

## **BILL ANALYSIS**

Senate Research Center

S.B. 40  
By: Zaffirini  
Higher Education  
9/7/2011  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 40 requires the Texas Guaranteed Student Loan Corporation (TGSLC) to administer a guaranteed student loan program, student financial aid program, or other student loan program that assists qualified students in Texas and nationwide. TGSLC is to assist institutions of higher education by providing services related to financial aid and student loan programs. TGSLC may also participate in revenue-generating activities related to higher education financial and student loan programs so long as the activities support TGSLC's primary purposes.

S.B. 40 amends current law relating to the composition and functions of the Texas Guaranteed Student Loan Corporation.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 57.01 and 57.11, Education Code, as follows:

Sec. 57.01. DECLARATION OF POLICY. Sets forth the purpose of this chapter and makes further nonsubstantive changes.

Sec. 57.11. TEXAS GUARANTEED STUDENT LOAN CORPORATION. (a) Makes no changes to this subsection.

(b) Creates this subsection from existing text. Provides that the Texas Guaranteed Student Loan Corporation (TGSLC) is a public nonprofit corporation and, except as otherwise provided in this chapter, has all the powers and duties incident to a nonprofit corporation under Chapter 22 (Nonprofit Corporations), Business Organizations Code, rather than the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., V.T.C.S.).

(c) Redesignates existing Subsection (b) as Subsection (c). Requires that all expenses of TGSLC be paid from revenue, rather than income, of TGSLC, except as otherwise provided by law.

(d) Redesignates existing Subsection (c) as Subsection (d). Provides that TGSLC is subject to Chapters 551 (Open Meetings) and 552 (Public Information), Government Code.

(e) Redesignates existing Subsection (d) as Subsection (e). Makes no further changes to this subsection.

SECTION 2. Amends Section 57.12(a), Education Code, to provide that TGSLC is abolished and this chapter expires September 1, 2013, rather than September 1, 2017.

SECTION 3. Amends Section 57.1311(b), Education Code, to require that the training program provide the person with information regarding certain information, including the policies developed under Section 57.19(i) regarding the separation of policymaking and management responsibilities.

SECTION 4. Amends Section 57.13(b), Education Code, as follows:

(b) Requires the governor, with advice and consent of the senate, to appoint the members of the board of directors of TGSLC (board), rather than to appoint 10 members to the board, as follows:

(1) five members who must have knowledge of or experience in finance, including management of funds or business operations;

(2) one member who must be a student enrolled at a postsecondary educational institution for the number of credit hours required by the institution to be classified as a full-time student of the institution; and

(3) five members who must be members of the faculty or administration of a postsecondary education institution that is an eligible institution for purposes of the Higher Education act of 1965, as amended, rather than four members who must be members of the faculty or administration of an eligible postsecondary educational institution, as defined by Section 57.46.

SECTION 5. Amends Section 57.131(d), Education Code, as follows:

(d) Prohibits a person from being one of the members of the board required by Section 57.13(b) to have knowledge of or experience in finance if the person:

(1) is a member of the board or an employee of a lender, rather than an employee of an eligible lender, that participates in a student loan program, rather than participates in the guaranteed student loan program; or originates, makes, holds, services, or has pecuniary interest of any kind in higher education student loans of any nature; or

(2) owns 10 percent or more of the voting stock or shares of a business entity that engages in an activity described by Subdivision (1), or \$15,000 or more of the fair market value of a business entity that engages in an activity described by Subdivision (1).

SECTION 6. Amends Section 57.14, Education Code, to provide that members of the board serve, rather than provides that members of the board appointed by the governor serve, for terms of six years, with the terms of three or four members, as applicable, expiring on January 31 of each odd-numbered year.

SECTION 7. Amends Section 57.17, Education Code, as follows:

Sec. 57.17. OFFICERS. Requires the governor to designate the chairman from among the board's membership. Requires the board to elect from among its members a vice-chairman and other officers, rather than a chairman, vice-chairman, and other officers, that the board considers necessary. Provides that the chairman and vice-chairman serve for a term of one year and authorizes that they be redesignated or reelected, as applicable.

SECTION 8. Amends Subchapter B, Chapter 57, Education Code, by adding Section 57.181, as follows:

Sec. 57.181. MEETING BY TELEPHONE CONFERENCE CALL; QUORUM PRESENT AT ONE LOCATION REQUIRED. (a) Authorizes the board or a board committee, notwithstanding Chapter 551, Government Code, to hold a meeting by

telephone conference call only if a quorum of the board or board committee, as applicable, is physically present at one location of the meeting.

