

SUBJECT: Changes to program for private sector employment of prison inmates

COMMITTEE: Corrections — favorable, without amendment

VOTE: 6 ayes — Hightower, Allen, Alexander, Gray, Hupp, Serna

0 nays

3 absent— Edwards, Farrar, Marchant

WITNESSES: For — Ladd Holton, L/M & Associates Inc.; Linda Marin, Texas Citizens United for Rehabilitation of Errants; Linda Reeves, Texas Inmate Family Association; Patricia Dodds; Mary L. Hysaw; Jean Leath

Against — Steven Bent, Texas Association of Responsible Nonsubscribers

On — Rick Levy, Texas AFL-CIO; Melinda Hoyle Bozarth, Texas Department of Criminal Justice

BACKGROUND : Under the federal Private Sector Prison Industries Enhancement (PIE) Program, private industries can employ state felons, subject to federal guidelines on wages and other restrictions. The private sector industries are generally located at or near the grounds of correctional facilities, and inmates work for the private industry while they are incarcerated.

Government Code sec. 497.051 authorizes the Texas Department of Criminal Justice (TDCJ) to operate a federally certified PIE program. The goods produced are exempt from federal and state prohibitions against the sale of prison-made products. Texas also gives a partial franchise tax credit (Tax Code secs. 171.653 and 171.654) to corporations participating in the program for wages paid to employees who are inmates and who used to be inmates.

Under federal and state laws, up to 80 percent of the inmates' gross wages can be deducted to repay the state for room and board, crime victims' compensation, family care, and taxes. Other deductions can go toward the cost of supervision, restitution and an inmate savings account. Federal law requires that programs meet other criteria, such as consulting with organized

labor and local private industry, using only inmates who volunteer, paying prevailing wages, and including provisions for compensating injured workers.

In 1995, the 74th Legislature moved authority for the program to TDCJ from the department's pardons and paroles division and capped the program at a 500 offenders.

Texas has one PIE-certified program, operated by the private company Wackenhut Corrections Corporation at the Lockhart Correctional Facility, about 30 miles from Austin. The Lockhart program began in 1993 and now employs about 150 inmates who work for two companies producing computer circuit boards and brass valves and fittings. Red River County also has a federal PIE certification but no operating program. Under authority granted in 1995, the Texas Youth Commission in 1997 obtained federal certification for a PIE program, but it is not yet operating.

While inmates also work at industrial plants throughout TDCJ as part of the prison industries program, they are not employed by private companies and are not paid wages.

DIGEST:

HB 1301 would transfer responsibility for overseeing the program that allows private industries to employ state prison inmates from the Texas Department of Criminal Justice to a newly created oversight authority. The authority would approve, certify and oversee a program that would have to comply with federal requirements for the private sector employment of prison inmates. The bill would raise the cap on the number of inmates who can participate in the program from 500 to 3,000. The bill also would eliminate statutory requirements for the apportionment of inmates' wages.

Composition, compensation of the authority. The authority would be composed of nine members, appointed by the governor and serving six-year terms. There would be three public members and one person representing each of the following areas: labor, employers, victim's advocates, inmates' advocates, the field of vocational rehabilitation and an employer of inmates in the program. The representative of labor would have to be appointed from a list of three persons recommended by a recognized state labor federation. The authority would have as ex-officio members a House member appointed by the speaker of the House, a senator appointed by the

lieutenant governor, the TDCJ executive director and the executive director of the Texas Workforce Commission. The governor would appoint the presiding officer. Authority members would be unsalaried but would be reimbursed for travel expenses.

Appointments to the Private Sector Prison Industries Oversight Authority would have to be made by January 1, 1998, when responsibility for the program would be moved from the Texas Department of Criminal Justice to the authority. The authority would have to adopt its rules by March 1, 1998.

Expenses of the authority. The expenses of the authority and costs to TDCJ for implementing the program would be paid from fees levied on the private sector employers. The employers would have to remit an annual fee equal to the amount they would have paid that year for unemployment insurance if they were using free-world employees. Any excess funds would be transferred annually to the crime victims compensation fund.

Pay for inmates in the program, impact on jobs statewide. The authority would have to require that inmates be paid at least the prevailing wage, as computed by the authority, for similar work in the same area as the prison industry. The computation would have to use data on openings and wages from the Texas Workforce Commission and consider the local council of government region as the area's location. However, employers could pay workers the minimum wage, instead of the prevailing wage, for their first two months of employment.

The authority would be prohibited from giving initial certification to a private prison industry program if it would result in the loss of existing jobs provided by the employer anywhere in the state.

The authority would have to require private prison industry programs to meet or exceed federal requirements for compensating inmates injured while working.

