

## **BILL ANALYSIS**

Senate Research Center  
78R12858 JSA-F

C.S.S.B. 1778  
By: Ogden  
Subcommittee on Higher Education  
5/3/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Under current law, public institutions of higher education (IHEs) can issue tax-exempt bonds to build or improve facilities, but private IHEs may not. Chapter 53 (Higher Education Authority), Education Code, provides a mechanism whereby a city may create a higher education authority to issue bonds to benefit private IHEs or a nonprofit corporation to benefit primary, secondary, and charter schools. The facilities are exempt from taxation even if they are located in another city and regardless of whether a university requests or directly benefits from the facilities. C.S.S.B. 1778 authorizes certain nonprofit instrumentalities, in addition to higher education authorities, to issue and execute revenue bonds for certain purposes and requires facilities under Chapter 53, Education Code, to be located in a city that created the relevant higher education authority, unless an exception set forth in the bill applies.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 53.02, Education Code, by adding Subdivision (14), to define “borrower.”

SECTION 2. Amends Section 53.33, Education Code, as follows:

Sec. 53.33. New heading: LIMITED POWER TO ACQUIRE, OWN, AND OPERATE EDUCATIONAL AND HOUSING FACILITIES. (a) Authorizes an authority or a nonprofit instrumentality (instrumentality) created under Section 53.35(b) to acquire, own, hold title to, lease, or operate an educational facility or housing facility or any facility incidental, subordinate, or related to or appropriate in connection with an educational facility or housing facility, but only if certain requirements are met.

(b) Authorizes an authority or instrumentality that exercises the powers granted by Subsection (a) to contract for the operation of the facility by public or private entities or persons on terms and conditions set forth in a contract relating to the operation of the facility.

(c) Provides the changes in the law made by the amendment of this section, by the 78th Legislature at the 2003 Regular Session do not affect the acquisition, ownership, construction, or improvement of a facility, or the acquisition and ownership of land that were approved by official action of the authority or nonprofit corporate instrumentality before March 15, 2003, and the law in effect immediately before the effective date of the amendment of this section by the 78th Legislature at the 2003 Regular Session, is continued for that purpose. Deletes text authorizing the authority to purchase, purchase contract, or lease, or to construct, or enlarge, extend, repair, renovate, or otherwise improve educational facilities or housing facilities. Deletes text authorizing an authority or instrumentality to acquire land for certain purposes. Deletes text authorizing the facilities to not be located within the city limits of the city or cities.

SECTION 3. Amends Section 53.34, Education Code, as follows:

Sec. 53.34. (a) Authorizes an authority or a nonprofit instrumentality created under Section 53.35(b), including an authority or nonprofit instrument authorized to own facilities under Section 53.33(a), to issue and execute revenue bonds or other obligations to loan or otherwise provide funds to a borrower under certain conditions.

(b) Provides that in issuing revenue bonds or other obligations under this chapter, the issuer of the bonds or other obligations, rather than authority, is considered to be acting on behalf of the city by which it was created.

(c) Requires the bonds or other obligations issued under Subsection (a) to be payable from and secured by a pledge of revenues, income, rather than all or any part of the gross or net revenue to be derived from the operation of the facility or facilities and any other revenue, or assets pledged for the purpose by the borrower. Authorizes the bonds or other obligations to be additionally secured by a mortgage, deed of trust, or chattel mortgage on real or personal property, or on both real and personal property, if granted by the borrower. Makes nonsubstantive changes.

(d) Provides that a facility financed with the proceeds of a loan or loans made to a borrower under Subsection (a) is not required to be located within the corporate limits of the city that created the issuer of the bonds or other obligations.

(e) Authorizes an authority or a nonprofit instrumentality that is authorized to acquire and own educational facilities and housing facilities under Section 53.33(a) to issue and execute revenue bonds and other obligations for the purpose of acquiring, owning, and operating the educational and housing facilities, to create operating reserves for the facilities, and to create debt service reserves for and to pay issuance costs related to the bonds or other obligations.

(f) Requires the bonds or other obligations issued under Subsection (e) to be payable from and secured by a pledge of all or any part of the gross or net revenues to be derived from the operation of the educational facilities and housing facilities being acquired and any other revenues, income, or assets, including the revenues and income of the educational facilities or housing facilities previously acquired or subsequently to be acquired. Authorizes the bonds or other obligations to be additionally secured by a mortgage, deed of trust, or chattel mortgage on real or personal property, or on both real and personal property, if granted by the authority or nonprofit instrumentality issuing the bonds or other obligations.

(g) Provides that the changes in law made by the amendment of this section by the 78th Legislature at the 2003 Regular Session affect and apply only to transactions involving bonds or other obligations that are issued or executed under this chapter on or after March 15, 2003. Establishes that bonds or other obligations that are issued or executed under this chapter before March 15, 2003, are governed by the law in effect immediately before the amendment of this section by the 78th Legislature at the 2003 Regular Session, and that former law is continued in effect for that purpose.

SECTION 4. Amends Section 53.35(b), Education Code, to include Section 53.34 in the provision that grants an authority and an instrumentality the power to act on the behalf of the governing body of a city or cities. Deletes text referencing the Texas Education Code. Requires the corporation, in addition to the powers granted under, and subject to the limitations provided by, Sections 53.33 and 53.34, to have all the powers granted under the Texas Non-Profit Corporation Act for the purpose of aiding institutions of higher education in providing educational facilities and housing facilities and facilities incidental, subordinate, or related thereto or appropriate in connection therewith. Provides that in addition to Sections 53.33 and

53.34 and the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01, V.T.C.S), Sections 53.131, 53.14, 53.15, 53.31, 53.32, 53.331, 53.34, 53.35, 53.38, and 53.41 of this code, rather than of the Education Code, apply to and govern such corporation and its procedures, bonds, and other obligations.

SECTION 5. Amends Section 53.48, Education Code, as follows:

Sec. 53.48. Provides that in the same manner that a corporation may issue and execute bonds or other obligations under this chapter for an institution of higher education, a corporation created under Section 53.35(b) may issue and execute bonds or other obligations to finance or refinance educational facilities or housing facilities to be used by an accredited primary or secondary school or by an authorized charter school.

SECTION 6. Effective: upon passage or September 1, 2003.