By:  Hinojosa, et al. S.B. No. 132

(Longoria, Guerra)

A BILL TO BE ENTITLED

AN ACT

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

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

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

SUBCHAPTER E. TEXAS LEVERAGE FUND

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

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

(b)  The leverage fund consists of:

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

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

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

(4)  investment earnings described by Subsection (e); and

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

(c)  The leverage fund may be used only:

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

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

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

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

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

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

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

(f)  The bank may use money in the leverage fund for the purposes specified by and according to the procedures established by this subchapter. This state may take action with respect to the leverage fund only as specified by this subchapter and only in accordance with the resolutions of the executive director of the office adopted under Section 489.253.

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

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

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

(1)  be executed and delivered at any time in one or more series as a single issue or as several issues;

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

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

(4)  be in coupon or registered form;

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

(6)  be subject to terms of redemption;

(7)  be payable at a place or places;

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

(9)  contain provisions not inconsistent with this subchapter.

(d)  Bonds issued under this section are subject to review and approval by the attorney general in the same manner and with the same effect as may be required by law, including Chapter 1202 or 1371, as applicable.

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

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

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

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

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

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

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

(b)  The resolution of the executive director of the office authorizing the issuance of the bonds and a security agreement securing the bonds may provide that, in the event of default in payment of the principal of or interest on the bonds or in the performance of an agreement contained in the proceedings or security agreement, the payment and performance may be enforced as provided by Sections 403.055 and 403.0551, by mandamus, or by the appointment of a receiver in equity with power to charge and collect bonds and to apply revenues pledged according to the proceedings or the provisions of the security agreement. A security agreement may provide that, in the event of default in payment or the violation of an agreement contained in the security agreement, a trustee under the security agreement may enforce the bondholder's rights by mandamus or other proceedings at law or in equity to obtain any relief permitted by law, including the right to collect and receive any revenue used to secure the bonds.

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

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

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

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

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

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

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

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

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

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

Sec. 489.258.  BONDS AS LEGAL INVESTMENTS FOR FIDUCIARIES AND OTHER PERSONS. (a)  Bonds of the bank issued under this subchapter are securities in which all public officers and bodies of this state; municipalities; municipal subdivisions; insurance companies and associations and other persons carrying on an insurance business; banks, bankers, trust companies, savings and loan associations, investment companies, and other persons carrying on a banking business; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in other obligations of this state may invest funds, including capital, in their control or belonging to them.

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

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

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

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

SECTION 2.  Section 501.008, Local Government Code, is amended to read as follows:

Sec. 501.008.  LIMITATION ON FINANCIAL OBLIGATION. (a)  Except as provided by Subsection (b), a [~~A~~] corporation may not incur a financial obligation that cannot be paid from:

(1)  bond proceeds;

(2)  revenue realized from the lease or sale of a project;

(3)  revenue realized from a loan made by the corporation to wholly or partly finance or refinance a project; or

(4)  money granted under a contract with a municipality under Section 380.002.

(b)  A Type A or Type B corporation may obtain a loan from the Texas leverage fund program under Subchapter E, Chapter 489, Government Code, for eligible projects as authorized by this subtitle. To secure the loan, the Type A or Type B corporation may pledge revenue from the sales and use tax imposed by the corporation's authorizing municipality under Chapter 504 or 505, as applicable, for the benefit of the corporation.

SECTION 3.  The Texas leverage fund program as amended by this Act authorizes the continued operation of the program that was established by the September 9, 1992, master resolution of the Texas Department of Commerce under Chapter 4 (S.B. 223), Acts of the 71st Legislature, Regular Session, 1989 (codifying authority of the former Texas Department of Commerce to issue revenue bonds under former Sections 481.052 through 481.058, Government Code), as amended by Chapter 1041 (S.B. 932), Acts of the 75th Legislature, Regular Session, 1997, and by Chapter 814 (S.B. 275), Acts of the 78th Legislature, Regular Session, 2003.

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

(b)  This section does not validate:

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

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

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

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

SECTION 5.  The comptroller of public accounts is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the comptroller may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 6.  The Texas Economic Development and Tourism Office is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the office may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 7.  The Texas Economic Development Bank is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the bank may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 8.  The attorney general is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the attorney general may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 9.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.