

By: Crownover

H.B. No. 2701

A BILL TO BE ENTITLED

AN ACT

relating to higher education authorities.

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

SECTION 1. Chapter 53, Education Code, as amended by Chapters 1266 and 1310, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

CHAPTER 53. HIGHER EDUCATION FACILITY AUTHORITIES FOR PUBLIC
SCHOOLS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.01. SHORT TITLE. This chapter may be cited as the Higher Education Facility Authority for Public Schools Act.

Sec. 53.02. DEFINITIONS. In this chapter:

(1) "City" means an incorporated city or town in this state.

(2) "Governing body" means the council, commission, or other governing body of a city.

(3) "Authority" means a higher education facility authority created under this chapter.

(4) "Board" means the board of directors of an authority.

(5) "Institution of higher education" means ~~[(i)]~~ any institution of higher education as defined by Subdivision (8) of Section 61.003 ~~[of this code, or (ii) a degree-granting college or university corporation accredited by the Texas Education Agency or~~

1 ~~by a recognized accrediting agency, as defined by Subdivision (13)~~
2 ~~of Section 61.003 of this code, or (iii) a postsecondary career~~
3 ~~school or college accredited by the Association of Independent~~
4 ~~Colleges and Schools, the National Association of Trade and~~
5 ~~Technical Schools, or the National Accrediting Commission of~~
6 ~~Cosmetology Arts and Sciences].~~

7 (6) "Educational facility" means a classroom
8 building, laboratory, science building, faculty or administrative
9 office building, or other facility used exclusively for the conduct
10 of the educational and administrative functions of an institution
11 of higher education.

12 (7) "Housing facility" means a single- or multi-family
13 residence used exclusively for housing or boarding, or housing and
14 boarding students, faculty, or staff members of an institution of
15 higher learning. The term includes infirmary and student union
16 building, but does not include a housing or boarding facility for
17 the use of a fraternity, sorority, or private club.

18 (8) "Bond resolution" means the resolution
19 authorizing the issuance of revenue bonds.

20 (9) "Trust indenture" means the mortgage, deed of
21 trust, or other instrument pledging revenue or ~~of~~ property, or
22 creating a mortgage lien on property, or both, to secure the revenue
23 bonds issued by the authority.

24 (10) ~~["Trustee" means the trustee under the trust~~
25 ~~indenture.~~

26 ~~[(11) "Repurchase agreement" means a simultaneous~~
27 ~~agreement between a higher education authority and another entity~~

1 ~~in which one of the parties has agreed to purchase investment~~
2 ~~securities on a specified date and the other party has agreed to~~
3 ~~repurchase the investment securities at the same price plus accrued~~
4 ~~interest on a later date, in which the market value of the~~
5 ~~investment securities purchased is in excess of the amount of the~~
6 ~~repurchase agreement, and in which the investment securities are so~~
7 ~~purchased and held separately from all other investment securities,~~
8 ~~in trust, in order to complete the contractual commitment.~~

9 ~~[(12)] "Accredited primary or secondary school" means a~~
10 ~~primary or secondary school, including a preschool, that is~~
11 ~~accredited by an accreditation body that is a member of the Texas~~
12 ~~Private School Accreditation Commission.~~

13 ~~[(13)]~~ "Authorized charter school" means an
14 open-enrollment charter school that holds a charter granted under
15 Subchapter D, Chapter 12.

16 (11) ~~[(14)]~~ "Borrower" means any of the following
17 entities that is the recipient of a loan made under Section 53.34:

18 (A) an institution of higher education;

19 (B) a nonprofit corporation:

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

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

26 (C) ~~[an accredited primary or secondary school,~~

27 ~~or~~

1 [~~(D)~~] an accredited or authorized charter
2 school.

3 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

4 Sec. 53.11. CREATION OF AUTHORITY. When the governing body
5 of a city finds that it is to the best interest of the city and its
6 inhabitants to create a higher education facility authority, it
7 shall pass an ordinance creating the authority and designating the
8 name by which it shall be known. If the governing bodies of two or
9 more cities find that it is to the best interest of the cities to
10 create an authority to include those cities, each governing body
11 shall pass an ordinance creating the authority and designating the
12 name by which it shall be known.

13 Sec. 53.12. TERRITORY. The authority comprises only the
14 territory included within the boundaries of the city or cities
15 creating it.

16 Sec. 53.13. CORPORATE POWERS. An authority is a body
17 politic and corporate having the power of perpetual succession. It
18 shall have a seal; it may sue and be sued; and it may make, amend,
19 and repeal its bylaws.

20 Sec. 53.131. AUTHORITY'S EARNINGS. A private person may
21 not share in any of an authority's earnings.

22 Sec. 53.14. BOARD OF DIRECTORS. (a) The authority shall be
23 governed by a board of directors consisting of not less than 7 nor
24 more than 11 members to be determined at the time of creating the
25 authority. The directors shall be appointed by the governing body
26 of the city or by the governing bodies of the cities, and they shall
27 serve until their successors are appointed as provided by this

1 section. If the authority includes more than one city, each
2 governing body shall appoint an equal number of directors unless
3 otherwise agreed by the cities.

4 (b) The members of the board serve for two-year terms.

5 (c) No officer or employee of any such city is eligible for
6 appointment as a director. Directors are not entitled to
7 compensation for services but are entitled to reimbursement for
8 expenses incurred in performing such service.

9 Sec. 53.15. ORGANIZATION OF BOARD; QUORUM; EMPLOYEES;
10 COUNSEL. (a) The board shall elect from among its members a
11 president and vice president, and shall elect a secretary and a
12 treasurer who may or may not be directors, and may elect other
13 officers as authorized by the authority's bylaws. The offices of
14 secretary and treasurer may be combined.

15 (b) The president has the same right to vote on all matters
16 as other members of the board.

17 (c) A majority constitutes a quorum, and when a quorum is
18 present action may be taken by a majority vote of directors present.

19 (d) The board may employ a manager or executive director of
20 the facilities and other employees, experts, and agents as it sees
21 fit. It may delegate to the manager the power to employ and
22 discharge employees.

23 (e) The board may employ legal counsel.

24 SUBCHAPTER C. POWERS AND DUTIES

25 Sec. 53.31. NO TAXING POWER. An authority has no power to
26 tax.

27 Sec. 53.32. NO POWER OF EMINENT DOMAIN. The authority does

1 not have the power of eminent domain.

2 Sec. 53.33. LIMITED POWER TO ACQUIRE, OWN, AND OPERATE
3 EDUCATIONAL AND HOUSING FACILITIES. (a) An authority or a
4 nonprofit instrumentality created under Section 53.35(b) may
5 acquire, own, hold title to, lease, or operate an educational
6 facility or housing facility or any facility incidental,
7 subordinate, or related to or appropriate in connection with an
8 educational facility or housing facility, but only if:

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

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

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

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

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

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

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

1 located.

2 (b) An authority or instrumentality that exercises the
3 powers granted by Subsection (a) may contract for the operation of
4 the facility by public or private entities or persons on the terms
5 and conditions set forth in a contract relating to the operation of
6 the facility.

7 (c) The changes in law made by the amendment of this section
8 by the 78th Legislature, Regular Session, 2003, do not affect the
9 acquisition, ownership, construction, or improvement of a
10 facility, or the acquisition and ownership of land that were
11 approved by official action of the authority or nonprofit corporate
12 instrumentality before March 15, 2003, and the law in effect
13 immediately before the effective date of the amendment of this
14 section by the 78th Legislature, Regular Session, 2003, is
15 continued in effect for that purpose.

16 Sec. 53.331. REFINANCING FACILITIES. The authority may
17 refinance any educational or housing facility acquired,
18 constructed, or improved.

