

SUBJECT: Bond financing for biotech and biomedical commercialization

COMMITTEE: Financial Institutions — favorable, without amendment

VOTE: 5 ayes — Averitt, Solomons, Hopson, Menendez, Pitts

0 nays

4 absent — Denny, Grusendorf, Marchant, Wise

SENATE VOTE: On final passage, May 1 — 30-0

WITNESSES: *(On companion bill, HB 2369:)*

For — Curt Bilby, Evacyte Corporation; Dana Chiodo, American Electronics Association; Tom Kowalski, Texas Healthcare and Bioscience Institute; Warren Webb; *Registered but did not testify*: Neal T. “Buddy” Jones, Southeast Texas Biotech Park Coalition; Ron Kessler, American Electronics Association

Against — None

On — Dennis K. Stone, University of Texas Southwestern Medical Center at Dallas; *Registered but did not testify*: Jim Buie, Texas Bond Review Board

DIGEST: SB 1485 would create the Product Development and Small Business Incubator Board to encourage development and production of Texas biotechnological and biomedical products and small businesses. The bill also would approve the issuance of bonds to finance projects of the board.

Product development and small business incubator board. The comptroller would preside over the eight-member board, which would be composed of:

- ! two technology business leaders experienced with the transfer of research to commercial applications;
- ! two technological researchers employed by institutions of higher education experienced with commercial applications;

- ! two experts in financing for technological products or businesses, and
- ! two persons with technology business experience from counties with high unemployment and low per capita income levels.

Members would be appointed by the governor to serve two-year staggered terms. The board would have to appoint a secretary and could prescribe duties for the position. Members would serve without pay but could be reimbursed for expenses.

A board member could be removed if illness or disability prevented them from performing their duties on the board or if they were absent for over half of the regularly scheduled board meetings during a calendar year, unless their absence was excused by the board.

Before assuming duties on the board, a member would have to complete one of the following training courses on:

- ! the enabling legislation that created the board;
- ! the programs operated by the board;
- ! the role and functions of the board;
- ! the rules of the board, especially in regard to disciplinary and investigatory authority;
- ! the current budget for the board;
- ! the results of the board's most recent audit;
- ! open meetings, open records, and administrative procedures requirements;
- ! requirements of conflict of interest laws and other laws relating to public officials; and
- ! any applicable ethics policies of the board or the Texas Ethics Commission.

The board would hold regular meetings in Austin. The comptroller could call meetings in other places. The board's policies would have to provide an opportunity for members of the public to appear before the board to speak on applicable issues. Minutes of board meetings would have to be available for public inspection. The board would be subject to open meetings and administrative procedures requirements.

Employees of the comptroller would provide staff support for the board. The comptroller would select and supervise the staff, provide information on their qualifications for employment and their standard of conduct responsibilities. The board would have to develop policies that clearly separated the policy-making responsibilities of the board and the management responsibilities of the comptroller.

The board would have to comply with federal and state program and facility accessibility requirements. The board would have to prepare a written plan on how a person that did not speak English could receive access to the board's program and services.

Bond funding. The board could issue up to \$25 million in general obligation bonds from the Texas product development fund and \$20 million in bonds from the small business incubator fund. No more than five percent of the total bond issuance could be used for administrative expenses.

The Texas product development fund and the small business incubator fund would consist of:

- ! bonds;
- ! financing application fees;
- ! loan repayments;
- ! guarantee fees;
- ! royalty receipts;
- ! dividend income;
- ! legislative appropriations;
- ! amounts received by the state from loans, loan guarantees, and equity investments;
- ! amounts received by the state from federal grants or other sources;
- and
- ! any other amounts required to be deposited into the fund.

Each fund also would contain a program account, an interest and sinking account, and any other accounts that the board authorized. The board could use money from the funds to carry out its duties and for debt service.

