



SPONSOR: Rep. Wagner & Sen. McDowell;
Reps. Spence, Buckworth, DiPinto, Stone, Schooley

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 462

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE CREATING A DELAWARE HIGHER EDUCATION FACILITIES AUTHORITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 14 of the Delaware Code by creating a new Chapter 94 to read as follows:

“Title 14

Education

Chapter 94. Delaware Higher Educational Facilities Authority

§ 9401. Short Title.

This Chapter shall be known as the Delaware Higher Educational Facilities Authority Act.

§ 9402. Legislative findings and determinations.

The General Assembly finds that annual Capital Improvement appropriations are insufficient to finance the immediate building and facility requirements of the institutions of higher education in the State, and in order to provide these buildings and facilities, it is necessary to authorize the issuance of revenue bonds, subject to the restrictions and limitations hereinafter set forth. It is the intent of the General Assembly that revenue bonds issued for academic and administrative buildings and facilities shall supplement and not supplant legislative appropriations for the same or similar purposes.

§ 9403. Definitions.

The following words or terms, as used in this Chapter, shall have the respective meanings as stated:

- (1) ‘Authority’ means the Delaware Higher Educational Facilities Authority.
- (2) ‘Bonds’ means revenue bonds which are payable solely and only from student tuition, fees, charges and institutional income received by the institution at which the project is being undertaken.
- (3) ‘Buildings and facilities’ means those academic buildings and other facilities used primarily for instructional and research purposes, including libraries, and such other administrative buildings and facilities as are deemed necessary by the Authority to provide supporting services to the instructional and research programs and activities of the institutions, including, but not limited to, administrative offices, facilities for business services, student services and extension and continuing education services.
- (4) ‘Project’ means the acquisition by gift, purchase, lease or construction of buildings and facilities which are deemed necessary by the Authority for the proper performance of the instructional, research and service functions of the institutions, and additions to buildings and facilities, the reconstruction, completion, equipment, improvement, repair or remodeling of buildings and facilities, including the demolition of existing buildings and

facilities which are to be replaced, and the acquisition of property whether real, personal, or mixed, for buildings and facilities by gift, purchase, lease, condemnation or otherwise.

(5) 'Institution' or "institutions" means the University of Delaware, Delaware State University and Delaware Technical and Community College.

(6) 'Institutional income' means income received by institutions that is not related to State appropriations or grant income.

§ 9404. Established; composition; term of office; vacancies; officers; compensation.

(a) There is hereby established the Delaware Higher Educational Facilities Authority. The Authority is constituted a public instrumentality and the exercise by the Authority of the powers conferred by this Chapter is the performance of an essential public function.

(b) The Authority shall consist of nine (9) members as follows:

- (1) One (1) Member approved by the Governor
- (2) The Budget Director
- (3) The Secretary of Education or designee
- (4) The University of Delaware President or designee
- (5) The Delaware State University President or designee
- (6) The Delaware Technical Community College President or designee
- (7) One (1) Member of the House of Representatives appointed by the Speaker of the House
- (8) One (1) Member of the Senate appointed by the President Pro Tempore
- (9) The Controller General or designee

§ 9405. Executive Director; General Counsel; quorum; power to issue bonds.

(a) (1) The Authority may appoint an Executive Director and a General Counsel, and any other officers, none of whom may be members of the Authority.

(2) The Executive Director shall:

- a. Serve at the pleasure of the Authority; and
- b. Receive compensation as fixed by the Authority.

(3) The Executive Director or other person designated by resolution of the Authority:

- a. Shall keep a record of the proceedings of the Authority;
- b. Shall be custodian of all books, documents and papers filed with the Authority, the minute book or journal of the Authority and its official seal; and
- c. May cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under the official seal of the Authority to the effect that the copies are true copies, and all persons dealing with the Authority may rely upon the certificates.

(b) (1) Six (6) members of the Authority shall constitute a quorum.

(2) The affirmative vote of a majority of the members present, and not less than five (5) votes, is necessary for any action taken by the Authority.

(c) (1) A vacancy in the membership of the Authority may not impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

(2) Any action taken by the Authority under this chapter may be authorized by resolution at any regular or special meeting and may take effect immediately and need not be published.