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

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

16 (c) Bonds or other obligations issued under Subsection (a)
17 shall be payable from and secured by a pledge of the revenues,
18 income, or assets pledged for the purpose by the borrower. The
19 bonds or other obligations may be additionally secured by a
20 mortgage, deed of trust, or chattel mortgage on real or personal
21 property, or on both real and personal property, if granted by the
22 borrower.

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

27 (e) An authority or a nonprofit instrumentality that is

1 authorized to acquire and own educational facilities and housing
2 facilities under Section 53.33(a) may issue and execute revenue
3 bonds and other obligations for the purpose of acquiring, owning,
4 and operating the educational and housing facilities, to create
5 operating reserves for the facilities, and to create debt service
6 reserves for and to pay issuance costs related to the bonds or other
7 obligations.

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

19 (g) The changes in law made by the amendment of this section
20 by the 78th Legislature, Regular Session, 2003, affect and apply
21 only to transactions involving bonds or other obligations that are
22 issued or executed under this chapter on or after March 15, 2003.
23 Bonds or other obligations that are issued or executed under this
24 chapter before March 15, 2003, are governed by the law in effect
25 immediately before the amendment of this section by the 78th
26 Legislature, Regular Session, 2003, and that former law is
27 continued in effect for that purpose.

1 Sec. 53.35. ISSUANCE OF BONDS; PROCEDURE; ETC. (a) The
2 bonds shall be authorized by resolution adopted by a majority vote
3 of a quorum of the board. Bonds authorized under this section shall
4 be issued in accordance with Chapter 1201, Government Code. The
5 bonds shall mature serially or otherwise in not to exceed 50 years.
6 The rate of interest to be borne by the bonds shall not exceed the
7 maximum rate prescribed by Chapter 1204, Government Code.

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 53.33 and 53.34. If a
14 nonprofit corporation is created for such purposes or agrees to
15 such request, the directors thereof shall thereafter be appointed
16 and be subject to removal by the governing body of the city or
17 cities. In addition to the powers granted under, and subject to the
18 limitations provided by, Sections 53.33 and 53.34, the corporation
19 shall have all powers granted under the Texas Non-Profit
20 Corporation Act for the purpose of aiding institutions of higher
21 education in providing educational facilities and housing
22 facilities and facilities incidental, subordinate, or related
23 thereto or appropriate in connection therewith. In addition to
24 Sections 53.33 and 53.34 and the Texas Non-Profit Corporation Act,
25 as amended (Article 1396-1.01 et seq., Vernon's Texas Civil
26 Statutes), Sections 53.131, 53.14, 53.15, 53.31, 53.32, 53.331,
27 53.34, 53.35, 53.38, and 53.41 of this code apply to and govern such

1 corporation and its procedures, bonds, and other obligations.

2 Sec. 53.351. BONDS FOR OPEN-ENROLLMENT CHARTER SCHOOL
3 FACILITIES. (a) The Texas Public Finance Authority shall
4 establish a nonprofit corporation to issue revenue bonds on behalf
5 of authorized open-enrollment charter schools for the acquisition,
6 construction, repair, or renovation of educational facilities of
7 those schools.

8 (b) The Texas Public Finance Authority shall appoint the
9 directors of the corporation in consultation with the commissioner
10 of education. Directors serve without compensation but are
11 entitled to reimbursement for travel expenses incurred in attending
12 board meetings. The board shall meet at least once a year.

13 (c) The corporation has all powers granted under the Texas
14 Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's
15 Texas Civil Statutes) for the purpose of aiding authorized
16 open-enrollment charter schools in providing educational
17 facilities. In addition, Sections 53.131, 53.15, 53.31, 53.32,
18 53.331, 53.34, 53.35, 53.36(a), and 53.37-53.42 apply to and govern
19 the corporation and its procedures and bonds.

20 (d) The corporation shall adopt rules governing the
21 issuance of bonds on behalf of an authorized open-enrollment
22 charter school.

23 (e) The comptroller shall establish a fund dedicated to the
24 credit enhancement of bonds issued under this section. The fund may
25 receive donations. The obligation of the fund is limited to an
26 amount equal to the balance of the fund.

27 (f) A revenue bond issued under this section is not a debt of

1 the state or any state agency, political corporation, or political
2 subdivision of the state and is not a pledge of the faith and credit
3 of any of these entities. A revenue bond is payable solely from the
4 revenue of the authorized open-enrollment charter school on whose
5 behalf the bond is issued. A revenue bond issued under this section
6 must contain on its face a statement to the effect that:

7 (1) neither the state nor a state agency, political
8 corporation, or political subdivision of the state is obligated to
9 pay the principal of or interest on the bond; and

10 (2) neither the faith and credit nor the taxing power
11 of the state or any state agency, political corporation, or
12 political subdivision of the state is pledged to the payment of the
13 principal of or interest on the bond.

14 (g) An educational facility financed in whole or in part
15 under this section is exempt from taxation if the facility:

16 (1) is owned by an authorized open-enrollment charter
17 school;

18 (2) is held for the exclusive benefit of the school;
19 and

20 (3) is held for the exclusive use of the students,
21 faculty, and staff members of the school.

22 Sec. 53.36. BOND RESOLUTION; NOTICE; ELECTION. (a) Before
23 authorizing the issuance of bonds, other than refunding bonds, the
24 board shall cause a notice to be issued stating that it intends to
25 adopt a resolution authorizing the issuance of the bonds, the
26 maximum amount thereof, and the maximum maturity thereof. The
27 notice shall be published once each week for two consecutive weeks

1 in a newspaper or newspapers having general circulation in the
2 authority. The first publication shall be at least 14 days prior to
3 the day set for adopting the bond resolution.

4 (b) If, prior to the day set for the adoption of the bond
5 resolution, there is presented to the secretary or president of the
6 board a petition signed by not less than 10 percent of the qualified
7 voters residing in the city or cities comprising the authority, who
8 own taxable property in the authority and who have duly rendered it
9 for taxation to the city in which such property is located or
10 situated, requesting an election on the proposition for the
11 issuance of the bonds, the bonds shall not be issued unless an
12 election is held and a majority vote is in favor of the bonds. The
13 election shall be called and held in accordance with the procedure
14 prescribed in Chapter 1251, Government Code, with the board and the
15 president and secretary performing the functions there assigned to
16 the governing body of the city, the mayor and city secretary,
17 respectively. If no such petition is filed, the bonds may be issued
18 without an election. However, the board may call an election on its
19 own motion without the filing of the petition.

20 Sec. 53.37. JUNIOR LIEN BONDS; PARITY BONDS. Bonds
21 constituting a junior lien on the net revenue or properties may be
22 issued unless prohibited by the bond resolution or trust indenture.
23 Parity bonds may be issued under conditions specified in the bond
24 resolution or trust indenture.

25 Sec. 53.38. RESERVES FOR OPERATING AND OTHER EXPENSES.
26 Money for the payment of not more than two years' interest on the
27 bonds and an amount estimated by the board to be required for

1 operating expenses during the first year of operation may be set
2 aside for those purposes out of the proceeds from the sale of the
3 bonds.

4 Sec. 53.39. REFUNDING BONDS. Bonds may be issued for the
5 purpose of refunding outstanding bonds in the manner provided in
6 this chapter for other bonds, and may be exchanged by the
7 comptroller or sold and the proceeds applied in accordance with the
8 procedure prescribed by Subchapter B or C, Chapter 1207, Government
9 Code.

10 Sec. 53.40. APPROVAL OF BONDS; REGISTRATION;
11 NEGOTIABILITY. Bonds issued under this chapter and the record
12 relating to their issuance shall be submitted to the attorney
13 general, and if he finds that they have been issued in accordance
14 with this chapter and constitute valid and binding obligations of
15 the authority and are secured as recited therein he shall approve
16 them, and they shall be registered by comptroller of public
17 accounts who shall certify the registration thereon. Thereafter
18 they are incontestable. The bonds shall be negotiable and shall
19 contain the following provision: "The holder hereof shall never
20 have the right to demand payment thereof out of money raised or to
21 be raised by taxation."

