H.166

An act relating to the Vermont Student Assistance Corporation

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 16 V.S.A. § 2867 is added to read:

§ 2867. RESERVE AND PLEDGED EQUITY FUNDS

(a) The corporation may create and establish one or more special funds, herein referred to as "debt service reserve funds" or "pledged equity funds."

(b) The corporation shall pay into each debt service reserve fund:

(1) any moneys appropriated and made available by the state for the purpose of such fund;

(2) any proceeds of the sale of notes, bonds, or other debt instruments, to the extent provided in the resolution or resolutions of the corporation authorizing the issuance thereof; and

(3) any other moneys or financial instruments such as surety bonds, letters of credit, or similar obligations, which may be made available to the corporation for the purpose of such fund from any other source or sources. All moneys or financial instruments held in any debt service reserve fund created and established under this section, except as hereinafter provided, shall be used, as required, solely for the payment of the principal of the bonds, notes, or other debt instruments secured in whole or in part by such fund or of the payments with respect to the bonds, notes, or other debt instruments specified

in any resolution of the corporation as a sinking fund payment, the purchase or redemption of the bonds, the payment of interest on the bonds, notes, or other debt instruments, or the payment of any redemption premium required to be paid when the bonds, notes, or other debt instruments are redeemed prior to maturity, or to reimburse the issuer of a liquidity or credit facility, bond insurance, or other credit enhancement for the payment by such party of any of the foregoing amounts on the corporation's behalf; provided, however, that the moneys or financial instruments in any such debt reserve fund shall not be drawn upon or withdrawn therefrom at any time in such amounts as would reduce the amount of such funds to less than the debt service reserve requirement established by resolution of the corporation for such fund as hereafter provided except for the purpose of paying, when due, with respect to bonds secured in whole or in part by such fund, the principal, interest, redemption premiums, and sinking fund payments and reimbursing, when due, the issuer of any credit enhancement for any such payments made by it, for the payment of which other moneys of the corporation are not available. Any income or interest earned by, or increment to, any debt service reserve fund due to the investment thereof may be transferred by the corporation to other funds or accounts of the corporation to the extent it does not reduce the amount of such debt service reserve fund below the debt service reserve requirement for such fund.

(c) The corporation shall pay into each pledged equity fund:

(1) any moneys appropriated and made available by the state for the purpose of such fund;

(2) any proceeds of the sale of notes, bonds, or other debt instruments, to the extent provided in the resolution or resolutions of the corporation authorizing the issuance thereof; and

(3) any other moneys or financial instruments such as surety bonds, letters of credit, or similar obligations, which may be made available to the corporation for the purpose of such fund from any other source or sources. All moneys or financial instruments held in any pledged equity fund created and established under this section, except as hereinafter provided, shall be used, as required, solely to provide pledged equity or over-collateralization of any trust estate of the corporation to the issuer of a liquidity or credit facility, bond insurance, or other credit enhancement obtained by the corporation; provided, however, that the moneys or financial instruments in any such pledged equity fund shall not be drawn upon or withdrawn from such fund at any time in such amounts as would reduce the amount of such funds to less than the pledged equity requirement established by resolution of the corporation for such fund as hereafter provided except for the purposes set forth in, and in accordance with, the governing resolution. Any income or interest earned by, or increment to, any pledged equity fund due to the investment thereof may be transferred

by the corporation to other funds or accounts of the corporation to the extent it does not reduce the amount of such pledged equity fund below the requirement for such fund. Anything in this subdivision to the contrary notwithstanding, upon the defeasance of the bonds, notes, or other debt instruments with respect to which the pledged equity requirement was established, the corporation may transfer amounts in such fund to another fund or account of the corporation proportionately to the amount of such defeasance; provided that the corporation shall repay to the state any amount appropriated by the state pursuant to subsection (f) of this section.

