

Action/Information Item

LOAN ADVISORY COUNCIL

Discussion of the Governor's May Revision Proposal to Sell EDFUND

The Governor, in the May Revision to the 2007-08 Budget, proposed to sell EDFUND in order to generate approximately \$1 billion in one-time revenue to the State. The May Revision included the following statements:

- The student loan guarantee business is not a core mission or competency of State government.
- EDFUND is an inherently valuable asset because the student loan guarantee business is a fundamentally attractive financial venture.
- Selling this non-governmental entity to a private company could produce a significant one-time financial benefit to the state without adversely affecting students.
- Potential buyers of EDFUND will be attracted to the opportunity of acquiring EDFUND's substantial loan guarantee portfolio and brand name.

At the time this agenda was prepared, there was still no 2007-08 State Budget. On July 20, 2007, the State Assembly approved the 2007-08 State Budget and supporting trailer bills, Senate Bills (SB) 89 and 91. However, the State Senate was still in budget negotiations.

Trailer bill SB 89 authorizes the process for the State to consider a sale of the student loan guarantee portfolio and certain assets and liabilities to an entity approved by the United States Education Department. Trailer bill SB 91 repeals existing law governing the establishment and operation of EDFUND and the State's participation in the Federal Family Education Loan Program should the sale take place.

Responsible Staff: Janet McDuffie
Acting Chief
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AMENDED IN ASSEMBLY JULY 20, 2007

AMENDED IN ASSEMBLY JULY 16, 2007

SENATE BILL

No. 89

Introduced by Committee on Budget and Fiscal Review

January 17, 2007

~~An act relating to the Budget Act of 2007. An act to amend Sections 69522, 69526, and 69766 of, and to add Article 2.4 (commencing with Section 69521) to Chapter 2 of Part 42 of Division 5 of Title 3 of, the Education Code, relating to student financial aid, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 89, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2007. Student Financial aid: state student loan guarantee program: assets and liabilities: sale.~~

Existing law establishes the Student Aid Commission as the primary state agency for the administration of state-authorized student financial aid programs available to students attending all segments of postsecondary education. Existing law authorizes the commission to carry out prescribed tasks, and authorizes the commission to establish an auxiliary organization for the purpose of providing operational and administrative services for the commission's participation in the Federal Family Education Loan Program. Under existing law, the operations of the auxiliary organization are required to be conducted in conformity with an operating agreement approved, for a period not to exceed 5 years, by the commission.

This bill would authorize the Director of Finance to act as agent for the state in the sale of the student loan guarantee portfolio and certain

related assets and liabilities of the student loan guarantee program not retained by the commission to an entity approved by the United States Secretary of Education to act as a state student loan guarantee agency for the Federal Family Education Loan Program, and selected by the director, in consultation with the Treasurer, pursuant to a prescribed procedure. The bill would also authorize the Director of Finance to consummate other transactions to maximize the value of the state student loan guarantee program to the state.

The bill would require the director to deposit the net proceeds of any sale of state student loan guarantee program assets and liabilities, or any funds achieved through any other arrangement to maximize the value of the program to the state, into the General Fund.

The bill would appropriate \$300,000 from the General Fund to the Director of Finance for the purposes of obtaining professional advice and counsel related to the sale of the state student loan guarantee program assets and liabilities under the bill.

This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would express the intent of the Legislature to make statutory changes relating to the Budget Act of 2007.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

1 SECTION 1. Article 2.4 (commencing with Section 69521) is
2 added to Chapter 2 of Part 42 of Division 5 of Title 3 of the
3 Education Code, to read:

4
5 Article 2.4. Maximizing the Value of the State Student Loan
6 Guarantee Program Assets and Liabilities

7
8 69521. (a) The Legislature finds and declares both of the
9 following:

10 (1) The student loan guarantee business is not a core mission
11 of government. Recognition of this fact led, in 1996, to the approval
12 of the establishment of an auxiliary organization for the purpose
13 of providing operational and administrative services for the Student
14 Aid Commission’s participation in the Federal Family Education
15 Loan Program.

1 (2) Pursuant to that authority, an auxiliary organization was
2 established to provide, pursuant to contract, certain services to
3 the Student Aid Commission.

4 (b) It is the intent of the Legislature that the value of the
5 auxiliary organization's arrangement with the Student Aid
6 Commission and the Student Aid Commission's participation in
7 the Federal Family Education Loan Program be maximized
8 through either of the following:

9 (1) The sale of the state's interest in the student loan guarantee
10 portfolio of the Student Aid Commission and certain related assets
11 and liabilities of the student loan guarantee program operated by
12 the Student Aid Commission, to a firm approved to act as a state
13 student loan guarantee agency for the Federal Family Education
14 Loan Program by the Secretary of Education.

