

## **BILL ANALYSIS**

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### **DIGEST AND PURPOSE**

In 1997, the Texas Department of Commerce was abolished and its functions were transferred to the Texas Department of Economic Development (TDED). TDED helps develop and promote the Texas economy by funding job training for Texas businesses, promoting Texas as a tourist destination, providing assistance to Texas businesses and communities, and serving as a central source of economic development information. TDED is subject to the Texas Sunset Act and will be abolished on September 1, 2001, unless continued by the legislature. As a result of its review of TDED, the Sunset Advisory Commission has recommended a two-year continuation of TDED along with several modifications in TDED's practices and procedures. S.B. 321 continues TDED until September 1, 2003, modifies TDED's enabling statutes, and transfers funds used to administer the smart jobs fund program to the unemployment insurance trust fund administered by the Texas Workforce Commission.

### **RULEMAKING AUTHORITY**

Rulemaking Authority is expressly granted to the Texas Department of Economic Development in Article 1 (Section 481.021, Government Code), in Article 2 to the Texas Workforce Commission (Sections 310.002, 310.003, 310.004, 310.007, 310.008, 310.009, 310.011, 310.012, and 310.013, Labor Code) and to the Texas Workforce Commission in Chapter 481 Government Code.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. CONTINUATION AND FUNCTIONS OF TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT.

SECTION 1.01. Amends Section 481.001, Government Code, by adding Subdivision (5), to define "council."

SECTION 1.02. Amends Section 481.003, Government Code, as follows:

Sec. 481.003. SUNSET PROVISION. Provides that the Texas Department of Economic Development is subject to Chapter 325 (Texas Sunset Act) and unless continued in existence as provided by that chapter, the Texas Department of Economic Development (department) is abolished and this chapter expires September 1, 2003, rather than 2001.

SECTION 1.03. Amends Chapter 481A, Government Code, by adding Section 481.0031 as follows:

Sec. 481.0031. OVERSITE OF DEPARTMENT. (a) Requires that the following certain criteria be used to determine if the department has successfully implemented the proper management and oversight controls of the state's economic development efforts.

(b) Requires the department to report to the Sunset Advisory Commission by September 1, 2002, on the status of the criteria set out in Subsection (a) as part of the reevaluation of the department.

(c) Provides that this section expires September 1, 2003.

SECTION 1.04. Amends Section 481.004, Government Code, to delete language regarding requirements for being on the governing board.

SECTION 1.05. Amends Section 481.0041(c), Government Code, to require that if the potential ground for removal involves the presiding officer, the executive director notify the next highest ranking officer of the governing board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 1.06. Amends Section 481.0044, Government Code, by adding Subsection (e), to require the governing board to develop and implement policies that clearly separate the policymaking responsibilities of the governing board and the management responsibilities of the executive director and staff of the department.

SECTION 1.07. Amends Chapter 481A, Government Code, by adding Section 481.0045 as follows:  
Sec. 481.0045. TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of the governing board from voting, deliberating, or being counted as a member in attendance at a meeting of the governing board until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with information regarding certain information.

(c) Provides that a person appointed to the governing board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 1.08. Amends Section 481.0066, Government Code, by adding Subsection (i), to provide that in carrying out its duties, the commission may not deliberate the purchase, exchange, lease, or value of real property, deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of an officer or employee of the department, or hear a complaint or charge against an officer or employee of the department.

SECTION 1.09. Amends Section 481.007, Government Code, to provide that an advisory committee, must provide independent, external expertise on department functions, may not be involved in setting department policy or managing the department's actual operations, and may not include a board member as a member of the advisory committee.

SECTION 1.10. Amends Section 481.010, Government Code, to require the executive director or the executive director's designee to provide to department employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 1.11. Amends Section 481.012, Government Code, by amending Subsection (b) and adding a Subsection (c), as follows:

(b) Requires the information file about each complaint to include the name of the person who filed the complaint, the date the complaint is received by the department, the subject matter of the complaint, the name of each person contacted in relation to the complaint, a summary of the results of the review or investigation of the complaint, and an explanation of the reason the file was closed, if the department closed the file without taking action other than to investigate the complaint.

(c) Requires the department to provide to the person filing the complaint and to each person

who is a subject of the complaint a copy of the department's policies and procedures relating to complaint investigation and resolution.

