

CHAPTER 728

H.B. No. 734

AN ACT

relating to the creation, administration, powers, duties, financing, and bond authority of the Texas Water Resources Finance Authority and to the sale to the authority of certain bonds.

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

SECTION 1. Subtitle C, Title 2, Water Code, is amended by adding Chapter 20 to read as follows:

CHAPTER 20. TEXAS WATER RESOURCES FINANCE AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 20.001. LEGISLATIVE PURPOSE AND POLICY. (a) The legislature declares that it is the policy of the state to:

(1) encourage and assist in the conservation and development of the water resources of the state for all useful and lawful purposes by the acquisition, improvement, extension, or construction of water resource conservation and development projects;

(2) encourage the optimum development of the feasible sites available for the construction or enlargement of dams and reservoirs for conservation of the public water of the state held in trust for the use and benefit of the public through assistance and participation in the acquisition and development of water storage facilities and systems or works necessary for filtration, treatment, and transportation of water from storage to points of treatment, filtration, and distribution;

(3) aid in the protection of the quality of the water resources of the state by encouraging and assisting in the financing of water quality enhancement projects; and

(4) aid in flood control, drainage, subsidence control, recharge, chloride control, agricultural soil and water conservation, and desalinization by encouraging and assisting in the financing of projects necessary to those purposes.

(b) The legislature finds that existing mechanisms for implementing the policies stated in Subsection (a) of this section may be enhanced by financing as provided in this subchapter.

(c) The legislature finds that to enhance the ability of the state to aid in the accomplishment of the purposes stated in Subsection (a) of this section, it is necessary

to create a water resources finance authority for the purpose of increasing the availability of financing by purchasing political subdivision bonds, and the legislature declares that the creation of the authority for this purpose is a public purpose and a use for which public money may be borrowed, spent, advanced, loaned, granted, or appropriated, and that this use serves a public purpose in improving or otherwise benefitting the people of this state. Also, the legislature determines and declares the necessity of enacting this subchapter is in the public interest.

Sec. 20.002. *DEFINITIONS AND CONSTRUCTION.* In this subchapter:

- (1) "Authority" means the Texas Water Resources Finance Authority.
- (2) "Authorized investments" means:
 - (A) direct obligations of or obligations the principal of and interest on which are guaranteed by the United States;
 - (B) direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, and Banks for Cooperatives;
 - (C) direct obligations of or obligations the principal of and interest on which are guaranteed by the State of Texas;
 - (D) bonds of cities, counties, and other political subdivisions of this state, other than bonds issued by a political subdivision to finance a project covered by this chapter;
 - (E) certificates of deposit of state and national banks that satisfy the requirements of Section 2.015, Chapter 240, Acts of the 69th Legislature, Regular Session, 1985 (Article 4393-1, Vernon's Texas Civil Statutes), and the rules of the State Depository Board and if the authority or a financial institution acting solely as agent for the authority possesses the collateral securing those deposits; and
 - (F) direct security repurchase agreements made only with state or national banks domiciled in the state under which the authority buys, holds in its possession or the possession of a financial institution acting solely as agent for the authority for a specified time, and then sells back any of the following securities, obligations, or participation certificates:
 - (i) United States government securities;
 - (ii) direct obligations of or obligations the principal of and interest on which are guaranteed by the United States; and
 - (iii) direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, and Banks for Cooperatives.
- (3) "Board" means the board of directors of the authority.
- (4) "Bond" means any type of interest-bearing obligation, including any bond, note, bond anticipation note, or other evidence of indebtedness under this chapter.
- (5) "Development board" means the Texas Water Development Board.
- (6) "Director" means a member of the board.
- (7) "Political subdivision" means a city, county, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, a state agency, an entity created by an interstate compact to which the state is a party, and any nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).
- (8) "Political subdivision bonds" means bonds, notes, or other securities that were issued by and any debt or other contractual obligations that were incurred by a political subdivision for the purpose of financing or refinancing projects for water resource development and conservation, water quality enhancement, flood control, drainage, subsidence control, recharge, chloride control, agricultural soil and water conservation, desalinization, or any combination of these purposes.

