

BILL ANALYSIS

C.S.H.B. 1000

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International Relations & Economic Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised that small businesses, particularly those in rural and distressed communities, are finding it difficult to secure the capital needed to grow and create good jobs. C.S.H.B. 1000 seeks to encourage job creation and local economic development by facilitating access to private sector capital for small businesses in rural communities and opportunity zones.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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 and to the comptroller of public accounts in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 1000 amends the Government Code to require the Texas Economic Development and Tourism Office (TEDTO) to accept applications from entities seeking approval as rural and opportunity funds. The bill requires such applications to include the following:

- the total investment authority sought by the applicant under the applicant's business plan;
- evidence sufficient to prove the following to TEDTO's satisfaction that, as of the date the applicant submits the application:
 - the applicant or affiliates of the applicant have invested, in the aggregate, at least \$100 million in nonpublic companies located in a municipality or county with a population below a certain threshold or in a census tract designated as a qualified opportunity zone in accordance with certain provisions of the Internal Revenue Code of 1986, regardless of whether the municipality, county, or census tract is located inside or outside Texas and regardless of when the designation of an applicable census tract was made; and
 - at least one principal in a federally licensed rural business investment company (RBIC) or small business investment company (SBIC) is and has been for at least four years an officer or employee of the applicant or of an affiliate of the applicant on the date the application is submitted;
- a copy of the applicable RBIC or SBIC license;
- an estimate of the number of jobs created and jobs retained as a result of the applicant's growth investments;
- a business plan prepared by a third party independent economic forecasting firm that

includes a specified revenue impact assessment which projects the state and local revenue to be generated by the proposed investments;

- a signed affidavit from each committed investor stating the amount of credit-eligible capital contributions the investor commits to making; and
- a nonrefundable application fee of \$5,000.

C.S.H.B. 1000 requires at least 65 percent of a rural and opportunity fund's investment authority to consist of credit-eligible capital contributions; defines, among other terms, "credit-eligible capital contribution" as an investment of cash that equals the amount specified on a tax credit certificate issued by TEDTO made by an entity that is subject to state insurance tax liability; and qualifies an investment as such a contribution only if the entity making the investment receives in exchange for the investment an equity interest in the rural and opportunity fund or, at par value or premium, a debt instrument that has a maturity date of at least five years from the closing date and a repayment schedule that is no faster than level principal amortization over five years. The bill defines "growth investment" as any capital or equity investment by a rural and opportunity fund in a targeted small business or any loan by a rural and opportunity fund to a targeted small business with a stated maturity date of at least one year after the date of issuance. The bill defines "targeted small business" as a business that, at the time of the initial growth investment in the business, had fewer than 250 employees and has its principal business operations located in one or more qualified areas in Texas and sets out criteria for determining the eligibility of an out-of-state business to be so classified and for determining the location of principal business operations. The bill defines "qualified area" as a qualified opportunity zone, as defined by certain provisions of the federal Internal Revenue Code of 1986, or a rural community, as defined for purposes of the Texas rural investment fund, that is not a geographic area delineated as urbanized by the U.S. Census Bureau. The bill provides for the meaning of "jobs created" and "jobs retained" and sets out methods for calculating the number of jobs in those categories for purposes of the bill's requirements.

C.S.H.B. 1000 requires TEDTO to make a determination on each application not later than the 30th day after the date TEDTO receives the application, to make application determinations in the order in which applications are received, and to consider applications received on the same day to be received simultaneously. The bill authorizes TEDTO to approve investment authority in amounts that would allow not more than \$35 million in tax credits to be claimed under the bill's provisions in any calendar year, excluding any credit carryforwards. The bill requires TEDTO, if a request for investment authority exceeds this limitation, to reduce the investment authority and the credit-eligible capital contributions for that application as necessary to avoid exceeding the limit and, if multiple applications received on the same day request a combined investment authority that exceeds the limit, to proportionally reduce the investment authority and the credit-eligible capital contributions for those applications as necessary to avoid exceeding the limit. The bill prohibits TEDTO from reducing an applicant's investment authority for any reason other than as authorized by these provisions.

