

1-1 By: McReynolds, Christian H.B. No. 1914  
1-2 (Senate Sponsor - Nichols)  
1-3 (In the Senate - Received from the House May 4, 2009;  
1-4 May 7, 2009, read first time and referred to Committee on Criminal  
1-5 Justice; May 20, 2009, reported favorably by the following vote:  
1-6 Yeas 6, Nays 0; May 20, 2009, sent to printer.)

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to abolishing the Private Sector Prison Industries  
1-10 Oversight Authority and to the certification and operation of  
1-11 private sector prison industries programs.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 492, Government Code, is amended by  
1-14 adding Section 492.0011 to read as follows:

1-15 Sec. 492.0011. PRIVATE SECTOR PRISON INDUSTRIES PROGRAM  
1-16 MANAGEMENT. (a) The board shall approve, certify, and supervise  
1-17 private sector prison industries programs operated by the  
1-18 department, the Texas Youth Commission, and county correctional  
1-19 facilities in accordance with Subchapter C, Chapter 497.

1-20 (b) This section does not authorize the board to direct the  
1-21 general operations of or to govern the Texas Youth Commission or  
1-22 county correctional facilities in any manner not specifically  
1-23 described by Subsection (a).

1-24 SECTION 2. Sections 492.003(a) and (c), Government Code,  
1-25 are amended to read as follows:

1-26 (a) Each member of the board must be representative of the  
1-27 general public. A person is not eligible for appointment as a  
1-28 member if the person or the person's spouse:

1-29 (1) is a person, other than a judge participating in  
1-30 the management of a community supervision and corrections  
1-31 department, who is employed by or participates in the management of  
1-32 a business entity or other organization regulated by the department  
1-33 or receiving funds from the department;

1-34 (2) owns, or controls directly or indirectly, more  
1-35 than a 10 percent interest in a business entity or other  
1-36 organization regulated by the department or receiving funds from  
1-37 the department, including an entity or organization with which the  
1-38 department contracts under Subchapter C, Chapter 497; ~~or~~

1-39 (3) uses or receives a substantial amount of tangible  
1-40 goods, services, or funds from the department, other than  
1-41 compensation or reimbursement authorized by law for board  
1-42 membership, attendance, or expenses; or

1-43 (4) owns, controls directly or indirectly, or is  
1-44 employed by a business entity or other organization with which the  
1-45 department contracts concerning a private sector prison industries  
1-46 program approved and certified by the board under Subchapter C,  
1-47 Chapter 497.

1-48 (c) A person may not be a member of the board and may not be a  
1-49 department employee employed in a "bona fide executive,  
1-50 administrative, or professional capacity," as that phrase is used  
1-51 for purposes of establishing an exemption to the overtime  
1-52 provisions of the federal Fair Labor Standards Act of 1938 (29  
1-53 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

1-54 (1) the person is an officer, employee, or paid  
1-55 consultant of a Texas trade association in the field of criminal  
1-56 justice or private sector prison industries; or

1-57 (2) the person's spouse is an officer, manager, or paid  
1-58 consultant of a Texas trade association in the field of criminal  
1-59 justice or private sector prison industries.

1-60 SECTION 3. Section 492.0031, Government Code, is amended by  
1-61 adding Subsections (b-1) and (d) to read as follows:

1-62 (b-1) In addition to the information described by  
1-63 Subsection (b), the training program must provide the person with  
1-64 information regarding:

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

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

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

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

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

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

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

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the board ~~[authority]~~;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and

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

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

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

SECTION 9. The heading to Section 497.056, Government Code, 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 one-half of the amount deposited to the credit of the general revenue fund from deductions from participants' wages].~~

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

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

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

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

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

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

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

Sec. 497.0581. PARTICIPANT CONTRIBUTIONS; ASSISTANCE ACCOUNT. (a) The board ~~[authority]~~ by rule shall determine the amount of deductions to be taken from wages received by the participant under this subchapter and the disbursement of those deductions. The board ~~[authority]~~ may establish deductions for participants committed to ~~[under the supervision of]~~ the Texas Youth Commission that are different than deductions established for other participants in the program. In determining the amount of deductions under this section, the board ~~[authority]~~ shall ensure that the deductions do not place the private sector prison industries programs in the department in noncompliance with the federal prison enhancement certification program established under 18 U.S.C. Section 1761.

