

CHAPTER 542

H.B. No. 1684

AN ACT

relating to the farm and ranch finance program; granting the authority to issue bonds; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 4, Agriculture Code, is amended by adding Chapter 59 to read as follows:

CHAPTER 59. FARM AND RANCH FINANCE PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.001. DEFINITIONS. *In this chapter:*

- (1) "Authority" means the Texas Agricultural Finance Authority created by Chapter 58 of this code.
- (2) "Board" means the Veterans Land Board.
- (3) "Bond" means a general obligation bond, certificate, note, or other obligation issued or incurred by the authority under this chapter as provided by Article III, Section 49-f, of the Texas Constitution.
- (4) "Commissioner" means the commissioner of agriculture.
- (5) "Fund" means the farm and ranch finance program fund.
- (6) "Program" means the farm and ranch finance program.

Sec. 59.002. DUTIES. (a) *The authority shall administer the program.*

(b) *The board shall administer the fund. At the request of the authority, the board shall make available to the authority money from the fund to pay debt service on the program's bonds and to provide financial assistance to borrowers to purchase farm or ranch land as provided by this chapter.*

Sec. 59.003. LIMITED IMMUNITY FROM SUIT OR LIABILITY. *The authority or a member of the board may be sued and held personally liable for damages that result from an official act or omission only if the act or omission is corrupt or malicious.*

[Sections 59.004–59.010 reserved for expansion]

SUBCHAPTER B. BONDS

Sec. 59.011. **BONDS.** (a) *The authority may provide by order or resolution for the issuance and sale of negotiable bonds authorized by Article III, Section 49-f, of the Texas Constitution. The proceeds from the sale of the bonds constitute the fund.*

(b) *Subchapter D, Chapter 58, Agriculture Code, as it relates to the issuance, sale, and refunding of bonds, applies to the authority's issuance, sale, and refunding of bonds under this chapter to finance the fund.*

Sec. 59.012. **DISPOSITION OF BOND PROCEEDS.** (a) *Except as provided by Subsections (b) and (c) of this section, proceeds from the sale of the bonds, other than refunding bonds, shall be deposited in the state treasury to the credit of the fund.*

(b) *The board may provide for transferring to the interest and sinking account from the proceeds of the sale of bonds or from the available money in the fund directly an amount that, together with the accrued interest received, is sufficient to pay interest becoming due during the fiscal year in which the bonds are sold and to establish appropriate reserves.*

(c) *At the timely request of the authority, the board shall provide for transferring from the proceeds of the sale of bonds or from available money in the fund directly an amount certified by the authority as reasonable and necessary to cover the costs of administering the program. That amount shall be deposited in the state treasury to the credit of a special fund to be known as the farm and ranch administrative expense fund.*

Sec. 59.013. **PAYMENT OF PRINCIPAL AND INTEREST.** *The authority shall arrange for payment of the principal of bonds as they mature and the interest on the bonds as it becomes payable.*

Sec. 59.014. **APPROVAL BY ATTORNEY GENERAL.** *Before the bonds are delivered to the purchasers, the attorney general shall examine the record relating to the bonds. If the record demonstrates that the bonds have been issued in accordance with the Texas Constitution and this chapter, the attorney general shall approve the bonds.*

Sec. 59.015. **USE OF FUND TO PAY COSTS OF ISSUANCE AND DEBT SERVICE.** (a) *The authority may use money in the fund attributable to the issuance and sale of bonds to pay:*

- (1) *legal fees and fees for financial advice the authority finds necessary for the sale of bonds;*
- (2) *the expense of publishing notice of sale of an installment of bonds;*
- (3) *the expense of printing the bonds;*
- (4) *the expense of issuing the bonds, including the actual costs of travel, lodging, and meals of officers, members, or employees of the board, directors or employees of the authority, the comptroller, the state treasurer, or the attorney general that the authority finds necessary to implement the issuance, rating, or delivery of the bonds;*
- (5) *the cost of manually signing the bonds;*
- (6) *remuneration to any agent employed by the authority to pay the principal of and interest on the bonds;*
- (7) *any amount required to be paid to maintain the federal tax exemption of interest on the bonds; or*
- (8) *any other cost, fee, or expense relating to the issuance of the bonds.*

