

- SUBJECT:** Revising private sector prison work programs for inmates
- COMMITTEE:** Corrections — committee substitute recommended
- VOTE:** 10 ayes — McReynolds, Madden, England, Hodge, Kolkhorst, Marquez, Martinez, S. Miller, Ortiz, Sheffield
- 0 nays
- 1 absent — Dutton
- WITNESSES:** For — Rick Levy, Texas AFL-CIO; Lance Lowry, AFSCME Texas Correctional Employees; (*Registered, but did not testify:* Rebecca Moss, Texas Association of Manufacturers; Becky Moeller, Texas AFL-CIO)
- Against — James Bertram, City of Lockhart; Carolyn V. Henderson, Randall Henderson, and Raymond Henderson, Henderson Controls, Inc.; Penny Rayfield, OnShore Resources; (*Registered, but did not testify:* Jacqueline Conn, Travis County Reentry Roundtable; Ed Davis, Restorative Justice Ministries Network of Texas; Karen Smith)
- On — Oliver Bell, Texas Board of Criminal Justice; Rick Thaler, Texas Department of Criminal Justice; Manuel Calzadias; Pamela Capestany; Loresca Foster; John Hill; Curtis Sample; Orlando Turner; (*Registered, but did not testify:* Jesse Lewis, Texas Workforce Commission)
- BACKGROUND:** Texas Department of Criminal Justice (TDCJ) operates a federally certified 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.
- The state’s Private Sector Prison Industries Oversight Authority is the entity that approves, certifies, and oversees the operation of the private sector prison industries programs in TDCJ, the Texas Youth Commission (TYC), and in county correctional facilities. The authority has eight

members, appointed by the governor. Three are public members, one is experienced in vocational rehabilitation, and the rest are representatives of organized labor, employers, victims' rights advocates, and inmates' rights advocates. There also are five ex-officio members: the executive directors of TDCJ, TYC, and the Texas Workforce Commission, and a member of the House of Representatives appointed by the speaker of the House and a member of the Senate appointed by the lieutenant governor.

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. 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 providing for compensation to injured workers.

Under rules developed under the authority in Government Code, sec. 497.0581, part of the deductions from offenders' wages are deposited in a general revenue account. Government Code, sec. 497.056 requires that of that money, up to \$2 million be deposited in a general revenue account, called the private sector prison industries expansion account. Once that threshold has been met, one-half of the amounts going into general revenue from the program are transferred to the private sector prison industries expansion account. The expansion account can be appropriated only to construct work facilities, recruit corporations to the program, and pay the costs of the oversight authority and TDCJ to implement the program.

The Texas PIE program is capped at 5,000 offenders. Currently, about 300 offenders are employed in TDCJ PIE programs, working in the following types of industries: window manufacturing; air conditioner parts manufacturing; computer component production; and hardwoods and veneer production. The TYC operates one small program, and there are no programs run by counties.

Under Government Code, ch. 492, the Texas Board of Criminal Justice governs the Texas Department of Criminal Justice (TDCJ). The board has nine members, appointed by the governor with the advice and consent of the Senate.

DIGEST:

CSHB 1914 would abolish the Texas Private Sector Industries Oversight Authority and transfer oversight of the state's PIE program to the Texas Board of Criminal Justice. The board would be required to approve, certify, and supervise the private sector prison industries programs operated by TDCJ, TYC, and county correctional facilities. The transfer of duties and powers would take place on the date that the Texas Board of Criminal Justice was designated by the federal Bureau of Justice Assistance as the program certificate holder for Texas.

The board would not be authorized to direct the general operations of or to govern the TYC or county correctional facilities in any other way.

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, 2009.

**Loss of jobs calculation and impact on Texas jobs.** The board would be under a new requirement to ensure that private sector prison industries programs were operated in a way to avoid the loss of any existing jobs for free-world employees in Texas. This requirement would apply to private sector prison industries programs certified on or after the bill's effective date and to programs certified before the effective date that began operations on or after the effective date.

CSHB 1914 would change the current requirement that when the board makes its initial certifications of the programs that it determine there would be no loss of Texas jobs by the employer. Instead, the board would have to certify that there would be no loss of jobs to any employer in Texas. This would apply to certifications made on or after the bill's effective date.

