

BILL ANALYSIS

Senate Research Center

C.S.S.B. 132
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Natural Resources & Economic Development
4/18/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 132 authorizes the Office of the Governor Economic Development & Tourism division to continue operation of the existing Texas Leverage Fund commercial paper note program currently within the Texas Economic Development Bank (EDB). The program is set to expire in 2022 if not continued in statute.

The Texas Leverage Fund (TLF) is a long-standing economic development loan program that was created in 1992 by a Master Resolution of the former Texas Department of Commerce to allow local Economic Development Corporations (EDCs) to leverage their economic development sales and use taxes for the support of local economic development projects.

The TLF program has both short-term and long-term issues that require legislative amendments to authorize the EDB to make changes to the original Master Resolution:

(1) Short-term: Credit support for the commercial paper notes issued for the TLF program is currently provided via a Letter of Credit issued by JP Morgan. This credit facility will expire on August 31, 2019. Legislative amendments are necessary to authorize the EDB to strengthen the statutory authority of the program to allow EDB to amend the Master Resolution to secure a new long term Letter of Credit.

(2) Long-term: Per terms of the 1992 Master Resolution, the commercial paper program is scheduled to expire September 1, 2022; however, there are active loans in the TLF program that have a maturity date that extends beyond 2022. Legislative amendments are necessary to authorize the EDB to amend the Master Resolution to extend the date to avoid a payment shortfall. Additionally, no new loans are being processed at this time due to the program's expiration date on September 1, 2022.

Legislative changes are needed to allow EDB to amend the Master Resolution to extend the life of the program and allow for new loans to be made. Without this legislation, the program cannot make any new loans, therefore it cannot increase its estimated revenue through interest paid on loans.

S.B. 132 would re-enact and update former sections of the Government Code that were in effect at the time the TLF program was originally created in 1992. The Office of the Attorney General has recommended moving the fund back outside the Treasury to comply with the authorizing statute and avoid any conflict. The proposed legislation would allow the TLF program to continue to operate, authorize the EDB to make amendments to the Master Resolution to extend and update the operation of the program, fulfill all future financial obligations to avoid a default, and allow the EDB to more efficiently run the program. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 132 amends current law relating to operation of the Texas leverage fund program administered by the Texas Economic Development Bank.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 489, Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. TEXAS LEVERAGE FUND

Sec. 489.251. DEFINITION. Defines "leverage fund."

Sec. 489.252. TEXAS LEVERAGE FUND. (a) Provides that the Texas leverage fund is created as a trust fund held outside the state treasury by the comptroller of public accounts of the State of Texas (comptroller) as trustee. Requires the comptroller to hold money in the leverage fund in escrow and in trust for and on behalf of the Texas Economic Development Bank (bank) and the owners of bonds issued under Section 489.253.

(b) Provides that the leverage fund consists of proceeds from the issuance of bonds under Section 489.253, payments of principal and interest on loans made under this subchapter, loan origination fees imposed on loans made under this subchapter, investment earnings described by Subsection (e), and any other money received by the bank under this subchapter.

(c) Provides that the leverage fund may be used only to make loans to economic development corporations for eligible projects as authorized by Chapters 501 (Provisions Governing Development Corporations), 504 (Type A Corporations), and 505 (Type B Corporations), Local Government Code, 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; to pay the principal of and interest on bonds issued under Section 489.253, to pay reasonable fees and other costs incurred by the bank in the administering the leverage fund, and for any other purpose authorized by this subchapter.

(d) Authorizes the bank, in coordination with the comptroller, to 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. Requires the accounts and sub-accounts to be kept and held in escrow and in trust as provided by Subsection (a).

(e) Authorizes the comptroller to invest and reinvest the money in the leverage fund in investments authorized by the law for state funds, pending use. Requires earnings on the investments to be credited to the leverage fund.

(f) Authorizes the bank to use money in the leverage fund for the purposes specified by and according to the procedures established by this subchapter. Authorizes this state to 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 Texas Economic Development and Tourist Office (executive director; office) adopted under Section 489.253.

Sec. 489.253. REVENUE-BASED BONDS AUTHORIZED. (a) Authorizes the bank, the office, or the office's successor agency to 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 (Programs and Loans or Grants of Public Money for Economic Development), Article III, Texas Constitution, and this subchapter.

(b) Provides that the bonds are special obligations of the bank and the principal of and interest on the bonds is required to 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. Provides that the bonds do not constitute an indebtedness of this state, the office, or the bank in the meaning of the Texas Constitution or any statutory limitation. Provides that the bonds do not constitute a pecuniary liabilities 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. Requires the limitations provided by this subsection to be stated plainly on the face of each bond.

