

By: Button, Parker, Capriglione, Springer,
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H.B. No. 3772

Substitute the following for H.B. No. 3772:

By: Button

C.S.H.B. No. 3772

A BILL TO BE ENTITLED

1 AN ACT

2 relating to operation of the Texas leverage fund program
3 administered by the Texas Economic Development Bank.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 489, Government Code, is amended by
6 adding Subchapter E to read as follows:

7 SUBCHAPTER E. TEXAS LEVERAGE FUND

8 Sec. 489.251. DEFINITION. In this subchapter, "leverage
9 fund" means the Texas leverage fund established by Section 489.252.

10 Sec. 489.252. TEXAS LEVERAGE FUND. (a) The Texas leverage
11 fund is created as a trust fund held outside the state treasury by
12 the comptroller as trustee. The comptroller shall hold money in the
13 fund in escrow and in trust for and on behalf of the bank and the
14 owners of bonds issued under Section 489.253.

15 (b) The leverage fund consists of:

16 (1) proceeds from the issuance of bonds under Section
17 489.253;

18 (2) payments of principal and interest on loans made
19 under this subchapter;

20 (3) loan origination fees imposed on loans made under
21 this subchapter;

22 (4) investment earnings described by Subsection (c);
23 and

24 (5) any other money received by the bank under this

1 subchapter.

2 (c) The leverage fund may be used only:

3 (1) to make loans to economic development corporations
4 for eligible projects as authorized by Chapters 501, 504, and 505,
5 Local Government Code;

6 (2) to pay the bank's necessary and reasonable costs of
7 administering the program established by this subchapter,
8 including the payment of letter of credit fees and credit rating
9 fees;

10 (3) to pay the principal of and interest on bonds
11 issued under Section 489.253;

12 (4) to pay reasonable fees and other costs incurred by
13 the bank in administering the fund; and

14 (5) for any other purpose authorized by this
15 subchapter.

16 (d) The bank, in coordination with the comptroller, may
17 provide for the establishment and maintenance of separate accounts
18 or sub-accounts in the leverage fund, including interest and
19 sinking accounts, reserve accounts, program accounts, or other
20 accounts. The accounts and sub-accounts must be kept and held in
21 escrow and in trust as provided by Subsection (a).

22 (e) Pending use, the comptroller may invest and reinvest the
23 money in the leverage fund in investments authorized by law for
24 state funds. Earnings on the investments shall be credited to the
25 fund.

26 (f) The bank may use money in the leverage fund for the
27 purposes specified by and according to the procedures established

1 by this subchapter. This state may take action with respect to the
2 fund only as specified by this subchapter and only in accordance
3 with the resolutions of the executive director of the office
4 adopted under Section 489.253.

5 Sec. 489.253. REVENUE-BASED BONDS AUTHORIZED. (a) The
6 bank, the office, or the office's successor agency may provide for
7 the issuance, sale, and retirement of bonds, including obligations
8 in the form of commercial paper notes, to provide funding for
9 economic development purposes as authorized by Section 52-a,
10 Article III, Texas Constitution, and this subchapter.

11 (b) The bonds are special obligations of the bank and the
12 principal of and interest on the bonds must be payable solely from
13 the revenues derived by the bank under this subchapter, including
14 loan repayments secured by a pledge of the local economic
15 development sales and use tax revenues imposed by municipalities
16 for the benefit of economic development corporations created under
17 Chapters 504 and 505, Local Government Code. The bonds do not
18 constitute an indebtedness of this state, the office, or the bank in
19 the meaning of the Texas Constitution or of any statutory
20 limitation. The bonds do not constitute a pecuniary liability of
21 this state, the office, or the bank or constitute a charge against
22 the general credit of this state, the office, or the bank, or
23 against the taxing power of this state. The limitations provided by
24 this subsection must be stated plainly on the face of each bond.

25 (c) The executive director of the office by resolution may
26 provide for the bonds to:

27 (1) be executed and delivered at any time in one or

1 more series as a single issue or as several issues;

2 (2) be in any denomination and form, including
3 registered uncertificated bonds not represented by written
4 instruments and commonly known as book-entry obligations, the
5 registration of ownership and transfer of which the bank shall
6 provide for under a system of books and records maintained by a
7 financial institution serving as trustee, paying agent, or bond
8 registrar;

9 (3) be of a term authorized by the executive director,
10 not to exceed 40 years from their date;

11 (4) be in coupon or registered form;

12 (5) be payable in installments and at a time or times
13 not exceeding the term authorized by applicable law;

14 (6) be subject to terms of redemption;

15 (7) be payable at a place or places;

16 (8) bear no interest or bear interest at any rate or
17 rates, fixed, variable, floating, or otherwise determined by the
18 bank or determined under a contractual arrangement approved by the
19 executive director, except that the maximum net effective interest
20 rate, computed in accordance with Section [1204.005](#), on the bonds
21 may not exceed a rate equal to the maximum annual interest rate
22 established by Section [1204.006](#); and

23 (9) contain provisions not inconsistent with this
24 subchapter.

