

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 377 Educational Facilities Financing

SPONSOR(S): Moraitis, Jr.

TIED BILLS: **IDEN./SIM. BILLS:** SB 628

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Choice & Innovation Subcommittee	12 Y, 0 N	Beagle	Fudge
2) Finance & Tax Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

The Higher Educational Facilities Financing Authority (authority) is a public corporation which assists eligible institutions of higher education in financing and refinancing educational facilities construction. Among other things, the authority may issue tax-exempt or taxable revenue bonds, which are privately financed and not secured by full faith and credit of the state. Financing acquired through the authority may be used for such construction projects as dormitories, parking and student service facilities, administration and academic buildings, libraries, and loans made in anticipation of tuition revenues.

Independent nonprofit colleges or universities which are located in and chartered by the state of Florida; are accredited by the Southern Association of Colleges and Schools (SACS); grant baccalaureate degrees; and are not a state university or community college may participate in educational facilities construction financing through the authority. This includes all 31 institutions belonging to the Independent Colleges and Universities of Florida (ICUF).

The bill renames the "Higher Educational Facilities Financing Authority" as the "Educational Facilities Financing Authority" and adds authorization for private, nonprofit elementary, middle, and secondary schools that are located in and chartered by the state of Florida and accredited by SACS to participate in construction financing through the authority. Accordingly, the term "institution of higher education" is replaced by the terms "educational institution" or "participating institution" throughout Part II of ch. 243, F.S. The bill makes a number of additional nomenclature changes to conform to this expansion of eligibility.

The bill expands the types of projects that the authority may finance to include:

- Costs for construction of dormitories or student housing; dining halls; student unions; administration or academic buildings; libraries; laboratories; research facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or utility facilities; and related facilities or structures required or useful for the instruction of students, research, or the operation of an educational institution, e.g., parking;
- Certain purchases of equipment and machinery; and
- A loan in anticipation of tuition revenues.

Books, fuel, supplies, or other items which are customarily deemed to be operating costs may not be financed.

The bill has an indeterminate fiscal impact on state and local governments. The bill extends opportunities to participate in tax-exempt educational facilities construction financing to certain private schools. This will likely reduce costs incurred for construction and financing; however, the amount of cost savings is indeterminate.

The bill takes effect July 1, 2014.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Higher Educational Facilities Financing Authority (authority) is a public corporation which assists eligible institutions of higher education in financing and refinancing educational facilities construction.¹ Participation in financing through the authority is limited to independent nonprofit colleges or universities which are located in and chartered by the state of Florida; are accredited by the Southern Association of Colleges and Schools (SACS); grant baccalaureate degrees; and are not a state university or community college.² This includes all 31 institutions belonging to the Independent Colleges and Universities of Florida (ICUF).³

Among other things, the authority may issue tax-exempt or taxable revenue bonds; acquire real estate; contract; and execute loans, leases, and other legal instruments.⁴ Bonds issued by the authority are privately financed, are not secured by the full faith and credit of the state, and do not constitute an obligation of the state.⁵ The authority may not enter into a financing agreement with a participating institution unless the institution demonstrates that it is financially responsible and capable of fulfilling its obligations under the agreement.⁶

The authority may only finance such projects as dormitories, parking and student service facilities, administration and academic buildings, libraries, and loans made in anticipation of tuition revenues.⁷ Financing may be provided for project costs related to construction and land acquisition; machinery and equipment; financing charges and interest; provisions for working capital; reserves for principal, interest, and rebate; provisions for extensions, enlargements, additions, and improvements; engineering, financial, and legal services; and construction planning and cost estimating.⁸

Currently, the authority and participating institutions are exempt from taxes or assessments related to a project or any property acquired for a project and any tax on income from those projects. Any bonds issued by the authority, any security for the bonds, the transfer of the bonds, and the income from the bonds (including profit on their sale) and notes, mortgages, security agreements, letters of credit, or other instruments are also exempt from taxation of any kind by the state or any local unit, political subdivision, or other instrumentality of the state. This tax exemption does not apply to income taxes imposed on corporations under ch. 220, F.S.⁹

¹ Part II, ch. 243, F.S.

