

AMENDED IN SENATE MAY 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1979

Introduced by Assembly Member Nazarian

February 19, 2014

An act to amend ~~Section~~ Sections 17173, 17199.3, and 17199.4 of, and to repeal Section 17193.5 of, the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL’S DIGEST

AB 1979, as amended, Nazarian. School facilities: California School Finance Authority: definitions.

~~Existing~~

(1) *Existing* law authorizes the California School Finance Authority to, among other things, determine the location and character of any project to be financed or refinanced under the California School Finance Authority Act. Existing law defines the term “project” as the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an educational facility to be financed or refinanced pursuant to the act.

This bill would provide that the term “project” may also include reimbursement for the costs of acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an education facility to be financed or refinanced pursuant to the act.

(2) *Existing* law authorizes a public credit provider, as defined, to require a participating party, with regard to providing credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of a participating party, to agree to specified conditions, including allowing the Controller to allocate specified

school district, county office of education, or charter school apportionments to the public credit provider if the public credit provider is required to make principal or interest payments, or both, pursuant to the credit enhancement agreement.

This bill would delete this provision.

(3) Existing law limits the total amount of revenue bonds that may be issued and outstanding at any time for purposes of the California School Finance Authority Act, other than up to \$4,000,000,000 in revenue bonds issued under a specified provision of that act, to \$400,000,000.

This bill would delete the distinction between the limits of the total amounts of revenue bonds that may be issued and outstanding at any time for purposes of the California School Finance Authority Act and under the specified provision of the act. The bill would instead set the limit of the total amount of revenue bonds that may be issued and outstanding at any time for purposes of the act at \$4,400,000,000.

(4) Existing law, the California School Finance Authority Act, authorizes a participating party, as defined, in connection with securing financing or refinancing of projects, as defined, to elect to guarantee or provide for payment of the bonds and related obligations in accordance with specified conditions.

This bill would generally revise and recast this provision of the act to authorize participating parties to provide for the funding of specified costs related to the issuance of the bonds, as well as the payment of the bonds, in accordance with prescribed requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17173 of the Education Code is amended
- 2 to read:
- 3 17173. As used in this chapter, the following words and terms
- 4 shall have the following meanings, unless the context indicates or
- 5 requires another or different meaning or intent:
- 6 (a) "Act" means the California School Finance Authority Act.
- 7 (b) "Agent" means a county or city board of education or
- 8 superintendent of schools acting with the board's consent, on behalf
- 9 of one or more school districts for any purpose of this chapter, the
- 10 Board of Governors of the California Community Colleges or the

1 Chancellor of the California Community Colleges acting with the
2 Board of Governors' consent, on behalf of one or more community
3 college districts for any purpose of this chapter, and the school
4 district, county office of education, or other chartering entity acting
5 with the consent of, and on behalf of, one or more charter schools
6 for any purpose of this chapter.

7 (c) "Authority" means the California School Finance Authority,
8 or any board, body, commission, department, or officer succeeding
9 to the principal functions of the authority, or to which the powers
10 conferred upon the authority by this chapter shall be given by law.

11 (d) "Bonds" or "revenue bonds" means bonds, notes, lease
12 obligations, certificates of participation, commercial paper, and
13 any other evidences of indebtedness.

14 (e) "*Certificate of participation*" means an undivided interest
15 in one or more bonds, leases, loans, installment sales, or other
16 agreements of a participating party or parties.

17 (f) "*Charter school*" means a school established pursuant to
18 Part 26.8 (commencing with Section 47600) of Division 4 of Title
19 2.

20 (e)

21 (g) "Cost," as applied to all or part of a project financed or
22 refinanced pursuant to this chapter, means and includes all or any
23 part of the cost of any of the following:

24 (1) Construction.

25 (2) Acquisition or improvement of all lands, structures, real or
26 personal property, rights, rights-of-way, franchises, easements,
27 and interests acquired or used for a project.

28 (3) Demolition or removal of any buildings or structures on land
29 acquired for a project, including the acquisition of any lands to
30 which the buildings or structures may be moved.

31 (4) All machinery and equipment.

32 (5) Financing or refinancing charges, including, but not limited
33 to, credit enhancement costs, and prepayment penalties.

