

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/29/09

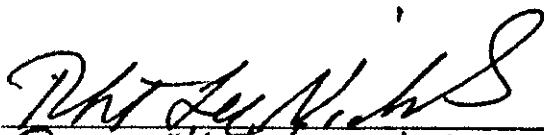
Date

Honorable David Dewhurst
President of the Senate


Honorable Joe Straus
Speaker of the House of Representatives

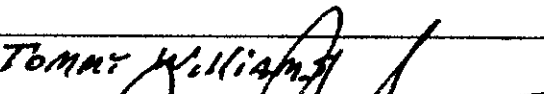
Sirs:

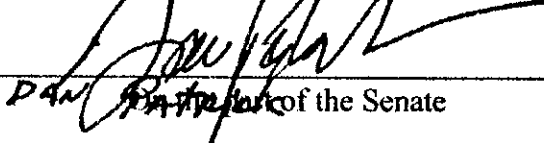
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 1914 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



Robert Nichols - chair


John Whitmire



Eliot SHAPLEIGH


Tommy Williams

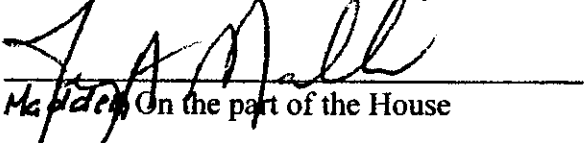

Dan Patterson of the Senate


Jim Reynolds


Christopher


England


Jerri Hodge


Mark On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 1914

A BILL TO BE ENTITLED

1

AN ACT

2 relating to abolishing the Private Sector Prison Industries
3 Oversight Authority and to the certification and operation of
4 private sector prison industries programs.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 492, Government Code, is amended by
7 adding Section 492.0011 to read as follows:

8 Sec. 492.0011. PRIVATE SECTOR PRISON INDUSTRIES PROGRAM
9 MANAGEMENT. (a) The board shall approve, certify, and supervise
10 private sector prison industries programs operated by the
11 department, the Texas Youth Commission, and county correctional
12 facilities in accordance with Subchapter C, Chapter 497.

13 (b) This section does not authorize the board to direct the
14 general operations of or to govern the Texas Youth Commission or
15 county correctional facilities in any manner not specifically
16 described by Subsection (a).

17 SECTION 2. Sections 492.003(a) and (c), Government Code,
18 are amended to read as follows:

19 (a) Each member of the board must be representative of the
20 general public. A person is not eligible for appointment as a
21 member if the person or the person's spouse:

22 (1) is a person, other than a judge participating in
23 the management of a community supervision and corrections
24 department, who is employed by or participates in the management of

1 a business entity or other organization regulated by the department
2 or receiving funds from the department;

3 (2) owns, or controls directly or indirectly, more
4 than a 10 percent interest in a business entity or other
5 organization regulated by the department or receiving funds from
6 the department, including an entity or organization with which the
7 department contracts under Subchapter C, Chapter 497; [✗]

8 (3) uses or receives a substantial amount of tangible
9 goods, services, or funds from the department, other than
10 compensation or reimbursement authorized by law for board
11 membership, attendance, or expenses; or

12 (4) owns, controls directly or indirectly, or is
13 employed by a business entity or other organization with which the
14 department contracts concerning a private sector prison industries
15 program approved and certified by the board under Subchapter C,
16 Chapter 497.

17 (c) A person may not be a member of the board and may not be a
18 department employee employed in a "bona fide executive,
19 administrative, or professional capacity," as that phrase is used
20 for purposes of establishing an exemption to the overtime
21 provisions of the federal Fair Labor Standards Act of 1938 (29
22 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

23 (1) the person is an officer, employee, or paid
24 consultant of a Texas trade association in the field of criminal
25 justice or private sector prison industries; or

26 (2) the person's spouse is an officer, manager, or paid
27 consultant of a Texas trade association in the field of criminal

1 justice or private sector prison industries.

2 SECTION 3. Section 492.0031, Government Code, is amended by
3 adding Subsections (b-1) and (d) to read as follows:

4 (b-1) In addition to the information described by
5 Subsection (b), the training program must provide the person with
6 information regarding:

7 (1) the legislative history of Subchapter C, Chapter
8 497;

9 (2) the history and operation of programs under that
10 subchapter; and

11 (3) any applicable federal law concerning the
12 operation or certification of a program under that subchapter.

13 (d) A person who is a member of the board on September 1,
14 2009, shall complete the training described by Subsection (b-1) not
15 later than January 1, 2010. This subsection expires September 1,
16 2011.

17 SECTION 4. Section 497.004(a), Government Code, is amended
18 to read as follows:

19 (a) The board may develop by rule and the department may
20 administer an incentive pay scale for work program participants
21 consistent with rules adopted by the board [~~Private Sector Prison~~
22 ~~Industries Oversight Authority~~] under Subchapter C. Prison
23 industries may be financed through contributions donated for this
24 purpose by private businesses contracting with the department. The
25 department shall apportion pay earned by a work program participant
26 in the same manner as is required by rules adopted by the board
27 [~~Private Sector Prison Industries Oversight Authority~~] under

1 Section 497.0581.

2 SECTION 5. Section 497.006(c), Government Code, is amended
3 to read as follows:

4 (c) A contract for the provision of services under this
5 section must:

6 (1) be certified by the board [~~Private Sector Prison~~
7 ~~Industries Oversight Authority~~] as complying with all requirements
8 of the Private Sector/Prison Industry Enhancement Certification
9 Program operated by the Bureau of Justice Assistance and authorized
10 by 18 U.S.C. Section 1761, other than a requirement relating to the
11 payment of prevailing wages, so long as the contract requires
12 payment of not less than the federal minimum wage;

13 (2) be certified by the board [~~authority~~], under rules
14 adopted under Section 497.059, that the contract would not cause
15 the loss of existing jobs of a specific type provided by any
16 employer [~~the contracting party~~] in this state; and

17 (3) be approved by the board.

