HOUSE
RESEARCH
ORGANIZATION bill analysis 4/11/2005

HB 1938
Ritter, et al.

SUBJECT: Reporting and oversight of grants from the Texas Enterprise Fund

COMMITTEE: Economic Development — favorable, without amendment

VOTE: 4 ayes — Ritter, B. Cook, Anchia, Kolkhorst

0 nays

3 absent — Deshotel, McCall, Seaman

WITNESSES: For — Don Baylor, Center for Public Policy Priorities; Rick Levy, Texas AFL-CIO; Fred Welch, Texas Economic Development Council. (*Registered, but did not testify*: Richard Landry, Pace Region 6 Council).

Against — None

On — (*Registered, but did not testify*: Richard Norris, Legislative Budget Board)

BACKGROUND: In 2003, the 78th Legislature created the Texas Enterprise Fund (TEF) as a “deal-closing” fund within the Governor’s Office to entice businesses to expand in or relocate to Texas. The fund, which received an initial appropriation of $295 million from the economic stabilization (rainy day) fund, provides cash grants for a wide variety of economic stimulus programs. Money may be awarded only with the approval of the lieutenant governor and the speaker of the House. The governor also has the option of including “clawback” provisions in contracts that require an enterprise to repay some or all of the grant to the state if it fails to create the promised number of jobs or to invest a minimum amount in the state. To date, about $212.4 million in grants have been awarded to 18 entities, primarily for business incentives.

DIGEST: HB 1938 would make a number of changes to the reporting and oversight process for TEF grants.

Enforcement. The bill would require the governor to enter into a written agreement with a recipient of a TEF grant. It would require the governor to include the following provisions, which currently are optional, in written agreements:

- The state would retain a lien or other interest on a capital improvement wholly or partially funded with a TEF grant in proportion to the percentage of the grant amount used to pay for the improvement.
- If the capital improvement was sold, the recipient would repay to the state the grant money used to pay for the improvement plus interest and share a proportionate amount of profit realized from the sale.
- If a grantee had not used the grant money for the purposes for which the funds had been intended by a date certain, the recipient would have to repay that amount plus interest to the state.

The bill also would add provisions required in a written agreement between the governor and a grantee. If a grant recipient had not met a specified performance target by a certain date, the recipient would be required to repay the grant and any related interest. Repayment of the funds could be prorated to reflect partial attainment of performance targets. The governor would not distribute any remaining grant money and could assess penalties for noncompliance by a grantee.

The agreement could require a percentage of the grant to be withheld until specific performance targets were met. After consultation with the speaker of the House and the lieutenant governor, the governor would be required to set a performance target and a date for those targets to be met, as well as the percentage of the grant that would be withheld for failure to meet those targets.

The agreement also would require a grantee to disclose to the governor any event that could impact its ability to comply with the agreement, including a lawsuit filed against the grantee or the death of an owner or partner.

A grantee would have to submit a quarterly progress report on the attainment of performance targets specified in an agreement to the governor, the lieutenant governor, and the speaker of the House.

Reporting. Prior to each regular legislative session, the governor would be required to submit a report to the lieutenant governor, the speaker of the House, and each member of the Legislature on grants made from the TEF. The report would have to state:

- the number of direct jobs each grantee promised to create;
- the number of direct jobs each grantee created;
- the median wage of the jobs each grantee created;
- the amount of capital investment each grantee promised to expend per project;
- the amount of capital investment actually allocated per project;
- the total amount of grants made to each grantee;
- the total amount of tax credits, local incentives, and other money or credits to each grantee by governmental entities in Texas;
- the percentage of money granted to recipients with fewer than 100 employees;
- the geographical distribution of grants by county;
- the average amount of money granted per job created by grantee;
- the number of jobs created by each grantee in various industry sectors; and
- the effect of grants of employment, personal income, and capital investment in the state and in each regional planning commission area.

The governor could require a grantee to submit information for the report. The report could not include confidential information.

The bill would apply only to an agreement entered into on or after the effective date. An agreement entered into before the bill's effective date would be governed by current law.

The bill would take effect September 1, 2005.