(b) *If, during the existence of the fund or during the period any bonds are payable from the fund, the authority determines that there will not be sufficient money in the fund during the following fiscal year to pay the principal of or interest on the bonds that is to come due during the following fiscal year, the comptroller shall transfer to the fund from the first money coming into the state treasury not otherwise appropriated by the constitution an amount sufficient to pay the obligations.*

(c) *The money transferred to the fund under Subsection (b) of this section shall be used to pay the obligations only if at the time the principal or interest becomes due there is not sufficient money in the fund to pay the amount due.*

Sec. 59.016. INVESTMENTS. (a) *The authority shall give timely instruction to the board of the dates on which principal on bonds matures and interest becomes payable. The board shall administer the fund accordingly.*

(b) *Except as provided by Subsection (c) of this section, money in the fund that is not immediately committed to paying principal of and interest on the bonds or to paying expenses as provided by Section 59.015 of this code may be invested by the board in:*

(1) *a direct security repurchase agreement or reverse security repurchase agreement made with a state or national bank domiciled in this state or with a primary dealer approved by the federal reserve system;*

(2) *a direct obligation of or obligation the principal and interest of which are guaranteed by the United States government;*

(3) *a direct obligation of or obligation guaranteed by the Federal Home Loan Banks, the Federal National Mortgage Association, the Federal Farm Credit System, the Student Loan Marketing Association, the Federal Home Loan Mortgage Corporation, or a successor to one of those organizations;*

(4) *a bankers' acceptance that:*

(A) *is eligible for purchase by a member of the federal reserve system;*

(B) *matures in 270 days or less; and*

(C) *is issued by a bank that has received the highest short-term credit rating by a nationally recognized investment rating firm;*

(5) *commercial paper that:*

(A) *matures in 270 days or less; and*

(B) *has received the highest short-term credit rating by a nationally recognized investment rating firm;*

(6) *a contract that is written by the board in which the board grants the purchaser the right to purchase securities in the board's marketable securities portfolio at a specified price over a specified period and for which the board is paid a fee and that specifically prohibits naked-option or uncovered option trading;*

(7) *an obligation of a state or of an agency, county, city, or other political subdivision of a state or a mutual fund composed of those obligations;*

(8) *an investment instrument, obligation, or other evidence of indebtedness the payment of which is directly or indirectly guaranteed by the full faith and credit of the United States government;*

(9) *an investment, account, depository receipt, or deposit that is fully:*

(A) *insured by the Federal Deposit Insurance Corporation or a successor to that organization; or*

(B) *secured by a security described by Subdivision (2), (3), or (8) of this subsection;*

(10) *a collateralized mortgage obligation fully secured by securities or mortgages issued or guaranteed by the Government National Mortgage Association (GNMA) or any entity identified by Subdivision (3) of this subsection;*

(11) *a security or evidence of indebtedness issued by the Farm Credit System Financial Assistance Corporation, the Private Export Funding Corporation, or the Export-Import Bank; and*

(12) *any other investment authorized for investment of state funds by the state treasurer under Section 404.024, Government Code.*

(c) *The board may not invest in or purchase obligations of a private corporation or other private business entity doing business in the Republic of South Africa unless the corporation or other entity:*

(1) *has:*

(A) *adopted the Statement of Principles for South Africa as they existed in 1987, as described in the Report on the Signatory Companies to the Statement of Principles for South Africa published by Arthur D. Little, Inc., Cambridge, Massachusetts, and has*

obtained a performance rating in Category 1 or 2 of the Statement of Principles for South Africa rating system as determined by Arthur D. Little, Inc.; or

(B) agreed to the Code of Conduct that is enforced by the United States Department of State under Section 208, Comprehensive Anti-Apartheid Act of 1986 (Pub. L. No. 99-440) and has received a rating of "Making Satisfactory Progress"; and

(2) does not supply strategic products or services for use by the government, military, or police of the Republic of South Africa.