18 SECTION 6. The heading to Subchapter C, Chapter 497,
19 Government Code, is amended to read as follows:

20 SUBCHAPTER C. PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS [~~OVERSIGHT~~
21 ~~AUTHORITY~~]

22 SECTION 7. Section 497.051, Government Code, is amended to
23 read as follows:

24 Sec. 497.051. PURPOSE; DEFINITIONS [~~DEFINITION~~]. (a) The
25 board shall [~~Private Sector Prison Industries Oversight Authority~~
26 ~~is created to~~] approve, certify, and supervise [~~oversee~~] the
27 operation of private sector prison industries programs in the

1 department, the Texas Youth Commission, and in county correctional
2 facilities in compliance with the federal prison enhancement
3 certification program established under 18 U.S.C. Section 1761.
4 The board may use board and department employees to ~~[executive~~
5 ~~director shall]~~ provide the ~~[authority with]~~ clerical and technical
6 support ~~[as]~~ necessary for the board ~~[authority]~~ to perform the
7 board's duties under ~~[imposed on the authority by]~~ this subchapter
8 and shall ensure that the department implements the policies
9 adopted by the board ~~[authority]~~ that relate to the operation of
10 private sector prison industries programs.

11 (a-1) The board shall ensure that private sector prison
12 industries programs are operated under this subchapter in a manner
13 that is designed to avoid the loss of existing jobs for employees in
14 this state who are not incarcerated or imprisoned.

15 (b) In this subchapter:

16 (1) "Governmental entity" means the department, the
17 Texas Youth Commission, and any county that operates a private
18 sector prison industries program under this subchapter.

19 ~~["Authority" means the Private Sector Prison Industries Oversight~~
20 ~~Authority.]~~

21 (2) "Participant" means a participant in a private
22 sector prison industries program.

23 (c) This subchapter does not authorize the board to direct
24 the general operations of or to govern the Texas Youth Commission or
25 county correctional facilities in any manner not specifically
26 described by Subsection (a).

27 SECTION 8. Section 497.0527, Government Code, is amended to

1 read as follows:

2 Sec. 497.0527. COMPLAINTS. (a) The board [~~authority~~]
3 shall maintain a file on each written complaint filed with the board
4 in relation to a private sector prison industries program
5 [~~authority~~]. The file must include:

6 (1) the name of the person who filed the complaint;

7 (2) the date the complaint is received by the board
8 [~~authority~~];

9 (3) the subject matter of the complaint;

10 (4) the name of each person contacted in relation to
11 the complaint;

12 (5) a summary of the results of the review or
13 investigation of the complaint; and

14 (6) an explanation of the reason the file was closed,
15 if the board [~~authority~~] closed the file without taking action
16 other than to investigate the complaint.

17 (b) The board [~~authority~~] shall provide to the person filing
18 the complaint and to each person who is a subject of the complaint a
19 copy of the board's [~~authority's~~] policies and procedures relating
20 to complaint investigation and resolution.

21 (c) The board [~~authority~~], at least quarterly until final
22 disposition of the complaint, shall notify the person filing the
23 complaint and each person who is a subject of the complaint of the
24 status of the investigation, unless the notice would jeopardize an
25 undercover investigation.

26 SECTION 9. The heading to Section 497.056, Government Code,
27 is amended to read as follows:

1 Sec. 497.056. PRIVATE SECTOR PRISON INDUSTRIES [~~EXPANSION~~]
2 ACCOUNT.

3 SECTION 10. Sections 497.056(b) and (c), Government Code,
4 are amended to read as follows:

5 (b) The [~~To construct more facilities and increase the~~
6 ~~number of participants, the~~] private sector prison industry
7 [~~expansion~~] account is created as an account in the general revenue
8 fund. Money in the account may be appropriated only to:

9 (1) [construct work facilities,] recruit corporations
10 to participate as private sector industries programs;

11 (2) [and] pay costs of the board [authority] and
12 department in implementing this subchapter, including the cost to
13 the department in reimbursing board [authority] members [~~and the~~
14 ~~employer liaison~~] for expenses; and

15 (3) pay costs associated with the storage of evidence:

16 (A) containing biological material and used in
17 the prosecution and conviction of an offense; or

18 (B) of a sexual assault or other sex offense.

19 (c) On each certification by the department that an amount
20 has been deposited to the credit of the general revenue fund from
21 deductions from participants' wages under Section 497.0581, the
22 comptroller shall transfer an equivalent amount from the general
23 revenue fund to the private sector prison industry [~~expansion~~]
24 account, until the balance in the account is \$1 [~~\$2~~] million. The
25 balance of the account may not exceed \$1 million [~~On a certification~~
26 ~~occurring when the balance in the account is more than \$2 million,~~
27 ~~the comptroller shall transfer to the account an amount equal to~~

1 ~~one-half of the amount deposited to the credit of the general~~
2 ~~revenue fund from deductions from participants' wages].~~

3 SECTION 11. Section 497.057, Government Code, is amended to
4 read as follows:

5 Sec. 497.057. RULES. The board [~~authority~~] shall adopt
6 rules as necessary to ensure that the private sector prison
7 industries program authorized by this subchapter is in compliance
8 with the federal prison enhancement certification program
9 established under 18 U.S.C. Section 1761.

