

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 Postsecondary

BILL: SB 598

INTRODUCER: Senator Martin

SUBJECT: Higher Educational Facilities Financing

DATE: March 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	HE	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

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

- Revises the definition of an "institution of higher education" that may participate in the program.
- 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 effective July 1, 2023.

II. Present Situation:

Higher Educational Facilities Financing Authority

The Higher Educational Facilities Financing Authority (HEFFA or authority) was established in 2001¹ 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.²

Purpose and Powers

The HEFFA is constituted as a public instrumentality and the exercise of its conferred powers³ is considered to be the performance of an essential public function.⁴ Among other powers, the HEFFA may:⁵

- 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.⁶ 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.⁷
- 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.⁸
- 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 5 members of the HEFFA are appointed by the Governor and are subject to confirmation by the Senate.⁹ The members are appointed for terms of 5 years each a member or members to succeed those whose terms expire. 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.¹⁰

¹ Ch. 2001-79, Laws of Fla.

² Section 243.51, F.S.

³ Sections 243.50-243.77, F.S.

⁴ Section 243.53(1), F.S.

⁵ Section 243.54, F.S.

⁶ Section 243.52(3), F.S.

⁷ Section 243.58(2), F.S.

⁸ Section 243.64, F.S.

⁹ Section 245.53(2), F.S.

¹⁰ *Id.*

Participating Institutions

A “participating institution” is an independent nonprofit college or university which is located in and chartered by the state, accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, and grants baccalaureate degrees; and 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.”¹¹

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.¹² The complete and detailed report must consist of the following:¹³

- 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 independent certified public accountant.¹⁴ The Auditor General also has the authority to conduct and audit of the authority or any programs or entities created by the authority.¹⁵

III. Effect of Proposed Changes:

SB 598 amends provisions related to the Higher Educational Facilities Financing Authority (HEFFA). The bill modifies s. 243.51, F.S., to confirm the declarations of the HEFFA as serving in the public interest, as determined by the Legislature.

The bill amends s. 243.52, F.S., to revise the definition of an “institution of higher education” that may participate in the HEFFA. The bill removes the requirement that the institution be baccalaureate granting and to be accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, instead simply that the institution is accredited beyond the high school level. The change in required degree level and specific accrediting agency will open the HEFFA to a broad range of other private postsecondary institutions that may become eligible for financing.

¹¹ Section 243.52(6) and (7), F.S.

¹² Section 243.73(1), F.S.

¹³ *Id.*

¹⁴ Section 243.73(2), F.S.

¹⁵ Section 243.73(3), F.S.

The bill modifies s. 243.53, F.S., to revise provisions relating to member appointments and meetings. The bill:

- 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 five-year term.
- Authorizes the HEFFA to meet via telephone conference, video conference or other communications technology allowing 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 change the voting requirement from a majority of members present in a meeting to the majority of members participating in the meeting.

The bill modifies s. 243.54, F.S., to expand the authority of the HEFFA to contract for services. Currently the HEFFA may contract for to assist with screening loan applications by institutions of higher education; the bill authorizes the HEFFA to contract for administrative services beyond just the screening.

The bill modifies 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 project with a participating institution that is not financially responsible and fully capable of fulfilling the obligations at the time the agreement is executed.

The bill also 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.

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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 the following sections of the Florida Statutes: 243.51, 243.52, 243.53, 243.54, 243.58, and 243.73.

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.