(d) In this section:

(1) "Direct security repurchase agreement" means an agreement under which the board buys, holds for a specified time, and then sells back any of the following securities, obligations, or participation certificates:

(A) a United States government security;

(B) a direct obligation of or an obligation the principal and interest of which are guaranteed by the United States government;

(C) a direct obligation of or an obligation guaranteed by the Federal Home Loan Banks, the Federal National Mortgage Association, the Federal Farm Credit System, the Student Loan Marketing Association, the Federal Home Loan Mortgage Corporation, or a successor to one of those organizations; or

(D) any other investment instrument, obligation, or other evidence of indebtedness the payment of which is directly or indirectly guaranteed by the full faith and credit of the United States government.

(2) "Doing business in the Republic of South Africa" means conducting or performing manufacturing, assembly, or warehousing operations in the Republic of South Africa or, in the case of a bank or other financial institution, lending money to the government of the Republic of South Africa or any of its agencies or instrumentalities.

(3) "Market value" means the fair and reasonable prevailing price at which a security is being sold on the open market at the time of the appraisal of the security by the board.

(4) "Reverse security repurchase agreement" means an agreement under which the board sells and after a specified time buys back any of the securities, obligations, or participation certificates listed by Subdivision (1) of this subsection.

(5) "Strategic products or services" means articles designated as arms, ammunition, or implements of war as provided by 22 C.F.R. Part 121 or data processing equipment or computers sold for military or police use or for use in connection with restriction on travel in the Republic of South Africa by residents of that country.

[Sections 59.017–59.020 reserved for expansion]

SUBCHAPTER C. ADMINISTRATION

Sec. 59.021. **FUND.** (a) The farm and ranch finance program fund is a fund in the state treasury.

(b) At the direction of the authority, money received from the state or federal government or from any other person, in addition to proceeds from bonds issued under this chapter, may be deposited to the credit of the fund.

(c) The authority may provide for establishing and maintaining separate accounts in the fund, including program accounts, an interest and sinking account, a reserve account, and any other accounts provided for by resolution of the authority.

(d) Money received as repayment of financial assistance shall be deposited first in the interest and sinking account as provided by resolution of the authority authorizing its bonds until that account is fully funded as provided by resolution of the authority.

(e) The fund and each account in the fund shall be kept and maintained at the direction of the authority and held in trust by the state treasurer for and on behalf of the authority and the owners of the bonds issued under this chapter.

(f) *The fund may be used only as provided by this chapter.*

(g) *Pending its use, money in the fund shall be invested as provided by the resolution authorizing issuance of the bonds.*

(h) *The authority may receive, and shall deposit in the fund, appropriations, grants, donations, earned federal funds, and the proceeds of any investment pools operated by the state treasurer.*

Sec. 59.022. *RULES. (a) The authority shall adopt rules governing application for financial assistance under this chapter. The authority may adopt rules it considers necessary to administer the program or considers in the best interest of the program. The authority may adopt rules concerning the sale of land acquired by the authority under this chapter by default, foreclosure, forfeiture, or any other means. The authority shall adopt collateral or security requirements to ensure the full repayment of financial assistance granted under this chapter. The authority may approve any extension of financial assistance under this chapter or may delegate that approval authority to the commissioner.*

(b) *The board may adopt rules it considers necessary to administer the fund or considers in the best interest of the fund, including rules on the investment of the fund.*

(c) *The authority may set and collect fees the authority considers reasonable and necessary to cover the expenses of administering the program or considers in the best interest of the program. Those fees shall be deposited in the state treasury to the credit of the farm and ranch administrative expense fund. An applicant for financial assistance participating in the program shall pay the costs of applying for, participating in, and administering and servicing the program, in amounts the authority considers reasonable and necessary. Any cost not paid by an applicant shall be paid from the fund.*

