

By: Hinojosa

S.B. No. 1465

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 and to creation of the micro-business disaster recovery loan guarantee program.

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

SECTION 1. Chapter 489, Government Code, is amended by adding Subchapters E and F 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

1 this subchapter;

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

3 and

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

5 subchapter.

6 (c) The fund may be used only:

7 (1) to make loans to economic development corporations

8 for eligible projects as authorized by Chapters 501, 504, and 505,

9 Local Government Code;

10 (2) to pay the bank's necessary and reasonable costs of

11 administering the program established by this subchapter,

12 including the payment of letter of credit fees and credit rating

13 fees;

14 (3) to pay the principal of and interest on bonds

15 issued under Section 489.253;

16 (4) to pay reasonable fees and other costs incurred by

17 the bank in administering the fund; and

18 (5) for any other purpose authorized by this

19 subchapter.

20 (d) The bank, in coordination with the comptroller, may

21 provide for the establishment and maintenance of separate accounts

22 or sub-accounts in the fund, including interest and sinking

23 accounts, reserve accounts, program accounts, or other accounts.

24 The accounts and sub-accounts must be kept and held in escrow and in

25 trust as provided by Subsection (a).

26 (e) Pending use, the comptroller may invest and reinvest the

27 money in the fund in investments authorized by law for state funds.

1 Earnings on the investments shall be credited to the fund.

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

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

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

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

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

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

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

14 (4) be in coupon or registered form;

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

17 (6) be subject to terms of redemption;

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

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

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

1 (d) Bonds issued under this section are subject to review
2 and approval by the attorney general in the same manner and with the
3 same effect as may be required by law, including Chapter 1202 or
4 1371, as applicable.

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

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

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

25 (c) In connection with the issuance of its bonds, the bank
26 may exercise the powers granted to the governing body of an issuer
27 in connection with the issuance of obligations under Chapter 1371.

1 However, any bonds issued in accordance with this subchapter and
2 Chapter 1371 are not subject to the rating requirement for an
3 obligation issued under Chapter 1371.

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

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

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

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

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

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

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 power of this state.

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

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

1 bonds. Refunding may be effected whether the refunded bonds have
2 matured or are to mature later, either by sale of the refunding
3 bonds or by exchange of the refunding bonds for the refunded bonds.

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

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

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

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

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

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

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

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

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

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

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

23 SUBCHAPTER F. MICRO-BUSINESS DISASTER RECOVERY LOAN GUARANTEE
24 PROGRAM

25 Sec. 489.301. DEFINITIONS. In this subchapter:

26 (1) "Declared disaster" means a state of disaster
27 declared by the governor under Chapter 418.

1 (2) "Financial institution" includes a bank, trust
2 company, banking association, savings and loan association,
3 mortgage company, investment bank, credit union, and
4 nontraditional financial institution.

5 (3) "Micro-business" means a corporation,
6 partnership, sole proprietorship, or other legal entity that:

7 (A) is domiciled in this state and has at least 95
8 percent of its employees located in this state;

9 (B) is formed to make a profit; and

10 (C) employs not more than 20 employees.

11 (4) "Participating financial institution" means a
12 financial institution participating in the program.

13 (5) "Program" means the micro-business disaster
14 recovery loan guarantee program.

15 Sec. 489.302. MICRO-BUSINESS DISASTER RECOVERY FUND. (a)
16 The micro-business disaster recovery fund is a dedicated account in
17 the general revenue fund.

18 (b) The micro-business disaster recovery fund is composed
19 of:

20 (1) money appropriated by the legislature for the
21 implementation and administration of this subchapter;

22 (2) amounts received by the state from federal grants
23 or other sources;

24 (3) interest earned on the investment of money in the
25 micro-business disaster recovery fund;

26 (4) amounts transferred from the Texas economic
27 development bank fund; and

1 (5) any other amounts received under this subchapter
2 and required by the bank to be deposited in the micro-business
3 disaster recovery fund.

