

FIRST REGULAR SESSION

# SENATE BILL NO. 228

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRAHAM.

Read 1st time January 8, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1122S.011

## AN ACT

To repeal sections 173.355, 173.360, 173.385, and 173.425, RSMo, and to enact in lieu thereof seven new sections relating to the higher education loan authority.

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

Section A. Sections 173.355, 173.360, 173.385, and 173.425, RSMo, are  
2 repealed and seven new sections enacted in lieu thereof, to be known as sections  
3 173.355, 173.360, 173.385, 173.386, 173.388, 173.389, and 173.425, to read as  
4 follows:

173.355. As used in sections 173.350 to 173.450, the following terms  
2 mean:

3 (1) "Asset of the authority", any asset or investment of any kind  
4 owned by the authority, including, but not limited to, any student loan,  
5 any income or revenues derived from any asset or investment owned by  
6 the authority, any funds, income, fees, revenues, proceeds of all bonds  
7 or other forms of indebtedness, and proceeds of the sale or liquidation  
8 of any such asset or investment;

9 (2) "Authority", the Missouri higher education loan authority;

10 [(2)] (3) "Board", the Missouri coordinating board for higher education;

11 [(3)] (4) "Bond resolution", any indenture, resolution or other financing  
12 document pursuant to which revenue bonds, notes or other forms of indebtedness  
13 of the authority are issued or secured;

14 [(4)] (5) "Commissioner", the Missouri commissioner of higher education;

15 [(5)] (6) "Department", the Missouri department of higher education;

16 (7) "Public colleges and universities", any public community  
17 college, public college, or public university located in the state of

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 **Missouri;**

19           [(6)] (8) "Secondary education loans", loans or notes originated by banks,  
20 other financial institutions, secondary education institutions or the authority, the  
21 proceeds of which are to be used to pay tuition for students enrolling for either  
22 junior or senior year at a secondary school which is accredited in accordance with  
23 applicable state law. Such loans shall be available only to the parents or  
24 guardians of those students who undertake courses of instruction for which  
25 postsecondary school course credit may be awarded. Loan proceeds will not be  
26 available for any secondary school instruction which is sectarian in nature.

173.360. In order that all eligible postsecondary education  
2 students have access to student loans that are guaranteed or insured, or both,  
3 **and in order to support funding of scholarships to public colleges and**  
4 **universities for eligible postsecondary education students, and in order**  
5 **to support the efforts of public colleges and universities to create and**  
6 **fund endowed professorships and fund capital projects,** there is hereby  
7 created a body politic and corporate to be known as the "Higher Education Loan  
8 Authority of the State of Missouri". The authority is hereby constituted a public  
9 instrumentality and body corporate, and the exercise by the authority of the  
10 powers conferred by sections 173.350 to 173.450 shall be deemed to be the  
11 performance of an essential public function. The authority shall consist of seven  
12 members, five of whom shall be appointed by the governor by and with the advice  
13 and consent of the senate, each of whom shall be a resident of the state; and a  
14 member of the coordinating board; and the commissioner of higher education. In  
15 making appointments to the authority, the governor shall take into consideration  
16 nominees recommended to him for appointment by the chairman of the  
17 coordinating board. Two of the appointed members shall be representatives of  
18 higher education institutions, one public and one private, in Missouri, two of the  
19 appointed members shall be representatives of lending institutions in Missouri,  
20 and one of the appointed members shall be representative of the public. The  
21 members of the authority first appointed by the governor shall be appointed to  
22 serve for terms of one, two, three, four and five years, respectively, from the date  
23 of appointment, or until their successors shall have been appointed and shall  
24 have qualified. The initial term of each member is to be designated by the  
25 governor at the time of making the appointment. Upon the expiration of the  
26 initial terms of office, successor members shall be appointed for terms of five  
27 years and shall serve until their successors shall have been appointed and shall

28 have qualified. Any member shall be eligible for reappointment. The governor  
29 shall fill any vacancy in the authority for the members he appoints for the  
30 remainder of the unexpired term. Any member of the authority may be removed  
31 by the governor for misfeasance, malfeasance, willful neglect of duty, or other  
32 cause after notice and a public hearing unless the notice or hearing shall be  
33 expressly waived in writing.

