

**SUBJECT:** Authorizing the labor of county jail offenders for nonprofit organizations

**COMMITTEE:** Corrections — committee substitute recommended

**VOTE:** 5 ayes — Madden, D. Jones, R. Allen, Hochberg, McReynolds

0 nays

2 absent — Haggerty, Noriega

**WITNESSES:** For — (*On original bill:* Bob L. Alford, Johnson County Sheriff's Department; Robert De La Garza, Goliad County; Chris Kirk, Sheriff's Association of Texas; Doris Lanfear, Johnson County Cemetery Association; Bill Shaefer, Mayor, City of Goliad; Robert T. Force); (*On committee Substitute:* Jim Allison, County Judges and Commissioners Association of Texas; Michael Vasquez, Texas Conference of Urban Counties

Against — (*On original bill:* Joseph Arabie, Texas AFL-CIO); (*On committee substitute:* Joseph Arabie, Texas AFL-CIO; Chris Kirk, Sheriff's Association of Texas; Joe Pollock)

**BACKGROUND:** Under Code of Criminal Procedure (CCP), art. 43.10, certain offenders who have been convicted and are serving a sentence of confinement in county jail, or who are unable to pay fines, are required to work in the county jail industries program or to perform manual labor. Under sec. 43.10(4), the offenders can be put to work on public works and maintenance projects for political subdivisions located in the county.

In an October 2004 opinion (GA-0261), the attorney general determined that CCP, art. 43.10(4) did not authorize a county to use county inmate labor at events that were a joint venture between the county and a nonprofit organization.

**DIGEST:** CSHB 129 would amend CCP, art. 43.10 to allow certain offenders who have been convicted and are serving a sentence of confinement in county jails, or who have not paid fines, to perform maintenance work and related services for nonprofit organizations in the county. Before work could be performed for an organization, the commissioners court, at the request of

the sheriff, would have to determine that the nonprofit organization provided a public service to the county or to a political subdivision in the county.

The nonprofit organizations also would have to qualify as nonprofit groups under the federal Internal Revenue Code and under the Texas Non-Profit Corporation Act.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005. It would apply to convictions occurring before, on, or after the effective date.

**SUPPORTERS  
SAY:**

CSHB 129 is necessary to ensure that the labor of offenders in county jails could be used to help nonprofit organizations when appropriate. Offender labor historically has been used to set up tables and chairs and to provide clean-up services for nonprofit organizations holding fundraisers on county property, to maintain cemeteries, and to maintain athletic playing fields for youths.

By explicitly authorizing the use of offender labor for certain nonprofit organizations, CSHB 129 would address the attorney general's 2004 opinion that under art. 43.10 a county could not use offender labor at events that were a joint venture between the county and a nonprofit organization. The bill would ensure that labor is used only in appropriate situations by requiring that a nonprofit organization be recognized by federal and state law as a nonprofit and by requiring county commissioners to determine that the organization provided a public service to the county or a local political subdivision. Nonprofit groups provide important services to communities, and the state should ensure that these groups have access to offender labor if the groups are performing a public service.

The bill would protect sheriffs from expectations that labor could be provided for all nonprofit groups by requiring county commissioners courts to determine that the group provided a public service. This would help insulate sheriffs from undue pressures from nonprofit groups and the public. The bill would require that commissioners make the finding only upon request of the sheriff to ensure that commissioners were not approving organizations or requests of which the sheriff was not aware. By allowing county commissioners to make a one-time finding, CSHB

129 would remove commissioners from involvement in the daily work of sheriffs and ensure that sheriffs could use their discretion in providing offender labor. Sheriffs previously had to make decisions about allocating offender labor, sometimes refusing to provide labor when requested, and CSHB 129 would continue this tradition.

CSHB 129 would not hurt free world workers. The work that offenders have provided for nonprofits is not the type the groups would have paid someone to do. For example, setting up chairs for an event might be done by offenders or volunteers for the nonprofit but not by paid workers. Nonprofit organizations do not have the resources to pay for the types of jobs that they request offenders perform.

CSHB 129 also could help in offender rehabilitation. Working for community groups can help offenders see a direct benefit of their labor to others, and this could make them more empathic and attached to the community, which could help when they were released from confinement.

OPPONENTS  
SAY:

CSHB 129 would not do enough to protect sheriffs from an expectation by nonprofit groups that offender labor be made available to all groups for all events. Offender labor is limited by many factors, including the numbers of offenders in jails and the availability of guards to watch inmates outside the jail. In a jail, one guard might be supervising 48 inmates but it is typical to have one guard supervising every four or five offenders on an outside work crew. County commissioners could approve a long list of organizations that by virtue of being on the approved list organizations might ask a sheriff for help and not understand why offender labor was not available.

CSHB 129 could result in a reduction of paying jobs for free world workers. CSHB 129 could increase the use of offender labor, and if the organizations use offender labor for jobs they otherwise would have paid someone to do, Texas workers would lose.

NOTES:

The committee substitute added the requirements that the county commissioners court make a determination at the sheriff's request that the nonprofit organization provides a public service and that the nonprofit organization qualify as a nonprofit under certain federal and state laws.

Two Senate bills are identical to the original version of CSHB 129, SB 154 by Zaffirini and SB 159 by Eltife. SB 159 has been scheduled for a

public hearing in the Senate Criminal Justice Committee on March 29. SB 154 has been referred to the same committee.