(c) Authorizes the executive director of the office by resolution to 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 (Computation of Net Effective Interest Rate), on the bonds may not exceed a rate equal to the maximum annual interest rate established by Section 1204.006 (Maximum Interest Rate); and

(9) contain provisions not inconsistent with this subchapter.

(d) Provides that bonds issued under this section are subject to review and approval by the Texas attorney general (attorney general) in the same manner and with the same effect as may be required by law, including Chapter 1202 (Examination and Registration of Public Securities) or 1371 (Obligations For Certain Public Improvements), as applicable.

(e) Provides that 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. Authorizes the bank to 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) Authorizes bonds issued under Section 489.253 to 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 that authorize issuance of the bonds provide.

(b) Authorizes the bank, from the proceeds of the sale of the bonds, to 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) Authorizes the bank, in connection with the issuance of its bonds, to exercise the powers granted to the governing body of an issuer in connection with the issuance of obligations under Chapter 1371. Provides that 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) Authorizes a resolution of the executive director that authorizes bonds to be issued under Section 489.253 or a security agreement, including a related indenture or trust indenture, to 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. Prohibits the bank, in making an agreement or provision, from incurring a pecuniary liability of this state, the office, or the bank or from incurring a charge against the general credit of this state, the office, or the bank, or against the taxing powers of this state.

(b) Authorizes the resolution of the executive director authorizing the issuance of the bonds and a security agreement securing the bonds to 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 (Payments to Debtors or Delinquents Prohibited) and 40.0551 (Deductions for Repayment of Certain Debts or Tax Delinquencies), 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. Authorizes a security agreement to provide that, in the event of default 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) Provides that a breach of a resolution of the executive director 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 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.

(d) Authorizes the trustee or trustees under a security agreement or a depository specified by the security agreement to 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) Authorizes bonds issued under Section 489.253 to 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. Authorizes refunding to 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) Prohibits a holder of refunded bonds from being 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) Authorizes refunding bonds having a final maturity not to exceed that permitted for other bonds issued under Section 489.253 to be issued under the same terms and conditions provided by this subchapter for the issuance of bonds or to be used in the manner provided by statute, including Chapters 1207 and 1371.

Sec. 489.257. USE OF BOND PROCEEDS. Authorizes the proceeds from the sale of bonds issued under this subchapter to be applied only for a purpose for which the bonds were issued, except that any secured interest received in the sale is required to 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 is required to be applied to the payment of the principal of or interest on the bonds, and that any premium received in the sale of the bonds is required to be applied in accordance with Section 1201.042(d) (relating to authorization of an issuer to spend a premium received by the issuer as part of the purchase price of public securities sold at a public or private sale in a certain manner).

Sec. 489.258. BONDS AS LEGAL INVESTMENTS FOR FIDUCIARIES AND OTHER PERSONS. (a) Provides that 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 are authorized to invest funds, including capital, in their control or belonging to them.

(b) Provides that the bonds of the bank issued under this subchapter are also securities that are authorized to 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, notwithstanding any other provision of law.

Sec. 489.259. ADMINISTRATION OF LEVERAGE FUND. Requires the bank to administer the leverage fund. Provides that 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 make, execute, and deliver contracts, conveyances, and other instruments and to impose charges and provide for reasonable penalties for delinquent payments or performance in connection with any transaction.

SECTION 2. Amends Section 501.008, Local Government Code, as follows:

Sec. 501.008. LIMITATION ON FINANCIAL OBLIGATION. (a) Creates Subsection (a) from existing text. Provides that except as provided by Subsection (b), a corporation may not incur financial obligation that cannot be paid from:

(1)–(4) makes no changes to these subdivisions.

(b) Authorizes A Type A or Type B corporation to obtain a loan from the Texas leverage fund program under Subchapter E, Chapter 489, Government Code, for eligible projects as authorized by this subtitle. Authorizes the Type A or Type B corporation, to secure the loan, to 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. Provides that 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 Sessions, 1997, and by Chapter 814 (S.B. 275), Acts of the 78th Legislature, Regular Session, 2003.

SECTION 4. (a) Provides that except as provided by Subsection (b) of this section, the governmental acts and proceedings of the comptroller, the office, and the 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) Provides that this section does not validate an act that, under the law of this state at the time the act occurred, was a misdemeanor or felony or a matter that on the effective date of this Act is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court or has been held invalid by a final judgment of a court.

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

SECTION 6. Provides that 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. Authorizes, but does not require, the Texas Economic Development and Tourism Office, if the legislature does not appropriate money specifically for that purpose, to implement a provision of this Act using other appropriations available for that purpose.

SECTION 7. Provides that the bank is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, the bank, if the legislature does not appropriate money specifically for that purpose, to implement a provision of this Act using other appropriations available for that purpose.

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

SECTION 9. Effective date: upon passage or September 1, 2019.