

## CHAPTER 555

## S.B. No. 705

## AN ACT

relating to the creation and powers of research and development authorities; authorizing bond issues.

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

SECTION 1. Title 83, Revised Statutes, is amended by adding Article 5190.10 to read as follows:

*Art. 5190.10. RESEARCH AND DEVELOPMENT AUTHORITIES.*

*Sec. 1. FINDINGS. The legislature finds that:*

*(1) Economic diversification is essential to the continued expansion and development of the Texas economy.*

*(2) Research and development will aid in economic diversification through the creation of new products and processes.*

*(3) Research and development attract new industries to Texas.*

*(4) Enhancement of research and development capabilities requires the coordinated efforts of state and local governments, educational institutions, and private industry.*

*Sec. 2. PURPOSES. The primary purpose of this article is to create county research and development authorities to promote scientific research and development and commercialization of research in affiliation with public and private institutions of research, higher education, or health science centers.*

*Sec. 3. DEFINITIONS. For the purposes of this article:*

*(1) "Authority" means a research and development authority established pursuant to this article.*

*(2) "County" means any county located within the State of Texas.*

*(3) "Governing board" means the commissioners court or other governing body of a county.*

*(4) "Bonds" means bonds, notes, or other debt instruments issued by the authority pursuant to the requirements of this article.*

*(5) "Bond resolution" means the resolution authorizing issuance of bonds.*

*(6) "Board" or "board of directors" means the governing body of an authority.*

*(7) "Cost" means the cost of construction; land or rights in land; other property, both real and personal; machinery and equipment; financing charges, including interest payable on bonds and the costs of issuing the bonds; all costs necessary for placing a project in operation; and operating costs associated with any research facility operated by the authority.*

*(8) "Contiguous counties" means counties with common borders.*

*(9) "Eligible institution" means a public or private institution of higher education, a public or private research center located in Texas, or a health science center.*

(10) "Project" means the land, buildings, equipment, facilities, improvements, and operating costs found by the board of directors to be required or suitable for the promotion of scientific research and development and commercialization of research, including but not limited to the development of research and development parks and other research facilities.

**Sec. 4. CREATION OF A RESEARCH AND DEVELOPMENT AUTHORITY.** A research and development authority may be created by any single county or by two or more contiguous counties in affiliation with one or more eligible institutions. The process for creating an authority shall be as follows:

(1) The participating county or counties shall acquire commitments by one or more eligible institutions to participate in the authority's activities.

(2) The county or counties' governing bodies shall pass a resolution declaring a need in the county or counties for a research and development authority.

(3) The resolution set out in Subdivision (2) above shall include the establishment of a board of directors for the authority. Such board shall be constituted as follows:

(A) two members from each of the participating county or counties selected by the governing body of each participating county; and

(B) the president of each eligible institution participating in the authority.

(4) The term of office for the board of directors shall be as follows: of the two members initially selected by each participating county: one shall be designated by the governing board to serve for one year and one shall serve for two years; thereafter, the term of office for each succeeding board member shall be two years. Any board member selected under this subdivision shall be eligible for reappointment.

(5) The president of each eligible institution which participates in the authority shall serve until a successor is appointed by the educational institution.

**Sec. 5. BOUNDARIES OF THE AUTHORITY.** The boundaries of the authority shall cover the same geographical area as the participating county or counties.

**Sec. 6. ORGANIZATION OF THE AUTHORITY.** (a) The board of directors shall elect from among its members a president and vice president, and shall elect a secretary and a treasurer who may or may not be directors, and may elect other officers as authorized by the authority's bylaws. The offices of secretary and treasurer may be combined.

(b) The president has the same right to vote on all matters as other members of the board of directors.

(c) A majority constitutes a quorum, and when a quorum is present action may be taken by a majority vote of the directors present.

(d) The board may employ a manager or executive director of the authority and other employees, experts, and agents as it sees fit. It may delegate to the manager the power to employ and discharge employees.

(e) The board may employ legal counsel.

**Sec. 7. APPLICATION OF OPEN RECORDS ACT.** The authority is subject to the open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

**Sec. 8. POWERS OF THE AUTHORITY.** The authority when created and confirmed shall constitute a public body corporate and politic exercising public and essential governmental functions, having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including but not limited to the following powers granted in this section:

(1) The authority shall have perpetual succession; provided, however, that if this article expires pursuant to Section 4 of this article, the county or counties creating the authority shall abolish the authority in accordance with the requirements of Section 4 of this article.