4 (c) Money in the micro-business disaster recovery fund may
5 be appropriated only to the bank for use in carrying out the
6 purposes of this subchapter.

7 Sec. 489.303. POWERS OF BANK IN ADMINISTERING
8 MICRO-BUSINESS DISASTER RECOVERY FUND. In administering the
9 micro-business disaster recovery fund, the bank has the powers
10 necessary to carry out the purposes of this subchapter, including
11 the power to invest money at the bank's discretion in obligations
12 determined proper by the bank.

13 Sec. 489.304. MICRO-BUSINESS DISASTER RECOVERY LOAN
14 GUARANTEE PROGRAM. (a) The bank shall establish and administer a
15 micro-business disaster recovery loan guarantee program in which
16 money in the micro-business disaster recovery fund is used to
17 guarantee loans made by participating financial institutions to
18 micro-businesses that have suffered economic injury as a result of
19 a declared disaster.

20 (b) The bank shall determine the eligibility of a financial
21 institution to participate in the program and may set a limit on the
22 number of eligible financial institutions that may participate in
23 the program.

24 (c) To participate in the program, an eligible financial
25 institution must enter into a participation agreement with the bank
26 that sets out the terms and conditions under which loans made to
27 micro-businesses recovering from a declared disaster will be

1 guaranteed.

2 (d) To qualify for a loan guarantee under the program, a
3 micro-business:

4 (1) must:

5 (A) be in good standing under the laws of this
6 state; and

7 (B) not owe delinquent taxes to a taxing unit of
8 this state before the date of the initial issuance of the disaster
9 declaration; and

10 (2) may not:

11 (A) have total revenue that exceeds the amount
12 for which no franchise tax is due under Section 171.002(d)(2), Tax
13 Code; or

14 (B) be a franchise, a national chain with
15 operations in this state, a lobbying firm, or a private equity firm
16 or backed by a private equity firm.

17 (e) A micro-business that receives a loan guarantee shall
18 apply the loan to working capital or to the purchase, construction,
19 or lease of capital assets damaged, reduced, or lost as a result of
20 the declared disaster.

21 Sec. 489.305. RULEMAKING AUTHORITY. The executive director
22 of the office shall adopt rules relating to the implementation of
23 the program and any other rules necessary to accomplish the
24 purposes of this subchapter.

25 Sec. 489.306. ANNUAL REPORT BY PARTICIPATING FINANCIAL
26 INSTITUTION. A participating financial institution shall submit an
27 annual report to the bank. The report must:

1 (1) provide information regarding outstanding loan
2 guarantees, loan guarantee losses, and any other information on
3 loan guarantees under the program the bank considers appropriate;

4 (2) state the total amount of loans that the bank has
5 guaranteed under this subchapter;

6 (3) include a copy of the financial institution's most
7 recent financial statement; and

8 (4) include information regarding the type and size of
9 micro-businesses with loan guarantees.

10 Sec. 489.307. ANNUAL REPORT TO LEGISLATURE. The bank shall
11 submit to the legislature an annual status report on the program's
12 activities.

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

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

18 (1) bond proceeds;

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

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

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

25 (b) A Type A or Type B corporation may obtain a loan from the
26 Texas small and rural community success fund program under
27 Subchapter E, Chapter 489, Government Code, for eligible projects

1 as authorized by this subtitle. To secure the loan, the Type A or
2 Type B corporation may pledge revenue from the sales and use tax
3 imposed by the corporation's authorizing municipality under
4 Chapter 504 or 505, as applicable, for the benefit of the
5 corporation.

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

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

24 (b) This section does not validate:

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

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

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

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

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

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

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

26 SECTION 8. The attorney general is required to implement a
27 provision of this Act only if the legislature appropriates money

1 specifically for that purpose. If the legislature does not
2 appropriate money specifically for that purpose, the attorney
3 general may, but is not required to, implement a provision of this
4 Act using other appropriations available for that purpose.

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