

FIRST REGULAR SESSION

SENATE BILL NO. 276

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CASKEY.

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S0849.03I

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 360.060, RSMo 1994, and sections 360.015, 360.047 and 360.106, RSMo Supp. 1998, relating to the health and educational facilities authority, and to enact in lieu thereof four new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 360.060, RSMo 1994, and sections 360.015, 360.047 and 360.106, RSMo Supp. 1998, are repealed and four new sections enacted in lieu thereof, to be known as sections 360.015, 360.047, 360.060 and 360.106, to read as follows:

360.015. As used in sections 360.010 to 360.140, unless the context clearly requires otherwise, the following terms mean:

(1) "Authority", the health and educational facilities authority of the state of Missouri created by sections 360.010 to 360.140;

(2) "Costs", as applied to health or educational facilities financed in whole or in part pursuant to the provisions of sections 360.010 to 360.140 includes the sum total of all reasonable or necessary expenses incidental to the acquisition, construction, reconstruction, repair, alteration, improvement, and extension of the facilities, including without limitation the expense of studies and surveys; land title and mortgage guaranty policies; architectural and engineering services; legal, organizational, marketing, or other special services; financing, acquiring, demolishing existing structures, constructing, equipping, and developing the sites of new and rehabilitated buildings; rehabilitating, reconstructing, repairing, or remodeling existing buildings; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; and all other necessary and incidental expenses

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

including interest during construction on bonds issued to finance the facilities and for a period subsequent to the estimated date of completion of the facilities;

(3) "Educational facilities", a structure or building, whether such structure or building is located within the state of Missouri or outside the state of Missouri, suitable for use as a dormitory or other housing, including housing for staff members, dining hall, student union, administration building, academic building, library, laboratory, place in which to conduct research, classroom, place for athletic activities, place in which to provide health care, place in which to house maintenance equipment and supplies, storage place, and place in which to locate utilities, as well as other structures or appurtenances related thereto required or useful for the instruction of students in the conducting of research at, or the operation of an educational institution, as defined in sections 360.010 to 360.140, including parking lots, garages, and other buildings or structures essential or convenient for the orderly conduct of such an institution and also including all necessary, useful or related furnishings, equipment, machinery, and appurtenances necessary or convenient for the operation of a particular service or structure in the manner for which its use is intended, including, without limitation, the acquisition, preparation and development of all lands necessary or convenient as a site or sites for any of the foregoing, but shall not include such items as books, fuel, supplies, or other items which customarily are deemed to constitute a current operating expense, and shall not include any property used or to be used for sectarian instruction or study or as a place for religious worship or any property used or to be used primarily in connection with any part of a program of a school or department of divinity of any religious denomination;

(4) "Educational institution", any public or private association, corporation, institution, partnership, limited partnership, joint venture or other entity, or any public association, corporation or institution which is, or is owned and operated by, a political subdivision of the state of Missouri, not operated for private or corporate profit, or any public association, corporation or institution which is, or is owned and operated by or on behalf of, a political subdivision of the state of Missouri, authorized by law to provide or operate educational facilities and to provide a program of education in the state of Missouri; and any of the foregoing described entities which are authorized by law to provide or operate educational facilities, and to provide a program of education outside the state of Missouri if such entity, or an affiliate of such entity, also operates an educational facility within the state of Missouri or maintains a regional or national headquarters within the state of Missouri, and any state educational institution as defined in subdivision (5) of section 176.010, RSMo, and "participating educational institution", any such educational institution which, pursuant to the provisions of sections 360.010 to 360.140, undertakes the financing and construction or acquisition of educational facilities or undertakes the refunding or refinancing of outstanding obligations, of a mortgage, or of advances or loans as provided in and permitted by sections 360.010 to 360.140 with respect to an educational facility;

