

By: Branch

H.B. No. 2912

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the administration of certain supplemental student loan
3 programs and the issuance of private activity bonds by qualified
4 nonprofit corporations.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The legislature, giving due consideration to the
7 historical and continuing interest of the people of Texas in
8 encouraging deserving and qualified persons to realize their
9 aspirations for education beyond high school, finds and declares
10 that postsecondary education for qualified Texans who desire to
11 pursue such education is important to the welfare and security of
12 this state and the nation and, consequently, is an important public
13 purpose. The legislature finds and declares that the state can
14 achieve its full economic and social potential only if every
15 individual Texan has the opportunity to contribute to the full
16 extent of the individual's capabilities and only when financial
17 barriers to the individual's economic, social, and educational
18 goals are removed. It is, therefore, the policy of the legislature
19 and the purpose of this Act to assist and permit qualified nonprofit
20 corporations to carry out one or more supplemental programs to
21 assist qualified students by making financial and other assistance
22 available to borrowers or institutions to finance the cost of
23 attendance at an accredited postsecondary educational institution.

24 SECTION 2. Chapter 53B, Education Code, is amended by

1 adding Subchapter D to read as follows:

2 SUBCHAPTER D. ADMINISTRATION OF SUPPLEMENTAL LOAN PROGRAMS AND
3 ISSUANCE OF PRIVATE ACTIVITY BONDS BY QUALIFIED
4 NONPROFIT CORPORATIONS

5 Sec. 53B.61. DEFINITIONS. In this subchapter:

6 (1) "Closing" means the issuance and delivery of a
7 supplemental program bond by a qualified nonprofit corporation in
8 exchange for the required payment for the supplemental program
9 bond.

10 (2) "Internal Revenue Code" means the Internal Revenue
11 Code of 1986 and its subsequent amendments.

12 (3) "Nationally recognized statistical rating
13 organization" has the meaning assigned by Section 3(a)(62),
14 Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(62)).

15 (4) "Private activity bond" has the meaning assigned
16 by Section 141(a), Internal Revenue Code.

17 (5) "Qualified student loan bond" has the meaning
18 assigned by Section 144(b), Internal Revenue Code.

19 (6) "Supplemental program" means a program
20 established, implemented, administered, and financed by a
21 qualified nonprofit corporation under Section 53B.63 to provide
22 supplemental program education loans.

23 (7) "Supplemental program bonds" includes bonds,
24 notes, refunding bonds, commercial paper, pass-through
25 instruments, or any other evidences of obligations of a qualified
26 nonprofit corporation secured by a capital reserve fund established
27 under Section 53B.65 and issued under this subchapter for the

1 purpose of originating, acquiring, or financing supplemental
2 program education loans.

3 (8) "Supplemental program education loan" means an
4 alternative education loan made by a qualified nonprofit
5 corporation under a supplemental program or by or on behalf of an
6 accredited institution to a student or to parents of a student, or
7 both, in amounts not to exceed the maximum amounts specified by a
8 qualified nonprofit corporation under its supplemental program to
9 finance part or all of the student's cost of attendance.

10 Sec. 53B.62. DETERMINATION BY COMPTROLLER OF QUALIFIED
11 NONPROFIT CORPORATION AUTHORITY TO ISSUE PRIVATE ACTIVITY BONDS.

12 The comptroller shall determine whether the definition of a
13 qualified scholarship funding corporation under Section 150(d),
14 Internal Revenue Code, allows a qualified nonprofit corporation to
15 issue private activity bonds consisting of qualified student loan
16 bonds in accordance with Section 144(b)(1)(B), Internal Revenue
17 Code. On the making by the comptroller of a determination that the
18 issuance is permissible:

19 (1) the comptroller shall provide notice of its
20 determination to the Legislative Budget Board; and

21 (2) each qualified nonprofit corporation may apply for
22 a student loan bond allocation in compliance with Chapter 1372,
23 Government Code, with respect to its supplemental program bonds
24 under this subchapter.