[Sections 20.003–20.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 20.011. CREATION OF AUTHORITY. (a) *The Texas Water Resources Finance Authority is created as a governmental entity and a body politic and corporate.*

(b) *The exercise of the powers and duties by the authority under this chapter constitutes an essential public purpose of the state in promoting the general welfare of the state and its citizens.*

Sec. 20.012. BOARD OF DIRECTORS. (a) *The authority is governed by a board of directors composed of the six directors of the development board.*

(b) *Each director serves on the board as an additional duty to those required of a member of the development board.*

Sec. 20.013. COMPENSATION; REIMBURSEMENT. *The directors are not entitled to receive compensation for their service on the board but are entitled to be reimbursed for their expenses in performing their powers and duties under this chapter.*

Sec. 20.014. ORGANIZATION OF BOARD. (a) *The board shall select from its membership one person to serve as chairman and one person to serve as vice-chairman.*

(b) *The person selected as chairman shall preside at meetings of the board and perform other duties directed by the board, and the vice-chairman shall preside at meetings of the board in the absence of the chairman.*

(c) *The board shall select persons to serve as secretary and treasurer for the authority. The persons selected as secretary and treasurer are not required to be directors and the positions of secretary and treasurer may be held by one person. The board also may appoint assistant secretaries.*

(d) *The secretary is the custodian of the minutes, books, records, and seal of the board, and the secretary and the treasurer shall perform duties as directed by the board.*

(e) *The chairman, vice-chairman, secretary, and treasurer shall be selected by the board at the first meeting of the board following January 31 of each odd-numbered year.*

Sec. 20.015. BOARD MEETINGS. (a) *The board shall hold regular meetings at times provided by its rules and shall meet at least once each calendar year.*

(b) *The board may hold special meetings at the call of the chairman or on request of three or more directors.*

Sec. 20.016. RULES AND RESOLUTIONS. *The board may adopt rules that are necessary to carry out this chapter and may take official action by adoption of a resolution or order.*

Sec. 20.017. LIABILITY. *A director or officer of the authority is not liable for any bonds issued or contracts executed by the authority.*

Sec. 20.018. GENERAL FISCAL AUTHORITY. *The board may acquire, hold, invest and reinvest in authorized investments, deposit, use, and dispose of the authority's revenues, income, receipts, funds, and money from every source and may select its depository or depositories, inside or outside the state, subject only to this chapter and any covenants with respect to the authority's bonds.*

Sec. 20.019. PROPERTY TAX EXEMPT. (a) *The property of the authority, its income, and its operations are exempt from all taxes and assessments imposed by the state and political subdivisions on property acquired or used by the authority under this chapter.*

(b) *If the authority is dissolved, all of its rights and properties vest in the state.*

Sec. 20.020. FISCAL YEAR; ANNUAL AUDIT. (a) *The authority shall operate on a fiscal year beginning September 1.*

(b) *The board shall have an audit made by the state auditor or by a certified public accountant of the authority's books and accounts for each fiscal year. The cost of the audit shall be paid by the authority.*

(c) *A copy of the audit shall be filed with the governor and with both houses of the legislature on or before January 1 of each year, except if the audit is being made by the state auditor and is not available by January 1, it shall be filed as soon as it is available.*

Sec. 20.021. AUTHORITY EXPENSES. (a) *Expenses incurred by the authority under this Act shall be paid solely from revenues or funds provided or to be provided under this chapter.*

(b) *This chapter may not be construed to authorize the authority to incur any indebtedness or liability on behalf of or payable by the state.*

(c) *The authority may not accept and is not entitled to receive any money appropriated by the state.*

(d) *The board shall use all available sources of revenue and income to pay expenses of operation and maintenance of the authority, to pay the premium, principal of and interest on bonds, and to create and maintain any reserves or funds provided by resolutions authorizing the issuance of bonds.*

Sec. 20.022. SUITS. *The authority may sue and be sued in the courts of this state in the name of the authority, and the courts shall take judicial notice of the creation of the authority.*

Sec. 20.023. SEAL. *The board may adopt a seal for the authority.*

[Sections 20.024–20.040 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 20.041. GENERAL POWERS AND DUTIES. *The authority may exercise any authority necessary or appropriate to carry out the purposes of this chapter.*

Sec. 20.042. GIFTS, GRANTS, ETC. *The board may request and accept for the authority grants, allocations, subsidies, guaranties, aid, contributions, services, labor, materials, gifts, and donations.*

Sec. 20.043. CONTRACTS. *The board on behalf of the authority may enter into contracts with any person to carry out this chapter.*

Sec. 20.044. PURCHASE OF INSURANCE. *The board may purchase for the authority and pay premiums on insurance of any type, in any amounts, and from any insurers the board considers advisable.*

Sec. 20.045. CONTRACTS WITH DEVELOPMENT BOARD. *The authority may enter into contracts with the development board and with consultants as necessary to perform the functions provided by this chapter.*