15 (2) The entry into an arrangement for the operation of the state
16 student loan guarantee program by an entity meeting the financial
17 and compliance standards established for the Federal Family
18 Education Loan Program.

19 69521.2. For the purposes of this article, all of the following
20 definitions apply:

21 (a) "Auxiliary organization" means the organization established
22 pursuant to Article 2.5 (commencing with Section 69522).

23 (b) "Director" means the Director of Finance.

24 (c) "Federal Family Education Loan Program" means the
25 program established pursuant to Part B (commencing with Section
26 1071) of Subchapter IV of Chapter 28 of Title 20 of the United
27 States Code, and includes, but is not necessarily limited to, the
28 Stafford and PLUS loan programs.

29 (d) "Federal Student Loan Reserve Fund" means the fund of
30 that name established pursuant to Section 69766.

31 (e) "Operating agreement" means the agreement entered into
32 between the Student Aid Commission and the auxiliary organization
33 pursuant to Section 69522.

34 (f) "Secretary of Education" means the United States Secretary
35 of Education and the Secretary of Education acting through the
36 United States Department of Education.

37 (g) "State student loan guarantee program" means the activities
38 performed by the Student Aid Commission as a state student loan
39 guarantee agency pursuant to Public Law 94-482, and subsequent
40 federal regulations, as authorized pursuant to Article 13

1 (commencing with Section 69760) or on behalf of the Student Aid
2 Commission by the auxiliary organization.

3 (h) “State student loan guarantee program assets” means all
4 of the assets of the state student loan guarantee program held by
5 the Student Aid Commission and all assets of the auxiliary
6 organization, tangible and intangible, including, without limitation,
7 the state’s interest in all loan guarantee contracts and agreements,
8 the funds deposited in the Student Loan Operating Fund other
9 than federal funds, all funds held by the auxiliary organization
10 other than federal funds, and the state’s interest in any leases of
11 real property or equipment entered into by the auxiliary
12 organization. These assets shall not include any property of the
13 United States held by the Student Aid Commission or the auxiliary
14 organization, as determined pursuant to Public Law 94-482, or
15 subsequent federal regulations.

16 (i) “State student loan guarantee program liabilities” means
17 all of the liabilities of the state student loan guarantee program
18 as determined by the Director of Finance.

19 (j) “Student Loan Operating Fund” means the fund of that name
20 established by Section 69766.

21 (k) “Transferee guarantee agency” means an alternative student
22 loan guarantee agency for the Federal Family Education Loan
23 Program that is the purchaser of the state student loan guarantee
24 program assets and liabilities.

25 (l) “Transferee guaranty program operator” means the entity
26 with which the state enters into an arrangement for the operation
27 of the state student loan guarantee program pursuant to this article.

28 (m) “Treasurer” means the State Treasurer.

29 69521.3. (a) The Director of Finance is hereby authorized to
30 act as agent for the state and, in that capacity, to sell the state
31 student loan guarantee program assets and liabilities not retained
32 by the Student Aid Commission to an entity that the director, in
33 consultation with the Treasurer, determines will provide the best
34 combination of each of the following:

35 (1) The highest price for those state student loan guarantee
36 program assets and liabilities.

37 (2) The greatest security for the payment of the purchase price.

38 (3) Demonstrated competence and professional qualifications
39 necessary for the continued satisfactory performance of student
40 loan guarantee services.

1 (4) *The approval of the Secretary of Education.*

2 (5) *The quality of student services offered, including, but not*
3 *necessarily limited to, borrower training in budgeting and financial*
4 *management, including debt management and other forms of*
5 *financial literacy.*

6 (6) *Borrower transparency or disclosure policies for products*
7 *or services, or both, offered to students outside of the federal*
8 *student loan programs.*

9 (b) *Notwithstanding any other provision of law, the sale process*
10 *shall include the steps the director, in consultation with the*
11 *Treasurer, deems necessary or convenient to achieve the ends set*
12 *forth in this section. The process shall include, but not necessarily*
13 *be limited to, all of the following:*

14 (1) *The satisfaction of criteria established by the director, in*
15 *consultation with the Treasurer, consistent with achieving a*
16 *combination of the best price for those state student loan guarantee*
17 *program assets and liabilities and the continued operation of*
18 *student loan guarantee services for California under the Federal*
19 *Family Education Loan Program. These criteria shall include any*
20 *pertinent requirements of the Secretary of Education.*

