

# SB31 INTRODUCED



1 SB31

2 PA8HREE-1

3 By Senators Waggoner, Smitherman, Allen, Jones, Livingston,

4 Bell, Shelnutt, Barfoot, Melson, Chesteen, Price, Williams,

5 Sessions, Kelley, Stewart, Gudger, Chambliss, Butler, Carnley,

6 Hovey, Weaver

7 RFD: Finance and Taxation Education

8 First Read: 06-Feb-24



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SYNOPSIS:

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 Loan Program; to state the purpose of the program; to change the administrator of the program to the Alabama Commission on



## SB31 INTRODUCED

29 Higher Education; to more specifically define eligible  
30 institutions to which loans shall be made; and to establish  
31 certain terms and conditions of loans to eligible  
32 institutions.

33 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

34 Section 1. Legislative Findings. The Legislature finds  
35 and declares that the purpose of the Distressed Institutions  
36 of Higher Education Revolving Loan Program established by Act  
37 2023-560 of the 2023 Regular Session is to ensure the prompt  
38 issuance of loans to eligible public and private colleges or  
39 universities in Alabama which are in financial distress and  
40 meet the eligibility requirements of Section 16-65A-2, Code of  
41 Alabama 1975. The program is designed to provide loan proceeds  
42 to those colleges and universities as quickly as possible to  
43 address their financial hardship. The Legislature appropriated  
44 thirty million dollars (\$30,000,000) from the Education Trust  
45 Fund for this program in Act 2023-378 of the 2023 Regular  
46 Session and those funds were deposited into the Distressed  
47 Institutions of Higher Education Loan Program Fund and remain  
48 available to be used for loans under this program. Any doubts  
49 concerning eligibility or the ability to repay a loan shall be  
50 construed in favor of making such loans under this program.

51 Section 2. Sections 1 through 6 of Act 2023-560 of the  
52 2023 Regular Session, now appearing as Sections 16-65A-1  
53 through 16-65A-6, Code of Alabama 1975, are amended to read as  
54 follows:

55 "§16-65A-1

56 There is created the Distressed Institutions of Higher



## SB31 INTRODUCED

57 Education Revolving Loan Program to be administered by the  
58 ~~State Treasurer~~Executive Director of the Alabama Commission on  
59 Higher Education.

60 "§16-65A-2

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

65 (1) Has been operating for more than 50 years in  
66 Alabama.

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

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

71 (4) Whose governing body has adopted a resolution  
72 authorizing the application for a loan from this program to  
73 maintain operations as it replenishes its endowment through  
74 private gifts.

75 (5) Has assets sufficient to pledge as collateral to  
76 secure the amount of the requested loan. Collateral shall be  
77 deemed sufficient if a college or university provides an  
78 opinion letter from a bank that is registered to do business  
79 in the State of Alabama and is regulated by the State Banking  
80 Department which states that the collateral offered by the  
81 college or university is sufficient to secure the requested  
82 amount of the loan.

83 (b) An eligible institution seeking a loan from this  
84 program shall make application on forms prescribed by the



## SB31 INTRODUCED

85 ~~State Treasurer~~Executive Director of the Alabama Commission on  
86 Higher Education. The institution shall certify that it meets  
87 all criteria provided by this section.

88 (c) The ~~State Treasurer~~Executive Director of the  
89 Alabama Commission on Higher Education shall review all  
90 applications for loans and shall make a careful and thorough  
91 investigation of the ability of each applicant to repay a loan  
92 under the program. ~~Any institution applying for a loan shall~~  
93 ~~provide any information requested by the State Treasurer~~  
94 ~~relevant to the determination of ability to repay.~~ Before  
95 awarding a loan to any applicant, the ~~Treasurer~~Executive  
96 Director of the Alabama Commission on Higher Education shall  
97 require the applicant to submit a written financial  
98 restructuring plan documenting the applicant's ability to  
99 repay the loan. The restructuring plan shall include specific  
100 facts demonstrating the applicant's ability to repay the loan  
101 as determined by the bank.

102 (d) Any loan made pursuant to this program shall  
103 require the recipient to pay interest at the published rate  
104 for the State Revolving Loan Fund at the time the loan is  
105 made. Any loan made pursuant to this program shall be paid  
106 back within 20 years. Any loan made pursuant to this program  
107 must be secured by a first perfected security interest in all  
108 assets pledged as collateral for the loan.

