

1-1 By: Zaffirini S.B. No. 40
1-2 (In the Senate - Filed November 8, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Higher Education;
1-4 May 3, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; May 3, 2011, sent
1-6 to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 40 By: Zaffirini
1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the functions of the Texas Guaranteed Student Loan
1-11 Corporation.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Sections 57.01 and 57.11, Education Code, are
1-14 amended to read as follows:

1-15 Sec. 57.01. DECLARATION OF POLICY. The legislature, giving
1-16 due consideration to the historical and continuing interest of the
1-17 people of the State of Texas in encouraging deserving and qualified
1-18 persons to realize their aspirations for education beyond high
1-19 school, finds and declares that postsecondary education for
1-20 qualified Texans ~~[those]~~ who desire to pursue such ~~[an]~~ education
1-21 ~~[and are properly qualified therefor]~~ is important to the welfare
1-22 and security of this state and the nation and, consequently, is an
1-23 important public purpose. The legislature finds and declares that
1-24 the state can achieve its full economic and social potential only if
1-25 every individual has the opportunity to contribute to the full
1-26 extent of the individual's ~~[his or her]~~ capabilities and only when
1-27 financial barriers to the individual's ~~[his or her]~~ economic,
1-28 social, and educational goals are removed. It is, therefore, the
1-29 purpose of this chapter to establish the Texas Guaranteed Student
1-30 Loan Corporation to:

1-31 (1) administer a guaranteed student loan program,
1-32 student financial aid programs, and other student loan programs to
1-33 assist qualified ~~[Texas]~~ students in this state and across the
1-34 nation in receiving a postsecondary education in this state or
1-35 elsewhere in the nation; ~~[and]~~

1-36 (2) assist institutions of higher education by
1-37 providing ~~[provide]~~ necessary and desirable services related to
1-38 financial aid and student ~~[the]~~ loan programs; and

1-39 (3) participate in revenue-generating activities
1-40 related to higher education student financial aid and student loan
1-41 programs to the extent the activities support the corporation's
1-42 primary purposes under Subdivisions (1) and (2) ~~[program, including~~
1-43 ~~cooperative awareness efforts with appropriate educational and~~
1-44 ~~civic associations designed to disseminate postsecondary education~~
1-45 ~~awareness information, including information regarding student~~
1-46 ~~financial aid and the Federal Family Education Loan Program, and~~
1-47 ~~other relevant topics including the prevention of student loan~~
1-48 ~~default]~~.

1-49 Sec. 57.11. TEXAS GUARANTEED STUDENT LOAN CORPORATION.
1-50 (a) The Texas Guaranteed Student Loan Corporation is created to
1-51 administer the programs authorized by this chapter.

1-52 (b) The corporation is a public nonprofit corporation and,
1-53 except as otherwise provided in this chapter, has all the powers and
1-54 duties incident to a nonprofit corporation under Chapter 22,
1-55 Business Organizations Code ~~[the Texas Non-Profit Corporation Act~~
1-56 ~~(Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)]~~.

1-57 (c) ~~[(b)]~~ Except as otherwise provided by law, all expenses
1-58 of the corporation shall be paid from revenue ~~[income]~~ of the
1-59 corporation.

1-60 (d) ~~[(c)]~~ The corporation is subject to Chapters ~~[Chapter]~~
1-61 551 and 552, Government Code.

1-62 (e) ~~[(d)]~~ Student loan borrower information collected,
1-63 assembled, or maintained by the corporation is confidential and is

2-1 not subject to disclosure under Chapter 552, Government Code.

2-2 SECTION 2. Subsection (a), Section 57.12, Education Code,
2-3 is amended to read as follows:

2-4 (a) The Texas Guaranteed Student Loan Corporation is
2-5 subject to Chapter 325, Government Code (Texas Sunset Act). Unless
2-6 continued in existence as provided by that chapter, the corporation
2-7 is abolished and this chapter expires September 1, 2013 [2017].