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

- 3 (1) To have perpetual succession as a body politic and corporate;
- 4 (2) To adopt bylaws for the regulation of its affairs and the conduct of its  
5 business;
- 6 (3) To sue and be sued and to prosecute and defend, at law or in equity,  
7 in any court having jurisdiction of the subject matter and of the parties;
- 8 (4) To have and to use a corporate seal and to alter the same at pleasure;
- 9 (5) To maintain an office at such place or places in the state of Missouri  
10 as it may designate;
- 11 (6) To issue bonds or other forms of indebtedness to obtain funds to  
12 purchase student loan notes or finance student loans, or both, including those  
13 which are guaranteed under the provisions of sections 173.095 to 173.187, or  
14 under the provisions of the federal Higher Education Act of 1965, as amended, or  
15 secondary education loans, or scholarships which have been converted to loans  
16 under the Missouri teacher education scholarship program provided for in  
17 sections 160.276 to 160.283, RSMo. Such bonds or other forms of indebtedness  
18 shall be payable from and secured by a pledge of revenues derived from or by  
19 reason of the ownership of student loan notes or financing of student loans, or  
20 both, and investment income or shall be payable from and secured as may be  
21 designated in a bond resolution authorized by the authority. Such bonds or other  
22 forms of indebtedness shall not constitute a debt or liability of the state of  
23 Missouri or of any political subdivision thereof;
- 24 (7) To cause proceeds of any bond or any other form of indebtedness to be  
25 used to purchase student loan notes or finance student loans, or both, including  
26 those which are guaranteed under section 173.110, or guaranteed under the  
27 federal Higher Education Act of 1965, as amended, or secondary education loans,  
28 or scholarships which have been converted to loans under the Missouri teacher  
29 education scholarship program provided for in sections 160.276 to 160.283, RSMo;
- 30 (8) To sell [or], **liquidate, and** enter into agreements to sell **or**

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

38 (9) **To sell, liquidate, and enter into agreement to sell or liquidate**  
39 **any asset of the authority, to carry out its purposes;**

40 (10) **To cause any asset of the authority to be used in any manner**  
41 **to carry out the purposes of the authority;**

42 (11) **To distribute any asset of the authority to the Missouri**  
43 **higher education fund established in section 173.388, to carry out the**  
44 **purposes of the authority;**

45 (12) To accept appropriations, gifts, grants, bequests, and devises and to  
46 utilize or dispose of the same to carry out its purpose;

47 [(10)] (13) To make and execute contracts, releases, compromises, and  
48 other instruments necessary or convenient for the exercise of its powers, or to  
49 carry out its purpose;

50 [(11)] (14) To collect reasonable fees and charges in connection with  
51 making and servicing its loans, notes, bonds, obligations, commitments, and other  
52 evidences of indebtedness, and in connection with providing technical,  
53 consultative and project assistant services. Such fees and charges shall be used  
54 to pay the costs of the authority;

55 [(12)] (15) To invest any funds not required for immediate disbursement  
56 in obligations of the state of Missouri or of the United States government or any  
57 instrumentality thereof, the principal and interest of which are guaranteed by the  
58 state of Missouri, or the United States government or any instrumentality  
59 thereof, or certificates of deposit or time deposits of federally insured banks, or  
60 federally insured savings and loan associations or of insured credit unions, or,  
61 with respect to moneys pledged or held under a trust estate or otherwise  
62 available for the owners of bonds or other forms of indebtedness, any investment  
63 authorized under the bond resolution governing the security and payment of such  
64 obligations or repurchase agreements for the specified investments;

65 [(13)] (16) To acquire, hold and dispose of personal property [for] to  
66 **carry out** its purposes;

67            [(14)] (17) To enter into agreements or other transactions with any  
68 federal or state agency, any person and any domestic or foreign partnership,  
69 corporation, association or organization;

70            [(15)] (18) To take any necessary actions to be qualified to issue  
71 tax-exempt bonds or other forms of tax-exempt indebtedness pursuant to the  
72 applicable provisions of the Internal Revenue Code of 1986, as amended;

73            [(16)] (19) To take any necessary actions to be qualified to issue bonds  
74 or other forms of indebtedness, the interest on which is not exempt from federal  
75 income taxation;

76            [(17)] (20) To service student loans for any owner thereof, regardless of  
77 whether such student loans are originated in this state or out of this state.

