

Assembly Bill No. 2377

CHAPTER 816

An act to add Article 4.1 (commencing with Section 94157) to Chapter 2 of Part 59 of Division 10 of Title 3 of the Education Code, relating to student loans, and making an appropriation therefor.

[Approved by Governor September 29, 2014. Filed with
Secretary of State September 29, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2377, John A. Pérez. Student loans: California Student Loan Refinancing Program.

Under existing law, the California Educational Facilities Authority Act, the California Educational Facilities Authority is, among other things, authorized to borrow money and issue bonds, notes, and other obligations. The authority is also authorized to 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.

This bill would establish the California Student Loan Refinancing Program under the administration of the authority, with the goal of helping eligible college graduates to refinance student loan debt at favorable rates by creating a revolving fund so that additional refinancing may occur to help more qualified borrowers, as defined, through the creation of a loss reserve account, as defined. The bill would authorize the authority to contract with any financial institution, as defined, for the purpose of allowing the financial institution to participate in the program. The bill would require the authority to establish a loss reserve account, consisting of moneys deposited by the authority, as specified, for each financial institution with which the authority enters into a contract. The bill would specify the conditions under which a qualified loan, as defined, may be enrolled in the program in order to obtain the protection against loss provided by its loss reserve account.

The bill would establish eligibility requirements for qualified borrowers to participate in the program. The bill would require the authority to submit an annual report to the Governor and the Legislature describing the program's financial condition and results, as specified. The bill would authorize the board of the authority to adopt emergency regulations for the implementation of the program established by the bill.

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

Appropriation: yes.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Over the last decade, tuition within the California higher education system increased 145 percent at the University of California and 191 percent at the California State University.

(b) The Middle Class Scholarship Act will lower the costs of tuition for prospective students; however, more needs to be done to assist those students who have already graduated and suffered the worst of the affordability squeeze, causing them to incur more student loan debt in order to complete their college degrees.

(c) Student loan debt is a drag on our economy, preventing graduates from entering graduate schools, achieving financial independence, buying property, and starting businesses.

(d) In the United States today, there is more than \$1.2 trillion in outstanding student loan debt, which works out to an average of more than \$26,000 per graduate. This level of debt translates to more than \$200,000 per graduate in lost savings and home equity, which in total accounts for \$4 trillion in lost national wealth.

(e) As of 2013, California residents had an average of just over \$20,000 in student loan debt upon graduation. Of the approximately 250,000 California residents who received bachelor's degrees both in and out of the state in 2012, 52 percent had some level of student loan debt.

(f) Through the California Educational Facilities Authority, the state has the ability to develop a student loan refinancing and consolidation program to assist college graduates carrying student loan debt to meet their payment obligations.

SEC. 2. Article 4.1 (commencing with Section 94157) is added to Chapter 2 of Part 59 of Division 10 of Title 3 of the Education Code, to read:

Article 4.1. California Student Loan Refinancing Program

94157. As used in this article, unless the context requires otherwise, the following terms have the following meanings:

(a) "Executive director" means the Executive Director of the California Educational Facilities Authority.

(b) "Financial institution" means a bank as defined under paragraph (4) of subdivision (b) of Section 1201 of the Commercial Code, including a federal- or state-chartered bank, that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by the authority. A financial institution shall have a branch or office, or be otherwise present for jurisdictional purposes, in California.

(c) "Loss reserve account" means an account in the State Treasury or in any financial institution that is established and maintained by the authority

for the benefit of a financial institution participating in the program for the purposes of any of the following:

(1) Depositing all required fees paid by the financial institution and the qualified borrower.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the financial institution by disbursing funds accumulated in the loss reserve account.

(d) “Private student loan” means a loan issued by a private lending institution for the costs of attendance at any public or private nonprofit college or university in the United States, notwithstanding the definitions in subdivisions (i), (k), and (l) of Section 94110.

(e) “Program” means the California Student Loan Refinancing Program created pursuant to this article.

(f) “Qualified borrower” means an individual meeting all of the following requirements:

(1) Residency in California.

(2) Completion of a bachelor’s degree.

(3) Employment in a public service program or by a nonprofit organization located in California.

(4) Able to repay, as determined by the authority.

(5) Meeting the criteria established by the financial institution and the authority.

(g) “Qualified loan” means a loan or a portion of a loan made by a financial institution to a qualified borrower to refinance a private student loan under the program. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the financial institution and the qualified borrower. Only a loan determined by the authority to be an educational loan nondischargeable in bankruptcy as set forth in Section 523 of Title 11 of the United States Code as that section existed on August 15, 2014, shall be a qualified loan eligible for financing under this article.

94158. (a) The California Student Loan Refinancing Program is hereby established under the administration of the authority. The goal of the program is to help college graduates who meet the eligibility criteria of the program, who are defined as qualified borrowers under Section 94157, to refinance student loan debt at favorable rates. This goal would be achieved through the creation of a revolving fund so that additional refinancing may occur to help more qualified borrowers, and through the creation of a loan loss reserve that can be leveraged by private lenders in the private student loan market.

(b) The authority may contract with any financial institution for the purpose of allowing the financial institution to participate in the program.

(c) A credit union operating pursuant to a certificate issued under the California Credit Union Law (Division 5 (commencing with Section 14000) of the Financial Code) may participate in the program only to the extent participation is in compliance with the California Credit Union Law. Nothing in this article shall be construed to limit the authority of the Commissioner

of Business Oversight to regulate credit unions subject to the commissioner's jurisdiction under the California Credit Union Law.