2-8 SECTION 3. Subsection (b), Section 57.1311, Education Code,
2-9 is amended to read as follows:

2-10 (b) The training program must provide the person with
2-11 information regarding:

2-12 (1) the provisions of this chapter, including the
2-13 policies developed under Section 57.19(i) regarding the separation
2-14 of policymaking and management responsibilities, and the
2-15 corporation's programs, functions, rules, and budget;

2-16 (2) the results of the most recent formal audit of the
2-17 corporation;

2-18 (3) the requirements of laws relating to open
2-19 meetings, public information, and conflicts of interest; and

2-20 (4) any applicable ethics policies adopted by the
2-21 corporation or the Texas Ethics Commission.

2-22 SECTION 4. Section 57.17, Education Code, is amended to
2-23 read as follows:

2-24 Sec. 57.17. OFFICERS. The governor shall designate the
2-25 chairman from among the board's membership. The board shall elect
2-26 from among its members a [chairman,] vice-chairman[7] and other
2-27 officers that the board considers necessary. The chairman and
2-28 vice-chairman serve for a term of one year and may be redesignated
2-29 or reelected, as applicable.

2-30 SECTION 5. Subchapter B, Chapter 57, Education Code, is
2-31 amended by adding Section 57.181 to read as follows:

2-32 Sec. 57.181. MEETING BY TELEPHONE CONFERENCE CALL; QUORUM
2-33 PRESENT AT ONE LOCATION REQUIRED. (a) Notwithstanding Chapter
2-34 551, Government Code, the board or a board committee may hold a
2-35 meeting by telephone conference call only if a quorum of the board
2-36 or board committee, as applicable, is physically present at one
2-37 location of the meeting.

2-38 (b) A telephone conference call meeting is subject to the
2-39 notice requirements applicable to other meetings, except that the
2-40 meeting notice must also specify:

2-41 (1) the location of the meeting where a quorum of the
2-42 board or board committee, as applicable, will be physically
2-43 present; and

2-44 (2) the intent to have a quorum present at that
2-45 location.

2-46 (c) The meeting location where a quorum is physically
2-47 present must be open to the public during the open portions of a
2-48 telephone conference call meeting. The open portions of the
2-49 meeting must be audible to the public at the location where the
2-50 quorum is present and be tape-recorded at that location. The tape
2-51 recording must be made available to the public.

2-52 (d) The meeting location where a quorum is physically
2-53 present must provide two-way communication during the entire
2-54 telephone conference call meeting, and the identification of each
2-55 party to the telephone conference call must be clearly stated
2-56 before the party speaks.

2-57 (e) A member of the board who participates in a board or
2-58 board committee meeting by telephone conference call but is not
2-59 physically present at the meeting location where a quorum is
2-60 physically present is not considered to be absent from the meeting
2-61 for any purpose. The vote of a member of the board who participates
2-62 in a board or board committee meeting by telephone conference call
2-63 is counted for the purpose of determining the number of votes cast
2-64 on a motion or other proposition before the board or board
2-65 committee.

2-66 (f) A member of the board may participate remotely by
2-67 telephone conference call instead of by being physically present at
2-68 the location of a board meeting for not more than one board meeting
2-69 per calendar year. A board member who participates remotely in any

3-1 portion of a board meeting by telephone conference call is
 3-2 considered to have participated in the entire board meeting by
 3-3 telephone conference call. For purposes of this subsection, remote
 3-4 participation by telephone conference call in a meeting of a board
 3-5 committee does not count as remote participation by telephone
 3-6 conference call in a board meeting regardless of whether:

3-7 (1) a quorum of the full board attends the board
 3-8 committee meeting; or

3-9 (2) notice of the board committee meeting is also
 3-10 posted as notice of a board meeting.

3-11 (g) A person who is not a member of the board may not speak
 3-12 at the board or board committee meeting from a remote location by
 3-13 telephone conference call, except as provided by Section 551.129,
 3-14 Government Code.

3-15 (h) The authority provided by this section is in addition to
 3-16 the authority provided by Section 551.125, Government Code.

