

BILL ANALYSIS

Senate Research Center
81R23258 E

C.S.S.B. 1169
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Criminal Justice
4/23/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Prison Industry Enhancement Certification Program (PIECP) is a program operated by the Texas Department of Criminal Justice which authorizes businesses to utilize inmate labor in the manufacturing of goods sold across state lines. Current and past PIECP programs include the manufacture of air conditioner parts, trailer beds, computer components, windows, and veneered wood products.

Federal law (Title 18, U.S. Code 1761) requires states to establish certain protections and procedures to prevent PIECP programs from displacing free-world businesses and workers. In 1997, the Texas Legislature passed H.B. 1301 (75th Legislature, Regular Session, 1997), creating the Private Sector Prison Industries Oversight Authority (authority) to fulfill these obligations.

The authority does not have adequate legislative direction to implement rules that would ensure that PIECP programs are in compliance with other state statutes and federal law. S.B. 1169 clarifies legislative intent regarding PIECP and transfers the certification of PIECP programs to the Texas Board of Criminal Justice to better facilitate compliance. The bill also ensures that businesses that do not participate in PIECP are not negatively affected by unfair competitive advantages that could unintentionally result through the employment of inmate labor.

C.S.S.B. 1169 amends current law relating to abolishing the Private Sector Prison Industries Oversight Authority and to the certification and operation of private sector prison industries programs.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Private Sector Prison Industries Oversight Authority is transferred to Texas Board of Criminal Justice in SECTION 4 (Section 497.004, Government Code), SECTION 11 (Section 497.057, Government Code), SECTION 12 (Section 497.058, Government Code), SECTION 13 (Section 497.0581, Government Code), SECTION 15 (Section 497.059, Government Code), and SECTION 17 (Section 497.060, Government Code) of this bill.

Rulemaking authority is expressly granted to the Texas Board of Criminal Justice in SECTION 16 (Section 497.0595, Government Code) and SECTION 18 (Section 497.063, Government Code) of this bill.

Rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 16 (Section 497.0596, Government Code) and SECTION 19 (Section 302.016, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 492, Government Code, by adding Section 492.0011, as follows:

Sec. 492.0011. PRIVATE SECTOR PRISON INDUSTRIES PROGRAM MANAGEMENT. (a) Requires the Texas Board of Criminal Justice (TBCJ) to approve, certify, and supervise private sector prison industries programs operated by the Texas Department of Criminal Justice (TDCJ), the Texas Youth Commission (TYC), and county correctional facilities in accordance with Subchapter C, Chapter 497.

(b) Provides that this section does not authorize TBCJ to direct the general operations of or to govern TYC or county correctional facilities in any manner not specifically described by Subsection (a).

SECTION 2. Amends Sections 492.003(a) and (c), Government Code, as follows:

(a) Prohibits a person from being eligible for appointment as a member of TBCJ if the person or person's spouse owns, or controls directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by TDCJ or receiving funds from TDCJ, including an entity or organization with which TDCJ contracts under Subchapter C, Chapter 497; or owns, controls directly or indirectly, or is employed by a business entity or other organization with which TDCJ contracts concerning a private sector prison industries program approved and certified by TBCJ under Subchapter C, Chapter 497. Makes nonsubstantive changes.

(c) Prohibits a person from being a member of TBCJ and being a TDCJ employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if the person is an officer, employee, or paid consultant of the Texas trade association in the field of criminal justice or private sector prison industries' or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of criminal justice or private sector prison industries.

SECTION 3. Amends Section 492.0031, Government Code, by adding Subsections (b-1) and (d), as follows:

(b-1) Requires that the training program, in addition to the information described by Subsection (b) (relating to information that must be provided to the person by the training program), provide the person with information regarding the legislative history of Subchapter C, Chapter 497, the history and operation of programs under that subchapter, and any applicable federal law concerning the operation or certification of a program under that subchapter.

(d) Requires a person who is a member of TBCJ on September 1, 2009, to complete the training described by Subsection (b-1) not later than January 1, 2010. Provides that this subsection expires September 1, 2011.

SECTION 4. Amends Section 497.004(a), Government Code, to authorize TBCJ by rule to develop and TDCJ to administer an incentive pay scale for work program participants consistent with rules adopted by TBCJ, rather than the Private Sector Prison Industries Oversight Authority (authority) under Subchapter C. Makes a conforming change.