22 Sec. 53.41. AUTHORIZED INVESTMENTS. All bonds issued under
23 this chapter are legal and authorized investments for all banks,
24 savings banks, trust companies, building and loan associations,
25 savings and loan associations, and insurance companies of all kinds
26 and types, and for the interest and sinking funds and other public
27 funds of any issuer. The bonds are also eligible and lawful

1 security for all deposits of public funds of the State of Texas and
2 of any issuer, to the extent of the value of the bonds, when
3 accompanied by any unmatured interest coupons appurtenant to them.

4 Sec. 53.42. INVESTMENT OF FUNDS; SECURITY. To the extent it
5 is applicable, the law as to the security for and the investment of
6 funds, applicable to cities, controls the investment of funds
7 belonging to authority. The bond resolution or the indenture or
8 both may further restrict the making of investments. The authority
9 may invest the proceeds of its bonds, until the money is needed, in
10 the direct obligations of or obligations unconditionally
11 guaranteed by the United States, to the extent authorized in the
12 bond resolution or indenture or in both.

13 Sec. 53.43. DEPOSITORIES. The authority may select a
14 depository or depositories according to the procedures provided by
15 law for the selection of city depositories, or it may award its
16 depository contract to the same depository or depositories selected
17 by the city or cities and on the same terms.

18 Sec. 53.44. OPERATION OF FACILITIES; RATES CHARGED; RESERVE
19 FUNDS. (a) The facilities may be operated by the authority without
20 the intervention of private profit for the use and benefit of the
21 public, or may be leased to an institution of higher education, or
22 may be operated by the institution under a contract with the
23 authority, the lease or contract to be in effect until any revenue
24 bonds issued in connection with it have been finally retired.

25 (b) The board shall charge rates for the use of the
26 facilities, or for their lease or operation, that are fully
27 sufficient to pay all expenses in connection with the ownership,

1 operation, and upkeep of the facilities, to pay the interest on the
2 bonds as it becomes due, to create a sinking fund to pay the bonds as
3 they become due, and to create and maintain a bond reserve fund and
4 other funds and reserves that may be provided in the bond resolution
5 or trust indenture. The bond resolution or trust indenture may
6 prescribe systems, methods, routines, and procedures under which
7 the facilities shall be operated.

8 Sec. 53.45. TRANSACTIONS WITH OTHER AGENCIES AND PERSONS.

9 The authority may borrow money and accept grants from, and enter
10 into contracts, leases, or other transactions with the United
11 States, the State of Texas, any municipal corporation in the state,
12 and any public or private person or corporation resident or
13 authorized to do business in the state.

14 Sec. 53.46. AUTHORITY EXEMPT FROM TAXATION. Because the
15 property owned by authority will be held for educational purposes
16 only and will be devoted exclusively to the use and benefit of the
17 students, faculty, and staff members of an accredited institution
18 of higher education, it is exempt from taxation of every character.

19 ~~[Sec. 53.47. GUARANTEED STUDENT LOANS AND ALTERNATE~~
20 ~~EDUCATION LOANS; BONDS FOR THE PURCHASE OF EDUCATION LOAN NOTES.~~

21 ~~(a) In this section:~~

22 ~~[(1) "Accredited institution" means an institution~~
23 ~~that has either been recognized by a recognized accrediting agency,~~
24 ~~as defined by Section 61.003, or accredited by the Accrediting~~
25 ~~Commission for Independent Colleges and Schools, the Accrediting~~
26 ~~Commission for Career Schools and Colleges of Technology, or the~~
27 ~~National Accrediting Commission of Cosmetology Arts and Sciences.~~

1 ~~[(2) "Alternative education loan" means a loan other~~
2 ~~than a guaranteed student loan that is made to or for the benefit of~~
3 ~~a student for the purpose of financing all or part of the student's~~
4 ~~cost of attendance at an accredited institution.~~

5 ~~[(3) "Cost of attendance" means all costs of a student~~
6 ~~incurred in connection with a program of study at an accredited~~
7 ~~institution, as determined by the institution, including tuition~~
8 ~~and instructional fees, the cost of room and board, books,~~
9 ~~computers, and supplies, and other related fees, charges, and~~
10 ~~expenses.~~

11 ~~[(4) "Guaranteed student loan" means a loan made by an~~
12 ~~eligible lender under the Higher Education Act of 1965 (Pub. L. No.~~
13 ~~89-329), as amended.~~

14 ~~[(5) "Qualified alternative education loan lender"~~
15 ~~means a nonprofit corporation incorporated under the laws of this~~
16 ~~state that:~~

17 ~~[(A) is a qualified nonprofit corporation,~~

18 ~~[(B) has serviced education loans made under the~~
19 ~~Higher Education Act of 1965, as amended, for a qualified nonprofit~~
20 ~~corporation for a period of not less than 10 years; or~~

21 ~~[(C) is a charitable organization qualified~~
22 ~~under Section 509(a)(2), Internal Revenue Code of 1986, as amended,~~
23 ~~that provides services to a qualified nonprofit corporation.~~

24 ~~[(6) "Qualified nonprofit corporation" means a~~
25 ~~nonprofit corporation:~~

26 ~~[(A) that issued bonds on or after January 1,~~
27 ~~1990, and before January 1, 2001, that qualified as qualified~~

1 ~~student loan bonds under Section 144(b), Internal Revenue Code of~~
2 ~~1986, as amended, or~~

3 ~~[(B) that the office of the governor, in~~
4 ~~consultation with the state student loan guaranty agency or any~~
5 ~~other public or private entity the office of the governor considers~~
6 ~~appropriate, has determined meets a need for student loan financing~~
7 ~~that existing qualified nonprofit corporations cannot meet, which~~
8 ~~determination may include information provided by the nonprofit~~
9 ~~corporation's plan for doing business that should include~~
10 ~~documented limitations in:~~

11 ~~[(i) the geographic coverage of existing~~
12 ~~qualified nonprofit corporations in the nonprofit corporation's~~
13 ~~proposed area of service;~~

14 ~~[(ii) the willingness of existing qualified~~
15 ~~nonprofit corporations to serve the eligible lenders in the~~
16 ~~proposed area of service; and~~

17 ~~[(iii) the ability of existing qualified~~
18 ~~nonprofit corporations to serve the eligible lenders in the~~
19 ~~proposed area of service.~~

20 ~~[(b) An authority may, upon approval of the city or cities~~
21 ~~which created the same, issue revenue bonds or otherwise borrow~~
22 ~~money to obtain funds to purchase or to make guaranteed student~~
23 ~~loans. Revenue bonds issued for such purpose shall be issued in~~
24 ~~accordance with and with the effect provided in this chapter,~~
25 ~~except Section 53.36 shall not apply, as this chapter has been~~
26 ~~modified by Chapter 1204, Government Code, and Subchapters A and D,~~
27 ~~Chapter 1207, Government Code. Such bonds shall be payable from and~~

1 ~~secured by a pledge of revenues derived from or by reason of the~~
2 ~~ownership of guaranteed student loans and investment income after~~
3 ~~deduction of such expenses of operating the loan program as may be~~
4 ~~specified by the bond resolution or trust indenture.~~

5 ~~[(c) An authority may cause money to be expended to make or~~
6 ~~purchase for its account guaranteed student loans that are~~
7 ~~guaranteed by the Texas Guaranteed Student Loan Corporation or that~~
8 ~~are executed by or on behalf of students who (1) are residents of~~
9 ~~this state or (2) have been admitted to attend an accredited~~
10 ~~institution within this state.~~

11 ~~[(d) The authority shall contract with a nonprofit~~
12 ~~corporation, organized under the laws of this state, whereby such~~
13 ~~corporation will provide the reports and other information required~~
14 ~~for continued participation in the federally guaranteed loan~~
15 ~~program provided by the Higher Education Act of 1965, as amended.~~

