SB31

PA8HREE-1

By Senators Waggoner, Smitherman, Allen, Jones, Livingston, Bell, Shelnutt, Barfoot, Melson, Chesteen, Price, Williams, Sessions, Kelley, Stewart, Gudger, Chambliss, Butler, Carnley, Hovey, Weaver

RFD: Finance and Taxation Education

First Read: 06-Feb-24

SYNOPSIS:

Under Act 2023-560 of the 2023 Regular Session, the Distressed Institutions of Higher Education Revolving Loan Program was established under the State Treasurer to provide loans to certain eligible institutions experiencing financial hardship that could lead to closure of the institution.

This bill would define the purpose of the program, change the administrator of the program to the Alabama Commission on Higher Education, more specifically define eligible institutions to which loans shall be made, and establish certain terms and conditions of loans to eligible institutions.

A BILL

TO BE ENTITLED

AN ACT

Relating to education; to amend Sections 1 through 6 of Act 2023-560 of the 2023 Regular Session, now appearing as Sections 16-65A-1 through 16-65A-6, Code of Alabama 1975, as the Distressed Institutions of Higher Education Loan Program; to state the purpose of the program; to change the administrator of the program to the Alabama Commission on

Higher Education; to more specifically define eligible institutions to which loans shall be made; and to establish certain terms and conditions of loans to eligible institutions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Legislative Findings. The Legislature finds and declares that the purpose of the Distressed Institutions of Higher Education Revolving Loan Program established by Act 2023-560 of the 2023 Regular Session is to ensure the prompt issuance of loans to eligible public and private colleges or universities in Alabama which are in financial distress and meet the eligibility requirements of Section 16-65A-2, Code of Alabama 1975. The program is designed to provide loan proceeds to those colleges and universities as quickly as possible to address their financial hardship. The Legislature appropriated thirty million dollars ($30,000,000) from the Education Trust Fund for this program in Act 2023-378 of the 2023 Regular Session and those funds were deposited into the Distressed Institutions of Higher Education Loan Program Fund and remain available to be used for loans under this program. Any doubts concerning eligibility or the ability to repay a loan shall be construed in favor of making such loans under this program.

Section 2. Sections 1 through 6 of Act 2023-560 of the 2023 Regular Session, now appearing as Sections 16-65A-1 through 16-65A-6, Code of Alabama 1975, are amended to read as follows:

"§16-65A-1

There is created the Distressed Institutions of Higher

Education Revolving Loan Program to be administered by the ~~State Treasurer~~Executive Director of the Alabama Commission on Higher Education.

"§16-65A-2

(a) The term "eligible institution" as used in this section shall mean any public or private college or university in Alabama, including any state-related college or university, that meets all of the following criteria:

(1) Has been operating for more than 50 years in Alabama.

(2) Has a significant impact on the community in which it is located.

(3) Is experiencing financial hardship that could lead to closure of the institution.

(4) Whose governing body has adopted a resolution authorizing the application for a loan from this program to maintain operations as it replenishes its endowment through private gifts.

(5) Has assets sufficient to pledge as collateral to secure the amount of the requested loan. Collateral shall be deemed sufficient if a college or university provides an opinion letter from a bank that is registered to do business in the State of Alabama and is regulated by the State Banking Department which states that the collateral offered by the college or university is sufficient to secure the requested amount of the loan.

(b) An eligible institution seeking a loan from this program shall make application on forms prescribed by the

~~State Treasurer~~Executive Director of the Alabama Commission on Higher Education. The institution shall certify that it meets all criteria provided by this section.

(c) The ~~State Treasurer~~Executive Director of the Alabama Commission on Higher Education shall review all applications for loans and shall make a careful and thorough investigation of the ability of each applicant to repay a loan under the program. ~~Any institution applying for a loan shall provide any information requested by the State Treasurer relevant to the determination of ability to repay.~~ Before awarding a loan to any applicant, the ~~Treasurer~~Executive Director of the Alabama Commission on Higher Education shall require the applicant to submit a written financial restructuring plan documenting the applicant's ability to repay the loan. The restructuring plan shall include specific facts demonstrating the applicant's ability to repay the loan as determined by the bank.

