HOUSE RESEARCH ORGANIZATION bill analysis | 5/20/2009 | SB 783 Shapiro (Morrison)

SUBJECT: Revising the Texas Emerging Technology Fund

COMMITTEE: Technology, Economic Development, and Workforce — favorable, without amendment

VOTE: 8 ayes — Strama, Parker, F. Brown, Button, Eissler, Gattis, Harless, Rodriguez

0 nays

1 absent — Ritter

SENATE VOTE: On final passage, April 28 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Jay Barksdale, Dallas Regional Chamber; Craig Casselberry, Texas Coalition for Capital; Jeffrey Clark, Technology Association of America; Cathy DeWitt, Texas Association of Business; Randy Erben, Texas Venture Capital Association; Bill Hammond, Texas Association of Business; Tom Kowalski, Texas Healthcare and Bioscience Institute (THBI); Laura Lazarescou, Alcatel-Lucent; Rebecca Moss, Texas Association of Manufacturers; Brinton Payne, Fort Worth Chamber of Commerce; Carlton Schwab, Texas Economic Development Council; Bill Sproull, Richardson Chamber of Commerce, Metroplex Technology Business Council; Geoff Wurzel, TechNet)

Against — None

On — Alan Kirchhoff, Office of the Governor; (*Registered, but did not testify*: David Clark, San Antonio Technology Accelerator Initiative (SATAI); Robert Norris, Legislative Budget Board)

BACKGROUND: The Emerging Technology Fund (ETF) is managed by the Governor's Office and promotes technology-related research and commercialization through a collaboration of private sector, higher education, and regional economic development entities.

Under current law, appropriations to the ETF, less amounts necessary to administer the fund, must be allocated as follows:

- 50 percent of the money for incentives for collaboration between certain entities;
- 16.67 percent for research award matching; and
- 33.33 percent for acquisition of research superiority.

DIGEST:

SB 783 would make a number of revisions to the Texas Emerging Technology Fund (ETF), including allowing the Governor's Office to contract with an outside entity to manage the fund, requiring an annual report, changing the allocations from ETF appropriations, and allowing transfers between the ETF and the Texas Enterprise Fund.

***Outside contracts.*** The bill would allow the governor to contract with an outside entity with substantial experience in evaluating institutional investment practices and performance to:

- assist in the negotiation and drafting of contracts between the governor and an ETF award recipient;
- oversee outstanding awards and monitor compliance with a contract;
- evaluate the fund's investment portfolio and advise the Governor's Office on its value and performance; and
- assist the governor in preparing the annual report.

An outside entity under contract could receive annual compensation from the ETF.

***Annual report.*** The Governor's Office would have to submit to the Legislative Budget Board (LBB) and post on the Governor's Office's website an annual report that included the following information regarding the ETF for the preceding fiscal year:

- the total number of awards made and their amount;
- the number and amount of awards made for commercialization activities, matching research awards, and acquisition of research superiority;
- the name of each award recipient, the recipient's organizational structure, and the amount the recipient was awarded;

- the total amount of funds received by each recipient from any source for a commercialization project, including the amount awarded to the recipient and the total amount of funds received by the recipient from the private sector or federal sources;
- a brief description of investments in the ETF's investment portfolio at the end of the reporting period and the portfolio's total value; and
- aggregate information on the planned and actual outcomes resulting from ETF awards during the preceding two fiscal years.

The governor would not be able to disclose in the report the name of any person in the private sector that invested in an ETF project. Additionally, the governor would notify each member of the Legislature via email when the annual report was posted on the Governor's Office's website.

***Amending ETF allocations.*** The bill would amend the allocation from legislative appropriations as follows:

- 60 percent of the money for incentives for collaboration between certain entities;
- 10 percent for research award matching; and
- 30 percent for acquisition of research superiority.

***Transfers between the ETF and the Texas Enterprise Fund.*** With prior written approval of the LBB, the governor could make an award or transfer between the ETF and the Texas Enterprise Fund for purposes of making a grant or other expenditure from either of those funds.