SECTION 1.12. Amends Section 481.021(c), Government Code, to require the department to adopt rules that require the department to account for all general revenue money contributed to projects supported by money held outside the treasury and provide that the department shall be fully reimbursed for those contributions as money becomes available, and require the department to account for all staff time spent on fund-raising activities associated with private donations.

SECTION 1.13. Amends Chapter 481L, Government Code, by adding Sections 481.175, 481.176, and 481.177 as follows:

Sec. 481.175. TEXAS TOURISM COORDINATING COUNCIL. (a) Provides that the Texas Tourism Coordinating Council (council) consists of one representative from each of the following certain entities.

- (b) Requires the council to designate a presiding officer from among its members.
- (c) Requires the council to receive administrative support from the entities the members represent.
- (d) Requires the council members to develop, maintain, and enter into a memorandum of understanding for the administration of this subchapter.

Sec. 481.176. MEETINGS. (a) Requires the council to meet as often as necessary to perform its duties.

- (b) Provides that eight members of the council, including the presiding officer, constitute a quorum. Authorizes the council, if a quorum is present, to act on any matter that is within its jurisdiction by a majority vote.
- (c) Requires the council to keep complete minutes of each meeting.

Sec. 481.177. POWERS AND DUTIES. Requires the council shall to analyze tourism functions of various state agencies, identify and address tourism coordination problems, ensure that council members comply with the required memorandum of understanding, implement a coordinated marketing plan, work with the department's Tourism Advisory Committee, as necessary, to ensure comment and recommendations from the other state agencies responsible for specific tourism areas such as recreational, nature, heritage, and cultural tourism, and report to the legislature biennially on all agencies' progress and actions taken to coordinate tourism efforts in this state, including the state resources dedicated to and the outcomes of recreational, cultural, historical, nature, and other types of tourism.

SECTION 1.14. (a) Provides that the Texas Economic Development Corporation is abolished.

Repealer: Section 481.024 (Texas Economic Development Corporation), Government Code.

- (b) Requires the Texas Department of Economic Development to adopt the rules required by Section 481.021(c), Government Code, as amended by this Act, on or before December 1, 2001.

## ARTICLE 2. FUNDING AND ADMINISTRATION OF SMART JOBS FUND PROGRAM

SECTION 2.01. Amends Title 4B, Labor Code, by adding Chapter 310 as follows:

## CHAPTER 310. SMART JOBS FUND PROGRAM

Sec. 310.001. DEFINITIONS. Defines “commission,” “county average weekly wage,” “division,” “employee,” “employer,” “executive director,” “existing employer,” “group health benefit plan,” “in-kind contribution,” “job,” “large business,” “medium business,” “micro-business,” “minority employer,” “minority group members,” “program,” “project,” “provider,” “qualified job,” “small business,” “trainee,” and “wages.”

Sec. 310.002. SMART JOBS FUND PROGRAM; PURPOSE; ADMINISTRATION. (a) Provides that the smart jobs fund program is created in the division as a workforce development incentive program to enhance employment opportunities for residents of this state and to increase the job skills of the existing workforce by providing job training assistance to businesses operating in, or relocating to, this state.

(b) Requires the program to award grants for the creation and retention of qualified jobs. Requires that at least 60 percent of the money spent under the program be used for projects that assist existing employers. Requires that at least 20 percent be used for employers that relocate operations to this state.

(c) Requires the commission by rule to develop and adopt a scoring system that evaluates the economic impact of grant applications and reflects the criteria set forth in this chapter. Requires the executive director to use the scoring system and a competitive process to award grants. Provides legislative intent on certain matters.

(d) Requires the commission to determine appropriate means to accomplish the goals of the program. Provides that as necessary to implement those goals, the commission may work in conjunction with the comptroller.

(e) Requires the division to administer the program.

(f) Authorizes the executive director to employ personnel as necessary to administer the program.

(g) Requires the division, in implementing provisions under this chapter regarding the classification of this state into regions, to use the uniform service regions established by the comptroller under Section 120, Article V, Chapter 19, Acts of the 72nd Legislature, 1st Called Session, 1991 (the General Appropriations Act).

Sec. 310.003. RULES. Requires the commission to adopt rules as necessary to implement the program.

