

## **BILL ANALYSIS**

C.S.H.B. 4133  
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State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Most states currently have large budget deficits, and their legislatures face tough choices in spending cuts and tax increases. It is possible that the business community will be asked to bear the brunt of these tax increases, and many will seek to relocate in order to protect their assets.

Texas has a budget surplus and a AA credit rating through good business practices and conservative spending. With prudent protections, Texas can start a program to recruit manufacturing and industry by providing export financial bank guarantees.

C.S.H.B. 4133 requires the Texas Economic Development and Tourism Office to create and administer the Texas Export Financial Assistance Program. The bill allows use of the Texas Enterprise Fund in certain cases to support the program's fund.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Economic Development and Tourism Office in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 4133 amends the Government Code to require the Texas Economic Development and Tourism Office to create a Texas Export Financial Assistance Guarantee Program to promote Texas as an exporter in the international arena, accelerate delivery of products manufactured in Texas to international markets, and stimulate the Texas economy by creating manufacturing jobs and tax bases by guaranteeing a portion of loans made by participating financial institutions to eligible manufacturers. The bill requires the office to administer the program and to adopt rules necessary for such administration, including rules regarding the use of money in the fund for administrative costs.

C.S.H.B. 4133 provides that a person may obtain a loan guarantee under the program with respect to the manufacture of a product if the product is manufactured in Texas, will be exported to an international market, and relates to one or more preferred manufacturing industries consisting of alternative energies, medical goods, green technologies, high fuel efficiency vehicles, water conservation and purification technologies, or scientific goods.

C.S.H.B. 4133 allows a manufacturer to obtain a loan guarantee under the program for costs associated with the manufacture of a qualified export product only after the manufacturer has been in the business of manufacturing the same or a substantially similar product for at least two years.

C.S.H.B. 4133 requires a manufacturer, to obtain a loan guarantee under the program, to provide to a participating financial institution a letter of credit or other documentation evidencing a creditworthy customer's undertaking to pay for the manufacturer's products. The bill authorizes a financial institution to impose other requirements on the manufacturer as the financial institution considers necessary to conform to prudent lending practices.

C.S.H.B. 4133 provides that a loan to be guaranteed under the program may finance an amount not to exceed 80 percent of the costs to be incurred in manufacturing the products to be purchased under the letter of credit or other documentation. The bill authorizes a financial institution to require a manufacturer to demonstrate that the manufacturer has the ability to finance the remaining 20 percent of the products' manufacturing costs. The bill prohibits a participating financial institution from lending any single manufacturer more than \$5 million for purposes of the program.

C.S.H.B. 4133 requires a manufacturer to use the proceeds of a loan guaranteed under the program only to finance the costs of manufacturing in Texas a product for international export.

C.S.H.B. 4133 prohibits a manufacturer from receiving any portion of the proceeds of a loan guaranteed under the program after the fifth anniversary of the date on which the manufacturer first received loan proceeds under the program, unless the manufacturer and financial institution reapply for the loan guarantee in the same manner as a person who has not previously applied for a loan guarantee under the program.

C.S.H.B. 4133 requires the office by rule to determine criteria for a financial institution to apply for loan guarantees under the program. The bill requires the office, if multiple financial institutions are used by a single manufacturer that applies to participate in the program, to designate one financial institution as the lead financial institution that shall solely hold the state's guarantee.

C.S.H.B. 4133 requires a participating financial institution to set the terms of the loan to be guaranteed under the program, and requires the terms to conform to prudent banking practices. The bill requires a participating financial institution to perform due diligence before making a loan to be guaranteed under the program, but establishes that the state is not required to perform due diligence before guaranteeing a loan. The bill requires a participating financial institution, not later than the 30th day after the date on which it receives a complete application for a loan to be guaranteed under the program and all necessary supporting documentation, including a letter of credit or other documentation, to perform due diligence and to approve or deny the loan. The bill requires a participating financial institution, as soon as practicable after approving a loan to be guaranteed under the program, to submit an application for a loan guarantee to the office. The bill requires the application to include the completed loan application approved by the financial institution, all supporting documentation, including the letter of credit or other documentation, and any other information or documentation required by office rule. The bill requires the office to determine whether to guarantee a loan not later than the 10th business day after the date the office receives a complete application for a loan guarantee.

C.S.H.B. 4133 authorizes the state to guarantee up to 50 percent of the amount of a loan made by a participating financial institution, or to guarantee a percentage of the amount of a loan made by a participating financial institution that is equal to the percentage of raw materials obtained from Texas sources used to manufacture the product, not to exceed 80 percent.

