

BILL ANALYSIS

Senate Research Center
77R12282 DWS-F

C.S.S.B. 1485
By: Carona
Business & Commerce
4/25/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

In 1989, a constitutional amendment was passed authorizing the issuance of bonds for the initial funding of a product development fund and a small business incubator fund. C.S.S.B. 1485 establishes the Product Development and Small Business Incubator Board (board) and reauthorizes the bonds for use in funding the board's activities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Product Development and Small Business Incubator Board in SECTION 1 (Sections 403.410, and 403.413, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 403, Government Code, by adding Subchapter P, as follows:

SUBCHAPTER P. PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATORS

Sec. 403.401. DEFINITIONS. Defines "board," "comptroller," "financing," "office," "product," "product fund," "program," and "small business fund."

Sec. 403.402. PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATOR BOARD. (a) Provides that the Product Development and Small Business Incubator Board is created in the office.

(b) Requires the board to administer the programs, the product fund, and the small business fund.

Sec. 403.403. MEMBERS OF THE BOARD; APPOINTMENT; TERMS OF OFFICE.

(a) Provides that the board consists of the comptroller and six persons appointed by the governor.

(b) Requires the governor, in appointing members to the board, to appoint certain persons with certain expertise.

(c) Provides that appointed board members serve two-year staggered terms with the terms of three members expiring February 1 of each odd-numbered year and the terms of three members expiring February 1 of each even-numbered year.

(d) Provides that the comptroller is the presiding officer of the board.

(e) Requires the board to appoint a secretary of the board whose duties may be prescribed by law and by the board.

(f) Provides that appointed members of the board serve without pay but are entitled to

reimbursement for their actual expenses incurred in attending meetings of the board or in performing other work of the board if that work is approved by the comptroller.

Sec. 403.404. REMOVAL OF BOARD MEMBER. (a) Provides grounds for removal of an appointed member from the board.

(b) Provides that the validity of an action of the board is not affected by the fact that the action was taken when a ground for removal of a board member existed.

Sec. 403.405. TRAINING OF BOARD MEMBERS. (a) Provides that before an appointed member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(b) Requires a training program established under this section to provide information to the member regarding certain items.

Sec. 403.406. MEETINGS. (a) Requires the board to hold regular meetings in Austin and other meetings at places and times scheduled by the board in formal sessions and called by the comptroller.

(b) Requires the board to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(c) Requires the board to make minutes of all meetings available in the board's office for public inspection.

Sec. 403.407. APPLICABILITY OF OPEN MEETINGS LAW AND ADMINISTRATIVE PROCEDURE LAW. Provides that the board is subject to the open meetings law, Chapter 551, and the administrative procedure law, Chapter 2001.

Sec. 403.408. STAFF. Provides that the employees of the comptroller selected by the comptroller for that purpose serve as the staff of the board.

(b) Requires the comptroller to supervise the staff of the board and perform other duties delegated to the comptroller by the board.

(c) Requires the comptroller to provide to members of the board and to board staff, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) Requires the board to develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the comptroller and the comptroller's staff.

Sec. 403.409. PROGRAM AND FACILITY ACCESSIBILITY. (a) Requires the board to comply with federal and state laws related to program and facility accessibility.

(b) Requires the board to prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs and services.

Sec. 403.410. POWERS OF THE BOARD; BONDS. (a) Provides that the board has the powers necessary and reasonable to carry out this subchapter and may adopt rules, policies,

and procedures necessary or reasonable to implement this subchapter.

(b) Authorizes the board to issue general obligation bonds, up to the amounts authorized and as provided by Section 71, Article XVI, Texas Constitution, to fund to program.

(c) Provides that not more than an amount equal to five percent of the total amount of bonds issued may be used to pay administrative fees involved in selling the bonds.

Sec. 403.411. TEXAS PRODUCT DEVELOPMENT FUND. (a) Provides that the Texas product development fund is a revolving fund in the state treasury.

(b) Provides that the product fund is composed of proceeds of bonds issued under this subchapter, financing application fees, loan repayments, guarantee fees, royalty receipts, dividend income, money appropriated by the legislature for authorized purposes of the product fund, amounts received by the state from loans, loan guarantees, and equity investments made under this subchapter, amounts received by the state from federal grants or other sources, and any other amounts received under this subchapter and required by resolution of the board to be deposited in the product fund. Provides that the product fund contains a program account, an interest and sinking account, and other accounts that the board authorizes to be created and maintained. Provides that money in the product fund is available for use by the board member under this subchapter. Authorizes, notwithstanding any other provision of this subchapter, any money in the fund to be used for debt service.

(c) Provides that money in the program account of the product development fund, minus the costs of issuance of bonds under this subchapter and necessary costs of administering the product development fund, may be used only to provide financing to aid in the development and production, including the commercialization, of new or improved products in this state. Requires the board to provide financing from the product development fund on the terms that the board determines to be reasonable, appropriate, and consistent with the purposes and objectives of the product development fund and this subchapter, for the purpose of aiding in the development and production of new or improved products in this state.