10 SECTION 12. Section 497.058(a), Government Code, is amended
11 to read as follows:

12 (a) The board [~~authority~~] by rule shall require that
13 participants at each private sector prison industries program be
14 paid not less than the prison industry enhancement certification
15 program (PIECP) wage as computed by the Texas Workforce Commission,
16 except that:

17 (1) the board [~~authority~~] may permit employers to pay
18 a participant the federal minimum wage for the two-month period
19 beginning on the date participation begins; and

20 (2) the minimum wage for participants committed to
21 [~~under the supervision of~~] the Texas Youth Commission, because of
22 the age of the participants and the extensive training component of
23 their employment, is the federal minimum wage.

24 SECTION 13. Section 497.0581, Government Code, is amended
25 to read as follows:

26 Sec. 497.0581. PARTICIPANT CONTRIBUTIONS; ASSISTANCE
27 ACCOUNT. (a) The board [~~authority~~] by rule shall determine the

1 amount of deductions to be taken from wages received by the
2 participant under this subchapter and the disbursement of those
3 deductions. The board [~~authority~~] may establish deductions for
4 participants committed to [~~under the supervision of~~] the Texas
5 Youth Commission that are different than deductions established for
6 other participants in the program. In determining the amount of
7 deductions under this section, the board [~~authority~~] shall ensure
8 that the deductions do not place the private sector prison
9 industries programs in the department in noncompliance with the
10 federal prison enhancement certification program established under
11 18 U.S.C. Section 1761.

12 (b) The private sector prison industry crime victims
13 assistance account is created as an account in the general revenue
14 fund. Money in the account may be appropriated only to the board
15 [~~authority~~] for the purpose of aiding victims of crime, under rules
16 adopted by the board [~~authority~~].

17 SECTION 14. The heading to Section 497.059, Government
18 Code, is amended to read as follows:

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

21 SECTION 15. Sections 497.059(a) and (b), Government Code,
22 are amended to read as follows:

23 (a) The board [~~authority~~] may not grant initial
24 certification to a private sector prison industries program if the
25 board [~~authority~~] determines that the operation of the program
26 would result in the loss of existing jobs provided by any [~~the~~]
27 employer in this state.

1 (b) The board [~~authority~~] shall adopt rules to determine
2 whether a program would cause the loss of existing jobs of a
3 specific type provided by an [~~the~~] employer in this state.

4 SECTION 16. Subchapter C, Chapter 497, Government Code, is
5 amended by adding Sections 497.0595 and 497.0596 to read as
6 follows:

7 Sec. 497.0595. LIMITATION ON CONTRACTS. (a) A
8 governmental entity may not enter into a contract or renew a
9 contract with an employer for a private sector prison industries
10 program under this subchapter if the board determines that the
11 contract has negatively affected or would negatively affect any
12 employer in this state, including through the loss of existing jobs
13 provided by the employer to employees in this state who are not
14 incarcerated or imprisoned.

15 (b) The board shall adopt rules that establish a procedure
16 to be used in making the determination described by Subsection (a).
17 The procedure must allow an aggrieved employer in this state to
18 submit a sworn statement to the board alleging that the employer has
19 been or would be negatively affected by the contract to be entered
20 into or renewed.

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

26 Sec. 497.0596. NOTICE CONCERNING CERTAIN CONTRACTS. (a)
27 Not later than the 60th day before the date a governmental entity

1 intends to enter into a contract with an employer for a private
2 sector prison industries program under this subchapter, the
3 governmental entity shall notify:

4 (1) the state senator and state representative in
5 whose district the program covered by the contract is or will be
6 located;

7 (2) the executive heads of the Texas AFL-CIO, the
8 Texas Association of Manufacturers, the National Federation of
9 Independent Business/Texas, the Texas Association of Business, and
10 the Texas Association of Workforce Boards;

11 (3) the chamber of commerce in any municipality or
12 county in which the program covered by the contract is or will be
13 located; and

14 (4) any employer that employs persons in this state
15 who are not incarcerated or imprisoned and who, as determined under
16 rules adopted by the Texas Workforce Commission to implement this
17 subdivision:

18 (A) perform work in the same job descriptions as
19 participants in the program covered by the contract will perform;
20 or

21 (B) are otherwise engaged in the manufacture of
22 the same or a substantially similar product as will be manufactured
23 under the contract.

24 (b) The notice required by Subsection (a) must include a
25 specific description, in plain language and in an easily readable
26 and understandable format, of any product that will be manufactured
27 under the contract.

1 (c) A governmental entity that provides notice under
2 Subsection (a) may charge the employer with whom the governmental
3 entity intends to enter into the contract for the cost of providing
4 that notice.

5 SECTION 17. Sections 497.060, 497.061, and 497.062,
6 Government Code, are amended to read as follows:

7 Sec. 497.060. WORKERS' COMPENSATION. The board [~~authority~~]
8 by rule shall require private sector prison industries program
9 employers to meet or exceed all federal requirements for providing
10 compensation to participants injured while working.

11 Sec. 497.061. RECIDIVISM STUDIES. The board [~~authority,~~
12 ~~with the cooperation of the Criminal Justice Policy Council,~~] shall
13 gather data to determine whether participation in a private sector
14 prison industries program is a factor that reduces recidivism among
15 participants.

16 Sec. 497.062. LIMITATION ON NUMBER OF PARTICIPANTS AND COST
17 ACCOUNTING CENTERS [~~, GOALS~~]. (a) The board [~~authority~~] may
18 certify [~~any number of~~] private sector prison industries programs
19 that meet or exceed the requirements of federal law and the rules of
20 the board. Except as provided by Subsection (b), the board may not
21 allow [~~authority, but in no event may the authority permit~~] more
22 than 750 [~~5,000~~] participants in the program at any one time or
23 authorize the operation of more than 11 cost accounting centers at
24 any one time.

