

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2272 (Low) – As Introduced February 16, 2022

SUBJECT: Postsecondary education: California Educational Facilities Authority.

SUMMARY: Makes changes to the California Educational Facilities Authority (CEFA) Act. Specifically, **this bill:**

- 1) Amends the CEFA Act to authorize the financing of working capital loans to a participating independent college by the CEFA, as specified.
- 2) Defines “working capital” as maintenance or operation expenses or any other costs that would be treated as an expense item, under generally accepted accounting principles, in connection with the ownership or operation of an educational facility, faculty or staff housing, student housing, or any combination thereof, including, but not limited to, reserves for maintenance or operation expenses, interest on any loan for working capital made pursuant to this part, and reserves for debt service with respect to, and any costs necessary or incidental to, that financing.
- 3) Makes technical, clarifying, and conforming changes to existing law.

EXISTING LAW:

- 1) Stipulates that public higher education in the state consists of (1) the California Community Colleges (CCC), (2) the California State University (CSU), and each campus, branch, and function thereof, and (3) each campus, branch, and function of the University of California (UC). Defines “independent institutions of higher education” as those nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in this state and are accredited by an agency recognized by the United States Department of Education (Education Code (EC) Section 66010, et seq.).
- 2) Establishes the CEFA Act and the CEFA to, in part:
 - a) Provide private institutions of higher education within the state with an additional means by which to expand, enlarge, and establish dormitory, academic, and related facilities, to finance those facilities, and to refinance existing facilities; and,
 - b) Enter into agreements with nonprofit entities, as defined, to develop student, faculty, and staff housing on near the campuses of the UC, the Hastings College of the Law, the CSU, the CCC, or a participating private college, as specified.

The CEFA Act authorizes the CEFA to fund, as specified, and to construct, acquire, or otherwise provide projects for these purposes. The CEFA Act defines “projects” for a participating private college to mean a dormitory, an educational facility, or faculty or staff housing, and defines “projects” for a participating nonprofit entity to mean the construction or acquisition of student housing or faculty and staff housing.

Further, the CEFA Act requires, in part, that a project involving a participating nonprofit entity include and maintain for 40 years, a restriction to the grant deed on the real property on which the student, faculty, or staff housing is to be located, with specified rights for the participating institution and its students, faculty, or staff (EC Section 94110, et seq.).

FISCAL EFFECT: Unknown

COMMENTS: *Need for the measure.* According to the author, “AB 2272 will provide a critical financing tool to private, nonprofit institutions of higher learning by allowing the CEFA to finance working capital loans and bonds separately from larger capital projects.”

The author contends that, “CEFA loans and bonds can provide short-term and long-term relief to private, nonprofit colleges and universities financially affected by the impact of COVID-19. However, due to the restrictions currently in the CEFA Act limiting working capital financings to components of larger capital project financings, no such financing has been possible.”

Further, the author states, “With the deleterious financial effects of COVID-19, CEFA needs the ability to finance working capital loans and bonds for private, nonprofit institutions of higher learning to help them continue to provide services to students until they are able to resume normal operations.”

The CEFA Act precludes CEFA from providing working capital financing unless it is part of a larger capital project. This restriction does not exist for other financing entities housed within the State Treasurer’s Office. For example, the California Health Facilities Financing Authority (CHFFA) has the ability to issue working capital loans and bonds. The CHFFA issued short-term direct loans to a variety of health facilities in order to provide them with working capital, which has proved to be a much-needed financial tool during the COVID-19 pandemic.

The author contends that the CEFA needs the ability to finance working capital loans and bonds for independent institutions of higher learning to help them continue to provide services to students until they are able to fully resume normal operations. Codifying this measure will ensure CEFA has parity with its sister financing entity, the CHFFA, while also ensuring California’s independent colleges and universities have the resources they need should another pandemic or catastrophic event take place.

This measure, in part, will authorize CEFA to issue working capital loans and bonds separately from larger capital projects.

Under federal tax law, it is possible to issue long-term tax-exempt bonds to finance working capital, including funding to address a temporary cash flow or operating deficit, such as those arising because of the COVID-19 pandemic and extraordinary, nonrecurring items that are not customarily payable from current revenue. Many types of unanticipated expenses, such as COVID-19 expenditures, fit into the latter category. However, the current CEFA Act includes restrictions that *prevent* CEFA from issuing long-term tax-exempt revenue bonds for working capital purposes separate from any capital project.

The CEFA. Established in 1973, the CEFA operates pursuant to the CEFA Act. The CEFA, housed in the California State Treasurer’s Office, was created for issuing revenue bonds to assist private non-profit (independent) institutions of higher education, in the expansion and

construction of educational facilities. Because the CEFA is authorized to issue tax-exempt bonds, the CEFA may provide more favorable financing to such independent institutions than might otherwise be obtainable.

Existing law specifically provides that bonds issued under the CEFA Act shall not be a debt, liability, or claim on the faith and credit or the taxing power of the State of California, or any of its political subdivisions. The full faith and credit of the participating institution is normally pledged to the payment of the bonds.

Presently, the CEFA issues tax-exempt conduit revenue bonds and may loan the proceeds to a private college (as defined in law) or nonprofit entity in order to acquire or construct certain projects. A revenue bond guarantees repayment solely from the revenues generated from the project being financed, rather than from a tax. On February 25, 2021, California State Treasurer Fiona Ma announced CEFA's approval of the sale of up to \$68 million in revenue bonds for Chapman University. The proceeds of the bonds will be used by Chapman to refund its prior debt issued through CEFA, as well as to fund the costs of issuance.