34 (6) Interest before, during, and for a period following, the
35 completion of any construction or improvement determined by the
36 authority.

37 (7) Provisions for working capital.

38 (8) Reserves for principal and interest, and for extensions,
39 enlargements, additions, replacements, renovations, and
40 improvements.

1 (9) Engineering, architectural, financial, and legal services,
2 plans, specifications, studies, surveys, estimates, administrative
3 expenses, and other expenses necessary or incident to the
4 construction, acquisition, or improvement of any project or any
5 financing or refinancing under this chapter.

6 ~~(f)~~

7 (h) “Educational facility” means any property, facility, structure,
8 equipment, or furnishings used or operated in conjunction with
9 one or more public schools, including charter schools, or
10 community colleges, including, but not limited to, all of the
11 following:

- 12 (1) Classrooms.
- 13 (2) Auditoriums.
- 14 (3) Student centers.
- 15 (4) Administrative offices.
- 16 (5) Sports facilities.
- 17 (6) Maintenance, storage, or utility facilities.
- 18 (7) All necessary or usual attendant and related facilities and
19 equipment, including streets, parking, and supportive service
20 facilities or structures required or useful for the effective operation
21 of the educational facility.

22 ~~(g)~~

23 (i) “Participating party” means:

- 24 (1) A school district, charter school, county office of education,
25 or community college district that undertakes, itself or through an
26 agent, the financing or refinancing of a project or of working capital
27 pursuant to this chapter.
- 28 (2) Any person, company, association, state or municipal
29 government entity, partnership, firm, or other entity or group of
30 entities that undertakes the financing or refinancing of a project
31 pursuant to this chapter in conjunction with an entity described in
32 paragraph (1).
- 33 (3) “Participating party” shall also be deemed to refer to the
34 agent to the extent the agent is acting on behalf of the school
35 district, charter school, county office of education, or community
36 college district for any purpose of this chapter.
- 37 (4) For purposes of subdivision (d) of Section 17183, and
38 Section 17193.5, subdivisions (a) and (b) of Section 17199.1, and
39 Section 17199.4, “participating party” shall be deemed to refer to
40 an entity described in paragraph (1) in conjunction with which an

1 entity described in paragraph (2), if any, applied for financing from
2 the authority.

3 ~~(h)~~

4 (j) “Project” means the acquisition, construction, expansion,
5 remodeling, renovation, improvement, furnishing, or equipping
6 of an educational facility to be financed or refinanced pursuant to
7 this chapter. “Project” may include reimbursement for the costs
8 of acquisition, construction, expansion, remodeling, renovation,
9 improvement, furnishing, or equipping of an educational facility
10 to be financed or refinanced pursuant to this chapter. “Project”
11 may include any combination of the foregoing undertaken jointly
12 by any participating party with one or more other participating
13 parties.

14 ~~(i)~~

15 (k) “Working capital” means funds to be used by, or on behalf
16 of, a participating party to pay maintenance or operating expenses,
17 or any other costs that would be treated as an expense item under
18 generally accepted accounting principles in connection with the
19 ownership or operation of an educational facility, including, but
20 not limited to, all of the following:

- 21 (1) Reserves for maintenance or operating expenses.
- 22 (2) Interest for a period not to exceed two years on any loan for
23 working capital made pursuant to this chapter.
- 24 (3) Reserves for debt service, and any other costs necessary or
25 incidental to, financing pursuant to this chapter.
- 26 (4) Payments made by a participating party for the rent or lease
27 of an educational facility.

28 ~~(j) “Certificate of participation” means an undivided interest in
29 one or more bonds, leases, loans, installment sales, or other
30 agreements of a participating party or parties.~~

31 ~~(k) “Charter school” means a school established pursuant to
32 Part 26.8 (commencing with Section 47600) of Division 4 of Title
33 2.~~

34 *SEC. 2. Section 17193.5 of the Education Code is repealed.*

35 ~~17193.5. (a) For purposes of this section, “public credit
36 provider” means any financial institution or combination of
37 financial institutions, that consists either solely, or has as a member
38 or participant, a public retirement system. Notwithstanding any
39 other law, a public credit provider, in connection with providing
40 credit enhancement for bonds, notes, certificates of participation,~~

1 or other evidences of indebtedness of a participating party, may
2 require the participating party to agree to the following conditions:

3 (1) If a participating party adopts a resolution by a majority vote
4 of its board to participate under this section, it shall provide notice
5 to the Controller of that election. The notice shall include a
6 schedule for the repayment of principal and interest on the bonds,
7 notes, certificates of participation, or other evidence of
8 indebtedness and identify the public credit provider that provided
9 credit enhancement. The notice shall be provided not later than
10 the date of issuance of the bonds.