25 Sec. 53B.63. SUPPLEMENTAL PROGRAM. (a) A qualified
26 nonprofit corporation may administer one or more supplemental
27 programs approved by the comptroller under Section 53B.64 under

1 which the qualified nonprofit corporation makes financial and other
2 assistance available to borrowers or accredited institutions to
3 finance the cost of attendance, issues supplemental program bonds,
4 lends the proceeds of supplemental program bonds, and exercises any
5 other powers authorized by this subchapter.

6 (b) Each qualified nonprofit corporation administering a
7 supplemental program approved by the comptroller shall establish
8 rules pertaining to participation in its supplemental programs,
9 including rules relating to issuing supplemental program bonds,
10 borrowing money, servicing and collection of supplemental program
11 education loans, and other policies governing the operation of its
12 supplemental programs.

13 (c) A qualified nonprofit corporation that has issued
14 supplemental program bonds to support a supplemental program may
15 continue to exercise the powers granted by the Texas Nonprofit
16 Corporation Law, including the power to issue bonds or otherwise
17 incur debt that does constitute a supplemental program bond and is
18 not secured by a capital reserve fund created and established under
19 Section 53B.65 for the purpose of financing or purchasing
20 alternative education loans or guaranteed student loans.

21 Sec. 53B.64. COMPTROLLER APPROVAL OF SUPPLEMENTAL
22 PROGRAMS. (a) Pursuant to Section 144(b)(1)(B), Internal Revenue
23 Code, the comptroller on behalf of the state may approve
24 supplemental programs administered by a qualified nonprofit
25 corporation and shall establish procedures for that approval. The
26 procedures established by the comptroller shall require that:

27 (1) the comptroller permit qualified nonprofit

1 corporations to submit the terms of any proposed supplemental
2 programs to the comptroller for approval on or after January 1 and
3 before June 1 of each calendar year;

4 (2) the comptroller, after providing notice of the
5 time, place, and purpose of the public hearing by publishing notice
6 in a newspaper of general circulation earlier than the 10th day
7 before the date of the hearing, conduct a public hearing before July
8 2 of each calendar year to consider the approval of proposed
9 supplemental programs;

10 (3) a proposed supplemental program submitted by a
11 qualified nonprofit corporation be accompanied by a nonrefundable
12 application fee in the amount of \$500 that the comptroller shall
13 retain to offset the costs of holding the related public hearing;

14 (4) the approval of a supplemental program be
15 memorialized in a written resolution adopted by the comptroller;

16 (5) any supplemental program bonds issued to support
17 an approved supplemental program receive, on or before the closing
18 date, an initial unenhanced credit rating of not less than an "A"
19 category or the equivalent of that rating as rated by a nationally
20 recognized statistical rating organization; and

21 (6) the comptroller not approve any supplemental
22 program that discriminates on the basis of the location of the
23 accredited institutions in which the students enroll.

24 (b) The comptroller may charge a qualified nonprofit
25 corporation an annual capital reserve fund maintenance fee in an
26 amount not to exceed 0.50 percent of the capital reserve
27 requirement relating to a capital reserve fund created and

1 established under Section 53B.65 that secures supplemental program
2 bonds issued under a supplemental program. Any required capital
3 reserve fund maintenance fee must be established in the written
4 resolution approving the supplemental program. The payment of any
5 required capital reserve fund maintenance fee by the related
6 qualified nonprofit corporation shall commence on the closing date
7 of the related supplemental program bonds and is payable annually
8 in arrears on each anniversary date after the closing date of the
9 related supplemental program bonds.

10 (c) Following the initial approval of a supplemental
11 program by the comptroller, the comptroller shall establish:

12 (1) a process for the approval of any material changes
13 in terms with respect to an approved supplemental program; and

14 (2) procedures allowing a qualified nonprofit
15 corporation to petition for a special hearing for the approval of
16 material changes in the terms with respect to an approved
17 supplemental program.

18 Sec. 53B.65. CAPITAL RESERVE FUNDS; OBLIGATION OF THE STATE.

19 (a) As part of a supplemental program administered under Section
20 53B.63, a qualified nonprofit corporation may create and establish
21 one or more capital reserve funds and may pay into the capital
22 reserve fund any money appropriated and made available by the state
23 for the purposes of that fund, any proceeds of the sale by the
24 qualified nonprofit corporation of supplemental program bonds to
25 the extent determined by the qualified nonprofit corporation, and
26 any other money available to the qualified nonprofit corporation.