(d) The debt service reserve and pledged equity requirements for any fund established under this section shall be established by resolution of the corporation prior to the issuance of any bonds, notes, or other debt instruments secured in whole or in part by a debt service reserve fund or prior to entering into any credit enhancement agreement and shall be the amount determined by the corporation to be reasonably required in light of the facts and circumstances of the particular debt issue or credit enhancement; provided that the maximum amount of the state's commitment with respect to any pledged equity fund shall be determined by the corporation at or prior to entering into any credit enhancement agreement related to such pledged equity fund. The corporation shall not at any time issue bonds, notes, or other debt instruments secured in whole or in part by a debt service reserve fund or enter into any

credit enhancement agreement that requires establishment of a pledged equity fund created and established under this section unless:

(1) the corporation at the time of such issuance or execution shall deposit in such fund from the proceeds of such bonds, notes, or other debt instruments, or from other sources, an amount which, together with the amount then in such fund, will not be less than the requirement established for such fund at that time;

(2) the corporation has made a determination at the time of the authorization of the issuance of such bonds, notes, or other debt instruments, or entering into such credit enhancement agreement that the corporation will derive revenues or other income from the education loans that secure such bonds, notes, or other debt instruments or that relate to any credit enhancement agreement sufficient to provide, together with all other available revenues and income of the corporation, other than any amounts appropriated by the state pursuant to this section, for the payment of such bonds, notes, and other debt instruments and reimbursement to the issuer of any credit enhancement, the payment of any expected deposits into any pledged equity fund established with respect to such credit enhancement and the payment of all costs and expenses incurred by the corporation with respect to the program or purpose for which such bonds, notes, or other debt instruments are issued; and

(3) the state treasurer or his or her designee has provided written approval to the corporation that the corporation may issue such bonds, notes, or other debt instruments and enter into any related credit enhancement agreement.

(e) In computing the amount of the debt service reserve or pledged equity funds for the purpose of this section, securities in which all or a portion of such funds shall be invested shall be valued at par if purchased at par or at amortized value, as such term is defined by resolution of the corporation, if purchased at other than par.

(f) In order to assure the maintenance of the debt service reserve fund requirement in each debt service reserve fund established by the corporation under this section, there may be appropriated annually and paid to the corporation for deposit in each such fund such sum as shall be certified by the chair of the corporation to the governor, the president of the senate, and the speaker of the house as is necessary to establish or restore each such debt service reserve fund to an amount equal to the requirement for each such fund. The chair shall annually, on or about February 1, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house, a certificate stating the sum required to restore each such fund to the amount aforesaid, and the sum so certified may be appropriated, and if appropriated, shall be paid to the corporation during the then current state fiscal year. In

order to assure the funding of the pledged equity fund requirement in each pledged equity fund established by the corporation under this section at the time and in the amount determined at the time of entering into any credit enhancement agreement related to a pledged equity fund, there may be appropriated and paid to the corporation for deposit in each such fund, such sum as shall be certified by the chair of the corporation, to the governor, the president of the senate and the speaker of the house, as is necessary to establish each such pledged equity fund to an amount equal to the amount determined by the corporation at the time of entering into any credit enhancement agreement related to a pledged equity fund; provided that the amount requested, together with any amounts previously appropriated pursuant to this subsection for a particular pledged equity fund, shall not exceed the maximum amount of the state's commitment, as determined by the corporation pursuant to subsection (d) of this section. The chair shall, on or about the February 1 next following the designated date for fully funding a pledged equity fund, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house, a certificate stating the sum required to bring each such fund to the amount aforesaid or to otherwise satisfy the state's commitment with respect to each such fund, and the sum so certified may be appropriated, and if appropriated, shall be paid to the corporation during the then-current state fiscal year. The combined principal amount of bonds, notes, and other debt

instruments outstanding at any time and secured in whole or in part by a debt service reserve fund established under this section and the aggregate commitment of the state to fund pledged equity funds pursuant to this subsection shall not exceed $50,000,000.00, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the corporation in contravention of the Constitution of the United States. Notwithstanding anything in this section to the contrary, the state's obligation with respect to funding any pledged equity fund shall be limited to its maximum commitment, as determined by the corporation pursuant to subsection (d) of this section and the state shall have no other obligation to replenish or maintain any pledged equity fund.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.