

EDUCATION CODE

TITLE 3. HIGHER EDUCATION

SUBTITLE A. HIGHER EDUCATION IN GENERAL

CHAPTER 53B. HIGHER EDUCATION LOAN AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53B.01. SHORT TITLE. This chapter may be cited as the Higher Education Loan Authority Act.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.02. DEFINITIONS. In this chapter:

(1) "Accredited institution" means an institution that has either been recognized by a recognized accrediting agency, as defined by Section 61.003, or accredited by the Accrediting Commission for Independent Colleges and Schools, the Accrediting Commission for Career Schools and Colleges of Technology, or the National Accrediting Commission of Cosmetology Arts and Sciences.

(2) "Alternative education loan" means a loan other than a guaranteed student loan that is made to or for the benefit of a student for the purpose of financing all or part of the student's cost of attendance at an accredited institution.

(3) "Authority" means a higher education loan authority created under this chapter.

(4) "Board" means the board of directors of an authority.

(5) "Bond resolution" means the resolution authorizing the issuance of revenue bonds.

(6) "City" means an incorporated city or town in this state.

(7) "Cost of attendance" means all costs of a student incurred in connection with a program of study at an accredited institution, as determined by the institution, including tuition and instructional fees, the cost of room and board, books, computers, and supplies, and other related fees, charges, and expenses.

(8) "Governing body" means the council, commission, or other governing body of a city.

(9) "Guaranteed student loan" means a loan made by an eligible lender under the Higher Education Act of 1965 (Pub. L. No. 89-329), as amended.

(10) "Qualified alternative education loan lender" means a nonprofit corporation incorporated under the laws of this state that:

(A) is a qualified nonprofit corporation;

(B) has serviced education loans made under the Higher Education Act of 1965, as amended, for a qualified nonprofit corporation for a period of not less than 10 years; or

(C) is a charitable organization qualified under Section 509(a)(2), Internal Revenue Code of 1986, as amended, that provides services to a qualified nonprofit corporation.

(11) "Qualified nonprofit corporation" means a nonprofit corporation:

(A) that issued bonds on or after January 1, 1990, and before January 1, 2001, that qualified as qualified student loan bonds under Section 144(b), Internal Revenue Code of 1986, as amended; or

(B) that the office of the governor, in consultation with the state student loan guaranty agency or any other public or private entity the office of the governor considers appropriate, has determined meets a need for student loan financing that existing qualified nonprofit corporations cannot meet, which determination may include information provided by the nonprofit corporation's plan for doing business that should include documented limitations in:

(i) the geographic coverage of existing qualified nonprofit corporations in the nonprofit corporation's proposed area of service;

(ii) the willingness of existing qualified nonprofit corporations to serve the eligible lenders in the proposed area of service; and

(iii) the ability of existing qualified nonprofit corporations to serve the eligible lenders in the

proposed area of service.

(12) "Repurchase agreement" means a simultaneous agreement between a higher education loan authority and another entity in which one of the parties has agreed to purchase investment securities on a specified date and the other party has agreed to repurchase the investment securities at the same price plus accrued interest on a later date, in which the market value of the investment securities purchased is in excess of the amount of the repurchase agreement, and in which the investment securities are so purchased and held separately from all other investment securities, in trust, in order to complete the contractual commitment.

(13) "Trust indenture" means the mortgage, deed of trust, or other instrument pledging revenue or property, or creating a mortgage lien on property, or both, to secure the revenue bonds issued by the authority.