² Section 243.52(6), F.S. The law defines the terms “institution of higher education” and “participating institution” to be synonymous. See s. 243.52(6) and (7), F.S.

³ See Independent Colleges and Universities of Florida, *About Us*, <http://www.icuf.org/newdevelopment/about-icuf/> (last visited Feb. 3, 2014). ICUF institutions include Adventist University of Health Sciences, Ave Maria University, Barry University, Beacon College, Bethune-Cookman University, Clearwater Christian College, Eckerd College, Edward Waters College, Embry-Riddle Aeronautical University, Everglades University, Flagler College, Florida College, Florida Institute of Technology, Florida Memorial University, Florida Southern College, Hodges University, Jacksonville University, Keiser University, Lynn University, Nova Southeastern University, Palm Beach Atlantic University, Ringling College of Art and Design, Rollins College, St. Leo University, Southeastern University, St. Thomas University, Stetson University, The University of Tampa, University of Miami, Warner University, and Webber International University. Independent Colleges and Universities of Florida, *School Websites*, <http://www.icuf.org/newdevelopment/schools/> (last visited Feb. 3, 2014).

⁴ Section 243.54, F.S.

⁵ Section 243.64, F.S.; Email, Independent Colleges and Universities of Florida, General Counsel (Feb. 3, 2014).

⁶ Section 243.58(2), F.S.

⁷ Section 243.52(3), F.S.

⁸ Section 243.52(4), F.S.

⁹ Section 243.70, F.S.

The authority's board consists of five members appointed by the Governor.¹⁰ The board must submit an annual report regarding its activities to the Governor and presiding officers of each house of the Legislature within two months of the end of its fiscal year.¹¹

Similar opportunities for higher educational facilities construction financing assistance are available through County Higher Educational Facilities Authorities (CHEFFA). However, since codified in 1969, CHEFFAs exist in only seven counties.¹² The Higher Educational Facilities Financing Authority was codified in 2001, in part, to extend such assistance to eligible institutions of higher education located in counties without a CHEFFA.¹³ A more extensive list of projects may be financed through a CHEFFA. Allowable projects include:

- Costs for construction of dormitories or student housing; dining halls; student unions; administration or academic buildings; libraries; laboratories; research facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or utility facilities; and related facilities or structures required or useful for the instruction of students, research, or the operation of an educational institution, e.g., parking;
- Certain purchases of equipment and machinery; and
- A loan in anticipation of tuition revenues.

Books, fuel, supplies, or other items which are customarily deemed to be operating costs may not be financed through a CHEFFA.¹⁴

Effect of Proposed Changes

The bill renames the "Higher Educational Facilities Financing Authority" as the "Educational Facilities Financing Authority" and adds authorization for private, nonprofit elementary, middle, and secondary schools that are located in and chartered by the state of Florida and accredited by SACS to participate in construction financing through the authority. Accordingly, the term "institution of higher education" is replaced by the terms "educational institution" or "participating institution" throughout Part II of ch. 243, F.S. Under the bill, the term "chartered by the state" refers to the private school's incorporation status with the state, and not status as a charter school. Charter schools are public schools and the charter, in that context, is a performance contract with its sponsor, typically a district school board.

The bill replaces the definition of "project" currently applicable to financing of construction projects through the authority with the broader definition currently applicable to CHEFFAs. Thus, allowable projects may include:

- Costs for construction of dormitories or student housing; dining halls; student unions; administration or academic buildings; libraries; laboratories; research facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or utility facilities; and related facilities or structures required or useful for the instruction of students, research, or the operation of an educational institution, e.g., parking;
- Certain purchases of equipment and machinery; and
- A loan in anticipation of tuition revenues.

Books, fuel, supplies, or other items which are customarily deemed to be operating costs may not be financed through the authority. To the extent that construction projects allowed by the bill are not currently available to eligible institutions, e.g., ICUF institutions, this change expands the types of projects that they may finance through the authority.

¹⁰ Section 243.53(2), F.S.