16 ~~[(e) The authority, as a municipal corporation of the state,~~
17 ~~is charged with a portion of the responsibility of the state to~~
18 ~~provide educational opportunities in keeping with all applicable~~
19 ~~state and federal laws. Nothing in this section shall be construed~~
20 ~~as a prohibition against establishing policies to limit the~~
21 ~~purchase of guaranteed student loans to guaranteed student loans~~
22 ~~executed by students attending school in a certain geographical~~
23 ~~area or by students who are residents of the area.~~

24 ~~[(f) In addition to establishing an authority under the~~
25 ~~provisions of this chapter, the governing body of a city or cities~~
26 ~~may request a qualified nonprofit corporation to exercise the~~
27 ~~powers enumerated and provided in this section for and on its~~

1 ~~behalf. If the qualified nonprofit corporation agrees to exercise~~
2 ~~such powers, the directors of such corporation shall thereafter be~~
3 ~~appointed by and be subject to removal by the governing body of the~~
4 ~~city or cities, and except as provided in this section, Sections~~
5 ~~53.14, 53.15, 53.31, 53.32, 53.38, and 53.41 through 53.43 apply to~~
6 ~~and govern such corporation, its procedures, and bonds.~~
7 ~~Notwithstanding the provisions of Section 53.42, a qualified~~
8 ~~nonprofit corporation which has been requested to exercise the~~
9 ~~powers enumerated and requested in this section may invest or cause~~
10 ~~a trustee or custodian on behalf of such qualified nonprofit~~
11 ~~corporation to invest its funds, including the proceeds of any~~
12 ~~bonds, notes, or other obligations issued by such qualified~~
13 ~~nonprofit corporation and any monies which are pledged to the~~
14 ~~payment thereof, in:~~

15 ~~[(1) certificates of deposit or other time or demand~~
16 ~~accounts of banks and savings and loan associations which are~~
17 ~~insured by the Federal Deposit Insurance Corporation, provided the~~
18 ~~amount of any certificate of deposit in excess of that covered by~~
19 ~~such insurance must be secured by a first and prior pledge of~~
20 ~~government obligations having a market value of not less than 100~~
21 ~~percent of the excess unless a nationally recognized rating agency~~
22 ~~has given the senior securities of the bank issuing the certificate~~
23 ~~of deposit the highest or next to the highest investment rating~~
24 ~~available,~~

25 ~~[(2) repurchase agreements,~~

26 ~~[(3) guaranteed student loans and alternative~~
27 ~~education loans, or~~

1 ~~[(4) a security issued by another nonprofit~~
2 ~~corporation acting under this section.~~

3 ~~[(g) A nonprofit corporation, whether acting at the request~~
4 ~~of a city or cities under Subsection (f) or acting as a servicer or~~
5 ~~administrator for another corporation that purchases guaranteed~~
6 ~~student loans, or that on its own behalf issues securities or~~
7 ~~otherwise obtains funds to purchase or make guaranteed student~~
8 ~~loans or alternative education loans, may:~~

9 ~~[(1) exercise the powers granted by the Texas~~
10 ~~Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's~~
11 ~~Texas Civil Statutes),~~

12 ~~[(2) service loans purchased or made from its funds or~~
13 ~~contract with another person to service the loans,~~

14 ~~[(3) grant a security interest in a trust estate~~
15 ~~securing its securities, and~~

16 ~~[(4) make investments as authorized by Subsection (f).~~

17 ~~[(h) A security interest in a trust estate granted under~~
18 ~~Subsection (g)(3) is attached and perfected at the time the~~
19 ~~security interest is executed and delivered by the nonprofit~~
20 ~~corporation. The security interest grants to the secured party a~~
21 ~~first prior perfected security interest in the trust estate for the~~
22 ~~benefit of the secured party without regard to the location of the~~
23 ~~assets that constitute the trust estate.~~

24 ~~[(i) An alternative education loan may be made under this~~
25 ~~section only by a qualified alternative education loan lender. An~~
26 ~~alternative education loan may not be in an amount in excess of the~~
27 ~~difference between the cost of attendance and the amount of other~~

1 ~~student assistance to the student, other than loans under Section~~
2 ~~428B(a)(1), Higher Education Act of 1965 (20 U.S.C. Section 1078-2)~~
3 ~~(relating to parent loans), for which the student borrower may be~~
4 ~~eligible. An alternative education loan covered by this subsection~~
5 ~~is subject to Chapter 342, Finance Code, as applicable, except~~
6 ~~that:~~

7 ~~[(1) the maximum interest rate on the loan may not~~
8 ~~exceed the rate permitted under Subchapter A, Chapter 303, Finance~~
9 ~~Code; and~~

10 ~~[(2) application and origination fees may be agreed to~~
11 ~~by the parties and assessed at the inception of the loan, provided~~
12 ~~that if any such fees constitute additional interest under~~
13 ~~applicable law, the effective rate of interest agreed to over the~~
14 ~~stated term of the loan may not exceed the rate allowed by~~
15 ~~Subchapter A, Chapter 303, Finance Code, and accrued unpaid~~
16 ~~interest may be added to unpaid principal at the beginning of the~~
17 ~~agreed repayment period at the borrower's option and in accordance~~
18 ~~with the terms of the agreement for purposes of determining the~~
19 ~~total principal amount due at the inception of the repayment~~
20 ~~period.~~

21 ~~[(j) An authority or nonprofit corporation making education~~
22 ~~loans under this section is exempt from the licensing requirements~~
23 ~~of Chapter 342, Finance Code.]~~

24 Sec. 53.48. BONDS FOR AUTHORIZED CHARTER [~~ACCREDITED~~
25 ~~PRIMARY OR SECONDARY~~] SCHOOLS. In the same manner that a
26 corporation may issue and execute bonds or other obligations under
27 this chapter for an institution of higher education, a corporation

1 created under Section 53.35(b) may issue and execute bonds or other
2 obligations to finance or refinance educational facilities [~~or~~
3 ~~housing facilities~~] to be used by [~~an accredited primary or~~
4 ~~secondary school or by~~] an authorized charter school.

5 [~~Sec. 53.49. BONDS FOR CERTAIN SCHOOLS OWNED AND OPERATED~~
6 ~~BY NONPROFIT CORPORATIONS. (a) In the same manner that a~~
7 ~~corporation may issue bonds under this chapter for an institution~~
8 ~~of higher education, a corporation created under Section 53.35(b)~~
9 ~~may issue bonds to finance or refinance educational facilities to~~
10 ~~be used by a school that:~~

11 [~~(1) is located in a county with a population of more~~
12 ~~than 1,800,000;~~

13 [~~(2) is located within three miles of an area~~
14 ~~designated as an enterprise zone under Chapter 2303, Government~~
15 ~~Code;~~

16 [~~(3) provides primary and secondary education to at~~
17 ~~least 1,000 students;~~

18 [~~(4) is accredited by an organization approved by the~~
19 ~~Texas Education Agency for private school accreditation; and~~

20 [~~(5) is owned and operated by a corporation created~~
21 ~~under the Texas Non-Profit Corporation Act (Article 1396-1.01 et~~
22 ~~seq., Vernon's Texas Civil Statutes).~~

23 [~~(b) Notwithstanding Section 53.34(b), bonds issued under~~
24 ~~this section may be payable from and secured by a pledge of any~~
25 ~~revenue or assets pledged for that purpose.]~~

26 SECTION 2. Subtitle A, Title 3, Education Code, is amended
27 by adding Chapters 53A and 53B to read as follows:

1 CHAPTER 53A. HIGHER EDUCATION FACILITY AUTHORITIES FOR PRIVATE
2 SCHOOLS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 53A.01. SHORT TITLE. This chapter may be cited as the
5 Higher Education Facility Authority for Private Schools Act.

