

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: SB 628

INTRODUCER: Senators Montford and Stargel

SUBJECT: Educational Facilities Financing

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	Pre-meeting
2.			AED	
3.			AP	
4.			RC	

I. Summary:

SB 628 expands to some K-12 “private nonprofit” schools the same construction, financing, and refinancing benefits currently available through a financing authority to independent, non-profit colleges and universities. The bill also expands the projects and authorized uses for the colleges, universities, and “private nonprofit” schools that participate in the program.

Specifically, the bill:

- Changes the name of the “Higher Educational Facilities Financing Authority” to the “Educational Facilities Financing Authority”;
- Expands the definition of authorized projects that may be used by participating institutions to include projects such as research facilities, athletic facilities, utility facilities, other structures useful for the operation of an educational institution, equipment, and machinery; and
- Expands the definition of participating institutions to include “private nonprofit elementary, middle, or secondary schools that are located in and chartered by the state, and accredited by Southern Association of Colleges and Schools.”

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, and 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.

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 Section 243.53(2), F.S.

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 Section 243.54, F.S.

- 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.
- 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 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;

⁸ Section 243.57, F.S.

⁹ Section 243.73, F.S.

¹⁰ *Id.*

¹¹ Section 243.52(3), F.S.

additions and improvements; engineering, financial, and legal services; plans and surveys; and other expenses.¹²

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 an 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

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 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.

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 easiest 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 educational institution, including:
 - Parking.
 - Other facilities or structures, essential or convenient for the orderly conduct of such institution, 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 educational institution.

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.*

²¹ Section 243.22, F.S.

²² Section 243.20(5), F.S.

As previously noted, the HEFFA was created in 2001, well after creation of the CEFA. 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 CEFA in 1999, little activity resulted and nonpublic institutions for higher education were denied loans based on tuition income to pay operational costs.²⁴

Private K-12 Schools

Private K-12 schools in Florida are, in general, subject to limited state oversight. However, private K-12 schools that participate in state school choice programs must comply with specific accountability provisions.

Background

Florida law defines “private schools” for purposes of satisfying compulsory²⁵ student attendance requirements as:

a nonpublic school defined as an individual, association, copartnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides instructional services that meet the intent of s. 1003.01(13) or that gives preemployment or supplementary training in technology or in fields of trade or industry that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the above schools through correspondence or extension, except those licensed under the provisions of chapter 1005. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs conducted in accordance with s. 1002.41.²⁶

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

²⁴ *Id.*

²⁵ Section 1002.20(2)(a), F.S. The compulsory school attendance laws apply to all children between the ages of 6 and 16 years, as provided in s. 1003.21(1) and (2)(a). *Id.*

²⁶ Section 1002.01(2), F.S., Additionally, in 1959, the Legislature created a “private school corporation.” Section 623.02, F.S. The “private school corporation” is “[a]ny 25 or more adult persons, who are legal residents of Florida and of the country in which any corporation may be formed hereunder, may for a private school corporation, under the provisions of this act and such private school shall be incorporated in the following manner: There shall be presented to one of the judges of the circuit court for the county in which such corporation will operate, a proposed charter subscribed by the intended incorporators, which shall set forth: (1) The name of the corporation which shall include the words ‘private school.’ (2) A designation of the geographic area in which such corporation will operate its school or schools. (3) The object and purpose of the corporation. (4) The qualifications of the members and the manner of their designation. (5) The term for which the corporation will exist, which term may be perpetual. (6) The names and addresses of the charter members. (7) The names of officers who shall manage the affairs of the corporation until the first election of officers. (8) The procedures by which the bylaws of the corporation shall be made, altered, or rescinded.” *Id.*

Private schools authorized by the Florida K-20 Education Code²⁷ must comply with limited requirements in the following topics:²⁸

- Annual private school survey.
- Retention of records.
- Attendance records and reports.
- School-entry health exams.
- Attendance requirements.

Private schools may choose to work with school districts or the Department of Education in the following topics:²⁹

- Athletic competition.
- Receipt of educational materials.
- Instructional materials.
- Diagnostic and resource centers.
- Exceptional education services.
- Professional development system.
- Bus driver training.
- Pool purchase of school buses.
- Emergency procedures.
- Epinephrine supply.

Accountability When Participating in State School Choice Scholarship Programs

Private K-12 schools may also choose to participate in a state school choice scholarship program.³⁰ However, they must comply with certain accountability requirements.³¹ Examples of these accountability requirements include, but are not limited to, requirements that private K-12 schools:

- Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.
- Meet applicable state and local health, safety, and welfare laws, codes and rules, including fire safety and building safety.
- Employ or contract with teachers who hold baccalaureate or higher degrees, have at least 3 years of teaching experience in public or private schools, or have the skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught.
- Require each employee and contracted personnel with direct student contact, instructional personnel, and school administrators to undergo background screening.
- Adopt ethics policies and standards of conduct.

