

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Education

BILL: CS/SB 628

INTRODUCER: Education Committee, Senator Montford and others

SUBJECT: Independent Nonprofit Higher Education Facilities Financing

DATE: March 27, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	Fav/CS
2.			AED	
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 628 expands the projects and authorized uses for independent nonprofit colleges and universities that participate in the program.

The bill takes effect July 1, 2014.

II. Present Situation:

Higher Educational Facilities Financing Authority

The Higher Educational Facilities Financing Authority (HEFFA) was created as a public instrumentality by the Legislature with the purpose of assisting institutions of higher education in undertaking constructing, financing, and refinancing projects. The HEFFA has numerous powers, including the ability to issue revenue bonds to finance the costs of a project for a participating institution.

Creation and Background

The HEFFA was established in 2001 in Chapter 243, Florida Statutes, as a “public body corporate and politic.”¹ The HEFFA is constituted as a “public instrumentality” and the exercise by the HEFFA of its conferred powers is “considered to be the performance of an essential public function.”² Members of the HEFFA are appointed by the Governor, subject to confirmation by the Senate.³ Chapters 119 (public records) and 286 (open meetings) apply to the HEFFA.⁴

Purpose And Powers

The purpose of the HEFFA is to assist institutions of higher education⁵ in undertaking constructing, financing, and refinancing projects.⁶ For this purpose, the HEFFA may:⁷

- Exercise general business authority.
 - Exercise all powers granted to corporations under the Florida Business Corporation Act, chapter 607, F.S.
 - Have perpetual succession as a body politic and corporate and adopt bylaws for the regulation of its affairs and the conduct of its business.
 - Adopt an official seal.
 - Maintain an office at any place in the state.
 - Sue and be sued.
 - Employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as necessary.
 - Charge to and equitably apportion among participating institutions its administrative costs and expenses incurred in the exercise of the powers and duties.
 - Contract with an entity as its agent to assist the HEFFA in screening applications of institutions of higher education for loans.
 - Do all things necessary or convenient to carry out the purposes of ss. 243.50-243.77, F.S.
- Implement financing arrangements.
 - Make and execute financing arrangements, leases, contracts, deeds, and other instruments necessary or convenient in the exercise of the powers and functions of its authority.

¹ Section 243.53(1), F.S., s. 4, Ch. 2001-79, L.O.F. The term “public body corporate and politic” is not specifically defined in state law; although, Section 1.01(8), F.S., defines “public body,” “body politic,” or “political subdivision” to include “counties, cities, town, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.” See *O’Malley v. Florida Insurance Guaranty Association*, 257 So.2d 9, 11 (Fla. 1971)(The business of a public corporation is ordinarily “stipulated by the Legislature to fill a public need without private profit to any organizers or stockholders. Their function is to promote the public welfare and often they implement government regulations within the state’s police power. In a word, they are organized for the benefit of the public.”); see *Forbes Pioneer Boat Line v. Board of Commissioners*, 82 So.2d 346, 350 (Fla. 1919)(Public corporations or public quasi-corporations and the governing bodies thereof possess only such powers as are expressly granted by statute or necessarily implied in order to carry the expressly granted powers into effect.).

² Section 243.53(1), F.S.

³ Section 245.53(2), F.S.

⁴ *Id.*

⁵ Section 243.52(6), F.S. An “institution of higher education” means “an independent nonprofit college or university which is located in and chartered by the state; which is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools which grants baccalaureate degrees; and which is not a state university or state community college.” *Id.*

⁶ Section 243.54, F.S.

