

## **BILL ANALYSIS**

Senate Research Center  
88R30070 MLH-D

C.S.H.B. 1515  
By: Clardy et al. (Springer)  
Natural Resources & Economic Development  
5/12/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Sunset bill for the Texas Economic Development and Tourism Office (EDT), a trustee program within the Office of the Governor. EDT is responsible for marketing and promoting Texas as a premier business location and travel destination. The Sunset Advisory Commission (commission) found the Texas economy benefits from a state-level economic development function and recommends continuing EDT for 12 years.

However, the commission also found EDT has not adequately addressed or communicated to state leadership the problems with some of EDT's financial incentives and assistance programs, namely the bond-supported Product Development and Small Business Incubator (PDSBI) and the Original Capital Access Program (OCAP), leading to financial instability, low participation, and high default rates. Accordingly, the commission recommends the PDSBI program and OCAP, while adopting clearer rules for and better communicating about its lending programs.

The bill continues EDT for 12 years and remove the Sunset date of EDT's enabling statute, while removing the PDSBI program and OCAP. Further, the bill requires EDT to adopt rules governing how it disburses funds for other access to capital programs. The bill requires EDT to develop plans for administering and communicating about lending programs. Finally, the Annual Bank Report is required to include information on the status of each EDT program to better inform the legislature.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 1515 amends current law relating to the continuation and functions of certain programs subject to rules adopted by the Texas Economic Development and Tourism Office.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Economic Development and Tourism Office in SECTION 4 (Section 481.0211, Government Code) and SECTION 7 (Section 481.406, Government Code) of this bill.

Rulemaking authority previously granted to the executive director of the Texas Economic Development and Tourism Office is modified in SECTION 16 (Section 481.406, Government Code) of this bill.

Rulemaking authority previously granted to the Product Development and Small Business Incubator Board is rescinded in SECTION 16 (Sections 489.210 and 489.213, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 481.003, Government Code, as follows:

Sec. 481.003. SUNSET PROVISION. Provides that the Texas Economic Development and Tourism Office (office), unless continued in existence as provided by Chapter 325 (Sunset Law), is abolished September 1, 2035, rather than the office is abolished and

Chapter 481 (Texas Economic Development and Tourism Office) expires September 1, 2023.

SECTION 2. Amends Section 481.0066, Government Code, by amending Subsection (d) and adding Subsection (f), as follows:

(d) Deletes existing text requiring the aerospace and aviation office to make specific recommendations to the legislature and the governor regarding the promotion of those industries. Makes nonsubstantive changes.

(f) Provides that Chapter 2110 (State Agency Advisory Committees) does not apply to the size, composition, or duration of the aerospace and aviation advisory committee.

SECTION 3. Amends Section 481.00681, Government Code, by adding Subsection (i) to provide that Chapter 2110 (State Agency Advisory Committees) does not apply to the size, composition, or duration of the Office of Small Business Assistance Advisory Task Force.

SECTION 4. Amends Subchapter B, Chapter 481, Government Code, by adding Section 481.0211, as follows:

Sec. 481.0211. ADVISORY COMMITTEES. (a) Authorizes the office by rule to establish advisory committees to make recommendations to the office on programs, rules, and policies administered by the office.

(b) Requires the office, in establishing an advisory committee under this section, to adopt rules, including rules regarding:

- (1) the purpose, role, responsibility, goals, and duration of the committee;
- (2) the size of and quorum requirement for the committee;
- (3) qualifications for committee membership;
- (4) appointment procedures for members;
- (5) terms of service for members;
- (6) training requirements for members;
- (7) policies to avoid conflicts of interest by committee members;
- (8) a periodic review process to evaluate the continuing need for the committee; and
- (9) policies to ensure the committee does not violate any provisions of Chapter 551 (Open Meetings) applicable to the office or the committee.

SECTION 5. Amends Section 481.022, Government Code, as follows:

Sec. 481.022. GENERAL DUTIES OF OFFICE. Requires the office to develop a plan to engage with stakeholders to gather input and solicit feedback on the development of rules promulgated by the office related to lending programs, including participant selection, requirements for borrowers, terms of loans, requirements for disbursement of funds, and other aspects of program administration. Makes nonsubstantive changes.

SECTION 6. Amends Section 481.172, Government Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires that a memorandum of understanding entered into under Subsection (a)(8) (relating to requiring the office to enter into a memorandum of understanding with certain

agencies to direct the efforts of those agencies in all matters relating to tourism) provide that the office is authorized to:

(1) makes no changes to this subdivision;

(2) require each agency to submit to the office for advance approval:

(A) makes no changes to this paragraph;

(B) a biennial plan of action for the agency's proposed tourism activities, rather than a plan not later than June 1 of each year, that includes certain criteria; and

(C) makes no changes to this paragraph;

(3) direct the development of a biennial strategic tourism plan, rather than an annual strategic tourism plan, including a marketing plan, to increase travel to this state, that meets certain criteria, including being developed not later than December 1 of each even-numbered year, rather than September 1 of each year; and

(4) makes no changes to this subdivision.

