

## **BILL ANALYSIS**

C.S.H.B. 2851  
By: Parker  
Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties have expressed concerns regarding certain aspects of the Charter School Finance Corporation (CSFC), which was created by the Texas Public Finance Authority to issue revenue bonds and lend the bond proceeds to authorized charter schools to help such schools finance or refinance the acquisition, construction, or improvement of educational facilities. The parties note that, unlike a state agency board of directors or another similar corporation established as an instrumentality of the state, neither the CSFC's directors and officers nor any directors, officers, or employees of the finance authority acting on the corporation's behalf are granted statutory immunity from personal liability for claims arising as a result of the performance of their official duties or on any commitment or agreement executed on the corporation's behalf.

According to those interested parties, the finance authority until recently had purchased directors and officers liability insurance in order to allow the CSFC to perform its statutory functions, but that coverage ceased when the insurance carrier providing the coverage exited the directors and officers liability line of business. Although the finance authority is working with the State Office of Risk Management to find a replacement carrier, concerns remain that any replacement policy would both require a much higher premium and have a substantially higher deductible, putting such a policy beyond the CSFC's budgetary constraints. Further, the absence of a liability insurance policy impedes CSFC's ability to meet to take any action related to bond issuance or applications for certain awards. C.S.H.B. 2851 seeks to address these concerns.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

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

### **ANALYSIS**

C.S.H.B. 2851 amends the Education Code to subject to the governor's approval the appointment of directors to the nonprofit corporation established by the Texas Public Finance Authority to act on the state's behalf in issuing revenue bonds for the provision of educational facilities to authorized open-enrollment charter schools. The bill grants a director, officer, or employee of the nonprofit corporation immunity from personal liability for damage, loss, or injury resulting from the performance of the person's duties under applicable law or on any commitment or agreement executed on the corporation's behalf under applicable law.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2851 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

**INTRODUCED**

**HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Section 53.351, Education Code, is amended to read as follows:

SECTION 1. Section 53.351(b), Education Code, is amended to read as follows:

Sec. 53.351. **BONDS FOR OPEN-ENROLLMENT CHARTER SCHOOL FACILITIES.** (a) The Texas Public Finance Authority shall establish a nonprofit corporation to act on behalf of the state, as its duly constituted authority and instrumentality, to issue revenue bonds for authorized open-enrollment charter schools for the acquisition, construction, repair, or renovation of educational facilities of those schools.

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

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(c) The corporation has all powers granted under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), or granted to a nonprofit corporation under the Business Organizations Code, for the purpose of aiding authorized open-enrollment charter schools in providing educational facilities. In addition, Sections 53.131, 53.15, 53.31, 53.32, 53.331, 53.34, 53.35, 53.38, 53.40, and 53.41 apply to and govern the corporation and its procedures and bonds. The corporation may exercise the powers granted to the governing body of an issuer with regard to the issuance of obligations and the execution of credit agreements under Chapter 1371, Government Code.

SECTION 2. Subchapter C, Chapter 53, Education Code, is amended by adding Section 53.352 to read as follows:  
Sec. 53.352. LIMITATION ON

(c-1) A director, officer, or employee, of the corporation or of the Texas Public Finance Authority, acting on behalf of the corporation is not personally liable:

(1) for damage, loss, or injury resulting from the performance of the person's duties under this chapter; or

(2) on any commitment or agreement executed on behalf of the corporation under this chapter.

(d) The corporation shall adopt rules governing the issuance of bonds under this section.

(e) The comptroller shall establish a fund dedicated to the credit enhancement of bonds issued by any issuer under this subchapter for any open-enrollment charter school. The fund may receive donations. The corporation may also use the money held under this subsection to provide loans or other credit support for the obligations of any open-enrollment charter school issued by any issuer in any manner not inconsistent with the Texas Non-Profit Corporation Act (Article 1396-1.01, Vernon's Texas Civil Statutes), or the provisions of the Business Organizations Code governing nonprofit corporations. The obligation of the fund is limited to an amount equal to the balance of the fund.

(f) Except as provided by Subsection (f-1), a revenue bond issued under this section is not a debt of the state or any state agency, political corporation, or political subdivision of the state and is not a pledge of the faith and credit of any of these entities. A revenue bond is payable solely from the revenue of the authorized open-enrollment charter school on whose behalf the bond is issued. A revenue bond issued under this section must contain on its face a statement to the effect that:

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

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

(f-1) Subsection (f) does not apply to a revenue bond issued under this section for a

LIABILITY OF CORPORATION. A director, officer, or employee of the nonprofit corporation established by the Texas Public Finance Authority under Section 53.351 is not personally liable:

(1) for damage, loss, or injury resulting from the performance of the person's duties under Section 53.351; or

(2) on any commitment or agreement executed on behalf of the corporation under Section 53.351.

charter district if the bond is approved for guarantee by the permanent school fund under Subchapter C, Chapter 45.

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

- (1) is owned by an authorized open-enrollment charter school;
- (2) is held for the exclusive benefit of the school; and
- (3) is held for the exclusive use of the students, faculty, and staff members of the school.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 3. Same as introduced version.