

Amend CSSB 1952 by adding the following appropriately numbered ARTICLE to PART 9:

ARTICLE 9_____. HIGHER EDUCATION AUTHORITY ACT

SECTION _____. Section 53.02, Education Code, is amended by adding Subdivision (14) to read as follows:

(14) "Borrower" means any of the following entities that is the recipient of a loan made under Section 53.34:

(A) an institution of higher education;

(B) a nonprofit corporation:

(i) incorporated by and under the exclusive control of an institution of higher education; or

(ii) incorporated and operating for the exclusive benefit of an institution of higher education and authorized by the governing board of the institution to enter into a transaction as a borrower under this chapter;

(C) an accredited primary or secondary school; or

(D) an authorized charter school.

SECTION _____. Section 53.33, Education Code, is amended to read as follows:

Sec. 53.33. LIMITED POWER TO ACQUIRE, OWN, AND OPERATE EDUCATIONAL AND HOUSING FACILITIES~~[CONSTRUCTION, ACQUISITION, ETC]~~. (a) An [The] authority or a nonprofit instrumentality created under Section 53.35(b) may 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:

(1) the facility is or will be located within the corporate limits of the city that created the authority or nonprofit instrumentality;

(2) the governing body of an institution of higher education officially requests the authority or nonprofit instrumentality to acquire and own the facility for the benefit of the institution of higher education;

(3) the institution of higher education officially agrees to accept, and has authority to receive legal title to, the facility not later than the date on which any bonds or other

obligations issued to acquire the facility are paid in full; and

(4) the ownership of the facility by the authority or the nonprofit instrumentality is approved by official action of the governing body of:

(A) the city that created the authority or nonprofit instrumentality;

(B) the school district in which the facility is or will be located; and

(C) the county in which the facility is or will be located.

(b) An authority or instrumentality that exercises the powers granted by Subsection (a) may 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) The changes in 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 in effect for that purpose [by purchase, purchase contract, or lease, may construct, or may enlarge, extend, repair, renovate, or otherwise improve educational facilities or housing facilities. It may acquire land for those purposes, furnish and equip the facilities, and provide by contract, lease, or otherwise for the operation and maintenance of the facilities. The facilities need not be located within the city limits of the city or cities].

SECTION _____. Section 53.34, Education Code, is amended to read as follows:

Sec. 53.34. REVENUE BONDS. (a) An [The] authority or a nonprofit instrumentality created under Section 53.35(b), including an authority or nonprofit instrumentality authorized to own facilities under Section 53.33(a), may issue and execute

revenue bonds or other obligations to loan or otherwise provide funds to a borrower if:

(1) the governing body of the borrower by official action requests the issuer of the bonds or other obligations to loan the proceeds under this subsection;

(2) the purpose of the loan is to enable the borrower to acquire, construct, enlarge, extend, repair, renovate, or otherwise improve 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, or for acquiring land to be used for those purposes, or to create operating and debt service reserves for and to pay issuance costs related to the bonds or other obligations; and

(3) under the terms of the loan, and unless a mortgage lien granted to secure the loan is in default, the ownership of the facility is required to be at all times under the exclusive control, and held for the exclusive benefit, of the borrower [~~for any of its purposes~~].

(b) In issuing revenue bonds or other obligations under this chapter, the issuer of the bonds or other obligations [~~authority~~] is considered to be acting on behalf of the [~~any~~] city by which it was created.

(c) Bonds or other obligations issued under Subsection (a) [~~(b) The bonds~~] shall be payable from and secured by a pledge of the revenues, income, [~~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. The bonds or other obligations may be additionally secured by a mortgage, [~~or~~] deed of trust, [~~on real property of the authority~~] or [~~by a~~] chattel mortgage on real or [~~its~~] personal property, or on [~~by~~] both real and personal property, if granted by the borrower.

(d) 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) An authority or a nonprofit instrumentality that is authorized to acquire and own educational facilities and housing

facilities under Section 53.33(a) may 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) Bonds or other obligations issued under Subsection (e) shall 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. The bonds or other obligations may 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) 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. 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 _____._____. Subsection (b), Section 53.35, Education Code, is amended to read as follows:

(b) In addition to or in lieu of establishing an authority under the provisions of this chapter, the governing body of a city or cities may 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 [Section] 53.33 and 53.34~~[, Texas Education Code]~~. If a nonprofit corporation is created for such purposes or agrees to such request, the directors thereof shall thereafter be appointed and be subject to removal by

the governing body of the city or cities. In addition to the powers ~~[of lease or acquisition of facilities]~~ granted under, and subject to the limitations provided by, Sections ~~[Section]~~ 53.33 and 53.34, the corporation shall 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. In addition to Sections ~~[the provisions of Section]~~ 53.33 and 53.34 and the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01, Vernon's Texas Civil Statutes), 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 ~~[Texas Education Code, shall]~~ apply to and govern such corporation and its procedures, ~~[and]~~ bonds, and other obligations.

SECTION _____. Section 53.48, Education Code, is amended to read as follows:

Sec. 53.48. BONDS FOR ACCREDITED PRIMARY OR SECONDARY SCHOOLS. 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.