11 (2) If, for any reason, a public credit provider is required to
12 make principal or interest payments, or both, pursuant to a credit
13 enhancement agreement, the public credit provider shall
14 immediately notify the Controller of that fact and of the amount
15 paid out by the public credit provider.

16 (3) Upon receipt of the notice required by paragraph (2), the
17 Controller shall make an apportionment to the public credit
18 provider in the amount of the payments made by the public credit
19 provider for the purpose of reimbursing the public credit provider
20 for its expenditures made pursuant to the credit enhancement
21 agreement. The Controller shall make that apportionment only
22 from moneys designated for apportionments to a participating
23 party, provided that such moneys are from one or more of the
24 following:

25 (A) Any revenue limit apportionments to a school district or
26 county office of education without regard to the specific funding
27 source of the apportionment.

28 (B) Any general apportionments to a community college district
29 without regard to the specific funding source of the apportionment.

30 (C) Any charter school block grant apportionments to a charter
31 school without regard to the specific funding source of the
32 apportionment.

33 (D) Any charter school categorical block grant apportionments
34 to a charter school without regard to the specific funding source
35 of the apportionment.

36 (b) The amount apportioned for a participating party pursuant
37 to this section shall be deemed to be an allocation to the
38 participating party and shall be included in the computation of
39 allocation, limit, entitlement, or apportionment for the participating
40 party. The participating party and its creditors do not have a claim

1 to funds apportioned or anticipated to be apportioned to the trustee
2 by the Controller pursuant to paragraph (3) of subdivision (a).

3 *SEC. 3. Section 17199.3 of the Education Code is amended to*
4 *read:*

5 17199.3. (a) The total amount of revenue bonds that may be
6 issued and outstanding at any time for purposes of this chapter;
7 ~~other than those revenue bonds issued under Section 17199.4~~, shall
8 not exceed *four billion* four hundred million dollars ~~(\$400,000,000)~~
9 *(\$4,400,000,000)*.

10 ~~(b) The total amount that may be outstanding at any time under~~
11 ~~this chapter, for purposes of Section 17199.4 only, shall not exceed~~
12 ~~four billion dollars (\$4,000,000,000).~~

13 (e)

14 (b) For purposes of ~~subdivisions (a) and (b)~~, *subdivision (a)*
15 bonds that meet any of the following conditions shall not be
16 deemed to be outstanding:

17 (1) Bonds that have been refunded pursuant to Section 17188.

18 (2) Bonds for which money or securities in amounts necessary
19 to pay or redeem the principal, interest, or any redemption premium
20 on the bonds have been deposited in trust.

21 (3) Bonds that have been issued to finance or refinance working
22 capital.

23 *SEC. 4. Section 17199.4 of the Education Code is amended to*
24 *read:*

25 17199.4. (a) Notwithstanding any other law, any participating
26 party, in connection with securing financing or refinancing of
27 projects, or working capital pursuant to this chapter, may, *in*
28 *accordance with this section*, elect to ~~guarantee or provide for~~
29 ~~payment of the bonds and related obligations in accordance with~~
30 ~~the following conditions~~ *funding, in whole or in part, one or more*
31 *of the following:*

32 (1) *Payments on authority bonds.*

33 (2) *Payments under credit enhancement or liquidity support*
34 *agreements in connection with authority bonds.*

35 (3) *Amounts pledged or assigned under one or more pledges*
36 *or assignments to pay authority bonds or obligations under these*
37 *credit enhancement or liquidity support agreements.*

38 (4) *Payments to fund reserves available to pay any of the*
39 *payments described in paragraphs (1), (2) and (3), exclusively*
40 *until paid.*

