

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 257 Higher Educational Facilities Financing

**SPONSOR(S):** Baker

**TIED BILLS:** None. **IDEN./SIM. BILLS:** CS/SB 598

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Postsecondary Education & Workforce Subcommittee	17 Y, 0 N	Dixon	Kiner
2) Appropriations Committee	28 Y, 0 N	Trexler	Pridgeon
3) Education & Employment Committee	21 Y, 0 N	Dixon	Hassell

### SUMMARY ANALYSIS

The Higher Educational Facilities Financing Authority (HEFFA) is a public corporation that assists the 30 institutions that are members of the Independent Colleges and Universities of Florida (ICUF) in constructing, financing, and refinancing projects. Among other things, the authority may issue tax-exempt or taxable revenue bonds, which are not secured by the full faith and credit of the state and do not constitute an obligation of the state. Financing acquired through the authority may be used for construction projects such as administration and academic buildings, research facilities, libraries, athletic facilities, dormitories, parking and student service facilities, and loans made in anticipation of tuition revenues.

The bill revises several provisions relating to the makeup and operation of HEFFA, including board appointee terms, public meetings and workshops, quorum and participation at such meetings and workshops, audit deadlines, contract administration, means of defining financial responsibility in financing agreements, and legislative determinations with respect to HEFFA's purpose. Specifically, the bill:

- Modifies the legislative findings and declarations by clarifying the necessity of the public interest of the provisions enacted as a matter of legislative determination.
- Specifies the start of a term when the Governor appoints a new member to the HEFFA as beginning on the later of the date the current term expires or the date the new member was appointed.
- Allows for the HEFFA to conduct a public meeting or workshop by means of communications media technology. For meetings or workshops being conducted via communication media technology, the bill requires the HEFFA to provide notice requirements for such meetings and workshops. This bill also revises the requirement for the HEFFA to take action by defining a quorum and the necessity of an affirmative vote of a majority of members participating in the meeting.
- Authorizes the HEFFA to contract with an entity as its agent and to assist the HEFFA with administrative matters.
- Prohibits the HEFFA from entering into a financing agreement with a participating institution for a project, if at the time the agreement is executed, the institution is not financially responsible and not fully capable of and willing to fulfill its obligation under the financing agreement.
- Increases the timeframe that the HEFFA is required to submit a report to the Governor and the presiding offices of each house of the Legislature, from two to six months after the end of its fiscal year.

This bill does not appear to have a fiscal impact on state government, and any unforeseen expenses incurred can be absorbed by the Authority's existing resources.

The bill provides an effective date of July 1, 2023.

### FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0257e.EEC

DATE: 3/31/2023

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Higher Educational Facilities Financing Authority

###### *Creation and Background*

The Higher Educational Facilities Financing Authority (authority) is a public corporation which assists eligible institutions of higher education in constructing, financing, and refinancing educational facilities construction.<sup>1</sup> 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 Florida College System institution.<sup>2</sup> This includes all 30 institutions belonging to the Independent Colleges and Universities of Florida (ICUF).<sup>3</sup>

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.<sup>4</sup> Bonds issued by the authority are not secured by the full faith and credit of the state, and do not constitute an obligation of the state.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

###### *HEFFA Board Membership, Meetings, and Transacting Business*

HEFFA's board consists of five members appointed by the Governor, subject to confirmation by the Senate. The Governor may remove a board member for misfeasance, malfeasance, or willful neglect of duty. Board members serve a term of five years and are eligible for reappointment. Additionally, the Governor may fill any vacancy for an unexpired term.<sup>8</sup>

HEFFA board members do not receive compensation, but may be reimbursed for expenses incurred during their duties.<sup>9</sup>

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<sup>1</sup> Part II, ch. 243, F.S.

<sup>2</sup> 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.

<sup>3</sup> See Independent Colleges and Universities of Florida, *About Us, Our Colleges – ICUF* (last visited Feb. 4, 2023). ICUF institutions include AdventHealth University, Ave Maria University, Barry University, Beacon College, Bethune-Cookman University, 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.

<sup>4</sup> Section 243.54, F.S.

<sup>5</sup> Section 243.64, F.S.

<sup>6</sup> Section 243.58(2), F.S.

<sup>7</sup> Section 243.70, F.S.

<sup>8</sup> Section 243.53(2), F.S.

<sup>9</sup> Section 112.061, F.S.