[Sections 20.046–20.070 reserved for expansion]

SUBCHAPTER D. POLITICAL SUBDIVISION BONDS

Sec. 20.071. PURCHASE OF POLITICAL SUBDIVISION BONDS. *The board may purchase political subdivision bonds including bonds that are acquired or owned by the development board.*

Sec. 20.072. ACQUISITION OF CERTAIN DEVELOPMENT BOARD BONDS. *If the board agrees to purchase political subdivision bonds from the development board that have not been purchased by the development board at the time of the agreement, the board may pay the purchase price for those bonds in exchange for the agreement of the development board to transfer those bonds to the board at the time the development board acquires them.*

Sec. 20.073. PRICE AND TERMS OF PURCHASE. *The board shall purchase political subdivision bonds at prices and under terms the board determines to be reasonable.*

Sec. 20.074. REVENUE BONDS. (a) The board may issue revenue bonds in the name of the authority to finance the cost of acquisition of political subdivision bonds and to pay the cost of bond issuance.

(b) The board may provide for payment of the premium, principal of, and interest on revenue bonds by pledging all or part of the revenue derived from political subdivision bonds acquired or to be acquired by the authority or from other sources of funds available to the authority.

Sec. 20.075. CONTRACT FOR OBTAINING COMPLIANCE WITH POLITICAL SUBDIVISION BONDS. The board shall enter into a contract with the development board for the development board to perform the functions required to ensure that the political subdivisions pay the debt service on political subdivision bonds and observe the conditions and requirements set forth in those bonds.

Sec. 20.076. ENFORCEMENT OF POLITICAL SUBDIVISION BONDS. (a) If there is a default in the payment of principal of or interest on political subdivision bonds purchased by the authority or any other default as defined in the proceedings or indentures authorizing the issuance of the bonds, the attorney general shall institute appropriate proceedings for mandamus or other legal remedies to compel the political subdivision or its officers, agents, and employees to cure the default by performing those duties that they are legally obligated to perform.

(b) The proceedings shall be brought and venue shall be in a district court of Travis County.

(c) This section is cumulative of any other rights or remedies to which the board may be entitled.

[Sections 20.077–20.100 reserved for expansion]

SUBCHAPTER E. BOND PROCEDURES

Sec. 20.101. ISSUANCE OF BONDS. For the issuance of bonds under this chapter, the board may exercise the authority granted to the governing body of an issuer with regard to issuance of obligations under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), to the extent that it is not inconsistent with this chapter.

Sec. 20.102. CONDITIONS FOR ISSUANCE OF BONDS. (a) Bonds may be issued as various series and issues.

(b) Bonds issued by the authority may mature serially or otherwise not later than 50 years after the date on which they are issued.

(c) The bonds may bear interest at a rate or rates determined in accordance with the resolution or order authorizing the issuance of the bonds but not to exceed the net effective interest rate authorized by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes).

(d) Rates of interest on bonds may be fixed, variable, floating, adjustable, or otherwise.

Sec. 20.103. PERIODIC DETERMINATION OF INTEREST. A bond resolution or order may provide for the periodic determination of interest rates without the board being required to give specific approval.

Sec. 20.104. PERSONS DESIGNATED TO ACT AS AGENTS OF BOARD. (a) A bond resolution or order may delegate to one or more officers, employees, or agents designated by the board authority to act on behalf of the board during the time bonds are outstanding to fix dates, prices, interest rates, and interest payment periods and to perform other procedures specified in the resolution.

(b) The person designated by the board may adjust the interest on bonds as necessary to permit the bonds to be sold or resold at par in conjunction with secondary market transactions.

Sec. 20.105. SECURITY QUALIFICATIONS. The board may take any action necessary to qualify the authority bonds for offer and sale under the securities laws and regulations of the United States, this state, and other states of the United States.

Sec. 20.106. INVESTMENT SECURITIES. The bonds and any interest coupons are investment securities under Chapter 8, Business & Commerce Code, and may be issued registrable as to principal or as to both principal and interest or may be made redeemable before maturity at the option of the authority or may contain a mandatory redemption provision.

Sec. 20.107. FORM OF BONDS. (a) The authority's bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details provided by the board in the resolution or order authorizing their issuance.

(b) The bonds shall be signed and executed as provided by the board's resolution or order authorizing the issuance of the bonds.