(b-1) Authorizes the office, using the input of each agency that is a party to a memorandum of understanding under Subsection (a)(8), to establish procedures for the submission of the plan required under Subsection (b)(2)(B).

SECTION 7. Amends Section 481.406, Government Code, by adding Subsection (d), as follows:

(d) Requires the office by rule to develop:

(1) procedures for disbursement of money to borrowers and lending partners for access to capital programs; and

(2) documentation and recovery effort requirements of a participating partner for a claim against a reserve account.

SECTION 8. Amends Section 489.105(b), Government Code, as follows:

(b) Deletes existing text providing that the Texas Economic Development Bank Fund (fund) includes investment earnings under the original capital access fund established under Section 481.402 (Original Capital Access Fund) and amounts transferred under Section 2303.504(b) (relating to requiring that three percent of the amount of a certain tax benefit be transferred to the fund), as amended by Article 2, Chapter 1134, Acts of the 77th Legislature, Regular Session, 2001. Makes nonsubstantive changes.

SECTION 9. Amends Section 489.107, Government Code, as follows:

Sec. 489.107. ANNUAL REPORT. (a) Creates this subsection from existing text.

(b) Requires that the report under Subsection (a) (relating to requiring the office to submit to the legislature an annual status report on the activities of the Texas Economic Development Bank (bank)) include for each program administered by the office:

(1) the number of grants, loans, and designations awarded in the previous fiscal year;

(2) the total number of grants, loans, and designations awarded by the bank;

(3) the amount in dollars of all grants, loans, and designations described by Subdivisions (1) and (2);

(4) the number of applications received in the previous fiscal year;

(5) the number of outstanding loans and designations;

(6) a summary of each outstanding loan and designation, including the amount outstanding and the terms of the loan or designation;

(7) the balance of each program's fund and any reserve account; and

(8) any challenges in administering each program, including any proposals for statutory changes that would address the challenges.

(c) Requires that the report, for the small business disaster recovery loan program, include a general description of each small business for which an applicant was awarded a loan from the fund during the preceding fiscal year.

(d) Requires the office, in preparing the report under Subsection (a), to remove any identifying information pertaining to program participants.

SECTION 10. Amends Sections 489.211(a) and (b), Government Code, as follows:

(a) Provides that the Texas product development fund (product fund) is a fund, rather than a revolving fund, in the state treasury.

(b) Provides that money in the product fund is available for use by the bank, rather than the Product Development and Small Business Incubator Board, under Subchapter D (Product Development and Small Business Incubators). Authorizes any money in the product fund, notwithstanding any other provision of this subchapter, to be used for debt service, bond redemption, or any costs associated with debt service or bond redemption. Deletes existing text providing that the product fund includes amounts transferred from the original capital access fund under Section 481.415 (Allocation and Transfer of Money from Original Capital Access Fund).

SECTION 11. Amends Sections 489.212(a) and (b), Government Code, as follows:

(a) Provides that the Texas small business incubator fund (small business fund) is a fund, rather than a revolving fund, in the state treasury.

(b) Provides that money in the small business fund is available for use by the bank, rather than the Product Development and Small Business Incubator Board, under this subchapter. Authorizes any money in the small business fund, notwithstanding any other provision of this subchapter, to be used for debt service, bond redemption, or any costs associated with debt service or bond redemption. Deletes existing text providing that the small business fund includes amounts transferred from the original capital access fund under Section 481.415.

SECTION 12. Amends Section 489.215(b), Government Code, to provide that Section 489.215 (Information Confidential) applies to any information collected in winding up the product development and small business incubator program investment portfolio under Subchapter D-1.

SECTION 13. Amends Chapter 489, Government Code, by adding Subchapter D-1, as follows:

#### SUBCHAPTER D-1. WINDING UP OF PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATOR PROGRAM

Sec. 489.221. MANAGEMENT OF INVESTMENT PORTFOLIO; WINDING UP AND FINAL LIQUIDATION. (a) Defines "product development and small business incubator program investment portfolio."

(b) Requires the bank to manage and wind up the product development and small business incubator program investment portfolio, including revenues and associated assets from financing and defaults on financing, in a manner that, to the extent feasible, provides for the maximum return on the state's investment. Authorizes the bank, in managing those investments and associated assets through procedures and subject to restrictions that the bank considers appropriate, to acquire, exchange, sell, supervise, manage, or retain any kind of investment or associated assets that a prudent investor, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances then prevailing pertinent to each investment or associated asset. Authorizes the bank to recover its reasonable and necessary costs incurred in the management of the portfolio, including costs incurred in the retaining of professional or technical advisors, from the earnings on the investments in the portfolio.

(c) Requires the bank, on completion of the winding up process under Subsection (b), to deposit any remaining investment earnings to the credit of the fund, as required under Sections 489.211 (Texas Product Development Fund) and 489.212 (Small Business Incubator Fund).

