March 22, 2013

ENGROSSED
SENATE BILL No. 532

DIGEST OF SB 532 (Updated March 20, 2013 1:48 pm - DI 101)

Citations Affected: IC 5-14; IC 21-16.

Synopsis: Higher education student loans. Permits the Indiana Secondary Market for Education Loans, Inc. (corporation) to become a direct lender of postsecondary education loans for purposes of attending both Indiana and non-Indiana postsecondary education institutions. Allows the board of directors of the corporation to meet in executive session to protect proprietary business information. Provides that the board of directors of the corporation is not required to have a minimum number of members present at the place where the meeting is conducted in order to conduct an electronic meeting. Repeals a provision concerning certain requirements regarding a meeting of the board of directors of the corporation, and repeals the law that establishes the secondary market sale fund.

Effective: July 1, 2013.

Eckerty, Smith J, Kruse, Stoops, Randolph

(HOUSE SPONSORS — BEHNING, DERMODY, RIECKEN)

January 14, 2013, read first time and referred to Committee on Financial Institutions.
February 18, 2013, amended, reported favorably — Do Pass.
February 21, 2013, read second time, amended, ordered engrossed.
February 22, 2013, engrossed.
February 25, 2013, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 5, 2013, read first time and referred to Committee on Financial Institutions.
March 21, 2013, amended, reported — Do Pass.

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March 22, 2013

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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ENGROSSED
SENATE BILL No. 532

A BILL FOR AN ACT to amend the Indiana Code concerning higher education.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-14-1.5-3.6, AS ADDED BY P.L.134-2012, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3.6. (a) This section applies only to a governing body of a public agency of the state, including a body corporate and politic established as an instrumentality of the state.

(b) A member of the governing body of a public agency who is not physically present at a meeting of the governing body may participate in a meeting of the governing body by electronic communication only if the member uses a means of communication that permits:

(1) the member;

(2) all other members participating in the meeting;

(3) all members of the public physically present at the place where the meeting is conducted; and

(4) if the meeting is conducted under a policy adopted under subsection (g)(7), all members of the public physically present at a public location at which a member participates by means of electronic communication;

to simultaneously communicate with each other during the meeting.

(c) The governing body must fulfill both of the following requirements for a member of the governing body to participate in a meeting by electronic communication:

(1) This subdivision does not apply to committees appointed by a board of trustees of a state educational institution **or to the board of directors of the Indiana secondary market for education loans, as established, incorporated, and designated under IC 21-16-5-1.** The minimum number of members who must be physically present at the place where the meeting is conducted must be the greater of:

(A) two (2) of the members; or

(B) one-third (1/3) of the members.

(2) All votes of the governing body during the electronic meeting must be taken by roll call vote.

Nothing in this section affects the public's right under this chapter to attend a meeting of the governing body at the place where the meeting is conducted and the minimum number of members is physically present as provided for in subdivision (1).

(d) Each member of the governing body is required to physically attend at least one (1) meeting of the governing body annually.

(e) Unless a policy adopted by a governing body under subsection (g) provides otherwise, a member who participates in a meeting by electronic communication:

(1) is considered to be present at the meeting;

(2) shall be counted for purposes of establishing a quorum; and

(3) may vote at the meeting.

(f) A governing body may not conduct meetings using a means of electronic communication until the governing body:

(1) meets all requirements of this chapter; and

(2) by a favorable vote of a majority of the members of the governing body, adopts a policy under subsection (g) governing participation in meetings of the governing body by electronic communication.

(g) A policy adopted by a governing body to govern participation in the governing body's meetings by electronic communication may do any of the following:

(1) Require a member to request authorization to participate in a meeting of the governing body by electronic communication within a certain number of days before the meeting to allow for arrangements to be made for the member's participation by electronic communication.

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(2) Subject to subsection (e), limit the number of members who may participate in any one (1) meeting by electronic communication.

(3) Limit the total number of meetings that the governing body may conduct in a calendar year by electronic communication.

(4) Limit the number of meetings in a calendar year in which any one (1) member of the governing body may participate by electronic communication.

(5) Provide that a member who participates in a meeting by electronic communication may not cast the deciding vote on any official action.

(6) Require a member participating in a meeting by electronic communication to confirm in writing the votes cast by the member during the meeting within a certain number of days after the date of the meeting.

(7) Provide that in addition to the location where a meeting is conducted, the public may also attend some or all meetings of the governing body, excluding executive sessions, at a public place or public places at which a member is physically present and participates by electronic communication. If the governing body's policy includes this provision, a meeting notice must provide the following information:

(A) The identity of each member who will be physically present at a public place and participate in the meeting by electronic communication.

(B) The address and telephone number of each public place where a member will be physically present and participate by electronic communication.

(C) Unless the meeting is an executive session, a statement that a location described in clause (B) will be open and accessible to the public.

(8) Require at least a quorum of members to be physically present at the location where the meeting is conducted.

(9) Provide that a member participating by electronic communication may vote on official action only if, subject to subsection (e), a specified number of members:

(A) are physically present at the location where the meeting is conducted; and

(B) concur in the official action.