(d) Any loan made pursuant to this program shall require the recipient to pay interest at the published rate for the State Revolving Loan Fund at the time the loan is made. Any loan made pursuant to this program shall be paid back within 20 years. Any loan made pursuant to this program must be secured by a first perfected security interest in all assets pledged as collateral for the loan.

~~(d) The State Treasurer may establish the terms and conditions of any loan made pursuant to this program, including: the amount of private funds committed prior to loan funds being drawn; the timing and amounts of disbursements;~~

~~and the terms of repayment. Any loan made pursuant to this program shall require the recipient to pay interest. Any loan made pursuant to this program shall be secured by a first perfected security interest in all collateral assets.~~

(e) The ~~State Treasurer may~~Executive Director of the Alabama Commission on Higher Education shall award a loan to any eligible institution that meets the requirements provided in this section within 30 days of the date the institution submits its application and shall be responsible for the administration of the loan, subject to this section. In administering a loan, the ~~Treasurer~~Executive Director of the Alabama Commission on Higher Education shall release funds to the recipient only pursuant to a written financial restructuring plan, submitted by the recipient to the ~~Treasurer~~Executive Director of the Alabama Commission on Higher Education, that includes specific steps the recipient must take to achieve financial soundness and specific benchmarks the recipient ~~must~~intends to meet to receive loan funds.

(f) As a condition of approval by the ~~State Treasurer~~ Executive Director of the Alabama Commission on Higher Education of a loan under the program, each applicant shall enter into a written contract with the ~~State Treasurer~~Executive Director of the Alabama Commission on Higher Education. Breach of contract by the recipient shall make the recipient immediately liable for the unpaid balance of the loan.

(g) The ~~State Treasurer~~Executive Director of the

Alabama Commission on Higher Education shall forward copies of executed loan contracts to the Chairs of the Senate Finance and Taxation-Education Committee and the House Ways and Means-Education Committee, the Finance Director, and the Legislative Fiscal Officer.

"§16-65A-3

Annually, on or before the first day of December, the ~~State Treasurer~~Executive Director of the Commission on Higher Education shall file a report regarding the operation of the program, including all loans issued and the status of any repayments, to the Governor, Lieutenant Governor, Speaker of the House of Representatives, President Pro Tempore of the Senate, the minority leaders of the Alabama Senate and House of Representatives, the Chairs of the Senate Committee on Finance and Taxation-Education and the House Ways and Means-Education Committee, the Legislative Fiscal Officer, and the Finance Director.

"§16-65A-4

The Distressed Institutions of Higher Education Loan Program Fund is created in the State Treasury to receive appropriations from the Legislature for the funding of loans and to be administered by the ~~State Treasurer~~Executive Director of the Alabama Commission on Higher Education, as provide by this section. Proceeds from loan repayments shall be deposited into this fund and may be used in the same manner as any other funds provided for this program. Any monies remaining in the fund, including any interest earned or any contributions from other sources, at the end of a fiscal year

shall not revert but shall remain in the fund and are reappropriated for the purposes authorized by this section. Any monies appropriated into the fund pursuant to Act 2023-560 that remain in the fund on the effective date of this act, shall be reallocated to the Alabama Commission on Higher Education for the purposes authorized by this section. The expenses of making and administering loans, including legal, consultant, and administrative expenses, shall be payable from the fund.

"§16-65A-5

The Attorney General, upon request of the ~~State Treasurer~~ Executive Director of the Alabama Commission on Higher Education, shall institute proceedings in the name of the state for the purpose of recovering any amount due the state under this section. All proceedings involving default or dispute of the contract shall be brought in the appropriate court of jurisdiction in Montgomery County, Alabama.

"§16-65A-6

In addition to the powers granted by any other provision of this chapter, the ~~State Treasurer~~ Executive Director of the Alabama Commission on Higher Education shall have the powers necessary and convenient to carry out the purposes and provisions of this chapter, including the power to enter into and execute contracts, agreements, and other instruments."

Section 3. This act shall become effective immediately upon its passage and approval by the Governor, or its otherwise becoming law.