Sec. 310.004. FUNDING; RAINY DAY FUND. (a) Provides that the smart jobs fund is established as a special trust fund in the custody of the comptroller separate and apart from all public money or funds of this state. Provides the fund is composed of certain monies.

(b) Provides that the program is funded through the smart jobs fund.

(c) Authorizes that money in the smart jobs fund be used for program administration, marketing expenses, and evaluation of the program. Provides that the costs of the division in any fiscal year may not exceed the lesser of five percent of the total amount appropriated for the program for that fiscal year or \$1.5 million.

(d) Provides that the smart jobs rainy day fund is established as a special trust fund in the custody of the comptroller separate and apart from all public money or funds of this

state. Provides that the smart jobs rainy day fund is composed of certain monies.

(e) Authorizes the commission to authorize the executive director to use money in the smart jobs rainy day fund if certain determinations are made.

(f) Requires the commission by rule to define "severe economic dislocation" for purposes of Subsection (e). Requires the commission, in adopting a definition, to consider employment-related factors, including certain factors.

(g) Authorizes the executive director, if the commission approves the use of money from the smart jobs rainy day fund because of a severe economic dislocation occurring in a specific region of the state, to use the money allocated from the smart jobs rainy day fund solely for projects located in the affected region.

(h) Prohibits, notwithstanding any other provision of this section, the total combined amount spent in any fiscal year from the smart jobs fund and the smart jobs rainy day fund from exceeding the amount appropriated by the legislature for that fiscal year for the operation of the program.

(i) Requires the executive director, if, during any three consecutive months, the balance in the smart jobs fund or the smart jobs rainy day fund exceeds 0.15 percent of the total taxable wages for the four calendar quarters ending the preceding June 30, as computed under Section 204.062(c), to immediately transfer the excess from the applicable fund to the unemployment compensation fund created under Section 203.021.

Sec. 310.005. DESIGNATION OF PROGRAM FUNDS FOR ECONOMIC DEVELOPMENT. Requires that a percentage of money in the smart jobs fund determined by the General Appropriations Act to be transferred to the Texas Department of Economic Development for the purpose of attracting businesses for economic development through the use of the program. Requires the department to determine the qualified recipients of the money for the purpose of attracting businesses to the state in accordance with commission rules and requirements for smart jobs grants. Provides that the resulting smart jobs grants are exempt from Section 310.002(c) and administered by the division.

Sec. 310.006. GRANTS. (a) Authorizes the executive director to award grants for projects that meet the requirements of this chapter.

(b) Prohibits a grant from being awarded unless each employer participating in the project certifies that a job or job opening exists or will exist at the end of the project for which the grant is sought and the job or job opening will be filled by a participant in the project.

(c) Prohibits a grant, except as otherwise provided by this subsection, from being awarded unless each employer participating in the project certifies that each job under the project is covered by a group health benefit plan for which the business pays at least 50 percent of the premiums or other charges assessed for employee-only coverage under the plan. Authorizes the executive director to waive the coverage requirement for a particular job if the affected employee voluntarily waives the coverage in the manner prescribed by rules adopted by the commission.

(d) Prohibits a grant from being awarded for a project under this section unless each employer participating in the project certifies that the starting wage for a new job created through the project will be equal to or greater than the county average weekly wage for the county in which the job or project is located and that the wage for a job

existing on the date that the project is scheduled to begin will be increased to the greater of three percent for a micro-business or small business or five percent for a business that is not a micro-business or small business over the wage in effect on the day before the date on which the project is scheduled to begin for that job or 100 percent of the county average weekly wage for the county in which the job or project is located.

(e) Authorizes an employer to apply for a grant under this chapter. Authorizes an employer to request a modification of the requirements provided by Subsection

(d) and Section 310.009, if reasonable factors exist for the modification, as determined by the executive director.

(f) Prohibits grants awarded under this section for which the executive director has modified the requirements of Subsection (d) from, in any fiscal year, exceeding 10 percent of the total dollar amount of grants awarded under the program in that year.

(g) Prohibits a grant, unless modified by the executive director under rules adopted by the commission, from being awarded for a project unless each employer participating in the project certifies that it will continue to spend on nonmanagerial training an amount from private sources equal to the average amount spent by that employer on such training for the most recent two-year period.