109 ~~(d) The State Treasurer may establish the terms and~~  
110 ~~conditions of any loan made pursuant to this program,~~  
111 ~~including: the amount of private funds committed prior to loan~~  
112 ~~funds being drawn; the timing and amounts of disbursements;~~



## SB31 INTRODUCED

113 ~~and the terms of repayment. Any loan made pursuant to this~~  
114 ~~program shall require the recipient to pay interest. Any loan~~  
115 ~~made pursuant to this program shall be secured by a first~~  
116 ~~perfected security interest in all collateral assets.~~

117 (e) The ~~State Treasurer may~~Executive Director of the  
118 Alabama Commission on Higher Education shall award a loan to  
119 any eligible institution that meets the requirements provided  
120 in this section within 30 days of the date the institution  
121 submits its application and shall be responsible for the  
122 administration of the loan, subject to this section. In  
123 administering a loan, the ~~Treasurer~~Executive Director of the  
124 Alabama Commission on Higher Education shall release funds to  
125 the recipient only pursuant to a written financial  
126 restructuring plan, submitted by the recipient to the  
127 ~~Treasurer~~Executive Director of the Alabama Commission on  
128 Higher Education, that includes specific steps the recipient  
129 must take to achieve financial soundness and specific  
130 benchmarks the recipient ~~must~~intends to meet to receive loan  
131 funds.

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

140 (g) The ~~State Treasurer~~Executive Director of the



## SB31 INTRODUCED

141 Alabama Commission on Higher Education shall forward copies of  
142 executed loan contracts to the Chairs of the Senate Finance  
143 and Taxation-Education Committee and the House Ways and  
144 Means-Education Committee, the Finance Director, and the  
145 Legislative Fiscal Officer.

146 "§16-65A-3

147 Annually, on or before the first day of December, the  
148 ~~State Treasurer~~Executive Director of the Commission on Higher  
149 Education shall file a report regarding the operation of the  
150 program, including all loans issued and the status of any  
151 repayments, to the Governor, Lieutenant Governor, Speaker of  
152 the House of Representatives, President Pro Tempore of the  
153 Senate, the minority leaders of the Alabama Senate and House  
154 of Representatives, the Chairs of the Senate Committee on  
155 Finance and Taxation-Education and the House Ways and  
156 Means-Education Committee, the Legislative Fiscal Officer, and  
157 the Finance Director.

158 "§16-65A-4

159 The Distressed Institutions of Higher Education Loan  
160 Program Fund is created in the State Treasury to receive  
161 appropriations from the Legislature for the funding of loans  
162 and to be administered by the ~~State Treasurer~~Executive  
163 Director of the Alabama Commission on Higher Education, as  
164 provide by this section. Proceeds from loan repayments shall  
165 be deposited into this fund and may be used in the same manner  
166 as any other funds provided for this program. Any monies  
167 remaining in the fund, including any interest earned or any  
168 contributions from other sources, at the end of a fiscal year



## SB31 INTRODUCED

169 shall not revert but shall remain in the fund and are  
170 reappropriated for the purposes authorized by this section.  
171 Any monies appropriated into the fund pursuant to Act 2023-560  
172 that remain in the fund on the effective date of this act,  
173 shall be reallocated to the Alabama Commission on Higher  
174 Education for the purposes authorized by this section. The  
175 expenses of making and administering loans, including legal,  
176 consultant, and administrative expenses, shall be payable from  
177 the fund.

178 "§16-65A-5

179 The Attorney General, upon request of the ~~State~~  
180 ~~Treasurer~~ Executive Director of the Alabama Commission on  
181 Higher Education, shall institute proceedings in the name of  
182 the state for the purpose of recovering any amount due the  
183 state under this section. All proceedings involving default or  
184 dispute of the contract shall be brought in the appropriate  
185 court of jurisdiction in Montgomery County, Alabama.

186 "§16-65A-6

187 In addition to the powers granted by any other  
188 provision of this chapter, the ~~State Treasurer~~ Executive  
189 Director of the Alabama Commission on Higher Education shall  
190 have the powers necessary and convenient to carry out the  
191 purposes and provisions of this chapter, including the power  
192 to enter into and execute contracts, agreements, and other  
193 instruments."

194 Section 3. This act shall become effective immediately  
195 upon its passage and approval by the Governor, or its  
196 otherwise becoming law.