

FIRST REGULAR SESSION

HOUSE BILL NO. 197

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KENDRICK.

0478H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 173.385, 173.425, and 173.445, RSMo, and to enact in lieu thereof six new sections relating to the powers and duties of the Missouri higher education loan authority.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 173.385, 173.425, and 173.445, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 173.385, 173.425, 173.441, 173.443, 173.444, and 173.445, to read as follows:

173.385. 1. The authority shall have the following powers, together with all powers incidental thereto or necessary for the performance thereof:

(1) To have perpetual succession as a body politic and corporate;

(2) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(3) To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

(4) To have and to use a corporate seal and to alter the same at pleasure;

(5) To maintain an office at such place or places in the state of Missouri as it may designate;

(6) To issue bonds or other forms of indebtedness to obtain funds to purchase student loan notes or finance student loans, or both, including those which are guaranteed under the provisions of sections 173.095 to 173.187, or under the provisions of the federal Higher Education Act of 1965, as amended, or secondary education loans, or scholarships which have been converted to loans under the Missouri teacher education scholarship program provided for in sections 160.276 to 160.283. Such bonds or other forms of indebtedness shall be payable from and secured by a pledge of revenues derived from or by reason of the ownership of student loan

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 notes or financing of student loans, or both, and investment income or shall be payable from and
18 secured as may be designated in a bond resolution authorized by the authority. Such bonds or
19 other forms of indebtedness shall not constitute a debt or liability of the state of Missouri or of
20 any political subdivision thereof;

21 (7) To cause proceeds of any bond or any other form of indebtedness to be used to
22 purchase student loan notes or finance student loans, or both, including those which are
23 guaranteed under section 173.110, or guaranteed under the federal Higher Education Act of
24 1965, as amended, or secondary education loans, or scholarships which have been converted to
25 loans under the Missouri teacher education scholarship program provided for in sections 160.276
26 to 160.283;

27 **(8) To issue tax-exempt bonds and taxable revenue bonds, including bonds that are**
28 **eligible for federal tax credits, exemptions, or payments;**

29 **(9)** To sell or enter into agreements to sell student loan notes acquired pursuant to
30 subdivision (7) of this section, and any agreement to sell student loan notes guaranteed under
31 section 173.110 shall be subject to prior approval of the department. Such agreements to sell
32 student loan notes shall be limited only by the terms of the bond resolution authorizing the issue
33 of the bonds or other forms of indebtedness, but shall not be limited by any other provision of
34 law limiting the sale of such student loan notes;

35 ~~[(9)]~~ **(10) To issue loans to eligible borrowers to refinance certain public or private**
36 **student loans, as provided under section 173.441;**

37 **(11)** To transfer assets of the authority to the Lewis and Clark discovery fund established
38 in section 173.392;

39 ~~[(10)]~~ **(12)** To accept appropriations, gifts, grants, bequests, and devises and to utilize
40 or dispose of the same to carry out its purpose;

41 ~~[(11)]~~ **(13)** To make and execute contracts, releases, compromises, and other
42 instruments necessary or convenient for the exercise of its powers, or to carry out its purpose;

43 ~~[(12)]~~ **(14)** To collect reasonable fees and charges in connection with making and
44 servicing its loans, notes, bonds, obligations, commitments, and other evidences of indebtedness,
45 and in connection with providing technical, consultative and project assistant services. Such fees
46 and charges shall be used to pay the costs of the authority;

47 ~~[(13)]~~ **(15)** To invest any funds not required for immediate disbursement in obligations
48 of the state of Missouri or of the United States government or any instrumentality thereof, the
49 principal and interest of which are guaranteed by the state of Missouri, or the United States
50 government or any instrumentality thereof, or certificates of deposit or time deposits of federally
51 insured banks, or federally insured savings and loan associations or of insured credit unions, or,
52 with respect to moneys pledged or held under a trust estate or otherwise available for the owners

53 of bonds or other forms of indebtedness, any investment authorized under the bond resolution
54 governing the security and payment of such obligations or repurchase agreements for the
55 specified investments;

56 ~~[(14)]~~ **(16)** To acquire, hold and dispose of personal property to carry out its purposes;

57 ~~[(15)]~~ **(17)** To enter into agreements or other transactions with any federal or state
58 agency, any person and any domestic or foreign partnership, corporation, association or
59 organization;