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

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

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

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

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

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

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

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

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

(c) For the purposes of this section, 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.

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

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

(2) 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;

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

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

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

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

(b) The notice required by Subsection (a) must 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.

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

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  
1,800 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 on any publicly accessible Internet website that is maintained by the board and contains any information concerning the private sector prison industries programs operated under this subchapter:

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

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

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

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

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

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

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

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

SECTION 21. (a) On the date on which the Texas Board of Criminal Justice is designated as the certificate holder for this state by the Bureau of Justice Assistance, the Private Sector Prison Industries Oversight Authority is abolished and all powers, duties, obligations, rights, contracts, appropriations, records, real or personal property, and personnel of the Private Sector Prison Industries Oversight Authority are transferred to the Texas Board of Criminal Justice in accordance with Subchapter C, Chapter 497, Government Code, as amended by this Act. Notwithstanding any other provision of this Act, before the date on which the Texas Board of Criminal Justice is designated as the certificate holder for this state by the Bureau of Justice Assistance, the Private Sector Prison Industries Oversight Authority shall continue to fulfill all duties and exercise all powers given to the authority under Subchapter C, Chapter 497, Government Code, as that law existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

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

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

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

7-1 member who is appointed to the board before the effective date of  
7-2 this Act is governed by the law in effect when the member was  
7-3 appointed, and the former law is continued in effect for that  
7-4 purpose.

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

7-9 (c) Section 497.051(a-1), Government Code, as added by this  
7-10 Act, applies only to the operation of a private sector prison  
7-11 industries program that is certified on or after the effective date  
7-12 of this Act or to a private sector prison industries program that  
7-13 was certified before the effective date of this Act but is not in  
7-14 operation on the effective date of this Act. Section 497.051(a-1),  
7-15 Government Code, as added by this Act, does not apply to the  
7-16 operation of a private sector prison industries program that was  
7-17 certified before the effective date of this Act and is in operation  
7-18 on the effective date of this Act. The operation of that program is  
7-19 governed by the law in effect when the program was certified, and  
7-20 the former law is continued in effect for that purpose.

7-21 (d) Section 497.059, Government Code, as amended by this  
7-22 Act, applies only to the certification of a private sector prison  
7-23 industries program that occurs on or after the effective date of  
7-24 this Act. The certification of a private sector prison industries  
7-25 program that occurs before the effective date of this Act is  
7-26 governed by the law in effect when the program was certified, and  
7-27 the former law is continued in effect for that purpose.

7-28 (e) Sections 497.0595 and 497.0596, Government Code, as  
7-29 added by this Act, apply only to a contract that is entered into or  
7-30 renewed in connection with a private sector prison industries  
7-31 program that is certified on or after the effective date of this Act  
7-32 or a private sector prison industries program that was certified  
7-33 before the effective date of this Act but is not in operation on the  
7-34 effective date of this Act. A contract that is entered into or  
7-35 renewed in connection with a private sector prison industries  
7-36 program that was certified before the effective date of this Act and  
7-37 is in operation on the effective date of this Act is governed by the  
7-38 law in effect when the program was certified, and the former law is  
7-39 continued in effect for that purpose.

7-40 (f) A rule adopted by the Texas Board of Criminal Justice  
7-41 under Section 497.063, Government Code, as added by this Act,  
7-42 applies only to a contract in connection with a private sector  
7-43 prison industries program that is certified on or after the  
7-44 effective date of this Act or to a contract in connection with a  
7-45 private sector prison industries program that was certified before  
7-46 the effective date of this Act but is not in operation on the  
7-47 effective date of this Act.

7-48 SECTION 23. This Act takes effect immediately if it  
7-49 receives a vote of two-thirds of all the members elected to each  
7-50 house, as provided by Section 39, Article III, Texas Constitution.  
7-51 If this Act does not receive the vote necessary for immediate  
7-52 effect, this Act takes effect September 1, 2009.

7-53 \* \* \* \* \*