3-17 SECTION 6. Subsection (d), Section 57.19, Education Code,
 3-18 is amended to read as follows:

3-19 (d) The president or the president's designee shall develop
 3-20 a ~~[an intra-agency]~~ career ladder program for the corporation. The
 3-21 program shall require internal corporate ~~[intra-agency]~~ postings
 3-22 of all nonentry level positions concurrently with any public
 3-23 posting.

3-24 SECTION 7. Subsection (a) Section 57.20, Education Code, is
 3-25 amended to read as follows:

3-26 (a) The corporation shall appoint an ombudsman ~~[maintain a~~
 3-27 ~~system]~~ to promptly and efficiently act on complaints filed with
 3-28 the corporation. The ombudsman ~~[corporation]~~ shall maintain
 3-29 information about parties to the complaint, the subject matter of
 3-30 the complaint, a summary of the results of the review or
 3-31 investigation of the complaint, and its disposition.

3-32 SECTION 8. Subsections (a) and (c), Section 57.21,
 3-33 Education Code, are amended to read as follows:

3-34 (a) The corporation shall take an active role in
 3-35 coordinating, facilitating, promoting, and providing assistance
 3-36 and support to:

3-37 (1) programs that focus on and disseminate ~~[designed~~
 3-38 ~~to make available to the residents of this state]~~ information
 3-39 regarding ~~[concerning]~~ postsecondary education awareness and the
 3-40 availability of student financial aid ~~[, including the Federal~~
 3-41 ~~Family Education Loan Program,]~~ and that ~~[to]~~ assist families in
 3-42 obtaining ~~[needed]~~ postsecondary education financing;

3-43 (2) programs designed to assist students, families,
 3-44 borrowers, and schools in preventing ~~[prevent]~~ student loan default
 3-45 throughout the life of the loan, provided that such programs are
 3-46 required as a part of a guaranty agency's obligation under the
 3-47 Federal Family Education Loan Program established by the Higher
 3-48 Education Act of 1965 (20 U.S.C. Section 1071 et seq.), or are
 3-49 funded by statutory or regulatory mandate, compensation, grant,
 3-50 contract, award, or other appropriate means; and

3-51 (3) programs designed to increase student retention
 3-52 and graduation rates in postsecondary education.

3-53 (c) To the extent practicable, each ~~[Each]~~ state agency
 3-54 that conducts higher education and financial aid outreach
 3-55 activities shall enter into a memorandum of understanding with the
 3-56 corporation. The memorandum of understanding may ~~[must]~~ outline
 3-57 how the corporation and the state agency will coordinate outreach
 3-58 activities to maximize resources and avoid duplication.

3-59 SECTION 9. The heading to Section 57.22, Education Code, is
 3-60 amended to read as follows:

3-61 Sec. 57.22. APPLICATION OF BUSINESS ORGANIZATIONS CODE ~~[THE~~
 3-62 ~~TEXAS NON-PROFIT CORPORATION ACT]~~.

3-63 SECTION 10. Subsection (a), Section 57.22, Education Code,
 3-64 is amended to read as follows:

3-65 (a) The corporation is subject to Chapter 22, Business
 3-66 Organizations Code ~~[the Texas Non-Profit Corporation Act (Article~~
 3-67 ~~1396-1.01 et seq., Vernon's Texas Civil Statutes)]~~, except that:

3-68 (1) the corporation may not make donations for the
 3-69 public welfare or for charitable or scientific purposes or in aid of

4-1 war activities;

4-2 (2) the corporation is not required to file articles
4-3 of incorporation;

4-4 (3) the corporation is not subject to voluntary or
4-5 involuntary dissolution;

4-6 (4) the corporation may not be placed in receivership;
4-7 and

4-8 (5) the corporation is not required to make reports to
4-9 the secretary of state under Section 22.357, Business Organizations
4-10 Code [Article 9.01 of that Act].