60 ~~[(16)]~~ **(18)** To take any necessary actions to be qualified to issue tax-exempt bonds or
61 other forms of tax-exempt indebtedness pursuant to the applicable provisions of the Internal
62 Revenue Code of 1986, as amended, including the issuance of such bonds to fulfill the
63 obligations of the authority under subsection 2 of this section;

64 ~~[(17)]~~ **(19)** To take any necessary actions to be qualified to issue bonds or other forms
65 of indebtedness, the interest on which is not exempt from federal income taxation, including the
66 issuance of such bonds to fulfill the obligations of the authority under subsection 2 of this
67 section;

68 ~~[(18)]~~ **(20)** To service student loans for any owner thereof, regardless of whether such
69 student loans are originated in this state or out of this state;

70 ~~[(19)]~~ **(21)** To create, acquire, contribute to, or invest in any type of financial aid
71 program that provides grants and scholarships to students.

72 2. The authority shall distribute three hundred fifty million dollars of assets of the
73 authority to the Lewis and Clark discovery fund established in section 173.392 as follows: two
74 hundred thirty million dollars no later than September 15, 2007; five million dollars by
75 December 31, 2007; and five million dollars each quarter thereafter ending September 30, 2013.
76 Any investment earnings on the moneys in the Lewis and Clark discovery fund shall be credited
77 against the next distribution by the authority and shall thereby reduce the amount of any such
78 distribution by the authority. The authority shall make any distributions to the Lewis and Clark
79 discovery fund pursuant to the dates scheduled in this subsection, provided, however, that the
80 date of any such distribution may be delayed by the authority if the authority determines that any
81 such distribution may materially adversely ~~[effect]~~ **affect** the services and benefits provided
82 Missouri students or residents in the ordinary course of the authority's business, the borrower
83 benefit programs of the authority, or the economic viability of the authority. Notwithstanding
84 the ability of the authority to delay any distribution required by this subsection, the distribution
85 of the entire three hundred fifty million dollars of assets by the authority to the Lewis and Clark
86 discovery fund shall be completed no later than September 30, 2013, unless otherwise approved
87 by the authority and the commissioner of the office of administration.

88 3. No member of the authority who lawfully acts or votes on any agreement or other
89 matter authorized under the powers granted to the authority under this section shall incur any
90 personal liability as a result of such lawful deliberations, acts, or votes, and such members shall
91 be immune from suit for such deliberations, acts, or votes. In no event shall such deliberations,
92 acts, or votes constitute a conflict of interest under section 173.380.

93 4. Notwithstanding any provision of law to the contrary, in the event of the initial
94 distribution of two hundred thirty million dollars of assets by the authority to the Lewis and
95 Clark discovery fund created in section 173.392, the director of the department of economic
96 development shall allocate to and reserve for the authority during the year of such first
97 distribution and in at least each of the next fourteen years thereafter a percentage of the state
98 ceiling under sections 108.500 to 108.532, which percentage shall at a minimum be equal to one
99 and one-half percent less than the average percentage of the authority's allocation of state ceiling
100 for the two calendar years 2005 and 2006 calculated annually. The dollar amount of state ceiling
101 to be received by the authority as determined under the provisions of this subsection for calendar
102 year 2014 and later years, not to exceed calendar year 2021, shall be reduced in any calendar year
103 by the percentage of the three hundred fifty million dollars not yet distributed by the authority
104 to the Lewis and Clark discovery fund by the preceding calendar year end.

 173.425. No asset of the authority shall be considered to be part of the revenue of the
2 state within the meaning of Article III, Section 36, of the Constitution of Missouri, and no asset
3 of the authority shall be required to be deposited into the state treasury, and no asset of the
4 authority shall be subject to appropriation by the general assembly, except for those amounts
5 distributed by the authority to the Lewis and Clark discovery fund pursuant to subdivision [~~(9)~~]
6 **(11)** of subsection 1 of section 173.385. The assets of the authority shall remain under the
7 exclusive control and management of the authority to be used as required pursuant to sections
8 173.350 to [~~173.450~~] **173.445**, except for those amounts distributed by the authority to the Lewis
9 and Clark discovery fund pursuant to subdivision [~~(9)~~] **(11)** of subsection 1 of section 173.385.
10 Student loan notes purchased or financed shall not be considered to be public property.