**173.386. Notwithstanding any other provision of law, the  
2 authority shall not have the power or authority to cause any asset of  
3 the authority to be used for the payment of debt incurred by the state  
4 or any public college or university, and the authority shall not have the  
5 power or authority to distribute any asset of the authority to any fund  
6 of the state of Missouri, or any other entity, for the purpose of payment  
7 of debt incurred by the state or any public college or university.**

**173.388. 1. There is hereby created in the state treasury a fund  
2 to be administered by the department of higher education to be known  
3 as the "Missouri Higher Education Fund". The state treasurer shall  
4 deposit to the credit of the fund all moneys which may be distributed  
5 to it by the authority, appropriated to it by the general assembly, and  
6 any gifts, contributions, grants or bequests received from federal,  
7 private or other sources for deposit into the fund. The moneys in the  
8 fund shall only be used to carry out the purposes of the authority. The  
9 moneys in the fund may be appropriated by the general assembly, but  
10 only for any purpose enumerated in subsection 2 of this section. None  
11 of the moneys in the fund shall be considered state funds unless and to  
12 the extent such moneys are appropriated by the general assembly.**

**13            2. The general assembly may annually appropriate moneys from  
14 the Missouri higher education fund only for the following purposes:**

**15            (1) To provide access to student loans that are guaranteed or  
16 insured, or both;**

**17            (2) To support funding of scholarships to public colleges and  
18 universities for eligible postsecondary education students;**

**19            (3) To support the efforts of public colleges and universities to**

20 create and fund endowed professorships;

21 (4) To support funding of capital projects at public colleges and  
22 universities, except such funding shall not be used for the purpose of  
23 payment of debt incurred by any such public college or university.

24 3. Moneys in the fund shall be invested by the state treasurer in  
25 the manner prescribed by law for investment of general revenue funds  
26 and any interest earned on invested moneys shall accrue to the benefit  
27 of the Missouri higher education fund. Notwithstanding the provisions  
28 of section 33.080, RSMo, to the contrary, moneys in the Missouri higher  
29 education fund shall not revert to the credit of the general revenue  
30 fund at the end of the biennium.

173.389. 1. Any money appropriated by the general assembly  
2 from the Missouri higher education fund and used by the recipient in  
3 violation of section 173.386 or section 173.388, shall thereby be a  
4 liability of the recipient to the credit of the Missouri higher education  
5 fund and the recipient shall remit all such money to the Missouri  
6 higher education fund. In the event the recipient of such appropriated  
7 funds is liable to remit the appropriated funds back to the Missouri  
8 higher education fund, pursuant to this section, such recipient shall  
9 also be liable to remit interest on the amount due to the  
10 fund. Beginning on the date of receipt of such appropriated funds by  
11 the recipient, such outstanding funds shall accrue interest at the rate  
12 of one percent per month until the principal and all accrued interest  
13 is remitted in full to the fund. The recipient shall remit all principal  
14 of and interest on such misused funds to the state treasurer for deposit  
15 into the Missouri higher education fund.

16 2. In addition to any other provision of law, the department of  
17 higher education shall have the authority to enforce the provisions of  
18 sections 173.386, 173.388, and 173.389.

173.425. [The proceeds of all bonds or other forms of indebtedness issued  
2 by the authority and of all fees permitted to be charged by the authority and of  
3 other revenues derived shall not] **No asset of the authority shall be**  
4 considered to be part of the revenue of the state within the meaning of article III,  
5 section 36, of the Constitution of Missouri, [shall not] **and no asset of the**  
6 **authority shall** be required to be deposited into the state treasury, and [shall  
7 not] **no asset of the authority shall** be subject to appropriation by the general  
8 assembly, **except for those amounts distributed by the authority to the**

9 **Missouri higher education fund pursuant to subdivision (11) of section**  
10 **173.385.** The [proceeds, fees, and revenue] **assets of the authority** shall  
11 remain under the exclusive control and management of the authority to be used  
12 as required pursuant to sections 173.350 to 173.450, **except for those amounts**  
13 **distributed by the authority to the Missouri higher education fund**  
14 **pursuant to subdivision (11) of section 173.385.** Student loan notes  
15 purchased or financed shall not be considered to be public property.

✓  
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Bill

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