

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/SB 598

INTRODUCER: Education Postsecondary Committee and Senator Martin

SUBJECT: Higher Educational Facilities Financing

DATE: March 21, 2023      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jahnke</u>	<u>Bouck</u>	<u>HE</u>	<u>Fav/CS</u>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 598 revises various provisions related to the Higher Educational Facilities Financing Authority (HEFFA). Specifically, the bill:

- Clarifies that the term for a new appointee to the HEFFA begins on the later of the dates on which the current term expires or the date of appointment by the governor.
- Authorizes the authority to conduct meetings and workshops by means of communications media technology, and:
  - Provides notice requirements and participation specifications for meetings and workshops conducted via communication media technology.
  - Specifies that majority voting is for members participating in the meeting, rather than those present.
- Authorizes the HEFFA to contract for administrative services.
- Modifies the time by which the HEFFA determines the financial responsibility and capability to fulfill a project to at the time the financial agreement is executed.
- Revises the timeframe within which the authority is required to submit a report to the Governor and the Legislature from 2 months to 6 months after the end of the fiscal year.

The bill is not expected to impact state or local government revenues and expenditures.

The bill is effective July 1, 2023.

## II. Present Situation:

### Higher Educational Facilities Financing Authority

The Higher Educational Facilities Financing Authority (HEFFA or authority) was established in 2001<sup>1</sup> as a public corporation to provide assistance to eligible private postsecondary institutions in financing and refinancing educational facilities construction, and to enable those institutions to coordinate their budgetary needs with the timing of receipt of tuition revenue.<sup>2</sup>

#### *Purpose and Powers*

The HEFFA is constituted as a public instrumentality and the exercise of its conferred powers<sup>3</sup> is considered to be the performance of an essential public function.<sup>4</sup> Among other powers, the HEFFA may:<sup>5</sup>

- Exercise general business authority, which includes contracting with an entity as its agent to assist the HEFFA in screening applications of institutions of higher education for loans.
- Implement financing arrangements. 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.<sup>6</sup> However, 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>7</sup>
- Issue bonds and manage loans. 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.<sup>8</sup>
- 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.

#### *Membership*

The five members of the HEFFA are appointed by the Governor and are subject to confirmation by the Senate.<sup>9</sup> Each member is appointed to a five-year term, and upon expiration of the term the Governor appoints a new member to a 5-year term. Additionally, the Governor has the authority to appoint someone to complete an unexpired term in case of a vacancy. Members of the authority can be reappointed, but the Governor has the power to remove any member who engages in misconduct or neglects their duties.<sup>10</sup>

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<sup>1</sup> Ch. 2001-79, Laws of Fla.

<sup>2</sup> Section 243.51, F.S.

<sup>3</sup> Sections 243.50-243.77, F.S.

<sup>4</sup> Section 243.53(1), F.S.

<sup>5</sup> Section 243.54, F.S.

<sup>6</sup> Section 243.52(3), F.S.

<sup>7</sup> Section 243.58(2), F.S.

<sup>8</sup> Section 243.64, F.S.

<sup>9</sup> Section 243.53(2), F.S.

<sup>10</sup> *Id.*

### ***Public Meetings***

Chapter 286, F.S., provides, in relevant part, that all meetings of any board or commission of each state agency or authority at which official acts are to be taken are declared to be public meetings open to the public at all times. No resolution, rule, or formal action shall be considered binding except as taken or made at a public meeting.<sup>11</sup>

Section 243.53(1), F.S., provides that ch. 286, F.S., applies to the HEFFA. Section 243.53(5), F.S., provides that a majority of the members constitute a quorum, and that a majority vote of the members present at the meeting is necessary for any action to be taken by the authority. Section 243.54(2), F.S., authorizes the HEFFA to adopt bylaws for the regulation of its affairs and the conduct of its business. It is unclear whether the HEFFA has adopted a bylaw addressing the “presence” of its board members or the use of “communications media technology” for its meetings.

Section 120.54(5), F.S., allows state agencies to conduct public meetings, hearings, and workshops through “communications media technology.” It is unclear whether HEFFA is a “state agency” for purposes of this provision.