Other recent CEFA-approved projects include: 1) Art Center College of Design's request to issue up to \$35 million in fixed-rate, tax-exempt bonds. The bond proceeds were used to finance construction and renovation projects located at their Hillside and South campuses. CEFA approved the issuance of these bonds on January 12, 2022; 2) Stanford University's request to issue up to \$300.4 million in fixed-rate, tax-exempt bonds. The bond proceeds were used to finance the construction, renovation, equipping, and furnishing of educational facilities located on the main campus as well as to pay the remaining outstanding CEFA Series U-5 Bonds. CEFA approved the issuance of these bonds on March 25, 2021; and, 3) Chapman University's request to issue up to \$68 million in fixed-rate, tax-exempt bonds. The bond proceeds were used to refund outstanding CEFA Series 2011 Bonds. The refunding of these bonds will provide Chapman with a net present value savings of approximately \$13.8 million. The CEFA approved the issuance of these bonds on February 25, 2021.

In addition to its bond financing program, CEFA helps students finance the cost of attendance of college through its College Access Tax Credit Fund and has the ability to develop housing through nonprofit public-private partnership (P3) agreements.

Since 1976, the CEFA has issued 382 bonds in a cumulative amount of \$14.4 billion for the benefit of 59 colleges and universities. Committee Staff understands that over the last ten years, the CEFA has provided funding for at least ten independent colleges and universities to build over 43 residence halls.

Arguments in support. According to the State Treasurer, Fiona Ma, sponsor of this measure, "Currently, the CEFA Act only allows the provision for working capital financing as part of a larger capital financing, such as a facility construction or renovation. However, when COVID-19 first arose in the state, colleges and universities had a difficult time paying for short-term obligations, like salaries or the purchase of personal protective equipment and tests."

The State Treasurer contends that, "Working capital financings could have provided a tool to pay for these expenses. Since most colleges and universities are in the bond market for capital projects sporadically, it is not reasonable to wait to include working capital financing in capital project bonds when costs are incurring, and revenues are falling now."

Further, the State Treasurer states, “Providing private, nonprofit colleges and universities with access to working capital financing provides them with a financing tool that allows them to continue operating through financial stress.”

Related legislation. AB 1602 (McCarty, et al.), of 2022, which passed unanimously out of this Committee on March 15, 2022, establishes the California Student Housing Revolving Loan Fund Act of 2022 (the Act) to provide zero-interest loans to qualifying applicants of the University of California, the California State University, and the California Community Colleges for the purpose of constructing affordable student, faculty, and staff housing; establishes the California Student Housing Revolving Fund (the Fund) as a continuously appropriated fund in the State Treasury; and, establishes that the Legislature intends to appropriate, in the annual Budget Act, the sum of \$5 billion, to be deposited in the created Fund.

Expansion of CEFA authority and financing eligibility. In recent history, this Committee has heard and passed several bills which have expanded the authority of the CEFA and its financing eligibility, including the following:

- 1) AB 635 (Low) of 2021, which was held on the Suspense File in the Assembly Appropriations Committee, was similar in nature to this measure.
- 2) AB 2484 (Low) of 2020, which was held at the request of the author in the Assembly Appropriations Committee, sought to change to the CEFA Act to enable public colleges and universities to use the CEFA bonding authority for student, faculty, or staff housing projects. The measure also broadened the allowable range of projects that could use CEFA’s authority to include any type of educational facility.
- 3) AB 1668 (Wieckowski), Chapter 154, Statutes of 2014, which allowed the CEFA to accept loan proceeds or issue other evidences of indebtedness necessary to allow for private placement loans.
- 4) AB 1163 (Brownley), Chapter 281, Statutes of 2011, which changed the definition of a “participating private college” or “participating college” to allow CEFA to act as a conduit issuer of tax exempt bonds for private religious colleges, as specified.
- 5) SB 280 (Scott), Chapter 345, Statutes of 2007, which modified the definition of “participating college” to maintain the eligibility of research organizations that did not grant degrees for CEFA financing, if they had received CEFA financing in the past.
- 6) AB 947 (Liu), Chapter 191, Statutes of 2005, which expanded the definition of a “private college,” for purposes of CEFA financing eligibility, to include nonprofit affiliates, as specified, of nonprofit private or independent degree-granting accredited colleges.
- 7) SB 1624 (Romero), Chapter 1081, Statutes of 2002, which authorized the CEFA to finance the construction of faculty and staff housing owned by private colleges, as specified, and authorized CEFA to use up to \$2 million of its fund balance, on a one-time basis, to provide grants to private colleges to support academic assistance programs to middle and high school pupils attending schools in low-income areas with low college going rates, as specified.

- 8) AB 1611 (Keeley), Chapter 569, Statutes of 2001, which authorized the CEFA to enter into agreements with nonprofit entities to finance construction costs for student, faculty, and staff housing near the campuses of the UC, the Hastings College of Law, the CSU, the CCC, or participating private colleges.

REGISTERED SUPPORT / OPPOSITION:**Support**

Association of Independent California Colleges & Universities
California State Treasurer (Sponsor)

Opposition

None on file.

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