

BILL ANALYSIS

Senate Research Center

H.B. 2701
By: Crownover (Janek)
Education
5/18/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently Chapter 53 of the Education Code, is an umbrella code and it makes it difficult to amend the code for one authority with out effecting the other two.

H.B. 2701 amends the Education Code to break Chapter 53 into three subchapters and inserts clarifying terms regarding the name of a higher education authority.

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. Reenacts and amends Chapter 53, Education Code, as amended by Chapters 1266 and 1310, Acts of the 78th Legislature, Regular Session, 2003, as follows:

New title: CHAPTER 53. HIGHER EDUCATION FACILITY AUTHORITIES FOR PUBLIC SCHOOLS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.01. SHORT TITLE. Authorizes this chapter to be cited as the Higher Education Facility Authority for Public Schools Act.

Sec. 53.02. DEFINITIONS. Redefines "authority," "institution of higher education," "trust indenture," and "borrower." Deletes definitions for "trustee," "repurchase agreement," and "accredited primary or secondary school."

SUBCHAPTER B. ADMINISTRATION PROVISIONS

Sec. 53.11. CREATION OF AUTHORITY. Provides that when the governing body of a city finds that it is to the best interest of the city and its inhabitants to create a higher education facility authority, it is required to pass an ordinance creating the authority and designating the name by which it is required to be known.

Sec. 53.12. Makes no changes to this section.

Sec. 52.13. Makes no changes to this section.

Sec. 53.131. Makes no changes to this section.

Sec. 53.14. Makes no changes to this section.

Sec. 53.15. Makes no changes to this section.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 53.31. Makes no changes to this section.

Sec. 53.32. Makes no changes to this section.

Sec. 53.33. Makes no changes to this section.

Sec. 53.331. Makes no changes to this section.

Sec. 53.34. Makes no changes to this section.

Sec. 53.35. Makes a nonsubstantive change.

Sec. 53.36. Makes no changes to this section.

Sec. 53.37. Makes no changes to this section.

Sec. 53.38. Makes no changes to this section.

Sec. 53.39. Makes no changes to this section.

Sec. 53.40. Makes no changes to this section.

Sec. 53.41. Makes no changes to this section.

Sec. 53.42. Makes no changes to this section.

Sec. 53.43. Makes no changes to this section.

Sec. 53.44. Makes no changes to this section.

Sec. 53.45. Makes no changes to this section.

Sec. 53.46. Makes no changes to this section. Deletes Section 53.47 relating to guaranteed student loans and alternate education loans and bonds for the purchase of education loan notes.

Sec. 53.48. [sic] New heading: BONDS FOR AUTHORIZED CHARTER SCHOOLS. Deletes existing text relating to financing housing facilities and the use of certain funds by an accredited primary or secondary school. Deletes Section 53.49 relating to bonds for certain schools owned and operated by nonprofit corporations.

SECTION 2. Amends Subtitle A, Title 3, Education Code, by adding Chapters 53A and 53B, as follows:

CHAPTER 53A. HIGHER EDUCATION FACILITY AUTHORITIES FOR PRIVATE SCHOOLS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53A.01. SHORT TITLE. Authorizes this chapter to be cited as the Higher Education Facility Authority for Private Schools Act.

Sec. 53A.02. DEFINITIONS. Defines "city," "governing body," "authority," "board," "institution of higher education," "educational facility," "housing facility," "bond resolution," "trust indenture," "accredited primary or secondary school," and "borrower."

[Reserves Sections 53A.03-53A.10 for expansion.]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 53A.11. CREATION OF AUTHORITY. Provides that when the governing body of a city finds that it is to the best interest of the city and its inhabitants to create a higher education facility authority (education authority), it is required to pass an ordinance

creating the authority and designating the name by which it shall be known. Requires each governing body, if the governing bodies of two or more cities find that it is to the best interest of the cities to create an educational authority to include those cities, to pass an ordinance creating the authority and designating the name by which it is to be known.

Sec. 53A.12. TERRITORY. Provides that the educational authority comprises only the territory included within the boundaries of the city or cities creating it.