(b) Provides that a telephone conference call meeting is subject to the notice requirements applicable to other meetings, except that the meeting notice is required to also specify:

(1) the location of the meeting where a quorum of the board or board committee, as applicable, will be physically present; and

(2) the intent to have a quorum present at that location.

(c) Requires that the meeting location where a quorum is physically present be open to the public during the open portions of a telephone conference call meeting. Requires that the open portions of the meeting be audible to the public at the location where the quorum is present and be tape-recorded at that location. Requires that the tape recording be made available to the public.

(d) Requires that the meeting location where a quorum is physically present provide two-way communication during the entire telephone conference call meeting, and that the identification of each party to the telephone conference call be clearly stated before the party speaks.

(e) Provides that a member of the board who participates in a board or board committee meeting by telephone conference call but is not physically present at the meeting location where a quorum is physically present is not considered to be absent from the meeting for any purpose. Provides that the vote of a member of the board who participates in a board or board committee meeting by telephone conference call is counted for the purpose of determining the number of votes cast on a motion or other proposition before the board or board committee.

(f) Authorizes a member of the board to participate remotely by telephone conference call instead of by being physically present at the location of a board meeting for not more than one board meeting per calendar year. Provides that a board member who participates remotely in any portion of a board meeting by telephone conference call is considered to have participated in the entire board meeting by telephone conference call. Provides that for purposes of this subsection, remote participation by telephone conference call in a meeting of a board committee does not count as remote participation by telephone conference call in a board meeting regardless of whether:

(1) a quorum of the full board attends the board committee meeting; or

(2) notice of the board committee meeting is also posted as notice of a board meeting.

(g) Prohibits a person who is not a member of the board from speaking at the board or board committee meeting from a remote location by telephone conference call, except as provided by Section 551.129, Government Code.

(h) Provides that the authority provided by this section is in addition to the authority provided by Section 551.125 (Other Governmental Body), Government Code.

SECTION 9. Amends Sections 57.19(d), Education Code, as follows:

(d) Requires the president or the president's designee to develop a career ladder program for TGSLC, rather than an intra-agency career ladder program. Requires that the program require internal corporate, rather than intra-agency, postings of all nonentry level positions concurrently with any postings.

SECTION 10. Amends Section 57.20(a), Education Code, as follows:

(a) Requires TGSLC to appoint an ombudsman, rather than maintain a system, to promptly and efficiently act on complaints filed with TGSLC. Requires the ombudsman, rather than TGSLC, to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

SECTION 11. Amends Sections 57.21(a) and (c), Education Code, as follows:

(a) Requires TGSLC take an active role in coordinating, facilitating, promoting, and providing assistance and support to programs subject to certain provisions.

(c) Requires each state agency that conducts higher education and financial aid outreach activities, to the extent practicable, to enter into a memorandum of understanding (MOU) with TGSLC. Authorizes, rather than requires, the MOU to outline how TGSLC and the state agency will coordinate outreach activities to maximize resources and avoid duplication.

SECTION 12. Amends the heading to Section 57.22, Education Code, to read as follows:

Sec. 57.22 APPLICATION OF BUSINESS ORGANIZATIONS CODE.

SECTION 13. Amends Section 57.22(a), Education Code, to provide that TGSLC is subject to Chapter 22, Business Organizations Code, rather than the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., V.T.C.S.), except that TGSLC is not required to make reports to the secretary of state (SOS) under Section 22.357 (Report of Domestic and Foreign Corporations), Business Organizations Code, rather than under Article 9.01 of the Texas Non-Profit Corporation Act, in addition to certain other exceptions.

SECTION 14. Amends Section 57.24, Education Code, as follows:

Sec. 57.24. AUTHORITY TO PARTICIPATE IN OTHER REVENUE-GENERATING ACTIVITIES; LIMITATIONS. (a) Authorizes TGSLC to participate in a revenue-generating activity by entering into a contract with the United States Department of Education, with this state or any agency, instrumentality, or political subdivision of this state, with any eligible institution as defined by Section 435 of the Higher Education Act of 1965 (20 U.S.C. Section 1085), as amended, that is eligible to participate in a program under Title IV of that Act, with any guaranty agency as defined by Section 435 of that Act (20 U.S.C. Section 1085), or with any entity to which the United States Department of Education has awarded one or more contracts to provide services under Title IV of that Act if the board determines that:

- (1) the activity is consistent with TGSLC's purposes described by Section 57.01;
- (2) revenue from the activity is sufficient to cover the costs of the activity, including the opportunity costs of any invested capital, within a defined period of time determined by the board for purposes of this section; and
- (3) revenue from the activity will enable TGSLC to support educational purposes under Section 57.211.