1 (5) Fees and charges contemplated by the instruments of the
2 authority, trustees, tender agents, remarketing agents, credit
3 enhancement and liquidity support providers, and service
4 providers.
5 (6) Any other costs necessary or incidental to any financing or
6 refinancing conducted under this chapter.
7 (b) The payments made pursuant to subdivision (a) may be in
8 connection with a financing or refinancing benefiting the
9 participating party itself, one or more other participating parties,
10 or any combination thereof.
11 (c) To participate under this section, the participating party
12 shall do all of the following:
13 (1) Elect to participate by an action of its governing board taken
14 in compliance with the rules of that board.
15 (2) Provide written notice to the Controller of all of the
16 following:
17 (A) Its election to participate.
18 (B) A schedule of the payments subject to that election.
19 (C) The payee or payees of those payments, or the trustee or
20 agent on their behalf to receive those payments.
21 (D) Payment delivery instructions, which may be by wire
22 transfer or other method approved by the Controller.
23 (d) The participating party may amend, supplement, or restate
24 the notice required pursuant to paragraph (2) of subdivision (c)
25 for any reason, including, but not necessarily limited to, providing
26 for new or increased payments. The participating party shall certify
27 in the notice and in any amendment, supplement, or restatement
28 of the notice that each and every payment reflected in the schedule
29 is a payment described in subdivision (a) and the amounts
30 scheduled do not exceed the actual or reasonably estimated
31 payment obligations to be funded pursuant to this section. The
32 participating party shall also represent in the notice that it is not
33 submitting the notice for the purpose of accelerating a participating
34 party's receipt of its apportionments. Nothing in this section
35 prohibits transfer by the recipient of an apportionment under this
36 section to the participating party submitting the notice of the excess
37 apportionment above the amount needed to fund actual payments
38 where the excess resulted from erroneous estimation of scheduled
39 payments or otherwise.

1 (1) ~~If a participating party adopts a resolution by a majority vote~~
2 ~~of its board to participate under this section, it shall provide notice~~
3 ~~to the Controller of that election. The notice shall include a~~
4 ~~schedule for the repayment of principal and interest on the bonds,~~
5 ~~and any other costs necessary or incidental to financing pursuant~~
6 ~~to this chapter, and identify a trustee appointed by the participating~~
7 ~~party or the authority for purposes of this section. If payment of~~
8 ~~all or a portion of the principal and interest on the bond is secured~~
9 ~~by a letter of credit or other instrument of direct payment, the~~
10 ~~notice may provide for reimbursements to the provider of the~~
11 ~~instrument in lieu of payment of that portion of the principal and~~
12 ~~interest of the bonds. The notice shall be provided not later than~~
13 ~~the date of issuance of the bonds or 60 days before the next~~
14 ~~payment, whichever date is later. The participating party shall~~
15 ~~update the notice at least annually if there is a change in the~~
16 ~~required payment for any reason, including, but not limited to,~~
17 ~~providing for new or increased costs necessary or incidental to the~~
18 ~~financing.~~

19 (2) ~~If, for any reason, the participating party will not make a~~
20 ~~payment at the time the payment is required, the participating party~~
21 ~~shall notify the trustee of that fact and of the amount of the~~
22 ~~deficiency. If the trustee receives this notice from the participating~~
23 ~~party, or does not receive any payment by the date that payment~~
24 ~~becomes due, the trustee shall immediately communicate that~~
25 ~~information to the Controller.~~

26 (3)

27 (e) Upon receipt of the notice required by paragraph (2) of
28 *subdivision (c)*, the Controller shall make an apportionment to the
29 *trustee indicated recipient* on the date, or during the period, shown
30 in the schedule in the amount of the deficiency for the purpose of
31 making the required payment. The *accordance with the following:*

32 (1) *If the participating party requests transfers in full as*
33 *scheduled, in the amount of the scheduled transfer or such lesser*
34 *amount as is available from the sources indicated in subdivision*
35 *(f).*

36 (2) *If the participating party does not request transfers in full*
37 *as scheduled, in the amount of the anticipated deficiency for the*
38 *purpose of making the required payment indicated in a written*
39 *request of the participating party to the Controller and in the*
40 *amount of the actual shortfall in payment indicated in a written*

1 request of the recipient or the participating party to the Controller
2 or the lesser amount that is available from the sources indicated
3 in subdivision (f).

