

BILL ANALYSIS

C.S.H.B. 2891
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Economic & Small Business Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In some instances, the state may take an intellectual property or commercial equity stake in ventures that the state funds, either in whole or in part, and that may have commercial value. However, there is no central oversight body to guide the state regarding appropriate times for the state to take advantage of opportunities to capitalize on such intellectual properties and commercial equity. Interested parties assert that the state, through its agencies, does not currently attempt to maximize the benefits such agencies might receive by more actively pursuing intellectual property or commercial equity in ventures the state helped to fund. C.S.H.B. 2891 seeks to maximize those benefits by setting out certain duties for the comptroller's office regarding such property and equity.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2891 amends the Government Code to require the comptroller of public accounts, using existing resources, to compile a list of the intellectual property and commercial equity, as defined by the bill, in which the state has an ownership interest or through its operations may acquire an ownership interest. The bill requires the comptroller, not later than December 31 of each even-numbered year, to collect information from each state agency regarding such intellectual property and commercial equity and sets out the required information to be submitted by the state agency. The bill requires the comptroller, from the submitted information, to publish electronically a biennial comprehensive report detailing the intellectual property and commercial equity in which the state has an ownership interest. The bill's provisions do not apply to an expressive work, as defined by the bill, in which the state has no ownership interest or that is created by a person who at the time the work was created was not employed by or otherwise providing services to the state related to the work.

C.S.H.B. 2891 includes the comptroller among the entities to which each state agency must report certain technological innovations developed by that agency.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2891 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.0302 to read as follows:

Sec. 403.0302. OFFICE OF STATE-OWNED INTELLECTUAL PROPERTY AND COMMERCIAL EQUITY. (a) In this section:

(1) "Commercial equity" means an ownership interest in a commercial enterprise.

(2) "State agency" has the meaning assigned by Section 403.241.

(b) The comptroller shall establish in the comptroller's office an office of state-owned intellectual property and commercial equity to monitor and track the intellectual property and commercial equity in which this state has an ownership interest or through its operations may acquire an ownership interest.

(c) Not later than December 31 of each even-numbered year, the office shall collect information from each state agency and from independent sources as necessary regarding the intellectual property and commercial equity in which the agency has an ownership interest. The information submitted by the state agency must contain:

(1) the total amount the state agency spent to acquire the ownership interest, including the amount of any grant awarded or loan granted, and the value of any other

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.0302 to read as follows:

Sec. 403.0302. STATE-OWNED INTELLECTUAL PROPERTY AND COMMERCIAL EQUITY. (a) In this section:

(1) "Commercial equity" means an ownership interest in a commercial enterprise.

(2) "Expressive work" means:

(A) a fictional or nonfictional entertainment, dramatic, literary, or musical work that is a play, book, magazine, newspaper, musical composition, audiovisual work, radio or television program, work of art, or work of political or newsworthy value; or

(B) an advertisement or commercial announcement of a work described by Paragraph (A).

(3) "Intellectual property" means an intangible asset that is subject to statutory protection under applicable patent, copyright, or trademark law. The term includes an invention, industrial design, identifying mark or symbol, electronic publication, trade secret, and literary, musical, artistic, photographic, or film work.

(4) "State agency" has the meaning assigned by Section 403.241.

(b) The comptroller, using existing resources, shall compile a list of the intellectual property and commercial equity in which this state has an ownership interest or through its operations may acquire an ownership interest.

(c) Not later than December 31 of each even-numbered year, the comptroller shall collect information from each state agency regarding the intellectual property and commercial equity in which the agency has an ownership interest or may acquire an ownership interest. The information submitted by the state agency must contain:

(1) the total amount the state agency spent to acquire the ownership interest, including the amount of any grant awarded or loan granted, and the value of any other

operations;

(2) any realized or unrealized gain that has resulted from the ownership interest; and

(3) the status of the intellectual property or commercial equity.

(d) The office shall:

(1) continuously monitor each grant, expenditure, or loan made by a state agency to fund a research and development project or another project that is likely to lead to an innovation in which a patent or other intellectual property right may be awarded; and

(2) determine whether there is an appropriate opportunity for this state to assume an ownership interest in intellectual property or a commercial equity position in the project.

No equivalent provision.

(e) From the information submitted under Subsection (c), the office shall electronically publish a biennial comprehensive report detailing:

(1) the intellectual property and commercial equity in which the state has an ownership interest;

(2) opportunities for this state to acquire an ownership interest in intellectual property or commercial equity; and

(3) methods by which this state can maximize its revenue and offer economic benefits by holding an ownership interest in a project or activity that the state partly or wholly funds.

(f) The comptroller may assign other duties to the office as the comptroller determines appropriate.

No equivalent provision.

operations;

(2) any realized or unrealized gain that has resulted from the ownership interest; and

(3) the status of the intellectual property or commercial equity.

No equivalent provision.

(d) For purposes of Subsection (c), an ownership interest does not include a grant awarded or other assistance provided under Subchapter B, Chapter 485.

(e) From the information submitted under Subsection (c), the comptroller shall electronically publish a biennial comprehensive report detailing the intellectual property and commercial equity in which the state has an ownership interest.

No equivalent provision.

(f) This section does not apply to an expressive work:

(1) that is created by a person who at the time the work was created was not employed by or otherwise providing services to the state related to the work; or

(2) in which the state has no ownership interest.

SECTION 2. Section 2111.002, Government Code, is amended to read as follows:

Sec. 2111.002. REPORTING. Each state agency shall report to the lieutenant governor, ~~and~~ the speaker of the house of representatives, ~~and the office of state-owned intellectual property and commercial equity established by the comptroller under Section 403.0302~~ any technological innovation developed by the agency that:

(1) has potential commercial application, is proprietary, or could be protected under intellectual property laws; and

(2) was developed:

(A) during the preceding calendar year; or

(B) before the preceding calendar year but was not previously reported to the lieutenant governor, ~~and~~ the speaker of the house of representatives, ~~and the office~~.

SECTION 3. Not later than December 1, 2013, the comptroller of public accounts of the State of Texas shall establish the office of state-owned intellectual property and commercial equity as required by Section 403.0302, Government Code, as added by this Act.

SECTION 4. This Act takes effect September 1, 2013.

SECTION 2. Section 2111.002, Government Code, is amended to read as follows:

Sec. 2111.002. REPORTING. Each state agency shall report to the lieutenant governor, ~~and~~ the speaker of the house of representatives, ~~and the comptroller~~ any technological innovation developed by the agency that:

(1) has potential commercial application, is proprietary, or could be protected under intellectual property laws; and

(2) was developed:

(A) during the preceding calendar year; or

(B) before the preceding calendar year but was not previously reported to the lieutenant governor, ~~and~~ the speaker of the house of representatives, ~~and the comptroller~~.

~~No equivalent provision.~~

SECTION 3. Same as introduced version.