(14) "Trustee" means the trustee under the trust indenture.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 53B.11. CREATION OF AUTHORITY. When the governing body of a city finds that it is to the best interest of the city and its inhabitants to create a higher education loan authority, it shall pass an ordinance creating the authority and designating the name by which it shall be known. If the governing bodies of two or more cities find that it is to the best interest of the cities to create an authority to include those cities, each governing body shall pass an ordinance creating the authority and designating the name by which it shall be known.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.12. TERRITORY. The authority comprises only the territory included within the boundaries of the city or cities creating it.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.13. CORPORATE POWERS. An authority is a body politic and corporate having the power of perpetual succession. It shall have a seal; it may sue and be sued; and it may make, amend, and repeal its bylaws.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.131. AUTHORITY'S EARNINGS. A private person may not share in any of an authority's earnings.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.14. BOARD OF DIRECTORS. (a) The authority shall be governed by a board of directors consisting of not less than 7 nor more than 11 members to be determined at the time of creating the authority. The directors shall be appointed by the governing body of the city or by the governing bodies of the cities, and they shall serve until their successors are appointed as provided by this section. If the authority includes more than one city, each governing body shall appoint an equal number of directors unless otherwise agreed by the cities.

(b) The members of the board serve for two-year terms.

(c) No officer or employee of any such city is eligible for appointment as a director. Directors are not entitled to compensation for services but are entitled to reimbursement for expenses incurred in performing such service.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.15. ORGANIZATION OF BOARD; QUORUM; EMPLOYEES; COUNSEL. (a) The board shall elect from among its members a president and vice president, and shall elect a secretary and a treasurer who may or may not be directors, and may elect other officers as authorized by the authority's bylaws. The offices of

secretary and treasurer may be combined.

(b) The president has the same right to vote on all matters as other members of the board.

(c) A majority constitutes a quorum, and when a quorum is present action may be taken by a majority vote of directors present.

(d) The board may employ employees, experts, and agents as it sees fit. It may delegate to the manager the power to employ and discharge employees.

(e) The board may employ legal counsel.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 53B.31. NO TAXING POWER. An authority has no power to tax.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.32. NO POWER OF EMINENT DOMAIN. The authority does not have the power of eminent domain.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.35. ISSUANCE OF BONDS; PROCEDURE; ETC. The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the board. Bonds authorized under this section shall be issued in accordance with Chapter 1201, Government Code. The bonds shall mature serially or otherwise in not to exceed 50 years. The rate of interest to be borne by the bonds shall not exceed the maximum rate prescribed by Chapter 1204, Government Code.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.37. JUNIOR LIEN BONDS; PARITY BONDS. Bonds constituting a junior lien on the net revenue or properties may be issued unless prohibited by the bond resolution or trust

indenture. Parity bonds may be issued under conditions specified in the bond resolution or trust indenture.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.38. RESERVES FOR OPERATING AND OTHER EXPENSES. Money for the payment of not more than two years' interest on the bonds and an amount estimated by the board to be required for operating expenses during the first year of operation may be set aside for those purposes out of the proceeds from the sale of the bonds.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.39. REFUNDING BONDS. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this chapter for other bonds, and may be exchanged by the comptroller or sold and the proceeds applied in accordance with the procedure prescribed by Subchapter B or C, Chapter 1207, Government Code.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.40. APPROVAL OF BONDS; REGISTRATION; NEGOTIABILITY. Bonds issued under this chapter and the record relating to their issuance shall be submitted to the attorney general, and if he finds that they have been issued in accordance with this chapter and constitute valid and binding obligations of the authority and are secured as recited therein he shall approve them, and they shall be registered by comptroller of public accounts who shall certify the registration thereon. Thereafter, they are incontestable. The bonds shall be negotiable and shall contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.41. AUTHORIZED INVESTMENTS. All bonds issued under this chapter are legal and authorized investments for all banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies of all kinds and types, and for the interest and sinking funds and other public funds of any issuer. The bonds are also eligible and lawful security for all deposits of public funds of the State of Texas and of any issuer, to the extent of the value of the bonds, when accompanied by any unmatured interest coupons appurtenant to them.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.42. INVESTMENT OF FUNDS; SECURITY. To the extent it is applicable, the law as to the security for and the investment of funds, applicable to cities, controls the investment of funds belonging to authority. The bond resolution or the indenture or both may further restrict the making of investments. The authority may invest the proceeds of its bonds, until the money is needed, in the direct obligations of or obligations unconditionally guaranteed by the United States, to the extent authorized in the bond resolution or indenture or in both.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.43. DEPOSITORIES. The authority may select a depository or depositories according to the procedures provided by law for the selection of city depositories, or it may award its depository contract to the same depository or depositories selected by the city or cities and on the same terms.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.45. TRANSACTIONS WITH OTHER AGENCIES AND PERSONS. The authority may borrow money and accept grants from, and enter into contracts, leases, or other transactions with the United