A majority of HEFFA's members constitutes a quorum and the affirmative vote of the members present at a HEFFA meeting is necessary for HEFFA to take any action.<sup>10</sup>

The HEFFA 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.<sup>11</sup>

### *Purpose and Powers*

The purpose of the HEFFA is to assist eligible institutions<sup>12</sup> in constructing, financing, and refinancing projects<sup>13</sup> throughout the state and to enable these institutions to coordinate budgetary needs with the time of receipt of tuition revenues.<sup>14</sup>

As a public corporation, the HEFFA, has perpetual succession and can adopt bylaws for the regulations of its affairs and the conduct of its business.<sup>15</sup> In conducting its business, the HEFFA can employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as necessary.<sup>16</sup> Additionally, the HEFFA can charge to and equitably apportion among participating institutions<sup>17</sup> its administrative costs and expenses incurred in the exercise of the powers and duties.<sup>18</sup> When screening applications of institutions of higher education for loans, the HEFFA, can contract with an entity as its agent for assistance.<sup>19</sup>

The HEFFA also has the authority to make and execute financing agreements, leases, contracts, deeds and other instruments necessary or convenient in the exercise of the powers and functions of the authority. This includes the sale-leaseback, lease-purchase, lease-leaseback, or other undertakings and provide for the sale of certificates of participation incident thereto.<sup>20</sup> In addition, the HEFFA can 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.<sup>21</sup>

Another responsibility of the HEFFA is to issue bonds, bond anticipation notes, and other obligations for any of its corporate purposes.<sup>22</sup> The HEFFA may also receive and accept from any public agency loans or grants for or in aid of the construction of a project.<sup>23</sup> Loans to any participating institution for the cost

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<sup>10</sup> Section 243.53(5), F.S.

<sup>11</sup> Section 243.73(1), F.S.

<sup>12</sup> Section 243.52(6), F.S. defines the term "Institution of higher education" as 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 Florida College System institution.

<sup>13</sup> Section 243.52(3), F.S. defines the term "project" as a structure that is 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, or maintenance, storage, or utility facility and other structures or facilities related thereto, required thereto, or required or useful for the instruction of students, the conducting of research, or the operation of an institution of higher education. The term also includes parking and other facilities or structures, essential or convenient for the orderly conduct of such institution of higher education and includes equipment and machinery and 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 such items as books, fuel, supplies, or other items that are customarily deemed to result in a current operating charge. The term also includes a loan in anticipation of tuition revenues by an institution of higher education, as defined in s. 254.52(6), F.S.

<sup>14</sup> Section 243.51, F.S.

<sup>15</sup> Section 253.54(2), F.S.

<sup>16</sup> Section 243.54(10), F.S.

<sup>17</sup> Section 254.52(7), F.S. defines the term "participating institution" as an institution of higher education, as defined in s. 243.52(6), F.S. 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, F.S.

<sup>18</sup> Section 243.54(15), F.S.

<sup>19</sup> Section 243.54(16), F.S.

<sup>20</sup> Section 243.54(6), F.S.

<sup>21</sup> Section 243.54(12), F.S.

<sup>22</sup> Section 243.54(8), F.S.

<sup>23</sup> Section 243.54(11), F.S.

of the project, including a loan in anticipation of tuition revenues can be made by the HEFFA.<sup>24</sup> The HEFFA can 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.<sup>25</sup>

The HEFFA can 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 contracts with any of those purposes. For these purposes, the HEFFA can designate the participating institution as the agent of the authority.<sup>26</sup>

### *Accountability and Transparency*

The HEFFA can 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.<sup>27</sup>

The HEFFA will 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 any bonds), all other conditions securing the bonds have been satisfied, and the lien has been released.<sup>28</sup>

At the end of each fiscal year, the HEFFA will submit a report to the Governor and the presiding officers of each house of the Legislature, within two months after the end of its fiscal year. The report will include:<sup>29</sup>

- The HEFFA's operation and accomplishments.
- The HEFFA's receipts and expenditures during the fiscal year.
- The HEFFA's assets and liabilities at the fiscal year and the status of reserved, special or other funds.
- A schedule of bonds that are outstanding at the end of the fiscal year, with a statement of the principal amounts of bonds issued and redeemed during the fiscal year.
- Any other information the HEFFA deems appropriate.