(5) "Health facilities", a structure or building, whether such structure or building is located within the state of Missouri or outside the state of Missouri, suitable for use as a hospital, clinic, nursing home, home for the aged or infirm, **congregate, life, senior, extended care or elderly housing or care facility**, or other health care facility, laboratory, **pharmacy**, laundry, residence facility or housing for nurses, doctors, interns, staff members, employees, students at such health facilities or their immediate families, and for physically or mentally handicapped persons, place for administrative offices, place in which to conduct research, place in which to house maintenance equipment and supplies, storage place, place in which to locate utilities, auditorium, dining hall, place for food service and preparation, place in which to house fire-fighting equipment, place in which to provide mental and physical health care and dental care, nursing, **technical or paraprofessional** school, medical **or dental** teaching school, and place in which to house offices; parking lots, garages, and buildings or structures in which to house supporting services; **or any other structure or facilities required or useful for the operation of a health institution; mental, emotional or physical rehabilitation facility; alcohol, drug or substance abuse diagnosis, counseling, treatment or rehabilitation facility; child care or child welfare facility**; and all necessary, useful, and related furnishings, equipment, machinery, and appurtenances, or other assets, tangible or intangible, including but not limited to assets related to health delivery systems or networks which are necessary or useful in the development, establishment or operation of a participating health institution; including without limitation the acquisition, preparation, and development of all lands necessary or convenient as a site or sites for any of the foregoing, but shall not include any property used or to be used for sectarian instruction or study or as a place for religious worship or any property used or to be used primarily in connection with any part of a program of a school or department of divinity of any religious denomination;

(6) "Health institution", any of the following entities authorized by law to provide or operate health facilities in the state of Missouri, or outside the state of Missouri if such entity or an affiliate of such entity also operates a health facility within the state of Missouri or maintains a regional or national headquarters within the state of Missouri:

(a) Any public or private association, corporation, institution, partnership, limited partnership, joint venture or other entity, [or any public association, corporation or institution which is, or is owned and operated by, a political subdivision of the state of Missouri,] not operated for private or corporate profit authorized by law to provide or operate health [facilities in the state of Missouri];

(b) Any network or organization of health care providers, however organized; any integrated health care delivery system; any joint venture, partnership or similar arrangement between or among health care providers; any health care purchasing alliance; any health insurers and third-party administrators which are participants in a system, network, joint venture, or

partnership that provides health services; any organization which, as its primary purpose, provides supporting services to one or more health institutions; and any foundation which supports a health institution or promotes and encourages health policy or medical research and public health; and

(c) Any of the entities listed in paragraph (a) or (b) of this subdivision whether operated for profit or not operated for private or corporate profit;

(7) "Missouri college savings bonds", bonds, notes or other evidences of indebtedness issued pursuant to sections 360.010 to 360.140 and designated as such;

(8) "Participating health institution", any health institution which, pursuant to the provisions of sections 360.010 to 360.140, undertakes the financing and construction or acquisition of health facilities or undertakes the refunding or refinancing of outstanding obligations, of a mortgage, or of advances or loans as provided in and permitted by sections 360.010 to 360.140 with respect to a health institution;

(9) "Revenues", with respect to health or educational facilities, the rents, fees, charges, and other income derived from the operation of the facilities.

360.047. 1. The authority shall have the power to assist, coordinate and participate with governmental authorities and issuers of states other than the state of Missouri (out-of-state issuers) in connection with issuance of bonds, notes or other evidence of indebtedness by such out-of-state issuers for educational facilities and health facilities located within the state of Missouri.

2. In connection with such financing by out-of-state issuers, the authority is designated as the only entity in the state of Missouri which may conduct the public hearing of the applicable governmental unit required by Section 147(f) of the Internal Revenue Code of 1986, as amended, and the governor of the state of Missouri is designated as the only **person or** entity in the state of Missouri who may [be] **serve as the elected representative which must give approval on behalf of** the applicable governmental unit pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended.

3. Following such hearing, the authority shall determine whether the financing should proceed with respect to educational facilities or health facilities located within the state of Missouri by an out-of-state issuer. If the authority determines that the financing should not proceed, the financing shall not proceed relative to the Missouri facilities.

