

1-1 By: Ogden, Estes S.B. No. 1778
1-2 (In the Senate - Filed March 14, 2003; March 24, 2003, read
1-3 first time and referred to Committee on Education; May 13, 2003,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 6, Nays 0; May 13, 2003, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1778 By: Van de Putte

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the authority of a higher education authority or
1-10 nonprofit instrumentality exercising the powers of a higher
1-11 education authority to acquire, own, and operate facilities, to
1-12 issue and execute bonds and other obligations, and to use the
1-13 proceeds of those obligations for authorized purposes.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 53.02, Education Code, is amended by
1-16 adding Subdivision (14) to read as follows:

1-17 (14) "Borrower" means any of the following entities
1-18 that is the recipient of a loan made under Section 53.34:

1-19 (A) an institution of higher education;

1-20 (B) a nonprofit corporation incorporated by and
1-21 under the exclusive control of an institution of higher education;

1-22 (C) an accredited primary or secondary school; or

1-23 (D) an accredited charter school.

1-24 SECTION 2. Section 53.33, Education Code, is amended to
1-25 read as follows:

1-26 Sec. 53.33. LIMITED POWER TO ACQUIRE, OWN, AND OPERATE
1-27 EDUCATIONAL AND HOUSING FACILITIES[. ~~CONSTRUCTION, ACQUISITION,~~
1-28 ~~ETC~~]. (a) An [The] authority or a nonprofit instrumentality
1-29 created under Section 53.35(b) may acquire, own, hold title to,
1-30 lease, or operate an educational facility or housing facility or
1-31 any facility incidental, subordinate, or related to or appropriate
1-32 in connection with an educational facility or housing facility, but
1-33 only if:

1-34 (1) the facility is or will be located within the
1-35 corporate limits of the city that created the authority or
1-36 nonprofit instrumentality;

1-37 (2) the governing body of an institution of higher
1-38 education officially requests the authority or nonprofit
1-39 instrumentality to acquire and own the facility for the benefit of
1-40 the institution of higher education;

1-41 (3) the institution of higher education officially
1-42 agrees to accept, and has authority to receive legal title to, the
1-43 facility not later than the date on which any bonds or other
1-44 obligations issued to acquire the facility are paid in full; and

1-45 (4) the ownership of the facility by the authority or
1-46 the nonprofit instrumentality is approved by official action of the
1-47 governing body of:

1-48 (A) the city that created the authority or
1-49 nonprofit instrumentality;

1-50 (B) the school district in which the facility is
1-51 or will be located; and

1-52 (C) the county in which the facility is or will be
1-53 located.

1-54 (b) An authority or instrumentality that exercises the
1-55 powers granted by Subsection (a) may contract for the operation of
1-56 the facility by public or private entities or persons on the terms
1-57 and conditions set forth in a contract relating to the operation of
1-58 the facility.

1-59 (c) The changes in law made by the amendment of this section
1-60 by the 78th Legislature at the 2003 Regular Session do not affect
1-61 the acquisition, ownership, construction, or improvement of a
1-62 facility, or the acquisition and ownership of land that were
1-63 approved by official action of the authority or nonprofit corporate

2-1 instrumentality before March 15, 2003, and the law in effect
2-2 immediately before the effective date of the amendment of this
2-3 section by the 78th Legislature at the 2003 Regular Session is
2-4 continued in effect for that purpose [~~by purchase, purchase~~
2-5 ~~contract, or lease, may construct, or may enlarge, extend, repair,~~
2-6 ~~renovate, or otherwise improve educational facilities or housing~~
2-7 ~~facilities. It may acquire land for those purposes, furnish and~~
2-8 ~~equip the facilities, and provide by contract, lease, or otherwise~~
2-9 ~~for the operation and maintenance of the facilities. The~~
2-10 ~~facilities need not be located within the city limits of the city or~~
2-11 ~~cities].~~

2-12 SECTION 3. Section 53.34, Education Code, is amended to
2-13 read as follows:

2-14 Sec. 53.34. REVENUE BONDS. (a) An [The] authority or a
2-15 nonprofit instrumentality created under Section 53.35(b),
2-16 including an authority or nonprofit instrumentality authorized to
2-17 own facilities under Section 53.33(a), may issue and execute
2-18 revenue bonds or other obligations to loan or otherwise provide
2-19 funds to a borrower if:

2-20 (1) the governing body of the borrower by official
2-21 action requests the issuer of the bonds or other obligations to loan
2-22 the proceeds under this subsection;

2-23 (2) the purpose of the loan is to enable the borrower
2-24 to acquire, construct, enlarge, extend, repair, renovate, or
2-25 otherwise improve an educational facility or housing facility or
2-26 any facility incidental, subordinate, or related to or appropriate
2-27 in connection with an educational facility or housing facility, or
2-28 for acquiring land to be used for those purposes, or to create
2-29 operating and debt service reserves for and to pay issuance costs
2-30 related to the bonds or other obligations; and

2-31 (3) under the terms of the loan, and unless a mortgage
2-32 lien granted to secure the loan is in default, the ownership of the
2-33 facility is required to be at all times under the exclusive control,
2-34 and held for the exclusive benefit, of the borrower [~~for any of its~~
2-35 purposes].