94159. (a) The authority shall establish a loss reserve account for each financial institution with which the authority enters into a contract.

(b) The loss reserve account for a financial institution shall consist of moneys deposited by the authority and, as applicable, deposited by the qualified borrowers, the financial institution, or any other source.

(c) Notwithstanding any other law, the authority may establish and maintain loss reserve accounts, as provided in subdivision (c) of Section 94157, with any financial institution under any policies the authority may adopt.

(d) All moneys in a loss reserve account established pursuant to this article are the exclusive property of, and solely controlled by, the authority. Interest or income earned on moneys credited to the loss reserve account shall be deemed to be part of the loss reserve account. The authority may withdraw from the loss reserve account all, or a portion of, the interest or other income that has been credited to the loss reserve account. Any withdrawal made pursuant to this subdivision shall be used for the sole purpose of offsetting costs associated with carrying out the program, including administrative costs and loss reserve account contributions.

(e) The combined amount to be deposited by the financial institution into any individual loss reserve account over a three-year period, in connection with any single qualified borrower, shall be not more than seventy-five thousand dollars (\$75,000).

94160. (a) If a financial institution seeks to enroll a qualified loan in the program in order to obtain the protection against loss provided by its loss reserve account, after disclosing relevant qualified loan financial information to the qualified borrower, it shall notify the authority in writing on a form prescribed by the authority, within 15 calendar days after the date on which the qualified loan is made, of all of the following:

- (1) The disbursement of the qualified loan.
- (2) The dollar amount of the qualified loan enrolled.
- (3) The interest rate applicable to, and the term of, the qualified loan.
- (4) The amount of any administrative fee related to the processing of an existing loan or the issuance of a new loan.

(b) The executive director may authorize an additional five days for a financial institution to submit the written notification described in subdivision (a) to the authority on a loan-by-loan basis for a reason limited to conditions beyond the reasonable control of the financial institution.

(c) When making a qualified loan that will be enrolled under the program, the financial institution shall require the qualified borrower to whom the qualified loan is made to pay an administration fee as determined by the authority. The financial institution shall also pay an administration fee in an amount equal to the fee paid by the qualified borrower. The financial institution shall deliver the fees collected under this subdivision to the authority for deposit in the loss reserve account for the financial institution.

94161. (a) The authority shall establish procedures under which financial institutions may submit claims for reimbursement for losses incurred as a result of qualified loan defaults. A financial institution that charges off all or part of a qualified loan to the loss reserve account may file a claim for reimbursement with the authority if all of the following conditions are met:

(1) The claim occurs contemporaneously with the action of the financial institution to charge off all or part of the qualified loan.

(2) The charge off on a qualified loan is made in a manner that is consistent with the financial institution's usual method for making determinations on personal loans that are not qualified loans.

(3) The financial institution has met all of the conditions established by the authority to assist the borrower in making payments prior to filing a claim for reimbursement.

(b) Costs for which a financial institution may be reimbursed from its loss reserve account include the amount of qualified loan principal charged off, accrued interest on the principal, reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including preservation of collateral, and any other related costs. Proper documentation of the expenses, to the satisfaction of the authority, shall be presented at the time of the claim.

(c) If a financial institution files two or more claims contemporaneously, and there are insufficient funds in the loss reserve account at that time to cover the entire amount of such claims, the financial institution may designate the order of priority in which the claims shall be paid.

(d) A financial institution may seek reimbursement of qualified loan losses prior to the liquidation of collateral, if any, from defaulted qualified loans. The financial institution shall repay the loss reserve account for any moneys received as reimbursement under this section if the financial institution recovers moneys from the qualified borrower or from the liquidation of collateral for the defaulted qualified loan, less any reasonable out-of-pocket expenses incurred in collection of this amount.

(e) In any case in which the payment of a claim under this section has fully covered a financial institution's loss on a qualified loan, the financial institution shall assign to the authority any right or title to, or interest in, any collateral, security, or other right of recovery in connection with a qualified loan made under the program.

94162. Notwithstanding Section 10231.5 of the Government Code, the authority shall annually submit a report to the Governor and the Legislature that describes the program's financial condition and its results. Programmatic results described in the report shall include, but not necessarily be limited to, the total number of qualified borrowers served and the dollar amount of qualified loans issued for all new qualified loans issued since the report for the prior year. The report required by this section shall be submitted in accordance with Section 9795 of the Government Code.

94163. The authority may enter into agreements with financial institutions, or with other agencies of the state, to provide necessary assistance in carrying out the program, including origination and servicing of qualified loans.

94164. Notwithstanding the other provisions of this article, the authority may facilitate the development of a secondary market for a qualified loan under the program by providing security for that loan, thereby increasing participation in the program by financial institutions and improving access to qualified borrowers to refinance private student loans. For purposes of this section, the actions that the authority may take include, but are not necessarily limited to, assigning all or a portion of any loss reserve account to any other entity in connection with providing security for a qualified loan, including a trustee of a securitization trust, transferring a qualified loan from a financial institution to a securitization trust, and assisting underwriters in marketing a qualified loan to the secondary market.

94165. The authority may adopt emergency regulations for the implementation of the program. Any emergency regulations that may be adopted by the authority under this section shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.