25 (b) The board may allow more than 750 participants in the
26 program at one time on a temporary basis if:

27 (1) an employer that operates a private sector prison

1 industries program requests in writing that the board temporarily
2 allow more than 750 participants in the program; and

3 (2) the board determines that there is good cause to
4 temporarily allow more than 750 participants in the program
5 ~~[authority shall establish as a goal that the program have at least~~
6 ~~1,800 participants by January 1, 2006].~~

7 SECTION 18. Subchapter C, Chapter 497, Government Code, is
8 amended by adding Sections 497.063 and 497.064 to read as follows:

9 Sec. 497.063. CONTRACT REQUIREMENTS. (a) The board shall
10 adopt rules requiring a contract entered into by a governmental
11 entity concerning a private sector prison industries program
12 operated under this subchapter to:

13 (1) include specific job descriptions for any work
14 that will be performed by participants under the contract;

15 (2) include a specific description, in plain language
16 and in an easily readable and understandable format, of any product
17 that will be manufactured under the contract; and

18 (3) charge a private sector prison industries employer
19 or other participating entity the fair market value for the lease of
20 any property owned by the governmental entity and leased to the
21 employer or entity under the contract.

22 (b) For the purposes of Subsection (a), "fair market value"
23 means an amount or rate that is equal to or greater than the average
24 amount or rate paid by the state for the lease of substantially
25 similar property.

26 Sec. 497.064. AVAILABILITY OF CERTAIN INFORMATION ON
27 INTERNET. The board shall make the following information available

1 on any publicly accessible Internet website that is maintained by
2 the board and contains any information concerning the private
3 sector prison industries programs operated under this subchapter:

4 (1) a copy of each current contract entered into by a
5 governmental entity;

6 (2) a list of hourly wages paid to participants under
7 each contract described by Subdivision (1); and

8 (3) minutes of any meeting of the board in which the
9 board discusses or takes action concerning:

10 (A) the board's powers and duties under this
11 subchapter; or

12 (B) one or more private sector prison industries
13 programs operated under this subchapter.

14 SECTION 19. Subchapter A, Chapter 302, Labor Code, is
15 amended by adding Section 302.016 to read as follows:

16 Sec. 302.016. RULES REGARDING PRIVATE SECTOR PRISON
17 INDUSTRIES PROGRAMS. The commission shall adopt rules necessary to
18 implement Section 497.0596(a)(4), Government Code.

19 SECTION 20. Sections 497.009, 497.052, 497.0521, 497.0522,
20 497.0523, 497.0524, 497.0525, 497.0526, 497.053, 497.054, and
21 497.055, Government Code, are repealed.

22 SECTION 21. (a) On the date on which the Texas Board of
23 Criminal Justice is designated as the certificate holder for this
24 state by the Bureau of Justice Assistance, the Private Sector
25 Prison Industries Oversight Authority is abolished and all powers,
26 duties, obligations, rights, contracts, appropriations, records,
27 real or personal property, and personnel of the Private Sector

1 Prison Industries Oversight Authority are transferred to the Texas
2 Board of Criminal Justice in accordance with Subchapter C, Chapter
3 497, Government Code, as amended by this Act. Notwithstanding any
4 other provision of this Act, before the date on which the Texas
5 Board of Criminal Justice is designated as the certificate holder
6 for this state by the Bureau of Justice Assistance, the Private
7 Sector Prison Industries Oversight Authority shall continue to
8 fulfill all duties and exercise all powers given to the authority
9 under Subchapter C, Chapter 497, Government Code, as that law
10 existed immediately before the effective date of this Act, and the
11 former law is continued in effect for that purpose.

12 (b) A rule, policy, procedure, or decision of the Private
13 Sector Prison Industries Oversight Authority continues in effect as
14 a rule, policy, procedure, or decision of the Texas Board of
15 Criminal Justice until repealed or otherwise superseded by an act
16 of the board.

17 (c) On or after the date on which the Texas Board of Criminal
18 Justice is designated as the certificate holder for this state by
19 the Bureau of Justice Assistance, a reference in law to the Private
20 Sector Prison Industries Oversight Authority means the Texas Board
21 of Criminal Justice.

22 SECTION 22. (a) Except as provided by Section 492.0031(d),
23 Government Code, as added by this Act, Sections 492.003(c) and
24 492.0031(b-1), Government Code, as amended by this Act, apply only
25 to a member of the Texas Board of Criminal Justice who is appointed
26 on or after the effective date of this Act. Except as provided by
27 Section 492.0031(d), Government Code, as added by this Act, a

1 member who is appointed to the board before the effective date of
2 this Act is governed by the law in effect when the member was
3 appointed, and the former law is continued in effect for that
4 purpose.

5 (b) As soon as practicable after the effective date of this
6 Act and not later than January 1, 2010, the Texas Workforce
7 Commission shall adopt rules as required by Section 302.016, Labor
8 Code, as added by this Act.

9 (c) Section 497.051(a-1), Government Code, as added by this
10 Act, applies only to the operation of a private sector prison
11 industries program that is certified on or after the effective date
12 of this Act or to a private sector prison industries program that
13 was certified before the effective date of this Act but is not in
14 operation on the effective date of this Act. Section 497.051(a-1),
15 Government Code, as added by this Act, does not apply to the
16 operation of a private sector prison industries program that was
17 certified before the effective date of this Act and is in operation
18 on the effective date of this Act. The operation of that program is
19 governed by the law in effect when the program was certified, and
20 the former law is continued in effect for that purpose.