Governmental entities would be prohibited from entering into or renewing contracts with private sector prison industry employers if the board determined that the contract had or would negatively affect any Texas employer, including through the loss of existing jobs provided by the employer to free-world Texans. The board would have to adopt rules to establish a procedure to make that determination. The rules would have to allow aggrieved employers to submit sworn statements alleging a negative effect of a contract. A contract would not be considered to negatively affect an employer if the only negative effect was the loss of jobs in a foreign country.

**Notice of PIE contract to legislators, others.** At least 60 days before entering into a contract for a private sector prison industries program, a governmental entity would have to notify the following persons:

- the state senator and the state representative in whose district the program was or would be located, 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;
- the chambers of commerce in cities or counties in which the program was or would be located; and
- any employer that employed free-world Texans who, as determined by Texas Workforce Commission rules, performed work in the same job descriptions as offenders in the PIE program would perform or were engaged in the manufacture of the same or a similar product.

The requirements would apply to contracts entered into on or after the bill's effective date. The Workforce Commission would be required to adopt the rules as soon as practicable after the bill's effective date and by January 1, 2010.

**Contract requirements.** CSHB 1914 would establish requirements for contracts in the private sector prison industries program. The contracts would have to include job descriptions for the work and specific descriptions of products that would be manufactured and charge private sector prison industries employers the fair market value of substantially similar property for government property leased to the entity.

The board would be required to make certain information available on the Internet, including a copy of each contract under the program, a list of the hourly wages paid under each contract, and minutes of the board's meetings concerning the program.

**Cap on number of participants.** CSHB 1914 would lower the cap on participants in the PIE program from 5,000 to 750. The bill would impose a new restriction that there may not be more than 11 cost accounting centers approved at any one time. The board would be allowed to exceed the 750 cap on the number of participants on a temporary basis if an employer operating a private sector prison industries program requested

to temporarily exceed the cap and the board determined that there was good cause to exceed it.

**Expansion account.** The bill would no longer allow the private sector prison industries expansion account to be used to construct work facilities. The cap on the account's balance would be reduced from \$2 million to \$1 million. The account could continue to be used to recruit corporations and for the costs of implementing the PIE program.

**SUPPORTERS  
SAY:**

CSHB 1914 is necessary to make the PIE program more accountable and transparent and to refocus it so that it does not expand at the expense of Texas workers. CSHB 1914 would not eliminate the PIE program or keep inmates from gaining valuable work skills, but it would make sure the program was run with consideration given to businesses and workers throughout the state. The changes in the bill would strengthen state laws so that existing private companies in Texas would not have direct, unfair competition from companies using prison labor in the PIE program.

Many of the provisions would address problems that came to light recently when the PIE program entered into a contract with a trailer manufacturer that made the same product as a Texas company. While no laws were broken with that contract, it may not have been in the best interest of Texas businesses and workers.

CSHB 1914 would move responsibility for the state's PIE program from the Private Sector Prison Industries Oversight Authority to the TDCJ board to make the PIE program more visible and to make its oversight more transparent and accountable. In the past, Oversight Authority meetings and actions have been sheltered from view and it has been difficult to obtain information from the authority. Placing the PIE program under the TDCJ board would put it under an entity that conducts its business in public, visible meetings and one that is more accountable to the public and the Legislature. The TDCJ board is the best entity to oversee the program because of its expertise in offender issues, including job skill acquisition.

**Loss of jobs calculation and impact on Texas jobs.** CSHB 1914 would create new safeguards so that PIE businesses operated fairly in Texas. The board would have to ensure that programs were operated in a way designed to avoid the loss of existing Texas jobs, not just jobs by that employer. This requirement to look at jobs statewide would result in a

more fair assessment of the impact of a potential PIE business than the tests in current law, which require consideration only of potential job loss by the PIE employer. The bill would guarantee that employers' points of view would be taken into consideration when PIE contracts were developed by requiring rules that allowed employers to submit statements about the contracts.

These provisions would balance the needs of Texas businesses and workers with the PIE program. Expansion of the program should not take place at the expense of free-world Texans.

