

SUBJECT: Granting municipal bonding authority for charter school facilities

COMMITTEE: Public Education — committee substitute recommended

VOTE: 7 ayes — Grusendorf, Branch, Dawson, Eissler, Griggs, Hochberg, Madden
0 nays
2 absent — Oliveira, Dutton

WITNESSES: For — Patrick O’Daniel and Trent Petty, Town of Westlake
Against — Karen Soehnge, Texas Association of School Administrators
On — T. Lynn Stuck, Attorney General’s Office

BACKGROUND: The 74th Legislature in 1995 authorized the formation of charter schools by enacting SB 1 by Ratliff. Education Code, sec. 12.101(a) allows the State Board of Education (SBOE) to grant open-enrollment charters to institutions of higher education, 501©)(3) nonprofit organizations, or government entities. Open-enrollment charter schools may operate in the facility of a commercial or nonprofit entity or a school district, including a home-rule school district.

The SBOE has granted only three open-enrollment charters to government entities. Dallas County and Harris County both are approved to operate open-enrollment charter schools for juvenile justice purposes. In February 2001, the SBOE granted the first open-enrollment charter to a municipality, the Town of Westlake, a general-law town with a population of about 250, located on the border between Tarrant and Denton counties. Because of the additional requirements of HB 6 by Dunnam, enacted by the 77th Legislature in 2001, Westlake did not receive its charter until June 2001. The town filed a two-year extension to give it time to open the charter school. Westlake Academy must open in fall 2003 or lose its state charter.

In 2002, Westlake approved \$12.4 million in municipal bonds to build a civic campus to house the charter school, the town hall, recreation facilities, and a

public library. After the town issued the bonds, the Attorney General's Office questioned whether Westlake legally could use municipal bond money for school construction.

In March 2003, Chairman Kent Grusendorf of the Public Education Committee requested an opinion from Attorney General Greg Abbott on whether a municipality that has been granted an open-enrollment charter may issue certificates of obligation to build charter school facilities (RQ-0029-GA).

HB 6 by Dunnam, enacted in 2001, authorized the Texas Public Finance Authority to establish a nonprofit corporation to issue tax-exempt revenue bonds on behalf of authorized open-enrollment charter schools to buy, build, repair, or renovate charter school educational facilities (Education Code, sec. 53.351). The law directs the comptroller to set up a fund to provide state credit enhancement for charter school facility bonds. A shell account has been set up, but lawmakers have appropriated no funds for it.

Local Government Code, chapter 271, subchapter C sets forth guidelines for issuing municipal certificates of obligation. Sec. 271.045(a) allows the governing body of an issuer to authorize certificates of obligation for the construction of any public work.

Texas Constitution, Art. 3, sec. 52 prohibits the Legislature from authorizing any town to lend its credit or to grant public money to assist any individual, association, or corporation.

DIGEST:

CSHB 1564 would allow an open-enrollment charter school to operate in the facility of any eligible entity. It would grant a municipality the same borrowing, bonding, and spending authority for open-enrollment charter school land, buildings, and facilities as the municipality had in connection with any other public works project.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 1564 would give municipalities like Westlake the legal authority they need to issue municipal bonds for open-enrollment charter school facilities. Since the state has authorized municipalities to operate open-enrollment charter schools, it also should authorize them to issue debt to build facilities to house the schools. Although a bond financing authority now exists for open-enrollment charter school facilities, the entity does not attract outside investors because lawmakers have appropriated no state dollars for it. The only other options for a municipality in this situation are revenue bonds or installment sales, both of which would cost more in higher interest rates, higher attorney fees, and higher closing costs.

HB 1564 would allow Westlake to proceed with its charter school. Westlake has spent much time, energy, and money in good faith that its charter would be operational in fall 2003. Citizens of Westlake have voted to fund the charter with municipal revenues, waiting lists are growing for the elementary grades at the school, and if the facilities are not ready to open this fall, Westlake will lose its charter. The charter school was created entirely for a public purpose, and no private facility or private contractor is involved in the deal.

The purpose of CSHB 1564 is to provide clear statutory authority for Westlake and other municipalities to issue bonds for charter school facilities as they would for other public works. Charter schools were meant to be an alternative to public schools. They are fundamentally different in that a charter school has no mandate to tax, as a public school district has. Therefore, it is highly unlikely that the use of municipal dollars for the charter school would be considered unconstitutional. It would be a mistake to wait for the attorney general to issue an opinion in this matter, since a statutory change would not affect a constitutional issue in any case.

Until the state grants open-enrollment charters to other municipalities, Westlake is the only municipality this bill would affect. Westlake levies no property taxes but relies on revenues from sales taxes and franchise fees. Therefore, Westlake will not be competing with other entities for local taxing capacity. Westlake is home to only 250 citizens, and the town's boundaries overlap three separate school districts. Westlake does not have enough voters to sway a school bond election in any of those districts. Many cities and counties have overlapping taxing jurisdictions, and it would not be logical to

argue, for example, that a county road tax directly competes with a city road tax.

**OPPONENTS
SAY:**

CSHB 1564 could erode support for local school district bonds. Should this measure be enacted, very few voters in an affected municipality would support a local school bond election. Allowing government entities that overlie contiguous governmental boundaries to issue bonds could stress local taxing capacity.

Lawmakers should wait for the attorney general to issue an opinion on the constitutionality of this issue. Citing the authority of Texas Constitution, Art. 3, sec. 52, the attorney general has ruled at least three times since 1990 — Opinions JM-1255 (December 11, 1990); LO-96-063 (June 13, 1996); and JC-0212 (April 20, 2000) — that cities may not donate public funds to build schools and that building schools is not a municipal purpose. Meanwhile, Westlake has other options, such as an installment sale plan, under which the town could use the land it bought for the civic campus as collateral to borrow the rest of the money it needs to complete the school.

NOTES:

The committee substitute added the clause specifying that municipalities could borrow and spend money for open enrollment charter schools in the same manner in which they borrow and spend for other public works.