21 (d) Section 497.059, Government Code, as amended by this
22 Act, applies only to the certification of a private sector prison
23 industries program that occurs on or after the effective date of
24 this Act. The certification of a private sector prison industries
25 program that occurs before the effective date of this Act is
26 governed by the law in effect when the program was certified, and
27 the former law is continued in effect for that purpose.

1 (e) Sections 497.0595 and 497.0596, Government Code, as
2 added by this Act, apply only to a contract that is entered into or
3 renewed in connection with a private sector prison industries
4 program that is certified on or after the effective date of this Act
5 or a private sector prison industries program that was certified
6 before the effective date of this Act but is not in operation on the
7 effective date of this Act. A contract that is entered into or
8 renewed in connection with a private sector prison industries
9 program that was certified before the effective date of this Act and
10 is in operation on the effective date of this Act is governed by the
11 law in effect when the program was certified, and the former law is
12 continued in effect for that purpose.

13 (f) A rule adopted by the Texas Board of Criminal Justice
14 under Section 497.063, Government Code, as added by this Act,
15 applies only to a contract in connection with a private sector
16 prison industries program that is certified on or after the
17 effective date of this Act or to a contract in connection with a
18 private sector prison industries program that was certified before
19 the effective date of this Act but is not in operation on the
20 effective date of this Act.

21 SECTION 23. This Act does not make an appropriation. A
22 provision in this Act that creates a new governmental program,
23 creates a new entitlement, or imposes a new duty on a governmental
24 entity is not mandatory unless a specific appropriation has been
25 made to implement the provision or it is determined by the agency
26 that the provisions imposed by this Act may be absorbed within
27 agency resources during the fiscal period without additional state

1 funding.

2 SECTION 24. This Act takes effect immediately if it
3 receives a vote of two-thirds of all the members elected to each
4 house, as provided by Section 39, Article III, Texas Constitution.
5 If this Act does not receive the vote necessary for immediate
6 effect, this Act takes effect September 1, 2009.

House Bill 1914
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Chapter 492, Government Code, is amended by adding Section 492.0011 to read as follows:
Sec. 492.0011. PRIVATE SECTOR PRISON INDUSTRIES PROGRAM MANAGEMENT. (a) The board shall approve, certify, and supervise private sector prison industries programs operated by the department, the Texas Youth Commission, and county correctional facilities in accordance with Subchapter C, Chapter 497. (b) This section does not authorize the board to direct the general operations of or to govern the Texas Youth Commission or county correctional facilities in any manner not specifically described by Subsection (a).

SECTION 2. Sections 492.003(a) and (c), Government Code, are amended to read as follows:
(a) Each member of the board must be representative of the general public. A person is not eligible for appointment as a member if the person or the person's spouse:
(1) is a person, other than a judge participating in the management of a community supervision and corrections department, who is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;
(2) owns, or controls directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department, including an entity or

SENATE VERSION

SECTION 1. Same as House version.

SECTION 2. Same as House version.

CONFERENCE

SECTION 1. Same as House version.

SECTION 2. Same as House version.

House Bill 1914
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

organization with which the department contracts under Subchapter C, Chapter 497; [øø]

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses; or

(4) owns, controls directly or indirectly, or is employed by a business entity or other organization with which the department contracts concerning a private sector prison industries program approved and certified by the board under Subchapter C, Chapter 497.

(c) A person may not be a member of the board and may not be a department 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:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of criminal justice or private sector prison industries; or

(2) 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. Section 492.0031, Government Code, is amended by adding Subsections (b-1) and (d) to read as follows:

(b-1) In addition to the information described by

SECTION 3. Same as House version.

SECTION 3. Same as House version.

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Subsection (b), the training program must provide the person with information regarding:

- (1) the legislative history of Subchapter C, Chapter 497;
 - (2) the history and operation of programs under that subchapter; and
 - (3) any applicable federal law concerning the operation or certification of a program under that subchapter.
- (d) A person who is a member of the board on September 1, 2009, shall complete the training described by Subsection (b-1) not later than January 1, 2010. This subsection expires September 1, 2011.

SECTION 4. Section 497.004(a), Government Code, is amended to read as follows:

(a) The board may develop by rule and the department may administer an incentive pay scale for work program participants consistent with rules adopted by the board [~~Private Sector Prison Industries Oversight Authority~~] under Subchapter C. Prison industries may be financed through contributions donated for this purpose by private businesses contracting with the department. The department shall apportion pay earned by a work program participant in the same manner as is required by rules adopted by the board [~~Private Sector Prison Industries Oversight Authority~~] under Section 497.0581.

SECTION 5. Section 497.006(c), Government Code, is amended to read as follows:

SECTION 4. Same as House version.

SECTION 5. Same as House version.

SECTION 4. Same as House version.

SECTION 5. Same as House version.

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(c) A contract for the provision of services under this section must:

(1) be certified by the board [~~Private Sector Prison Industries Oversight Authority~~] 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;

(2) be certified by the board [~~authority~~], under rules adopted under Section 497.059, that the contract would not cause the loss of existing jobs of a specific type provided by any employer [~~the contracting party~~] in this state; and

(3) be approved by the board.

SECTION 6. The heading to Subchapter C, Chapter 497, Government Code, is amended to read as follows:

SUBCHAPTER C. PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS [~~OVERSIGHT AUTHORITY~~]

SECTION 7. Section 497.051, Government Code, is amended to read as follows:

Sec. 497.051. PURPOSE; DEFINITIONS [~~DEFINITION~~]. (a) The board shall [~~Private Sector~~

SECTION 6. Same as House version.