6 Sec. 53A.02. DEFINITIONS. In this chapter:

7 (1) "City" means an incorporated city or town in this
8 state.

9 (2) "Governing body" means the council, commission, or
10 other governing body of a city.

11 (3) "Authority" means a higher education facility
12 authority created under this chapter.

13 (4) "Board" means the board of directors of an
14 authority.

15 (5) "Institution of higher education" means (i) a
16 degree-granting college or university corporation accredited by
17 the Texas Education Agency or by a recognized accrediting agency,
18 as defined by Section 61.003(13), or (ii) a postsecondary career
19 school or college accredited by the Association of Independent
20 Colleges and Schools, the National Association of Trade and
21 Technical Schools, or the National Accrediting Commission of
22 Cosmetology Arts and Sciences.

23 (6) "Educational facility" means a classroom
24 building, laboratory, science building, faculty or administrative
25 office building, or other facility used exclusively for the conduct
26 of the educational and administrative functions of an institution
27 of higher education.

1 (7) "Housing facility" means a single- or multi-family
2 residence used exclusively for housing or boarding, or housing and
3 boarding students, faculty, or staff members of an institution of
4 higher learning. The term includes infirmary and student union
5 building, but does not include a housing or boarding facility for
6 the use of a fraternity, sorority, or private club.

7 (8) "Bond resolution" means the resolution
8 authorizing the issuance of revenue bonds.

9 (9) "Trust indenture" means the mortgage, deed of
10 trust, or other instrument pledging revenue or property, or
11 creating a mortgage lien on property, or both, to secure the revenue
12 bonds issued by the authority.

13 (10) "Accredited primary or secondary school" means a
14 primary or secondary school, including a preschool, that is
15 accredited by an accreditation body that is a member of the Texas
16 Private School Accreditation Commission.

17 (11) "Borrower" means any of the following entities
18 that is the recipient of a loan made under Section 53A.34:

19 (A) an institution of higher education;

20 (B) a nonprofit corporation:

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

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

27 (C) an accredited primary or secondary school.

1 [Sections 53A.03-53A.10 reserved for expansion]

2 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

3 Sec. 53A.11. CREATION OF AUTHORITY. When the governing
4 body of a city finds that it is to the best interest of the city and
5 its inhabitants to create a higher education facility authority, it
6 shall pass an ordinance creating the authority and designating the
7 name by which it shall be known. If the governing bodies of two or
8 more cities find that it is to the best interest of the cities to
9 create an authority to include those cities, each governing body
10 shall pass an ordinance creating the authority and designating the
11 name by which it shall be known.

12 Sec. 53A.12. TERRITORY. The authority comprises only the
13 territory included within the boundaries of the city or cities
14 creating it.

15 Sec. 53A.13. CORPORATE POWERS. An authority is a body
16 politic and corporate having the power of perpetual succession. It
17 shall have a seal; it may sue and be sued; and it may make, amend,
18 and repeal its bylaws.

19 Sec. 53A.131. AUTHORITY'S EARNINGS. A private person may
20 not share in any of an authority's earnings.

21 Sec. 53A.14. BOARD OF DIRECTORS. (a) The authority shall
22 be governed by a board of directors consisting of not less than 7
23 nor more than 11 members to be determined at the time of creating
24 the authority. The directors shall be appointed by the governing
25 body of the city or by the governing bodies of the cities, and they
26 shall serve until their successors are appointed as provided by
27 this section. If the authority includes more than one city, each

1 governing body shall appoint an equal number of directors unless
2 otherwise agreed by the cities.

3 (b) The members of the board serve for two-year terms.

4 (c) No officer or employee of any such city is eligible for
5 appointment as a director. Directors are not entitled to
6 compensation for services but are entitled to reimbursement for
7 expenses incurred in performing such service.

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

14 (b) The president has the same right to vote on all matters
15 as other members of the board.

16 (c) A majority constitutes a quorum, and when a quorum is
17 present action may be taken by a majority vote of directors present.

18 (d) The board may employ a manager or executive director of
19 the facilities and other employees, experts, and agents as it sees
20 fit. It may delegate to the manager the power to employ and
21 discharge employees.

22 (e) The board may employ legal counsel.

23 [Sections 53A.16-53A.30 reserved for expansion]

24 SUBCHAPTER C. POWERS AND DUTIES

25 Sec. 53A.31. NO TAXING POWER. An authority has no power to
26 tax.

27 Sec. 53A.32. NO POWER OF EMINENT DOMAIN. The authority does

1 not have the power of eminent domain.

2 Sec. 53A.33. LIMITED POWER TO ACQUIRE, OWN, AND OPERATE
3 EDUCATIONAL AND HOUSING FACILITIES. (a) An authority or a
4 nonprofit instrumentality created under Section 53A.35(b) may
5 acquire, own, hold title to, lease, or operate an educational
6 facility or housing facility or any facility incidental,
7 subordinate, or related to or appropriate in connection with an
8 educational facility or housing facility, but only if:

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

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

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

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

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

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

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

1 located.

2 (b) An authority or instrumentality that exercises the
3 powers granted by Subsection (a) may contract for the operation of
4 the facility by public or private entities or persons on the terms
5 and conditions set forth in a contract relating to the operation of
6 the facility.

7 (c) The changes in law made by the amendment of this section
8 by the 78th Legislature, Regular Session, 2003, do not affect the
9 acquisition, ownership, construction, or improvement of a
10 facility, or the acquisition and ownership of land that were
11 approved by official action of the authority or nonprofit corporate
12 instrumentality before March 15, 2003, and the law in effect
13 immediately before the effective date of the amendment of this
14 section by the 78th Legislature, Regular Session, 2003, is
15 continued in effect for that purpose.

16 Sec. 53A.331. REFINANCING FACILITIES. The authority may
17 refinance any educational or housing facility acquired,
18 constructed, or improved.

19 Sec. 53A.34. REVENUE BONDS. (a) An authority or a
20 nonprofit instrumentality created under Section 53A.35(b),
21 including an authority or nonprofit instrumentality authorized to
22 own facilities under Section 53A.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.

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

16 (c) Bonds or other obligations issued under Subsection (a)
17 shall be payable from and secured by a pledge of the revenues,
18 income, or assets pledged for the purpose by the borrower. The
19 bonds or other obligations may be additionally secured by a
20 mortgage, deed of trust, or chattel mortgage on real or personal
21 property, or on both real and personal property, if granted by the
22 borrower.

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

27 (e) An authority or a nonprofit instrumentality that is

1 authorized to acquire and own educational facilities and housing
2 facilities under Section 53A.33(a) may issue and execute revenue
3 bonds and other obligations for the purpose of acquiring, owning,
4 and operating the educational and housing facilities, to create
5 operating reserves for the facilities, and to create debt service
6 reserves for and to pay issuance costs related to the bonds or other
7 obligations.

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

19 (g) The changes in law made by the amendment of this section
20 by the 78th Legislature, Regular Session, 2003, affect and apply
21 only to transactions involving bonds or other obligations that are
22 issued or executed under this chapter on or after March 15, 2003.
23 Bonds or other obligations that are issued or executed under this
24 chapter before March 15, 2003, are governed by the law in effect
25 immediately before the amendment of this section by the 78th
26 Legislature, Regular Session, 2003, and that former law is
27 continued in effect for that purpose.

1 Sec. 53A.35. ISSUANCE OF BONDS; PROCEDURE; ETC. (a) The
2 bonds shall be authorized by resolution adopted by a majority vote
3 of a quorum of the board. Bonds authorized under this section shall
4 be issued in accordance with Chapter 1201, Government Code. The
5 bonds shall mature serially or otherwise in not to exceed 50 years.
6 The rate of interest to be borne by the bonds shall not exceed the
7 maximum rate prescribed by Chapter 1204, Government Code.