CSHB 1914 would not harm any of the PIE programs operating now because it would not apply these requirements to them nor would the bill cripple the program. If a proposed PIE program met the requirements in the bill, it could get a contract. Expansion of current industries or new industries to Texas are just a couple of possibilities of manufactures that could meet the requirements of the bill, depending on other factors.

**Notice of PIE contract to legislators, others.** CSHB 1914 would make the PIE contracting process more transparent by requiring notice to legislators, local officials, labor and business leaders, and others involved in business in Texas before a contract was signed. These officials and others then could give their input on the contract. This would address the recent situation in which local officials in one area were unaware of that the state was entering into a PIE contract that had the potential to affect jobs in their area.

**Contract requirements.** The bill would increase the transparency of PIE contracts and the ability to analyze the contracts by requiring all contracts to include certain information. The bill would make sure that this transparency would extend to the public by requiring information about the contracts to be posted on the Internet.

The bill would help level the playing field for free world businesses and PIE contractors by requiring that contracts include certain things, such as the charging of fair market value for the use of prison facilities. This calculation would not be unfair to PIE companies because the calculation would have to be for substantially similar property.

**Cap on the number of participants.** Lowering the cap on the number of PIE participants to 750 and establishing a cap of 11 on the number of

vendors would set the program limits at a more realistic level without harming the program or any anticipated near-term expansion. This lower cap would protect Texas workers and businesses from a rapid expansion of the program, which is especially justified in today's economic climate. The Legislature would be able to raise the cap when warranted, but having the lower cap in statute would ensure that the program could be evaluated before it expanded beyond 750.

Historically, the PIE program has never had more than about 500 participants, and it has only about 300 now. A cap of 750 is enough to allow the program in the near future. The bill also would give the board enough flexibility to act in the unlikely case that the program reached the 750 cap by allowing for temporary expansions.

**Expansion account.** The bill would eliminate the current inappropriate authority for money from the PIE program to be used to build facilities because the state should not be constructing buildings for private employers. Eliminating this use of the funds would mean that the cap on the fund could be lowered and there would still be enough funds to operate the program.

OPPONENTS  
SAY:

It would be best to leave oversight of the PIE program to the current Private Sector Prison Industries Oversight Authority. The authority has done a good job in the past, and there is no compelling reason to strip its authority. Having a stand-alone entity oversee the state's PIE program ensures appropriate focus on the program, insulates the process from some competing interests and political pressure, and allows those overseeing the program to develop expertise in this area. The TDCJ board has broad and numerous responsibilities and may not be able to give the program the attention it deserves.

**Loss of jobs calculation and impact on Texas jobs.** The requirement in CSHB 1914 prohibiting PIE program contracts that would negatively affect any employer in the state would be too broad. In almost any situation, some employer somewhere in the state could claim that a PIE program negatively affected them. Over time, this requirement could make new contracts all but impossible. The PIE program has a small, but important role in the state's inmate job training efforts, and expansion of the program should not be made more difficult.

**Cap on the number of participants.** The cap on the PIE program should remain at its current level and not be lowered so that the program would be ready for future expansion. It could be hard to recruit a large company to the PIE program if the number of participants already was at or near the limit that would be set by the bill. Expansion should not be feared since it would have to take place under the parameters in the law that would make sure expansion fair to Texas businesses or workers.

**Expansion account.** Lowering the cap on the expansion account and eliminating the ability for it to construct work facilities could leave it with out enough flexibility or resources to handle a program expansion.

NOTES:

The committee substitute made several changes to the filed version of the bill, including:

- adding the provisions dealing with the private sector prison industries expansion account;
- changing from 30 to 60 days the deadline that governmental entities have to notify certain persons before entering into a contract for a private sector prisons industries program and adding to the list of persons who would have to be notified of the contracts;
- changing the proposed cap on the number of participants from 400 to 500 and adding the provisions allowing for the board to temporarily allow more participants; and
- adding the provision stating that the TDCJ board was not authorized to direct the operations of or govern TYC or county correctional facilities.

The companion bill, SB 1169 by Nichols, was reported favorably, as substituted, by the Senate Criminal Justice Committee on April 24 and recommended for the Local and Uncontested Calendar.