C.S.H.B. 1000 sets out the circumstances under which TEDTO may deny an application, including if the business plan or revenue impact assessment does not demonstrate a positive economic impact on state and local revenue that will exceed the cumulative amount of tax credits, and authorizes an applicant whose application TEDTO denies, not later than the 15th day after the date TEDTO provides notice of denial, to provide additional information to complete, clarify, or cure defects in the application identified by TEDTO. The bill establishes that if the applicant does so during the prescribed period, the application is considered complete as of the original submission date, but otherwise the application is finally denied and an applicant who wishes to reapply is required to resubmit an application in full with a new submission date. The bill provides for review and reconsideration by TEDTO of an application for which the applicant provides additional information, subject to certain conditions. The bill's provisions relating to an applicant's submission of additional information and to TEDTO review and reconsideration of a denied application expressly do not apply to an application denied as a result of the applicant's

failure to submit with the application the affidavits required from each committed investor.

C.S.H.B. 1000 requires TEDTO, on approval of an application, to provide written notice to the applicant of the applicant's approval as a rural and opportunity fund, including the amount of the fund's investment authority, and to provide a tax credit certificate to each investor whose affidavit was included in the application and include on the certificate the amount of the investor's credit-eligible capital contribution. The bill requires a rural and opportunity fund, not later than the 60th day after the date the fund receives the approval notice, to collect the credit-eligible capital contribution from each investor issued a tax credit certificate and to collect one or more investments of cash that, when added to the collected credit-eligible capital contributions, equal the fund's investment authority. The bill requires the fund, not later than the 65th day after the date the fund receives the approval notice, to send to TEDTO documentation sufficient to prove that the fund has collected the required amounts. The bill requires at least 10 percent of the rural and opportunity fund's investment authority to consist of equity investments contributed directly or indirectly by affiliates of the fund. The bill establishes that if a fund fails to comply with these collection and documentation requirements, the fund's approval lapses and the corresponding investment authority does not count toward the prescribed limit for total TEDTO approvals. The bill provides for the redistribution of lapsed investment authority. The bill requires application fees submitted to TEDTO to be deposited to the credit of the general revenue fund and restricts the appropriation of such funds to TEDTO for the purpose of administering the bill's provisions relating to rural and opportunity funds.

C.S.H.B. 1000 sets out certain actions and failures to meet investment targets that constitute grounds requiring TEDTO to revoke a tax credit certificate issued in connection with an investment in a rural and opportunity fund and requires TEDTO to notify the comptroller of public accounts of such a revocation and, on request, to provide the comptroller with lists of valid and revoked certificates. The bill requires TEDTO, before revoking a certificate, to notify the fund of the reasons for the pending revocation and authorizes the fund, not later than the 90th day after the date the notice is received, to correct any violation outlined in the notice to the satisfaction of TEDTO and avoid revocation of the certificate. The bill establishes that if a tax credit certificate is revoked, the associated investment authority does not count toward the bill's prescribed limit on total investment authority approvals. The bill provides for the redistribution of revoked investment authority.

C.S.H.B. 1000 authorizes a rural and opportunity fund, on or after the sixth anniversary of the closing date, to apply to TEDTO to exit the program and no longer be subject to regulation under the bill's provisions. The bill makes a fund eligible to exit the program if no tax credit certificates related to investments in the fund have been revoked and the fund has not received any revocation notice that has not been corrected. The bill requires TEDTO to respond to the application not later than the 30th day after receipt, prohibits TEDTO from unreasonably denying an application, and requires TEDTO to give the fund notice of a denial and include in the notice the reasons for the denial. The bill prohibits TEDTO from revoking a tax credit certificate related to an investment in a fund after the fund's exit from the program. The bill subjects a fund to a penalty if the fund authorizes a distribution to the fund's equity holders in an amount that, when added to all previous distributions to the fund's equity holders and any previous penalties, exceeds the fund's investment authority and if the fund's actual number of jobs created and retained is less than the fund's estimated number of jobs created and retained. The bill sets out the method for calculating the penalty and requires the fund, before making a distribution to the fund's equity holders, to deduct the amount of the penalty from the amount otherwise authorized to be distributed to the equity holders and pay the penalty to TEDTO. The bill requires TEDTO to deposit such penalties received in the general revenue fund.