25 (d) Bonds issued under this section are subject to review
26 and approval by the attorney general in the same manner and with the
27 same effect as may be required by law, including Chapter [1202](#) or

1 1371, as applicable.

2 (e) This state pledges to and agrees with the owners of any
3 bonds issued under this section that this state will not limit or
4 alter the rights vested in the bank to fulfill the terms of any
5 agreements made with an owner or in any way impair the rights and
6 remedies of an owner until the bonds, together with any premium and
7 the interest on the bonds, with interest on any unpaid premium or
8 installments of interest, and all costs and expenses in connection
9 with any action or proceeding by or on behalf of the owners, are
10 fully met and discharged. The bank may include this pledge and
11 agreement of this state in any agreement with the owners of the
12 bonds.

13 Sec. 489.254. BOND SALE AND ISSUANCE. (a) Bonds issued
14 under Section 489.253 may be sold at public or private sale at a
15 price and in a manner and from time to time as resolutions of the
16 executive director of the office that authorize issuance of the
17 bonds provide.

18 (b) From the proceeds of the sale of the bonds, the bank may
19 pay expenses, premiums, and insurance premiums that the bank
20 considers necessary or advantageous in connection with the
21 authorization, sale, and issuance of the bonds.

22 (c) In connection with the issuance of its bonds, the bank
23 may exercise the powers granted to the governing body of an issuer
24 in connection with the issuance of obligations under Chapter 1371.
25 However, any bonds issued in accordance with this subchapter and
26 Chapter 1371 are not subject to the rating requirement for an
27 obligation issued under Chapter 1371.

1 Sec. 489.255. AGREEMENTS IN BONDS. (a) A resolution of the
2 executive director of the office that authorizes bonds to be issued
3 under Section 489.253 or a security agreement, including a related
4 indenture or trust indenture, may contain any agreements and
5 provisions customarily contained in instruments securing bonds,
6 including provisions respecting the fixing and collection of
7 obligations, the creation and maintenance of special funds, and the
8 rights and remedies available, in the event of default to the
9 holders of the bonds or to the trustee under the security agreement,
10 all as the bank considers advisable and consistent with this
11 subchapter. However, in making such an agreement or provision, the
12 bank may not incur:

13 (1) a pecuniary liability of this state, the office,
14 or the bank; or

15 (2) a charge against the general credit of this state,
16 the office, or the bank, or against the taxing powers of this state.

17 (b) The resolution of the executive director of the office
18 authorizing the issuance of the bonds and a security agreement
19 securing the bonds may provide that, in the event of default in
20 payment of the principal of or interest on the bonds or in the
21 performance of an agreement contained in the proceedings or
22 security agreement, the payment and performance may be enforced as
23 provided by Sections 403.055 and 403.0551, by mandamus, or by the
24 appointment of a receiver in equity with power to charge and collect
25 bonds and to apply revenues pledged according to the proceedings or
26 the provisions of the security agreement. A security agreement may
27 provide that, in the event of default in payment or the violation of

1 an agreement contained in the security agreement, a trustee under
2 the security agreement may enforce the bondholder's rights by
3 mandamus or other proceedings at law or in equity to obtain any
4 relief permitted by law, including the right to collect and receive
5 any revenue used to secure the bonds.

6 (c) A breach of a resolution of the executive director of
7 the office adopted under Section 489.253, a breach of an agreement
8 made under this section, or a default under bonds issued under this
9 subchapter does not constitute:

10 (1) a pecuniary liability of this state, the office,
11 or the bank; or

12 (2) a charge against the general credit of this state,
13 the office, or the bank, or against the taxing power of this state.

14 (d) The trustee or trustees under a security agreement or a
15 depository specified by the security agreement may be any person
16 that the bank designates, regardless of whether the person is a
17 resident of this state or incorporated under the laws of the United
18 States or any state.