***Other provisions.*** SB 783 would amend the ETF to allow for proposals for research superiority to be considered from institutions of higher education from outside the state and from entities other than institutions of higher education, regardless of location.

The bill also would provide that information related to an application to the ETF would be confidential. Additionally, information relating to an ETF application collected, assembled, or maintained by or for the governor, the lieutenant governor, the speaker of the House, the emerging technology advisory committee, or the committee's advisory panels would be confidential and not subject to the public information act.

The bill would require the Governor's Office ,within 10 days of any contract awarded from the ETF, to prepare a summary of the contract, including general information on the award recipient, including the recipient's name and address, the award amount, and the type of emerging technology supported by the award. This summary report could not include confidential information.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS SAY:

SB 783 would provide greater transparency and flexibility for the Emerging Technology Fund (ETF). Since the ETF was created by the 79th Legislature in 2005, the fund has grown in size and scope, granting over $137 million in awards to almost 80 entities during fiscal years 2006-2008. The improvements to the ETF contained in SB 783 would allow the fund to continue to serve as the leading model for promoting technology-related research commercialization in the nation.

Given the success and growth of the ETF, the Governor's Office currently is at capacity in terms of managing effectively the assets of the myriad companies in the ETF's portfolio and could benefit from outside expertise. By allowing the Governor's Office to contract with a professional firm dedicated to managing these assets, the bill would allow it to focus on finding suitable future investment possibilities. This change also would ensure that the Governor's Office was exercising its fiduciary responsibility.

The Legislative Budget Board, in its 2009 *Texas State Government Effectiveness and Efficiency* report, highlighted the fact that Texas did not require the Governor's Office to produce an annual report showing the Emerging Technology Fund's actual performance, as is standard accountability practice in similar technology development agencies in other states. The bill also would bring transparency to the ETF by requiring the Governor's Office to submit an annual report on the fund and its investment strategies. The bill would require the Governor's Office to notify each member of the Legislature of the report's availability. This would provide a higher degree of accountability and public oversight of the fund's performance and use.

SB 783 would provide another accountability measure by requiring prior approval from the LBB before an award or transfer between the ETF and the Texas Enterprise Fund could occur. This would ensure that adequate vetting of the use of these competitive funds had occurred and that all interested parties were aware of such action.

OPPONENTS SAY:

By requiring written approval from the Legislative Budget Board (LBB) for transfers between the Texas Enterprise Fund and the ETF, SB 783 would add an unnecessary hurdle that could delay future economic development opportunities for the state. Often, Texas is competing with entities outside the state to secure talent in an emerging technology field or to close the deal for a business to relocate to the state. These negotiations are time-sensitive, and an additional step in the process could derail opportunities for Texas to remain competitive.

Requiring the LBB to be involved in the management of ETF and Enterprise Funds awards would be unnecessary as there are already sufficient safeguards for awards from these funds. The ultimate decision to award funds from the ETF or Texas Enterprise Fund rests in an unanimous decision by the governor, the lieutenant governor, and the speaker of the House. Regardless of who is in these positions, this arrangement ensures involvement by the executive and legislative branch and that public input is represented.

OTHER OPPONENTS SAY:

While SB 783 would take steps to make the ETF more transparent through an annual reporting requirement, it would not go far enough. As the Legislative Budget Board states in its 2009 *Texas State Government Effectiveness and Efficiency* report, under ETF contracts, the Governor's Office can take an equity position in companies receiving commercialization program awards. These arrangements have the potential to generate significant rates of return for the state. However, there is no guarantee that repayment of awards would occur, because start-up companies often fail before bringing new products or processes to market. The number of companies in which the Governor's Office can take an equity position grew from 30 to 54 during fiscal year 2008.

Due to the state's growing investment in early-stage technology companies and the high risk, high return nature of ETF equity arrangements, additional disclosure is needed to identify the companies in which the Governor's Office can take an equity position and each company's ETF award amount.

NOTES: A related bill, HB 2531 by Chavez, which also would require an annual report by the ETF, passed the House by 142-0 on May 4 and has been referred to the Senate Economic Development Committee.