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SENATE BILL NO. 995

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 31, 1995)

(Patron Prior to Substitute—Senator Stosch)

A BILL to amend and reenact §§ 2.1-127, 15.1-1399.14, 23-38.30, and 23-38.33:1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 23-38.33:01, relating to the sale or liquidation of certain assets of the Virginia Education Loan Authority.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-217, 15.1-1399.14, 23-38.30, and 23-38.33:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 23-38.33:01 as follows:

§ 2.1-127. Compromise and settlement of disputes.

~~The~~ *Except as provided in subsection B of § 23-38.33:1, the* Attorney General shall have the authority to compromise and settle disputes, claims and controversies involving the interests of the Commonwealth, and to discharge any such claims, but only after the proposed compromise, settlement or discharge, together with the reasons therefor, have been submitted in writing to the Governor and approved by him. Where any dispute, claim or controversy involves the interests of any department, institution, division, commission, board or bureau of the Commonwealth, the Attorney General shall have authority to compromise and settle or discharge the same provided such action is approved both by the Governor, in the manner above provided, and by the head of the department, institution, division, board or bureau which is interested. However, when any dispute, claim or controversy involves the interests of any department, institution, division, commission, board or bureau of the Commonwealth, and the amount in dispute does not exceed $50,000, the Attorney General or an assistant Attorney General assigned to such department, institution, division, commission, board or bureau shall have the authority to compromise and settle or discharge the same provided such action is approved by the head of the department, institution, division, board or bureau whose interests are in issue. When the dispute, claim or controversy involves a case in which the Commonwealth has a claim for sums due it as the result of hospital, medical or dental care furnished by or on behalf of the Commonwealth, the Attorney General or such assistant Attorney General shall have the authority to compromise and settle and discharge the same when the amount in dispute does not exceed $50,000.

§ 15.1-1399.14. Allocation of state ceiling for 1990 and beyond.

This section shall apply to all private activity bonds issued by issuing authorities during 1990 and in years subsequent 1990. The state ceiling for these calendar years shall be allocated as follows:

1. "Housing." For calendar years 1990 and beyond, an amount equal to forty-one percent of the Virginia state ceiling on private activity bonds shall be set aside for single family and multifamily housing bonds. The housing portion of the state ceiling shall be divided between local housing authorities and the Virginia Housing Development Authority. The bond authority allocated to these issuers shall be distributed as follows:

Issuer	Portion of State Ceiling
Local Housing Authorities	14%
Virginia Housing Development Authority	27%
Total Housing Allocation	41%

2. "Industrial development." For calendar years 1990 and beyond, an amount equal to forty-one percent of the Virginia state ceiling on private activity bonds shall be set aside for the issuance of industrial development bonds for manufacturing and exempt facilities.

3. "Student loans." For calendar years 1990 and beyond, an amount equal to eight percent of the Virginia state ceiling on private activity bonds shall be set aside for the issuance of student loan bonds by the Virginia Education Loan Authority. *For calendar years 1995 and thereafter, such eight percent shall be available for other private activity bonds at the discretion of the Governor.*

4. "State allocation." For calendar years 1990 and beyond, an amount equal to ten percent of the Virginia state ceiling on private activity bonds shall be set aside for state issuing authorities and for

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allocations to projects of state and regional interests as determined by the Governor.

§ 23-38.30. Definitions.

As used in this chapter, the following words and terms shall have the following meanings, unless the context indicates otherwise:

"Authority" means the Virginia Education Loan Authority or the State Education Assistance Authority.

"Authorities" or "Virginia Student Assistance Authorities" means the Virginia Education Loan Authority and the State Education Assistance Authority, jointly and individually.

"~~Guaranteed Student Loan Program~~*Federally guaranteed student loan program*" means the student loan program conducted by the United States Secretary of Education pursuant to Title IV, Part B, of the federal Higher Education Act of 1965, as amended.