(d) Provides that the bank has any power necessary to accomplish the purposes of this section.

SECTION 14. Amends Section 2303.003(7), Government Code, to redefine "qualified employee."

SECTION 15. Amends Section 2303.4052, Government Code, as follows:

Sec. 2303.4052. REQUIRED INFORMATION FROM NOMINATING BODY. (a) Creates this subsection from existing text.

(b) Authorizes the nominating body to electronically submit in a manner prescribed by the bank a digital scan of a certified copy of the documentation required by Subsections (a)(1) (relating to a certified copy of the ordinance or order, as appropriate, or reference to an ordinance or order) and (2) (relating to a certified copy of the minutes of all public hearings conducted with respect to local incentives available qualified businesses within the jurisdiction of the governmental entity nominating the project or activity).

SECTION 16. Repealers: Sections 481.0066(d-1) (relating to requiring the aerospace and aviation office to make specific short-term and long-term statutory, administrative, and budget related recommendations to the legislature and the governor) and (d-2) (relating to requiring the aerospace and aviation office to submit to the legislature and governor a report detailing the actions taken by the aerospace and aviation office in carrying out the policy initiatives and reforms), Government Code.

Repealer: Section 481.401(6-a) (relating to the definition of "original capital access program"), Government Code.

Repealers: Sections 481.406(b) (relating to authorizing the rules for the original capital access program to meet certain criteria) and (c) (relating to requiring that a line of credit meet certain criteria to qualify for participation in the original capital access program), Government Code.

Repealers: Sections 481.402 (Original Capital Access Fund) and 481.404 (Powers of Bank in Administering Original Capital Access Fund), Government Code.

Repealers: Sections 481.405 (Original Capital Access Program) and 481.407 (Provisions Relating to Capital Access Loan Under Original Capital Access Program), Government Code.

Repealers: Sections 481.408 (Original Capital Access Program Reserve Account) and 481.409 (Limitations on State Contribution to Original Capital Access Program Reserve Account), Government Code.

Repealers: Sections 481.410 (State's Rights With Respect to Original Capital Access Program Reserve Account) and 481.412(a) (relating to requiring the office to submit to the legislature an annual status report on the activities of all programs), Government Code.

Repealers: Sections 481.415 (Allocation and Transfer of Money from Original Capital Access Fund) and 481.458 (Program Annual Status Report), Government Code.

Repealers: Sections 481.609 (Report) and 489.307 (Annual Report to Legislature), Government Code.

Repealers: Sections 489.201 (Definitions) and 489.202 (Product Development and Small Business Incubator Board), Government Code.

Repealers: Sections 489.203 (Board Members; Appointment; Terms of Office) and 489.204 (Removal of Board Member), Government Code.

Repealers: Sections 489.205 (Training of Board Members) and 489.206 (Meetings), Government Code.

Repealers: Sections 489.207 (Applicability of Open Meetings Law and Administrative Procedure Law) and 489.208 (Staff), Government Code.

Repealers: Sections 489.209 (Program and Facility Accessibility) and 489.210 (Powers of Board and Bank; Bonds), Government Code.

Repealers: Sections 489.211(c) (relating to authorizing money in the program account of the product fund to be used only to provide financing to aid in the development and production, including the commercialization, of new or improved products in this state) and 489.212(c) (relating to authorizing money in the project account of the small business fund to be used only to provide financing to foster and stimulate the development of small businesses in this state), Government Code.

Repealers: Sections 489.213 (Eligible Products and Businesses; Financing) and 489.214 (Application Process), Government Code.

Repealers: Sections 489.215(c) (relating to requiring that any application for financing that is withdrawn by the applicant before approval or funding or that is denied by the bank be returned to the applicant promptly on request) and 489.216 (Program Coordination), Government Code.

Repealer: Section 489.217 (Expenditures), Government Code.

SECTION 17. Requires the office, not later than December 1, 2024, to submit the first biennial strategic tourism plan required by Section 481.172(b)(3), Government Code, as amended by this Act.

SECTION 18. Authorizes a member of an advisory committee repealed by this Act to be reappointed to serve as a member of a new advisory committee established under Section 481.0211, Government Code, as added by this Act.

SECTION 19. (a) Provides that Section 2303.003, Government Code, as amended by this Act, except as provided by Subsection (b) of this section, applies to an application for an enterprise project designation under the enterprise zone program under Chapter 2303, Government Code, as amended by this Act, that is submitted on or after the effective date of this Act. Provides that an application for an enterprise project designation under the enterprise zone program that is submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

(b) Provides that Section 2303.003(7)(D) (relating to providing that a "qualified employee" means a person who meets certain qualifications), Government Code, as added by this Act, applies to an enterprise project that is under audit or subject to audit by the Comptroller of Public Accounts of the State of Texas on or after the effective date of this Act.

SECTION 20. Effective date: September 1, 2023.