

BILL ANALYSIS

C.S.H.B. 4119
By: Guillen
International Relations & Economic Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas leverage fund is an economic development loan program that was created in 1992 by a master resolution of the former Texas Department of Commerce. However, it is set to expire soon if not continued by statute. It has been noted that such continuation and other revisions are needed, among other reasons, to allow the Texas Economic Development Bank to renew the letter of credit that currently backs its commercial paper notes, to avoid a payment shortfall of active program loans, and to provide for the program's authority to issue new loans. C.S.H.B. 4119 seeks to create, as a successor to the leverage fund program, the Texas small and rural community success fund as a trust fund held outside the state treasury by the comptroller of public accounts as trustee and to provide for the operation of the Texas small and rural community success fund program administered by the bank.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4119 establishes that the Texas small and rural community success fund program, as created by the bill, authorizes the continued operation, under a new name and with new provisions as added by the bill, of the Texas leverage fund program previously established.

C.S.H.B. 4119 amends the Government Code to create the Texas small and rural community success fund as a trust fund held outside the state treasury by the comptroller of public accounts as trustee. The bill requires the comptroller to hold money in the fund in escrow and in trust for and on behalf of the Texas Economic Development Bank and the owners of bonds issued under the bill's provisions. The bill provides for the composition of the fund and limits use of the fund to the following:

- to make loans to economic development corporations for eligible projects as generally authorized by the Development Corporation Act and as authorized by the act's provisions relating to Type A corporations and Type B corporations;
- to pay the bank's necessary and reasonable costs of administering the program established by the bill's provisions, including the payment of letter of credit fees and credit rating fees;
- to pay the principal of and interest on bonds issued under the bill's provisions regarding revenue-based bonds;

- to pay reasonable fees and other costs incurred by the bank in administering the fund; and
- for any other purpose authorized by the bill's provisions.

C.S.H.B. 4119 provides the following with respect to the fund:

- the bank is required to administer the fund and has the powers, including those specified by the bill, that are necessary to carry out the purposes of the bill's provisions;
- the bank, in coordination with the comptroller, may provide for the establishment and maintenance of separate accounts or sub-accounts in the 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 the bill;
- pending use, the comptroller may invest and reinvest the money in the fund in investments authorized by law for state funds and earnings on the investments must be credited to the fund;
- the bank may use money in the fund for the purposes specified by and according to the procedures established by the bill's provisions; and
- the state may take action with respect to the fund only as specified by the bill's provisions and only in accordance with the resolutions of the executive director of the Texas Economic Development and Tourism Office (TEDTO) adopted under the bill's provisions.

C.S.H.B. 4119 authorizes the use of revenue-based bonds, sold at public or private sale, to provide funding for economic development purposes as authorized by the Texas Constitution and the bill's provisions. The bank or TEDTO may provide for the issuance, sale, and retirement of bonds, including obligations in the form of commercial paper notes. The bill provides the following limitations that must be stated plainly on the face of each bond:

- 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 including loan repayments secured by a pledge of the local economic development sales and use tax revenues imposed by municipalities for the benefit of Type A or Type B economic development corporations;
- the bonds do not constitute an indebtedness of the state, TEDTO, or the bank in the meaning of the Texas Constitution or of any statutory limitation; and
- the bonds do not constitute a pecuniary liability of the state, TEDTO, or the bank or constitute a charge against the general credit of the state, TEDTO, or the bank or against the taxing power of this state.

The executive director of TEDTO by resolution may provide for the bonds, among other things, to be executed and delivered at any time in one or more series as a single issue or as several issues and to be of a term authorized by the executive director, not to exceed 40 years from their date. The bonds are subject to review and approval by the attorney general and the bill sets out the state's pledge to and agreement with the bank with respect to not limiting or altering certain vested rights of the bank until the bonds and certain prescribed conditions are fully met and discharged.

C.S.H.B. 4119 provides for the following:

- with respect to bond sale and issuance:
 - authorized payments of expenses, premiums, and insurance premiums from bond sale proceeds; and
 - the authorization for the bank to exercise certain powers granted to the governing body of an issuer in connection with the issuance of obligations for certain public improvements; and
- with respect to agreements and provisions in bonds contained in an authorizing resolution:
 - an authorization of certain enforcement provisions in the event of certain defaults;

- a prohibition against the bank, in making an agreement or provision, incurring a pecuniary liability of the state, TEDTO, or the bank or a charge against the general credit of the state, TEDTO, or the bank or against the taxing powers of the state;
- a specification that a breach of an applicable resolution, a breach of an applicable bond agreement, or a default under bonds issued under the bill's provisions does not constitute such a pecuniary liability or such a charge; and
- an authorization regarding the designation of a trustee or trustees under a security agreement or a depository specified by the security agreement.

C.S.H.B. 4119 sets out provisions regarding the following:

- the process by which the revenue bonds issued under the bill's provisions may be refunded by the bank by its issuance of refunding bonds, with proceeds applied only for a purpose for which the bonds were issued, with certain exceptions as established by the bill; and
- the fiduciaries and other persons for home bonds issued under the bill's provisions are legal investments.

C.S.H.B. 4119 amends the Local Government Code to authorize a Type A corporation or a Type B corporation to obtain a loan from the Texas small and rural community success fund program for eligible projects. The bill authorizes the Type A or Type B corporation, in order to secure the loan, to pledge revenue from the sales and use tax imposed by the corporation's authorizing municipality under applicable provisions for the benefit of the corporation.

C.S.H.B. 4119 validates certain governmental acts and proceedings applicable to the Texas leverage fund program and provides that implementation of a provision of the bill by the comptroller, TEDTO, Texas Economic Development Bank, or attorney general is mandatory only if a specific appropriation is made for that purpose.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4119 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include the definitions included in the original providing the following:

- for purposes of the Development Corporation Act, that a project includes the land, equipment, expenditures, and improvements that are found by a corporation's board of directors to be suitable for the expansion of broadband network infrastructure; and
- for purposes of the act with respect to an applicable small business:
 - that an applicable small business is a corporation, partnership, sole proprietorship, or other legal entity that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees residing in Texas; and
 - that a project includes expenditures that are found by a corporation's board of directors to be suitable to assist the economic recovery of applicable small businesses whose operation was restricted by an order, proclamation, or regulation issued by the governor or the governing body of a political subdivision during a declared state of disaster under the Texas Disaster Act of 1975.