

BILL ANALYSIS

C.S.H.B. 3446
By: Rose
Economic Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas manufacturers have stated a need for a unified branding program to promote Texas-made products. The program would have a wide-ranging constituency with a common goal of competing and excelling in a global marketplace. The Texas manufacturing sector is strong but strives to maintain a solid market share against competition from cheap labor in India, China, and other nations. According to the Texas Workforce Commission, Texas' economy lost 181,000 manufacturing jobs from 1999-2004. Identification of products made in Texas allows consumers to make a choice to support Texas manufacturers.

C.S.H.B. 3446 establishes a "Genuine Texas" program in the Office of the Comptroller of Public Accounts (comptroller), whereby goods manufactured in Texas can be identified with a "Genuine Texas" logo. The comptroller would administer the program by developing and expanding markets for Texas manufactured products, developing promotional campaigns, and adopting manufactured quality standards and other criteria for use of the logo

RULEMAKING AUTHORITY

It is the opinion of the committee that rulemaking authority is expressly granted to the Comptroller of Public Accounts in SECTION 1 of this bill.

ANALYSIS

SECTION 1. The bill creates the "Genuine Texas Program" (program), a program established and administered by the Comptroller of Public Accounts (comptroller) to develop and expand markets for products manufactured in Texas. It also states the definition of "Texas manufactured products" and reserves Sections 490C.002-490C.050 for expansion.

The bill authorizes the comptroller to adopt rules and establish procedures to administer the program.

The bill requires that the comptroller, in establishing a program, design and administer the use of a logo for Texas manufactured products and adopt product quality standards and other criteria for evaluating applications to use the logo; develop procedures for acceptance and administration of funds received to administer the program; develop promotional and advertising campaigns; contract with media representatives to disperse promotional materials; and receive gifts, donations, or grants and establish internal reporting requirements for the use of such funds.

The bill authorizes the comptroller to charge a fee not to exceed \$100 a year for use of the logo.

The bill authorizes the comptroller to utilize available funds to purchase food and beverages for a promotional event.

The bill authorizes the comptroller to sell or contract for the sale of items to promote Texas manufactured products and to use the comptroller's website to advertise and sell the items.

The bill requires the comptroller to appoint an advisory board to assist in the implementation of the program, including advising the comptroller on the adoption of rules and the establishment of procedures for administration of the program, if one is established. The bill also requires the comptroller to provide the advisory board with a staff, as necessary. The bill states that a member of the advisory board serves at the pleasure of the comptroller and those members serve

without compensation but are entitled to reimbursement for expenses incurred in the performance of official board duties. The bill also states that Chapter 2110 (State Agency Advisory Committees) does not apply to the advisory board and reserves Sections 490C.058-490C.100 for expansion.

The bill sets forth that it is a violation of the Act for a person to use, reproduce, or distribute the logo without the consent of the comptroller or to violate a rule adopted or a procedure established for the program.

The bill authorizes the comptroller to temporarily suspend or permanently forfeit the right of a person who violates this chapter from using the logo. The bill also authorizes the comptroller to consider the circumstances and seriousness of the violation, any efforts by the person to correct the violation, and whether the person previously violated this Act when determining a course of action for continued use of the logo.

The bill authorizes the comptroller to impose an administrative penalty not to exceed \$500 for a violation of this Act. Provides that a proceeding to impose the administrative penalty is a contested case under Chapter 2001 (Administrative Procedure).

The bill provides that a person who commits a violation is subject to a civil penalty not to exceed \$500 for each violation.

The bill authorizes each day a violation continues to be considered a separate violation for purposes of an administrative or civil penalty and requires the amount of a penalty to be based on certain factors.

The bill authorizes the enforcement of an administrative penalty to be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court. The bill further authorizes a person who cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the comptroller to contest the affidavit as provided by those rules.

The bill authorizes the attorney general or the county or district attorney of the county in which the violation is alleged to have occurred, at the request of the comptroller, to file suit to collect the civil penalty.

The bill requires an administrative or civil penalty collected to be deposited to the credit of the general revenue fund.

The bill authorizes the attorney general or the county or district attorney of the county in which the alleged violation is threatened to occur or is occurring, at the request of the comptroller, to file suit for the appropriate injunctive relief to prevent or abate a violation. The bill provides that the venue for an action is in Travis County.

SECTION 2. States the effective date for this Act.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies the original by increasing from \$25 a year to \$100 a year, the limit of a fee that the comptroller is authorized to charge for use of the logo. The substitute removes the provision in the original bill which prohibits a person who violates this chapter from using the logo. The substitute adds new language to authorize the comptroller to temporarily suspend or permanently forfeit the right of a person who violates this chapter from using the logo and to authorize the comptroller to consider the circumstances and seriousness of the violation, any efforts by the person to correct the violation, and whether the person previously violated this chapter when determining a course of action for use of the logo. The substitute modifies the

original by authorizing, rather than requiring, the attorney general or the county or district attorney of the county to file suit to collect a civil penalty for a violation and to file suit for the appropriate injunctive relief to prevent or abate a violation.