21 (2) *A Notice of Request for Qualifications sent by the Director*
22 *of Finance to each firm currently acting as a state student loan*
23 *guarantee agency under the Federal Family Education Loan*
24 *Program and any entity proposed by the Secretary of Education,*
25 *and advertised in the State Contracts Register pursuant to Sections*
26 *14827.1 and 14827.2 of the Government Code. This notice shall*
27 *include a description of the state student loan guarantee program,*
28 *a summary description of the state student loan guarantee program*
29 *assets and liabilities offered for sale, and a description of the due*
30 *diligence review process to provide potential purchasers with*
31 *further information regarding the state student loan guarantee*
32 *program assets and liabilities offered for sale, the selection criteria*
33 *on which the transaction will be based, the submission*
34 *requirements and deadlines, and a Department of Finance contact*
35 *name and telephone number for more information.*

36 (3) *The evaluation by the director, in consultation with the*
37 *Treasurer, of all statements timely submitted in response to the*
38 *Notice of Request for Qualifications sent pursuant to paragraph*
39 *(2), using the criteria contained in the notice, and, based on those*
40 *statements, the establishment of a qualified purchasers list.*

1 69521.4. (a) If, after seeking the advice of, and in active
2 participation with, the Treasurer, the Director of Finance
3 determines that an alternative arrangement to the sale of the state
4 student loan guarantee program assets and liabilities may be
5 financially beneficial to the state, the Director of Finance is also
6 hereby authorized to enter into an arrangement other than that
7 authorized in Section 69521.3, for the purpose of maximizing the
8 value of the state student loan guarantee program assets and
9 liabilities. This arrangement may take any form the director, in
10 consultation with the Treasurer, deems advisable to provide the
11 best combination of each of the following:

12 (1) The greatest value to the General Fund.

13 (2) The greatest financial security for achieving value to the
14 General Fund.

15 (3) The continued satisfactory performance of student loan
16 guarantee services.

17 (4) The approval of the United States Secretary of Education,
18 to the extent required by Public Law 94-482, or subsequent federal
19 regulations.

20 (5) The quality of student services offered, including, but not
21 necessarily limited to, borrower training in budgeting and financial
22 management, including debt management and other forms of
23 financial literacy.

24 (6) Borrower transparency or disclosure policies for products
25 or services, or both, offered to students outside of the federal
26 student loan programs.

27 (b) Notwithstanding any other provision of law, this process
28 shall include the steps the Director of Finance, in consultation
29 with the Treasurer, deems necessary or convenient to achieve the
30 ends set forth in this section. The process shall include, but not
31 necessarily be limited to, all of the following:

32 (1) The satisfaction of the established criteria consistent with
33 achieving a combination of the greatest value to the General Fund
34 and the continued operation of student loan guarantee services
35 for California under the Federal Family Education Loan Program.
36 The criteria shall include any pertinent requirements of the
37 Secretary of Education.

38 (2) A Notice of Request for Qualifications sent by the director
39 to each nonprofit entity currently acting as a state student loan
40 guaranty agency under the Federal Family Education Loan

1 Program, any entity known to the director to be acting as a
2 servicing agent for a state student loan guaranty agency, and any
3 nonprofit entity proposed by the Secretary of Education, and
4 advertised in the State Contracts Register pursuant to Sections
5 14827.1 and 14827.2 of the Government Code. The notice shall
6 include a description of the state student loan guarantee program,
7 a summary description of the state student loan guarantee program
8 assets and liabilities, and a description of the due diligence review
9 process to provide further information regarding the state student
10 loan guarantee program assets and liabilities, the selection criteria
11 on which the transaction will be based, submission requirements
12 and date, and a Department of Finance contact name and phone
13 number for more information.

14 (3) The evaluation by the director, in consultation with the
15 Treasurer, of all statements timely submitted in response to the
16 Notice of Request for Qualifications, using the criteria contained
17 in the notice, and, based on the statements, the establishment of a
18 qualified purchasers list.

19 69521.5. (a) The Director of Finance is authorized to take all
20 actions that he or she deems to be necessary or convenient to
21 accomplish any of the following:

22 (1) To preserve the state student loan guarantee program assets,
23 pending consummation of their sale or the consummation of any
24 other transaction, to maximize the value of the state student loan
25 guarantee program to the state, including, without limitation, as
26 authorized in Sections 69522, 69526, and 69766.

27 (2) To engage in negotiations with, and provide sufficient
28 information regarding the state student loan guarantee assets and
29 liabilities to, potential purchasers or any potential transferee
30 guaranty program operator.

31 (3) To either consummate the sale of, and transfer, the state
32 student loan guarantee program assets and liabilities not retained
33 to the Student Aid Commission to the transferee guarantee agency,
34 or to consummate the agreement with the transferee guaranty
35 program operator.

36 (4) To seek and negotiate with the United States Secretary of
37 Education the designation of any alternative state student loan
38 guarantee agency for California under the Federal Family
39 Education Loan Program or the approval of the Secretary of
40 Education of any transferee guaranty program operator to the

1 extent required by Public Law 94-82, or subsequent federal
2 regulations.

