

SUBJECT: Prison industries, sale of prison-made goods, TDCJ purchasing authority

COMMITTEE: Corrections — favorable, without amendment

VOTE: 6 ayes — Hightower, Allen, Edwards, Gray, Hupp, Marchant

0 nays

3 absent — Alexander, Farrar, Serna

WITNESSES: For — None

Against — None

On — Carl Reynolds, Texas Board of Criminal Justice; John Benestante, Texas Department of Criminal Justice

BACKGROUND : Inmates in the Texas Department of Criminal Justice (TDCJ) work at department-owned industrial plants throughout TDCJ as part of the prison industries program. These inmates are not paid wages. TDCJ is also authorized to operate a program, called the Private Sector Prison Industries Enhancement (PIE) Program, under which private industries can employ state felons while they are incarcerated, subject to federal guidelines on wages and other restrictions. The goods produced under the PIE program are exempt from federal and state prohibitions against the sale of prison-made products.

DIGEST: HB 2324 would rearrange current Government Code statutes governing TDCJ's prison industries office and prison-made goods. It also would authorize TDCJ to provide services through this program, repeal TDCJ's current exemption from state purchasing requirements, and create an offense for inmates to possess certain types of information.

HB 2324 would take effect September 1, 1997.

**Texas Correctional Industries.** TDCJ would be authorized to provide services through the Texas Correctional Industries program. HB 2324 would consolidate statutes governing the program into one subchapter,

including the purposes of the program governing prison-made goods.

HB 2324 would move to the new subchapter current provisions concerning prison-made goods act and the industrial revolving account that is used to administer the Texas Correctional Industries. The bill would add purchasing real property to the current uses of the fund.

HB 2324 would authorize TDCJ's prison industries office to enter into contracts to produce products to be sold on the open market and would eliminate current authority to enter into contracts related to the prison industries program. HB 2314 would move to this section current authorization that allows the prison industries office to enter into contracts with private businesses if the contracts comply with federal rules concerning the employment of inmates by private industries. Inmates working under a contract for a private company would have to be counted toward a current cap on the number of inmates who can participate in private sector-prison work programs.

HB 2324 would authorize the TDCJ board to establish a prison industries advisory committee instead of establishing the committee by law.

HB 2324 would move the current offense for selling prison made products on the open market to this new subchapter. The bill would change the current penalties for this offense from a misdemeanor punishable by a fine of at least \$10 and up to \$500 and confinement in jail for at least 10 days and up to one year or both, to a Class B misdemeanor (maximum penalty of 180 days and a \$2,000 fine).

**Sale of prison made goods.** HB 2324 would consolidate statutes governing the sale of prison-made articles or products to governmental agencies under one subchapter. TDCJ would be authorized to contract with (1) another state, the federal government or a foreign government to manufacture or sell to them prison-made articles or products; and (2) a private school or a visually handicapped person in Texas to manufacture Braille textbooks or other educational aids for visually handicapped persons.

**Possessing personal information.** HB 2324 would it a criminal offense, under the current offense of inmate misuse of information gained

through work program, for an inmate or state jail prisoner to possess personal information about another that the inmate has access to through participation in a work program. (Currently, it is an offense for an inmate, with intent to harm or defraud, to disclose or use this type of information.)

**TDCJ purchasing authority.** HB 2324 would repeal current provisions that allow the TDCJ board to adopt policies allowing the institutional division to purchase certain goods outside of the state purchasing and general services act.

**Miscellaneous.** The bill would make other changes including:

- authorizing TDCJ to provide inmate labor, through a contract, to nonprofit organizations that provide services to the general public and enhance social welfare and the general well-being of the community; and
- moving statutes on the use of surplus agricultural property and products out of the current prison-made goods subchapter and putting it in a subchapter listing general provisions relating to inmate labor.

SUPPORTERS  
SAY:

HB 2324 would rearrange statutes governing the prison industries program and the sale of prison-made goods so that they are arranged more logically, expand TDCJ's authority so that inmates can provide services, ensure that TDCJ follows standard state purchasing procedures, and close a loophole in current law concerning inmates possessing information about private persons.

**Texas Correctional Industries.** HB 2324 would give TDCJ clear authority to provide services through its prison industries program. The department already does some activities, such as repairing school buses and data entry, that could be considered services, and the department might want to expand these types of activities in the future. TDCJ should be able to design its work programs to include any meaningful job, including producing services. This could be especially helpful in teaching inmates job skills since many jobs in the free world involve the service sector. The sale of services produced by TDCJ would be governed by all current laws and rules governing the sale of products.

Allowing TDCJ to use the industrial revolving account to purchase property would ensure that the department had the flexibility to use the fund for everything necessary to run the prison industries program. This authority could be used, for example, to purchase land next to an existing prison for an inmate workshop. HB 2324 would simply allow money from the fund to be spend on property, but purchases would still be governed by state property purchasing rules.

The bill would clarify TDCJ's existing authority to contract with private businesses to produce articles through the federally-certified Prison Industries Program. Currently, this authorization has been used only for arrangements in which private industries hire felons to work in factories built near or on prison grounds. However, TDCJ could want to use this program to enter into a contract with a private business to produce a product in a factory that it owns. Any contract with a private company would be subject to state and federal rules governing the PIE program, including criteria on consulting with organized labor and local private industry, using only inmates who volunteer, paying prevailing wages, compensating injured workers and deducting from inmates' pay for room and board, crime victims' compensation, family care, taxes, the cost of supervision, restitution and an inmate savings account. HB 2324 would ensure that TDCJ inmates working under a contract with a private business would be counted toward the state-mandated cap on the PIE program.

**Sale of prison-made goods.** HB 2324 would give TDCJ clear authority to contract with other state, federal or foreign governments for sales of its products.

**TDCJ purchasing authority.** HB 2324 would remove TDCJ's exception to standard state purchasing requirements to prevent misuses of this authority. In the past this authorization has been used to make questionable purchases, such as the purchase of the food product VitaPro. TDCJ should be subject to standard state purchasing requirements and guidelines. TDCJ would still be able to make emergency purchases, but it would have to use standard state guidelines for emergencies.

**Possessing personal information.** HB 2324 would close a loophole in the current law that prohibits inmates from disclosing or using personal

information about persons that they have gained through a work program. This offense does not cover an inmate who possesses the information, perhaps to use later to harm someone. HB 2324 would ensure that possessing this type of information, with intent to harm or defraud, would also be an offense.

**Miscellaneous.** HB 2323 would give TDCJ clear authority to contract with nonprofit organizations such as ones that build homes for low-income Texans. This could help inmates gain work skill and allow them to help society.

OPPONENTS  
SAY:

**Texas Correctional Industries.** Authorizing TDCJ to produce services in its prison industries program could result in private service-sector businesses being harmed.

It might be unwise to give TDCJ authority to purchase land with funds from the industrial revolving account. There is a danger that TDCJ could expand its property holdings without adequate oversight.

**TDCJ purchasing authority.** TDCJ is a large agency that sometimes has unique needs. It should retain the ability to make certain purchases outside of the state purchasing laws. Past misuses of this authority could be dealt with by tightening current law or increased oversight.

**Miscellaneous.** Allowing inmates to provide labor for nonprofit organizations could be misused to exploit inmates.