

BILL ANALYSIS

Senate Research Center
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S.B. 1485
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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. As proposed, 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 1403.063, 1403.151, and 1403.153, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 9G, Government Code, by adding Chapter 1403, as follows:

CHAPTER 1403. BONDS FOR PRODUCT DEVELOPMENT AND
ASSISTANCE TO SMALL BUSINESSES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1403.001. DEFINITIONS. Defines "board," "financing," "product," "product development fund," "programs," and "small business fund."

Sec. 1403.002. PROGRAM COORDINATION. Requires the Product Development and Small Business Incubator Board (board) and the comptroller to coordinate the administration and funding of the programs established under this chapter.

Sec. 1403.003. CONFIDENTIALITY OF INFORMATION. (a) Provides that information in any form provided by or on behalf of an applicant for financing or a recipient of financing under this chapter and collected, compiled, or maintained by or for the board, including information contained in, accompanying, or derived from any application or report, is confidential information and may not be disclosed by the board or the comptroller if the information relates to a product, the development, application, manufacture, or use of a product, or the markets, market prospects, or marketing of a product; is proprietary information of actual or potential commercial value to the applicant or recipient; and has not been disclosed to the public.

(b) Provides that confidential information under Subsection (a) includes certain information.

(c) Provides that Subsection (a) applies regardless of whether the product to which the information relates is capable of being patented or registered under copyright or trademark laws or has a potential for being sold, traded, or licensed for a fee.

(d) Provides that notwithstanding Subsection (a), information in an account, voucher,

or contract relating to the receipt or expenditure of public funds by the board or the comptroller under this chapter is not confidential.

Reserves Sections 1403.004-1403.050 for expansion.

SUBCHAPTER B. PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATOR BOARD

Sec. 1403.051. **PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATOR BOARD; COMPOSITION.** (a) Provides that the Product Development and Small Business Incubator Board (board) consists of the comptroller or the comptroller's designee and six persons appointed by the governor with the advice and consent of the senate.

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

Sec. 1403.052. **TERMS.** (a) Provides that members of the board appointed by the governor serve two-year staggered terms with the terms of one-half of the members expiring February 1 of each year.

(b) Provides that if the comptroller designates a person to represent the comptroller on the board, the person serves at the will of the comptroller.

Sec. 1403.053. **REMOVAL OF BOARD MEMBER.** (a) Provides that it is a ground for removal from the board that a member cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed or is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of 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. 1403.054. **TRAINING OF BOARD MEMBERS.** (a) Provides that a person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(c) Provides that Subsection (a) does not apply to the comptroller but does apply to the comptroller's designee, if the comptroller designates a person to represent the comptroller on the board.

Sec. 1403.055. **OFFICERS; MEETINGS.** (a) Provides that the comptroller or the comptroller's designee serves as the presiding officer of the board.

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

(c) Requires the board to hold regular meetings in the City of Austin and other meetings at places and times scheduled by the board in formal sessions and called by the presiding officer.

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

Sec. 1403.056. PUBLIC TESTIMONY AT BOARD MEETINGS. 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.

Sec. 1403.057. COMPENSATION AND REIMBURSEMENT. Provides that appointed members of the board serve without compensation but are entitled to reimbursement as provided by the General Appropriations Act for actual expenses incurred in attending board meetings or performing other board work that has been approved by the presiding officer.

Sec. 1403.058. APPLICABILITY OF CERTAIN LAWS. Provides that the board is subject to the open meetings law, Chapter 551, the public information law, Chapter 552, and the administrative procedure law, Chapter 2001.

Sec. 1403.059. STAFF. (a) 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.

Sec. 1403.060. INFORMATION ON RESPONSIBILITIES OF BOARD MEMBERS AND STAFF. 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.

Sec. 1403.061. SEPARATION OF POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. 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. 1403.062. 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. 1403.063. POWERS OF BOARD. Requires the board to administer the programs, the product development fund, and the small business fund, and authorizes the board to exercise any power necessary and reasonable to implement this chapter and adopt reasonable rules, policies, and procedures necessary to implement this chapter.