3 (5) To transfer the Federal Student Loan Reserve Fund to any
4 transferee guaranty agency in a manner that is consistent with the
5 intentions of the United States Secretary of Education.

6 (6) To transfer any of the state student loan guarantee program
7 assets in the form of cash or investments not transferred to any
8 transferee guaranty agency or transferee guarantee program
9 operator directly to the General Fund.

10 (7) To retain any state student loan guarantee program assets
11 determined by the director to be necessary or appropriate for the
12 purposes of the Student Aid Commission.

13 (b) In order to accomplish the purposes of this article, the
14 Director of Finance shall do all of the following:

15 (1) Notify the Chairperson of the Joint Legislative Budget
16 Committee and the chairpersons of the Senate and Assembly
17 Budget Committees of the director's determination to proceed with
18 a transaction other than the sale of the state student loan guarantee
19 program assets and liabilities pursuant to Section 69521.3,
20 providing that notice no less than 30 days prior to the
21 consummation of the transaction with the transferee guarantee
22 program operator, or at a later date that the director determines
23 to be most beneficial to the negotiations of the transaction.

24 (2) Upon the consummation of the sale of the state student loan
25 guarantee program assets to a transferee guaranty agency, the
26 Director of Finance shall notify the Secretary of State and the
27 Chairperson of the Joint Legislative Budget Committee.

28 (3) Upon the consummation of a transaction authorized by this
29 article with a transferee guarantee program operator, the Director
30 of Finance shall notify the Secretary of State and the Chairperson
31 of the Joint Legislative Budget Committee.

32 (c) In order to accomplish the purposes of this article:

33 (1) The Student Aid Commission shall cooperate fully with the
34 Director of Finance and, in particular, take all steps to preserve
35 the state student loan guarantee program assets deemed necessary
36 or convenient by the Director of Finance, including, without
37 limitation, as set forth in Sections 69522, 69526, and 69766.

38 (2) The Student Aid Commission shall direct the auxiliary
39 organization to cooperate fully with the director.

1 (3) *Until the consummation of the sale or other transaction to*
2 *maximize the value of the state student loan guarantee program*
3 *to the state, all of the actions, approvals, and directions of the*
4 *Student Aid Commission affecting the state student loan guarantee*
5 *program shall be effective only upon the approval of the Director*
6 *of Finance.*

7 (4) *Notwithstanding any provision of the Nonprofit Public*
8 *Benefit Corporation Law (Part 2 (commencing with Section 5110)*
9 *of Division 2 of Title 1 of the Corporations Code), the auxiliary*
10 *organization shall, as directed by the commission under paragraph*
11 *(2), cooperate fully with the Director of Finance.*

12 69521.6. *Notwithstanding any other provision of law, neither*
13 *the approval of the Attorney General nor of the Director of General*
14 *Services is required for the execution and implementation of the*
15 *sale, lease, conveyance, exchange, transfer, or other disposition*
16 *of the auxiliary organization, any state student loan guarantee*
17 *program assets or liabilities held by the auxiliary organization,*
18 *or any sale or other arrangement authorized by this article.*

19 69521.7. *The state student loan guarantee program assets and*
20 *liabilities shall be transferred to the transferee guarantee agency*
21 *upon the completion of any sale pursuant to this article, and may*
22 *be transferred to the transferee guaranty program operator if*
23 *contemplated by the transaction entered into pursuant to Section*
24 *69521.4.*

25 69521.8. (a) *The Director of Finance shall deposit all proceeds*
26 *of any sale of, or any funds achieved through any other*
27 *arrangement to maximize the value of, the state student loan*
28 *guarantee program assets and liabilities under this article, net of*
29 *any costs related to that transaction, into the General Fund.*

30 (b) *The proceeds of any sale of, or any funds achieved through*
31 *any other arrangement to maximize the value of, the state student*
32 *loan guarantee program assets and liabilities are not “proceeds*
33 *of taxes” as that term is used in subdivision (c) of Section 8 of*
34 *Article XIII B of the California Constitution. The disbursement of*
35 *these proceeds is not subject to the limitations imposed by that*
36 *article.*

37 69521.9. (a) *Notwithstanding any other provision of law, the*
38 *Director of Finance is authorized to enter into an agreement with*
39 *a firm or individual to act as an advisor to the state in the*
40 *transactions contemplated by this article. Section 14838 of the*

1 *Government Code and Article 4 (commencing with Section 10335)*
2 *of Chapter 2 of Part 2 of Division 2 of the Public Contract Code*
3 *does not apply to any agreement entered into by the director with*
4 *an advisor pursuant to this section.*

5 *(b) Notwithstanding any other provision of law, the Director of*
6 *Finance is also authorized to enter into a legal services agreement*
7 *to obtain specialized legal advice related to the transactions*
8 *contemplated by this article. Section 11040 of the Government*
9 *Code and Section 6072 of the Business and Professions Code shall*
10 *not apply to the legal services agreement entered into by the*
11 *director pursuant to this section.*