SECTION 6. Same as House version.

SECTION 7. Same as House version.

SECTION 7. Same as House version.

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~~Prison Industries Oversight Authority is created to~~ approve, certify, and supervise ~~[oversee]~~ the operation of private sector prison industries programs in the department, the Texas Youth Commission, and in county correctional facilities in compliance with the federal prison enhancement certification program established under 18 U.S.C. Section 1761. The board may use board and department employees to ~~[executive director shall]~~ provide the ~~[authority with]~~ clerical and technical support ~~[as]~~ necessary for the board ~~[authority]~~ to perform the board's duties under ~~[imposed on the authority by]~~ this subchapter and shall ensure that the department implements the policies adopted by the board ~~[authority]~~ that relate to the operation of private sector prison industries programs.

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

(b) In this subchapter:

(1) "Governmental entity" means the department, the Texas Youth Commission, and any county that operates a private sector prison industries program under this subchapter. ~~["Authority" means the Private Sector Prison Industries Oversight Authority.]~~

(2) "Participant" means a participant in a private sector prison industries program.

(c) This subchapter does not authorize the board to direct the general operations of or to govern the Texas

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Youth Commission or county correctional facilities in any manner not specifically described by Subsection (a).

SECTION 8. Section 497.0527, Government Code, is amended to read as follows:

Sec. 497.0527. COMPLAINTS. (a) The board [~~authority~~] shall maintain a file on each written complaint filed with the board in relation to a private sector prison industries program [~~authority~~]. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the board [~~authority~~];
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the board [~~authority~~] closed the file without taking action other than to investigate the complaint.

(b) The board [~~authority~~] shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's [~~authority's~~] policies and procedures relating to complaint investigation and resolution.

(c) The board [~~authority~~], at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the

SECTION 8. Same as House version.

SECTION 8. Same as House version.

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complaint of the status of the investigation, unless the notice would jeopardize an undercover investigation.

SECTION 9. The heading to Section 497.056, Government Code, is amended to read as follows:
Sec. 497.056. PRIVATE SECTOR PRISON INDUSTRIES ~~[EXPANSION]~~ ACCOUNT.

SECTION 9. Same as House version.

SECTION 9. Same as House version.

SECTION 10. Sections 497.056(b) and (c), Government Code, are amended to read as follows:

SECTION 10. Same as House version.

SECTION 10. Same as House version.

(b) ~~The [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. Money in the account may be appropriated only to:

(1) ~~[construct work facilities,]~~ recruit corporations to participate as private sector industries programs;

(2) ~~[, and]~~ pay costs of the board ~~[authority]~~ and department in implementing this subchapter, including the cost to the department in reimbursing board ~~[authority]~~ members ~~[and the employer liaison]~~ for expenses; and

(3) pay costs associated with the storage of evidence:

(A) containing biological material and used in the prosecution and conviction of an offense; or

(B) of a sexual assault or other sex offense.

(c) On each certification by the department that an amount has been deposited to the credit of the general

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revenue fund from deductions from participants' wages under Section 497.0581, the comptroller shall transfer an equivalent amount from the general revenue fund to the private sector prison industry ~~[expansion]~~ account, until the balance in the account is \$1 ~~[\$2]~~ million. The balance of the account may not exceed \$1 million ~~[On a certification occurring when the balance in the account is more than \$2 million, the comptroller shall 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. Section 497.057, Government Code, is amended to read as follows:
Sec. 497.057. RULES. The board ~~[authority]~~ shall 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. Section 497.058(a), Government Code, is amended to read as follows:
(a) The board ~~[authority]~~ by rule shall 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, except

SECTION 11. Same as House version.

SECTION 12. Same as House version.

SECTION 11. Same as House version.

SECTION 12. Same as House version.

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that:

- (1) the board [authority] may permit employers to pay a participant the federal minimum wage for the two-month period beginning on the date participation begins; and
- (2) the minimum wage for participants committed to [under the supervision of] the Texas Youth Commission, because of the age of the participants and the extensive training component of their employment, is the federal minimum wage.

SECTION 13. Section 497.0581, Government Code, is amended to read as follows:

Sec. 497.0581. PARTICIPANT CONTRIBUTIONS; ASSISTANCE ACCOUNT. (a) The board [authority] by rule shall determine the amount of deductions to be taken from wages received by the participant under this subchapter and the disbursement of those deductions. The board [authority] may establish deductions for participants committed to [under the supervision of] the Texas Youth Commission that are different than deductions established for other participants in the program. In determining the amount of deductions under this section, the board [authority] shall ensure that the deductions do not place the private sector prison industries programs in the department in noncompliance with the federal prison enhancement certification program established under 18 U.S.C. Section 1761.

(b) The private sector prison industry crime victims assistance account is created as an account in the general

SECTION 13. Same as House version.

SECTION 13. Same as House version.

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revenue fund. Money in the account may be appropriated only to the board [authority] for the purpose of aiding victims of crime, under rules adopted by the board [authority].

SECTION 14. The heading to Section 497.059, Government Code, is amended to read as follows:
Sec. 497.059. LIMITING IMPACT OF CERTIFICATION ON NON-PRISON INDUSTRY.

SECTION 14. Same as House version.

SECTION 14. Same as House version.

SECTION 15. Sections 497.059(a) and (b), Government Code, are amended to read as follows:

SECTION 15. Same as House version.

SECTION 15. Same as House version.

(a) The board [authority] may not grant initial certification to a private sector prison industries program if the board [authority] determines that the operation of the program would result in the loss of existing jobs provided by any [the] employer in this state.

(b) The board [authority] shall adopt rules to determine whether a program would cause the loss of existing jobs of a specific type provided by an [the] employer in this state.