Deletes existing text authorizing TGSLC to participate in a revenue-generating activity that is consistent with TGSLC's purposes if the board determines that the revenue from the activity is sufficient to cover the costs of the activity, and may contribute to a reduction in the insurance premium paid by students under Section 57.43 of this code.

(b) Authorizes TGSLC to enter into a contract with the United States Department of Education under Subsection (a) alone or in concert with any of the entities with which the corporation is authorized to enter into a contract under that subsection.

(c) Creates this subsection from existing text. Makes a conforming and nonsubstantive change.

(d) Authorizes TGSLC, if, under Subsection (a), the board authorizes TGSLC to perform debt collection, default aversion, financial literacy, exit counseling, or loan servicing, to perform those services only in relation to higher education student loans.

(e) Requires TGSLC to submit a written report to the legislature and the Legislative Budget Board not later than December 1 of each even-numbered year regarding TGSLC'S participation in revenue-generating activities under this section. Requires that the report:

(1) include the amounts of revenue from and expenses associated with the activities;

(2) demonstrate how that revenue is used for the support of educational purposes under Section 57.211; and

(3) certify the reasonable and necessary amount of operating funds under Section 57.71 required to fulfill TGSLC's responsibilities under Section 57.41(a), and the amount of excess operating funds under Section 57.71.

SECTION 15. Amends Section 57.41(a), Education Code, as follows:

(a) Requires TGSLC to serve as the designated guarantee agency under the Federal Family Education Loan Program in accordance with the Higher Education Act of 1965, 20 U.S.C. Section 1001 et seq., as amended, regulations adopted under that act, and other applicable federal law. Deletes existing text requiring TGSLC to guarantee loans made to eligible borrowers by eligible lenders as provided by the federal guaranteed student loan program under the Higher Education Act of 1965, 20 U.S.C. Section 1001 et seq., as amended.

SECTION 16. Amends Section 57.461, Education Code, as follows:

Sec. 57.461. New heading: ADVISORY COMMITTEES. Requires TGSLC to establish advisory committees as the board considers appropriate. Deletes existing Subsection (a) requiring TGSLC to establish advisory committees with certain provisions (relating to membership, purpose, and duties of each advisory committee). Deletes existing Subsection (b) requiring the board to appoint advisory committee members on the recommendation of the president of the board. Deletes existing Subsection (c) authorizing the board to establish other advisory committees as the board considers necessary. Deletes existing Subsection (d) requiring the board to specify each advisory committee's purpose and duties and to require each committee to report to the board in a manner specified by the board relating to each committee's activities and work results.

SECTION 17. Amends Sections 57.47(a), (b), and (d), Education Code, as follows:

(a) Authorizes TGSLC to bring suit against a defaulting party in accordance with the requirements of the Higher Education Act of 1965, 20 U.S.C. Section 1001 et seq., as amended, if a student borrower defaults on a loan and TGSLC is required to honor the guarantee. Deletes existing text requiring that TGSLC or the Texas Higher Education Coordinating Board (THECB) bring suit against a defaulting party in accordance with the requirements of the Higher Education Act of 1965, 20 U.S.C. Section 1001 et seq., as amended.

(b) Authorizes a suit against a defaulting party under this section to be brought in the county in which the defaulting party resides, in which the lender is located, or in Travis or Williamson County.

(d) Makes conforming changes.

SECTION 18. Amends Sections 57.481(a)-(c), Education Code, as follows:

(a) Deletes text of existing Subsection (b) defining "loan default rate" in this section. Redesignates existing Subsection (b) as Subsection (a). Requires TGSLC to take a comprehensive and active role in coordinating, facilitating, and providing technical assistance on guaranteed student loan default prevention and reduction initiatives and programs that promote responsible borrowing, financial literacy, debt management, research, and informed policymaking and to work with the appropriate state agencies and other entities inside and outside this state, including postsecondary eligible institutions, eligible lenders, servicers, secondary markets, THECB, the Texas Education Agency, state professional and occupational licensing agencies, and the United States Department of Education. Deletes existing text relating to reduction initiatives and programs in the state. Replaces references to the Texas Central Agency with Texas Education Agency.