SECTION 5. Amends Section 497.006(c), Government Code, to require that a contract for the provision of services under this section be certified by TBCJ as complying with all requirements of the Private Sector/Prison Industry Enhancement Certification Program operated by the Bureau of Justice Assistance and authorized by 18 U.S.C. Section 1761, other than a requirement relating to the payment of prevailing wages, so long as the contract requires payment of not less than the federal minimum wage; be certified by TBCJ, under rules adopted under Section 497.059 (Limiting Impact on Non-Prison Industry), that the contract would not cause the loss of existing jobs of a specific type provided by any employer, rather than the contracting party, in this state; and be approved by TBCJ. Makes conforming changes.

SECTION 6. Amends the heading to Subchapter C, Chapter 497, Government Code, to read as follows:

SUBCHAPTER C. PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS

SECTION 7. Amends Section 497.051, Government Code, as follows:

Sec. 497.051. New heading: PURPOSE; DEFINITIONS. (a) Requires TBCJ to, rather than the authority is created to, approve, certify, and supervise, rather than oversee, the operation of private sector prison industries programs in TDCJ, TYC, and the county correctional facilities in compliance with the federal prison enhancement certification program established under 18 U.S.C. Section 1761. Authorizes TBCJ to use TBCJ and TDCJ employees to provide the clerical and technical support necessary for TBCJ to perform TBCJ's duties under this subchapter and requires TBCJ to ensure that TDCJ implements the policies adopted by TBCJ that relate to the operation of private sector prison industries programs.

(a-1) Requires TBCJ to ensure that private sector prison industries programs are operated under this subchapter in a manner that is designed to avoid any loss of existing jobs for employees in this state who are not incarcerated or imprisoned.

(b) Defines "governmental entity." Deletes definition of "authority."

(c) Provides that this subchapter does not authorize TBCJ to direct the general operations of or to govern TYC or county correctional facilities in any manner not specifically described by Subsection (a).

SECTION 8. Amends Section 497.0527, Government Code, as follows:

Sec. 497.0527. COMPLAINTS. (a) Requires TBCJ to maintain a file on each written complaint filed with TBCJ in relation to a private sector prison industries program. Makes conforming changes.

(b) Makes conforming changes.

(c) Makes a nonsubstantive and a conforming change.

SECTION 9. Amends the heading to Section 497.056, Government Code, to read as follows:

Sec. 497.056. PRIVATE SECTOR PRISON INDUSTRIES ACCOUNT.

SECTION 10. Amends Sections 497.056(b) and (c), Government Code, as follows:

(b) Provides that the private sector prison industry account is created as an account in the general revenue fund. Authorizes money in the account to be appropriated only to recruit corporations to participate as private sector industry programs and pay costs of TBCJ and TDCJ in implementing this subchapter, including the cost to TDCJ in reimbursing TBCJ members for expenses. Deletes existing text providing that to construct more facilities and increase the number of participants, the private sector prison industry expansion account is created as an account in the general revenue fund. Deletes existing text authorizing money in the account to be appropriated only to construct work facilities, recruit corporations to participate as private sector industry programs, and pay costs of the authority and TDCJ in implementing this subchapter, including the cost to TDCJ in reimbursing authority members and the employer liaison for expenses. Makes a nonsubstantive change.

(c) Requires the comptroller of public accounts (comptroller), on each certification by TDCJ that an amount has been deposited to the credit of the general revenue fund from deductions from participants' wages under Section 497.0581, to transfer an equivalent amount from the general revenue fund to the private sector prison industry account, rather than the private sector prison industry expansion account, until the balance in the account is \$1 million, rather than \$2 million. Prohibits the balance in the account from exceeding \$1 million. Deletes existing text requiring the comptroller, on a certification occurring when the balance in the account is more than \$2 million, to transfer to the account an amount equal to one-half of the amount deposited to the credit of the general revenue fund from deductions from participants' wages.

SECTION 11. Amends Section 497.057, Government Code, as follows:

Sec. 497.057. RULES. Requires TBCJ, rather than the authority, to adopt rules as necessary to ensure that the private sector prison industries program authorized by this subchapter is in compliance with the federal prison enhancement certification program established under 18 U.S.C. Section 1761.