4-11 SECTION 11. Section 57.24, Education Code, is amended to
4-12 read as follows:

4-13 Sec. 57.24. AUTHORITY TO PARTICIPATE IN OTHER
4-14 REVENUE-GENERATING ACTIVITIES; LIMITATIONS. (a) The corporation
4-15 may participate in a revenue-generating activity by entering into a
4-16 contract with the United States Department of Education, with this
4-17 state or any agency, instrumentality, or political subdivision of
4-18 this state, with any eligible institution as defined by Section 435
4-19 of the Higher Education Act of 1965 (20 U.S.C. Section 1085), as
4-20 amended, that is eligible to participate in a program under Title IV
4-21 of that Act, with any guaranty agency as defined by Section 435 of
4-22 that Act, or with any entity to which the United States Department
4-23 of Education has awarded one or more contracts to provide services
4-24 under Title IV of that Act [that is consistent with the
4-25 corporation's purposes] if the board determines that [the revenue
4-26 from the activity]:

4-27 (1) ~~[is sufficient to cover the costs of]~~ the activity
4-28 is consistent with the corporation's purposes described by Section
4-29 57.01; ~~and]~~

4-30 (2) revenue from the activity is sufficient to cover
4-31 the costs of the activity, including the opportunity costs of any
4-32 invested capital, within a defined period of time determined by the
4-33 board for purposes of this section; and

4-34 (3) revenue from the activity will enable the
4-35 corporation to support educational purposes under Section 57.211
4-36 [may contribute to a reduction in the insurance premium paid by
4-37 students under Section 57.43 of this code].

4-38 (b) The corporation may enter into a contract with the
4-39 United States Department of Education under Subsection (a) alone or
4-40 in concert with any of the entities with which the corporation may
4-41 enter into a contract under that subsection.

4-42 (c) If, under Subsection (a) [of this section], the board
4-43 authorizes the corporation to perform additional services, the
4-44 corporation may not require postsecondary educational institutions
4-45 or students to use those services unless required by state or
4-46 federal law.

4-47 (d) If, under Subsection (a), the board authorizes the
4-48 corporation to perform debt collection, default aversion,
4-49 financial literacy, exit counseling, or loan servicing, the
4-50 corporation may perform those services only in relation to higher
4-51 education student loans.

4-52 (e) The corporation shall submit a written report to the
4-53 legislature and the Legislative Budget Board not later than
4-54 December 1 of each even-numbered year regarding the corporation's
4-55 participation in revenue-generating activities under this section.
4-56 The report must:

4-57 (1) include the amounts of revenue from and expenses
4-58 associated with the activities;

4-59 (2) demonstrate how that revenue is used for the
4-60 support of educational purposes under Section 57.211; and

4-61 (3) certify:

4-62 (A) the reasonable and necessary amount of
4-63 operating funds under Section 57.71 required to fulfill the
4-64 corporation's responsibilities under Section 57.41(a); and

4-65 (B) the amount of excess operating funds under
4-66 Section 57.71.

4-67 SECTION 12. Subsection (a), Section 57.41, Education Code,
4-68 is amended to read as follows:

4-69 (a) The corporation shall serve as the designated guarantee

5-1 agency under the Federal Family Education Loan Program in
 5-2 accordance with ~~[loans made to eligible borrowers by eligible~~
 5-3 ~~lenders as provided by the federal guaranteed student loan program~~
 5-4 ~~under]~~ the Higher Education Act of 1965, 20 U.S.C. Section ~~[Sec.]~~
 5-5 1001 et seq., as amended, regulations adopted under that Act, and
 5-6 other applicable federal law.

5-7 SECTION 13. Section 57.461, Education Code, is amended to
 5-8 read as follows:

5-9 Sec. 57.461. [~~POSTSECONDARY EDUCATIONAL INSTITUTIONS AND~~
 5-10 ~~LENDER]~~ ADVISORY COMMITTEES. ~~[(a)]~~ The corporation shall
 5-11 establish advisory committees as the board considers appropriate [~~+~~

5-12 ~~[(1) an advisory committee that is composed of 15~~
 5-13 ~~members who represent the postsecondary educational institutions~~
 5-14 ~~that participate in the corporation's guaranteed student loan~~
 5-15 ~~program; and~~

5-16 ~~[(2) an advisory committee that is composed of 12~~
 5-17 ~~members including:~~