SECTION 16. Subchapter C, Chapter 497, Government Code, is amended by adding Sections 497.0595 and 497.0596 to read as follows:

SECTION 16. Same as House version.

SECTION 16. Same as House version.

Sec. 497.0595. LIMITATION ON CONTRACTS. (a) A governmental entity may not enter into a contract or

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renew a contract with an employer for a private sector prison industries program under this subchapter if the board 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) The board shall adopt rules that establish a procedure to be used in making the determination described by Subsection (a). The procedure must allow an aggrieved employer in this state to submit a sworn statement to the board alleging that the employer has been or would be negatively affected by the contract to be entered into or renewed.

(c) 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 the board, are performed by workers in a foreign country.

Sec. 497.0596. NOTICE CONCERNING CERTAIN CONTRACTS. (a) 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, the governmental entity shall notify:

(1) the state senator and state representative in whose district the program covered by the contract is or will be located;

(2) the executive heads of the Texas AFL-CIO, the

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Texas Association of Manufacturers, the National Federation of Independent Business/Texas, the Texas Association of Business, and the Texas Association of Workforce Boards;

(3) the chamber of commerce in any municipality or county in which the program covered by the contract is or will be located; and

(4) 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:

(A) perform work in the same job descriptions as participants in the program covered by the contract will perform; or

(B) are otherwise engaged in the manufacture of the same or a substantially similar product as will be manufactured under the contract.

(b) The notice required by Subsection (a) must 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.

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

SECTION 17. Sections 497.060, 497.061, and 497.062, Government Code, are amended to read as follows:
Sec. 497.060. WORKERS' COMPENSATION. The

SECTION 17. Same as House version.

SECTION 17. Same as House version.

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board [authority] by rule shall require private sector prison industries program employers to meet or exceed all federal requirements for providing compensation to participants injured while working.

Sec. 497.061. RECIDIVISM STUDIES. The board [authority, with the cooperation of the Criminal Justice Policy Council,] shall gather data to determine whether participation in a private sector prison industries program is a factor that reduces recidivism among participants.

Sec. 497.062. LIMITATION ON NUMBER OF PARTICIPANTS AND COST ACCOUNTING CENTERS[; GOALS]. (a) The board [authority] may certify ~~[any number of]~~ private sector prison industries programs that meet or exceed the requirements of federal law and the rules of the board. Except as provided by Subsection (b), the board may not allow [authority, but in no event may the authority permit] more than 750 [5,000] participants in the program at any one time or authorize the operation of more than 11 cost accounting centers at any one time.

(b) The board may allow more than 750 participants in the program at one time on a temporary basis if:

(1) an employer that operates a private sector prison industries program requests in writing that the board temporarily allow more than 750 participants in the program; and

(2) the board determines that there is good cause to temporarily allow more than 750 participants in the program [authority shall establish as a goal that the program have at least 1,800 participants by January 1,

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2006].

SECTION 18. Subchapter C, Chapter 497, Government Code, is amended by adding Sections 497.063 and 497.064 to read as follows:

Sec. 497.063. CONTRACT REQUIREMENTS. (a) The board shall adopt rules requiring a contract entered into by a governmental entity concerning a private sector prison industries program operated under this subchapter to:

- (1) include specific job descriptions for any work that will be performed by participants under the contract;
- (2) 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
- (3) 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) For the purposes of Subsection (a), "fair market value" means an amount or rate that is equal to or greater than the average amount or rate paid by the state for the lease of substantially similar property.

Sec. 497.064. AVAILABILITY OF CERTAIN INFORMATION ON INTERNET. The board shall make the following information available on any publicly accessible Internet website that is maintained by the board and contains any information concerning the private sector prison industries programs operated under

SECTION 18. Same as House version.

SECTION 18. Same as House version.

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this subchapter:

(1) a copy of each current contract entered into by a governmental entity;

(2) a list of hourly wages paid to participants under each contract described by Subdivision (1); and

(3) minutes of any meeting of the board in which the board discusses or takes action concerning:

(A) the board's powers and duties under this subchapter;
or

(B) one or more private sector prison industries programs operated under this subchapter.

SECTION 19. Subchapter A, Chapter 302, Labor Code, is amended by adding Section 302.016 to read as follows:

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

SECTION 20. Sections 497.009, 497.052, 497.0521, 497.0522, 497.0523, 497.0524, 497.0525, 497.0526, 497.053, 497.054, and 497.055, Government Code, are repealed.

SECTION 21. (a) On the date on which the Texas Board of Criminal Justice is designated as the certificate

SECTION 19. Same as House version.

SECTION 20. Same as House version.

SECTION 21. Same as House version.

SECTION 19. Same as House version.

SECTION 20. Same as House version.

SECTION 21. Same as House version.

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holder for this state by the Bureau of Justice Assistance, the Private Sector Prison Industries Oversight Authority is abolished and all powers, duties, obligations, rights, contracts, appropriations, records, real or personal property, and personnel of the Private Sector Prison Industries Oversight Authority are transferred to the Texas Board of Criminal Justice in accordance with Subchapter C, Chapter 497, Government Code, as amended by this Act. Notwithstanding any other provision of this Act, before the date on which the Texas Board of Criminal Justice is designated as the certificate holder for this state by the Bureau of Justice Assistance, the Private Sector Prison Industries Oversight Authority shall 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) A rule, policy, procedure, or decision of the Private Sector Prison Industries Oversight Authority continues in effect as a rule, policy, procedure, or decision of the Texas Board of Criminal Justice until repealed or otherwise superseded by an act of the board.