4 (3) In making apportionments under this section, the Controller
5 may rely conclusively and without liability on any notice or request
6 delivered under this section, including any delivered prior to
7 enactment of the act that adds this paragraph. The Controller may
8 make, but is not obligated to make, apportionments not reflected
9 on a notice or amended, supplemented, or restated notice delivered
10 under this section that the Controller receives less than 20 days
11 prior to when the apportionment would otherwise be required.

12 (f) The Controller shall make ~~that~~ an apportionment under this
13 section only from moneys designated for apportionment to ~~a the~~
14 participating party, ~~provided that such moneys are~~ party delivering
15 the notice, and only from one or more of the following:

16 (A)

17 (1) Any revenue limit apportionments to a school district or
18 county office of education without regard to the specific funding
19 source of the apportionment.

20 (B)

21 (2) Any charter school block grant apportionments to a charter
22 school without regard to the specific funding source of the
23 apportionment.

24 (C)

25 (3) Any charter school categorical block grant apportionments
26 to a charter school without regard to the specific funding source
27 of the apportionment.

28 ~~(4) As an alternative to the procedures set forth in paragraphs~~
29 ~~(2) and (3), the participating party may provide a transfer schedule~~
30 ~~in its notice to the Controller of its election to participate under~~
31 ~~this section. The transfer schedule shall set forth amounts to be~~
32 ~~transferred to the trustee and the date for the transfers. The~~
33 ~~Controller, subject to the limitation in paragraph (3), shall make~~
34 ~~apportionments to the trustee of those amounts on the specified~~
35 ~~date for the purpose of making those transfers. The authority may~~
36 ~~require a participating party to proceed under this subdivision.~~

37 (b)

38 (g) (1) The amount apportioned for a participating party
39 pursuant to this section shall be deemed to be an allocation to the
40 participating party and shall be included in the computation of

1 allocation, limit, entitlement, or apportionment for the participating
2 party.

3 ~~The~~

4 (2) *The participating party and its creditors do not have a claim*
5 *to funds apportioned or anticipated to be apportioned to the trustee*
6 *by the Controller pursuant to paragraph (3) and (4) of subdivision*
7 *(a), or to the funds apportioned to by the Controller to the trustee*
8 *under any other provision of this section.*

9 ~~(e) (1) Participating parties that elect to participate under this~~
10 ~~section shall apply to the authority. The~~

11 *(h) (1) The authority may require participation under this*
12 *section under the terms of any financing or refinancing under this*
13 *chapter. The authority may impose limits on new participation*
14 *under this section. The authority may require participating parties*
15 *to apply to the authority for participation. If the authority limits*
16 *participation under this section, the authority shall consider each*
17 *of the following priorities in making funds participation available:*

18 ~~(A) First priority shall be given to school districts, charter~~
19 ~~schools, or county offices of education participating parties that~~
20 ~~apply for funding for instructional classroom space under this~~
21 ~~chapter.~~

22 ~~(B) Second priority shall be given to school districts, charter~~
23 ~~schools, or county offices of education participating parties that~~
24 ~~apply for funding of modernization of instructional classroom~~
25 ~~space under this chapter.~~

26 ~~(C) Third priority shall be given to all participating parties that~~
27 ~~apply for funding under this chapter for any other eligible costs,~~
28 ~~as defined in Section 17173.~~

29 (2) The authority shall prioritize applications at appropriate
30 intervals.

31 (3) A school district electing to participate under this section
32 that has applied for revenue bond moneys for purposes of joint
33 venture school facilities construction projects, pursuant to Article
34 5 (commencing with Section 17060) of Chapter 12, shall not be
35 subject to the priorities set forth in paragraph (1).

36 ~~(d)~~

37 *(i) This section shall not be construed to make the State of*
38 *California liable for any payments within the meaning of Section*
39 *1 of Article XVI of the California Constitution or otherwise, except*
40 *as expressly provided in this section.*

1 (e)

2 (j) A school district that has a qualified or negative certification
3 pursuant to Section 42131, or a county office of education that has
4 a qualified or negative certification pursuant to Section 1240, may
5 not participate under this section.

6 (k) *This section does not obligate the State of California to make*
7 *available the sources of apportionment under subdivision (f) in*
8 *any amount or any time or, except as provided in this section, to*
9 *fund any payment described in this section. The addition of this*
10 *subdivision is intended solely to clarify existing law.*

O