States, the State of Texas, any municipal corporation in the state, and any public or private person or corporation resident or authorized to do business in the state.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Sec. 53B.47. GUARANTEED STUDENT LOANS AND ALTERNATIVE EDUCATION LOANS; BONDS FOR THE PURCHASE OF EDUCATION LOAN NOTES.

(a) An authority may, upon approval of the city or cities which created the same, issue revenue bonds or otherwise borrow money to obtain funds to purchase or to make guaranteed student loans or alternative education loans. Revenue bonds issued for such purpose shall be issued in accordance with and with the effect provided in this chapter. Such bonds shall be payable from and secured by a pledge of revenues derived from or by reason of the ownership of guaranteed student loans or alternative education loans and investment income after deduction of such expenses of operating the loan program as may be specified by the bond resolution or trust indenture.

(b) An authority may cause money to be expended to make or purchase for its account guaranteed student loans that are guaranteed by the Texas Guaranteed Student Loan Corporation, other guaranteed student loans, or alternative education loans that are executed by or on behalf of students who:

(1) are residents of this state; or

(2) have been admitted to attend an accredited institution within this state.

(c) The authority shall contract with a nonprofit corporation, organized under the laws of this state, whereby such corporation will provide the reports and other information required for continued participation in the federally guaranteed loan program provided by the Higher Education Act of 1965, as amended, or in an alternative education loan program.

(d) The authority, as a municipal corporation of the state, is charged with a portion of the responsibility of the state to provide educational opportunities in keeping with all applicable state and federal laws. Nothing in this section shall be construed



as a prohibition against establishing policies to limit the purchase of guaranteed student loans or alternative education loans executed by students attending school in a certain geographical area or by students who are residents of the area.

(e) In addition to establishing an authority under the provisions of this chapter, the governing body of a city or cities may request a qualified nonprofit corporation to exercise the powers enumerated and provided in this section for and on its behalf. If the qualified nonprofit corporation agrees to exercise such powers, the directors of such corporation shall thereafter be appointed by and be subject to removal by the governing body of the city or cities, and except as provided in this section, Sections [53B.14](#), [53B.15](#), [53B.31](#), [53B.32](#), [53B.38](#), and [53B.41](#) through [53B.43](#) apply to and govern such corporation, its procedures, and bonds. Notwithstanding the provisions of Section [53B.42](#), a qualified nonprofit corporation which has been requested to exercise the powers enumerated and requested in this section may invest or cause a trustee or custodian on behalf of such qualified nonprofit corporation to invest its funds, including the proceeds of any bonds, notes, or other obligations issued by such qualified nonprofit corporation and any monies which are pledged to the payment thereof, in:

(1) certificates of deposit or other time or demand accounts of banks and savings and loan associations which are insured by the Federal Deposit Insurance Corporation, provided the amount of any certificate of deposit in excess of that covered by such insurance must be secured by a first and prior pledge of government obligations having a market value of not less than 100 percent of the excess unless a nationally recognized rating agency has given the senior securities of the bank issuing the certificate of deposit the highest or next to the highest investment rating available;

(2) repurchase agreements;

(3) guaranteed student loans and alternative education loans; or

(4) a security issued by another nonprofit corporation acting under this section.