360.060. Bonds of the authority may be issued as serial bonds, as term bonds, or as a combination of both types. All bonds issued by the authority shall be payable solely out of the revenues and receipts derived from the leasing or sale by the authority of, or the loan by the authority with respect to, the facility or facilities concerned or of any thereof as may be designated in the resolution or resolutions of the authority under which bonds shall be authorized to be issued or as may be designated in a trust indenture authorized by the authority. The bonds may be

executed and delivered by the authority at any time and from time to time may be in such form and denomination or denominations and of such terms and maturities, may be in fully registered form or in bearer form, registrable either as to principal or interest or both, may bear such conversion privileges, may be payable in such installment or installments and at such time or times not exceeding ~~[forty]~~ **sixty** years from the date of the issuance thereof, may be payable at such place or places whether within or without the state of Missouri, may bear interest at such rate or rates per annum either initially or thereafter, as shall be determined by the authority or as shall be determined in any manner approved by the authority in its resolution, including, but not limited to, the delegation thereof to its chairman, vice chairman, executive director or a third party pursuant to a formula set forth therein, notwithstanding the provisions of section 108.170, RSMo, may be made payable at such time or times and at such place or places, may be evidenced in such manner, may be executed by such officers of the authority, may have attached thereto, in the case of bearer bonds or bonds registrable as to principal only, interest coupons bearing the facsimile signature of the secretary of the authority, and may contain such provisions not inconsistent herewith, all as shall be provided in the resolution or resolutions of the authority whereunder the bonds shall be authorized to be issued or as shall be provided in a trust indenture authorized by the authority. If deemed advisable by the authority, there may be retained in the resolution or the trust indenture under which any bonds of the authority are authorized to be issued an option to call for redemption in advance of maturity all or any part of such bonds as may be specified in the resolution or in the trust indenture, at such price or prices, upon the giving of such notice or notices, and upon such terms and conditions as may be set forth in the resolution or in the trust indenture and as may be recited on the face of the bond, but nothing in this section shall be construed to confer upon the authority the right or option to call for redemption in advance of maturity any bonds except as may be provided in the resolution or in the trust indenture under which they shall be issued. The bonds of the authority may be sold at public or private sale for such price, in such manner, and from time to time as may be determined by the authority notwithstanding the provisions of section 108.170, RSMo, and the authority may pay all expenses, premiums, and commissions which it may deem necessary or advantageous in connection with the issuance thereof from the proceeds of the bonds.

360.106. 1. As used in this section and sections 360.111 to 360.118, the following terms mean:

(1) "Funding agreement", any loan agreement, financing agreement or other agreement between the authority and a participating district under this section, providing for the use of proceeds of, security for, and the repayment of, school district bonds, and shall include a complete waiver by the participating district of all powers, rights and privileges conferred upon the participating district to institute any action authorized by any act of the Congress of the United States relating to bankruptcy on the part of the participating district;

(2) "Participating district", with respect to a particular issue of bonds, notes or other financial obligations, any school district and any public community junior college in this state which voluntarily enters into a funding agreement with the authority pursuant to this section;

(3) "School district bonds", any bonds, notes or other obligations issued by the authority for the purpose of making loans to, purchasing the bonds or notes of or otherwise by agreement using or providing for the use of the proceeds of the obligations by a participating district under this section and all related costs of issuance of the obligations including, but not limited to, all costs, charges, fees and expenses of underwriters, financial advisors, attorneys, consultants, accountants and of the authority.

2. In addition to other powers granted to the authority by sections 360.010 to 360.140, the authority shall have the power to issue school district bonds or notes for the purpose of making loans to, or purchasing the bonds, notes or other financial instruments of:

(1) Any school district or any public community junior college in this state for the use of the various funds of such school district or public community junior college for any lawful purpose; and

(2) Any school district in this state with respect to obligations issued by such school district pursuant to sections 164.121 to 164.301, RSMo, or otherwise by law.

3. In connection with the issuance of school district bonds pursuant to the powers granted in this section, the authority shall have all powers as set forth elsewhere in sections 360.010 to 360.140, and the provisions of sections 360.010 to 360.140 shall be applicable to the issuance of school district bonds to the extent that they are not inconsistent with the provisions of this section.