(b) Redesignates existing Subsection (c) as Subsection (b). Requires TGSLC to maintain a system of communication among the appropriate state agencies and entities to address student loan default prevention issues, rather than to reduce loan default claims.

SECTION 19. Amends Section 57.49, Education Code, as follows:

Sec. 57.49. COOPERATION OF STATE AGENCIES AND SUBDIVISIONS. Requires each state agency and political subdivision of the state to cooperate with TGSLC in providing information to the agency's or political subdivision's clients concerning student financial aid, including information about delinquency, default prevention, and life-of-loan issues. Requires each state agency and political subdivision to provide information to TGSLC on request to assist TGSLC in curing delinquent loans, collecting defaulted loans, and developing information and reports concerning responsible borrowing.

SECTION 20. Amends Sections 57.50 and 57.71, Education Code, as follows:

Sec. 57.50. NONDISCRIMINATION. Prohibits TGSLC or an eligible lender from discriminating against an eligible student in making a loan or loan guarantee on the basis of race, age, religion, or sex or any other basis prohibited by applicable law.

Sec. 57.71. New heading: FEDERAL AND OPERATING FUNDS. Requires TGSLC to maintain a federal fund and operating fund, rather than to establish reserve and operating funds, in accordance with Sections 422, 422A, and 422B of the Higher Education Act of 1965 (20 U.S.C. Sections 1072, 1072a, and 1072b), as amended.

SECTION 21. Amends Subchapter D, Chapter 57, Education Code, by adding Section 57.762, as follows:

Sec. 57.762. REVIEW BY STATE AUDITOR. Requires the state auditor, in addition to any other audit required by law, to periodically review TGSLC's activities in a manner consistent with the state auditor's audit plan under Chapter 321, Government Code. Requires TGSLC to reimburse the state auditor for all reasonable costs incurred by the state auditor in conducting a review under this section.

SECTION 22. Amends Section 57.78, Education Code, as follows:

Sec. 57.78. INVESTMENTS. Requires that the federal fund maintained by TGSLC under Section 57.71 be invested in accordance with Section 422A of the Higher Education Act of 1965 (20 U.S.C. Section 1072a), as amended. Authorizes the operating

fund maintained by TGSLC under Section 57.71 to be invested only in accordance with Chapter 2256 (Public Funds Investment), Government Code. Provides that authority to invest the operating fund in accordance with Chapter 2256, Government Code, complies with Section 422B of the Higher Education Act of 1965 (20 U.S.C. Section 1072b), as amended. Deletes existing text authorizing all money of TGSLC to be invested in accordance with Chapter 2256, Government Code.

SECTION 23. Repealers: (1) Section 57.13(d) (relating to the composition of the board of directors), Education Code;

(2) Sections 57.19(c) (relating to delegating powers of the board to certain persons), (g) (relating to an annual policy statement), and 57.19(h) (relating to the office of the governor's biennial report to the legislature), Education Code;

(3) Sections 57.41(c) (relating to the conditions under which TGSLC shall make a loan), and (d) (relating to participation in revenue-generating activities by TGSLC), Education Code;

(4) Section 57.42 (Reinsurance), Education Code;

(5) Section 57.43 (Insurance Premiums), Education Code;

(6) Section 57.44 (Eligible Borrowers), Education Code;

(7) Section 57.45 (Eligible Lenders), Education Code;

(8) Section 57.46 (Eligible Institutions), Education Code; and

(9) Sections 57.481(d) (relating to calculating loan default rates and semiannual notifications of those rates), (e) (relating to the establishing of a loan default rate), (f) (relating to the conducting of program evaluations), (g) (relating to the conditions of eligibility to participate in the guaranteed student loan program), and (h) (relating to an advisory committee's mandatory review of TGSLC's proposed action), Education Code.

SECTION 24. Requires the governor, notwithstanding any other law, to comply with the requirements of Section 57.13, Education Code, as amended by this Act, and Section 30a, Article XVI, Texas Constitution, as soon as practicable on or after September 1, 2011, to appoint one additional member to the board under Section 57.13(b)(3), Education Code, for a term to expire January 31, 2015.

SECTION 25. Effective date: September 1, 2011.