5-18 ~~[(A) one member who represents the Texas Higher~~
 5-19 ~~Education Coordinating Board; and~~

5-20 ~~[(B) 11 members who represent lenders that~~
 5-21 ~~participate in the corporation's guaranteed student loan program].~~

5-22 ~~[(b) The board shall appoint advisory committee members on~~
 5-23 ~~the recommendation of the president.~~

5-24 ~~[(c) The board may establish other advisory committees as~~
 5-25 ~~the board considers necessary.~~

5-26 ~~[(d) The board shall:~~

5-27 ~~[(1) specify each advisory committee's purpose and~~
 5-28 ~~duties; and~~

5-29 ~~[(2) require each committee to report to the board in a~~
 5-30 ~~manner specified by the board relating to each committee's~~
 5-31 ~~activities and work results.]~~

5-32 SECTION 14. Subsections (a), (b), and (d), Section 57.47,
 5-33 Education Code, are amended to read as follows:

5-34 (a) If a student borrower defaults on a loan and the
 5-35 corporation is required to honor the guarantee, the corporation may
 5-36 ~~[or the Texas Higher Education Coordinating Board shall]~~ bring suit
 5-37 against the defaulting party in accordance with the requirements of
 5-38 the Higher Education Act of 1965, 20 U.S.C. Section ~~[Sec.]~~ 1001 et
 5-39 seq., as amended.

5-40 (b) A suit against a defaulting party under this section may
 5-41 be brought in the county in which the defaulting person resides, in
 5-42 which the lender is located, or in Travis or Williamson County.

5-43 (d) Notwithstanding any other law, if the corporation ~~[or~~
 5-44 ~~the Texas Higher Education Coordinating Board]~~ brings suit against
 5-45 a defaulting party under this section, the corporation ~~[or the~~
 5-46 ~~coordinating board, as appropriate,]~~ shall pay 50 percent of the
 5-47 filing fee or other costs of court taxed and collected in advance
 5-48 that are in effect on the date on which the suit is filed. If the
 5-49 defaulting borrower prevails in the suit filed under this section,
 5-50 the corporation ~~[or the coordinating board, as appropriate,]~~ shall
 5-51 pay the remaining 50 percent of the statutory filing fee on the date
 5-52 of the final disposition of the suit. If the corporation ~~[or~~
 5-53 ~~coordinating board]~~ prevails in the suit:

5-54 (1) the judgment shall find the defaulting borrower
 5-55 liable to the corporation ~~[or the coordinating board, as~~
 5-56 ~~appropriate,]~~ for the amount of the filing fee; and

5-57 (2) the corporation ~~[or coordinating board, as~~
 5-58 ~~appropriate,]~~ shall pay the remaining 50 percent of the statutory
 5-59 filing fee not later than one week after the date on which the
 5-60 defaulting borrower pays to the corporation ~~[or coordinating board,~~
 5-61 ~~as appropriate,]~~ the full amount, including the filing fee, for
 5-62 which the borrower is liable to the corporation ~~[or coordinating~~
 5-63 ~~board].~~

5-64 SECTION 15. Subsections (a), (b), and (c), Section 57.481,
 5-65 Education Code, are amended to read as follows:

5-66 (a) ~~[In this section, "loan default rate" means the rate at~~
 5-67 ~~which student borrowers default on loans guaranteed by the~~
 5-68 ~~corporation as determined by the corporation in compliance with~~
 5-69 ~~federal guidelines.~~

6-1 ~~[(b)]~~ The corporation shall take a comprehensive and [an]
 6-2 active role in coordinating, facilitating, and providing technical
 6-3 assistance on guaranteed student loan default prevention and
 6-4 reduction initiatives and programs that promote responsible
 6-5 borrowing, financial literacy, debt management, research, and
 6-6 informed policymaking [in the state] and shall work with the
 6-7 appropriate state agencies and other entities inside and outside
 6-8 this state, including eligible postsecondary educational
 6-9 institutions, eligible lenders, servicers, secondary markets, the
 6-10 Texas Higher Education Coordinating Board, the Texas [Central]
 6-11 Education Agency, [and] state professional and occupational
 6-12 licensing agencies, and the United States Department of Education.