"Guarantor" means the State Education Assistance Authority or any other person or entity which may guarantee, insure, or otherwise undertake to pay or protect any interests or rights the Virginia Education Loan Authority may acquire pursuant to the ~~Guaranteed Student Loan Program~~ *federally guaranteed student loan program*, any nonfederal student loan program, or otherwise. In the case of student loans made or acquired under the federal Health Education Assistance Loan Program, the word "guarantor" shall mean the United States Secretary of Health and Human Services.

"Student loans" means loans to students and parents of students at public or private institutions of higher education within or without the Commonwealth and at vocational schools accredited by a nationally recognized accrediting agency or by a state agency designated by the Governor, made for educational purposes, and made pursuant to the ~~federal Guaranteed Student Loan Program~~ *federally guaranteed student loan program* or any nonfederal student loan program conducted by a guarantor as defined by this chapter.

§ 23-38.33:01. Sale of certain assets.

A. The Virginia Education Loan Authority shall sell or otherwise liquidate substantially all of its student loans and related assets. In conducting such sale or liquidation, the Virginia Education Loan Authority shall (i) consult with advisors, counsel, and other experts regarding the sale or liquidation and the defeasance or other provision for payment or discharge of its obligations; (ii) act to preserve the value of its student loans prior to such sale, including the identification and retention of personnel necessary to complete the sale and perform its ongoing responsibilities regarding its student loans prior to such sale or liquidation, and protect the guarantee of student loans; (iii) service and acquire student loans under current contractual arrangements as it deems appropriate prior to such sale or liquidation; and (iv) take any and all actions that it deems appropriate to ensure that the liquidation is accomplished in a manner consistent with the best interests of the Commonwealth. The Virginia Education Loan Authority may (i) arrange for such sale or liquidation in such manner, whether by public bid or at private sale or a combination thereof, at such time or times and on such terms and conditions as it deems appropriate, and (ii) provide for a portion of the sale or liquidation proceeds or other amounts to be reserved for payment to the purchasers thereof upon conditions to be set forth in the sale or liquidation agreements.

B. Following the completion of such sale or liquidation, but not later than June 30, 1996, all moneys of the Virginia Education Loan Authority, after payment of expenses and provision for any reserves deemed appropriate, shall be deposited in the general fund of the Commonwealth. The executive director shall provide periodic reports to the Governor and the General Assembly regarding the status of the sale or liquidation.

§ 23-38.33:1. Powers.

A. The State Education Assistance Authority is hereby authorized and empowered:

1. To guarantee, acquire contingent interests in, purchase, collect, sell and discharge student loans;

2. To fix, revise, charge and collect premiums and fees for guaranteeing student loans and for its other acts or undertakings;

3. To perform all other acts required or permitted of guarantors under the ~~Guaranteed Student Loan Program~~ *federally guaranteed student loan program*; and

4. To perform all other acts which are necessary or advisable to the establishment and conduct of nonfederal student loan programs approved by the Governor.

B. The Virginia Education Loan Authority is hereby authorized and empowered:

1. To make, acquire, originate, service, collect and discharge student loans;

2. To fix, revise, charge and collect interest on student loans and fees for originating, servicing and collecting student loans and for its other acts or undertakings; ~~and~~

3. To perform all other acts required or permitted of eligible lenders under the ~~Guaranteed Student Loan Program~~ *federally guaranteed student loan program* and any nonfederal student loan programs in which it participates*;*

4. In connection with the sale of substantially all of its student loans and related assets pursuant to § 23-38.33:01, to cause to be established a nonprofit corporation or other entity, the sole purpose of

which is to acquire all or a part of such student loans and related assets. Such corporation or other entity shall not be authorized to pledge the credit of the Virginia Education Loan Authority or the Commonwealth; and

5. In connection with the sale of substantially all of its student loans and related assets and provision for payment or discharge of its obligations pursuant to § 23-38.33:01, (i) to seek guidance, including, but not limited to, written rulings from the United States Department of the Treasury, and the Internal Revenue Service, and to enter into agreements with such agency or related agencies; and (ii) to compromise, satisfy, and otherwise provide for any and all its obligations and liabilities, including any and all contingent and unliquidated claims, obligations, and liabilities. In paying, discharging, compromising, satisfying, or otherwise providing for its obligations and liabilities, which obligations and liabilities shall not constitute obligations and liabilities of the Commonwealth, the Virginia Education Loan Authority shall not be subject to § 2.1-127 or other provisions of state law applicable to the payment, discharge, compromise, satisfaction, settlement, or other provision for claims against the Commonwealth. The Virginia Education Loan Authority may reserve for payment to third parties for its obligations and liabilities, and may establish, hold, invest, reinvest, and maintain such reserves as deemed sufficient to meet such obligations and liabilities.

