

By: Guillen

H.B. No. 4119

Substitute the following for H.B. No. 4119:

By: Button

C.S.H.B. No. 4119

A BILL TO BE ENTITLED

AN ACT

relating to operation of the Texas small and rural community success fund program administered by the Texas Economic Development Bank as successor to the Texas leverage fund program.

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 SMALL AND RURAL COMMUNITY SUCCESS FUND

Sec. 489.251. DEFINITION. In this subchapter, "fund" means the Texas small and rural community success fund established by Section 489.252.

Sec. 489.252. TEXAS SMALL AND RURAL COMMUNITY SUCCESS FUND.

(a) The Texas small and rural community success fund is created as a trust fund held outside the state treasury by the comptroller as trustee. The comptroller shall hold money in the 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 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;

1           (4) investment earnings described by Subsection (e);  
2 and  
3           (5) any other money received by the bank under this  
4 subchapter.

5           (c) The fund may be used only:

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

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

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

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

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

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

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

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

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

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

27       (c) The executive director of the office by resolution may

1 provide for the bonds to:

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

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

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

13 (4) be in coupon or registered form;

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

16 (6) be subject to terms of redemption;

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

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

25 (9) contain provisions not inconsistent with this  
26 subchapter.

27 (d) Bonds issued under this section are subject to review

1 and approval by the attorney general in the same manner and with the  
2 same effect as may be required by law, including Chapter 1202 or  
3 1371, as applicable.

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

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

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

24 (c) In connection with the issuance of its bonds, the bank  
25 may exercise the powers granted to the governing body of an issuer  
26 in connection with the issuance of obligations under Chapter 1371.  
27 However, any bonds issued in accordance with this subchapter and

1 Chapter 1371 are not subject to the rating requirement for an  
2 obligation issued under Chapter 1371.

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

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

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

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

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

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

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

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

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

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

1 matured or are to mature later, either by sale of the refunding  
2 bonds or by exchange of the refunding bonds for the refunded bonds.

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

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

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

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

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

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



1 insurance business; banks, bankers, trust companies, savings and  
2 loan associations, investment companies, and other persons  
3 carrying on a banking business; administrators, guardians,  
4 executors, trustees, and other fiduciaries; and other persons  
5 authorized to invest in other obligations of this state may invest  
6 funds, including capital, in their control or belonging to them.

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

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

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

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

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

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

27 (1) bond proceeds;

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

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

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

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

15           SECTION 3. The Texas small and rural community success fund  
16 program authorizes the continued operation, under a new name and  
17 with new provisions, as added by this Act, of the Texas leverage  
18 fund program that was established by the September 9, 1992, master  
19 resolution of the Texas Department of Commerce under Chapter 4  
20 (S.B. 223), Acts of the 71st Legislature, Regular Session, 1989  
21 (codifying authority of the former Texas Department of Commerce to  
22 issue revenue bonds under former Sections 481.052 through 481.058,  
23 Government Code), as amended by Chapter 1041 (S.B. 932), Acts of the  
24 75th Legislature, Regular Session, 1997, and by Chapter 814 (S.B.  
25 275), Acts of the 78th Legislature, Regular Session, 2003.

26           SECTION 4. (a) Except as provided by Subsection (b) of this  
27 section, the governmental acts and proceedings of the comptroller,

1 the Texas Economic Development and Tourism Office, and the Texas  
2 Economic Development Bank relating to the administration of the  
3 Texas leverage fund program that occurred before the effective date  
4 of this Act are validated as if the acts had occurred as authorized  
5 by law.

6 (b) This section does not validate:

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

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

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

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

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

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

1 purpose.

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

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

14           SECTION 9. This Act takes effect immediately if it receives  
15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect September 1, 2021.