

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authority of a higher education authority or
3 nonprofit instrumentality exercising the powers of a higher
4 education authority to acquire, own, and operate facilities, to
5 issue and execute bonds and other obligations, and to use the
6 proceeds of those obligations for authorized purposes.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Section 53.02, Education Code, is amended by
9 adding Subdivision (14) to read as follows:

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

12 (A) an institution of higher education;

13 (B) a nonprofit corporation incorporated by and
14 under the exclusive control of an institution of higher education;

15 (C) an accredited primary or secondary school; or

16 (D) an accredited charter school.

17 SECTION 2. Section 53.33, Education Code, is amended to
18 read as follows:

19 Sec. 53.33. LIMITED POWER TO ACQUIRE, OWN, AND OPERATE
20 EDUCATIONAL AND HOUSING FACILITIES [~~CONSTRUCTION, ACQUISITION,~~
21 ~~ETC~~]. (a) An [The] authority or a nonprofit instrumentality
22 created under Section 53.35(b) may acquire, own, hold title to,
23 lease, or operate an educational facility or housing facility or
24 any facility incidental, subordinate, or related to or appropriate

1 in connection with an educational facility or housing facility, but
2 only if:

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

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

10 (3) the institution of higher education officially
11 agrees to accept, and has authority to receive legal title to, the
12 facility not later than the date on which any bonds or other
13 obligations issued to acquire the facility are paid in full; and

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

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

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

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

23 (b) An authority or instrumentality that exercises the
24 powers granted by Subsection (a) may contract for the operation of
25 the facility by public or private entities or persons on the terms
26 and conditions set forth in a contract relating to the operation of
27 the facility.

1 (c) The changes in law made by the amendment of this section
2 by the 78th Legislature at the 2003 Regular Session do not affect
3 the acquisition, ownership, construction, or improvement of a
4 facility, or the acquisition and ownership of land that were
5 approved by official action of the authority or nonprofit corporate
6 instrumentality before March 15, 2003, and the law in effect
7 immediately before the effective date of the amendment of this
8 section by the 78th Legislature at the 2003 Regular Session is
9 continued in effect for that purpose [~~by purchase, purchase~~
10 ~~contract, or lease, may construct, or may enlarge, extend, repair,~~
11 ~~renovate, or otherwise improve educational facilities or housing~~
12 ~~facilities. It may acquire land for those purposes, furnish and~~
13 ~~equip the facilities, and provide by contract, lease, or otherwise~~
14 ~~for the operation and maintenance of the facilities. The~~
15 ~~facilities need not be located within the city limits of the city or~~
16 ~~cities].~~

17 SECTION 3. Section 53.34, Education Code, is amended to
18 read as follows:

19 Sec. 53.34. REVENUE BONDS. (a) An [The] authority or a
20 nonprofit instrumentality created under Section 53.35(b),
21 including an authority or nonprofit instrumentality authorized to
22 own facilities under Section 53.33(a), may issue and execute
23 revenue bonds or other obligations to loan or otherwise provide
24 funds to a borrower if:

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

1 (2) the purpose of the loan is to enable the borrower
2 to acquire, construct, enlarge, extend, repair, renovate, or
3 otherwise improve an educational facility or housing facility or
4 any facility incidental, subordinate, or related to or appropriate
5 in connection with an educational facility or housing facility, or
6 for acquiring land to be used for those purposes, or to create
7 operating and debt service reserves for and to pay issuance costs
8 related to the bonds or other obligations; and

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

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

18 (c) Bonds or other obligations issued under Subsection (a)
19 ~~[(b) The bonds]~~ shall be payable from and secured by a pledge of
20 the revenues, income, ~~[all or any part of the gross or net revenue~~
21 ~~to be derived from the operation of the facility or facilities and~~
22 ~~any other revenue]~~ or assets pledged for the purpose by the
23 borrower. The bonds or other obligations may be additionally
24 secured by a mortgage, ~~[or]~~ deed of trust, ~~[on real property of the~~
25 ~~authority]~~ or ~~[by a]~~ chattel mortgage on real or ~~[its]~~ personal
26 property, or on ~~[by]~~ both real and personal property, if granted by
27 the borrower.

