

BILL ANALYSIS

Senate Research Center
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S.B. 1940
By: Springer et al.
Natural Resources & Economic Development
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1940 is the Sunset bill for the Texas Economic Development and Tourism Office (EDT), a trustee program within the Office of the Governor. The office is responsible for marketing and promoting Texas as a premier business location and travel destination. The Sunset Advisory 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 removing 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 removes 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.

As proposed, S.B. 1940 amends current law relating to the continuation and functions of 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 11 (Section 481.406, Government Code) of this bill.

Rulemaking authority previously granted to the Texas Economic Development and Tourism Office is rescinded in SECTION 11 (Sections 489.210 and 489.213, Government Code) of this bill.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 (Texas Sunset Act), 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(d), Government Code, 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.

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), investment earnings under the Texas product development fund under Section 489.211 (Texas Product Development Fund), and investment earnings under the Texas small business incubator fund under Section 489.212 (Small Business Incubator Fund). 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 the report, for the small business disaster recovery loan program, to 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 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 investment portfolio."

(b) Requires the bank to manage and wind up the product development and small business incubator investment portfolio, including revenues from loans and loan defaults, 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) Provides that the bank has any power necessary to accomplish the purposes of this section.

SECTION 11. Repealers: Sections 481.0066(d-1) (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.

Repealers: Sections 481.0066(e) (relating to requiring the governor to appoint an aerospace and aviation advisory committee consisting of certain members) and (e-1) (relating to requiring the aerospace and aviation advisory committee to perform certain tasks), Government Code.

Repealer: Section 481.0066(e-2) (relating to providing that members of the aerospace and aviation advisory committee meet certain criteria), 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 489.213 (Eligible Products and Businesses; Financing) and 489.214 (Application Process), Government Code.

Repealers: Sections 489.215 (Information Confidential) and 489.216 (Program Coordination), Government Code.

Repealer: Section 489.217 (Expenditures), Government Code.

SECTION 12. 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 13. Effective date: September 1, 2023.