(d) (1) The Authority may issue bonds to pay all or any part of the cost of carrying out any project at any institution and may refund or refinance bonds issued for any project.

(2) The bonds may not grant to the owners or holders any right to have the Authority or the General Assembly levy any taxes or appropriate any funds for the payment of principal or interest.

§ 9406. Powers and duties.

(a) (1) In addition to any other powers granted or duties imposed upon it, the Authority has the powers and duties set forth in this Section.

(2) The Authority shall adopt any rule or regulation necessary to carry out its powers and duties.

(b) The Authority may:

(1) Adopt an official seal;

(2) Maintain an office at the place or places it may designate;

(3) Participate in legal proceedings in the name of the Authority; and

(4) Sue and be sued in its own name, plead and be impleaded.

(c) The Authority may:

(1) Issue bonds for any of its corporate purposes and borrow funds as working capital for its operations;

(2) Fix, revise, charge and collect rates, fees and charges for the services furnished or to be furnished by the Authority and contract with any person, including financial institutions, loan originators, administrators, issuers of letters of credit and insurers;

(3) Employ consultants, attorneys, accountants, financial experts, bankers, managers and other employees and agents as may be necessary in its judgment, and fix their compensation;

(4) Receive and accept from any source and in any form, loans, appropriations, contributions, gifts or grants for or in aid of any Authority purpose and, when required, use the funds, property or labor only for the purposes for which it was provided;

(5) Charge to and apportion among participating institutions its administrative and operating costs and expenses incurred in the exercise of its powers and duties; and

(6) Do all acts and things necessary or convenient to carry out its corporate purposes and in such manner and upon such procedure as the Authority may in its discretion from time to time determine or prescribe.

§ 9407. Bonds.

(a) The Authority is hereby authorized to provide by resolution, from time to time, for the issuance of duly authorized bonds of the Authority for any of its corporate purposes, including the refunding of its bonds. The principal of, premium, if any, and the interest on any issue of bonds shall be payable solely from, and shall be secured by an irrevocable pledge of a sufficient portion of the student tuition, fees, charges, and institutional income received by the particular institution.

(b) The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times, may be redeemed before maturity, at the option of the Authority, at such price or prices and under such terms and

conditions, all as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Authority may sell such bonds in such manner, whether at public or private sale, and for such price, as it may determine to be in the best interests of the Authority.

- (c) The proceeds of the bonds of each issue shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, subject to this Chapter.

§ 9408. Credit of State not pledged to Authority bonds.

- (a) Bonds issued by the Authority under this Chapter shall not constitute a debt or liability of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but such bonds, unless refunded by bonds of the Authority authorized by this Chapter, shall be payable solely from funds and property pledged, assigned or available for their payment as specifically authorized in the resolution authorizing such bonds or in the trust indenture securing such bonds. All bonds shall contain on the face thereof a statement to the effect that the Authority is obligated to pay such bonds and the interest thereon only from revenues or other specifically pledged property, and that neither the State nor any political subdivision thereof is obligated to pay the bonds or the interest thereon and that neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

- (b) All expenses incurred in carrying out this Chapter, other than for the issuance of general obligation bonds by the State, shall be payable solely from funds provided under this chapter and nothing in this chapter shall be construed to authorize the Authority to incur indebtedness or any liability on behalf of or payable by the State or any political subdivision thereof.

§ 9409. Audit of books and accounts.

The office of Auditor of Accounts shall cause an annual audit of the books and accounts of the Authority. The selection of a firm to perform the annual audit of the books and accounts of the Authority shall be mutually agreed upon by the office of the Auditor of Accounts and the Secretary who shall consult and cooperate with each other in the selection, contract, employment and scope of professional services to be rendered, provisions in Chapter 29 of Title 29 notwithstanding. The audit shall be performed by an independent firm of certified public accountants of recognized ability and standing and shall conform in all respects to the covenants contained in all trust agreements entered into by the Authority for the benefit of its bondholders. The Authority shall transfer funds, as requested by the office of Auditor of Accounts, to cover the cost of the audit.”.

SYNOPSIS

This Act establishes the Delaware Higher Educational Facilities Authority.