12 *69521.10. (a) The Director of Finance, in consultation with*
13 *the Treasurer, shall select a firm or individual to provide advisory*
14 *services based on demonstrated competence and professional*
15 *qualifications necessary for the satisfactory performance of the*
16 *services required, in the manner described in this section.*

17 *(b) The Director of Finance and the Treasurer shall establish*
18 *selection criteria for selecting an advisor. The criteria may include,*
19 *but are not necessarily limited to, factors such as professional*
20 *excellence, demonstrated competence, specialized experience in*
21 *performing similar services, education and experience of key*
22 *personnel to be assigned, staff capability, ability to meet schedules,*
23 *nature and quality of similar completed work of the firm or*
24 *individual, reliability and continuity of the firm or individual, and*
25 *other considerations deemed by the director and the Treasurer to*
26 *be relevant and necessary to the performance of advisory services.*

27 *(c) The Director of Finance shall, for the purposes of obtaining*
28 *services under this section, send a Notice of Request for*
29 *Qualifications to firms and individuals in the Treasurer's*
30 *underwriter and financial advisor pools. The director shall publish*
31 *this notice in the State Contracts Register pursuant to Sections*
32 *14827.1 and 14827.2 of the Government Code. The notice shall*
33 *include a description of the advisory services required, the*
34 *selection criteria based on which the contract award will be made,*
35 *submission requirements and deadlines, and a Department of*
36 *Finance contact name and telephone number for more information.*

37 *(d) (1) After the final response date stated in the Notice of*
38 *Request for Qualifications, the Director of Finance and the*
39 *Treasurer shall review the responses submitted, and shall evaluate*
40 *them using the criteria contained in the notice. The director and*

1 *the Treasurer shall rank, in order of preference based on the*
2 *criteria contained in the notice, the firm or individuals determined*
3 *to be qualified to perform the required services.*

4 *(2) The Director of Finance and the Treasurer, or their*
5 *designees, may interview any of the qualified firms or individuals*
6 *regarding the experience and qualifications of those firms or*
7 *individuals, as well as anticipated concepts and the benefits of*
8 *alternative methods of furnishing the required services.*

9 *(e) (1) Following the interviews, if any, held pursuant to*
10 *subdivision (d), the Director of Finance and the Treasurer shall*
11 *adjust the ranking of the qualified individuals or firms to reflect*
12 *those firms or individuals deemed to be the most highly qualified*
13 *to perform the required services.*

14 *(2) The Director of Finance, in consultation with the Treasurer,*
15 *shall enter into negotiations with the firm or individual most highly*
16 *ranked pursuant to paragraph (1). If negotiations are concluded*
17 *successfully, the director shall enter into a contract. If the director,*
18 *in his sole discretion, concludes that the negotiations are*
19 *unsuccessful, the director shall terminate the negotiations, and*
20 *begin new negotiations, in consultation with the Treasurer, with*
21 *the other firms or individuals ranked pursuant to paragraph (1)*
22 *in order of their ranking, and either contract with or terminate*
23 *negotiations with each next most highly ranked firm or individual.*

24 *(3) If, after pursuing the negotiation process set forth in*
25 *paragraph (2), the Director of Finance has been unable to*
26 *negotiate a satisfactory contract at fair and reasonable*
27 *compensation, the director may reinstitute the selection process*
28 *prescribed in this section, commencing with the issuance of a new*
29 *Notice of Request for Qualifications.*

30 *69521.11. (a) The Director of Finance shall notify the Joint*
31 *Legislative Budget Committee in writing upon his or her*
32 *determination that neither the sale nor any other transaction*
33 *authorized by this article is anticipated to achieve the purposes of*
34 *this article.*

35 *(b) The Director of Finance shall cease those activities he or*
36 *she is authorized or directed to undertake pursuant to this article*
37 *and Sections 69522, 69526, and 69766 upon the earlier of:*

38 *(1) The 30th day following written notice by the director to the*
39 *Chairperson of the Joint Legislative Budget Committee pursuant*
40 *to subdivision (a) of this section.*

1 (2) *January 10, 2009.*

2 *SEC. 2. Section 69522 of the Education Code is amended to*
3 *read:*

4 69522. (a) (1) The commission may establish an auxiliary
5 organization for the purpose of providing operational and
6 administrative services for the commission's participation in the
7 Federal Family Education Loan Program, or for other activities
8 approved by the commission and determined by the commission
9 to be all of the following:

10 (A) Related to student financial aid.

11 (B) Consistent with the general mission of the commission.

12 (C) Consistent with the purposes of the federal Higher Education
13 Act of 1965 (Public Law 89-329) and amendments thereto.