⁷ *Id.*

- Mortgage any project and the site thereof for the benefit of the holders of revenue bonds issued to finance projects or those providing credit for that purpose.
- Engage in the sale-leaseback, lease-purchase, lease-leaseback, or other undertakings and provide for the sale of certificates of participation incident thereto.
- Issue bonds and manage loans.
 - Issue bonds; bond anticipation notes, and other obligations for any of its corporate purposes.
 - Receive and accept from any public agency loans or grants for or in aid of the construction of a project.
 - Make loans to any participating institution for the cost of the project, including a loan in anticipation of tuition revenues.
 - Make loans to a participating institution to refund outstanding obligations, mortgages, or advances issued, made, or given by the participating institution for the cost of a project.
- Manage and Delegate Project Responsibilities
 - Determine the location and character of any project to be financed; construct, reconstruct, maintain, repair, and lease the project as lessee or lessor; enter into contract for these purposes.
 - Designate the participating institution as the agent of the HEFFA for these purposes.
- Provide Accountability and Transparency
 - Establish rules for the use of a project, and designate a participating institution as its agent to establish rules for the use of the project undertaken by the participating institution.
 - Transfer free and clear title to the participating institution when principal and interest on revenue bonds have been paid (or adequate provision has been made to pay), all other conditions securing the bonds have been satisfied, and the lien has been released.⁸
 - Submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives at the end of each fiscal year.⁹ The report must include numerous provisions, including but not limited to expenditures, assets, liabilities, and the outstanding bond schedule.¹⁰

Authorized Projects and Costs

A “project” is defined as “a dormitory, student service facility, parking facility, administration building, academic building, or library and includes a loan in anticipation of tuition revenues by an institution of higher education....”¹¹

The HEFFA may finance “costs” to include items such as: construction and land acquisition; structures; demolition, including the cost of purchasing the lands which the buildings may be removed; machinery and equipment; working capital, reserves for principal, interest, and rebate; additions and improvements; engineering, financial, and legal services; plans and surveys; and other expenses.¹²

⁸ Section 243.57, F.S.

⁹ Section 243.73, F.S.

¹⁰ *Id.*

¹¹ Section 243.52(3), F.S.

¹² Section 243.52(4), F.S. In the case of a loan in anticipation of tuition revenues, the term “cost” means “the amount of the loan in anticipation of revenues which does not exceed the amount of tuition revenues anticipated to be received by the

Bonds and Tax Exempt Status

Revenue bonds issued by the HEFFA are not a debt or liability of the HEFFA, any municipality, the state, or any political subdivision thereof.¹³ Thus the bonds are not secured by the full faith and credit of the state, and do not constitute an obligation, either general or special, of the state.¹⁴ However, the bonds may be secured by mortgage or the full faith and credit of a participating institution of higher education or any other lawfully pledged security of a participating institution of higher education.¹⁵

Because the operation and maintenance of a project by the HEFFA or a participating institution constitutes the performance of an essential public function, neither the HEFFA nor a participating institution is required to pay any taxes or assessments upon or in respect of a project or any property acquired or used by the HEFFA or a participating institution.¹⁶

Participating Institutions

A “participating institution” means “an institution of higher education, as defined in s. 243.52(6) that undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in and permitted by ss. 243.50-243.77.”¹⁷ Thus, to become a “participating institution” an “institution of higher education” must essentially utilize the HEFFA as provided by law.

The participating institution may fix, revise, charge, and collect rates, rents, fees, and charges for the use of and for the services furnished to or to be furnished by each project and may contract with any person, partnership, association, corporation, or other body, public or private, in respect thereof. The rates, rents, fees, and charges must be fixed and adjusted in respect of the aggregate of rates, rents, fees, and charges from the project to as to provide funds sufficient with other revenues to pay the cost of maintenance, repairs, operations, and principal and interest on outstanding revenue bonds.¹⁸

County Educational Facilities Authority

As early as 1969, the Legislature created in each county, a “public body corporate and politic” to be known as the “_____ County Educational Facilities Authority.”¹⁹ The CEFAs were constituted as a public instrumentality and the exercise of the authority and powers conferred are deemed to be the performance of an essential public function.²⁰ The purpose of the CEFAs is to

borrowing institution of higher education in the 1-year period following the date of the loan, plus costs related to the issuance of the loan, or the amount of the bonds, the proceeds of which the fund loans and any related cost of debt service, reserve funds, and rebate associated therewith.” *Id.*

¹³ Section 243.66, F.S.