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

5 (e) An authority or a nonprofit instrumentality that is
6 authorized to acquire and own educational facilities and housing
7 facilities under Section 53.33(a) may issue and execute revenue
8 bonds and other obligations for the purpose of acquiring, owning,
9 and operating the educational and housing facilities, to create
10 operating reserves for the facilities, and to create debt service
11 reserves for and to pay issuance costs related to the bonds or other
12 obligations.

13 (f) Bonds or other obligations issued under Subsection (e)
14 shall be payable from and secured by a pledge of all or any part of
15 the gross or net revenues to be derived from the operation of the
16 educational facilities and housing facilities being acquired and
17 any other revenues, income, or assets, including the revenues and
18 income of the educational facilities or housing facilities
19 previously acquired or subsequently to be acquired. The bonds or
20 other obligations may be additionally secured by a mortgage, deed
21 of trust, or chattel mortgage on real or personal property, or on
22 both real and personal property, if granted by the authority or
23 nonprofit instrumentality issuing the bonds or other obligations.

24 (g) The changes in law made by the amendment of this section
25 by the 78th Legislature at the 2003 Regular Session affect and apply
26 only to transactions involving bonds or other obligations that are
27 issued or executed under this chapter on or after March 15, 2003.

1 Bonds or other obligations that are issued or executed under this
2 chapter before March 15, 2003, are governed by the law in effect
3 immediately before the amendment of this section by the 78th
4 Legislature at the 2003 Regular Session, and that former law is
5 continued in effect for that purpose.

6 SECTION 4. Subsection (b), Section 53.35, Education Code,
7 is amended to read as follows:

8 (b) In addition to or in lieu of establishing an authority
9 under the provisions of this chapter, the governing body of a city
10 or cities may request or order created one or more nonprofit
11 corporations to act on its behalf and as its duly constituted
12 authority and instrumentality to exercise the powers granted to an
13 authority under the provisions of Sections [~~Section~~] 53.33 and
14 53.34 [~~, Texas Education Code~~]. If a nonprofit corporation is
15 created for such purposes or agrees to such request, the directors
16 thereof shall thereafter be appointed and be subject to removal by
17 the governing body of the city or cities. In addition to the powers
18 [~~of lease or acquisition of facilities~~] granted under, and subject
19 to the limitations provided by, Sections [~~Section~~] 53.33 and 53.34,
20 the corporation shall have all powers granted under the Texas
21 Non-Profit Corporation Act for the purpose of aiding institutions
22 of higher education in providing educational facilities and housing
23 facilities and facilities incidental, subordinate, or related
24 thereto or appropriate in connection therewith. In addition to
25 Sections [~~the provisions of Section~~] 53.33 and 53.34 and the Texas
26 Non-Profit Corporation Act, as amended (Article 1396-1.01,
27 Vernon's Texas Civil Statutes), Sections 53.131, 53.14, 53.15,

1 53.31, 53.32, 53.331, 53.34, 53.35, 53.38, and 53.41 of this code~~[7~~
2 ~~Texas Education Code, shall]~~ apply to and govern such corporation
3 and its procedures, [and] bonds, and other obligations.

4 SECTION 5. Section 53.48, Education Code, is amended to
5 read as follows:

6 Sec. 53.48. BONDS FOR ACCREDITED PRIMARY OR SECONDARY
7 SCHOOLS. In the same manner that a corporation may issue and
8 execute bonds or other obligations under this chapter for an
9 institution of higher education, a corporation created under
10 Section 53.35(b) may issue and execute bonds or other obligations
11 to finance or refinance educational facilities or housing
12 facilities to be used by an accredited primary or secondary school
13 or by an authorized charter school.

14 SECTION 6. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2003.