(c) On or after the date on which the Texas Board of Criminal Justice is designated as the certificate holder for this state by the Bureau of Justice Assistance, a reference in law to the Private Sector Prison Industries Oversight Authority means the Texas Board of Criminal Justice.

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SECTION 22. (a) Except as provided by Section 492.0031(d), Government Code, as added by this Act, Sections 492.003(c) and 492.0031(b-1), Government Code, as amended by this Act, apply only to a member of the Texas Board of Criminal Justice who is appointed on or after the effective date of this Act. Except as provided by Section 492.0031(d), Government Code, as added by this Act, a member who is appointed to the board before the effective date of this Act is governed by the law in effect when the member was appointed, and the former law is continued in effect for that purpose.

SECTION 22. Same as House version.

SECTION 22. Same as House version.

(b) As soon as practicable after the effective date of this Act and not later than January 1, 2010, the Texas Workforce Commission shall adopt rules as required by Section 302.016, Labor Code, as added by this Act.

(c) Section 497.051(a-1), Government Code, as added by this Act, applies only to the operation of a private sector prison industries program that is certified on or after the effective date of this Act or to 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 497.051(a-1), Government Code, as added by this Act, does not apply to the operation of a private sector prison industries program that was certified before the effective date of this Act and is in operation on the effective date of this Act. The operation of that program is governed by the law in effect when the program was certified, and the former law is continued in effect for that purpose.

(d) Section 497.059, Government Code, as amended by

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this Act, applies only to the certification of a private sector prison industries program that occurs on or after the effective date of this Act. The certification of a private sector prison industries program that occurs before the effective date of this Act is governed by the law in effect when the program was certified, and the former law is continued in effect for that purpose.

(e) Sections 497.0595 and 497.0596, Government Code, as added by this Act, apply only to a contract that is entered into or renewed in connection with a private sector prison industries program that is certified on or after the effective date of this Act or 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. A contract that is entered into or renewed in connection with a private sector prison industries program that was certified before the effective date of this Act and is in operation on the effective date of this Act is governed by the law in effect when the program was certified, and the former law is continued in effect for that purpose.

(f) A rule adopted by the Texas Board of Criminal Justice 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.

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No equivalent provision.

SECTION 23. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

SECTION ____. This Act does not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory *during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.*

SECTION 23. Same as House version.

SECTION 23. Same as Senate version, except provides that certain provisions of the Act are not mandatory *unless a specific appropriation has been made to implement the provision or it is determine by the agency that the provisions imposed by the Act may be absorbed within agency resources during the fiscal period without additional state.*

SECTION 23. Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1914 by McReynolds (Relating to abolishing the Private Sector Prison Industries Oversight Authority and to the certification and operation of private sector prison industries programs.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code by abolishing the Private Sector Prison Industries Oversight Authority and transferring the functions, property, and employees to the Texas Board of Criminal Justice (TBCJ). The bill would require that the funds in the private sector prison industries account, real property and private sector prison industries oversight authority be transferred to the TBCJ and the maximum amount allowed in the private sector prison industry account would be lowered from \$2.0 million and limit the balance in the account to \$1.0 million. The bill would remove the requirement that the Comptroller of Public Accounts transfer one-half of the balance above \$2.0 million to General Revenue Fund. The bill would expand authorized expenditures in the account to allow that the funds may be used to pay costs associated with the storage of evidence that contains biological material used in the prosecution and conviction of an offense or of a sexual assault or other sex offense. The bill would require the Board to supervise the operation of the private sector industries programs to ensure program operation in a manner designed to avoid the loss of existing jobs of persons not incarcerated. The bill would require that board members include in their training not later than January 1, 2010, the history and operations of the Private Sector Prison Industries Oversight Authority, as applicable in the Government Code. The bill would add provisions limiting contracts for a private sector industries program and would require a government entity give its senator, state representative and certain others 60 days notice prior to entering into such a contract. The Board would be required to allow no more than 750 participants and no more than 11 cost accounting centers. The Board would be required to adopt rules specifying required contract language. Information related to the program would be required to be placed on the board's Internet site.

The bill would require that on the date that TBCJ is designated the certificate holder for this state by the Bureau of Justice Assistance, the Private Sector Prison Industries Oversight Authority would be abolished and all powers transferred to the TBCJ. Notwithstanding any other provision, before the date TBCJ is designated the Private Sector Prison Industries Oversight Authority shall continue to fulfill all duties and exercise all powers given to the authority. On or after the date on which the TBCJ is designated as the certificate holder, all references in law to the Private Sector Prison Industries Oversight Authority means the TBCJ.

The Texas Department of Criminal Justice and the Texas Workforce Commission have determined that the cost of implementing the provisions of this bill would not be significant.

Local Government Impact

None of the requirements applicable to a county under the provisions of the bill would cause a significant fiscal impact to Local Workforce Development Boards.

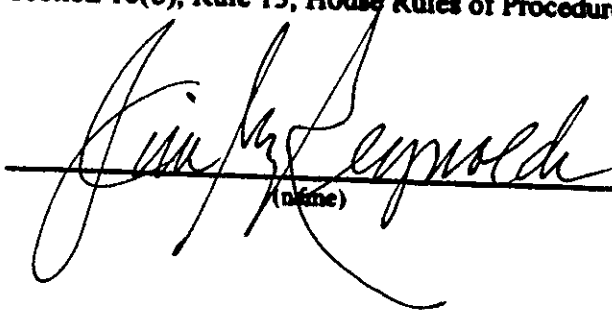
Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 320 Texas Workforce Commission, 694 Youth Commission, 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, SDO, AI, DB

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 1914 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



(name)

5/30/09
(date)