(h) Prohibits a grant from being awarded for a project if the project will impair existing contracts for services or collective bargaining agreements, except that a project inconsistent with the terms of a collective bargaining agreement may be undertaken with the written concurrence of the collective bargaining unit and the employer or employers who are parties to the agreement.

Sec. 310.007. GRANT APPLICATION; AWARDING OF GRANTS. (a) Authorizes the following certain people to apply for a grant under this chapter.

(b) Requires a grant application to be filed with the division in a form approved by the executive director and, except as provided by Subsection (c), to include a complete business and training plan, including certain information.

(c) Authorizes the commission by rule to exempt a micro-business from the requirement to submit a business and training plan that complies with Subsection (b). Requires the commission by rule to establish a simplified application process for grant applications from micro-businesses.

(d) Authorizes the division to provide assistance with the application process to all applicants and to give priority to assisting applicants who are small businesses or micro-businesses.

(e) Requires the division to minimize the length of the application form and to simplify as much as possible the review process for grant applications.

(f) Requires the division to notify each applicant as to whether the application is complete not later than the fifth business day after the date on which the application is received by the division.

Sec. 310.008. PARTICIPATION IN ADDITIONAL PROGRAMS; APPLICATION REQUIREMENTS. (a) Prohibits a business from applying both for a grant under this chapter and to a public community or technical college for customized training and assessment from the

college through a grant issued to the college under the skills development fund program established under Chapter 303 unless the business and the college file an application for concurrent participation in both programs.

(b) Requires the commission by rule to establish the requirements for an application subject to this section.

Sec. 310.009. MATCHING REQUIREMENTS; EXEMPTIONS. (a) Requires that money provided under a grant for a project to be matched by private funds provided by the employer benefiting from the project in an amount at least equal to the amount provided by the grant.

(b) Authorizes the commission to adopt rules modifying the requirements of Subsection (a) for employers that are small businesses or micro-businesses and to also adopt rules modifying the requirements of Subsection (a) for projects that provide significant economic benefits to an entire region of the state.

(c) Authorizes that employer matches to include documented in-kind contributions as well as wages paid to trainees during the training period.

Sec. 310.010. TRAINEES. Requires the program to give priority to residents of this state, including residents formerly sentenced to the institutional division or the state jail division of the Texas Department of Criminal Justice.

Sec. 310.011. CONTRACTS. (a) Authorizes the executive director to approve any project that meets the requirements of this chapter. Requires the division, if a project is approved and funds are available, to enter into a contract with the grant applicant and with each employer participating in the project. Requires the contract to specify those skills and competencies to be gained as a result of the project.

(b) Authorizes reimbursable costs in the contract to include only those expenses related to direct training in job-related basic skills, including literacy skills, job-related vocational skills, and administrative costs. Prohibits the total administrative costs for any particular project from exceeding 10 percent of the project's expenditures.

(c) Requires that each contract must provide a schedule for payment of smart jobs fund money. Requires twenty-five percent of allowable expenditures to be withheld by the division for 90 days after the date of completion of the contract. Requires that if at least 85 percent of the trainees in the project have been retained in employment for that 90-day period, other than trainees who leave the employment voluntarily for better-paying jobs, and have successfully achieved the skills and competencies, wage requirements, and other contractual obligations, the amount of allowable expenditures withheld to be remitted to the employer. Requires the commission by rule to establish procedures as necessary to verify that a trainee has left the employment for a better-paying job. Provides that if there is a negative balance, the employer is liable for the amount of the negative balance and shall remit that amount to the division not later than the 30th day after the date on which the employer is notified of the negative balance by the division.

(d) Requires each contract to state the term of the grant award. Requires a grant recipient who does not use all money awarded under the grant for the prescribed purpose within the allotted term to reimburse the program by submitting the appropriate amount to the executive director not later than the 30th day after the expiration date of the term of the grant award. Requires the executive director to remit money received under this subsection to the comptroller for deposit in the smart jobs rainy day fund.

Sec. 310.012. SMART JOBS PROGRAM CONTRACT PROVISIONS. Requires the commission by rule to require each smart jobs contract to have clearly defined goals, outputs, and measurable outcomes that directly relate to program objectives, clearly defined sanctions for noncompliance with contract terms, and clearly specified accounting, reporting, and auditing requirements for funds received under program contracts.