4. School district bonds issued pursuant to this section may be secured by a pledge of payments made to the authority by the participating district, by the bonds or notes of the participating district, or by a pooling of such payments, bonds or notes of two or more of such participating districts or as otherwise set forth in the funding agreements.

5. The authority may invest any funds held pursuant to powers granted under this section, which are not required for immediate disbursement, in any investment approved by the authority and specified in the trust indenture or resolution pursuant to which such bonds or notes are issued without regard to any limitation otherwise imposed by section 360.120 or otherwise by law; provided, however, that each participating district shall receive the earnings, or a credit for such earnings, to the extent any such amounts invested are attributable to a particular participating district.

6. (1) In connection with school district bonds, upon certification by the authority to the commissioner of education and the state treasurer that the funding agreement provides for consent by a participating district for direct deposit of its state payments to the trustee, the state treasurer shall transfer, but only out of funds described in this section, directly to the trustee for such school district bonds, the amounts needed to pay the principal and interest when due on the

school district bonds attributable to a particular participating district. Such transfers for any school district bonds attributable to a particular participating district shall only be made out of, and to the extent of, the state payments and distributions from all funds to be made by the state to such participating district pursuant to sections 163.011 to 163.195, RSMo, and the distributions from the fair share fund to be made by the state to such participating district pursuant to section 149.015, RSMo. Any such transfer by the state on behalf of a participating district shall discharge the state's obligation to make such state payments to such participating district to the extent of such transfer;

(2) A participating district shall withdraw amounts from any of its funds established pursuant to section 165.011, RSMo, to the extent such amounts could have been used to make the payments made on its behalf by the state treasurer as provided in subdivision (1) of this subsection. Notwithstanding any provisions of section 108.180, RSMo, to the contrary, such amounts shall be deposited into the participating district's funds as provided by law in lieu of the state payments transferred to the trustee under the funding agreement;

(3) The authority shall from time to time develop guidelines containing certain criteria with respect to participating school districts and with respect to the issuance of school district bonds;

(4) Transfers made under this subsection pursuant to a school district's participation in a funding agreement under this section shall be made at no cost to the school district.

7. The authority shall provide for the payment of costs of issuance, costs of credit enhancement and any other costs or fees related to the issuance of any school district bonds other than reserve funds, out of the proceeds thereof or out of amounts distributed annually to the authority pursuant to sections 160.534 and 164.303, RSMo. The authority shall annually submit a request for funding of such costs to the commissioner of education in such form and at such time as he may request. A copy of such request shall be forwarded to the commissioner of administration. The authority shall provide for the payment of costs pursuant to this subsection only for bonds issued for the purpose of financing construction or renovation projects approved by voters after January 1, 1995, or refinancing construction or renovation projects or for refinance of lease purchase obligations with general obligation bonds.

8. Any refunding or refinancing of existing bonds of a school district under this section shall have a net present value savings of at least one and one-half percent of the par amount of the refunded bonds.

9. The commissioner of education shall serve as an ex officio, nonvoting, advisory member of the authority solely with regard to the exercise of powers granted pursuant to this section.

10. Nothing in this section or sections 360.111 to 360.118 shall be construed to relieve a school district of its obligation to levy a debt service levy or capital projects levy sufficient to retire any obligation of the district as otherwise provided by law.

11. Any professional services provided in connection with the sale of such bonds pursuant to this section, including, but not limited to, underwriters, bond counsel, underwriters' counsel, trustee and financial advisors, shall be obtained through competitive bidding. The initial bid for professional services shall be for a period of not longer than two years, and thereafter such bids shall be awarded for a period not longer than one year.

12. The authority shall review the cost effectiveness of the program established under this section and sections 360.111 to 360.118 and shall, on or before the fifteenth of **[January] August** of each year, provide a report to the general assembly which shall contain a report on the program, the authority's findings and a recommendation of whether this section should be repealed, strengthened or otherwise amended.

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