**173.441. 1. Beginning January 1, 2020, the authority may issue loans to eligible
2 borrowers to refinance eligible public or private student loans; provided that, the amount
3 of the refinancing loan does not exceed the outstanding aggregate principal amount of the
4 original loan.**

5 **2. For purposes of this section, a borrower eligible for refinancing is either:**

6 **(1) An individual who has graduated from an accredited institution of higher
7 education who holds a minimum of an associate's degree and is a resident of the state of
8 Missouri; or**

9 **(2) A parent or guardian of a graduate of an institution of higher education who**
10 **received or agreed to pay an educational loan on behalf of a graduate who holds a**
11 **minimum of an associate's degree, provided that both the graduate and the parent or**
12 **guardian in whose name the loan is held shall be residents of the state of Missouri.**

13 **3. For purposes of this section, "eligible public or private student loans" means any**
14 **loans that are in repayment that were either made by the authority or made to a borrower**
15 **by any other private or governmental lender to finance attendance at any accredited**
16 **institution of higher education in any state.**

173.443. 1. Notwithstanding any other provision of law, the authority may issue
2 **bonds, notes, or other obligations, the interest on which may be included in the gross**
3 **income of the holder or holders of such bonds, notes, or obligations under the Internal**
4 **Revenue Code of the United States, as amended, to the same extent and in the same manner**
5 **as interest on bills, notes, bonds, or other obligations of the United States is included in the**
6 **gross income of the holder or holders of such bonds, notes, or other obligations under this**
7 **section that may be eligible for tax credits or exemptions or payments from the federal**
8 **government, or any other desired federal income tax treatment of such bonds, notes, or**
9 **other obligations. Any such bonds, notes, or other obligations shall be issued only upon**
10 **a finding by the authority that such issuance is necessary, is in the public interest, and is**
11 **in furtherance of the purposes and powers of the authority.**

12 **2. Bonds issued by the authority shall bear such rate or rates of interest not to**
13 **exceed fifteen percent per annum and shall mature at such time or times within forty years**
14 **from the date thereof, as the authority determines. The bonds may be either serial bonds**
15 **or term bonds.**

16 **3. Serial bonds may be issued with or without the reservation of the right to call**
17 **them for payment and redemption in advance of their maturity, upon the giving of such**
18 **notice, and with or without a covenant requiring the payment of a premium in the event**
19 **of such payment and redemption prior to maturity, as the authority determines.**

20 **4. Term bonds shall contain a reservation of the right to call them for payment and**
21 **redemption prior to maturity at such time or times and upon the giving of such notice and**
22 **upon the payment of such premium, if any, as the authority determines.**

23 **5. The bonds, when issued, shall be sold at public sale for the best price obtainable**
24 **after giving such reasonable notice of such sale as may be determined by the board, but in**
25 **no event shall such bonds be sold for less than ninety-eight percent of the par value thereof**
26 **and accrued interest. Any such bonds may be sold to the United States of America or to**
27 **any agency or instrumentality thereof, at a price not less than par and accrued interest,**
28 **without public sale and without the giving of notice as herein provided.**

29 **6. The bonds, when issued and sold, shall be negotiable instruments within the**
30 **meaning of the law merchant and the negotiable instruments law, and the interest thereon**
31 **shall be exempt from income taxes under the laws of the state of Missouri.**

173.444. The department of higher education may promulgate all necessary rules
2 **and regulations for the administration of sections 173.441 and 173.443. Any rule or**
3 **portion of a rule, as that term is defined in section 536.010, that is created under the**
4 **authority delegated in this section shall become effective only if it complies with and is**
5 **subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This**
6 **section and chapter 536 are nonseverable, and if any of the powers vested with the general**
7 **assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove**
8 **and annul a rule are subsequently held unconstitutional, then the grant of rulemaking**
9 **authority and any rule proposed or adopted after August 28, 2019, shall be invalid and**
10 **void.**

 173.445. The higher education loan authority is assigned to the department of higher
2 education. The authority shall annually file with the director of said department a report of its
3 previous year's income, expenditures and bonds or other forms of indebtedness issued and
4 outstanding. **For reports filed after January 1, 2020, the report shall also include**
5 **information about loans refinanced under section 173.441 including, but not limited to, the**
6 **number of applications received, number of students assisted, and aggregate dollars**
7 **expended.**

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