As noted above, a majority of the membership constitutes a quorum, and an affirmative vote of a majority of the members present is necessary for any action. The law does not define “present.” Absent any statutory definition of the term, and consistent with prior Attorney General Opinions,<sup>12</sup> the plain meaning of the term applies. “Present” means “in attendance; not elsewhere.”<sup>13</sup>

### ***Reports and Audits***

The HEFFA is required to submit an annual report to the Governor and the legislature, within 2 months after the end of its fiscal year.<sup>14</sup> The complete and detailed report must include the following:<sup>15</sup>

- Operations and accomplishments.
- Receipts and expenditures during its fiscal year in accordance with the categories or classifications established by the authority for its operating and capital outlay purposes.
- Assets and liabilities at the end of its fiscal year and the status of reserve, special, or other funds.
- A schedule of its bonds outstanding at the end of its fiscal year, together with a statement of the principal amounts of bonds issued and redeemed during the fiscal year.
- Any other information the authority deems appropriate.

In addition to the report, the HEFFA must submit a copy of an annual financial audit of its accounts and records, and an annual compliance audit of its programs conducted by an

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<sup>11</sup> Section 286.011(1), F.S.

<sup>12</sup> Op. Att’y Gen. Fla. 2020-03, and Op. Att’y Gen. Fla. 2010-34, n. 5-6.

<sup>13</sup> Black’s Law Dictionary (11<sup>th</sup> ed. 2019).

<sup>14</sup> Section 243.73(1), F.S.

<sup>15</sup> *Id.*

independent certified public accountant.<sup>16</sup> The Auditor General also has the authority to conduct and audit of the authority or any programs or entities created by the authority.<sup>17</sup>

### III. Effect of Proposed Changes:

This bill amends provisions related to the Higher Educational Facilities Financing Authority (HEFFA).

**Section 1** amends s. 243.51, F.S., to confirm the declarations of the HEFFA as serving in the public interest, as determined by the Legislature.

**Section 2** amends s. 243.53, F.S., to revise provisions relating to member appointments and meetings. The section:

- Specifies the term for a new appointee to the HEFFA to begin on the later of the dates on which the current term expires or the date of appointment by the Governor. This change will allow, if the appointment of a new board member is delayed, for the new member to serve a full 5-year term.
- Authorizes the HEFFA to meet via telephone conference, video conference, or other communications technology that allows public access. The bill provides noticing requirements to inform the public of the remote meeting and how persons may access the meeting, and specifies that participation by an officer, member, or other representative via telephone or video conference constitutes the individual's presence at the meeting. Accordingly, the bill changes the voting requirement from a majority of members present in a meeting to the majority of members participating in the meeting.

**Section 3** amends s. 243.54, F.S., to expand the authority of the HEFFA to contract for services. Currently the HEFFA may contract for assistance with screening loan applications by institutions of higher education; the bill authorizes the HEFFA to contract for administrative services beyond just the screening.

**Section 4** amends s. 243.58, F.S., relating to the timing for the HEFFA to determine the financial responsibility of the applicant. The bill specifies that the HEFFA may not enter into a financing agreement for a project with a participating institution that is not financially responsible and fully capable of fulfilling the obligations at the time the agreement is executed.

**Section 5** amends s. 243.73, F.S., revising the timeframe within which the authority is required to submit an annual report to the Governor and the Legislature from 2 months to 6 months after the end of the fiscal year. Because the annual report must include the annual financial audit, this timeframe will better reflect the general timeframe for delivery of audited financial statements.

**Section 6** provides the bill is effective July 1, 2023.

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<sup>16</sup> Section 243.73(2), F.S.

<sup>17</sup> Section 243.73(3), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 243.51, 243.53, 243.54, 243.58, and 243.73 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 Postsecondary on March 7, 2023:**

The committee substitute removes from the bill the changes to s. 243.52, F.S., which modified the definition of an “institution of higher education.” Thereby retaining the current definition.

- B. **Amendments:**

None.