Other responsibilities of the authority. The authority would have to work with the state's Criminal Justice Policy Council to gather data to determine whether participation in the program reduces recidivism among inmates.

HB 1301 would establish an exception to the law that generally requires inmates to be paroled to the county in which they resided when they committed their offense. If an inmate who had worked in the program had a job offer resulting from the inmate's participation in the program, parole panels would be required to parole the inmate to the county where the job was located. This requirement could be waived if it would pose a threat to the life or safety of the inmate's victim, a witness in the case, or any other person.

HB 1301 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

HB 1301 would create a new authority to more effectively and fairly oversee the state's private sector prison industries program and make other changes in the statute governing the program to ensure that it does not harm free-world workers.

The PIE program teaches inmates skills that could lead to their employment after they leave prison and could reduce their chances of returning to prison. In addition, the program allows the state to recoup some of the cost of incarcerating inmates and allows inmates to pay compensation to crime victims, restitution, costs of their families' care and taxes and to put money into a savings account. As of February 1997, inmate workers at the Lockhart facility have paid about \$436,000 for crime victims' compensation, about \$16,000 for restitution, and about \$680,000 to the state for inmate room and board.

By raising the cap on the program from 500 to 3,000, HB 1301 would recognize that the state has a responsibility to try and promote the hiring of inmates so that they are able to gain experience and job skills. The 3,000 cap on the program would allow the program to expand and have a number of workers sufficient to properly study its results while maintaining it at a reasonable level.

A new authority is needed to guide the program. Proposed and existing federal guidelines require Texas to have a single body with rulemaking authority to oversee all of the state's PIE certifications. Giving this function to an existing state agency entity could cause conflict in the oversight of PIE programs operated by other agencies or counties. For example, if a TDCJ

entity was charged with oversight of the program, it could find itself overseeing a PIE program operated by the Texas Youth Commission. The authority's expenses would be paid by the private industries, not the state. As a matter of fact HB 806 would have a net positive impact on general revenue, according to the fiscal note.

The bill would ensure that the oversight authority broadly represented those involved in the program and affected by the criminal justice system, including labor, employers, victims and inmates advocates. Requiring a representative from a recognized labor federation would ensure that the interests of workers — both inmate and free-world — would be represented.

HB 1301 contains numerous safeguard to ensure that free-world workers are not harmed by the programs. Inmates would have to be paid at least the prevailing wage. The bill details how the prevailing wage would to be computed, which has been a source of controversy in the past. The computation would use Texas Workforce Commission data and the local council of government region as the location with which wages are to be compared.

Other provisions would ensure companies in the program did not gain an unfair advantage over free-world companies. For example, the industries would have to meet or exceed federal workers' compensation requirements. This requirement is necessary to meet federal guidelines that allow industries to carry workers compensation or comparable coverage for employees. In addition, companies would have to pay a fee equal to the amount of money they would pay for free-world unemployment insurance.

Free-world workers would gain additional protection because involvement in the PIE program by industries could not result in a loss of jobs statewide, ensuring that only new or expanding businesses would qualify. This could help attract to Texas some companies that would otherwise move their operations overseas. These provisions actually would give free-world workers more protections than they now receive from the in-prison factories that produce goods for state agencies.

Allowing employers to pay a worker the minimum wage, instead of the prevailing wage, for a worker's first two months would be a fair way to

allow employers to train workers. Paying a training wage while a worker gains necessary job skills is a common practice in the free world that should be extended to this program. Because industries value a trained, skilled workforce, they would have no incentive to “churn” workers by hiring, then firing them to avoid paying the prevailing wage. The industries currently involved in the PIE program pay at or above the prevailing wage.

HB 1301 would require a study of the program to see whether participation by inmates helps reduce recidivism. The study would enable the Legislature and the oversight authority to make informed decisions about the program in the future.

**OPPONENTS
SAY:**

The state should not expand a program that allows prison inmates to work for private industries. These kind of programs have the potential to exploit inmates and to undermine free world workers. The existence of the programs can depress free-world workers' wages and unfairly give employers incentives to use prison labor.

HB 1301 should not create a new governmental oversight authority. The growth of government boards and commissions should be checked, not expanded. A better idea might be to use some existing authority to oversee the program.

HB 1301 should not allow inmates to be paid minimum wage for their first two months of work. Authorizing a lower training wage regardless of an inmate's experience could exploit skilled, experienced workers by forcing them to work for a wage lower than what they should be paid. Allowing a two-month training wage could give employers an incentive to churn workers every two months so they could continue to pay a wage lower than the prevailing wage.

HB 1301 should not restrict industries by mandating that industries meet or exceed federal workers' compensation requirements. It might be better to define benefits that must be provided and allow employers to choose how to meet the requirements.