

CHAPTER 5

S.B. No. 20

AN ACT

relating to the student loan program administered by the Texas Higher Education Coordinating Board and to the management of funds received by the board; and authorizing the issuance of bonds.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 52, Education Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ADDITIONAL BONDS

Sec. 52.81. DEFINITIONS. In this subchapter:

- (1) "Board" means the Texas Higher Education Coordinating Board.*
- (2) "Bond" means a general obligation bond issued by the board under Article III, Section 50b-3, of the Texas Constitution.*

(3) "Fund" means the student loan auxiliary fund.

Sec. 52.82. **ISSUANCE; SALE.** (a) The board may by resolution authorize the issuance of general obligation bonds in a total aggregate amount not to exceed \$300 million.

(b) Before the board may issue bonds under this subchapter, the bond review board must review and approve the bonds under Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes).

(c) The board may sell the bonds at a negotiated sale if the board determines that a negotiated sale is a more efficient and economical method of selling the bonds.

(d) The total amount of bonds issued by the board in a state fiscal year may not exceed \$100 million.

Sec. 52.83. **TERMS.** (a) Except as provided by this subchapter, the board by resolution may provide the terms and name of the bonds.

(b) The bonds must be dated and bear interest at a rate prescribed by the board.

(c) The bonds must mature serially or otherwise not later than the 40th year after the date of their issuance.

(d) The bonds may have a different face value from other bonds issued by the board.

Sec. 52.84. **EXECUTION; REGISTRATION.** The resolution authorizing the issuance of the bonds may provide for the manner of execution and for the registration of ownership of the bonds.

Sec. 52.85. **MARKETING; DISTRIBUTION.** (a) The board shall coordinate the marketing and distribution of the bonds.

(b) The board may use its staff to market and distribute the bonds or may contract with another entity to market and distribute the bonds.

Sec. 52.86. **APPROVAL AND REGISTRATION.** (a) The attorney general shall examine the bonds and the records relating to the bonds' issuance.

(b) If the attorney general finds that the bonds have been issued in accordance with law, the attorney general shall approve the bonds, and the comptroller of public accounts shall register the bonds.

(c) Following approval and registration, the bonds are incontestable and are binding obligations according to their terms.

Sec. 52.87. **MANDAMUS.** The performance of official duties prescribed by this subchapter and Article III, Section 50b-3, of the Texas Constitution, in reference to the payment of the bonds, may be enforced in a court of competent jurisdiction by mandamus or other appropriate proceedings.

Sec. 52.88. **REPLACEMENT OF BOND.** The board may provide for the replacement of a bond that is mutilated, lost, or destroyed.

Sec. 52.89. **FUND.** (a) A special fund to be known as the student loan auxiliary fund is created in the state treasury.

(b) The fund consists of proceeds from the sale of the bonds and gifts or grants made to the board for purposes of the fund.

(c) The board shall deposit the proceeds from the sale of bonds in the fund.

(d) The board by resolution may create and provide the terms of the administration and use of an interest and sinking account or other accounts in the fund.

Sec. 52.90. **LOANS FROM FUND.** (a) The board shall make a loan from the fund to a student who qualifies for a loan under Subchapter C of this chapter.

(b) Loans from the fund are governed by Subchapter C of this chapter as if made under that subchapter, except to the extent of conflict with this subchapter.

(c) The board may charge and collect a loan origination fee from a student who receives a loan from the fund. The board may use the fee to pay operating expenses for making loans under this section.

SECTION 2. Section 52.19, Education Code, as amended by Chapter 4, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 52.19. INVESTMENT OF FUNDS. All money in the reserve portion of the interest and sinking fund, *including the reserve portion*, and all money in the Texas Opportunity Plan Fund in excess of the amount necessary for student loans *shall* ~~may~~ be invested by the state treasurer *in the investments prescribed by board resolution*. *The board shall furnish to the state treasurer a copy of the resolution prescribing authorized investments* ~~[under Section 404.024, Government Code]~~. The board may sell any instruments owned in the interest and sinking fund or in the Texas Opportunity Plan Fund at the prevailing market price. Income from these investments shall be deposited in the interest and sinking fund.

SECTION 3. Subsection (b), Section 52.521, Education Code, is amended to read as follows:

(b) *The board shall deposit funds* ~~[Funds]~~ obtained as a result of any claims, including claims filed on loans in default that have been litigated as provided under a contract with the United States Department of Education, filed with a guarantor ~~[shall be deposited]~~ in the Texas Opportunity Plan Fund *or in the student loan auxiliary fund* in the appropriate account to be used for making student loans.

SECTION 4. Sections 52.53 and 52.541, Education Code, are amended to read as follows:

Sec. 52.53. GIFTS AND GRANTS. The board may accept gifts, grants, or donations of real or personal property from any individual, group, association, or corporation or the United States, subject to limitations or conditions set by law. *The board shall deposit gifts, grants, or donations of money* ~~[shall be deposited]~~ *in the Texas Opportunity Plan Fund or in the student loan auxiliary fund and shall* ~~[,]~~ *separately account* ~~[accounted]~~ *for* ~~[,]~~ *and expend the funds* ~~[expended]~~ in accordance with the specific purpose for which given and under such conditions as are imposed by the donor and as provided by law.

Sec. 52.541. ACCOUNTS FOR LOAN PROGRAMS. (a) The board shall establish separate accounting within the Texas Opportunity Plan Fund *and the student loan auxiliary fund* for each of its existing loan programs, including accounting for the federally insured loans that are insured by the United States Department of Education, the federally insured loans that are insured by the United States Department of Health and Human Services, and each loan program that consists of loans insured by the State of Texas.

(b) If a loan program is established after September 1, 1989, the board shall establish separate accounting within the Texas Opportunity Plan Fund *and the student loan auxiliary fund* for that loan program.

(c) The board may transfer funds among the separate accounts established under this section if:

(1) the transfer is approved by the board and is necessary to administer the Texas Opportunity Plan Fund *or the student loan auxiliary fund*; and

(2) the reason for the transfer is documented in the accounting of the funds.

SECTION 5. Subsection (a), Section 52.56, Education Code, is amended to read as follows:

(a) The board shall make a report of the operations of the Texas Opportunity Plan *and of the student loan auxiliary fund* to the governor annually and to the legislature not later than December 1 prior to the regular session of the legislature.

SECTION 6. This Act takes effect immediately, except Sections 1, 3, 4, and 5 of this Act take effect when the constitutional amendment proposed by the 72nd Legislature, 2nd Called Session, 1991, providing for the issuance of general obligation bonds to finance educational loans to students, is approved by the voters. If that proposed constitutional amendment is not approved, Sections 1, 3, 4, and 5 of this Act have no effect and legislation on this subject may not again be considered by a subsequent called session of the 72nd Legislature.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on August 23, 1991: Yeas 28, Nays:0; passed the House on August 25, 1991: Yeas 112, Nays 17, one present not voting.

Approved August 29, 1991.

Effective August 29, 1991 except §§ 1, 3, 4, and 5 of this Act effective upon approval of constitutional amendment proposed by Acts 1991, 72nd Leg., 2nd C.S. S.J.R. No. 2.