(10) Establish any other procedures, limitations, or conditions that govern participation in meetings of the governing body by electronic communication and are not in conflict with this

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chapter.

(h) The policy adopted by the governing body must be posted on the Internet web site of the governing body or the public agency.

(i) Nothing in this section affects a public agency's right to exclude the public from an executive session in which a member participates by electronic communication.

SECTION 2. IC 21-16-1-5, AS ADDED BY P.L.2-2007, SECTION 257, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. "Education loan" means a **direct loan or** loan insured or guaranteed under a federal or state program or a program of private insurance that is made to assist a student in obtaining postsecondary education and that is:

(1) made to any Indiana student, or to either one (1) or both parents or the legal guardian of the student, for the purpose of attending an Indiana or non-Indiana postsecondary educational institution;

(2) made to any non-Indiana student, or to one (1) or both parents or the legal guardian of the student, for the purpose of attending an Indiana **or non-Indiana** postsecondary education institution; or

(3) made or owned by any lending institution:

(A) with an office located in Indiana; or

(B) whose affiliate has an office located in Indiana or located in a state in which an Indiana bank or an Indiana bank holding company is entitled under Indiana law to acquire a bank or bank holding company.

SECTION 3. IC 21-16-1-10, AS ADDED BY P.L.2-2007, SECTION 257, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. "Fund":

(1) for purposes of IC 21-16-2, refers to the college work study fund established by IC 21-16-2-2; **and**

(2) for purposes of IC 21-16-4, refers to the student loan program fund established by IC 21-16-4-11. ~~and~~

~~(3) for purposes of IC 21-16-5, refers to the secondary market sale fund established by IC 21-16-5-17.~~

SECTION 4. IC 21-16-5-3, AS ADDED BY P.L.2-2007, SECTION 257, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) The corporation must, under its articles of incorporation, limit its powers to those described in subsection (b).

(b) The corporation may:

(1) borrow money;

(2) purchase, sell, and retire education loans, if the loans are not

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in default status;

(3) provide incentive services and payments, including the payment of premiums for the purchase of education loans and the payment of an origination fee, to assist lending institutions that provide education loans;

(4) loan funds to lending institutions if:

(A) the lending institution agrees to use the funds to originate education loans of an amount equal to the loan made by the corporation over a period agreeable to the corporation and to grant the corporation the right of first refusal to purchase those education loans;

(B) the lending institution agrees to use education loans or government securities as collateral for the loan; and

(C) the corporation has, in response to its written request, received written authorization from the governor to exercise the power described in this subdivision;

~~(5) establish after consultation with the associations representing the private lenders of Indiana and, at the direction of the governor, a direct lending program under which the corporation may make education loans:~~

~~(A) to eligible borrowers under a federal program; and~~

~~(B) if the corporation determines that the borrowers cannot reasonably obtain an education loan from a lending institution in Indiana;~~

~~(6)~~ **(5)** make direct loans to or for the benefit of an education loan borrower **or** to consolidate all or a part of the borrower's outstanding education loans into one (1) loan;

~~(7)~~ **(6)** operate a secondary market for postsecondary education finance instruments, including tuition certificates and education savings certificates sold by or offered through lending institutions or postsecondary educational institutions; ~~and~~

(7) provide financial literacy and educational tools to students, their families, and Indiana colleges and universities with respect to responsibly financing the costs of higher education; and

(8) do all other things that are necessary or incidental to performing the functions listed in subdivisions (1) through (7).

SECTION 5. IC 21-16-5-7, AS ADDED BY P.L.2-2007, SECTION 257, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. The board of directors of the corporation may meet in executive session to **do any of the following:**

(1) Discuss negotiating strategies with respect to financing

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arrangements or proposals, in addition to those items listed in IC 5-14-1.5-6.1.

(2) Discuss, prepare bids for, or respond to proposals or arrangements for raising capital or acquiring assets.

(3) Discuss and prepare competitive marketing strategies.

(4) Engage in strategic planning.

SECTION 6. IC 21-16-5-8 IS REPEALED [EFFECTIVE JULY 1, 2013]. ~~Sec. 8. Any or all members of the board of directors may participate in a meeting of the board by means of a conference telephone or similar communications equipment by which a member can communicate with each of the other board members if at least three (3) board members are present at the meeting. Participation by these means does not violate IC 5-14-1.5.~~

SECTION 7. IC 21-16-5-10, AS ADDED BY P.L.2-2007, SECTION 257, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. Notwithstanding any other law, the ~~commission~~ **corporation** may not make grants for any purpose without approval by the budget agency and the governor after review by the budget committee.