27 A qualified nonprofit corporation may not create or establish any

1 capital reserve fund under this section to secure supplemental
2 program bonds issued as qualified student loan bonds until the
3 determination described by Section 53B.62 has been made by the
4 comptroller.

5 **(b)** Except as otherwise provided by this section, money held
6 in any capital reserve fund must be used solely with respect to
7 supplemental program bonds, the repayment of which is secured by
8 any such fund and solely for the payment of principal of
9 supplemental program bonds, the purchase or redemption of those
10 supplemental program bonds, including any fees or premiums, and the
11 payment of interest on those supplemental program bonds. In
12 addition, if a qualified nonprofit corporation obtains a letter of
13 credit, insurance contract, surety bond, or similar financial
14 undertaking to establish and fund a capital reserve fund under this
15 section, money in that capital reserve fund may be used to pay all
16 reimbursement obligations of the qualified nonprofit corporation
17 established in connection with that letter of credit, insurance
18 contract, surety bond, or other financial undertaking, including
19 all fees, expenses, indemnities, and commissions. Money in excess
20 of the reserve requirement established by Subsection (c) may be
21 transferred to other funds and accounts of the qualified nonprofit
22 corporation.

23 **(c)** A qualified nonprofit corporation may establish a
24 capital reserve requirement for a capital reserve fund by providing
25 that money in the fund may not be withdrawn at any time in an amount
26 that would reduce the amount of the fund to less than the maximum
27 amount of principal and interest becoming due by reason of maturity

1 or a required sinking fund payment in the next succeeding period not
2 exceeding 24 months within which any such maturity occurs or any
3 such payment is required, except for the purpose of paying the
4 amount due on any interest payment date or on maturity or making a
5 sinking fund payment with respect to supplemental program bonds
6 secured by the capital reserve fund.

7 (d) A qualified nonprofit corporation may provide that it
8 will not issue supplemental program bonds if the capital reserve
9 requirement established under Subsection (c) with respect to
10 supplemental program bonds outstanding and to be issued that are
11 secured by the capital reserve fund will exceed the amount of the
12 capital reserve fund at the time of issuance, unless the qualified
13 nonprofit corporation, at the time of issuance of the supplemental
14 program bonds, deposits in the capital reserve fund from proceeds
15 of the supplemental program bonds to be issued, or from other
16 sources, an amount that, together with the amount in the capital
17 reserve fund, is not less than the capital reserve requirement.

18 (e) On or before September 1 of each year, a qualified
19 nonprofit corporation shall certify to the comptroller and the
20 Legislative Budget Board the amount, if any, necessary to restore
21 the amount in any capital reserve fund to which this subsection
22 applies, as stated in the trust indenture or other document, to the
23 capital reserve requirement. The comptroller shall cause to be
24 paid directly from legislative appropriations or from other funds
25 designated by the Legislative Budget Board under its budget
26 execution authority to the qualified nonprofit corporation during
27 the current state fiscal year the amount necessary to restore the

1 amount in the capital reserve fund to the capital reserve
2 requirement.

3 (f) Neither this state nor any political subdivision of this
4 state is obligated to pay the principal of or the interest on
5 supplemental program bonds, except from amounts on deposit in the
6 applicable capital reserve funds, and neither the faith and credit
7 nor the taxing power of this state or of any political subdivision
8 of this state is pledged to the payment of the principal of, premium
9 if any, or interest on supplemental program bonds. The issuance of
10 supplemental program bonds does not directly, indirectly, or
11 contingently obligate this state or any political subdivision of
12 this state to levy or pledge any form of taxation whatsoever or to
13 make any appropriation for the payment of supplemental program
14 bonds.

15 (g) The aggregate sum of capital reserve requirements
16 relating to capital reserve funds securing supplemental program
17 bonds may not at any time exceed \$98 million.

18 SECTION 3. This Act takes effect September 1, 2011.