Sec. 310.013. SMART JOBS PROGRAM MONITORING PRACTICES. Requires the commission by rule to adopt program monitoring practices that include risk-assessment to determine which contracts have the highest risk for fraud and abuse and a method to obtain and evaluate program cost information to ensure all costs, including administrative costs, are reasonable and necessary to achieve program objectives.

Sec. 310.014. ANNUAL REPORT. (a) Requires the commission to report to the governor and the legislature at the end of each fiscal year on the status of the program.

(b) Requires the annual report to include for that fiscal year certain information.

(c) Requires the commission, in addition to the information required under Subsection (b), to include in the annual report, for each region of the state in which a grant is awarded, the percentage paid by employers in that region of the total amount of unemployment insurance contributions paid by employers during the preceding calendar year.

SECTION 2.02. Amends Section 19.011(a), Education Code, to provide that in order to achieve the goals stated in Section 19.003, the district with the cooperation of the Health and Human Services Commission, the Council on Workforce and Economic Competitiveness, the division of workforce development at the Texas Workforce Commission, rather than the Texas Department of Commerce, and the department must provide persons confined or imprisoned in the department, information on the tax refund voucher program under Chapter 301H, Labor Code, rather than Chapter 31D Human Resources Code and information on the smart jobs fund program under Chapter 310, Labor Code.

SECTION 2.03. Amends Section 403.351(a), Government Code, to make a conforming change.

SECTION 2.04. Amends Section 2308.308, Government Code, to make a conforming change.

SECTION 2.05. Amends Section 204.123(a), Labor Code, requiring the commission, if, on September 1 of a year, determines that the amount in the compensation fund will exceed 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, to transfer from the holding fund created under Section 204.122; 50 percent of the amount in the holding fund to the smart jobs fund created under Section 310.004(a), rather than Section 481.154(a), Government Code, and 20 percent of the amount in the holding fund to the smart jobs rainy day fund created under Section 310.004(d), rather than 481.154(d), Government Code.

SECTION 2.06. Amends Section 302.021(a), Labor Code, to provide that the following job-training, employment, and employment-related educational programs and functions are consolidated under the authority of the division, the smart jobs fund program under Chapter 310. Deletes language regarding the inmate employment counseling program.

SECTION 2.07. Section 303.005, Labor Code, to make a conforming change.

SECTION 2.08. Section 306.007(a), Labor Code, provides that to assist in the reintegration into the labor force of persons formerly sentenced to the institutional division or the state jail division, the commission through Project RIO must provide to the employers and potential employers of those persons information from the Texas Department of Economic Development, rather than Commerce, on the enterprise zone program and information from the division of workforce development at the Texas

Workforce Commission on the smart jobs fund program.

SECTION 2.09. Repealer: Chapter 481J (Business Development-Smart Jobs Fund Program), Government Code.

SECTION 2.10. (a) Provides that on the effective date of this Act, all powers, duties, obligations, rights, contracts, records, employees, property, and unspent and unobligated appropriations and other funds of the Texas Department of Economic Development that are used by that agency on the effective date of this Act to administer the smart jobs fund program are transferred to the Texas Workforce Commission.

(b) Provides that all rules, policies, procedures, and decisions that affect the smart jobs fund program are continued in effect until superseded by a rule or other appropriate action of the Texas Workforce Commission.

(c) Provides that any action or proceeding before the Texas Department of Economic Development relating to the smart jobs fund program is transferred without change in status to the Texas Workforce Commission, and the Texas Workforce Commission assumes, without change in status, the position of the Texas Department of Economic Development in any action or proceeding relating to the smart jobs fund program to which the Texas Department of Economic Development is a party.

(d) Provides that the smart jobs fund program established under Subchapter J, Chapter 481, Government Code, is abolished on the effective date of this Act. Prohibits the Texas Department of Economic Development from awarding a grant under that program on or after that date. Provides that all unobligated and unexpended balances in the smart jobs fund created under Section 481.154, Government Code, as that section existed before repeal by this Act, are transferred on the effective date of this Act to the smart jobs fund created under Section 310.004, Labor Code, as added by this Act.

(e) Requires the Texas Workforce Commission to adopt rules to implement Chapter 310, Labor Code, as added by this Act, not later than December 31, 2001.

### ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date: September 1, 2001.