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AB-2272 Postsecondary education: California Educational Facilities Authority. (2021-2022)

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Assembly Bill No. 2272

CHAPTER 123

An act to amend Sections 94110, 94140, 94146, 94150, 94151, and 94191 of the Education Code, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor July 19, 2022. Filed with Secretary of State July 19, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2272, Low. Postsecondary education: California Educational Facilities Authority.

Existing law establishes the University of California, the California State University, the California Community Colleges, and independent institutions of higher education as segments of higher education in this state.

The California Educational Facilities Authority Act establishes the California Educational Facilities Authority to, among other things, (1) provide private institutions of higher education within the state with an additional means by which to expand, enlarge, and establish dormitory, academic, and related facilities, finance those facilities, and refinance existing facilities; and (2) enter into agreements with nonprofit entities, as defined, to develop student, faculty, and staff housing on or near the campuses of the University of California, the Hastings College of the Law, the California State University, the California Community Colleges, or a participating private college, as specified. The act authorizes the authority to fund, as specified, and to construct, acquire, or otherwise provide for, projects for these purposes. The act defines "project" for a participating private college to mean a dormitory, an educational facility, or faculty or staff housing, and defines "project" for a participating nonprofit entity to mean the construction or acquisition of student housing or faculty and staff housing.

This bill would amend the act to also authorize the financing of working capital loans to a participating private college by the authority, as specified. The bill would define "working capital" for these purposes to mean maintenance or operation expenses in connection with the ownership or operation of an educational facility, faculty or staff housing, and student housing, as specified, and would make other conforming changes.

Because this bill would authorize the authority to expend funds for new purposes, it would make an appropriation.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 94110 of the Education Code is amended to read:

94110. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) "Authority" means the California Educational Facilities Authority created by this chapter or any board, body, commission, department, or officer succeeding to the principal functions of the authority or to whom the power conferred upon the authority by this chapter is given by law.

(b) "Bond" means bonds, notes, debentures, securities, or other evidences of indebtedness of the authority issued pursuant to this chapter.

(c) "Cost," as applied to a project or portion of a project financed under this chapter, means all, or any part of, the cost of construction and acquisition of lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project, the cost of demolishing or removing buildings or structures on acquired land, including the cost of acquiring lands to which the buildings or structures may be moved, the cost of machinery and equipment, financing charges, interest before, during, and for a period after completion of, the construction as determined by the authority, provisions for working capital, reserves for principal and interest and for extension, enlargements, additions, replacements, renovations and improvements, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of constructing a project or incident to the construction or acquisition or financing of a project.

(d) "Dormitory" means a housing unit with necessary and usual attendant and related facilities and equipment.

(e) (1) "Educational facility" means a dormitory, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, health care facility (including for an institution of higher education that maintains and operates a school of medicine, structures or facilities designed to provide services as a hospital or clinic, whether the hospital or clinic is operated directly by the institution of higher education or by a separate nonprofit corporation, the members of which consist of the educational institution or the members of its governing body), faculty and staff housing, parking, maintenance, storage, or utility facilities, and other related structures or facilities used for student instruction, conducting research, or operating an institution for higher education, and related facilities and equipment.

(2) "Educational facility" does not include a facility used, or to be used, for sectarian instruction or as a place for religious worship, or a facility used, or to be used, primarily in connection with a part of the program of a school or department of divinity.

(f) "Faculty and staff housing" means a residential unit owned by a participating college or participating nonprofit entity for use by an individual holding a faculty appointment or a staff position at a public university, public college, or participating college.

(g) "Participating nonprofit entity" means an entity within the meaning of paragraph (3) of subsection (c) of Section 501 of Title 26 of the United States Code that, pursuant to this chapter for the purpose of owning student, faculty, or staff housing, as approved by, and for participation with, the authority, undertakes the financing and construction or acquisition of student, faculty, or staff housing, on real property owned or leased by the entity, for the benefit of a public college, public university, or participating private college. The authority may determine any additional qualifications of a participating nonprofit entity through regulations or guidelines.

(h) "Participating private college" or "participating college" means a private college that participates with the authority in undertaking the financing of working capital or the financing and construction or acquisition of a project and does not restrict the admission of a student based on the student's race or ethnicity, provided that the financing does not violate Section 5 of Article XVI of the California Constitution or the establishment clause of the First Amendment to the United States Constitution.

