

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1465
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Natural Resources & Economic Development
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1465 authorizes the continued operation of the Texas leverage fund program (TLF) under the new name of the Texas small and rural community success fund program. The TLF has been inactive since 2015. This has been detrimental to small and rural communities which have historically participated in the program.

When the program was active, Type A and Type B economic development corporations (EDCs) in small and rural communities would leverage their economic development sales and use taxes for the support of local economic development projects. These communities often participated in the program because of the inability to make an initial capital investment, but could make guaranteed loan payments over time by pledging proceeds from Type A or Type B taxes. According to the 2020 annual status report from the Texas Economic Development Bank, no other program is available to fill the purpose.

C.S.S.B. 1465 would reestablish the original enabling legislation and update former sections of the Texas Government Code that were in effect at the time the TLF program was originally created in 1992. Without the enabling legislation, the program cannot continue to operate. To help small business owners in Texas, C.S.S.B. 1465 establishes the micro-business disaster loan guarantee program, administered by the Texas Economic Development Bank within the Governor's Office Trusteed Programs. The program focuses on helping micro-businesses across the state that have been affected by COVID-19 pandemic or any other declared disaster.

C.S.S.B. 1465 amends current law 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.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive director of the Texas Economic Development and Tourism Office in SECTION 1 (Section 489.305, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 489, Government Code, by adding Subchapters E and F, as follows:

SUBCHAPTER E. TEXAS SMALL AND RURAL COMMUNITY SUCCESS FUND

Sec. 489.251. DEFINITION. Defines "fund."

Sec. 489.252. TEXAS SMALL AND RURAL COMMUNITY SUCCESS FUND. (a) Provides that the Texas small and rural community success fund (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 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 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) Authorizes the fund to be used only:

(1) 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;

(2) 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;

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

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

(5) 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 fund, including interest and sinking accounts, reserve accounts, program accounts, or other accounts. Requires that the accounts and sub-accounts be kept and held in escrow and in trust as provided by Subsection (a).

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

(f) Authorizes the bank to use money in the 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 fund only as specified by this subchapter and only in accordance with the resolutions of the executive director of the Texas Economic Development and Tourism Office (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 requires that the principal of and interest on the bonds 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 of any statutory limitation. Provides that the bonds do 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. Requires that the limitations provided by this subsection 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 is required to 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 is prohibited from exceeding 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 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 of the office 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, however, 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 of the office 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, however, in making such an agreement or provision, from incurring:

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

(2) 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 of the office 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 are authorized to be enforced as provided by Sections 403.055 and 403.0551, 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 in payment or the violation of an agreement contained in the security agreement, a trustee under the security agreement is authorized to 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 of the office 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 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 issued in the manner provided by statute, including Chapters 1207 (Refunding Bonds) 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:

(1) 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

(2) any premium received in the sale of the bonds is required to be applied in accordance with Section 1201.042(d).

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, notwithstanding any other provision of law, 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.

Sec. 489.259. ADMINISTRATION OF FUND. Requires the bank to administer the fund. Provides that, in administering the 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.

SUBCHAPTER F. MICRO-BUSINESS DISASTER RECOVERY LOAN GUARANTEE PROGRAM

Sec. 489.301. DEFINITIONS. Defines "declared disaster," "financial institution," "micro-business," "participating financial institution," and "program" in this subchapter.

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

(b) Provides that the micro-business disaster recovery fund is composed of:

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

- (2) amounts received by the state from federal grants or other sources;
- (3) interest earned on the investment of money in the micro-business disaster recovery fund;
- (4) amounts transferred from the Texas economic development bank fund; and
- (5) any other amounts received under this subchapter and required by the bank to be deposited in the micro-business disaster recovery fund.

(c) Authorizes money in the micro-business disaster recovery fund to be appropriated only to the bank for use in carrying out the purposes of this subchapter.

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

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

(b) Provides that the bank is required to determine the eligibility of a financial institution to participate in the program and is authorized to set a limit on the number of eligible financial institutions that are authorized to participate in the program.

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

(d) Provides that, to qualify for a loan guarantee under the program, a micro-business:

(1) is required to be in good standing under the laws of this state and to not owe delinquent taxes to a taxing unit of this state before the date of the initial issuance of the disaster declaration; and

(2) is prohibited from having total revenue that exceeds the amount for which no franchise tax is due under Section 171.002(d)(2) (relating to the certain threshold in which a taxable entity is not required to pay any franchise tax and is not considered to owe any franchise tax for a period), Tax Code, or from being a franchise, a national chain with operations in this state, a lobbying firm, or a private equity firm or backed by a private equity firm.

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

Sec. 489.305. RULEMAKING AUTHORITY. Requires the executive director of the office to adopt rules relating to the implementation of the program and any other rules necessary to accomplish the purposes of this subchapter.

Sec. 489.306. ANNUAL REPORT BY PARTICIPATING FINANCIAL INSTITUTION. Requires a participating financial institution to submit an annual report to the bank. Requires that the report:

- (1) provide information regarding outstanding loan guarantees, loan guarantee losses, and any other information on loan guarantees under the program the bank considers appropriate;
- (2) state the total amount of loans that the bank has guaranteed under this subchapter;
- (3) include a copy of the financial institution's most recent financial statement; and
- (4) include information regarding the type and size of micro-businesses with loan guarantees.

Sec. 489.307. ANNUAL REPORT TO LEGISLATURE. Requires the bank to submit to the legislature an annual status report on the program's activities.

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

Sec. 501.008. LIMITATION ON FINANCIAL OBLIGATION. (a) Creates this subsection from existing text and creates an exception under Subsection (b) to the prohibition against a corporation incurring a financial obligation that cannot be paid from certain bonds, revenue, or money. Makes a nonsubstantive change.

- (b) Authorizes a Type A or Type B corporation to obtain a loan from the Texas small and rural community success fund program under Subchapter E, Chapter 489, Government Code, for eligible projects as authorized by Subtitle C1 (Additional Planning and Development Provisions Applying to More Than One Type of Local Government). 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 fund authorizes the continued operation, under a new name and with new provisions, as added by this Act, of the Texas leverage fund 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 Session, 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, 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. Requires the comptroller to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Provides that if the legislature does not appropriate money specifically for that purpose, the comptroller is authorized, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 6. Requires the office to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Provides that if the legislature does not appropriate money specifically for that purpose, the office is authorized, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

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

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

SECTION 9. Effective date: upon passage or September 1, 2021.