SECTION 12. Amends Section 497.058(a), Government Code, as follows:

(a) Requires TBCJ by rule to require that participants at each private sector prison industries program be paid not less than the prison industry enhancement certification program (PIECP) wage as computed by the Texas Workforce Commission (TWC), except that TBCJ may permit employers to pay a participant the federal minimum wage for the two-month period beginning on the date participation begins; and the minimum wage for participants committed to TYC, because of the age of the participants and the extensive training component of their employment, is the federal minimum wage. Makes nonsubstantive and conforming changes.

SECTION 13. Amends Section 497.0581, Government Code, as follows:

Sec. 497.0581. PARTICIPANT CONTRIBUTIONS; ASSISTANCE ACCOUNT. (a) Requires TBCJ by rule to determine the amount of deductions to be taken from wages received by the participant under this subchapter and the disbursement of those deductions. Makes conforming changes.

(b) Makes conforming changes.

SECTION 14. Amends the heading to Section 497.059, Government Code, to read as follows:

Sec. 497.059. LIMITING IMPACT OF CERTIFICATION ON NON-PRISON INDUSTRY.

SECTION 15. Amends Sections 497.059(a) and (b), Government Code, to make conforming and nonsubstantive change.

SECTION 16. Amends Subchapter C, Chapter 497, Government Code, by adding Sections 497.0595 and 497.0596, as follows:

Sec. 497.0595. LIMITATION ON CONTRACTS. (a) Prohibits a governmental entity from entering into a contract or renewing a contract with an employer for a private sector prison industries program under this subchapter if TBCJ determines that the contract has negatively affected or would negatively affect any employer in this state, including through the loss of existing jobs provided by the employer to employees in this state who are not incarcerated or imprisoned.

(b) Requires TBCJ to adopt rules that establish a procedure to be used in making the determination described by Subsection (a). Requires the procedure to allow an aggrieved employer in this state to submit a sworn statement to TBCJ alleging that the employer has been or would be negatively affected by the contract to be entered into or renewed.

(c) Provides that for the purposes of this section, a contract does not negatively affect an employer if the only negative effect alleged in a sworn statement by the employer is the loss of existing jobs that, at the time the sworn statement is submitted to TBCJ, are performed by workers in a foreign country.

Sec. 497.0596. NOTICE CONCERNING CERTAIN CONTRACTS. (a) Requires the governmental entity, not later than the 60th day before the date a governmental entity intends to enter into a contract with an employer for a private sector prison industries program under this subchapter, to notify the state senator and state representative in whose district the program covered by the contract is or will 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 chamber of commerce in any municipality or county in which the program covered by the contract is or will be located; and any employer that employs persons in this state who are not incarcerated or imprisoned and who, as determined under rules adopted by the Texas Workforce Commission to implement this subdivision perform work in the same job descriptions as participants in the program covered by the contract will perform or are otherwise engaged in the manufacture of the same or a substantially similar product as will be manufactured under this contract.

(b) Requires that the notice required by Subsection (a) include a specific description, in plain language and in an easily readable and understandable format, of any product that is or will be manufactured under the contract.

(c) Authorizes a governmental entity that provides notice under Subsection (a) to charge the employer with whom the governmental entity intends to enter into the contract for the cost of providing that notice.

SECTION 17. Amends Sections 497.060, 497.061, and 497.062, Government Code, as follows:

Sec. 497.060. **WORKERS' COMPENSATION.** Requires TBCJ by rule to require private sector prison industries program employers to meet or exceed all federal requirements for providing compensation to participants injured while working. Makes a conforming change.

Sec. 497.061. **RECIDIVISM STUDIES.** Requires TBCJ to gather data to determine whether participation in a private sector prison industries program is a factor that reduces recidivism among participants. Deletes existing text requiring the authority, with the cooperation of the Criminal Justice Policy Council, to gather data to determine whether participation in a private sector prison industries program is a factor that reduces recidivism among participants.

Sec. 497.062. New heading: **LIMITATION ON NUMBER OF PARTICIPANTS AND COST ACCOUNTING CENTERS.** (a) Authorizes TBCJ to certify private sector prison industries programs that meet or exceed the requirements of federal law and the rules of TBCJ. Prohibits TBCJ, except as provided by Subsection (b), from allowing more than 750 participants in the program at any one time or authorizing the operation of more than 11 cost accounting centers at any one time. Deletes existing text authorizing the authority to certify any number of private sector prison industries programs that meet or exceed the requirements of federal law and the rules of the authority, but providing that in no event may the authority permit more than 5,000 participants in the program at any one time.