(i) (1) "Private college" means an institution for higher education other than a public college, situated within the state and that, by virtue of law or charter, is a nonprofit private or independent degree-granting educational institution that is regionally accredited and empowered to provide a program of education beyond the high school level.

(2) For purposes of obtaining financing under this chapter, "private college" also includes either of the following:

(A) A nonprofit affiliate, established on or before January 1, 2005, of one or more private colleges, as defined in paragraph (1), the sole or primary purpose of which is to provide administrative or other support services to an affiliated private college or private colleges, and that undertakes the financing of a project or working capital for the exclusive use and benefit of one or more of the affiliated private colleges.

(B) A private nonprofit research organization engaged in basic research and advanced education at the predoctoral and postdoctoral levels through personnel situated within the state, but only if the organization previously has borrowed the proceeds of bonds or other obligations previously issued by the authority.

(j) (1) "Project" means a dormitory or an educational facility, faculty or staff housing, or any combination thereof, or any function concerning student loans, or interests in student loans, as determined by the authority.

(2) For a participating nonprofit entity, "project" means the construction or acquisition of student housing or faculty and staff housing. The authority, in consultation with the top administrative officials and the participating nonprofit entity, shall develop and adopt regulations to ensure, to the greatest extent practicable, that each project involving a participating nonprofit entity is used to house students, faculty, or staff of the participating private college, public college, or public university. The student, faculty, or staff housing shall meet all of the following criteria:

(A) Upon completion or acquisition of the project, the project will be owned by a participating nonprofit entity and located on real property owned, or leased by, that entity.

(B) The top administrative official of the public university, public college, or participating private college that the project is intended to benefit, verifies the need for housing and financing assistance in a specific area pursuant to subparagraph (D).

(C) The project is monitored on an annual basis by the authority to ensure that it meets the requirements of subparagraph (E) and all other regulatory agreements entered into by the authority.

(D) The project is located within a five-mile radius of the boundary of a campus or satellite center of the public college, public university, or participating private college that the project is intended to benefit. The participating nonprofit entity may request approval from the top official of the institution for a project that is located outside the five-mile radius, provided that all of the following criteria are met:

(i) There are no available and feasible sites within the five-mile radius.

(ii) The project is near a mass transit destination.

(iii) The time required to commute from campus to the mass transit destination, as estimated by the top administrative official, typically does not exceed 30 minutes.

(E) (i) The project includes and maintains for 40 years a restriction to the grant deed on the real property on which the student or faculty and staff housing is to be located. The grant deed shall accomplish all of the following:

(I) Give the public college, public university, or participating private college that the project is intended to benefit the right, but not the obligation, to purchase the property at fair market value.

(II) Ensure that students, faculty, or staff of the affected campus will have first right of refusal to all available units.

(III) Require that, to the greatest extent feasible, at least 50 percent of student residents will meet the criteria for need-based financial assistance, as determined by the top administrative official of the affected campus.

(IV) Require that all contracts for construction and renovation of the proposed project shall be subject to, and comply with the provisions referenced in, Section 10128 of the Public Contract Code.

(ii) For purposes of this subparagraph, the authority, through regulation or rule, shall define "student" and "faculty," taking into consideration enrollment status requirements and employment status requirements. The definitions of "student" and "faculty" may be different for each participating campus.

(k) "Public college" means a community college.

(l) "Public university" means any campus of the University of California, the California State University, or the Hastings College of the Law.

(m) "Student housing" means a residential unit owned by a participating nonprofit entity, and located on real property owned by that entity, for use by an individual enrolled at a public college, public university, or participating private college.

(n) "Student loan" means a loan having terms and conditions acceptable to the authority that is made to finance or refinance the costs of attendance at a private college or a public college and that is approved by the authority, if the loan is originated pursuant to a program that is approved by the authority.

(o) "Top administrative official" means the chancellor in the case of a campus of the University of California, the dean in the case of the Hastings College of the Law, the president in the case of a campus of the California State University, the president in the case of a campus of the California Community Colleges, or the president or highest ranking official in the case of a participating private college.

(p) "Working capital" means maintenance or operation expenses or any other costs that would be treated as an expense item, under generally accepted accounting principles, in connection with the ownership or operation of an educational facility, faculty or staff housing, student housing, or any combination thereof, including, but not limited to, reserves for maintenance or operation

expenses, interest on any loan for working capital made pursuant to this part, and reserves for debt service with respect to, and any costs necessary or incidental to, that financing.