C.S.H.B. 1000 authorizes a rural and opportunity fund, before making a growth investment, to request from TEDTO a written opinion as to whether the business in which the fund proposes to invest qualifies as a targeted small business. The bill requires TEDTO, not later than the 15th business day after receiving such a request, to notify the fund of its determination and establishes

that if TEDTO fails to provide that notification on or before that date, the business in which the fund proposes to invest is considered to be a targeted small business for purposes of the bill's provisions. The bill requires a rural and opportunity fund to submit a report to TEDTO on or before the fifth business day after each anniversary of the closing date until the fund has exited the program and sets out the contents of the report.

C.S.H.B. 1000 requires TEDTO, before the beginning of the 90th Legislature, Regular Session, to submit to the lieutenant governor, the speaker of the house of representatives, and each member of the legislature a report on the economic benefits of the rural and opportunity funds. The bill requires the report to include an assessment of the following:

- the aggregate effects of growth investments made under the bill's provisions, including specified metrics;
- the benefits to the state from cost savings attributable to jobs created and retained by all targeted small businesses, including savings for specified programs; and
- the total positive fiscal effect of those benefits on the state and local governments in Texas.

The bill prohibits the report from including information that is confidential by law. The bill requires the portion of the report relating to the aggregate effects of growth investments to be based on data submitted to TEDTO by each rural and opportunity fund and requires the use of certain estimation techniques in the preparation of that portion of the report. The bill prohibits TEDTO from accepting applications for approval of rural and opportunity funds after January 1, 2022, unless the total positive fiscal effects described by the report exceed the sum of all tax credit certificates issued by TEDTO under the bill's provisions. The bill requires TEDTO to resume accepting applications when this condition is satisfied.

C.S.H.B. 1000 requires TEDTO to adopt rules necessary to implement the bill's provisions relating to rural and opportunity funds and requires TEDTO to begin accepting applications for approval of such funds not later than January 1, 2020.

C.S.H.B. 1000 amends the Insurance Code to make an entity eligible for a credit against the entity's state insurance tax liability for a tax year if the entity holds a tax credit certificate issued by TEDTO as an investor in a rural and opportunity fund and the third, fourth, fifth, or sixth anniversary of the closing date in connection with which the certificate was issued occurs during the tax year. The bill sets the amount of the credit for a tax year at 25 percent of the amount of the credit-eligible capital contribution stated on the tax credit certificate. The bill prohibits the total credit claimed for a tax year, including the amount of any carryforward, from exceeding the amount of state insurance tax liability due for the entity for the tax year after applying all other applicable tax credits and authorizes credits to be applied to the entity's estimated or final tax payments for the tax year. The bill authorizes an entity that is eligible for a credit that exceeds the limitation on total credit claimed per tax year to carry the unused credit forward for not more than 20 consecutive tax reports and establishes that a credit carryforward is considered to be used before a current year credit. The bill prohibits an entity from conveying, assigning, or transferring allowed credit to another entity, except to an affiliate of the entity that is subject to state insurance tax liability. The bill establishes that an entity claiming a credit under the bill's provisions is not required to pay any additional retaliatory tax as a result of claiming that credit. The bill requires the comptroller to recapture the amount of a credit claimed on a tax report filed under certain statutory provisions from an entity if the tax credit certificate on which the credit is based is revoked under the bill's provisions. The bill requires the comptroller to adopt rules necessary to implement the bill's provisions relating to insurance tax credit and establishes that those provisions apply only to a tax report originally due on or after January 1, 2020.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1000 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions requiring TEDTO to report to the legislature before the beginning of the 90th Legislature, Regular Session, regarding the economic benefits of the fund program and making TEDTO's authority to accept applications after January 1, 2022, contingent on the total positive fiscal effects of the program exceeding the sum of all tax credit certificates issued under the program.

The substitute includes a specification that a rural community considered to be a qualified area for purposes of fund investments is not a geographic area delineated as urbanized by the U.S. Census Bureau.

The substitute revises certain details relating to the amount and location of the required investment experience of an applicant seeking approval as a fund.

The substitute changes the percentage of a fund's investment authority that the fund must invest in certain targeted small businesses by certain deadlines to prevent the revocation of the fund's tax credit certificate and the location of those targeted small businesses.

The substitute expands the requirement that a fund's annual report to TEDTO include the average annual salary of jobs created and retained as a result of fund investments by also requiring the report to include evidence of any other monetary or social benefit to the state as a result of those jobs.