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 53A.33 and 53A.34. If a
14 nonprofit corporation is created for such purposes or agrees to
15 such request, the directors thereof shall thereafter be appointed
16 and be subject to removal by the governing body of the city or
17 cities. In addition to the powers granted under, and subject to the
18 limitations provided by Sections 53A.33 and 53A.34, the corporation
19 shall have all powers granted under the Texas Non-Profit
20 Corporation Act for the purpose of aiding institutions of higher
21 education in providing educational facilities and housing
22 facilities and facilities incidental, subordinate, or related
23 thereto or appropriate in connection therewith. In addition to
24 Sections 53A.33 and 53A.34 and the Texas Non-Profit Corporation
25 Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil
26 Statutes), Sections 53A.131, 53A.14, 53A.15, 53A.31, 53A.32,
27 53A.331, 53A.34, 53A.35, 53A.38, and 53A.41 apply to and govern

1 such corporation and its procedures, bonds, and other obligations.

2 Sec. 53A.36. BOND RESOLUTION; NOTICE; ELECTION. (a)

3 Before authorizing the issuance of bonds, other than refunding
4 bonds, the board shall cause a notice to be issued stating that it
5 intends to adopt a resolution authorizing the issuance of the
6 bonds, the maximum amount thereof, and the maximum maturity
7 thereof. The notice shall be published once each week for two
8 consecutive weeks in a newspaper or newspapers having general
9 circulation in the authority. The first publication shall be at
10 least 14 days prior to the day set for adopting the bond resolution.

11 (b) If, prior to the day set for the adoption of the bond
12 resolution, there is presented to the secretary or president of the
13 board a petition signed by not less than 10 percent of the qualified
14 voters residing in the city or cities comprising the authority, who
15 own taxable property in the authority and who have duly rendered it
16 for taxation to the city in which such property is located or
17 situated, requesting an election on the proposition for the
18 issuance of the bonds, the bonds shall not be issued unless an
19 election is held and a majority vote is in favor of the bonds. The
20 election shall be called and held in accordance with the procedure
21 prescribed in Chapter 1251, Government Code, with the board and the
22 president and secretary performing the functions there assigned to
23 the governing body of the city, the mayor and city secretary,
24 respectively. If no such petition is filed, the bonds may be issued
25 without an election. However, the board may call an election on its
26 own motion without the filing of the petition.

27 Sec. 53A.37. JUNIOR LIEN BONDS; PARITY BONDS. Bonds

1 constituting a junior lien on the net revenue or properties may be
2 issued unless prohibited by the bond resolution or trust indenture.
3 Parity bonds may be issued under conditions specified in the bond
4 resolution or trust indenture.

5 Sec. 53A.38. RESERVES FOR OPERATING AND OTHER EXPENSES.

6 Money for the payment of not more than two years' interest on the
7 bonds and an amount estimated by the board to be required for
8 operating expenses during the first year of operation may be set
9 aside for those purposes out of the proceeds from the sale of the
10 bonds.

11 Sec. 53A.39. REFUNDING BONDS. Bonds may be issued for the

12 purpose of refunding outstanding bonds in the manner provided in
13 this chapter for other bonds, and may be exchanged by the
14 comptroller or sold and the proceeds applied in accordance with the
15 procedure prescribed by Subchapter B or C, Chapter 1207, Government
16 Code.

17 Sec. 53A.40. APPROVAL OF BONDS; REGISTRATION;

18 NEGOTIABILITY. Bonds issued under this chapter and the record
19 relating to their issuance shall be submitted to the attorney
20 general, and if he finds that they have been issued in accordance
21 with this chapter and constitute valid and binding obligations of
22 the authority and are secured as recited therein he shall approve
23 them, and they shall be registered by comptroller of public
24 accounts who shall certify the registration thereon. Thereafter,
25 they are incontestable. The bonds shall be negotiable and shall
26 contain the following provision: "The holder hereof shall never
27 have the right to demand payment thereof out of money raised or to

1 be raised by taxation."

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

12 Sec. 53A.42. INVESTMENT OF FUNDS; SECURITY. To the extent
13 it is applicable, the law as to the security for and the investment
14 of funds, applicable to cities, controls the investment of funds
15 belonging to authority. The bond resolution or the indenture or
16 both may further restrict the making of investments. The authority
17 may invest the proceeds of its bonds, until the money is needed, in
18 the direct obligations of or obligations unconditionally
19 guaranteed by the United States, to the extent authorized in the
20 bond resolution or indenture or in both.

21 Sec. 53A.43. DEPOSITORIES. The authority may select a
22 depository or depositories according to the procedures provided by
23 law for the selection of city depositories, or it may award its
24 depository contract to the same depository or depositories selected
25 by the city or cities and on the same terms.

26 Sec. 53A.44. OPERATION OF FACILITIES; RATES CHARGED;
27 RESERVE FUNDS. (a) The facilities may be operated by the authority

1 without the intervention of private profit for the use and benefit
2 of the public, or may be leased to an institution of higher
3 education, or may be operated by the institution under a contract
4 with the authority, the lease or contract to be in effect until any
5 revenue bonds issued in connection with it have been finally
6 retired.

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

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

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

1 Sec. 53A.48. BONDS FOR ACCREDITED PRIMARY OR SECONDARY
2 SCHOOLS. In the same manner that a corporation may issue and
3 execute bonds or other obligations under this chapter for an
4 institution of higher education, a corporation created under
5 Section 53A.35(b) may issue and execute bonds or other obligations
6 to finance or refinance educational facilities or housing
7 facilities to be used by an accredited primary or secondary school.

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

14 (1) is located in a county with a population of more
15 than 1,800,000;

16 (2) is located within three miles of an area
17 designated as an enterprise zone under Chapter 2303, Government
18 Code;

19 (3) provides primary and secondary education to at
20 least 1,000 students;

21 (4) is accredited by an organization approved by the
22 Texas Education Agency for private school accreditation; and

23 (5) is owned and operated by a corporation created
24 under the Texas Non-Profit Corporation Act (Article 1396-1.01 et
25 seq., Vernon's Texas Civil Statutes).

26 (b) Notwithstanding Section 53A.34(b), bonds issued under
27 this section may be payable from and secured by a pledge of any

1 revenue or assets pledged for that purpose.

2 CHAPTER 53B. HIGHER EDUCATION LOAN AUTHORITIES

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 53B.01. SHORT TITLE. This chapter may be cited as the
5 Higher Education Loan Authority Act.

6 Sec. 53B.02. DEFINITIONS. In this chapter:

7 (1) "Accredited institution" means an institution
8 that has either been recognized by a recognized accrediting agency,
9 as defined by Section 61.003, or accredited by the Accrediting
10 Commission for Independent Colleges and Schools, the Accrediting
11 Commission for Career Schools and Colleges of Technology, or the
12 National Accrediting Commission of Cosmetology Arts and Sciences.

13 (2) "Alternative education loan" means a loan other
14 than a guaranteed student loan that is made to or for the benefit of
15 a student for the purpose of financing all or part of the student's
16 cost of attendance at an accredited institution.

17 (3) "Authority" means a higher education loan
18 authority created under this chapter.

19 (4) "Board" means the board of directors of an
20 authority.

21 (5) "Bond resolution" means the resolution
22 authorizing the issuance of revenue bonds.

23 (6) "City" means an incorporated city or town in this
24 state.

25 (7) "Cost of attendance" means all costs of a student
26 incurred in connection with a program of study at an accredited
27 institution, as determined by the institution, including tuition

1 and instructional fees, the cost of room and board, books,
2 computers, and supplies, and other related fees, charges, and
3 expenses.

4 (8) "Governing body" means the council, commission, or
5 other governing body of a city.

6 (9) "Guaranteed student loan" means a loan made by an
7 eligible lender under the Higher Education Act of 1965 (Pub. L. No.
8 89-329), as amended.