(2) *The authority may sue and be sued in all courts of competent jurisdiction and may institute and prosecute suits without giving security for costs and may appeal from a judgment or judgments without giving supersedeas or cost bond.*

(3) *The authority may acquire by grant, purchase, gift, devise, lease, or otherwise and may hold, use, sell, lease, or dispose of real and personal property of every kind and nature whatsoever and hold licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any of its powers pursuant to the provisions of this article.*

(4) *The authority may enter into any contracts necessary to carry out its obligations under this article.*

(5) *The authority may accept grants and loans from the United States of America, its departments and agencies; the State of Texas, its agencies, counties, municipalities, and political subdivisions; and public or private corporations and persons and may generally perform all acts necessary for the full exercise of the powers vested in it.*

(6) *The authority may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties which are not needed for, or, in the cases of leases, which are not inconsistent with the efficient operation and maintenance of the authority or which are required to carry out the purposes of the authority as enumerated in this article.*

(7) *The acquisition of any land or interest therein, the planning, acquisition, establishment, development, construction, improvement, maintenance, buildings, equipment, and operation of a project and the exercise of any other powers herein granted the authority are hereby declared to be public and governmental functions, exercised for a public purpose and a matter of public necessity.*

(8) *The authority may issue bonds or enter into participation agreements for the purpose of defraying all or part of the cost of any project, to secure the payment of such bonds as provided in this article, and to sell bonds or to exchange bonds for property, labor, services, material, or equipment comprising a project or incidental to the acquisition of a project.*

(9) *The authority may collect rent, fees, and any other charges determined by the board of directors to be necessary from the users of any project or part of any project. The amount of such rent, fees, or charges may be determined from time to time by the board of directors.*

(10) *The authority has no power to tax.*

(11) *The authority has no power of eminent domain.*

**Sec. 9. ISSUANCE OF BONDS.** (a) *The authority shall have the full power to issue bonds from time to time and in such amounts as it shall consider necessary or appropriate for the acquisition, purchase, construction, reconstruction, repair, equipping, improvement, or extension of the projects and all properties thereof whether real, personal, or mixed; provided, however, that the authority shall not issue bonds in an amount in excess of the limits established in Subsection (h) of this section. All such bonds shall be fully negotiable and may be made redeemable before maturity at the option of the issuing authority at such price or prices and under such terms and conditions as may be fixed by the issuing authority in the resolution authorizing such bonds and may be sold at public or private sale, whichever the board of directors may deem more advantageous.*

(b) *Prior to delivery, all bonds authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if he finds that they have been issued in accordance with the Constitution and this article and that they will be binding obligations of the authority, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration and the sale and delivery of the bonds to the purchaser, they shall be incontestable.*

(c) *In order to secure the payment of such bonds, such authority shall have full power and authority to encumber and pledge all or any part of the revenues of its projects and to mortgage and encumber all or any part of the properties thereof and everything pertaining thereto acquired or to be acquired and to prescribe the terms and provisions of such bonds in any manner not inconsistent with the provisions of this article. If not prohibited by the resolution or indenture relating to outstanding bonds, any such authority shall have full power and authority to encumber separately any item or items of real estate or personalty, including machinery, and other equipment of any nature, and to acquire, use, hold, or contract for any such property under any lease arrangement, chattel mortgage, or conditional sale, including but not limited to transactions commonly known as equipment trust transactions. Nothing herein shall be construed as prohibiting an authority from encumbering any one or more projects for the purpose of purchasing, building, constructing, enlarging, extending, repairing, or reconstructing another one or more of said projects and purchasing necessary property, both real, personal, and mixed, in connection therewith.*

(d) *Refunding bonds may be issued for the purposes and in the manner provided by general law, including without limitation Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes).*

(e) *Whenever the revenues of any project shall be encumbered under this article, the expense of operation and maintenance, including all salaries, labor, materials, and repairs necessary to render efficient service and every proper item of expense, shall always be a first lien and charge against such revenues.*

(f) *All such bonds shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, and insurance companies. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political subdivisions of the State of Texas, and such bonds shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof or their value on the market, whichever is the lesser, when accompanied by all unmatured coupons appurtenant thereto.*