SEC. 2. Section 94140 of the Education Code is amended to read:

94140. The authority shall have power to do all of the following:

- (a) Adopt bylaws for the regulation of its affairs and the conduct of its business.
- (b) Adopt and have an official common seal and alter it at pleasure.
- (c) Sue and be sued in its own name, and plead and be impleaded.
- (d) Borrow money, issue bonds and notes and other obligations of the authority, and provide for the rights of the holders thereof as provided in this chapter.
- (e) Acquire, lease as lessee, hold, and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this chapter.
- (f) Acquire, in the name of the authority by purchase or otherwise, on the terms and conditions and in the manner as it deems proper, any land or interest in land and other property that it determines is reasonably necessary for a project, including any lands held by a county, municipality, or other governmental subdivision of the state, to hold and use the property, and to sell, convey, lease, or otherwise dispose of the acquired property that is no longer necessary for the authority's purposes.
- (g) Receive and accept, from any source, loans, contributions, or grants for, or in aid of, the financing or refinancing of working capital or the acquisition, construction, financing, or refinancing of a project, or any portion of a project, in money, property, labor, or other things of value.
- (h) Prepare, or cause to be prepared, plans, specifications, designs, and estimates of costs for the construction and equipment of projects for participating colleges and participating nonprofit entities under this chapter, and from time to time to modify those plans, specifications, designs, or estimates.
- (i) By contract or contracts, or by its own employees, to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, projects for participating colleges and participating nonprofit entities.
- (j) Employ consulting engineers, architects, accountants, construction and financial experts, superintendents, and other employees and agents that may be necessary in its judgment and to fix their compensation.
- (k) Determine the location and character of any project to be undertaken pursuant to this chapter, and construct, reconstruct, repair, lease, as lessee or lessor, the project, enter into contracts for any or all of those purposes, and designate a participating private college or participating nonprofit entity as its agent to determine the location and character of a project undertaken by the participating private college or participating nonprofit entity under this chapter and, as the agent of the authority, construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the project and, as agent of the authority, to enter into contracts for any and all of those purposes including contracts for the management and operation of the project.
- (l) Establish rules and regulations for the use of a project, or any portion of a project, and to designate a participating private college or participating nonprofit entity as its agent to establish rules and regulations for the use of a project undertaken by the participating private college or participating nonprofit entity.
- (m) Generally establish, revise from time to time, and charge and collect, rates, rents, fees, and other charges for the use of and for the services furnished or to be furnished by a project, or any portion of a project, and contract with holders of its bonds and with any other person, party, association, corporation, or other body, public or private, in respect thereof.
- (n) Enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the authority or to carry out any power expressly given in this chapter.
- (o) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in obligations that are authorized by law for the investment of trust funds in the custody of the Treasurer.
- (p) Charge, and equitably apportion among participating private colleges and participating nonprofit entities, its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter.
- (q) Finance, directly or through an intermediary, or purchase or take assignments of, or make commitments to finance, directly or through an intermediary, or purchase or to take assignments of, student loans, to contract in advance for those student loans, and to contract in advance for that financing, purchase, or assignment, and to pay any amounts payable in respect thereto. A student

loan shall be eligible for financing or purchase by the authority or for assignment hereunder regardless of the repayment status of the loan. A pledge made to secure authority financing for student loan project purposes shall be valid and binding from the time the pledge is made. The revenues and receipts of property or interest in the property pledged and thereafter received by the authority, a participating college or public institution of higher education, a servicer, a trustee, or a custodian shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of a pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, participating college or public institution of higher education, servicer, trustee, or custodian irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(r) Hold or invest in student loans, create pools of student loans, and sell bonds bearing interest on a taxable or tax-exempt basis or other interests backed by the pools of student loans.

(s) Contract or otherwise provide for the distribution, processing, origination, purchase, sale, servicing, securing, and collection of student loans, the payment of fees, charges, and administrative expenses in connection with student loans, and the funding of reserves required or provided for in any resolution authorizing, or trust agreement securing, authority financing for student loan purposes.

(t) Assist in providing support to participating colleges or participating nonprofit entities to enhance the market acceptance of potential bond issues by the authority, including securing probable or actual credit ratings from nationally recognized bond rating agencies, providing or obtaining liquidity or credit enhancement, providing or securing bond reserve funds, performing any other action deemed necessary by the authority, and incurring necessary expenses, payable from available authority funds, for any of these purposes.