Sec. 403.412. SMALL BUSINESS INCUBATOR FUND. (a) Provides that the Texas small business incubator fund is a revolving fund in the state treasury.

(b) Provides that the small business fund is composed of proceeds of bonds issued under this subchapter, financing application fees, loan repayments, guarantee fees, royalty receipts, dividend income, money appropriated by the legislature for authorizes purposes of the small business fund, amounts received by the state from loans, loan guarantees, and equity investments made under this subchapter, amounts received by the state from federal grants or other sources, and any other amounts received under this subchapter and required by resolution of the board to be deposited in the small business fund. Provides that the small business fund contains a project account, an interest and sinking account, and other accounts that the board authorizes to be created and maintained. Provides that money in the small business fund is available for use by the board under this subchapter. Authorizes, notwithstanding any other provision of this subchapter, any money in the fund to be used for debt service.

(c) Provides that money in the project account of the small business fund, minus the costs of issuance of bonds under this subchapter and necessary costs of administering the small business fund, may be used only to provide financing to foster and stimulate the development of small businesses in this state. Requires the board to provide

financing from the small business fund on the terms and conditions that the board determines to be reasonable, appropriate, and consistent with the purposes and objectives of the small business fund and this subchapter, for the purpose of fostering and stimulating the development of new or existing small businesses in this state.

Sec. 403.413. ELIGIBLE PRODUCTS AND BUSINESSES; FINANCING. (a) Authorizes financing to be made under this chapter only for a product or small business approved by the board.

(b) Requires the board, in determining eligible products and small businesses, to give preference to products or businesses in the areas of biomedicine and biotechnology that have the greatest likelihood of commercial success, job creation, and job retention in this state. Requires the board to give additional further preference to providing financing to projects or businesses that meet certain requirements.

(c) Requires the board to adopt rules governing the terms and conditions and conditions of the financing, specifically including requirements for appropriate security or collateral, equity interest, and the rights and remedies of the board and office in the event of a default on the loan. Requires the rules to include a requirement that applicants report to the board on the use of money distributed through either fund.

(d) Requires the board, before approving the provision of financing to a person to enter into an agreement with the person under which the board will obtain an appropriate portion of royalties, patent rights, equitable interests, or a combination of those royalties, rights, and interests, from or in the product or proceeds of the product for which financing is requested. Requires contracts executed under this subchapter to include agreements to ensure proper use of funds and the receipt of royalties, patent rights, or equity interest, as appropriate.

(e) Authorizes the board to appoint an advisory committee of experts in the areas of biomedicine and biotechnology to review projects and businesses for which applicants seek financing under this chapter.

(f) Prohibits the amount of financing provided to a single recipient from exceeding 10 percent of the total amount of bonds issued.

(g) Provides that a claim of the state for a payment owed to the state under this subchapter by a person who has been provided financing has priority over all other claims against the person.

Sec. 403.414. APPLICATION PROCESS. (a) Requires an applicant, to apply for financing from the board, to submit certain required items.

(b) Requires the application to include a business plan, containing the information required by the board, including minimum specified requirements.

(c) Requires the board to determine, with respect to each application for financing, whether certain requirements are met.

(d) Requires the board, after considering the application and all other information it considers relevant, to approve or deny the application and promptly notify the applicant of its decision.

Sec. 403.415. INFORMATION CONFIDENTIAL. (a) Provides that information described by Subsection (b) collected, assembled, or maintained by or for the board is

confidential and may not be disclosed by the board, the comptroller, or the office.

(b) Provides this section applies to information in any form provided by or on behalf of an applicant for financing or a recipient of financing under this subchapter, including information contained in, accompanying, or derived from any application or report, that relates to a product, to the development, application, manufacture, or use of a product, or to the markets, market prospects, or marketing of a product, and that is proprietary information of actual or potential commercial value to the applicant or receipt that has not been disclosed to the public. Provides that information includes scientific and technological information, including computer programs and software, and marketing and business operation information, regardless of whether the product to which the information relates is patentable or capable of being registered under copyright or trademark laws or has a potential for being sold, traded, or licensed for a fee. Provides that this section does not make confidential information in an account, voucher, or contract relating to the receipt or expenditure of public funds by the board or the comptroller under this subchapter.

(c) Requires the board, if an applicant for financing under this chapter withdraws the application before it is approved by the board or if the board denies an application for financing, on request to promptly return to the applicant the application and all materials submitted by or on behalf of the applicant that relate to the application.

Sec. 403.416. PROGRAM COORDINATION. Requires the board and the office to coordinate the administration and funding of the programs.

SECTION 2. Effective date: upon passage or September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Amends As Filed S.B. 1485, by making proposed changes to Chapter 403, Government Code, by adding Subchapter P, rather than Title 9G, Government Code.

SECTION 2. Effective date.