(b) Authorizes TBCJ to allow more than 750 participants in the program at one time on a temporary basis if an employer that operates a private sector prison industries program requests in writing that TBCJ temporarily allow more than 750 participants in the program and TBCJ determines that there is good cause to temporarily allow more than 750 participants in the program. Deletes existing text requiring the authority to establish as a goal that the program have at least 1,800 participants by January 1, 2006.

SECTION 18. Amends Subchapter C, Chapter 497, Government Code, by adding Sections 497.063 and 497.064, as follows:

Sec. 497.063. **CONTRACT REQUIREMENTS.** (a) Requires TBCJ to adopt rules requiring a contract entered into by a governmental entity concerning a private sector prison industries program operated under this subchapter to include specific job descriptions for any work that will be performed by participants under the contract; include a specific description, in plain language and in an easily readable and understandable format, of any product that will be manufactured under the contract; and charge a private sector prison industries employer or other participating entity the fair

market value for the lease of any property owned by the governmental entity and leased to the employer or entity under the contract.

(b) Defines "fair market value."

Sec. 497.064. AVAILABILITY OF CERTAIN INFORMATION ON INTERNET. Requires TBCJ to make the following information available on any publicly accessible Internet website that is maintained by TBCJ and contains any information concerning the private sector prison industries programs operated under this subchapter:

- (1) a copy of each current contract entered into by a governmental entity;
- (2) a list of wages paid to participants under each contract described by Subdivision (1); and
- (3) minutes of any meeting of TBCJ in which TBCJ discusses or takes action concerning TBCJ's powers and duties under this subchapter; or one or more private sector prison industries programs operated under this subchapter.

SECTION 19. Amends Subchapter A, Chapter 302, Labor Code, by adding Section 302.016, as follows:

Sec. 302.016. RULES REGARDING PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS. Requires TWC to adopt rules necessary to implement Section 497.0596 (a)(4), Government Code.

SECTION 20. Repealers: Sections 497.009 (Certification for Franchise Tax Credit), 497.052 (Membership), 497.0521 (Conflicts of Interest), 497.0522 (Removal Provisions), 497.0523 (Information: Requirements for Office or Employment), 497.0524 (Training Program), 497.0525 (Policymaking and Management Responsibilities), 497.0526 (Public Access), 497.053 (Terms), 497.054 (Presiding Officer), and 497.055 (Reimbursement), Government Code.

SECTION 21. (a) Provides that, on the date on which TBCJ is designated as the certificate holder for this state by the Bureau of Justice Assistance, the authority is abolished and all powers, duties, obligations, rights, contracts, appropriations, records, real or personal property, and personnel of the authority are transferred to TBCJ in accordance with Subchapter C, Chapter 497, Government Code, as amended by this Act. Requires the authority, notwithstanding any other provision of this Act, before the date on which TBCJ is designated as the certificate holder for this state by the Bureau of Justice Assistance, to continue to fulfill all duties and exercise all powers given to the authority under Subchapter C, Chapter 497, Government Code, as that law existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) Provides that a rule, policy, procedure, or decision of the authority continues in effect as a rule, policy, procedure, or decision of TBCJ until repealed or otherwise superseded by an act of TBCJ.

(c) Provides that a reference in law to the authority on or after the date on which TBCJ is designated as the certificate holder for this state by the Bureau of Justice Assistance, means TBCJ.

SECTION 22. (a) Makes application of Sections 492.003(c) and 492.0031(b-1), Government Code, as amended by this Act, except as provided by Section 492.0031(d), Government Code, as added by this Act, prospective.

(b) Requires TWC to adopt rules as required by Section 302.016, Labor Code, as added by this Act, as soon as practicable after the effective date of this Act and not later than January 1, 2010.

(c) Makes application of Section 497.051(a-1), Government Code, as added by this Act, prospective.

(d) Makes application of Section 497.059, Government Code, as amended by this Act, prospective.

(e) Makes application of Sections 497.0595 and 497.0596, Government Code, as added by this Act, prospective.

(f) Provides that a rule adopted by TBCJ under Section 497.063, Government Code, as added by this Act, applies only to a contract in connection with a private sector prison industries program that is certified on or after the effective date of this Act or to a contract in connection with a private sector prison industries program that was certified before the effective date of this Act but is not in operation on the effective date of this Act.

SECTION 23. Effective date: upon passage or September 1, 2009.