

BILL ANALYSIS

S.B. 1778
By: Ogden
Financial Institutions
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, public institutions of higher education can issue tax-exempt bonds to build or improve facilities, but private institutions of higher education cannot. Chapter 53, Education Code (Higher Education Authority) provides a mechanism whereby a municipality may create a higher education authority (“authority”) to issue bonds to benefit private institutions of higher education or to nonprofit corporations to benefit primary, secondary, and charter schools. Facilities built or improved using bonds issued by such authorities are exempt from taxation, even if they are located in another municipality and regardless of whether a private institution of higher education requests or directly benefits from the facilities.

S.B. 1778 authorizes certain nonprofit instrumentalities, in addition to higher education authorities, to issue and execute revenue bonds for certain purposes. The bill also requires facilities utilizing bonds under Chapter 53, Education Code to be located in the municipality that created the authority issuing the bonds, unless a specific exemption applies.

RULEMAKING AUTHORITY

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1778 amends Section 53.33, Education Code to permit authorities or nonprofit instrumentalities to acquire, own, hold title to, lease, or operate an educational facility, housing facility, or any facility incidental, subordinate, related to, or appropriate in connection with an educational facility or housing facility, if certain conditions are met:

- The facility must be within the corporate limits of the city that created the authority or instrumentality;
- The institution of higher education officially requests the authority or instrumentality to acquire and own the facility for the benefit of the institution;
- The institution of higher education officially agrees to accept the facility not later than the date on which any bonds or other obligations issued to acquire the facility are paid in full; and
- The authority or instrumentality’s ownership of the facility has been approved by governing bodies of the city, school district, and county in which it is located.

The above changes do not affect the acquisition, ownership, construction, or improvement of a facility or land that were approved by official action of an authority or instrumentality before March 15, 2003. The bill deletes the current, unconditioned ability of an authority to own, construct, or improve facilities. The bill explicitly permits an authority or instrumentality to contract for the operation of a facility.

The bill amends Section 53.34, Education Code to permit an authority or instrumentality to issue and execute revenue bonds or other obligations to loan or otherwise provide funds to a borrower, subject to specified conditions, and clarifies the types of security for such bonds or obligations. The bill amends Section 53.02, Education Code to define “borrower,” with respect to a recipient of a loan made under Section 53.34, Education Code. The bill specifies that the issuer of bonds or other obligations -under this section is considered to be acting on behalf of the city which created it. A facility funded in this manner is

not required to be located within the corporate limits of the city which created the issuer. The bill permits an authority or instrumentality to issue and execute revenue bonds or other obligations for the purpose of its acquiring, owning, or operating educational or housing facilities, or creating debt service reserves for and to pay issuance costs related to the bonds or other obligations. The bill establishes the types of security for such bonds or obligations. The bill specifies that changes made to this section affect and apply only to transactions involving bonds or other obligations issued or executed after March 15, 2003.

EFFECTIVE DATE

On passage or, if the Act fails to obtain the necessary vote, the Act takes effect September 1, 2003.