Sec. 59.023. *POWERS OF AUTHORITY. In addition to the powers granted to the authority under Section 58.022 of this code, the authority has the power necessary to accomplish the purposes and carry out the programs provided by this chapter, including the power:*

(1) *to adopt and enforce bylaws, rules, and procedures necessary to carry out this chapter;*

(2) *to establish, charge, and collect a fee, charge, or penalty in connection with a program, service, or activity provided by the authority under this chapter;*

(3) *to issue bonds, provide for and secure the payment of the bonds, and provide for the rights of the owners of the bonds, in the manner and to the extent permitted by this chapter;*

(4) *to purchase, hold, cancel, or resell or otherwise dispose of its bonds, subject to any restrictions and any resolution authorizing the issuance of its bonds;*

(5) *to own, rent, lease, or otherwise acquire, accept, or hold any interest in real, personal, or mixed property, by purchase, exchange, gift, assignment, transfer, foreclosure, mortgage, sale, lease, or otherwise;*

(6) *to hold, manage, operate, or improve real, personal, or mixed property;*

(7) *to sell, lease, encumber, mortgage, exchange, donate, convey, or otherwise dispose of any of its property or any interest in its property, deed of trust, or mortgage lien owned by it, under its control or custody, or in its possession and to release or relinquish any right, title, claim, lien, interest, easement, or demand, including any equity or right of redemption in property foreclosed by it, by public or private sale, with or without public bidding;*

(8) *to lease or rent any improvement, land, or facility from any person;*

(9) *to make a secured or unsecured loan to provide financial assistance as provided by this chapter, including the refunding of an outstanding obligation, mortgage, or advance used for those purposes, and to charge and collect interest on those loans for loan payments and on terms and conditions the authority considers advisable that are not in conflict with this chapter;*

(10) to purchase or acquire, sell, discount, assign, negotiate, or otherwise dispose of notes or other evidence of indebtedness of eligible applicants as the board determines or portions or portfolios of or participations in those evidences of indebtedness; and

(11) to sell and guarantee securities, whether taxable or tax exempt under federal law, in primary and secondary markets.

Sec. 59.024. **ELIGIBILITY.** To be eligible to borrow money from the fund, a person, at the time of application, must:

(1) be a member of a household that has derived at least 25 percent of its gross income from a farm or ranch for the preceding three years; and

(2) have a net worth of less than \$250,000.

Sec. 59.025. **DOWN PAYMENT.** (a) A loan under this chapter may not exceed \$150,000, less the down payment required under this subsection. If the purchase price of land purchased with financial assistance under this chapter is \$150,000 or less, the minimum down payment is equal to five percent of the purchase price. If the purchase price exceeds \$150,000, the minimum down payment is an amount equal to the sum of five percent of the purchase price plus the amount equal to the difference between the purchase price and \$150,000.

(b) The authority shall provide by rule for the period during which and the manner in which the down payment provided for under Subsection (a) of this section shall be paid to the authority.

(c) If the sale is not consummated, the authority shall refund the down payment to the borrower.

Sec. 59.026. **TRANSFER OF BORROWER'S INTEREST.** (a) The contract for a loan under this chapter must provide that transfer of ownership of the land without the authority's express written permission before the entire principal and interest due have been paid constitutes default under the contract.

(b) If the borrower dies or becomes financially incapacitated or if the borrower's interest in land is involuntarily transferred by court order or other proceedings, including bankruptcy, sheriff or trustee sale, or divorce, the land may be conveyed by the borrower or the borrower's heirs, administrators, executors, or successors in interest by complying with the rules adopted by the authority and obtaining the authority's written permission.

Sec. 59.027. **CHANGES IN USE.** (a) Before a borrower may use land acquired with financial assistance under this chapter for a primary purpose other than farming or ranching, the borrower must submit to the authority an application for approval of the change of use.

(b) As soon as practicable after an application for a change of use is received, the authority shall approve or deny the application and shall notify the borrower of the authority's decision.

(c) The loan contract must provide that using land acquired under this chapter for a purpose other than farming or ranching without the approval of the authority constitutes default under the contract.

