwise superseded by an act
11 of the board.

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

17 SECTION 22. (a) Except as provided by Section 492.0031(d),
18 Government Code, as added by this Act, Sections 492.003(c) and
19 492.0031(b-1), Government Code, as amended by this Act, apply only
20 to a member of the Texas Board of Criminal Justice who is appointed
21 on or after the effective date of this Act. Except as provided by
22 Section 492.0031(d), Government Code, as added by this Act, a
23 member who is appointed to the board before the effective date of
24 this Act is governed by the law in effect when the member was
25 appointed, and the former law is continued in effect for that
26 purpose.

27 (b) As soon as practicable after the effective date of this

1 Act and not later than January 1, 2010, the Texas Workforce
2 Commission shall adopt rules as required by Section 302.016, Labor
3 Code, as added by this Act.

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

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

23 (e) Sections 497.0595 and 497.0596, Government Code, as
24 added by this Act, apply only to a contract that is entered into or
25 renewed in connection with a private sector prison industries
26 program that is certified on or after the effective date of this Act
27 or a private sector prison industries program that was certified

1 before the effective date of this Act but is not in operation on the
2 effective date of this Act. A contract that is entered into or
3 renewed in connection with a private sector prison industries
4 program that was certified before the effective date of this Act and
5 is in operation on the effective date of this Act is governed by the
6 law in effect when the program was certified, and the former law is
7 continued in effect for that purpose.

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

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