14 (2) The activities approved by the commission under this
15 subdivision shall not include either of the following:

16 (A) The issuance of bonds.

17 (B) Loan origination or loan capitalization activities. This
18 paragraph shall not preclude the commission or the auxiliary
19 organization from undertaking other permitted activities that are
20 related to student financial aid in partnership with institutions that
21 conduct loan origination or loan capitalization activities.

22 (b) The auxiliary organization shall be established and
23 maintained as a nonprofit public benefit corporation subject to the
24 Nonprofit Public Benefit Corporation Law in Part 2 (commencing
25 with Section 5110) of Division 2 of Title 1 of the Corporations
26 Code, except that, if there is a conflict between this article and the
27 Nonprofit Public Benefit Corporation Law, this article shall prevail.

28 (c) (1) The commission shall maintain its responsibility for
29 financial aid program administration, policy leadership program
30 evaluation, and information development and coordination. The
31 auxiliary organization shall provide operational and support
32 services essential to the administration of the Federal Family
33 Education Loan Program and other permitted activities that are
34 related to student financial aid, if those services are determined
35 by the commission to be consistent with the overall mission of the
36 commission.

37 (2) *On or after the operative date of Article 2.4 (commencing*
38 *with Section 69521), the commission shall not authorize the*
39 *auxiliary organization to perform any new or additional services*
40 *except those deemed by the Director of Finance to be necessary*

1 *or convenient either for the operation of the state student loan*
2 *guarantee program, as defined in Section 69521.2, or to*
3 *accomplish the goal of maximizing the value of the state student*
4 *loan guarantee program assets and liabilities pursuant to Article*
5 *2.4 (commencing with Section 69521).*

6 ~~(2)~~

7 (3) The implementation and effectuation of the auxiliary
8 organization shall be carried out so as to enhance the administration
9 and delivery of commission programs and services. The
10 commission shall conduct regular performance evaluations of the
11 operation of auxiliary organizations in furtherance of its fiscal and
12 fiduciary responsibilities for approved programs.

13 (d) (1) (A) The operations of the auxiliary organization shall
14 be conducted in conformity with an operating agreement approved
15 annually by the commission. On and after January 1, 2002, the
16 commission may approve an operating agreement for a period not
17 to exceed five years. Prior to approval, the commission shall
18 provide a copy of the proposed operating agreement to the
19 Department of Finance and the Joint Legislative Budget Committee
20 for their review and comment. The operations of the auxiliary
21 organization shall be limited to services prescribed in that
22 agreement.

23 (B) *On or after the operative date of Article 2.4 (commencing*
24 *with Section 69521), the commission shall not approve any*
25 *operating agreement that permits the auxiliary organization to*
26 *perform any new or additional services, except those deemed by*
27 *the Director of Finance to be necessary or convenient either for*
28 *the operation of the state student loan guarantee program, as*
29 *defined in Section 69521.2, or to accomplish the goal of maximizing*
30 *the value of the state student loan guarantee program assets and*
31 *liabilities pursuant to Article 2.4 (commencing with Section 69521).*

32 (2) Prior to approval of any amendment to an existing operating
33 agreement or any new operating agreement with an auxiliary
34 organization or subsidiary auxiliary organization for the purpose
35 of delineating new services or activities authorized pursuant to
36 subdivision (a), the commission shall provide the Director of
37 Finance and the Joint Legislative Budget Committee with at least
38 45 days advance notice in writing that includes a description of
39 the proposed operating agreement. If the Director of Finance or
40 the Joint Legislative Budget Committee notifies the commission

1 regarding issues of concern with the proposed operating agreement,
2 the commission shall convene a meeting of appropriate
3 representatives from the commission, the Department of Finance,
4 and the Legislature to resolve those issues.

5 (e) The commission shall oversee the development and
6 operations of the auxiliary organization in a manner that ensures
7 broad public input and consultation with representatives of the
8 financial aid community, colleges and universities, and state
9 agencies.

10 *SEC. 3. Section 69526 of the Education Code is amended to*
11 *read:*

12 69526. (a) The board of directors shall approve all expenditures
13 and fund authorizations of the auxiliary organization.
14 Authorizations of expenditure of funds for use outside of the
15 normal business operations of the auxiliary organization shall be
16 approved by an officer of the commission and in accordance with
17 commission policy.