Sec. 53A.13. CORPORATE POWERS. Provides that an educational authority is a body politic and corporate having the power of perpetual succession. Requires an educational authority to have a seal; authorizes it to sue and be sued; and authorizes it to make, amend, and repeal its bylaws.

Sec. 53A.131. AUTHORITY'S EARNINGS. Prohibits a private person from sharing in any of an educational authority's earnings.

Sec. 53A.14. BOARD OF DIRECTORS. Sets forth the composition, terms, and appointment procedures of the board of directors of the higher education facility authority (board). Prohibits an officer or employee of any such city from being eligible for appointment as director. Prohibits directors from being entitled to compensation for services. Provides that directors are entitled to reimbursement for expenses incurred in performing such service.

Sec. 53A.15. ORGANIZATION OF BOARD; QUORUM; EMPLOYEES; COUNSEL. (a) Requires the board to elect from among its members a president and vice president, and to elect a secretary and a treasurer who may or may not be directors. Authorizes the board to elect other officers as authorized by the authority's bylaws. Authorizes the offices of secretary and treasurer to be combined.

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

(c) Provides that a majority constitutes a quorum. Authorizes action to be taken when a quorum is present by a majority vote of directors present.

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

(e) Authorizes the board to employ legal counsel.

[Reserves Sections 53A.16-53A.30 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 53A.31. NO TAXING POWER. Provides that an educational authority has no power to tax.

Sec. 53A.32. NO POWER OF EMINENT DOMAIN. Provides that the educational authority does not have the power of eminent domain.

Sec. 53A.33. LIMITED POWER TO ACQUIRE, OWN, AND OPERATE EDUCATIONAL AND HOUSING FACILITIES. (a) Authorizes an educational authority or a nonprofit instrumentality created under Section 53A.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 procedures are followed.

(b) Authorizes an educational 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 the terms and conditions set forth in a contract relating to the operation of the facility.

(c) Provides that the changes in law made by the amendment of this section by the 78th Legislature, Regular Session, 2003, 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 that the law in effect immediately before the effective date of the amendment of this section by the 78th Legislature, Regular Session, 2003, is continued in effect for that purpose.

Sec. 53A.331. REFINANCING FACILITIES. Authorizes the educational authority to refinance any educational or housing facility acquired, constructed, or improved.

Sec. 53A.34. REVENUE BONDS. (a) Authorizes an educational authority or a nonprofit instrumentality created under Section 53A.35(b), including an educational authority or nonprofit instrumentality authorized to own facilities under Section 53A.33(a), to issue and execute revenue bonds or other obligations to loan or otherwise provide funds to a borrower if certain procedures are followed.

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

(c) Requires bonds or other obligations issued under Subsection (a) to be payable from and secured by a pledge of the revenues, income, 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.

(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 educational authority or a nonprofit instrumentality that is authorized to acquire and own educational facilities and housing facilities under Section 53A.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 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, Regular Session, 2003, 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. Provides 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, Regular Session, 2003, and that former law is continued in effect for that purpose.

Sec. 53A.35. ISSUANCE OF BONDS; PROCEDURE; ETC. (a) Requires that the bonds be authorized by resolution adopted by a majority vote of a quorum of the board. Requires bonds authorized under this section to be issued in accordance with Chapter 1201 (Public Securities Procedures Act), Government Code. Requires the bonds to mature serially or otherwise in not to exceed 50 years. Prohibits the rate of interest to be borne by the bonds from exceeding the maximum rate prescribed by Chapter 1204 (Interest Rate), Government Code.

(b) Authorizes the governing body of a city or cities, in addition to or in lieu of establishing an authority under the provisions of this chapter, to request or order created one or more nonprofit corporations to act on its behalf and as its duly constituted authority and instrumentality to exercise the powers granted to an authority under the provisions of Sections 53A.33 and 53A.34. Requires the directors, if a nonprofit corporation is created for such purposes or agrees to such request, to thereafter be appointed and be subject to removal by the governing body of the city or cities. Requires the nonprofit corporation, in addition to the powers granted under, and subject to the limitations provided by Sections 53A.33 and 53A.34, to have all 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 53A.33 and 53A.34 and the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), Sections 53A.131, 53A.14, 53A.15, 53A.31, 53A.32, 53A.331, 53A.34, 53A.35, 53A.38, and 53A.41 apply to and govern such corporation and its procedures, bonds, and other obligations.

