

BILL ANALYSIS

C.S.H.B. 570

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International Relations & Economic Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The COVID-19 pandemic has revealed numerous inequities and gaps in financing available to all small businesses in Texas, and this has generated calls for increased access to financing through a small business recovery fund. Additional concerns surround the pronounced effect these conditions present for small businesses in rural Texas communities as compared to those in Texas' urban areas. Despite the unique economic impact of small businesses in these rural communities, investment incentives targeted to their location may be nonexistent.

Moreover, worries over increased regulatory burdens, coupled with an uncertain economic outlook, typically cause traditional lenders and their investors to tighten restrictions on credit to all businesses. There are concerns that these barriers to credit and the lack of available capital will not only continue affecting all the state's small businesses but will disproportionately affect rural communities whose small businesses historically have faced trouble accessing the capital they need to grow and expand. Providing economic opportunities and access to affordable long-term capital for these small businesses, rural and urban, is critical to Texas' overall competitive advantage.

C.S.H.B. 570 seeks to stimulate private investment in small businesses by establishing a targeted investment program that provides certain tax incentives for investments in small business recovery funds.

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. 570 amends the Government Code and Insurance Code to provide for Texas Economic Development and Tourism Office (TEDTO) approval of small business recovery funds for the provision of certain financing to targeted small businesses, as defined by the bill, and to create tax credits against state insurance liability for applicable investors in those funds.

C.S.H.B. 570 amends the Government Code to require TEDTO to accept applications from entities seeking approval as small business recovery funds. The bill requires an application 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, as of the application date:
 - that investments in nonpublic companies by the applicant or its affiliates meet a \$100 million threshold; and
 - that the applicant or an affiliate has at least one officer or employee who has held such a position for at least four years and is a principal of a federally licensed rural business investment company or small business investment company;
- a copy of the relevant federal license;
- an estimate of the number of jobs created and jobs retained that will result from the applicant's growth investments;
- a business plan that includes a certain revenue impact assessment;
- 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.

The bill defines, among other terms, "credit-eligible capital contribution" for purposes of its provisions.

C.S.H.B. 570 sets out provisions relating to TEDTO determinations on each application, including the period for making those determinations and the order in which determinations are made. The bill caps the total investment authority for small business recovery funds that TEDTO may approve in any calendar year at \$500 million and provides for reductions of investment authority and credit-eligible capital contributions with regard to an application, or simultaneous multiple applications, that would otherwise exceed the cap. The bill provides for the disposition of application fees and restricts the appropriation of the fees to TEDTO for purposes of administering the bill's provisions relating to small business recovery funds.

C.S.H.B. 570 restricts the grounds for denial of an application to the following:

- the application is incomplete or the application fee is not paid in full;
- the application fails to provide sufficient evidence regarding the federal licensing requirement or the requirement to demonstrate qualifying nonpublic investments;
- the revenue impact assessment does not demonstrate that the business plan will result in a sufficient positive economic impact on state and local revenue, measured as specified by the bill;
- the credit-eligible capital contributions described in the investor affidavits do not meet the required minimum of 65 percent of the total investment authority sought; or
- TEDTO has already approved the total amount of investment authority allowed under the annual cap.

The bill provides for a 15-day period within which an applicant whose application has been denied may provide additional information to TEDTO to complete, clarify, or cure defects in the application and sets out related procedures. This process for supplying additional information does not apply to an application that is denied because the applicant failed to submit required investor affidavits.

C.S.H.B. 570 requires TEDTO, on approving an application, to provide written notice to the applicant that includes the amount of the approved small business recovery fund's investment authority and to provide a tax credit certificate to each investor whose affidavit was included in the application with the amount of the investor's credit-eligible capital contribution included on the certificate. The bill requires a fund to do the following not later than the 60th day after receiving the approval notice:

- collect the credit-eligible capital contribution from each investor issued a tax credit certificate; and
- collect one or more cash investments that equal the portion of the fund's investment authority that is not attributable to the credit-eligible capital contributions, subject to a minimum proportion that must consist of certain equity investments.

The bill requires the fund, not later than the 65th day after receipt of the approval notice, to send TEDTO documentation sufficient to prove that the fund has collected those contributions and

investments. 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 annual cap on total investment authority approved by TEDTO. The bill provides for the redistribution of lapsed investment authority.

C.S.H.B. 570 sets out the following grounds for revocation of a tax credit certificate, with reference to actions or omissions that occur before a small business recovery fund exits the program:

- the fund fails to meet certain investment targets by specified deadlines, including a failure to meet the required growth investments in targeted small businesses whose principal business operations are located in, or are relocated to, a rural area of Texas;
- the fund fails to maintain growth investments equal to 100 percent of its investment authority until the sixth anniversary of its closing date;
- the fund makes a distribution or payment that results in the fund having less than 100 percent of its investment authority either invested in growth investments in Texas or available for such investment and held in certain forms; or
- the fund makes a disqualifying investment in a targeted small business that has a certain interest in or relationship with the fund or an affiliate of or investor in the fund.

