



**House Ways and Means Education Reported Substitute
for SB31**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 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. 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



House Ways and Means Education Reported Substitute for SB31

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

33 (1) Has been operating for more than **50100** years in
34 Alabama.

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

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

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

43 (5) Has assets sufficient to pledge as collateral to
44 secure the amount of the requested loan. Collateral shall be
45 deemed sufficient if a college or university provides an
46 opinion letter from a state or national bank that is not a
47 current creditor of the college or university making
48 application and that is registered to do business in the State
49 of Alabama which states that, in the bank's opinion based on
50 the bank's own loan approval standards, the collateral offered
51 by the college or university is sufficient to secure the
52 requested amount of the loan. The bank shall require reports
53 and documents reasonably necessary for the bank to offer its
54 opinion, including appraisals, and environmental and other
55 reports as deemed appropriate by the bank. The bank is
56 entitled to be paid a reasonable amount related to the



House Ways and Means Education Reported Substitute for SB31

57 issuance of its opinion, including, without limitation, all
58 costs incurred by the bank for reports.

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

64 (c) The ~~State Treasurer~~Executive Director of the
65 Alabama Commission on Higher Education shall review all
66 applications for loans and shall make a careful and thorough
67 investigation of the ability of each applicant to repay a loan
68 under the program. Any institution applying for a loan shall
69 provide any information requested by the ~~State~~
70 ~~Treasurer~~Executive Director of the Alabama Commission on
71 Higher Education relevant to the determination of ability to
72 repay. Before awarding a loan to any applicant, the
73 ~~Treasurer~~Executive Director of the Alabama Commission on
74 Higher Education shall require the applicant to submit a
75 written financial restructuring plan documenting the
76 applicant's ability to repay the loan. The restructuring plan
77 shall include specific facts demonstrating the applicant's
78 ability to repay the loan as required by the Executive
79 Director of the Alabama Commission on Higher Education.

80 (d) Any loan made pursuant to this program shall
81 require the recipient to pay interest at the published rate
82 for the State Revolving Loan Fund at the time the loan is
83 made. Any loan made pursuant to this program shall be paid
84 back within 20 years. Any loan made pursuant to this program



House Ways and Means Education Reported Substitute for SB31

85 must be secured by a first perfected security interest in all
86 assets pledged as collateral for the loan.

87 ~~(d) The State Treasurer may establish the terms and~~
88 ~~conditions of any loan made pursuant to this program,~~
89 ~~including: the amount of private funds committed prior to loan~~
90 ~~funds being drawn; the timing and amounts of disbursements;~~
91 ~~and the terms of repayment. Any loan made pursuant to this~~
92 ~~program shall require the recipient to pay interest. Any loan~~
93 ~~made pursuant to this program shall be secured by a first~~
94 ~~perfected security interest in all collateral assets.~~

95 (e) The ~~State Treasurer may~~Executive Director of the
96 Alabama Commission on Higher Education may award a loan to any
97 eligible institution that meets the requirements provided in
98 this section upon approval of the loan within 30 days of the
99 date the institution submits its application and shall be
100 responsible for the administration of the loan, subject to
101 this section. The 30-day period to reach a decision on the
102 approval of a loan may not be extended for any reason. Once a
103 loan is approved, funds shall be transferred to the applicant
104 within a reasonable period of time. In administering a loan,
105 the ~~Treasurer~~ Executive Director of the Alabama Commission on
106 Higher Education shall release funds to the recipient only
107 pursuant to a written financial restructuring plan, submitted
108 by the recipient to the ~~Treasurer~~ Executive Director of the
109 Alabama Commission on Higher Education, that includes specific
110 steps the recipient must take to achieve financial soundness
111 and specific benchmarks the recipient ~~must~~intends to meet to
112 receive loan funds.



House Ways and Means Education Reported Substitute for SB31

113 (f) As a condition of approval by the ~~State Treasurer~~
114 Executive Director of the Alabama Commission on Higher
115 Education of a loan under the program, each applicant shall
116 enter into a written contract with the ~~State Treasurer~~
117 Executive Director of the Alabama Commission on Higher
118 Education. As a condition of approval of a loan, the Executive
119 Director of the Alabama Commission on Higher Education shall
120 ensure the county, municipality, or combination thereof where
121 the institution is located will, within a reasonable period of
122 time, provide local funds to the institution equal to at least
123 15 percent of the amount of the loan provided by this program
124 to the applicant institution. Breach of contract by the
125 recipient shall make the recipient immediately liable for the
126 unpaid balance of the loan.

127 (g) Any institution receiving a loan shall be required
128 to meet the following milestones during the first five years
129 of the loan term:

130 (1) The institution must have average annual growth of
131 at least 10 percent in its full-time student population. The
132 full-time student population in October of the calendar year
133 in which the loan is made shall provide the baseline year for
134 this calculation. This metric shall be evaluated on an annual
135 basis every October starting in the calendar year following
136 the year in which the loan is made. An institution may meet
137 this requirement so long as the average full-time student
138 population growth in the years following the baseline year is
139 10 percent, regardless of whether such growth is less than 10
140 percent in a given year.



House Ways and Means Education Reported Substitute for SB31

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

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

161 (i) If the amount of a loan to a qualified institution
162 exceeds fifteen million dollars (\$15,000,000), the collateral
163 pledged by that institution to secure that amount exceeding
164 fifteen million dollars (\$15,000,000) shall be U.S.
165 Treasuries.

166 ~~(g)~~ (j) The ~~State Treasurer~~ Executive Director of the
167 Alabama Commission on Higher Education shall forward copies of
168 executed loan contracts to the Chairs of the Senate Finance



House Ways and Means Education Reported Substitute for SB31

169 and Taxation-Education Committee and the House Ways and
170 Means-Education Committee, the Finance Director, and the
171 Legislative Fiscal Officer.

172 (k) No applicant institution considered under this
173 chapter may be awarded a loan from the Distressed Institutions
174 of Higher Education Loan Program Fund more than one time
175 during the existence of this fund."

176 "§16-65A-4

177 The Distressed Institutions of Higher Education Loan
178 Program Fund is created in the State Treasury to receive
179 appropriations from the Legislature for the funding of loans
180 and to be administered by the ~~State Treasurer~~Executive
181 Director of the Alabama Commission on Higher Education, as
182 provide by this section. Proceeds from loan repayments shall
183 be deposited into this fund and may be used in the same manner
184 as any other funds provided for this program. Any monies
185 remaining in the fund, including any interest earned or any
186 contributions from other sources, at the end of a fiscal year
187 shall not revert but shall remain in the fund and are
188 reappropriated for the purposes authorized by this section.
189 Any monies appropriated into the fund pursuant to Act 2023-560
190 that remain in the fund on the effective date of this act,
191 shall be reallocated to the Alabama Commission on Higher
192 Education for the purposes authorized by this section. The
193 expenses of making and administering loans, including legal,
194 consultant, and administrative expenses, shall be payable from
195 the fund.

196 "§16-65A-5



House Ways and Means Education Reported Substitute for SB31

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

204 "§16-65A-6

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

212 Section 2. This act shall become effective
213 immediately.