18 (b) *On or after the operative date of Article 2.4 (commencing*
19 *with Section 69521), and, notwithstanding any approval by the*
20 *commission or any of its officers or employees or by the board of*
21 *directors made after August 1, 2007, any expenditure of funds held*
22 *by the auxiliary organization for the following purposes shall be*
23 *subject to the prior approval of the Director of Finance:*

24 (1) *Increases in compensation or benefits for officers of the*
25 *auxiliary organization, including discretionary bonuses and*
26 *retention bonuses.*

27 (2) *Outreach programs, public awareness campaigns, or*
28 *diversification of the auxiliary organization's business or data*
29 *processing systems that are not deemed by the Director of Finance*
30 *to be necessary or convenient either for the operation of the state*
31 *student loan guarantee program, as defined in Section 69521.2,*
32 *or to accomplish the purposes of Article 2.4 (commencing with*
33 *Section 69521).*

34 (3) *Activities other than any of the following:*

35 (A) *Those directly related to providing guarantees under the*
36 *Federal Family Education Loan Program, which shall not be*
37 *deemed to include any of the activities set forth in paragraph (2).*

38 (B) *Those required to provide operational support services to*
39 *the commission pursuant to the operating agreement between the*

1 *commission and the auxiliary organization, which shall not be*
2 *deemed to include any of the activities set forth in paragraph (2).*

3 *(C) Those deemed by the Director of Finance to be necessary*
4 *or convenient either for the operation of the state student loan*
5 *guarantee program, as defined in Section 69521.2, or to*
6 *accomplish the purposes of Article 2.4 (commencing with Section*
7 *69521).*

8 ~~(b)~~

9 *(c) The commission, in consultation with the Department of*
10 *Finance and the board of directors of the auxiliary organization,*
11 *shall do all of the following:*

12 *(1) Institute a standard accounting and reporting system for the*
13 *management and operations of the auxiliary organization.*

14 *(2) Implement financial standards that will ensure the fiscal*
15 *viability of the auxiliary organization. The standards shall include*
16 *proper provision for professional management, adequate working*
17 *capital, adequate reserve funds for current operations and capital*
18 *replacements, and adequate provisions for new business*
19 *requirements.*

20 *(3) Institute procedures to ensure that transactions of the*
21 *auxiliary organization are consistent with the mission of the*
22 *commission.*

23 *(4) Develop policies for the expenditure of funds derived from*
24 *indirect cost payments not required to implement paragraph (2).*
25 *The use of those funds shall be regularly reported to the board of*
26 *directors.*

27 ~~(e)~~

28 *(d) The auxiliary organization shall not accept any grant,*
29 *contract, bequest, trust, or gift, unless it is so conditioned that it*
30 *may be used only for purposes consistent with the policies of the*
31 *commission.*

32 *SEC. 4. Section 69766 of the Education Code is amended to*
33 *read:*

34 *69766. (a) The Federal Student Loan Reserve Fund and the*
35 *Student Loan Operating Fund are hereby created in the State*
36 *Treasury. On January 1, 2000, the State Guaranteed Loan Reserve*
37 *Fund shall cease to exist, and funds deposited, or required to be*
38 *deposited in that fund, shall be transferred to the Federal Student*
39 *Loan Reserve Fund or to the Student Loan Operating Fund and*

1 allocated to those funds in accordance with the requirements of
2 federal law.

3 (b) All money received for the purposes of this article from
4 federal, state or local governments, including any money deposited
5 in the State Guaranteed Loan Reserve Fund, or from other private
6 or public sources, shall be deposited in the Federal Student Loan
7 Reserve Fund or the Student Loan Operating Fund and allocated
8 to those funds in accordance with the requirements of federal law.
9 Funds deposited in the Federal Student Loan Reserve Fund or the
10 Student Loan Operating Fund are not part of the General Fund, as
11 defined in Section 16300 of the Government Code. No moneys
12 from the General Fund shall be deposited in the Federal Student
13 Loan Reserve Fund or the Student Loan Operating Fund.

14 (c) The contents of the Federal Student Loan Reserve Fund are
15 federal funds, administered in accordance with federal laws and
16 regulations. The contents of the Student Loan Operating Fund are
17 state funds within the custody and control of the Student Aid
18 Commission.

19 (d) Notwithstanding Section 13340 of the Government Code,
20 all moneys deposited in the Federal Student Loan Reserve Fund
21 and the Student Loan Operating Fund are hereby continuously
22 appropriated, without regard to fiscal years, for purposes of this
23 article. The continuous appropriation made by this section shall
24 be available to assume the obligation under any outstanding budget
25 act appropriation from the State Guaranteed Loan Reserve Fund
26 as it existed prior to January 1, 2000. *On or after the operative
27 date of Article 2.4 (commencing with Section 69521), the
28 expenditure of funds from the Student Loan Operating Fund is
29 subject to the limitations set forth in Sections 69522 and 69526.*

30 (e) The total amount of all outstanding debts, obligations, and
31 liabilities that may be incurred or created under this article or under
32 Article 2.5 (commencing with Section 69522), including any
33 obligation to repay to the United States any funds provided under
34 Title IV of the “Higher Education Act of 1965,” and extensions
35 thereof or amendments thereto, or any similar act of Congress, is
36 limited to the amount contained in the Federal Student Loan
37 Reserve Fund or the Student Loan Operating Fund, and the state
38 shall not be liable to the United States, or to any other person or
39 entity, beyond the amount contained in the Federal Student Loan