Sec. 20.108. FUNDS. (a) In the resolution or order authorizing issuance of bonds the board may make additional covenants with respect to the bonds and the pledged revenues and may provide for the flow of funds and the establishment, maintenance, and investment of funds.

(b) The funds established may include an interest and sinking fund, a reserve fund, and other funds that will be kept and maintained by or under the direction of the board.

(c) Any funds established by the board are not to be part of the state treasury but, at the direction of the board, may be kept and held in escrow and in trust by the state treasury on behalf of the authority and the owners of the bonds and used only as provided by this chapter.

(d) Money in the funds shall be invested in authorized investments as provided in any bond resolutions and orders of the authority.

(e) Legal title to money in any fund is in the authority unless or until paid from the fund as provided by this chapter or the resolutions or orders authorizing the authority's bonds.

(f) The state treasurer, as custodian of any of the funds, shall administer the funds solely and strictly as provided by this chapter and the resolutions or orders authorizing the bonds, and the state may not take any other action relating to any of the funds except those specified in this chapter and the resolutions and orders authorizing the bonds.

Sec. 20.109. RESOLUTIONS, ORDERS, ETC. (a) The resolutions or orders authorizing the bonds may prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with and subordinate to the lien and pledge in support of the bonds being issued.

(b) The orders or resolutions of the board issuing bonds may include other provisions and covenants that the board determines necessary.

(c) In a resolution or order authorizing the issuance of the authority's bonds, the board may prescribe systems, methods, routines, and procedures under which the authority will function.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Sec. 20.110. APPROVAL OF ATTORNEY GENERAL. The bonds issued under this chapter are subject to review and approval by the attorney general in the same manner and with the same effect as provided by Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717g, Vernon's Texas Civil Statutes).

Sec. 20.111. BOND REVIEW BOARD. (a) Bonds may not be issued under this section unless the issuance has been reviewed and approved by the bond review board. The bond review board is composed of:

- (1) the governor;

- (2) the lieutenant governor;
- (3) the speaker of the house of representatives;
- (4) the state treasurer; and
- (5) the comptroller of public accounts.

(b) The governor is chairman of the review board. The bond review board may adopt rules governing application for review, the review process, and reporting requirements. A member of the bond review board may not be held liable for damage resulting from the performance of the members' functions under this section.

Sec. 20.112. **REFUNDING BONDS.** (a) The board may issue refunding bonds to refund all or part of its outstanding bonds issued under this chapter, including matured but unpaid interest.

(b) The board may refund bonds in the manner provided by general law for revenue bonds.

Sec. 20.113. **ELIGIBLE SECURITY.** The bonds are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their face value.

Sec. 20.114. **LEGAL INVESTMENTS.** The bonds are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and

(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Sec. 20.115. **TAX EXEMPT.** Since the authority is performing an essential governmental function in the exercise of the powers conferred on it by this chapter, the bonds issued under this Act, and the interest and income from the bonds, including any profit made on the sale of bonds, and all fees, charges, gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of bonds are free from taxation and assessments of every kind by this state and any city, county, district, authority, or other political subdivision of this state.

Sec. 20.116. **PLEDGE OF STATE FAITH AND CREDIT; COVENANT WITH OWNERS OF BONDS.** (a) The authority's bonds are obligations solely of the authority and are payable solely from funds of the authority, and this chapter and the authority's bonds are not and do not create or constitute a pledge, giving, or lending of the faith or credit or taxing authority of the state.

(b) Each bond of the authority must include a statement that the state is not obligated to pay the premium, principal of, or interest on the authority's bonds and that the faith or credit and the taxing authority of the state is not pledged, given, or loaned to those payments.

(c) The state pledges to and agrees with the owners of any bonds issued in accordance with this chapter that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the owners of the bonds or in any way impair the rights and remedies of those owners until the bonds, together with any premium and interest, 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 those owners, are fully met and discharged. The

authority may include this pledge and agreement of the state in any agreement with the owners of bonds.

Sec. 20.117. *ENFORCEMENT BY MANDAMUS.* A writ of mandamus and all other legal and equitable remedies are available to any party at interest to require the authority and any other party to carry out agreements and to perform functions and duties under this chapter, the Texas Constitution, or the authority's bond resolutions and orders.

SECTION 2. Not later than the 90th day after the effective date of this Act, the board of directors of the Texas Water Resources Finance Authority shall meet, organize, and select officers.

