

By: Nichols

S.B. No. 1169

A BILL TO BE ENTITLED

1 AN ACT
2 relating to abolishing the Private Sector Prison Industries
3 Oversight Authority and to the certification and operation of
4 private sector prison industries programs.

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

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

8 Sec. 492.0011. PRIVATE SECTOR PRISON INDUSTRIES PROGRAM
9 MANAGEMENT. The board shall approve, certify, and oversee the
10 operation of private sector prison industries programs in the
11 department, the Texas Youth Commission, and county correctional
12 facilities in accordance with Subchapter C, Chapter 497.

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

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

18 (1) is a person, other than a judge participating in
19 the management of a community supervision and corrections
20 department, who is employed by or participates in the management of
21 a business entity or other organization regulated by the department
22 or receiving funds from the department;

23 (2) owns, or controls directly or indirectly, more
24 than a 10 percent interest in a business entity or other

1 organization regulated by the department or receiving funds from
2 the department, including an entity or organization with which the
3 department contracts under Subchapter C, Chapter 497; [~~or~~]

4 (3) uses or receives a substantial amount of tangible
5 goods, services, or funds from the department, other than
6 compensation or reimbursement authorized by law for board
7 membership, attendance, or expenses; or

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

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

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

22 (2) the person's spouse is an officer, manager, or paid
23 consultant of a Texas trade association in the field of criminal
24 justice or private sector prison industries.

25 SECTION 3. Section 497.004(a), Government Code, is amended
26 to read as follows:

27 (a) The board may develop by rule and the department may

1 administer an incentive pay scale for work program participants
2 consistent with rules adopted by the board [~~Private Sector Prison~~
3 ~~Industries Oversight Authority~~] under Subchapter C. Prison
4 industries may be financed through contributions donated for this
5 purpose by private businesses contracting with the department. The
6 department shall apportion pay earned by a work program participant
7 in the same manner as is required by rules adopted by the board
8 [~~Private Sector Prison Industries Oversight Authority~~] under
9 Section 497.0581.

10 SECTION 4. Section 497.006(c), Government Code, is amended
11 to read as follows:

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

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

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

25 (3) be approved by the board.

26 SECTION 5. The heading to Subchapter C, Chapter 497,
27 Government Code, is amended to read as follows:

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

3 SECTION 6. Section 497.051, Government Code, is amended to
4 read as follows:

5 Sec. 497.051. PURPOSE; DEFINITIONS [~~DEFINITION~~]. (a) The
6 board shall [~~Private Sector Prison Industries Oversight Authority~~
7 ~~is created to~~] approve, certify, and oversee the operation of
8 private sector prison industries programs in the department, the
9 Texas Youth Commission, and in county correctional facilities in
10 compliance with the federal prison enhancement certification
11 program established under 18 U.S.C. Section 1761. The board may use
12 board and department employees to [~~executive director shall~~]
13 provide the [~~authority with~~] clerical and technical support [~~as~~]
14 necessary for the board [~~authority~~] to perform the board's duties
15 under [~~imposed on the authority by~~] this subchapter and shall
16 ensure that the department implements the policies adopted by the
17 board [~~authority~~] that relate to the operation of private sector
18 prison industries programs.

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

23 (b) In this subchapter:

24 (1) "Governmental entity" means the department, the
25 Texas Youth Commission, and any county that operates a private
26 sector prison industries program under this subchapter.

27 [~~"Authority" means the Private Sector Prison Industries Oversight~~

1 ~~Authority.]~~

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

4 SECTION 7. Section 497.0527, Government Code, is amended to
5 read as follows:

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

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

11 (2) the date the complaint is received by the board
12 [~~authority~~];

13 (3) the subject matter of the complaint;

14 (4) the name of each person contacted in relation to
15 the complaint;

16 (5) a summary of the results of the review or
17 investigation of the complaint; and

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

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

25 (c) The board [~~authority~~], at least quarterly until final
26 disposition of the complaint, shall notify the person filing the
27 complaint and each person who is a subject of the complaint of the

1 status of the investigation, unless the notice would jeopardize an
2 undercover investigation.