2-36 (b) In issuing revenue bonds or other obligations under this
2-37 chapter, the issuer of the bonds or other obligations [authority]
2-38 is considered to be acting on behalf of the [any] city by which it
2-39 was created.

2-40 (c) Bonds or other obligations issued under Subsection (a)
2-41 [~~(b) The bonds~~] shall be payable from and secured by a pledge of
2-42 the revenues, income, [~~all or any part of the gross or net revenue~~
2-43 ~~to be derived from the operation of the facility or facilities and~~
2-44 ~~any other revenue]~~ or assets pledged for the purpose by the
2-45 borrower. The bonds or other obligations may be additionally
2-46 secured by a mortgage, [~~or~~] deed of trust, [~~on real property of the~~
2-47 ~~authority]~~ or [~~by a~~] chattel mortgage on real or [its] personal
2-48 property, or on [~~by~~] both real and personal property, if granted by
2-49 the borrower.

2-50 (d) A facility financed with the proceeds of a loan or loans
2-51 made to a borrower under Subsection (a) is not required to be
2-52 located within the corporate limits of the city that created the
2-53 issuer of the bonds or other obligations.

2-54 (e) An authority or a nonprofit instrumentality that is
2-55 authorized to acquire and own educational facilities and housing
2-56 facilities under Section 53.33(a) may issue and execute revenue
2-57 bonds and other obligations for the purpose of acquiring, owning,
2-58 and operating the educational and housing facilities, to create
2-59 operating reserves for the facilities, and to create debt service
2-60 reserves for and to pay issuance costs related to the bonds or other
2-61 obligations.

2-62 (f) Bonds or other obligations issued under Subsection (e)
2-63 shall be payable from and secured by a pledge of all or any part of
2-64 the gross or net revenues to be derived from the operation of the
2-65 educational facilities and housing facilities being acquired and
2-66 any other revenues, income, or assets, including the revenues and
2-67 income of the educational facilities or housing facilities
2-68 previously acquired or subsequently to be acquired. The bonds or
2-69 other obligations may be additionally secured by a mortgage, deed

3-1 of trust, or chattel mortgage on real or personal property, or on
3-2 both real and personal property, if granted by the authority or
3-3 nonprofit instrumentality issuing the bonds or other obligations.

3-4 (g) The changes in law made by the amendment of this section
3-5 by the 78th Legislature at the 2003 Regular Session affect and apply
3-6 only to transactions involving bonds or other obligations that are
3-7 issued or executed under this chapter on or after March 15, 2003.
3-8 Bonds or other obligations that are issued or executed under this
3-9 chapter before March 15, 2003, are governed by the law in effect
3-10 immediately before the amendment of this section by the 78th
3-11 Legislature at the 2003 Regular Session, and that former law is
3-12 continued in effect for that purpose.

3-13 SECTION 4. Subsection (b), Section 53.35, Education Code,
3-14 is amended to read as follows:

3-15 (b) In addition to or in lieu of establishing an authority
3-16 under the provisions of this chapter, the governing body of a city
3-17 or cities may request or order created one or more nonprofit
3-18 corporations to act on its behalf and as its duly constituted
3-19 authority and instrumentality to exercise the powers granted to an
3-20 authority under the provisions of Sections [~~Section~~] 53.33 and
3-21 53.34[~~, Texas Education Code~~]. If a nonprofit corporation is
3-22 created for such purposes or agrees to such request, the directors
3-23 thereof shall thereafter be appointed and be subject to removal by
3-24 the governing body of the city or cities. In addition to the powers
3-25 [~~of lease or acquisition of facilities~~] granted under, and subject
3-26 to the limitations provided by, Sections [~~Section~~] 53.33 and 53.34,
3-27 the corporation shall have all powers granted under the Texas
3-28 Non-Profit Corporation Act for the purpose of aiding institutions
3-29 of higher education in providing educational facilities and housing
3-30 facilities and facilities incidental, subordinate, or related
3-31 thereto or appropriate in connection therewith. In addition to
3-32 Sections [~~the provisions of Section~~] 53.33 and 53.34 and the Texas
3-33 Non-Profit Corporation Act, as amended (Article 1396-1.01,
3-34 Vernon's Texas Civil Statutes), Sections 53.131, 53.14, 53.15,
3-35 53.31, 53.32, 53.331, 53.34, 53.35, 53.38, and 53.41 of this code[~~r~~
3-36 ~~Texas Education Code, shall~~] apply to and govern such corporation
3-37 and its procedures, [~~and~~] bonds, and other obligations.

3-38 SECTION 5. Section 53.48, Education Code, is amended to
3-39 read as follows:

3-40 Sec. 53.48. BONDS FOR ACCREDITED PRIMARY OR SECONDARY
3-41 SCHOOLS. In the same manner that a corporation may issue and
3-42 execute bonds or other obligations under this chapter for an
3-43 institution of higher education, a corporation created under
3-44 Section 53.35(b) may issue and execute bonds or other obligations
3-45 to finance or refinance educational facilities or housing
3-46 facilities to be used by an accredited primary or secondary school
3-47 or by an authorized charter school.

3-48 SECTION 6. This Act takes effect immediately if it receives
3-49 a vote of two-thirds of all the members elected to each house, as
3-50 provided by Section 39, Article III, Texas Constitution. If this
3-51 Act does not receive the vote necessary for immediate effect, this
3-52 Act takes effect September 1, 2003.

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