C. Each Authority is hereby further authorized and empowered:

1. To act in the name of the Virginia Student Assistance Authorities and to act on behalf of, borrow and receive funds from, transfer and lend funds to, use and act with respect to the contracts, property and personnel of, the other Authority in exercising the powers set forth in this chapter;

2. To issue bonds, notes, certificates, evidences of indebtedness and other obligations, on a tax exempt or taxable basis, for any of its purposes, and in furtherance of any of its powers, payable solely from the revenues and property pledged for the payment of such obligations, and to refund such obligations;

3. To borrow money in anticipation of the issuance of such obligations and to issue notes, certificates, or other evidences of indebtedness of such Authority on a tax exempt or taxable basis, such notes, certificates or other evidences of indebtedness to be payable in the first instance from the proceeds of any obligations to be subsequently issued under this chapter and to be payable solely from the revenues and property pledged for the payment of such evidences of indebtedness. Either Authority may in its discretion, retire any such notes, certificates or other evidences of indebtedness by means of current revenues or other funds, in lieu of retiring them by means of obligations;

4. To contract for and obtain letters of credit, bond insurance, investment contracts and other instruments, agreements and arrangements in connection with the issuance of such obligations and evidences of indebtedness;

5. To invest and reinvest the funds and assets of such Authority in accordance with applicable law and agreements governing same;

6. To provide retirement, deferred compensation, employee benefit and other plans for Authority personnel and to pay, deposit and invest Authority funds in accordance with the provisions of such plans;

7. To adopt bylaws, rules and regulations to effectuate the purposes of this chapter;

8. To acquire title to, hold and dispose of real and personal property in the name of such Authority and to establish such offices as such Authority deems appropriate for its purposes;

9. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes and the execution of its powers under this chapter, including agreements with the United States government, or any agency or other instrumentality thereof;

10. To employ, in its discretion, consultants, ~~attorneys,~~ accountants and financial experts, underwriters, placement agents, and such other agents as may be necessary in its judgment, and to fix their compensation to be payable from funds made available to such Authority. *Legal services in civil matters shall be rendered and performed by the Attorney General in accordance with Chapter 11 (§ 2.1-117 et seq.) of Title 2.1, and special counsel may only be employed by the Authorities with approval and appointment by the Attorney General or as may otherwise be authorized by § 2.1-122*;

11. To receive and accept from any federal or private agency, corporation, association or person funds and grants to be expended in accomplishing the objectives of such Authority, and to receive and accept from the Commonwealth, from any municipality, county or other political subdivision thereof, including the other Authority, and from any other source aid or contributions of either money, property, or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

12. To develop, organize, conduct, and administer other programs of educational assistance to students and their parents, subject to the approval of the Governor;

13. To render advice and assistance, and to provide services to institutions of higher education, financial institutions and other entities providing financial aid to or for the benefit of students;

14. To examine the records of institutions of higher education and participating lenders to determine compliance with the requirements of each Authority and its programs, including, but not limited to, records relating to potential and existing student loan recipients;

15. To conduct investigations to determine whether applications and other data submitted to either Authority for the purpose of securing student loans contains any misrepresentations or false statements made for the purpose of cheating or defrauding any person;

16. To sue and be sued in the name of such Authority. In connection with the collection of student loans, the executive director or any designated employee may institute actions in the general district courts of the Commonwealth and may otherwise act as agent of such Authority; and

17. To do all other acts and things necessary or convenient to carry out the powers expressly granted in this chapter; however, nothing in this chapter shall be construed to empower either Authority to engage in the business of banking or insurance.

2. That an emergency exists and this act is in force from its passage.