1 Reserve Fund or the Student Loan Operating Fund for any debts,
2 obligations, and liabilities.

3 *SEC. 5. The sum of three hundred thousand dollars (\$300,000)*
4 *is hereby appropriated from the General Fund to the Director of*
5 *Finance for the purposes of obtaining professional advice and*
6 *counsel related to the sale of the state student loan guarantee*
7 *program assets and liabilities pursuant to Sections 69521.8 and*
8 *69521.9 of the Education Code.*

9 *SEC. 6. This act is an urgency statute necessary for the*
10 *immediate preservation of the public peace, health, or safety within*
11 *the meaning of Article IV of the Constitution and shall go into*
12 *immediate effect. The facts constituting the necessity are:*

13 *In order to implement provisions of the Budget Act of 2007*
14 *relating to the Student Aid Commission and its auxiliary*
15 *organization at the earliest possible time, it is necessary that this*
16 *act take effect immediately.*

17 ~~SECTION 1. It is the intent of the Legislature to make statutory~~
18 ~~changes relating to the Budget Act of 2007.~~

AMENDED IN ASSEMBLY JULY 20, 2007

AMENDED IN ASSEMBLY JULY 16, 2007

SENATE BILL

No. 91

Introduced by Committee on Budget and Fiscal Review

January 17, 2007

~~An act relating to the Budget Act of 2007. An act to repeal Article 2.5 (commencing with Section 69522) and Article 13 (commencing with Section 69760) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code, relating to student financial aid.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 91, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2007.~~ *Student financial aid.*

Existing law establishes the Student Aid Commission as the primary state agency for the administration of state-authorized student financial aid programs available to students attending all segments of postsecondary education. Existing law authorizes the commission to carry out prescribed tasks, and authorizes the commission to establish an auxiliary organization for the purpose of providing operational and administrative services for the commission's participation in the Federal Family Education Loan Program. Under existing law, the operations of the auxiliary organization are required to be conducted in conformity with an operating agreement approved, for a period not to exceed 5 years, by the commission.

This bill would repeal provisions of existing law relating to the establishment and operation of the auxiliary organization and the state's participation in the Federal Family Education Loan Program if and when the Director of Finance notifies the Secretary of State and the Chairperson of the Joint Legislative Budget Committee that specified

occurrences, related to either a sale of the state student loan guarantee program assets to a transferee guaranty agency, as defined, or a transaction with a transferee guarantee program operator, have been consummated and 30 days elapse after the receipt of the notice.

~~This bill would express the intent of the Legislature to make statutory changes relating to the Budget Act of 2007.~~

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

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

1 *SECTION 1. Article 2.5 (commencing with Section 69522) of*
2 *Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code*
3 *is repealed.*

4 *SEC. 2. Article 13 (commencing with Section 69760) of Chapter*
5 *2 of Part 42 of Division 5 of Title 3 of the Education Code is*
6 *repealed.*

7 *SEC. 3. Section 1 shall not become operative unless and until*
8 *both of the following occur:*

9 *(a) Pursuant to paragraph (2) or (3) of subdivision (b) of Section*
10 *69521.5 of the Education Code, the Director of Finance notifies*
11 *the Secretary of State and the Chairperson of the Joint Legislative*
12 *Budget Committee that either of the following has occurred:*

13 *(1) A sale of the student loan guarantee program assets to a*
14 *transferee guaranty agency within the meaning of paragraph (2)*
15 *of subdivision (b) of Section 69521.5 of the Education Code has*
16 *been consummated.*

17 *(2) A transaction with a transferee guarantee program operator*
18 *within the meaning of paragraph (3) of subdivision (b) of Section*
19 *69521.5 of the Education Code has been consummated.*

20 *(b) Thirty days elapse after the receipt of the notice referred to*
21 *in subdivision (a).*

22 *SEC. 4. Section 2 shall not become operative unless and until*
23 *both of the following occur:*

24 *(a) Pursuant to paragraph (2) of subdivision (b) of Section*
25 *69521.5 of the Education Code, the Director of Finance notifies*
26 *the Secretary of State and the Chairperson of the Joint Legislative*
27 *Budget Committee that a sale of the student loan guarantee*
28 *program assets to a transferee guaranty agency within the meaning*
29 *of that paragraph has been consummated.*

1 **(b)** *Thirty-days elapse after the receipt of the notice referred to*
2 *in subdivision (a).*
3 ~~SECTION 1. It is the intent of the Legislature to make statutory~~
4 ~~changes relating to the Budget Act of 2007.~~

O