C.S.H.B. 4133 requires a participating financial institution to service any loan made by the institution under the program, collect payments on the loan, and pay the state accordingly. The bill requires a participating financial institution, every six months, to pay to the office a 25-basis-point fee applied to the outstanding balance of the state's guaranteed portion of loans made by the financial institution under the program. The bill requires the office by rule to prescribe the manner in which a financial institution must pay the required fee.

C.S.H.B. 4133 requires that the office have final approval of any financial institutions applying for participation in the program. The bill requires the office to establish a structured application process for a financial institution to apply for a guarantee under the program of a loan made by the financial institution, and to establish eligibility criteria for a financial institution to participate

in the program. The bill requires the office to perform an annual audit of the program.

C.S.H.B. 4133 requires the office, not later than January 1 of each odd-numbered year, to submit a report on the program to the legislature. The bill requires the report to include the amounts of loans guaranteed under the program, the uses of loans guaranteed, an assessment of whether the program has accomplished its statutory purposes, the number of jobs created as a result of the program, and the income, including tax revenue, received by the state as a result of the program.

C.S.H.B. 4133 establishes the Texas export financial assistance guarantee program fund as a dedicated account in the general revenue fund and requires the following amounts to be deposited in the fund: any amounts appropriated by the legislature for the fund; gifts, grants, and other donations received for the fund; and income and interest earned on the investment of money in the fund. The bill limits use of the fund to the guarantee of loans made under the program and for the administration of the program only.

C.S.H.B. 4133, for purposes of the added provisions relating to the Texas Export Financial Assistance Guarantee Program, defines "financial institution," "fund," "office," "participating financial institution," "program," and "qualified export product."

C.S.H.B. 4133 authorizes the use of the Texas Enterprise Fund to support the Texas Export Financial Assistance Program to the extent that sufficient amounts are unavailable in the Texas Export Financial Assistance Guarantee Program fund to make payments as required by a guarantee for a defaulted loan, the full repayment of which is unrecoverable under the letter of credit or other documentation, or from the borrower's assets.

#### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 4133 adds a provision not in the original to include in the rules the Texas Economic Development and Tourism Office is required to adopt as necessary for the administration of the Texas Export Financial Assistance Guarantee Program rules regarding the use of money in the Texas export financial assistance guarantee program fund for administrative costs. The substitute differs from the original by requiring a manufacturer, in order to obtain a loan under the program, to provide either a letter of credit or other documentation evidencing a creditworthy customer's undertaking to pay for the manufacturer's products, rather than limiting the means of satisfying the requirement to just a letter of credit as in the original. The substitute differs from the original by making conforming changes adding references to the alternative of other documentation.

C.S.H.B. 4133 differs from the original by limiting the maximum amount that a financial institution may lend to any single manufacturer to \$5 million, rather than a maximum \$10 million as in the original.

C.S.H.B. 4133 differs from the original, in provisions requiring the Texas Economic Development and Tourism Office in the case of multiple financial institutions to designate one financial institution as the lead financial institution to solely hold the state's guarantee, by referring to multiple financial institutions used by a single manufacturer that applies to participate in the program, rather than to multiple financial institutions selected to participate in the program as in the original. The substitute differs from the original by extending the deadline for a participating financial institution to perform due diligence and approve or deny the loan from not later than the 15th day after the date the institution receives application materials as in the original, to not later than the 30th day after the date the institution receives application

materials.

C.S.H.B. 4133 differs from the original by substituting, in place of a requirement included in the original that the office approve one or more financial institutions for participation in the program, a requirement that the office have final approval of any financial institutions applying for participation in the program.

C.S.H.B. 4133 adds, to the information required to be included in the office's biennial report to the legislature, the number of jobs created as a result of the program and the income, including tax revenue, received by Texas as a result of the program.

C.S.H.B. 4133 removes a provision in the original limiting to an amount not exceeding \$100 million in any state fiscal biennium any amounts appropriated by the legislature for the Texas export financial assistance guarantee program fund and required to be deposited in that fund. The substitute adds a provision not in the original authorizing the fund to be used only for the administration of the program, in addition to being used only to guarantee loans made as provided by the bill.

C.S.H.B. 4133 adds a provision not in the original authorizing the use of the Texas Enterprise Fund to support the Texas Export Financial Assistance Guaranteed Program to the extent that sufficient amounts are unavailable in the Texas export financial assistance guarantee program fund to make payments as required by a guarantee for a default loan, the full repayment of which is unrecoverable under the letter of credit or other documentation.