Sec. 53A.36. BOND RESOLUTION; NOTICE; ELECTION. (a) Requires the board, before authorizing the issuance of bonds, other than refunding bonds, to cause a notice to be issued stating that it intends to adopt a resolution authorizing the issuance of the bonds, the maximum amount thereof, and the maximum maturity thereof. Requires the notice to be published once each week for two consecutive weeks in a newspaper or newspapers having general circulation in the educational authority. Requires the first publication to be at least 14 days prior to the day set for adopting the bond resolution.

(b) Requires the bonds, if, prior to the day set for the adoption of the bond resolution, there is presented to the secretary or president of the board a petition signed by not less than 10 percent of the qualified voters residing in the city or cities comprising the authority, who own taxable property in the authority and who have duly rendered it for taxation to the city in which such property is located or situated, requesting an election on the proposition for the issuance of the bonds, to not be issued unless an election is held and a majority vote is in favor of the bonds. Requires the election to be called and held in accordance with the procedure prescribed in Chapter 1251 (Bond Election), Government Code, with the board and the president and secretary performing the functions there assigned to the governing body of the city, the mayor and city secretary, respectively. Authorizes the bonds, if no such petition is filed, to be issued without an election. Authorizes the board to call an election on its own motion without the filing of the petition.

Sec. 53A.37. JUNIOR LIEN BONDS; PARITY BONDS. Authorizes the bonds constituting a junior lien on the net revenue or properties be issued unless prohibited by the bond resolution or trust indenture. Authorizes parity bonds be issued under conditions specified in the bond resolution or trust indenture.

Sec. 53A.38. RESERVES FOR OPERATING AND OTHER EXPENSES. Authorizes money for the payment of not more than two years' interest on the bonds and an amount estimated by the board to be required for operating expenses during the first year of operation to be set aside for those purposes out of the proceeds from the sale of the bonds.

Sec. 53A.39. REFUNDING BONDS. Authorizes bonds to be issued for the purpose of refunding outstanding bonds in the manner provided in this chapter for other bonds, and may be exchanged by the comptroller or sold and the proceeds applied in accordance with the procedure prescribed by Subchapter B (Advance Refunding Procedures) or C (Direct Deposit With Paying Agent), Chapter 1207, Government Code.

Sec. 53A.40. APPROVAL OF BONDS; REGISTRATION; NEGOTIABILITY. Requires bonds issued under this chapter and the record relating to their issuance to be submitted to the attorney general, and if he finds that they have been issued in accordance with this chapter and constitute valid and binding obligations of the educational authority and are secured as recited therein requires the attorney general to approve them. Requires that the bonds be registered by the comptroller of public accounts who is required to certify the registration thereon. Provides that thereafter, they are incontestable. Requires the bonds to be negotiable and to contain a certain provision containing certain text.

Sec. 53A.41. AUTHORIZED INVESTMENTS. Provides that all bonds issued under this chapter are legal and authorized investments for all banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies of all kinds and types, and for the interest and sinking funds and other public funds of any issuer. Provides that the bonds are also eligible and lawful security for all deposits of public funds of the State of Texas and of any issuer, to the extent of the value of the bonds, when accompanied by any unmatured interest coupons appurtenant to them.

Sec. 53A.42. INVESTMENT OF FUNDS; SECURITY. Provides that to the extent it is applicable, the law as to the security for and the investment of funds, applicable to cities, controls the investment of funds belonging to authority. Authorizes the bond resolution or the indenture or both to further restrict the making of investments. Authorizes the educational authority to invest the proceeds of its bonds, until the money is needed, in the direct obligations of or obligations unconditionally guaranteed by the United States, to the extent authorized in the bond resolution or indenture or in both.

Sec. 53A.43. DEPOSITORIES. Authorizes the educational authority to select a depository or depositories according to the procedures provided by law for the selection of city depositories, or it to award its depository contract to the same depository or depositories selected by the city or cities and on the same terms.