C.S.H.B. 570 provides for the redistribution of the investment authority associated with a revoked certificate and for the effect of revoked authority on the annual cap on total investment authority. In addition, the bill provides the following matters regarding revocation:

- TEDTO must notify the comptroller of public accounts when it revokes a certificate and provide the comptroller with lists of valid and revoked tax credit certificates on request;
- TEDTO must notify a fund of the reasons for a pending revocation before revoking a certificate; and
- to avoid the revocation, a fund may correct any violation outlined in such a notice within a specified period.

C.S.H.B. 570 authorizes a small business recovery fund, on or after the sixth anniversary of its closing date, to apply to TEDTO to exit the program and no longer be subject to regulation under the bill's provisions. The bill prohibits the unreasonable denial of an application to exit and sets out eligibility criteria, a deadline for TEDTO to respond to the application, and a certain notice requirement in the case of a 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.

C.S.H.B. 570 subjects a small business recovery fund to a penalty under the following circumstances:

- the fund's actual number of jobs created and retained is less than the fund's corresponding estimate; and
- the fund authorizes a distribution to its equity holders in an amount that, when added to all such previous distributions and any previous penalties, exceeds the fund's investment authority.

The bill sets out the methods for calculating estimated and actual jobs created and retained and for calculating the penalty. The bill requires the fund to deduct the penalty amount from the amount otherwise authorized to be distributed to the equity holders and to pay the penalty to TEDTO before making the distribution. The bill requires TEDTO to deposit such penalties received in the general revenue fund.

C.S.H.B. 570 authorizes a small business recovery fund to request from TEDTO a written opinion as to whether a business in which the fund proposes to make a growth investment qualifies as a targeted small business. The bill establishes a deadline and related notice requirement for a TEDTO determination on such a request. The bill requires a fund to submit an annual report to TEDTO until the fund has exited the program and sets out the contents of that report.

C.S.H.B. 570 requires TEDTO, before the beginning of the 90th Legislature, Regular Session, to submit to the lieutenant governor, speaker of the house of representatives, and each member of the legislature a report on the economic benefits of the bill's provisions. The bill requires the report to include an assessment of the following:

- the aggregate effects of applicable growth investments, including specified metrics;
- the benefits to the state from cost savings attributable to jobs created and retained by all targeted small businesses, including Medicaid, food assistance program, and unemployment-related savings; and
- the total positive fiscal effect of those cost savings on the state and local governments.

The bill prohibits the report from including information that is confidential by law and specifies the use of certain data and certain estimation techniques. The bill prohibits TEDTO from accepting applications for approval of small business recovery 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. 570 requires TEDTO to adopt rules necessary to implement the bill's provisions relating to small business recovery funds as soon as practicable after the bill's effective date and to begin accepting applications for approval of such funds not later than October 1, 2021.

C.S.H.B. 570 amends the Insurance Code, with respect to credits against applicable state insurance tax liability for an entity that invests in a small business recovery fund, as follows:

- to make an entity eligible for a tax credit that is equal to 25 percent of the amount of the credit-eligible capital contribution stated on a tax credit certificate if the entity holds a tax credit certificate issued in exchange for investment in a fund and the third, fourth, fifth, or sixth anniversary of the fund's closing date occurs during the tax year; and
- to cap the total credit claimed by an entity for a tax year, including the amount of any carryforward, at the amount of the entity's state insurance tax liability due for the entity for the tax year after applying all other applicable tax credits.

C.S.H.B. 570 provides the following regarding implementation of the credit:

- credits may be applied to estimated or final tax payments;
- an entity may carry forward unused credit and apply the credit to a subsequent tax report;
- an entity may not convey, assign, or transfer credit to another entity, except to an affiliate of the entity that is liable for state insurance tax; and
- an entity claiming an applicable credit is not required to pay any additional retaliatory tax as a result of claiming that credit.

The bill requires the comptroller to recapture from an entity the amount of a credit claimed on an applicable tax report if the tax credit certificate on which the credit is based is revoked.

C.S.H.B. 570 requires the comptroller to adopt rules necessary to implement the bill's provisions relating to insurance tax credit. Those provisions apply only to a tax report originally due on or after January 1, 2021.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 570 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 changes the requirement incentivizing investment in the small business recovery fund, with respect to incentivized investment in small businesses in rural areas, as follows:

- the substitute does not include the provision requiring TEDTO to issue an additional tax credit certificate for one or more growth investments in targeted small businesses located in rural areas; and
- the substitute includes a provision that instead requires a minimum percentage of investments to be made in targeted small businesses whose principal business operations are located in, or are relocated to, a rural area in Texas.