¹¹ Section 243.73(1), F.S.

¹² Chapter 69-345, L.O.F., *codified as* Part I, ch. 243, F.S.; Email, Independent Colleges and Universities of Florida, General Counsel (Feb. 3, 2014).

¹³ Chapter 2001-79, L.O.F.

¹⁴ Section 243.20(5), F.S.

Private schools that qualify to participate in construction financing through the authority will be eligible for the tax exemptions currently available to eligible institutions. Additionally, the bill extends the deadline for the authority's annual report from two months to four months after the end of the fiscal year.

The bill contains a number of nomenclature changes in ch. 243, F.S., which conform to substantive changes made by the bill. Chapter 243, F.S., entitled "Higher Educational Facilities Bonds" is renamed "Educational Facilities Bonds." Part II of ch. 243, F.S., entitled "Higher Educational Facilities Financing" is renamed "Educational Facilities Financing." The "Higher Educational Facilities Financing Act" is renamed the "Educational Facilities Financing Act."

B. SECTION DIRECTORY:

Section 1. Renames ch. 243, F.S., as "Educational Facilities Bonds" and Part II of ch. 243, F.S., as "Educational facilities financing."

Section 2. Amends s. 243.50, F.S., relating to Short title.

Section 3. Amends s. 243.51, F.S., relating to Findings and declarations.

Section 4. Amends s. 243.52, F.S., relating to Definitions.

Section 5. Amends s. 243.53, F.S., relating to Creation of Higher Educational Facilities Financing Authority.

Section 6. Amends s. 243.54, F.S., relating to Powers of the authority.

Section 7. Amends s. 243.59, F.S., relating to Approval required to issue bonds.

Section 8. Amends s. 243.66, F.S., relating to Payment of bonds.

Section 9. Amends s. 243.67, F.S., relating to Rates, rents, fees, and charges.

Section 10. Amends s. 243.73, F.S., relating to Reports; audits.

Section 11. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill extends opportunities to participate in tax-exempt educational facilities construction financing to private, nonprofit, SACS accredited elementary, middle, and secondary schools. This will likely reduce costs incurred for construction and financing; however, the amount of the reduction is indeterminate. See Fiscal Comments.

D. FISCAL COMMENTS:

The revenue impact of this bill on state and local governments has not yet been estimated. The bill authorizes private, nonprofit, SACS accredited elementary, middle, and secondary schools that are located in and chartered by the state of Florida to participate in educational facilities construction financing through the authority. SACS's database of accredited schools indicates that 169 SACS accredited private elementary, middle, and secondary schools are located in Florida. The database does not indicate whether listed schools are nonprofit entities.¹⁵ Furthermore, even if a private school meets the bill's eligibility criteria, it must still demonstrate that it is financially responsible in order to finance through the authority.¹⁶ Thus, it is unclear how many of these private schools will be eligible to participate in construction financing through the authority.

Currently, the authority and participating institutions are exempt from taxes or assessments related to a project or any property acquired for a project and any tax on income from those projects. It is likely that many of the private schools referenced by the bill already receive an exemption from ad valorem taxation. Generally speaking, educational institutions and property used by them for educational purposes are exempt from ad valorem taxation.¹⁷ Among other things, this tax exemption applies to "a federal, state, parochial, church, or private school, college, or university conducting regular classes and courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, SACS, or the Florida Council of Independent Schools . . .".¹⁸

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill extends an existing tax exemption on projects financed through the authority to qualified private, nonprofit elementary, middle, and secondary schools that are located in and chartered by the state of Florida and accredited by SACS. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹⁵ Southern Association of Colleges and Schools, *Find Accredited Schools*, <http://www.advanc-ed.org/> (last visited Feb. 4, 2014).

¹⁶ Section 243.58(2), F.S.

¹⁷ Section 196.198, F.S. Property owned by an educational institution is deemed to be used for an educational purpose if the institution has taken affirmative steps to prepare the property for educational use. The term "affirmative steps" means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate commitment of the property to an educational use. *Id.*

¹⁸ Section 196.012(5), F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.