Reserves Sections 1403.064-1403.100 for expansion.

SUBCHAPTER C. BONDS AND FUNDS

Sec. 1403.101. ISSUANCE OF BONDS. Requires the Texas Public Finance Authority, as provided by Section 71, Article XVI, Texas Constitution, to issue general obligation bonds in the amount of \$10 million and deposit the proceeds in the product development fund and issue general obligation bonds in the amount of \$10 million and deposit the proceeds in the small business fund.

Sec. 1403.102. 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 development fund consists of certain monies.

(c) Provides that the product development 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 development fund is available for use by the board under this chapter.

(d) Provides that money in the program account of the product development fund, minus the costs of issuance of bonds under this chapter 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 chapter.

Sec. 1403.103. TEXAS 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 consists of certain monies.

(c) 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 chapter.

(d) Provides that money in the project account of the small business fund, minus the costs of issuance of bonds under this chapter 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 that the board determines to be reasonable, appropriate, and consistent with the purposes and objectives of the small business fund and this chapter.

Reserves Sections 1403.104-1403.150 for expansion.

SUBCHAPTER D. FINANCING FOR PRODUCT DEVELOPMENT AND SMALL BUSINESSES

Sec. 1403.151. ELIGIBLE PRODUCTS AND BUSINESSES; FINANCING. (a) Authorizes financing to be made under this chapter only for a product or small business as 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 probability of commercial success and creating and retaining jobs 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 establishing limits on the amount of financing an applicant may receive and otherwise governing the terms of the financing. Requires the rules to include certain requirements.

Sec. 1403.152. AGREEMENT REQUIRED. (a) Requires the board, before approving the provision of financing to a person under the product development program, 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.

(b) Requires an agreement entered into under this chapter to include provisions to ensure the proper use of funds and the receipt by the board of royalties, patent rights, or equity interest, as appropriate.

(c) Requires an agreement entered into under this chapter to state the amount and type of financing to be provided and the schedule and other terms for repayment of any loan.

Sec. 1403.153. APPLICATION. (a) Requires the board to adopt an application form for persons seeking financing from the board.

(b) Requires a person seeking financing under this chapter to deliver to the comptroller certain items.

(c) Requires an application for financing to contain a business plan that contains the information required by the board, including certain information.

Sec. 1403.154. EVALUATION AND APPROVAL OF APPLICATION. (a) Requires the board, for each application for financing under this chapter, to determine whether certain factors exist.

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

Sec. 1403.155. ADVISORY COMMITTEE. 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.

Sec. 1403.156. PROVISION OF FINANCING. Requires the comptroller, if the board approves an application for financing under this chapter, to use money in the product development fund or small business fund, as applicable, to provide financing to the applicant in accordance with the agreement entered into under Section 1403.152.

Sec. 1403.157. WITHDRAWN AND DENIED APPLICATIONS. (a) 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.

(b) Authorizes the board, notwithstanding Subsection (a), to retain a record of the submission and disposition of a withdrawn or denied application that does not include any information considered confidential under Section 1403.003.

SECTION 2. (a) Requires the governor to make the initial appointments to the Product Development and Small Business Incubator Board under Chapter 1403, Government Code, as added by this Act, not later than October 1, 2001. Requires the governor, in making those appointments, to designate three members for terms expiring February 1, 2002, and three members for terms expiring February 1, 2003.

(b) Requires an initial appointee to the Product Development and Small Business Incubator Board to complete the training required by Section 1403.054, Government

Code, as added by this Act, not later than the 60th day after the date on which the person is appointed. Authorizes an initial appointee to the board, notwithstanding Section 1403.054(a), Government Code, as added by this Act, to serve as a board member without completing the training required by that section. Provides that if the person does not complete the training within the time prescribed by this subsection, the person vacates the office.

SECTION 3. Effective date: September 1, 2001.