

BILL ANALYSIS

Senate Research Center
82R2185 KSD-D

S.B. 40
By: Zaffirini
Higher Education
4/4/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The William D. Ford Federal Direct Loan Program (FDLP) became effective on July 1, 2010, due to legislative changes in the Federal Health Care Reform Act of 2010. Students and parents who previously received loans through the Federal Family Education Loan Program (FFELP) will now borrow through FDLP, a program under which students and parents borrow directly from, and repay their loans to, the United States Department of Education (DOE).

Under FDLP, the funds for a student loan come directly from the federal government. Under FFELP, loans came from a bank, credit union, or other lender that participated in the program. Eligibility rules and loan amounts are identical under both programs.

The current statutes under which the Texas Guaranteed Student Loan Corporation (TGS LC) operates limit the scope of TGS LC's mission to servicing the now defunct FFELP. This legislation would allow TGS LC to continue to manage its existing FFELP portfolio for the life of the loans, as well as operate under the newly established FDLP.

The primary purpose of TGS LC is to administer FFELP loans made before July 1, 2010, on behalf of DOE. Although FFELP originations ceased as of June 30, 2010, TGS LC continues to provide life-of-the-loan support for TGS LC-guaranteed loans in its existing \$32 billion FFELP student loan portfolio.

Effective July 1, 2010, all federal Stafford, PLUS, and Consolidation loans must be made under FDLP, a program under which students and parents borrow directly from, and repay their loans to, DOE. With the onset of the FDLP, many of the services and functions previously performed by private sector lenders will now be carried out by low-bid federal contractors servicing loans under the supervision of career DOE employees.

While it may be easy to assume that DOE or the United States Department of the Treasury will now handle all aspects of student lending under FDLP, this is not the case. None of the contractors are Texas-based and DOE, focused on national issues regarding direct loan administration, is not likely to dedicate resources to preventing defaults in the state of Texas. Many of the services performed by TGS LC at no charge under FFELP (the program under whose authority TGS LC currently provides guarantee services, *See 20 U.S.C. § 1078 b-c*) are still required, leaving institutions of higher education to contract out for such services.

Texas and its institutions of higher education have a distinct interest in direct loan default prevention. DOE will still require institutions to provide services for the loans in the four key areas of debt management, financial literacy education, default prevention, and staff training. These are the essential services currently offered by TGS LC to institutions at no cost.

The state should continue to utilize TGS LC to provide default aversion assistance for students who borrow direct loans to attend Texas colleges and universities and to help those colleges and universities take appropriate steps to prevent direct loan defaults by their alumni.

This bill would make several changes to the enabling statutes for TGS LC to permit TGS LC to continue to provide certain information, services, and products to and for the residents of and students in Texas, related to higher education student financial aid, including outreach, access,

awareness, default prevention, and financial literacy, following the termination of FFELP, the program under whose authority TGSLC currently provides guarantee services.

S.B. 40 allows TGSLC to continue to manage their existing FFELP for the life of the loans, as well as operate under the newly established FDLP.

As proposed, S.B. 40 amends current law relating to the 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) Provides that the Texas Guaranteed Student Loan Corporation (TGSLC) is created to administer any student loan program TGSLC is required, qualified, or authorized by federal or other law to administer and to provide any related information, products, tools, functions, and services in accordance with applicable law, including certain federal loan programs, and administer any other program or function authorized by this chapter and provide related services.

(b) Creates this subsection from existing text. Provides that 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 57.1311(b), Education Code, as follows:

(b) Requires that the training program provide the person with information regarding the requirements of laws that primarily relate to or affect the business of TGSLC, and any applicable ethics policies adopted by TGSLC in addition to certain other provisions. Deletes existing text referring to the requirements of laws relating to open meetings, public information, and conflicts of interests and any applicable ethics policies adopted by TGSLC or the Texas Ethics Commission.

SECTION 3. Amends Section 57.18, Education Code, by adding Subsection (c), as follows:

(c) Provides that the board of directors of TGSLC (board) is not subject to Section 551.125 (Other Governmental Body), Government Code. Authorizes any of TGSLC's directors, notwithstanding any other provision of Chapter 551, Government Code, to

attend any board meeting by telephone conference call, provided that the telephone conference is audible to the public at the meeting location specified in the meeting's notice during each part of the meeting that is required to be open to the public.

SECTION 4. Amends Section 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 5. 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 6. 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 7. Amends the heading to Section 57.22, Education Code, to read as follows:

Sec. 57.22 APPLICATION OF BUSINESS ORGANIZATIONS CODE.

SECTION 8. Amends Section 57.22(a), Education Code, as follows:

(a) Provides 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 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 9. 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 that is reasonably aligned with, rather than consistent with, or that may further TGSLC's purposes or business if the board determines that the revenue from the activity may, rather than is sufficient to, cover the costs of the activity and provide funds to support activities approved by the board as TGSLC's philanthropic activities or as having strategic or positioning importance to TGSLC. Deletes existing text relating to revenue from an activity that may contribute to a reduction in the insurance premium paid by students under Section 57.43 (Insurance Premiums) of this code.

(b) Makes nonsubstantive changes.

SECTION 10. 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 11. 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 12. 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 13. Amends Section 57.48(a), Education Code, as follows:

(a) Requires TGSLC, except as provided by Subsection (g) (relating to issuing a warrant or initiating an electronic funds transfer by the comptroller), to report to the comptroller of public accounts the name of any person who is in default on a loan guaranteed or administered under this chapter (Guaranteed Student Loans).

SECTION 14. 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 15. 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 16. Amends Sections 57.50, 57.71, and 57.78, 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. RESERVE AND OPERATING FUNDS. Requires TGSLC 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.

Sec. 57.78. INVESTMENTS. Requires the reserve and operating funds established by TGSLC under Section 57.71 to be invested in accordance with Sections 422A and 422B of the Higher Education Act of 1965 (20 U.S.C. Sections 1072a and 1072b), as amended, or other applicable federal law. Deletes existing text authorizing all money of TGSLC to be invested in accordance with Chapter 2256 (Public Funds Investment), Government Code.

SECTION 17. Repealers: Sections 57.19(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.

Repealers: Sections 57.41(b) (relating to the prescribing of terms and conditions on which loans are to be guaranteed), 57.41(c) (relating to the conditions under which TGSLC shall make a loan), and 57.41(d) (relating to participation in revenue-generating activities by TGSLC), Education Code.

Repealer: Section 57.42 (Reinsurance), Education Code.

Repealer: Section 57.43 (Insurance Premiums), Education Code.

Repealer: Section 57.44 (Eligible Borrowers), Education Code.

Repealer: Section 57.45 (Eligible Lenders), Education Code.

Repealer: Section 57.46 (Eligible Institutions), Education Code.

Repealers: 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 18. Effective date: upon passage or September 1, 2011.