SEC. 3. Section 94146 of the Education Code is amended to read:

94146. (a) Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt or liability of the state or of any political subdivision of the state, or a pledge of the faith and credit of the state or of any political subdivision other than the authority, but shall be payable solely from the funds herein provided. All bonds shall contain a statement to the effect that neither the State of California nor the authority shall be obligated to pay the bond or the interest on the bond except from revenues of the authority, and that neither the faith and credit nor the taxing power of the state or of any political subdivision of the state is pledged to the payment of the principal of, or the interest on, the bonds.

(b) The issuance of bonds under the provisions of this chapter shall not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation whatever therefor or to make an appropriation for payment of the bonds. This section shall not prevent or be construed to prevent the authority from pledging its full faith and credit, or the full faith and credit of a participating private college or participating nonprofit entity, to the payment of bonds or issue of bonds authorized pursuant to this chapter.

SEC. 4. Section 94150 of the Education Code is amended to read:

94150. (a) The authority may issue bonds of the authority for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest date of redemption or subsequent date of redemption, purchase or maturity of the bonds, to be refunded and, if deemed advisable by the authority, for the additional purpose of paying all or any part of the cost of working capital or constructing and acquiring additions, improvements, extensions, or enlargements of a project or any portion of a project.

(b) The proceeds of any bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase, retirement at maturity, or redemption prior to maturity of any outstanding bonds either on their earliest redemption date or dates, any subsequent redemption date or dates, upon their purchase or maturity, or paid to a third person to assume the authority's obligation to make the payments, and may, pending that application, be placed in escrow to be applied to the purchase, retirement at maturity, or redemption on the date or dates determined by the authority.

(c) Any proceeds placed in escrow may, pending their use, be invested and reinvested in obligations or securities authorized by resolutions of the authority, payable or maturing at the time or times as are appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, of the outstanding bonds to be refunded at maturity or redemption of the bonds to be refunded either at their earliest redemption date or dates or any subsequent redemption date or dates. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds to be refunded or to the payment of interest on the refunding bonds. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by the authority.

(d) The portion of the proceeds of any bonds issued for the additional purpose of paying all or any part of the cost of working capital or constructing and acquiring additions, improvements, extensions, or enlargements of a project may be invested and reinvested in obligations or securities authorized by resolution of the authority, maturing not later than the time or times when the proceeds will be needed for the purpose of paying all or any part of the cost. The interest, income, and profits, if any, earned or realized on the investment may be applied to the payment of all or any part of the cost or may be used by the authority in any lawful manner.

(e) All of those refunding bonds are subject to this chapter in the same manner and to the same extent as other bonds issued pursuant to this chapter.

SEC. 5. Section 94151 of the Education Code is amended to read:

94151. (a) The authority is hereby authorized to loan funds to a participating institution and to provide for the issuance of bonds for the purpose of refinancing working capital or projects not originally funded pursuant to this chapter, such refinancing to include the repayment of costs, as defined in Section 94110, incurred for projects by the participating institution and which have a completion date subsequent to December 29, 1969.

(b) For purposes of this section, "completion date" shall mean, in the case of construction or renovation of a project, the date on which the notice of completion is filed, and, in the case of the acquisition of a project, the date of such acquisition.

(c) All such bonds shall be subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this chapter.

SEC. 6. Section 94191 of the Education Code is amended to read:

94191. The authority also shall have power:

(a) To make loans to any participating private college or participating nonprofit entity for the acquisition or construction of projects in accordance with a loan agreement and in accordance with plans and specifications that shall be subject to approval by the authority. No loan shall exceed the total cost of the project and the equipment therefor as determined by the authority. Each loan shall be premised upon an agreement between the authority and the participating private college or participating nonprofit entity as to payment, security, maturity, redemption, interest, and other appropriate matters.

(b) To make loans to any participating private college or participating nonprofit entity to refund existing bonds, mortgages, or advances or other obligations incurred, given, or made by the private college or participating nonprofit entity for the acquisition or construction of any projects.

(c) To make loans to any participating private college for working capital in accordance with a loan agreement. Each loan shall be premised upon an agreement between the authority and the participating private college as to payment, security, maturity, redemption, interest, and other appropriate matters.

(d) To make loans to any participating private college to refund existing bonds, mortgages, or advances or other obligations incurred, given, or made by the participating private college for working capital.