19 Sec. 489.256. REFUNDING BONDS. (a) Bonds issued under
20 Section 489.253 may be refunded by the bank by the issuance of the
21 bank's refunding bonds in the amount that the bank considers
22 necessary to refund the unpaid principal of the refunded bonds,
23 together with any unpaid interest, premiums, expenses, and
24 commissions required to be paid in connection with the refunded
25 bonds. Refunding may be effected whether the refunded bonds have
26 matured or are to mature later, either by sale of the refunding
27 bonds or by exchange of the refunding bonds for the refunded bonds.

1 (b) A holder of refunded bonds may not be compelled to
2 surrender the bonds for payment or exchange before the date on which
3 the bonds are payable, or, if the bonds are called for redemption,
4 before the date on which they are by their terms subject to
5 redemption.

6 (c) Refunding bonds having a final maturity not to exceed
7 that permitted for other bonds issued under Section 489.253 may be
8 issued under the same terms and conditions provided by this
9 subchapter for the issuance of bonds or may be issued in the manner
10 provided by statute, including Chapters 1207 and 1371.

11 Sec. 489.257. USE OF BOND PROCEEDS. The proceeds from the
12 sale of bonds issued under this subchapter may be applied only for a
13 purpose for which the bonds were issued, except that:

14 (1) any secured interest received in the sale shall be
15 applied to the payment of the principal of or interest on the bonds
16 sold and, if a portion of the proceeds is not needed for a purpose
17 for which the bonds were issued, that portion shall be applied to
18 the payment of the principal of or interest on the bonds; and

19 (2) any premium received in the sale of the bonds shall
20 be applied in accordance with Section 1201.042(d).

21 Sec. 489.258. BONDS AS LEGAL INVESTMENTS FOR FIDUCIARIES
22 AND OTHER PERSONS. (a) Bonds of the bank issued under this
23 subchapter are securities in which all public officers and bodies
24 of this state; municipalities; municipal subdivisions; insurance
25 companies and associations and other persons carrying on an
26 insurance business; banks, bankers, trust companies, savings and
27 loan associations, investment companies, and other persons

1 carrying on a banking business; administrators, guardians,
2 executors, trustees, and other fiduciaries; and other persons
3 authorized to invest in other obligations of this state may invest
4 funds, including capital, in their control or belonging to them.

5 (b) Notwithstanding any other provision of law, the bonds of
6 the bank issued under this subchapter are also securities that may
7 be deposited with and received by public officers and bodies of this
8 state and municipalities and municipal subdivisions for any purpose
9 for which the deposit of other obligations of the state are
10 authorized.

11 Sec. 489.259. ADMINISTRATION OF LEVERAGE FUND. The bank
12 shall administer the leverage fund. In administering the leverage
13 fund and this subchapter, the bank has the powers necessary to carry
14 out the purposes of this subchapter, including the power to:

15 (1) make, execute, and deliver contracts,
16 conveyances, and other instruments; and

17 (2) impose charges and provide for reasonable
18 penalties for delinquent payments or performance in connection with
19 any transaction.

20 SECTION 2. The Texas leverage fund program as amended by
21 this Act authorizes the continued operation of the program that was
22 established by the September 9, 1992, master resolution of the
23 Texas Department of Commerce under Chapter 4 (S.B. 223), Acts of the
24 71st Legislature, Regular Session, 1989 (codifying authority of the
25 former Texas Department of Commerce to issue revenue bonds under
26 former Sections 481.052 through 481.058, Government Code), as
27 amended by Chapter 1041 (S.B. 932), Acts of the 75th Legislature,

1 Regular Session, 1997, and by Chapter 814 (S.B. 275), Acts of the
2 78th Legislature, Regular Session, 2003.

3 SECTION 3. (a) Except as provided by Subsection (b) of this
4 section, the governmental acts and proceedings of the comptroller,
5 the Texas Economic Development and Tourism Office, and the Texas
6 Economic Development Bank relating to the administration of the
7 Texas leverage fund program that occurred before the effective date
8 of this Act are validated as if the acts had occurred as authorized
9 by law.

10 (b) This section does not validate:

11 (1) an act that, under the law of this state at the
12 time the act occurred, was a misdemeanor or felony; or

13 (2) a matter that on the effective date of this Act:

14 (A) is involved in litigation if the litigation
15 ultimately results in the matter being held invalid by a final
16 judgment of a court; or

17 (B) has been held invalid by a final judgment of a
18 court.

19 SECTION 4. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2017.