Sec. 59.028. **APPRAISAL.** (a) Before the authority may loan money for the purchase of land under this chapter, the authority must have an appraisal of the property made to determine its value.

(b) An appraiser representing the authority must be qualified to give competent appraisals of land. The authority may contract with the board to use appraisers employed by the board.

Sec. 59.029. **PAYMENTS TO AUTHORITY UNDER CERTAIN LEASES.** If, during a period a person is indebted to the authority for land purchased with financial assistance under this chapter, the person executes or there exists a lease or contract of sale of oil, gas, or other minerals, chemicals, hard metals, timber, sand, gravel, or other material that covers the land purchased from the authority that would result in the depletion of the corpus of the land, not less than one-half of all bonus money, delay rentals, or royalties received as consideration for or payment under the oil, gas, or mineral lease and not less than one-half

of all money received under a lease or contract of sale of other minerals, chemicals, hard metals, timber, sand, gravel, or other material shall be paid to the authority by the lessee under the lease or the buyer under the contract of sale. The authority shall apply those payments to the satisfaction of the indebtedness.

Sec. 59.030. TERM OF LEASES. (a) A purchaser may not lease land purchased with financial assistance under this chapter for a term longer than 10 years, except:

(1) a lease for oil, gas, or other minerals may be for a term of not longer than 10 years, and as long thereafter as oil, gas, or other minerals are produced from the land in commercial quantities; and

(2) a lease for coal and lignite may be for a term of not longer than 40 years, and as long thereafter as coal and lignite are produced from the land in commercial quantities.

(b) A lease or a separate instrument to take effect in the future may not contain a provision for option or renewal of the lease or re-lease of the property for any term that would result in a fixed term of the lease that exceeds the maximum fixed term authorized under Subsection (a) of this section. A lease or instrument that contains an option renewal or re-lease agreement in violation of this section is void.

Sec. 59.031. DEATH OF A BORROWER. (a) If a borrower receiving financial assistance under this chapter dies while indebted to the state under a contract, the borrower's rights under this chapter and the contract devolve on the borrower's heirs, devisees, or personal representatives under the laws of this state, subject to all rights, claims, and charges of the authority.

(b) Default by an heir, devisee, or personal representative with respect to a right, claim, or charge of the authority has the same effect as default by the borrower before the borrower's death.

Sec. 59.032. UNENCUMBERED TITLE. The authority may establish a procedure by which a borrower acquiring land with a loan under this chapter may obtain title to a portion of the tract clear of encumbrances.

[Sections 59.033–59.045 reserved for expansion]

SUBCHAPTER D. OFFENSES; PENALTIES

Sec. 59.046. FALSE OR FICTITIOUS WRITTEN STATEMENT. (a) A person commits an offense if the person knowingly or intentionally makes, publishes, passes, files, or uses any false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or other written instrument relating to the procurement of financial assistance under this chapter or to the purchase, sale, or resale of land under this chapter or in connection with any transaction under this chapter.

(b) An offense under this section is a felony of the third degree.

Sec. 59.047. FRAUD. (a) A person commits an offense if the person defrauds a person of rights or benefits under this chapter or uses this chapter to defraud the state by an act of fraud, duress, deceit, coercion, or misrepresentation.

(b) An offense under this section is a felony of the third degree.

SECTION 2. Chapter 163, Natural Resources Code, is repealed.

SECTION 3. Subchapter D, Chapter 59, Agriculture Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

SECTION 4. On the effective date of this Act, the powers, duties, and obligations of the Veterans Land Board relating to the Farm and Ranch Finance Program, other than administration of the farm and ranch finance program fund, are transferred to the Texas Agricultural Finance Authority, and the Veterans Land Board shall transfer all property and records relating to the program in its custody to the Texas Agricultural Finance Authority.

SECTION 5. This Act takes effect September 1, 1993.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 4, 1993, by a non-record vote; passed by the Senate on May 21, 1993, by a viva-voce vote.

Approved June 8, 1993.

Effective Sept. 1, 1993.