HOUSE RESEARCH ORGANIZATION bill analysis | 4/28/1999

HB 1687
Hunter, Greenberg, Chavez, et al
(CSHB 1687 by Chavez)

SUBJECT: State loan guarantees to promote the Texas film industry

COMMITTEE: State, Federal and International Relations — committee substitute recommended

VOTE: 9 ayes — Hunter, P. Moreno, Berman, Chavez, Elkins, Isett, C. Jones, Madden, Juan Solis

0 nays

WITNESSES: For — Dwight Adair, Motion Picture Industry Production Companies; Kaye Charles Cruz, 24 Hour Entertainment, Inc.; Joseph Dial, Brahmin Entertainment; Tom Herod, Jr.; James Hinton; Terence Lipman; Michael Saleman; James Watkins

Against — None

On — James LeBas, Comptroller's Office; Carol Pirie, Texas Film Commission; David Teel, Texas Department of Economic Development

DIGEST: CSHB 1687 would create the Texas Film Industry Loan Guarantee Indemnity Program and the Texas Film Industry Administrative Fund to guarantee private loans to promote the Texas film industry. A Texas film would be defined as a film in which 80 percent of the production budget was spent on goods and services in Texas. Qualifying films would have budgets between $1 million and $5 million.

Texas Film Industry Loan Guarantee Indemnity Program. In order to help film makers borrow money, the comptroller would be charged with administering a program to guarantee loans for film production. Total outstanding loan guarantees could not exceed $50 million. A loan guarantee would be issued only for a loan approved by a Texas lender and on approval of a qualified application by a Texas film producer. For each loan guarantee, the comptroller would determine the terms, conditions, and maximum guarantee amount.

An individual loan could not exceed $3 million. The guarantee amount could not exceed $2.4 million. The comptroller could adopt other requirements for a qualified loan. Any action or claim under a loan guarantee would have to be brought within three years of the date on which the guarantee was approved.

State Security Requirements. The film producer would have to provide an indemnity against loss, benefitting the comptroller, equal to the amount guaranteed by the state. The indemnity would have to be issued by a comptroller-approved, Texas-licensed insurance company, surety company, or financial institution. CSHB 1687 would make falsifying information to obtain a loan guarantee a third-degree felony, punishable by two to 10 years in prison and an optional fine of up to $10,000.

An applicant would have to file a surety bond with the comptroller indemnifying the state and the lender against loss resulting from failure to complete the film on time and within budget.

Comptroller responsibility. The comptroller would have rule-making authority to implement CSHB 1687. The comptroller could charge up to a $100 loan guarantee application processing fee, investigate information on the application, and deny any application that was incomplete or failed to meet the minimum requirements.

CSHB 1687 would direct the comptroller to adopt all necessary rules to implement the bill by December 1, 1999. The rules would have to include the terms and conditions for collateral as security for loan default and the procedures for obligations owed the comptroller under CSHB 1687.

CSHB 1687 would require the comptroller to issue quarterly reports to the Legislative Budget Board and the Legislature that would include the names and address of those who had applied and been approved for the loan guarantee, as well as the amount of each guarantee.

The comptroller would be able to solicit and accept gifts, grants and donations for the guarantee program

Texas Film Industry Administrative Fund. CSHB 1687 would establish the Texas Film Industry Administrative Fund within the general revenue fund consisting of any appropriations, interest income, fees collected, and collateral proceeds. The fund would only be used for program administration.

Sunset provision. CSHB 1687 would sunset on September 1, 2005. Once the bill expired, the comptroller would determine the amount needed to continue obligations under outstanding guarantees. Any remaining funds could be used only by the Music, Film, Television and Multimedia Office in the Governor's Office to promote the film industry in Texas.

The bill would take effect September 1, 1999.

SUPPORTERS SAY:

CSHB 1687 would provide the financial infrastructure necessary to promote the growth, development, and self-sufficiency of the Texas film and video industry. It would build upon and increase the status of Texas as a center for independent film making. CSHB 1687 would encourage Texas film makers to stay in Texas, film and produce in Texas, spend their money in Texas, and keep their profits in Texas.

In 1996, the Texas Department of Commerce (now the Texas Department of Economic Development) issued a report on the Texas film industry recommending a public-private partnership to provide a financial infrastructure to promote the film industry in Texas.

CSHB 1687 would serve as a major economic development tool for Texas, especially the small communities where so many Texas films are made today. In return for loan guarantees, producers would promise to spend 80 percent of their production budgets in Texas. Hotels, rental cars, caterers, restaurants, and a variety of small businesses and suppliers would benefit from this measure, all of whom contribute sales tax revenue to the state.

Currently, most Texas banks do not make loans to film makers because they are unfamiliar with standard industry collateral and risks. This forces Texas film makers who want financial support for their projects to go to Hollywood or New York City, where film financing is a major segment of the industry.

All loan guarantees under CSHB 1687 would have to be insured at 100 percent with an indemnity policy from a comptroller-approved institution. Additionally, film makers would have to provide valid collateral for the loan.

Loan guarantees could not to exceed $50 million. But this potentially could support Texas films by Texas producers with total budgets of $100 million. Some experts say this could have a $400 million ripple effect on the Texas economy. In 1996, about 7,700 Texas were employed in the motion picture industry.

CSHB 1687 would expire on September 1, 2005. By that time, the relationship between the film and financial industries in Texas should be strong enough to thrive without state guarantees. This bill would serve as a catalyst for economic development and the Texas film industry, without cost to the state.

OPPONENTS SAY:

The state should not get involved in guaranteeing loans for one small segment of private business, and a risky segment at that. If an industry based on Texas film makers and their products had the potential to be all that profitable, then the financial industry would be leading the way in making loans. It’s one thing to make a movie. It’s another to get access to national distribution systems in order to market it.

There is a reason Texas lenders choose not to loan money to low-budget Texas film makers: the loans are too risky. In a robust economy, like the Texas economy today, lenders are more likely to take risks. The risks associated with film industry loans must be too high, or filmmakers already would be getting all the backing they need from financial experts.

Despite the fact that CSHB 1687 would require a 100 percent indemnification for the loan guarantees, the state still would be liable for a defaulted loan. Under the protection of state guarantees, indemnifying entities might issue insurance policies more freely than they would have otherwise. If they were unable to back their policies, the state would be solely responsible for the loan guarantees. Furthermore, if indemnifying entities would have to insure the loan guarantees at 100 percent, there is a question about why the state would need to guarantee the loan in the first place. The indemnifying entity and the lender could come to an agreement without the state’s interference in the private sector.

NOTES:

The committee substitute would place all administrative and rule-making responsibilities with the comptroller, instead of the Department of Economic Development, as in the original bill. The substitute would require a 100 percent indemnity of the state’s guarantee, while t he original bill would have set the indemnity at 80 percent. The substitute also changed the name of the fund and the program.