6-13 (b) ~~[(c)]~~ The corporation shall maintain a system of
 6-14 communication among the appropriate state agencies and entities to
 6-15 address student [reduce] loan default prevention issues [claims].

6-16 SECTION 16. Section 57.49, Education Code, is amended to
 6-17 read as follows:

6-18 Sec. 57.49. COOPERATION OF STATE AGENCIES AND SUBDIVISIONS.
 6-19 Each agency and political subdivision of the state shall cooperate
 6-20 with the corporation in providing information to the agency's or
 6-21 political subdivision's clients concerning student financial aid,
 6-22 including information about delinquency, default prevention, and
 6-23 life-of-loan issues. Each agency and political subdivision shall
 6-24 provide information to the corporation on request to assist the
 6-25 corporation in curing delinquent loans, ~~[and]~~ collecting defaulted
 6-26 loans, and developing information and reports concerning
 6-27 responsible borrowing.

6-28 SECTION 17. Sections 57.50 and 57.71, Education Code, are
 6-29 amended to read as follows:

6-30 Sec. 57.50. NONDISCRIMINATION. Neither the corporation nor
 6-31 an eligible lender may discriminate against an eligible student in
 6-32 making a loan or loan guarantee on the basis of race, age, religion,
 6-33 or sex or any other basis prohibited by applicable law.

6-34 Sec. 57.71. FEDERAL [RESERVE] AND OPERATING FUNDS. The
 6-35 corporation shall maintain a federal fund [establish reserve] and
 6-36 operating fund [funds] in accordance with Sections [Section] 422,
 6-37 422A, and 422B of the Higher Education Act of 1965 (20 U.S.C.
 6-38 Sections [Section] 1072, 1072a, and 1072b), as amended.

6-39 SECTION 18. Subchapter D, Chapter 57, Education Code, is
 6-40 amended by adding Section 57.762 to read as follows:

6-41 Sec. 57.762. REVIEW BY STATE AUDITOR. In addition to any
 6-42 other audit required by law, the state auditor shall periodically
 6-43 review the corporation's activities in a manner consistent with the
 6-44 state auditor's audit plan under Chapter 321, Government Code. The
 6-45 corporation shall reimburse the state auditor for all reasonable
 6-46 costs incurred by the state auditor in conducting a review under
 6-47 this section.

6-48 SECTION 19. Section 57.78, Education Code, is amended to
 6-49 read as follows:

6-50 Sec. 57.78. INVESTMENTS. The federal fund maintained by
 6-51 the corporation under Section 57.71 shall [All money of the
 6-52 corporation may] be invested in accordance with Section 422A of the
 6-53 Higher Education Act of 1965 (20 U.S.C. Section 1072a), as amended.
 6-54 The operating fund maintained by the corporation under Section
 6-55 57.71 may be invested only in accordance with Chapter 2256,
 6-56 Government Code. Authority to invest the operating fund in
 6-57 accordance with Chapter 2256, Government Code, complies with
 6-58 Section 422B of the Higher Education Act of 1965 (20 U.S.C. Section
 6-59 1072b), as amended.

6-60 SECTION 20. The following provisions of the Education Code
 6-61 are repealed:

- 6-62 (1) Subsections (c), (g), and (h), Section 57.19;
- 6-63 (2) Subsections (c) and (d), Section 57.41;
- 6-64 (3) Section 57.42;
- 6-65 (4) Section 57.43;
- 6-66 (5) Section 57.44;
- 6-67 (6) Section 57.45;
- 6-68 (7) Section 57.46; and
- 6-69 (8) Subsections (d), (e), (f), (g), and (h), Section

7-1 57.481.

7-2 SECTION 21. This Act takes effect immediately if it
7-3 receives a vote of two-thirds of all the members elected to each
7-4 house, as provided by Section 39, Article III, Texas Constitution.
7-5 If this Act does not receive the vote necessary for immediate
7-6 effect, this Act takes effect September 1, 2011.

7-7

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