9 (10) "Qualified alternative education loan lender"
10 means a nonprofit corporation incorporated under the laws of this
11 state that:

12 (A) is a qualified nonprofit corporation;

13 (B) has serviced education loans made under the
14 Higher Education Act of 1965, as amended, for a qualified nonprofit
15 corporation for a period of not less than 10 years; or

16 (C) is a charitable organization qualified under
17 Section 509(a)(2), Internal Revenue Code of 1986, as amended, that
18 provides services to a qualified nonprofit corporation.

19 (11) "Qualified nonprofit corporation" means a
20 nonprofit corporation:

21 (A) that issued bonds on or after January 1,
22 1990, and before January 1, 2001, that qualified as qualified
23 student loan bonds under Section 144(b), Internal Revenue Code of
24 1986, as amended; or

25 (B) that the office of the governor, in
26 consultation with the state student loan guaranty agency or any
27 other public or private entity the office of the governor considers

1 appropriate, has determined meets a need for student loan financing
2 that existing qualified nonprofit corporations cannot meet, which
3 determination may include information provided by the nonprofit
4 corporation's plan for doing business that should include
5 documented limitations in:

6 (i) the geographic coverage of existing
7 qualified nonprofit corporations in the nonprofit corporation's
8 proposed area of service;

9 (ii) the willingness of existing qualified
10 nonprofit corporations to serve the eligible lenders in the
11 proposed area of service; and

12 (iii) the ability of existing qualified
13 nonprofit corporations to serve the eligible lenders in the
14 proposed area of service.

15 (12) "Repurchase agreement" means a simultaneous
16 agreement between a higher education loan authority and another
17 entity in which one of the parties has agreed to purchase investment
18 securities on a specified date and the other party has agreed to
19 repurchase the investment securities at the same price plus accrued
20 interest on a later date, in which the market value of the
21 investment securities purchased is in excess of the amount of the
22 repurchase agreement, and in which the investment securities are so
23 purchased and held separately from all other investment securities,
24 in trust, in order to complete the contractual commitment.

25 (13) "Trust indenture" means the mortgage, deed of
26 trust, or other instrument pledging revenue or property, or
27 creating a mortgage lien on property, or both, to secure the revenue

1 bonds issued by the authority.

2 (14) "Trustee" means the trustee under the trust
3 indenture.

4 [Sections 53B.03-53B.10 reserved for expansion]

5 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

6 Sec. 53B.11. CREATION OF AUTHORITY. When the governing
7 body of a city finds that it is to the best interest of the city and
8 its inhabitants to create a higher education loan authority, it
9 shall pass an ordinance creating the authority and designating the
10 name by which it shall be known. If the governing bodies of two or
11 more cities find that it is to the best interest of the cities to
12 create an authority to include those cities, each governing body
13 shall pass an ordinance creating the authority and designating the
14 name by which it shall be known.

15 Sec. 53B.12. TERRITORY. The authority comprises only the
16 territory included within the boundaries of the city or cities
17 creating it.

18 Sec. 53B.13. CORPORATE POWERS. An authority is a body
19 politic and corporate having the power of perpetual succession. It
20 shall have a seal; it may sue and be sued; and it may make, amend,
21 and repeal its bylaws.

22 Sec. 53B.131. AUTHORITY'S EARNINGS. A private person may
23 not share in any of an authority's earnings.

24 Sec. 53B.14. BOARD OF DIRECTORS. (a) The authority shall
25 be governed by a board of directors consisting of not less than 7
26 nor more than 11 members to be determined at the time of creating
27 the authority. The directors shall be appointed by the governing

1 body of the city or by the governing bodies of the cities, and they
2 shall serve until their successors are appointed as provided by
3 this section. If the authority includes more than one city, each
4 governing body shall appoint an equal number of directors unless
5 otherwise agreed by the cities.

6 (b) The members of the board serve for two-year terms.

7 (c) No officer or employee of any such city is eligible for
8 appointment as a director. Directors are not entitled to
9 compensation for services but are entitled to reimbursement for
10 expenses incurred in performing such service.

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

17 (b) The president has the same right to vote on all matters
18 as other members of the board.

19 (c) A majority constitutes a quorum, and when a quorum is
20 present action may be taken by a majority vote of directors present.

21 (d) The board may employ employees, experts, and agents as
22 it sees fit. It may delegate to the manager the power to employ and
23 discharge employees.

24 (e) The board may employ legal counsel.

25 [Sections 53B.16-53B.30 reserved for expansion]

26 SUBCHAPTER C. POWERS AND DUTIES

27 Sec. 53B.31. NO TAXING POWER. An authority has no power to

1 tax.

2 Sec. 53B.32. NO POWER OF EMINENT DOMAIN. The authority does
3 not have the power of eminent domain.

4 Sec. 53B.35. ISSUANCE OF BONDS; PROCEDURE; ETC. The bonds
5 shall be authorized by resolution adopted by a majority vote of a
6 quorum of the board. Bonds authorized under this section shall be
7 issued in accordance with Chapter 1201, Government Code. The bonds
8 shall mature serially or otherwise in not to exceed 50 years. The
9 rate of interest to be borne by the bonds shall not exceed the
10 maximum rate prescribed by Chapter 1204, Government Code.

11 Sec. 53B.37. JUNIOR LIEN BONDS; PARITY BONDS. Bonds
12 constituting a junior lien on the net revenue or properties may be
13 issued unless prohibited by the bond resolution or trust indenture.
14 Parity bonds may be issued under conditions specified in the bond
15 resolution or trust indenture.

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

22 Sec. 53B.39. REFUNDING BONDS. Bonds may be issued for the
23 purpose of refunding outstanding bonds in the manner provided in
24 this chapter for other bonds, and may be exchanged by the
25 comptroller or sold and the proceeds applied in accordance with the
26 procedure prescribed by Subchapter B or C, Chapter 1207, Government
27 Code.

1 Sec. 53B.40. APPROVAL OF BONDS; REGISTRATION;
2 NEGOTIABILITY. Bonds issued under this chapter and the record
3 relating to their issuance shall be submitted to the attorney
4 general, and if he finds that they have been issued in accordance
5 with this chapter and constitute valid and binding obligations of
6 the authority and are secured as recited therein he shall approve
7 them, and they shall be registered by comptroller of public
8 accounts who shall certify the registration thereon. Thereafter,
9 they are incontestable. The bonds shall be negotiable and shall
10 contain the following provision: "The holder hereof shall never
11 have the right to demand payment thereof out of money raised or to
12 be raised by taxation."

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

23 Sec. 53B.42. INVESTMENT OF FUNDS; SECURITY. To the extent
24 it is applicable, the law as to the security for and the investment
25 of funds, applicable to cities, controls the investment of funds
26 belonging to authority. The bond resolution or the indenture or
27 both may further restrict the making of investments. The authority

1 may invest the proceeds of its bonds, until the money is needed, in
2 the direct obligations of or obligations unconditionally
3 guaranteed by the United States, to the extent authorized in the
4 bond resolution or indenture or in both.

5 Sec. 53B.43. DEPOSITORIES. The authority may select a
6 depository or depositories according to the procedures provided by
7 law for the selection of city depositories, or it may award its
8 depository contract to the same depository or depositories selected
9 by the city or cities and on the same terms.

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

16 Sec. 53B.47. GUARANTEED STUDENT LOANS AND ALTERNATE
17 EDUCATION LOANS; BONDS FOR THE PURCHASE OF EDUCATION LOAN NOTES.

18 (a) An authority may, upon approval of the city or cities which
19 created the same, issue revenue bonds or otherwise borrow money to
20 obtain funds to purchase or to make guaranteed student loans.
21 Revenue bonds issued for such purpose shall be issued in accordance
22 with and with the effect provided in this chapter. Such bonds shall
23 be payable from and secured by a pledge of revenues derived from or
24 by reason of the ownership of guaranteed student loans and
25 investment income after deduction of such expenses of operating the
26 loan program as may be specified by the bond resolution or trust
27 indenture.

