

By: Guillen

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. Subchapter C, Chapter 501, Local Government
16 Code, is amended by adding Sections 501.108 and 501.109 to read as
17 follows:

18 Sec. 501.108. PROJECTS RELATED TO BROADBAND NETWORK
19 INFRASTRUCTURE EXPANSION. In this subtitle, "project" includes the
20 land, equipment, expenditures, and improvements that are found by
21 the board of directors to be suitable for the expansion of broadband
22 network infrastructure.

23 Sec. 501.109. PROJECTS RELATED TO ASSISTANCE FOR SMALL
24 BUSINESSES AFFECTED BY DECLARED DISASTER. (a) For the purposes of
25 Subsection (b), "small business" means a corporation, partnership,
26 sole proprietorship, or other legal entity that:

27 (1) is formed for the purpose of making a profit;

1 (2) is independently owned and operated; and
2 (3) has fewer than 100 employees residing in this
3 state.

4 (b) In this subtitle, "project" includes expenditures that
5 are found by the board of directors to be suitable to assist the
6 economic recovery of small businesses whose operation was
7 restricted by an order, proclamation, or regulation issued by the
8 governor or the governing body of a political subdivision during a
9 declared state of disaster under Chapter 418, Government Code.

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

21 SECTION 5. (a) Except as provided by Subsection (b) of this
22 section, the governmental acts and proceedings of the comptroller,
23 the Texas Economic Development and Tourism Office, and the Texas
24 Economic Development Bank relating to the administration of the
25 Texas leverage fund program that occurred before the effective date
26 of this Act are validated as if the acts had occurred as authorized
27 by law.

1 (b) This section does not validate:

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

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

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

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

10 SECTION 6. The comptroller of public accounts is required
11 to implement a provision of this Act only if the legislature
12 appropriates money specifically for that purpose. If the
13 legislature does not appropriate money specifically for that
14 purpose, the comptroller may, but is not required to, implement a
15 provision of this Act using other appropriations available for that
16 purpose.

17 SECTION 7. The Texas Economic Development and Tourism
18 Office is required to implement a provision of this Act only if the
19 legislature appropriates money specifically for that purpose. If
20 the legislature does not appropriate money specifically for that
21 purpose, the office may, but is not required to, implement a
22 provision of this Act using other appropriations available for that
23 purpose.

24 SECTION 8. The Texas Economic Development Bank is required
25 to implement a provision of this Act only if the legislature
26 appropriates money specifically for that purpose. If the
27 legislature does not appropriate money specifically for that

1 purpose, the bank may, but is not required to, implement a provision
2 of this Act using other appropriations available for that purpose.

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

9 SECTION 10. This Act takes effect immediately if it
10 receives a vote of two-thirds of all the members elected to each
11 house, as provided by Section 39, Article III, Texas Constitution.
12 If this Act does not receive the vote necessary for immediate
13 effect, this Act takes effect September 1, 2021.