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SNOPSIS:

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 Revolving 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



29 institutions to which loans shall be made; and to establish
30 certain terms and conditions of loans to eligible
31 institutions.

32 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

33 Section 1. Sections 1 through 6 of Act 2023-560 of the
34 2023 Regular Session, now appearing as Sections 16-65A-1
35 through 16-65A-6, Code of Alabama 1975, are amended to read as
36 follows:

37 "§16-65A-1

38 There is created the Distressed Institutions of Higher
39 Education Revolving Loan Program to be administered by the
40 ~~State Treasurer~~Executive Director of the Alabama Commission on
41 Higher Education.

42 "§16-65A-2

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

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

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

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

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



57 (5) Has assets sufficient to pledge as collateral to
58 secure the amount of the requested loan. Collateral shall be
59 deemed sufficient if a college or university provides an
60 opinion letter from a state or national bank that is not a
61 current creditor of the college or university making
62 application and that is registered to do business in the State
63 of Alabama which states that, in the bank's opinion based on
64 the bank's own loan approval standards, the collateral offered
65 by the college or university is sufficient to secure the
66 requested amount of the loan. The bank shall require reports
67 and documents reasonably necessary for the bank to offer its
68 opinion, including appraisals, and environmental and other
69 reports as deemed appropriate by the bank. The bank is
70 entitled to be paid a reasonable amount related to the
71 issuance of its opinion, including, without limitation, all
72 costs incurred by the bank for reports.

73 (b) An eligible institution seeking a loan from this
74 program shall make application on forms prescribed by the
75 ~~State Treasurer~~ Executive Director of the Alabama Commission on
76 Higher Education. The institution shall certify that it meets
77 all criteria provided by this section.

78 (c) The ~~State Treasurer~~ Executive Director of the
79 Alabama Commission on Higher Education shall review all
80 applications for loans and shall make a careful and thorough
81 investigation of the ability of each applicant to repay a loan
82 under the program. Any institution applying for a loan shall
83 provide any information requested by the ~~State~~
84 ~~Treasurer~~ Executive Director of the Alabama Commission on



85 Higher Education relevant to the determination of ability to
86 repay. Before awarding a loan to any applicant, the
87 ~~Treasurer~~Executive Director of the Alabama Commission on
88 Higher Education shall require the applicant to submit a
89 written financial restructuring plan documenting the
90 applicant's ability to repay the loan. The restructuring plan
91 shall include specific facts demonstrating the applicant's
92 ability to repay the loan as required by the Executive
93 Director of the Alabama Commission on Higher Education.

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

101 ~~(d) The State Treasurer may establish the terms and~~
102 ~~conditions of any loan made pursuant to this program,~~
103 ~~including: the amount of private funds committed prior to loan~~
104 ~~funds being drawn; the timing and amounts of disbursements;~~
105 ~~and the terms of repayment. Any loan made pursuant to this~~
106 ~~program shall require the recipient to pay interest. Any loan~~
107 ~~made pursuant to this program shall be secured by a first~~
108 ~~perfected security interest in all collateral assets.~~

109 (e) The ~~State Treasurer may~~Executive Director of the
110 Alabama Commission on Higher Education may award a loan to any
111 eligible institution that meets the requirements provided in
112 this section upon approval of the loan within 30 days of the



113 date the institution submits its application and shall be
114 responsible for the administration of the loan, subject to
115 this section. The 30-day period to reach a decision on the
116 approval of a loan may not be extended for any reason. Once a
117 loan is approved, funds shall be transferred to the applicant
118 within a reasonable period of time. In administering a loan,
119 the ~~Treasurer~~ Executive Director of the Alabama Commission on
120 Higher Education shall release funds to the recipient only
121 pursuant to a written financial restructuring plan, submitted
122 by the recipient to the ~~Treasurer~~ Executive Director of the
123 Alabama Commission on Higher Education, that includes specific
124 steps the recipient must take to achieve financial soundness
125 and specific benchmarks the recipient ~~must~~ intends to meet to
126 receive loan funds.

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

135 (g) Any institution receiving a loan shall be required
136 to meet the following milestones during the first five years
137 of the loan term:

138 (1) The institution must have average annual growth of
139 at least 10 percent in its full-time student population. The
140 full-time student population in October of the calendar year



141 in which the loan is made shall provide the baseline year for
142 this calculation. This metric shall be evaluated on an annual
143 basis every October starting in the calendar year following
144 the year in which the loan is made. An institution may meet
145 this requirement so long as the average full-time student
146 population growth in the years following the baseline year is
147 10 percent, regardless of whether such growth is less than 10
148 percent in a given year.

149 (2) The institution must demonstrate improvement in its
150 deficit over the first five years of the loan with an average
151 annual decrease in deficit of 15 percent over that five-year
152 period. The institution's deficit (net assets from operations)
153 in the institution's fiscal year in which the loan is made
154 shall provide the baseline year for this milestone
155 calculation. The calculation of the deficit milestone will be
156 based on the institution's change in net assets from
157 operations including endowment contributions for each fiscal
158 year. This metric shall be evaluated over the five-year period
159 on an annual basis each October based on the institution's
160 audited financial statements. An institution may meet this
161 requirement so long as the annual rolling average decrease in
162 deficit in the years following the baseline year is 15
163 percent, regardless of whether such decrease is less than 15
164 percent in a given year.

165 (h) If an institution fails to meet any milestone set
166 forth in (g) (1) and (2), the state may deem the loan in
167 default and the state may demand payment of the full amount of
168 principal and interest owed.



169 (i) If the amount of a loan to a qualified institution
 170 exceeds fifteen million dollars (\$15,000,000), the collateral
 171 pledged by that institution to secure that amount exceeding
 172 fifteen million dollars (\$15,000,000) shall be U.S.
 173 Treasuries.

174 ~~(g)~~ (j) ~~The State Treasurer~~ Executive Director of the
 175 Alabama Commission on Higher Education shall forward copies of
 176 executed loan contracts to the Chairs of the Senate Finance
 177 and Taxation-Education Committee and the House Ways and
 178 Means-Education Committee, the Finance Director, and the
 179 Legislative Fiscal Officer.

180 "§16-65A-3

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

192 "§16-65A-4

193 The Distressed Institutions of Higher Education Loan
 194 Program Fund is created in the State Treasury to receive
 195 appropriations from the Legislature for the funding of loans
 196 and to be administered by the ~~State Treasurer~~ Executive



197 Director of the Alabama Commission on Higher Education, as
198 provide by this section. Proceeds from loan repayments shall
199 be deposited into this fund and may be used in the same manner
200 as any other funds provided for this program. Any monies
201 remaining in the fund, including any interest earned or any
202 contributions from other sources, at the end of a fiscal year
203 shall not revert but shall remain in the fund and are
204 reappropriated for the purposes authorized by this section.
205 Any monies appropriated into the fund pursuant to Act 2023-560
206 that remain in the fund on the effective date of this act,
207 shall be reallocated to the Alabama Commission on Higher
208 Education for the purposes authorized by this section. The
209 expenses of making and administering loans, including legal,
210 consultant, and administrative expenses, shall be payable from
211 the fund.

212 "§16-65A-5

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

220 "§16-65A-6

221 In addition to the powers granted by any other
222 provision of this chapter, the ~~State Treasurer~~ Executive
223 Director of the Alabama Commission on Higher Education shall
224 have the powers necessary and convenient to carry out the



225 purposes and provisions of this chapter, including the power
226 to enter into and execute contracts, agreements, and other
227 instruments."

228 Section 2. This act shall become effective immediately.

229