(f) A nonprofit corporation, whether acting at the request of a city or cities under Subsection (e) or acting as a servicer or administrator for another corporation that purchases or makes guaranteed student loans or alternative education loans, or that on its own behalf issues securities or otherwise obtains funds to purchase or make guaranteed student loans or alternative education loans, may:

(1) exercise the powers granted by Chapters 20 and 22, Business Organizations Code, and any provision of Title 1, Business Organizations Code, applicable to a nonprofit corporation;

(2) service loans purchased or made from its funds or contract with another person to service the loans;

(3) grant a security interest in a trust estate securing its securities; and

(4) make investments as authorized by Subsection (e).

(g) A security interest in a trust estate granted under Subsection (f)(3) is attached and perfected at the time the security interest is executed and delivered by the nonprofit corporation. The security interest grants to the secured party a first prior perfected security interest in the trust estate for the benefit of the secured party without regard to the location of the assets that constitute the trust estate.

(h) An alternative education loan may be made under this section only by or on behalf of a qualified alternative education loan lender. An alternative education loan may not be in an amount in excess of the difference between the cost of attendance and the amount of other student assistance to the student, other than loans under Section 428B(a)(1), Higher Education Act of 1965 (20 U.S.C. Section 1078-2) (relating to parent loans), for which the student borrower may be eligible. An alternative education loan covered by this subsection is subject to Chapter 342, Finance Code, as applicable, except that:

(1) the maximum interest rate on the loan may not exceed the rate permitted under Subchapter A, Chapter 303, Finance Code; and

(2) application and origination fees may be agreed to by the parties and assessed at the inception of the loan, provided

that if any such fees constitute additional interest under applicable law, the effective rate of interest agreed to over the stated term of the loan may not exceed the rate allowed by Subchapter A, Chapter 303, Finance Code, and accrued unpaid interest may be added to unpaid principal at the beginning of the agreed repayment period at the borrower's option and in accordance with the terms of the agreement for purposes of determining the total principal amount due at the inception of the repayment period.

(i) An authority or nonprofit corporation making education loans under this section is exempt from the licensing requirements of Chapter 342, Finance Code.

Added by Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1304 (H.B. 2911), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1304 (H.B. 2911), Sec. 2, eff. June 17, 2011.

Sec. 53B.48. QUALIFIED NONPROFIT CORPORATION ACTING FOR OR ON BEHALF OF TWO OR MORE CITIES. (a) A qualified nonprofit corporation described by Section 53B.47(e) that has agreed to exercise the powers enumerated under Section 53B.47 for and on behalf of two or more cities may withdraw from acting for and on behalf of any of those cities if the governing body of the applicable city consents to the withdrawal and rescinds its earlier request that the nonprofit corporation act for and on behalf of the city. A nonprofit corporation that completes a withdrawal described by this subsection continues to act under the authority of Section 53B.47(e) for and on behalf of the remaining city or cities.

(b) Following the qualified nonprofit corporation's withdrawal under this section from acting for and on behalf of a city:

(1) the applicable city is no longer:

(A) entitled to participate in the appointment or

removal of a member of the board of directors of the nonprofit corporation under Section 53B.47(e); or

(B) authorized or required to participate in the approval of the issuance of revenue bonds or other borrowings by the nonprofit corporation under Section 53B.47(a); and

(2) members of the board of directors of the nonprofit corporation who were appointed by that city are no longer considered to be qualified directors of the nonprofit corporation.

(c) A qualified nonprofit corporation that withdraws from acting for and on behalf of a city may change the size of its board of directors to reflect the withdrawal, provided that its bylaws at all times require at least three directors. The governing body or bodies of the city or cities for and on behalf of which the nonprofit corporation continues to act retain the power to:

(1) appoint and remove the directors of the nonprofit corporation as provided by Section 53B.47(e); and

(2) approve the issuance of revenue bonds or other borrowings by the nonprofit corporation as provided by Section 53B.47(a).

Added by Acts 2015, 84th Leg., R.S., Ch. 420 (H.B. 3245), Sec. 1, eff. June 10, 2015.