Sec. 53A.44. OPERATION OF FACILITIES; RATES CHARGED; RESERVE FUNDS.
(a) Authorizes the facilities to be operated by the educational authority without the intervention of private profit for the use and benefit of the public, or authorizes the facilities to be leased to an institution of higher education, or to be operated by the institution under a contract with the authority, the lease or contract to be in effect until any revenue bonds issued in connection with it have been finally retired.

(b) Requires the board to charge rates for the use of the facilities, or for their lease or operation, that are fully sufficient to pay all expenses in connection with the ownership, operation, and upkeep of the facilities, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds and reserves that may be provided in the bond resolution or trust indenture. Requires the bond resolution or trust indenture may prescribe systems, methods, routines, and procedures under which the facilities to be operated.

Sec. 53A.45. TRANSACTIONS WITH OTHER AGENCIES AND PERSONS. Authorizes the educational authority to borrow money and accept grants from, and enter into contracts, leases, or other transactions with the United States, the State of Texas, any municipal corporation in the state, and any public or private person or corporation resident or authorized to do business in the state.

Sec. 53A.46. **AUTHORITY EXEMPT FROM TAXATION.** Provides that because the property owned by authority will be held for educational purposes only and will be devoted exclusively to the use and benefit of the students, faculty, and staff members of an accredited institution of higher education, it is exempt from taxation of every character.

[Reserves Sec. 53A.47.]

Sec. 53A.48. **BONDS FOR ACCREDITED PRIMARY OR SECONDARY SCHOOLS.** Authorizes a corporation, in the same manner that a corporation may issue and execute bonds or other obligations under this chapter for an institution of higher education, created under Section 53A.35(b) to 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.

Sec. 53A.49. **BONDS FOR CERTAIN SCHOOLS OWNED AND OPERATED BY NONPROFIT CORPORATIONS.** (a) Authorizes a corporation, in the same manner that a corporation may issue bonds under this chapter for an institution of higher education, created under Section 53A.35(b) to issue bonds to finance or refinance educational facilities to be used by a certain school.

(b) Provides that bonds issued under this section may be payable from and secured by a pledge of any revenue or assets pledged for that purpose, notwithstanding Section 53A.34(b).

CHAPTER 53B. HIGHER EDUCATION LOAN AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53B.01. **SHORT TITLE.** Authorizes this chapter to be cited as the Higher Education Loan Authority Act.

Sec. 53B.02. **DEFINITIONS.** Defines "accredited institution," "alternative education loan," "authority," "board," "bond resolution," "city," "cost of attendance," "governing body," "guaranteed student loan," "qualified alternative education loan lender," "qualified nonprofit corporation," "repurchase agreement," "trust indenture," and "trustee."

[Reserves Sections 53B.03-53B.10 for expansion.]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 53B.11. **CREATION OF AUTHORITY.** Requires the governing body of a city, when it finds that it is to the best interest of the city and its inhabitants to create a higher education loan authority (loan authority), to pass an ordinance creating the authority and designating the name by which it is to be known. Requires each governing body, if the governing bodies of two or more cities find that it is to the best interest of the cities to create an authority to include those cities, to pass an ordinance creating the authority and designating the name by which it is to be known.

Sec. 53B.12. **TERRITORY.** Provides that the loan authority comprises only the territory included within the boundaries of the city or cities creating it.

Sec. 53B.13. **CORPORATE POWERS.** Provides that an authority is a body politic and corporate having the power of perpetual succession. Requires a loan authority to have a seal; authorizes it to sue and be sued; and authorizes it to make, amend, and repeal its bylaws.

Sec. 53B.131. **AUTHORITY'S EARNINGS.** Prohibits a private person from sharing in any of a loan authority's earnings.

Sec. 53B.14. BOARD OF DIRECTORS. Sets forth the composition, terms, and appointment procedures of the board of directors of a loan authority. Provides that the directors are not entitled to compensation for services but are entitled to reimbursement for expenses incurred in performing such service.

Sec. 53B.15. ORGANIZATION OF BOARD; QUORUM; EMPLOYEES; COUNSEL.
(a) Requires the board to elect from among its members a president and vice president, and to elect a secretary and a treasurer who may or may not be directors. Authorizes the board to elect other officers as authorized by the authority's bylaws. Authorizes the offices of secretary and treasurer to be combined.