1 (b) An authority may cause money to be expended to make or
2 purchase for its account guaranteed student loans that are
3 guaranteed by the Texas Guaranteed Student Loan Corporation or that
4 are executed by or on behalf of students who:

5 (1) are residents of this state; or

6 (2) have been admitted to attend an accredited
7 institution within this state.

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

13 (d) The authority, as a municipal corporation of the state,
14 is charged with a portion of the responsibility of the state to
15 provide educational opportunities in keeping with all applicable
16 state and federal laws. Nothing in this section shall be construed
17 as a prohibition against establishing policies to limit the
18 purchase of guaranteed student loans to guaranteed student loans
19 executed by students attending school in a certain geographical
20 area or by students who are residents of the area.

21 (e) In addition to establishing an authority under the
22 provisions of this chapter, the governing body of a city or cities
23 may request a qualified nonprofit corporation to exercise the
24 powers enumerated and provided in this section for and on its
25 behalf. If the qualified nonprofit corporation agrees to exercise
26 such powers, the directors of such corporation shall thereafter be
27 appointed by and be subject to removal by the governing body of the

1 city or cities, and except as provided in this section, Sections
2 53B.14, 53B.15, 53B.31, 53B.32, 53B.38, and 53B.41 through 53B.43
3 apply to and govern such corporation, its procedures, and bonds.
4 Notwithstanding the provisions of Section 53B.42, a qualified
5 nonprofit corporation which has been requested to exercise the
6 powers enumerated and requested in this section may invest or cause
7 a trustee or custodian on behalf of such qualified nonprofit
8 corporation to invest its funds, including the proceeds of any
9 bonds, notes, or other obligations issued by such qualified
10 nonprofit corporation and any monies which are pledged to the
11 payment thereof, in:

12 (1) certificates of deposit or other time or demand
13 accounts of banks and savings and loan associations which are
14 insured by the Federal Deposit Insurance Corporation, provided the
15 amount of any certificate of deposit in excess of that covered by
16 such insurance must be secured by a first and prior pledge of
17 government obligations having a market value of not less than 100
18 percent of the excess unless a nationally recognized rating agency
19 has given the senior securities of the bank issuing the certificate
20 of deposit the highest or next to the highest investment rating
21 available;

22 (2) repurchase agreements;

23 (3) guaranteed student loans and alternative
24 education loans; or

25 (4) a security issued by another nonprofit corporation
26 acting under this section.

27 (f) A nonprofit corporation, whether acting at the request

1 of a city or cities under Subsection (e) or acting as a servicer or
2 administrator for another corporation that purchases guaranteed
3 student loans, or that on its own behalf issues securities or
4 otherwise obtains funds to purchase or make guaranteed student
5 loans or alternative education loans, may:

6 (1) exercise the powers granted by the Texas
7 Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's
8 Texas Civil Statutes);

9 (2) service loans purchased or made from its funds or
10 contract with another person to service the loans;

11 (3) grant a security interest in a trust estate
12 securing its securities; and

13 (4) make investments as authorized by Subsection (e).

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

21 (h) An alternative education loan may be made under this
22 section only by a qualified alternative education loan lender. An
23 alternative education loan may not be in an amount in excess of the
24 difference between the cost of attendance and the amount of other
25 student assistance to the student, other than loans under Section
26 428B(a)(1), Higher Education Act of 1965 (20 U.S.C. Section 1078-2)
27 (relating to parent loans), for which the student borrower may be

1 eligible. An alternative education loan covered by this subsection
2 is subject to Chapter 342, Finance Code, as applicable, except
3 that:

4 (1) the maximum interest rate on the loan may not
5 exceed the rate permitted under Subchapter A, Chapter 303, Finance
6 Code; and

7 (2) application and origination fees may be agreed to
8 by the parties and assessed at the inception of the loan, provided
9 that if any such fees constitute additional interest under
10 applicable law, the effective rate of interest agreed to over the
11 stated term of the loan may not exceed the rate allowed by
12 Subchapter A, Chapter 303, Finance Code, and accrued unpaid
13 interest may be added to unpaid principal at the beginning of the
14 agreed repayment period at the borrower's option and in accordance
15 with the terms of the agreement for purposes of determining the
16 total principal amount due at the inception of the repayment
17 period.

18 (i) An authority or nonprofit corporation making education
19 loans under this section is exempt from the licensing requirements
20 of Chapter 342, Finance Code.

21 SECTION 3. Section 61.0816(a), Education Code, as added by
22 Chapter 820, Acts of the 78th Legislature, Regular Session, 2003,
23 is amended to read as follows:

24 (a) The board shall collect and make available to the public
25 on request information regarding higher education authorities
26 operating under Chapters [~~Chapter~~] 53, 53A, and 53B and nonprofit
27 corporations carrying out the functions of higher education

1 authorities under those chapters [~~Chapter 53~~]. For each authority
2 or corporation, the information must include:

3 (1) the total amount and type of outstanding bonds
4 issued by the authority or corporation;

5 (2) a description of the programs and activities
6 administered by the authority or corporation; and

7 (3) with respect to any real property owned by the
8 authority or corporation:

9 (A) the location and description of the property;

10 (B) the current or proposed use of the property,
11 including whether the property is under construction or renovation;

12 (C) the method by which the authority or
13 corporation financed the acquisition, construction, or renovation
14 of the property;

15 (D) the school, public or private institution of
16 higher education, or other educational institution for which the
17 property is being used or proposed to be used;

18 (E) whether the property is exempt from ad
19 valorem taxes; and

20 (F) the appraised value of the property.

21 SECTION 4. Section 1371.001(4), Government Code, is amended
22 to read as follows:

23 (4) "Issuer" means:

24 (A) a home-rule municipality that:

25 (i) adopted its charter under Section 5,
26 Article XI, Texas Constitution;

27 (ii) has a population of 50,000 or more; and

1 (iii) has outstanding long-term
2 indebtedness that is rated by a nationally recognized rating agency
3 for municipal securities in one of the four highest rating
4 categories for a long-term obligation;

5 (B) a conservation and reclamation district
6 created and organized as a river authority under Section 52,
7 Article III, or Section 59, Article XVI, Texas Constitution;

8 (C) a joint powers agency organized and operating
9 under Chapter 163, Utilities Code;

10 (D) a metropolitan rapid transit authority or
11 regional transportation authority created, organized, and
12 operating under Chapter 451 or 452, Transportation Code;

13 (E) a conservation and reclamation district
14 organized or operating as a navigation district under Section 52,
15 Article III, or Section 59, Article XVI, Texas Constitution;

16 (F) a district organized or operating under
17 Section 59, Article XVI, Texas Constitution, that has all or part of
18 two or more municipalities within its boundaries;

19 (G) a state agency, including a state institution
20 of higher education;

21 (H) a hospital authority created or operating
22 under Chapter 262 or 264, Health and Safety Code, in a county that:

23 (i) has a population of more than 3.3
24 million; or

25 (ii) is included, in whole or in part, in a
26 standard metropolitan statistical area of this state that includes
27 a county with a population of more than 2.2 million;

1 (I) a hospital district in a county that has a
2 population of more than two million;

3 (J) a nonprofit corporation organized to
4 exercise the powers of a higher education loan authority under
5 Section 53B.47(e) [~~53.47(e)~~], Education Code;

6 (K) a county with a population of 3.3 million or
7 more;

8 (L) an independent school district that has an
9 average daily attendance of 50,000 or more as determined under
10 Section 42.005, Education Code;

11 (M) a municipality or county operating under
12 Chapter 334, Local Government Code; or

13 (N) a district created under Chapter 335, Local
14 Government Code.

15 SECTION 5. The purpose of this Act is to reorganize statutes
16 related to higher education authorities without causing a
17 substantive change in the law.

18 SECTION 6. This Act takes effect September 1, 2005.