3 SECTION 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 or renew a contract with an
9 employer for a private sector prison industries program under this
10 subchapter if the board determines that the contract has negatively
11 affected or would negatively affect any employer in this state,
12 including through the loss of existing jobs provided by the
13 employer to employees in this state who are not incarcerated or
14 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 30th day before the date a governmental entity

1 intends to enter into or renew a contract with an employer for a
2 private sector prison industries program under this subchapter, the
3 governmental entity shall notify the state senator and state
4 representative in whose district the program covered by the
5 contract is or will be located.

6 (b) The notice required by Subsection (a) must include a
7 specific description, in plain language and in an easily readable
8 and understandable format, of any product that is or will be
9 manufactured under the contract.

10 SECTION 14. Sections 497.060, 497.061, and 497.062,
11 Government Code, are amended to read as follows:

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

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

21 Sec. 497.062. LIMITATION ON NUMBER OF PARTICIPANTS AND COST
22 ACCOUNTING CENTERS~~[, GOALS]~~. [~~(a)~~] The board [authority] may
23 certify any number of private sector prison industries programs
24 that meet or exceed the requirements of federal law and the rules of
25 the board [authority], but in no event may the board allow
26 ~~[authority permit]~~ more than 400 ~~[5,000]~~ participants in the
27 program at any one time or authorize the operation of more than 11

1 cost accounting centers at any one time.

2 ~~[(b) The authority shall establish as a goal that the~~
3 ~~program have at least 1,800 participants by January 1, 2006.]~~

4 SECTION 15. Subchapter C, Chapter 497, Government Code, is
5 amended by adding Sections 497.063 and 497.064 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

11 SECTION 16. Sections 497.009, 497.052, 497.0521, 497.0522,
12 497.0523, 497.0524, 497.0525, 497.0526, 497.053, 497.054, 497.055,
13 and 497.056, Government Code, are repealed.

14 SECTION 17. (a) The Private Sector Prison Industries
15 Oversight Authority is abolished and all powers, duties,
16 obligations, rights, contracts, appropriations, records, real or
17 personal property, and personnel of the Private Sector Prison
18 Industries Oversight Authority are transferred to the Texas Board
19 of Criminal Justice in accordance with Subchapter C, Chapter 497,
20 Government Code, as amended by this Act.

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

26 (c) A reference in law to the Private Sector Prison
27 Industries Oversight Authority means the Texas Board of Criminal

1 Justice.

2 (d) All funds in the private sector prison industries
3 expansion account are transferred to the office of the attorney
4 general and may be used only to compensate victims of crime under
5 Subchapter B, Chapter 56, Code of Criminal Procedure (Crime
6 Victims' Compensation Act).

7 SECTION 18. (a) Section 492.003(c), Government Code, as
8 amended by this Act, applies only to a member of the Texas Board of
9 Criminal Justice who is appointed on or after the effective date of
10 this Act. A member who is appointed to the board before the
11 effective date of this Act is governed by the law in effect when the
12 member was appointed, and the former law is continued in effect for
13 that purpose.

14 (b) Section 497.059, Government Code, as amended by this
15 Act, applies only to the certification of a private sector prison
16 industries program that occurs on or after the effective date of
17 this Act. The certification of a private sector prison industries
18 program that occurs before the effective date of this Act 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 (c) Sections 497.0595 and 497.0596, Government Code, as
22 added by this Act, apply only to a contract that is entered into or
23 renewed on or after the effective date of this Act. A contract that
24 is entered into or renewed before the effective date of this Act is
25 governed by the law in effect when the contract was entered into or
26 renewed, and the former law is continued in effect for that purpose.

27 SECTION 19. This Act takes effect immediately if it

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1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2009.