SECTION 3. Chapter 15, Water Code, is amended by adding Section 15.1071 to read as follows:

Sec. 15.1071. *SALE OF POLITICAL SUBDIVISION BONDS TO TEXAS WATER RESOURCES FINANCE AUTHORITY.* (a) Notwithstanding any other provision of this chapter, the board may sell to the Texas Water Resources Finance Authority any political subdivision bonds purchased with money in the water loan assistance fund and may apply the proceeds of a sale in the manner provided by this section.

(b) The board shall sell the political subdivision bonds at the price and under the terms that it determines to be reasonable.

(c) The board may sell political subdivision bonds to the Texas Water Resources Finance Authority without making a previous offer to the political subdivisions and without advertising, soliciting, or receiving bids for the sale.

(d) The board may enter into a contract with the Texas Water Resources Finance Authority to sell to the authority political subdivision bonds that are not owned by the board. For bonds sold under this subsection, the contract may provide that the board will receive from the authority the sales price for the political subdivision bonds in exchange for the board's agreement to transfer to the authority political subdivision bonds subsequently acquired by the board and to pay to the authority from the investment income received on the water assistance fund or the water loan assistance fund any amounts considered appropriate including without limitation an amount equal to the proportionate share of that investment income attributable to the money used to purchase the political subdivision bonds.

(e) Proceeds from the sale of bonds under this section shall be deposited in the water assistance fund and used for the purposes and in the manner provided by law.

(f) As part of a sales agreement with the Texas Water Resources Finance Authority, the board by contract may agree to perform the functions required to ensure that the political subdivisions pay the debt service on political subdivision bonds sold and observe the conditions and requirements stated in those bonds.

(g) The board may exercise any powers necessary to carry out the authority granted by this section including the authority to contract with any person to accomplish the purposes of this section.

SECTION 4. Chapter 17, Water Code, is amended by adding Section 17.0871 to read as follows:

Sec. 17.0871. *SALE OF POLITICAL SUBDIVISION BONDS TO THE TEXAS WATER RESOURCES FINANCE AUTHORITY.* (a) Notwithstanding any other provision of this chapter, the board may sell to the Texas Water Resources Finance Authority any political subdivision bonds purchased with money in the development fund or the agricultural water conservation fund and may apply the proceeds of the sale in the manner provided by this section.

(b) The board shall sell the political subdivision bonds at the price and under the terms that it determines to be reasonable.

(c) The board may sell political subdivision bonds to the Texas Water Resources Finance Authority without making a previous offer to the political subdivisions and without advertising, soliciting, or receiving bids for the sale.

(d) *The board may enter into a contract with the Texas Water Resources Finance Authority to sell to the authority political subdivision bonds that are not owned by the board. For bonds sold under this subsection, the contract may provide that the board will receive from the Texas Water Resources Finance Authority the sales price for the political subdivision bonds in exchange for the board's agreement to transfer to the authority political subdivision bonds subsequently acquired by the board and to pay to the authority from the investment income received on the development fund or the agricultural water conservation fund, as applicable, an amount equal to the proportionate share of the investment income attributable to the money used to purchase the political subdivision bonds.*

(e) *Proceeds from the sale excluding accrued interest may be used by the board together with other available money including money in the interest and sinking fund and reserve fund and other amounts that are pledged to repayment of bonds to be discharged, paid, or redeemed, to discharge, pay, or redeem, in whole or in part, outstanding water development bonds, water quality enhancement bonds, agricultural water conservation bonds, and obligations of the board under contracts entered into under Subchapter E of Chapter 16 of this code.*

(f) *Money to be used to make discharges, payments, or redemptions under Subsection (e) of this section may be deposited by the board with a paying agent or trustee selected by the board. The board may enter into an escrow or similar agreement with the paying agent or trustee with respect to the safekeeping, investment, reinvestment, administration, and disposition of the money on terms and conditions that the board considers reasonable.*

(g) *The accrued interest portion of proceeds from the sale of political subdivision bonds shall be disposed of as otherwise provided by this chapter. Money not applied to discharges, payments, or redemptions shall be deposited in the development fund, the administrative fund, or the agricultural water conservation fund, as appropriate, to be used for the purposes provided by law.*

(h) *As part of the sales agreement with the Texas Water Resources Finance Authority, the board by contract may agree to perform the functions required to ensure that the political subdivision pays the debt service on the political subdivision bonds and observes the conditions and requirements stated in those bonds.*

SECTION 5. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 28, 1987, by the following vote: Yeas 142, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 734 on May 21, 1987, by the following vote: Yeas 141, Nays 2, 1 present, not voting. Passed by the Senate, with amendments, on May 15, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 20, 1987.

Effective June 20, 1987.