Money in the program account of the product fund — less the costs to issue bonds and administer the product fund — only could be used to provide financing to aid in the development and production of new or improved products in the state. Similarly, money in the program account of the business fund — less the costs to issue bonds and administer the business fund — only could be used to provide financing to foster and stimulate small business development in the state. The board would determine terms and conditions for providing financing from the funds.

Eligible products and businesses. The board would have to approve any product or business that received financing from the funds. In determining eligibility for financing, the board would have to give special preference to products or businesses in the area of biotechnology and biomedicine with the greatest likelihood of commercial success and job creation and retention in the state. The board also would have to give preference to:

- ! grantees under the federal small business innovation research program;
- ! companies formed to commercialize state-funded research;
- ! applicants with other sources of funding;
- ! companies receiving assistance from designated small business development centers; or
- ! applicants who were residents of the state, doing business in the state, and performing financed activities predominantly in the state.

The board's rules governing terms and conditions of financing — including security or collateral requirements, equity interest, and the board's remedies in the event of a loan default — would have to require an applicant to report to the board on the use of money from the funds.

To receive funding, a person would have to enter into an agreement with the board providing that the board would obtain an appropriate portion of royalties, patent rights, or equitable interests from the proceeds of the product it approved for financing.

The board could appoint an advisory committee of experts to review projects and businesses seeking financing. A single recipient could not receive financing in an amount greater than 10 percent of the total bond issuance.

The state's claim for payment from a person who had been provided financing would have priority over all other claims against the person.

The board could set a reasonable application fee. An application for financing also would have to include:

- ! information on the history and financial condition of the applicant;
- ! the applicant's current markets and market prospects;
- ! the integrity of the applicant's management;
- ! a feasibility statement on development of the product, including the current state of product development and the proposed schedule for commercialization; and
- ! documentation of attempts to obtain other financing, if applicable.

The board would have to determine for each application whether:

- ! the product or business was economically sound;
- ! there was a reasonable expectation that the product or business would succeed;
- ! the product or business would create jobs or otherwise benefit the state economy;
- ! the applicant had sufficient management resources;
- ! financing was necessary because it was unavailable through traditional capital markets or had been offered only on prohibitively expensive terms; and
- ! there was a reasonable assurance that the revenues from the sale of the product would cover financing repayment costs.

The board would have to notify an applicant promptly of its decision to approve or deny the application.

Certain information held by the board would be confidential, including:

- ! any proprietary information that had not been disclosed to the public and related to product development or marketing; and
- ! scientific and technological information and business and marketing information regardless of whether the product was patentable, could

be copyrighted or registered as a trademark, or had the potential to be released for a fee.

Information on the expenditure of public funds would not be confidential.

The board would have to return all submission materials if an applicant withdrew an application before the board made a decision on whether to provide financing. The board could keep a record of the submission that did not include any 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, 2001.

**SUPPORTERS
SAY:**

SB 1485 would create the Product Development and Small Business Incubator Board to administer the Texas product development fund and the small business incubator fund to promote the commercial potential of biotechnology and biomedicine. In 1989, voters approved constitutional amendments authorizing the issuance of \$25 million in bonds to capitalize the product development fund and the issuance of \$20 million in bonds to capitalize the small business incubator fund. The Department of Commerce was designated to administer the funds, but the bonds were never issued. When the department was abolished in 1997, the enabling legislation for the funds also was repealed.

SB 1485 would provide legislative authorization to issue bonds already approved by voters. The bill also would establish a board composed of technology industry experts to oversee administration of the funds. The House Business and Industry Committee and the Senate Economic Development Committee, in their interim reports, both recommended that the funds be reauthorized.

Since the funds still are authorized in the Constitution and count against the state's bond rating, it makes sense to utilize them. Debt service on the bonds would be paid with loan repayments rather than with general revenue, so SB 1485 would have no fiscal impact to the state. By promoting economic development and job creation in the areas of biotechnology and biomedicine,

which have vast economic potential, the overall fiscal impact should be positive.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The companion bill, HB 2369 by George, was reported favorably as substituted by the House Financial Institutions Committee on April 11.