²⁷ Chapters 1000 through 1013, F.S. See Section 1000.01(1), F.S.

²⁸ See Section 1002.42, F.S.

²⁹ *Id.*

³⁰ See Section 1002.39, F.S., creating the John M. McKay Scholarships for Students with Disabilities Program, Section 1002.395, F.S., creating the Florida Tax Credit Scholarship Program.

³¹ See Section 1002.421, F.S. These requirements are in addition to applicable requirements to participate in each specific state school choice scholarship program. Section 1002.421(1), F.S.

III. Effect of Proposed Changes:

SB 628 expands to some K-12 “private nonprofit” schools the same construction, financing, and refinancing benefits currently available through a financing authority to independent, non-profit colleges and universities. The bill also expands the projects and authorized uses for the colleges, universities, and “private nonprofit” schools that participate in the program. The bill renames the “Higher Educational Facilities Financing Authority” (HEFFA) as the “Educational Facilities Financing Authority” (EFFA).

Authorized Projects

The bill expands the definition of a “project” that can be approved by EFFA 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 educational institution, including:
 - Parking.
 - Other facilities or structures, essential or convenient for the orderly conduct of such institution, 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 educational institution.

Authorized Participating Institutions

The definition of “participating institution” for purposes of accessing the benefits of EFFA is expanded to include “[a] private nonprofit elementary, middle, or secondary school that is located in and chartered by the state and accredited by the Southern Association of Colleges and Schools.” However, the bill does not define the phrase “private nonprofit elementary, middle, or secondary school.” Thus it may be possible that this language could be interpreted to include any number of the:

- 2,268 private schools, as defined in s. 1002.01(2), F.S.³²
- 570 charter schools in Florida, as defined in Section 1002.33, F.S.³³
- Unknown number of “private school corporations,” as defined in Section 623.02, F.S.³⁴
- Unknown number of self-proclaimed “private nonprofit” independent, non-public schools.

In sum, these new “private nonprofit” schools may take advantage of everything that a “participating institution” is authorized to utilize from an EFFA. A bond may be secured by the full faith and credit of a private school that is participating in the John M. McKay Scholarships for Students with Disabilities Program (McKay)³⁵ or the Florida Tax Credit Scholarship Program (FTC).³⁶ Current law for the HEFFA provides that “... the state will not limit or alter the rights vested in the [HEFFA/EFFA] until the obligations, together with the interest thereon, are fully met and discharged and the contracts are fully performed on the part of the [HEFFA/EFFA] ...”³⁷ Thus, it is unclear whether this language could prevent the Department of Education from terminating a private school’s eligibility to participate in the McKay or FTC scholarship programs.

Additionally, the addition of the new participating entities (including but not limited to private schools participating in the McKay or FTC scholarship programs) and expanded definition of projects, might result in inconsistencies with existing State Board of Education and Department of Education compliance authority. For example, existing law for the HEFFA/EFFA provides that:

- “[T]he powers granted to the [HEFFA/EFFA] ... are not subject to the supervision or regulation of, and do not require the approval or consent of, any municipality or political subdivision or any commission, board, body, bureau or agency thereof or of the state...”³⁸
- “[T]he issuance of notes, certificates of participation, revenue bonds, and revenue refunding bonds ... need not comply with the requirements of any other law applicable to the issuance of bonds or such obligations.”³⁹

³² Florida Department of Education, *Florida’s Private Schools Annual Report 2012-2013*, available at http://www.floridaschoolchoice.org/Information/Private_Schools/annual_reports/Private_School_Annual_Report_2012-2013.pdf

³³ Florida Department of Education, *Charter Schools*, http://www.floridaschoolchoice.org/Information/Charter_Schools/ (last viewed March 16, 2014). See “A charter school shall organize as, or be operated by, a nonprofit organization.”

³⁴ It is not known if these statistics are tracked.

³⁵ Section 1002.39, F.S.

³⁶ Section 1002.395, F.S.

³⁷ Section 243.74, F.S.

³⁸ Section 243.75, F.S.

³⁹ Section 243.75, F.S.

- “To the extent that ss. 243.50-243.77 are inconsistent with any general statute or special act or part thereof, ss. 243.50-243.77 are controlling.”⁴⁰

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:

Because the bill amends various sections in Chapter 423, F.S., -- which is outside of the K-20 Education Code -- the bill could, without clarification, be interpreted to apply to private schools, private school corporations, other “nonprofit” or independent, non-public schools, and charter schools.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 243.50, 243.51, 243.52, 243.53, 243.54, 243.59, 243.66, 243.67, and 243.73.

⁴⁰ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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