SUPPORTERS SAY:

By introducing much-needed accountability controls and reporting requirements, HB 1938 would ensure that the Texas Enterprise Fund operated no differently than other state programs in terms of open government and accountability. The TEF is an important economic development program that has been credited with creating 14,000 new jobs since its creation in 2003. This bill would strengthen the fund by making sure that these economic gains actually were realized.

HB 1938 would implement recommendations from the Legislative Budget Board (LBB) in its 2005 *Staff Performance Report* to enhance the accountability of the TEF. The LBB found that current state law governing the TEF does not require the governor to report to the Legislature on the fund's grants, activities, or performance. At least two agreements entered into by the Governor's Office in 2004 should have included stronger provisions to hold grant recipients accountable for meeting job creation and investment goals, according to the LBB. This bill would create reasonable performance standards to demonstrate the effectiveness of projects funded by the TEF and hold companies accountable for the money that they receive.

The Governor's Office currently enjoys excessive latitude in negotiating the terms of agreements with recipients of TEF grants. In creating the TEF, the Legislature granted the governor the option of incorporating clawback provisions into contracts with TEF grant recipients. However, the governor just as easily could fail to incorporate any enforcement provisions into a contract. HB 1938 would require grant recipients to meet specific performance measures, which could include job creation or capital investment mandates, and force a grantee to repay funds if those goals were not met.

HB 1938 would improve accountability of the fund by requiring the governor to issue a biennial report to the Legislature on projects funded by the TEF. By providing detailed information, such as the number, type, and median wage of jobs created as well as the geographical distribution of grants throughout the state, the bill would provide legislators information necessary to determine the effectiveness of grants from the fund. With this information, legislators could decide how effectively money appropriated to TEF has been spent and how best to reform the TEF's administration in the future.

OPPONENTS SAY:

HB 1938 is unnecessary because the TEF already has safeguards to prevent misuse of grants from the fund. Every project funded by the TEF requires the unanimous written consent of the governor, the lieutenant governor, and the speaker of the House. As of February 2005, fewer than 20 percent of proposals from applicants had been approved, a fact that demonstrates the rigorous review process by which TEF applications are evaluated. The Governor's Office includes clawback provisions in all agreements and has proved willing to deny funds to grantees that do not meet their performance targets. The governor also has been forthcoming and inclusive toward the Legislature in providing information about the approval and administration of grants under the program.

HB 1938 could hinder the governor's ability to respond quickly to economic development opportunities. The TEF has been so successful in its short history due largely to the unique method of its management. Business leaders considering location and investment decisions must respond quickly to market circumstances, and these firms benefit from their ability to negotiate directly with the Governor's Office. The additional requirements in HB 1938 could slow the application and approval process, leading Texas to miss out on investment from some firms.

Requiring grant recipients to report quarterly on their business activities would be onerous and could discourage participation among companies. The governor already requires annual reporting from grantees, a process that many grant participants consider overly burdensome. Further, the bill's overly stringent clawback provisions could introduce uncertainty into the process for applicants who would have to worry about losing their grants if they fell even slightly behind schedule. The red tape and penalties introduced under this bill could discourage participation from applicants who might fear that compliance would be more trouble than it was worth.

OTHER OPPONENTS SAY:

While HB 1938 would mark an improvement in terms of accountability, further reforms are needed. Companies receiving TEF money should be required to provide a minimum of health care coverage, a living wage, and a safe workplace for employees. In order to prevent bad corporate actors from receiving taxpayer dollars, applicants should have to verify their compliance with state and federal environmental and labor laws. In addition, grants should go only to firms creating "primary jobs" in sectors such as manufacturing or research and development, since those industries generate new wealth in a region and tend to pay higher wages. The bill also more explicitly could tie grants to workforce development programs, in order to improve the capacity not just of employers but also of Texas citizens and require that a specific proportion of grants be targeted to small businesses, which are the biggest job generators. Also, the projects should have to be distributed geographically across the state and directed particularly to areas of the greatest economic need.

NOTES:

The House and the Senate versions of SB 1 by Ogden (Pitts), the general appropriations act for fiscal 2006-07, would appropriate $140 million to TEF in general revenue-related funds and authorize the appropriation of up to $130 million in additional funding in fiscal 2007 contingent upon enactment of legislation creating a funding source for the TEF.