

## **Agenda Page 371, Issue 066 Trailer Bill Language for EdFund Sale**

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### **LAO Compromise (Part 42, Chapter 2, Article 2.4 of Education Code):**

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

- (1) The highest price for those state student loan guarantee program assets and liabilities.
- (2) The greatest security for the payment of the purchase price.
- (3) Demonstrated competence and professional qualifications necessary for the continued satisfactory performance of student loan guarantee services.
- (4) The approval of the Secretary of Education.
- (5) The quality of student services offered, including, but not necessarily limited to, borrower training in budgeting and financial management, including debt management and other forms of financial literacy.
- (6) Borrower transparency or disclosure policies for products or services, or both, offered to students outside of the federal student loan programs.

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

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

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(2) A Notice of Request for Qualifications sent by the Director of Finance to each firm currently acting as a state student loan guarantee agency under the Federal Family Education Loan Program and any entity proposed by the Secretary of Education, and advertised in the State Contracts Register pursuant to Sections 14827.1 and 14827.2 of the Government Code. This notice shall include a description of the state student loan guarantee program, a summary description of the state student loan guarantee program assets and liabilities offered for sale, and a description of the due diligence review process to provide potential purchasers with further information regarding the state student loan guarantee program assets and liabilities offered for sale, the selection criteria on which the transaction will be based, the submission requirements and deadlines, and a Department of Finance contact name and telephone number for more information. **A copy of the Notice of Request for Qualifications shall be provided to the Joint Legislative Budget Committee within seven days of transmittal to guarantee agencies.**

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

**(4) The Director of Finance shall notify the Joint Legislative Budget Committee within seven days of any determination that a transaction authorized by this section is likely to result in a payment to the state of less than \$500 million.**

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

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- (1) The greatest value to the General Fund.
  - (2) The greatest financial security for achieving value to the General Fund.
  - (3) The continued satisfactory performance of student loan guarantee services.
  - (4) The approval of the United States Secretary of Education, to the extent required by Public Law 94-482, or subsequent federal regulations.
  - (5) The quality of student services offered, including, but not necessarily limited to, borrower training in budgeting and financial management, including debt management and other forms of financial literacy.
  - (6) Borrower transparency or disclosure policies for products or services, or both, offered to students outside of the federal student loan programs.
- (b) The Director of Finance shall notify the Joint Legislative Budget Committee within seven days of any determination that an alternative arrangement to the sale of the state student loan guarantee program assets and liabilities may be financially beneficial to the state.**
- ~~(b)~~ **(c)** Notwithstanding any other provision of law, this process shall include the steps the Director of Finance, in consultation with the Treasurer, deems necessary or convenient to achieve the ends set forth in this section. The process shall include, but not necessarily be limited to, all of the following: (1) The satisfaction of the established criteria consistent with achieving a combination of the greatest value to the General Fund and the continued operation of student loan guarantee services for California under the Federal Family Education Loan Program. The criteria shall include any pertinent requirements of the Secretary of Education.
- (2) A Notice of Request for Qualifications sent by the director to each nonprofit entity currently acting as a state student loan guaranty agency under the Federal Family Education Loan Program, any entity known to the director to be acting as a servicing agent for a state student loan guaranty agency, and any nonprofit entity proposed by the Secretary of Education, and advertised in the State Contracts Register pursuant to Sections 14827.1 and 14827.2 of the Government Code. The notice shall include a description

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of the state student loan guarantee program, a summary description of the state student loan guarantee program assets and liabilities, and a description of the due diligence review process to provide further information regarding the state student loan guarantee program assets and liabilities, the selection criteria on which the transaction will be based, submission requirements and date, and a Department of Finance contact name and phone number for more information. **A copy of the Notice of Request for Qualifications shall be provided to the Joint Legislative Budget Committee within seven days of transmittal to guarantee agencies.**

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

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

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

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

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

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

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

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

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

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

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

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

~~(2) Upon~~ **No less than 30 days prior to** the consummation of the sale of the state student loan guarantee program assets to a transferee guaranty agency, the Director of Finance shall notify the Secretary of State and the Chairperson of the Joint Legislative Budget Committee **of the pending sale.**

~~(3) Upon~~ **(2) No less than 30 days prior to** the consummation of a transaction authorized by this article with a transferee guarantee program operator, the Director of Finance shall notify the Secretary of State and the Chairperson of the Joint Legislative Budget Committee **of the pending transaction.**

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

(1) The Student Aid Commission shall cooperate fully with the Director of Finance and, in particular, take all steps to preserve the state student loan guarantee program assets deemed necessary or convenient

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by the Director of Finance, including, without limitation, as set forth in Sections 69522, 69526, and 69766.

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

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

(4) Notwithstanding any provision of the Nonprofit Public Benefit Corporation Law (Part 2 [commencing with Section 5110] of Division 2 of Title 1 of the Corporations Code), the auxiliary organization shall, as directed by the commission under paragraph (2), cooperate fully with **the Student Aid Commission and** the Director of Finance.

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

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

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

(b) The proceeds of any sale of, or any funds achieved through any other arrangement to maximize the value of, the state student loan guarantee program assets and liabilities are not “proceeds of taxes” as

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that term is used in subdivision (c) of Section 8 of Article XIII B of the California Constitution. The disbursement of these proceeds is not subject to the limitations imposed by that article.

69521.9. (a) Notwithstanding any other provision of law, the Director of Finance is authorized to enter into an agreement with a firm or individual to act as an advisor to the state in the transactions contemplated by this article. Section 14838 of the Government Code and Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code does not apply to any agreement entered into by the director with an advisor pursuant to this section.

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

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

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

(c) The Director of Finance shall, for the purposes of obtaining services under this section, send a Notice of Request for Qualifications to firms and individuals in the Treasurer's underwriter and financial advisor pools. The director shall publish this notice in the State Contracts Register pursuant to Sections 14827.1 and 14827.2 of the Government Code. The notice shall include a description of the advisory services



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required, the selection criteria based on which the contract award will be made, submission requirements and deadlines, and a Department of Finance contact name and telephone number for more information. **A copy of the Notice of Request for Qualifications shall be provided to the Joint Legislative Budget Committee within seven days of publication in the State Contracts Register.**

(d) (1) After the final response date stated in the Notice of Request for Qualifications, the Director of Finance and the Treasurer shall review the responses submitted, and shall evaluate them using the criteria contained in the notice. The director and the Treasurer shall rank, in order of preference based on the criteria contained in the notice, the firm or individuals determined to be qualified to perform the required services.

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

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

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

(3) If, after pursuing the negotiation process set forth in paragraph (2), the Director of Finance has been unable to negotiate a satisfactory contract at fair and reasonable compensation, the director may reinstitute the selection process prescribed in this section, commencing with the issuance of a new Notice of



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Request for Qualifications.

**(4) The Director of Finance shall notify the Joint Legislative Budget Committee in writing within 7 days of entering into a contract with a firm or individual pursuant to paragraph 1.**

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

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

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

(2) ~~January 10, 2009~~ **June 30, 2010.**