(g) *If bonds are to be issued by an authority to purchase any existing research and development park or other research facility, and the owner thereof is willing to accept said bonds in lieu of cash, then in that event the revenue bonds may be exchanged for the property or for the stock of a corporation owning the property to be dissolved simultaneously.*

(h) *The board of directors may by resolution issue bonds payable solely from revenues as well as refunding bonds; provided, however, that at no time may the board issue bonds or refunding bonds if the issuance of such bonds or refunding bonds would result in the total aggregate principal amount of all outstanding bonds of the issuer exceeding \$500 million.*

**Sec. 10. TRUST AGREEMENTS.** *Any bonds issued under the provisions of this article may be secured by a trust agreement by and between the authority and a trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Any such trust agreement may evidence a pledge or assignment of the lease, sale, or other revenues to be received from a lessee or purchaser with respect to a project for the payment of principal of and interest and any premium on such bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for such purposes. Any such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project in connection with which such bonds shall have been authorized, and the custody, safeguard-*

ing, and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the project.

**Sec. 11. ENFORCEMENT OF AGREEMENTS OR MORTGAGES.** (a) Any agreement relating to any project shall be for the benefit of the authority. Any such agreement shall contain a provision that, in the event of a default in the payment of the principal of or the interest or premium on such bonds or in the performance of any agreement contained in such proceedings, mortgage, or instrument, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with such resolution, mortgage, or instrument.

(b) Any mortgage to secure bonds issued thereunder may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

**Sec. 12. AUTHORITY'S BONDS NOT OBLIGATIONS OF THE STATE.** (a) The authority's bonds are solely obligations of the authority and are payable solely from funds of the authority, and this article and the authority's bonds are not and do not create or constitute in any way an obligation, a debt, or a liability of the state, or create or constitute a pledge, giving, or lending of the faith or credit or taxing power of the state except bonds authorized by the Texas Constitution.

(b) Each bond of the authority authorized by this article shall contain on its face a statement to the effect that the state is not obligated to pay the principal thereof or interest thereon; and that neither the faith or credit nor the taxing power of the state is pledged, given, or loaned to such payment.

(c) However, the state hereby pledges to and agrees with the holders of any bonds issued under this article that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the said holder thereof or in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds.

**Sec. 13. OPTION TO PURCHASE GRANTED TO LESSEE.** The authority may grant a lessee an option to purchase all or any part of a project when all bonds of the corporation delivered to provide such facilities have been paid or provision has been made for their final payment. The provisions of this law are procedurally exclusive for the authority to convey or grant an option to purchase, and reference to no other law shall be required.

**Sec. 14. EXEMPTION FROM TAXATION.** As set forth in this article, the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this article, and the bonds of the authority issued pursuant to this article, and the interest and income therefrom, including any profit made on the

*sale thereof, and all its fees, charges, gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of such bonds shall at all times be free from taxation and assessments of every kind by this state and by all public agencies.*

*Sec. 15. COOPERATION OF THE STATE. The state, its officers, departments, divisions, and other political subdivisions of the state are authorized to cooperate with and provide assistance to local agencies and the authority in carrying out the purposes of this article and thereby promote the industry and economy of the state. Personnel, facilities, and property under the jurisdiction of such state officers, departments, divisions, and political subdivisions and such appropriated and other funds as from time to time may be available therefor may be used and applied pursuant to this section except to the extent prohibited by law.*

**SECTION 2. LIBERAL CONSTRUCTION OF THE ACT.** This Act shall be construed liberally to effectuate the legislative intent and the purposes of this Act, and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers.

**SECTION 3. SEVERABILITY CLAUSE.** If any word, phrase, clause, paragraph, sentence, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, or provision.

**SECTION 4. EXPIRATION OF THE ACT.** This Act shall expire on September 1, 1995, unless reauthorized by the legislature prior to its expiration date. If this Act is not reauthorized by the legislature, each authority created under this Act shall be abolished on September 1, 1995, by the county or counties which established the authority; provided, however, that if an authority has bonds outstanding as of September 1, 1995, such authority shall continue to operate until all bonds outstanding as of that date have been paid and discharged.

**SECTION 5. EMERGENCY.** 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 the Senate on May 1, 1987, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 20, 1987, by the following vote: Yeas 30, Nays 0. Passed the House, with amendment, on May 14, 1987, by the following vote: Yeas 140, Nays 1, two present not voting.

Approved June 18, 1987.

Effective June 18, 1987.