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

(c) Provides that a majority constitutes a quorum. Authorizes the board, when a quorum is present to take action by a majority vote of directors present.

(d) Authorizes the board to employ employees, experts, and agents as it sees fit. Authorizes the board to delegate to the manager the power to employ and discharge employees.

(e) Authorizes the board to employ legal counsel.

[Reserves Sections 53B.16-53B.30 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 53B.31. NO TAXING POWER. Provides that an authority has no power to tax.

Sec. 53B.32. NO POWER OF EMINENT DOMAIN. Provides that the authority does not have the power of eminent domain.

[Reserves Secs. 53B.33 and 53B.34.]

Sec. 53B.35. ISSUANCE OF BONDS; PROCEDURE; ETC. Requires the bonds to be authorized by resolution adopted by a majority vote of a quorum of the board. Requires bonds authorized under this section to be issued in accordance with Chapter 1201 (Public Securities Act), Government Code. Requires the bonds to mature serially or otherwise in not to exceed 50 years. Requires the rate of interest to be borne by the bonds to not exceed the maximum rate prescribed by Chapter 1204 (Interest Rate), Government Code.

[Reserves Sec. 53B.36.]

Sec. 53B.37. JUNIOR LIEN BONDS; PARITY BONDS. Authorizes bonds constituting a junior lien on the net revenue or properties to be issued unless prohibited by the bond resolution or trust indenture. Authorizes parity bonds to be issued under conditions specified in the bond resolution or trust indenture.

Sec. 53B.38. RESERVES FOR OPERATING AND OTHER EXPENSES. Authorizes money for the payment of not more than two years' interest on the bonds and an amount estimated by the board to be required for operating expenses during the first year of operation to be set aside for those purposes out of the proceeds from the sale of the bonds.

Sec. 53B.39. REFUNDING BONDS. Authorizes bonds to be issued for the purpose of refunding outstanding bonds in the manner provided in this chapter for other bonds, and to be exchanged by the comptroller or sold and the proceeds applied in accordance with the procedure prescribed by Subchapter B or C, Chapter 1207 (Refunding Bonds), Government Code.

Sec. 53B.40. APPROVAL OF BONDS; REGISTRATION; NEGOTIABILITY. Requires bonds issued under this chapter and the record relating to their issuance to be submitted to the attorney general, and if he finds that they have been issued in accordance with this chapter and constitute valid and binding obligations of the authority and are secured as recited therein requires that the attorney general approve them. Requires that the bonds be registered by the comptroller who is required to certify the registration thereon. Provides that thereafter, they are incontestable. Requires the bonds to be negotiable and to contain a certain provision containing specific text.

Sec. 53B.41. AUTHORIZED INVESTMENTS. Provides that all bonds issued under this chapter are legal and authorized investments for all banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies of all kinds and types, and for the interest and sinking funds and other public funds of any issuer. Provides that the bonds are also eligible and lawful security for all deposits of public funds of the State of Texas and of any issuer, to the extent of the value of the bonds, when accompanied by any unmatured interest coupons appurtenant to them.

Sec. 53B.42. INVESTMENT OF FUNDS; SECURITY. Provides that to the extent it is applicable, the law as to the security for and the investment of funds, applicable to cities, controls the investment of funds belonging to authority. Authorizes the bond resolution or the indenture or both to further restrict the making of investments. Authorizes the loan authority to invest the proceeds of its bonds, until the money is needed, in the direct obligations of or obligations unconditionally guaranteed by the United States, to the extent authorized in the bond resolution or indenture or in both.

Sec. 53B.43. DEPOSITORIES. Authorizes the loan authority to select a depository or depositories according to the procedures provided by law for the selection of city depositories, or it to award its depository contract to the same depository or depositories selected by the city or cities and on the same terms.

[Reserves Sec. 53B.44.]

Sec. 53B.45. TRANSACTIONS WITH OTHER AGENCIES AND PERSONS. Authorizes the loan authority to borrow money and accept grants from, and enter into contracts, leases, or other transactions with the United States, the State of Texas, any municipal corporation in the state, and any public or private person or corporation resident or authorized to do business in the state.

[Reserves Sec. 53B.46.]

