

**SUBJECT:** Allowing contracts for prison inmates to provide services

**COMMITTEE:** Corrections — committee substitute recommended

**VOTE:** 4 ayes — Madden, D. Jones, R. Allen, McReynolds

2 nays — Hochberg, Noriega

1 absent — Haggerty

**WITNESSES:** For — None

Against — Rick Levy, Texas AFL-CIO

On — Chris Kirk, Sheriff's Association of Texas

**BACKGROUND:** The Texas Department of Criminal Justice (TDCJ) operates a federally certified Private Sector Prison Industries Enhancement (PIE) program under which private industries employ state felons, subject to federal guidelines on wages and other restrictions. The private sector industries generally are located at or near the grounds of correctional facilities, and inmates work for the private industry while they are incarcerated. The goods produced are exempt from federal and state prohibitions against the sale of prison-made products.

Federal law requires that programs meet certain criteria, such as paying prevailing wages. Other criteria include consulting with organized labor and local private industry, using only inmates who volunteer, and providing for compensation to injured workers. Under federal and state laws, a portion 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.

The Texas PIE program is capped at 5,000 offenders. Currently, about 466 offenders are employed in PIE program doing various types of manufacturing. Government Code, sec. 497.062, requires that the PIE authority establish as a goal that the program have at least 1,800 participants by January 1, 2006.

The Private Sector Prison Industries Oversight Authority approves, certifies, and oversees the operation of the PIE program in TDCJ, the Texas Youth Commission, and in county correctional facilities.

The Texas Correctional Industries Office of TDCJ oversees inmates working at industrial plants throughout TDCJ as part of the prison industries program. Inmates working at these plants are not part of the PIE program. Goods produced in the TCI program may not be sold on the open market but can be sold to state agencies and political subdivisions of the state.

Government Code, sec. 497.022, allows TDCJ to contract with other states, the federal government, and foreign governments for the manufacture or sale of prison-made products and to contract with a private school or visually handicapped person in Texas to manufacture Braille textbooks or other instructional aids for the education of visually handicapped persons.

**DIGEST:**

CSHB 2389 would authorize the TDCJ's Texas Correctional Industries office to enter into contracts to provide services. It would be legal to sell items made under these service contracts if the service were one that federal law did not require to be certified under the PIE program.

The contracts for services would be exempt from the federal PIE requirements that the program pay prevailing wages but would have to comply with all other federal PIE requirements. The contracts would have to be approved by the TDCJ board and would be limited to 500 participants. The Private Sector Prison Industries Oversight Authority would have to certify that the contracts for services would not cause the loss of existing jobs in Texas of the specific type provided by the contract.

CSHB 2839 also would allow TDCJ to contract with a private or independent institution of higher education to manufacture for or sell to them prison-made products.

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.

SUPPORTERS  
SAY:

CSHB 2839 would set up a framework for Texas inmates working in the prison TCI manufacturing program to perform services. This would allow the state's inmate industry program to broaden the type of work inmates do so that inmates could earn wages like they do in the PIE industries and could learn skills that could help them obtain work upon release.

Current law prohibits wage-paying to inmates unless they are involved in the PIE program. Federal law governing the PIE program is silent about inmates providing services. Opportunities to have inmates provide services for the free market have arisen, but under current law Texas could not compete for those jobs. Texas tried to bid on a contract to have inmates work reconditioning auto parts but was unable to secure the contract because the work was considered a service and prohibited under Texas law. Virginia, which allows inmates to perform services, won the contract and now employs more than 300 inmates refurbishing auto parts.

CSHB 2839 would solve this problem by allowing the TDCJ board to enter into contracts for inmates to provide services sold on the free-world market. This would make Texas more competitive with other states vying for these contracts.

CSHB 2839 would require contracts to provide services to comply with all but one of the PIE program criteria. Service contracts would have to meet federal requirements on deductions from wages, consulting the labor and local private industry, using only inmates who volunteer, and providing compensation to injured workers. However, to ensure that the agency would be competitive with other states for this type of work, the bill would not require contracts authorized by the bill pay the prevailing wage. Other states are not under the obligation to pay prevailing wages because federal law is silent on the provision of services under the PIE program. CSHB 2839 would create a level playing field with other states competing for these jobs.

Free-world labor would not be harmed by CSHB 2839. The bill would cap the inmate workers in service contracts at 500. Approving a contract also would be a two-step process involving the PIE authority and the TDCJ board, both of which would be sensitive to causing harm to free world workers. Free world labor could bring any concerns about a potential contract to either entity.

CSHB 2839 would extend to private or independent institutions of higher education the current authorization for inmate-made products to be sold to state colleges and universities. This authority could be used, for example, to sell college dorm-room mattresses to private schools. Allowing these types of sales would be a natural extension of current law, under which public universities can be sold prison-made furniture or other goods, and would not harm any free world interests.

OPPONENTS  
SAY:

CSHB 2839 would expand the type of work that Texas prison inmates could do for wages but would lack one of the most important safeguards applied in other wage-earning jobs – the requirement to pay prevailing wages. This safeguard protects both free-world workers and inmates. The requirement protects free-world workers by helping to ensure that jobs in the free world are not displaced by companies lowering their costs by using inmate labor that costs less than free-world labor. The requirement protects inmates by ensuring that they are not exploited. The requirements of the PIE program are carefully crafted to ensure that providing wage-paying jobs for inmates is balanced with the rights and needs of free-world labor, and CSHB 2389 would upset that balance.

Allowing inmate-made products to be sold to private college and universities could hurt free-world companies and workers that provide those goods now. This change would violate the general principle that allows the state to sell to other state entities such as public universities but not to private entities.

NOTES:

The committee substitute added the requirement that contracts for services meet all but one of the PIE requirements and the limit of 500 workers for these contracts.