

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 376

An Act to amend and reenact §§ 23-38.33:1 and 23-38.34:1 of the Code of Virginia, relating to the Virginia student assistance authorities.

[H 1989]

Approved March 15, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-38.33:1 and 23-38.34:1 of the Code of Virginia are amended and reenacted as follows:

§ 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 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; *and*

5. To compromise, satisfy and otherwise provide for any and all of 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 State Education Assistance Authority shall not be subject to § 2.1-127 or other provisions of law applicable to the payment, discharge, compromise, satisfaction, settlement or other provision for claims against the Commonwealth. The State Education Assistance Authority may reserve for payment to third parties for its obligations and liabilities, and may establish, hold, invest, reinvest, and maintain such reserves as are deemed sufficient to meet such obligations and liabilities.

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;
3. To perform all other acts required or permitted of eligible lenders under the 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 of 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, 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~~ contain 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.

§ 23-38.34:1. State Education Assistance Authority trust funds; investment; limitations on contingent interests; terms of acquisition.

A. The State Education Assistance Authority is authorized to establish and maintain a trust fund or funds, to which it shall deposit guaranty insurance premiums, federal reinsurance payments, student loan payments and all other revenues and funds it receives, and from which it shall pay the guaranty obligations it incurs and its operating expenses. Assets necessary or required to support non-federal, state-sponsored programs shall be segregated from those required for federal loan programs and shall be held in reserve to guarantee such loans. The assets of such State Education Assistance Authority trust funds shall be reserved, invested, and expended solely by the State Education Assistance Authority pursuant to and for the purposes of this chapter and shall not be loaned or otherwise transferred or used by the Commonwealth for any other purpose. If the State Education Assistance Authority ceases to guarantee state-sponsored programs, the reserves set aside for those programs will revert to the Commonwealth to be held and administered for purposes consistent with administration of such state-sponsored programs. ~~The State Education Assistance Authority shall be the trustee of all such trust funds. After payment of or provision for all obligations incurred by the State Education Assistance~~

Authority under such nonfederal state-sponsored programs, amounts remaining in the trust funds established or maintained to support such programs shall be transferred to the general fund of the Commonwealth, free of the restrictions imposed by this subsection. The State Education Assistance Authority shall liquidate its remaining nonfederal assets, pay or provide for any remaining nonfederal obligations and liabilities, and deposit any net proceeds into the general fund of the Commonwealth.

B. The State Education Assistance Authority is hereby authorized and empowered to invest and reinvest all such trust funds except that no investments shall be made in securities which, at the time of making such investments, are by statute prohibited for the investment of reserves of domestic life insurance companies, except in the exercise of bona fide discretion. Subject to such limitations, the State Education Assistance Authority shall have full power to purchase, hold, sell, assign, transfer and dispose of all funds, assets and investments comprising such trust funds.

C. The State Education Assistance Authority may acquire from lenders contingent interests in student loan obligations and may fix, revise and charge guaranty insurance premiums for acquiring such contingent interests, except that the State Education Assistance Authority shall not acquire additional contingent interests in student loan obligations to the extent such additional contingent interests would then cause the current unpaid balance of all contingent interests then held by the State Education Assistance Authority to exceed ~~one hundred~~ 100 times the amount of all cash, cash equivalents, investments, and federal reinsurance receivables which would then be available to the State Education Assistance Authority to purchase the underlying student loan obligations in the event of default.

D. The State Education Assistance Authority shall prescribe the terms and conditions upon which it will acquire contingent interests in student loans. Such terms and conditions may include, without limitation: (i) any requirements of notice and transfer of such student loans to the State Education Assistance Authority in the event such student loans become delinquent; (ii) the interest rate or rates payable on such student loans; (iii) the terms and places of payment of principal and interest; (iv) the maturities of such student loans; (v) the terms of any life insurance which may be required in connection with such student loans; (vi) the safekeeping of all assets pledged to the payment of such student loans; and (vii) all other matters respecting such contingent interests and student loans as will protect the assets of the State Education Assistance Authority.

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