Sec. 53B.47. GUARANTEED STUDENT LOANS AND ALTERNATE EDUCATION LOANS; BONDS FOR THE PURCHASE OF EDUCATION LOAN NOTES. (a) Authorizes a loan authority to, upon approval of the city or cities which created the loan authority to, issue revenue bonds or otherwise borrow money to obtain funds to purchase or to make guaranteed student loans. Requires revenue bonds issued for such purpose to be issued in accordance with and with the effect provided in this chapter. Requires such bonds to be payable from and secured by a pledge of revenues derived from or by reason of the ownership of guaranteed student loans and investment income after deduction of such expenses of operating the loan program as may be specified by the bond resolution or trust indenture.

(b) Authorizes a loan authority to cause money to be expended to make or purchase for its account, guaranteed student loans that are guaranteed by the Texas Guaranteed Student Loan Corporation or that are executed by or on behalf of certain students.

(c) Requires the loan authority to contract with a nonprofit corporation, organized under the laws of this state, whereby such corporation will provide the reports and other information required for continued participation in the federally guaranteed loan program provided by the Higher Education Act of 1965, as amended.

(d) Provides that the authority, as a municipal corporation of the state, is charged with a portion of the responsibility of the state to provide educational opportunities in keeping with all applicable state and federal laws. Requires nothing in this section to be construed as a prohibition against establishing policies to limit the purchase of guaranteed student loans to guaranteed student loans executed by students attending school in a certain geographical area or by students who are residents of the area.

(e) Authorizes the governing body of a city or cities, in addition to establishing an authority under the provisions of this chapter, to request a qualified nonprofit corporation to exercise the powers enumerated and provided in this section for and on its behalf. Requires the directors of such corporation, if the qualified nonprofit corporation agrees to exercise such powers, to thereafter be appointed by and be subject to removal by the governing body of the city or cities, and except as provided in this section, Sections 53B.14, 53B.15, 53B.31, 53B.32, 53B.38, and 53B.41 through 53B.43 apply to and govern such corporation, its procedures, and bonds. Authorizes a qualified nonprofit corporation which has been requested to exercise the powers enumerated and requested in this section to invest or cause a trustee or custodian on behalf of such qualified nonprofit corporation to invest its funds, including the proceeds of any bonds, notes, or other obligations issued by such qualified nonprofit corporation and any monies which are pledged to the payment thereof, in certain payments.

(f) Authorizes a nonprofit corporation, whether acting at the request of a city or cities under Subsection (e) or acting as a servicer or administrator for another corporation that purchases guaranteed student loans, or that on its own behalf issues securities or otherwise obtains funds to purchase or make guaranteed student loans or alternative education loans, to take certain actions.

(g) Provides that a security interest in a trust estate granted under Subsection (f)(3) is attached and perfected at the time the security interest is executed and delivered by the nonprofit corporation. Provides that the security interest grants to the secured party a first prior perfected security interest in the trust estate for the benefit of the secured party without regard to the location of the assets that constitute the trust estate.

(h) Authorizes an alternative education loan to be made under this section only by a qualified alternative education loan lender. Prohibits an alternative education loan from being in an amount in excess of the difference between the cost of attendance and the amount of other student assistance to the student, other than loans under Section 428B(a)(1), Higher Education Act of 1965 (20 U.S.C. Section 1078-2) (relating to parent loans), for which the student borrower is authorized to be eligible. Provides that an alternative education loan covered by this subsection is subject to Chapter 342 (Consumer Loans), Finance Code, as applicable, with certain exceptions.

(i) Provides that an authority or nonprofit corporation making education loans under this section is exempt from the licensing requirements of Chapter 342 (Consumer Loans), Finance Code.

SECTION 3. Amends Section 61.0186(a), Education Code, as added by Chapter 820, Acts of the 78th Legislature, Regular Session, 2003, to require the Texas Higher Education Board to collect and make available to the public on request information regarding higher education authorities operating under Chapters, rather than chapter, 53, 53A, and 53B and nonprofit corporations carrying out the functions of higher education authorities under those chapters. Makes a conforming change.

SECTION 4. Amends Section 1371.001(4), to redefine "issuer."

SECTION 5. Effective date: September 1, 2005.