With the report, the HEFFA will also submit a copy of an annual financial audits of its accounts and records and an annual compliance audit of its programs conducted by an independent certified public accountant.<sup>30</sup>

### *Undertaking Projects*

Eligibility and the undertaking for any projects will be determined by the HEFFA. One requirement is that the project is appropriate to the need and circumstance of, and will make a significant contribution to the purposes of, the authority and will serve a public purpose by advancing the prosperity and general welfare of the state and public. In addition, a financing agreement for a project will not be entered into with a participating institution that is not financially responsible and fully capable of and willing to fulfil its obligation under the financial agreement. The HEFFA will also require that adequate provisions must be made for the operation, repair, and maintenances of a project at the expense of the participating institution and for the payment of principal of and interest on the bonds.<sup>31</sup>

### *Tax Exempt Bonds*

Revenue bonds issued by HEFFA are not a debt or liability of HEFFA, any municipality, the state, or any political subdivision thereof.<sup>32</sup> Thus, the bonds are not secured by the full faith and credit of the

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<sup>24</sup> Section 243.54(13), F.S.

<sup>25</sup> Section 243.54(14), F.S.

<sup>26</sup> Section 243.54(7)(a)-(c), F.S.

<sup>27</sup> Section 243.54(9), F.S.

<sup>28</sup> Section 243.57, F.S.

<sup>29</sup> Section 243.73(1)(a)-(e), F.S.

<sup>30</sup> Section 243.73(2), F.S.

<sup>31</sup> Section 243.58, F.S.

<sup>32</sup> Section 243.66, F.S.

state, and do not constitute an obligation, either general or special, of the state.<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup>

## Effect of Proposed Changes

The bill revises several provisions relating to the makeup and operation of HEFFA, including board appointee terms, public meetings and workshops, quorum and participation at such meetings and workshops, audit deadlines, contract administration, means of defining financial responsibility in financing agreements, and legislative determination's with respect to HEFFA's purpose.

The bill modifies the legislative findings and declarations by clarifying the necessity of the public interest of the provisions enacted as a matter of legislative determination.

The bill specifies the start of a term when the Governor appoints a new member to the HEFFA as beginning on the later of the dates that the current term expires or the date the new member was appointed by the Governor.

The bill defines "communications media technology" as telephone conference, video conference, or other communication technology that enables all persons attending a public meeting or workshop can audibly communicate. The bill allows for the HEFFA to conduct a public meeting or workshop by means of communications media technology. For meeting or workshops being conducted via communication media technology, the bill requires the HEFFA to provide notice requirements for such meetings and workshops.

This bill also revises the requirement for an action to be taken by the HEFFA as a majority of members constitutes a quorum, and the affirmative vote of a majority of members participating in the meeting is necessary.

The bill authorizes HEFFA to contract with an entity as its agent and to assist it with administrative matters.

Additionally, the bill prohibits the HEFFA from entering into a financing agreement with a participating institution for a project, if at the time the agreement is executed, the institution is not financially responsible and not fully capable of and willing to fulfill its obligation under the financing agreement.

The bill revises the timeframe for the HEFFA to submit a report to the Governor and the presiding offices of each house of the Legislature, to be within six months after the end of its fiscal year.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 243.51, F.S.; modifying legislative findings and declarations regarding the Higher Education Facilities Financing Act.

**Section 2:** Amends s. 243.53, F.S.; specifying when the term for a new appointee to the Higher Educational Facilities Financing Authority begins; defining "communications media technology"; revising a requirement for when action may be taken by the Higher Educational Facilities Financing Authority; authorizing the Higher Educational Authority to conduct meetings and workshops by means of communications media technology; providing notice requirements for meetings and workshops.

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<sup>33</sup> Section 243.64, F.S.

<sup>34</sup> Section 243.52(5), F.S.

<sup>35</sup> Section 243.70, F.S.

- Section 3:** Amends s. 243.54, F.S.; authorizing the Higher Educational Facilities Financing Authority to contract with an entity to assist with administrative matters.
- Section 4:** Amends 243.58, F.S.; prohibiting the Higher Educational Facilities Financing Authority from entering into a financing agreement with a participating institution for a project if at the time the agreement is executed certain conditions exist.
- Section 5:** Amends 243.73, F.S.; revising the timeframe within which the Higher Educational Facilities Financing Authority is required to submit a report to the Governor and the Legislature.
- Section 6:** Provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None.
2. Expenditures:  
None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:  
None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

*See Fiscal Comments.*

### D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact. Any unforeseen expenses incurred can be absorbed by the Authority's existing resources.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:  
None.
2. Other:  
None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.