SECTION 8. IC 21-16-5-17 IS REPEALED [EFFECTIVE JULY 1, 2013]. ~~Sec. 17. (a) The secondary market sale fund is established to provide money for school assessment testing and remediation, including reading recovery programs. The fund shall be administered by the budget agency.~~

~~(b) The expenses of administering the fund shall be paid from money in the fund. The fund consists of proceeds from the sale of assets of the Indiana Secondary Market for Education Loans, Incorporated.~~

~~(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest earned from these investments shall be credited to the fund.~~

~~(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund but remains available to be used for providing money for school assessment testing and remediation, including reading recovery programs as allowed under this chapter.~~

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COMMITTEE REPORT

Madam President: The Senate Committee on Financial Institutions, to which was referred Senate Bill No. 532, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-14-1.5-3.6, AS ADDED BY P.L.134-2012, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3.6. (a) This section applies only to a governing body of a public agency of the state, including a body corporate and politic established as an instrumentality of the state.

(b) A member of the governing body of a public agency who is not physically present at a meeting of the governing body may participate in a meeting of the governing body by electronic communication only if the member uses a means of communication that permits:

(1) the member;

(2) all other members participating in the meeting;

(3) all members of the public physically present at the place where the meeting is conducted; and

(4) if the meeting is conducted under a policy adopted under subsection (g)(7), all members of the public physically present at a public location at which a member participates by means of electronic communication;

to simultaneously communicate with each other during the meeting.

(c) The governing body must fulfill both of the following requirements for a member of the governing body to participate in a meeting by electronic communication:

(1) This subdivision does not apply to committees appointed by a board of trustees of a state educational institution **or to the Indiana secondary market for education loans, as established, incorporated, and designated under IC 21-16-5-1.** The minimum number of members who must be physically present at the place where the meeting is conducted must be the greater of:

(A) two (2) of the members; or

(B) one-third (1/3) of the members.

(2) All votes of the governing body during the electronic meeting must be taken by roll call vote.

Nothing in this section affects the public's right under this chapter to attend a meeting of the governing body at the place where the meeting is conducted and the minimum number of members is physically

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present as provided for in subdivision (1).

(d) Each member of the governing body is required to physically attend at least one (1) meeting of the governing body annually.

(e) Unless a policy adopted by a governing body under subsection (g) provides otherwise, a member who participates in a meeting by electronic communication:

(1) is considered to be present at the meeting;

(2) shall be counted for purposes of establishing a quorum; and

(3) may vote at the meeting.

(f) A governing body may not conduct meetings using a means of electronic communication until the governing body:

(1) meets all requirements of this chapter; and

(2) by a favorable vote of a majority of the members of the governing body, adopts a policy under subsection (g) governing participation in meetings of the governing body by electronic communication.

(g) A policy adopted by a governing body to govern participation in the governing body's meetings by electronic communication may do any of the following:

(1) Require a member to request authorization to participate in a meeting of the governing body by electronic communication within a certain number of days before the meeting to allow for arrangements to be made for the member's participation by electronic communication.

(2) Subject to subsection (e), limit the number of members who may participate in any one (1) meeting by electronic communication.

(3) Limit the total number of meetings that the governing body may conduct in a calendar year by electronic communication.

(4) Limit the number of meetings in a calendar year in which any one (1) member of the governing body may participate by electronic communication.

(5) Provide that a member who participates in a meeting by electronic communication may not cast the deciding vote on any official action.

(6) Require a member participating in a meeting by electronic communication to confirm in writing the votes cast by the member during the meeting within a certain number of days after the date of the meeting.

(7) Provide that in addition to the location where a meeting is conducted, the public may also attend some or all meetings of the governing body, excluding executive sessions, at a public place

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or public places at which a member is physically present and participates by electronic communication. If the governing body's policy includes this provision, a meeting notice must provide the following information:

(A) The identity of each member who will be physically present at a public place and participate in the meeting by electronic communication.

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(9) Provide that a member participating by electronic communication may vote on official action only if, subject to subsection (e), a specified number of members:

(A) are physically present at the location where the meeting is conducted; and

(B) concur in the official action.

(10) Establish any other procedures, limitations, or conditions that govern participation in meetings of the governing body by electronic communication and are not in conflict with this chapter.

(h) The policy adopted by the governing body must be posted on the Internet web site of the governing body or the public agency.

(i) Nothing in this section affects a public agency's right to exclude the public from an executive session in which a member participates by electronic communication.".

Page 2, delete lines 13 through 19.

Page 3, between lines 32 and 33, begin a new paragraph and insert:

"SECTION 7. IC 21-16-5-8 IS REPEALED [EFFECTIVE JULY 1, 2013]. ~~Sec. 8. Any or all members of the board of directors may participate in a meeting of the board by means of a conference telephone or similar communications equipment by which a member can communicate with each of the other board members if at least three~~

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~~(3) board members are present at the meeting. Participation by these means does not violate IC 5-14-1.5.~~".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 532 as introduced.)

HOLDMAN, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 532 be amended to read as follows:

Page 2, line 6, after "the" insert "**board of directors of the**".

(Reference is to SB 532 as printed February 19, 2013.)

ECKERTY

COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 532, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 5, line 26, after "borrower" insert "**or**".

and when so amended that said bill do pass.

(Reference is to SB 532 as reprinted February 22, 2013.)

BURTON, Chair

Committee Vote: yeas 12, nays 0.

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