¹⁴ Section 243.64, F.S.

¹⁵ Section 243.52(5), F.S.

¹⁶ Section 243.70, F.S.

¹⁷ Section 243.52(7), F.S.

¹⁸ Section 243.67, F.S. Note that any holder of revenue bonds may take legal action to enforce and compel performance of all duties, including the fixing, charging, and collecting of the rates, rents, fees, and charges. Section 243.69, F.S.

¹⁹ Section 243.21(1), F.S. *Compare* the definition of “projects” for CEFAs and the HEFFA. The CEFAs have historically had a more extensive list of projects that may be financed.

²⁰ *Id.*

assist institutions for higher education in the construction, financing, and refinancing of projects.²¹ The definition of “project” for CEFAs means:²²

- A structure suitable for use as a:
 - Dormitory or other housing facility.
 - Dining hall.
 - Student union.
 - Administration building.
 - Academic building.
 - Library.
 - Laboratory.
 - Research facility.
 - Classroom.
 - Athletic facility.
 - Health care facility.
 - Maintenance, storage or utility facility.
- Other structures or facilities:
 - Related thereto or required thereto.
 - Required or useful:
 - For the instruction of students.
 - The conducting of research.
 - The operation of an institution of educational institution, including:
 - Parking.
 - Other facilities or structures, essential or convenient for the orderly conduct of such institution of higher education, and includes:
 - Equipment.
 - Machinery.
 - Other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but does not include items such as:
 - Books.
 - Fuel.
 - Supplies.
 - Other items that are customarily deemed to result in a current operating charge.
- A loan in anticipation of tuition revenues by a private institution of higher education.

As previously noted, the HEFFA was created in 2001, well after creation of the CEFAs. It appears the HEFFA was created as a response to the problems experienced by the CEFA with projects for constructions as well as operations.²³ Despite Legislative attempts to increase authority for the CEFAs in 1999, little activity resulted and nonpublic institutions for higher education were denied loans based on tuition income to pay operational costs.²⁴

²¹ Section 243.22, F.S.

²² Section 243.20(5), F.S.

²³ See Staff of the Florida Senate, *Legislative Bill Analysis for CS/SB 302* (2001).

²⁴ *Id.*

III. Effect of Proposed Changes:

CS/SB 628 expands the projects and authorized uses for independent nonprofit colleges and universities that participate in the program.

Authorized Projects

The bill expands the definition of a “project” that can be approved by the Higher Educational Facilities Financing Authority (HEFFA) to track authority currently provided to County Educational Facilities Authorities (CEFAs), and mean:

- A structure suitable for use as a:
 - Dormitory or other housing facility.
 - Dining hall.
 - Student union.
 - Administration building.
 - Academic building.
 - Library.
 - Laboratory.
 - Research facility.
 - Classroom.
 - Athletic facility.
 - Health care facility.
 - Maintenance, storage or utility facility.
- Other structures or facilities:
 - Related thereto or required thereto.
 - Required or useful:
 - For the instruction of students.
 - The conducting of research.
 - The operation of an institution of higher education, including:
 - Parking.
 - Other facilities or structures, essential or convenient for the orderly conduct of such institution of higher education, and includes:
 - Equipment.
 - Machinery.
 - Other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but does not include items such as:
 - Books.
 - Fuel.
 - Supplies.
 - Other items that are customarily deemed to result in a current operating charge.
- A loan in anticipation of tuition revenues by an institution of higher education.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Indeterminate.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 243.52 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education on March 25, 2014:

The committee substitute:

- Reverted back to current law regarding the name of the “Higher Educational Facilities Financing authority” instead of the “Educational Facilities Financing Authority” as stated in SB 628.

- Reverted back to current law regarding institutions eligible to participate in HEFFA. SB 628 included provisions that expand the definition of a “participating institution” to include a “private nonprofit elementary, middle, or secondary school.”

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
