HOUSE BILL No. 1297

DIGEST OF INTRODUCED BILL

Citations Affected: IC 21-29-3-2; IC 21-32; IC 21-34; IC 21-35.

Synopsis: Financing public university projects. Makes changes in the law governing the financing of capital projects by state educational institutions. Repeals a requirement that certain revenue bonds be approved in an appropriation act of the general assembly.

Effective: Upon passage.

Klinker, Cherry, Pelath, Truitt

January 13, 2010, read first time and referred to Committee on Education.

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Introduced

Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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HOUSE BILL No. 1297

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 21-29-3-2, AS ADDED BY P.L.2-2007, SECTION 270, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. This chapter shall not be construed as limiting or restricting the investment powers otherwise provided state educational institutions, including the power to adopt and implement investment policies under IC 21-29-2-1 **and IC 21-29-2-2.**

SECTION 2. IC 21-32-1-2, AS ADDED BY P.L.2-2007, SECTION 273, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a)** "Bonds" includes:

(1) bonds;

(2) notes;

~~(2)~~ **(3)** debentures; and

~~(3)~~ **(4)** other evidences of indebtedness.

(b) The term does not include:

(1) certificates of participation in lease purchase agreements;

(2) installment contracts; or

(3) instruments similar to installment contracts or certificates

of participation in lease purchase agreements.

SECTION 3. IC 21-32-2-2, AS ADDED BY P.L.2-2007, SECTION 273, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A state educational institution may do any of the following:

(1) Borrow funds on a temporary basis in anticipation of the issuance of long term obligations.

(2) Use the proceeds of a temporary borrowing for any purpose for which the institution could issue **or incur** obligations under **IC 21-33-3-5,** IC 21-34, IC 21-35-2, IC 21-35-3, or IC 21-35-5.

(3) Issue a temporary borrowing:

(A) in the form of a bond, note, commercial paper, or any other form;

(B) upon the terms and conditions and with the provisions (including redemption provisions);

(C) at the rate or rates of interest (fixed or variable); and

(D) subject to subdivision (5), in the denominations;

as the state educational institution determines under subdivision (6).

(4) Negotiate the terms of any temporary borrowing.

(5) Make the denominations determined under subdivision (3)(D) convertible into different denominations.

(6) Make the determinations under subdivision (3) by any of the following:

(A) The adoption of a resolution.

(B) The approval of a form of indenture between the state educational institution and a designated corporate trustee.

SECTION 4. IC 21-32-3-7, AS ADDED BY P.L.2-2007, SECTION 273, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. **(a) As used in this section, "check" includes electronic transfer by wire transfer or other similar means.**

~~(a)~~ **(b)** A state educational institution may not:

(1) accept a bid for the bonds, other than a bid submitted by the federal government or any agency of the federal government; or

(2) execute and deliver a contract of sale for the bonds;

unless the bid or contract is accompanied by a certified check or cashier's check in an amount equal to one percent (1%) of the principal amount of the bonds sold.

~~(b)~~ **(c)** The check required by subsection ~~(a)~~ **(b)** must be:

(1) payable to the state educational institution issuing the bonds; and

(2) drawn on a bank or trust company, in or out of state, that is

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insured by the Deposit Insurance Fund of the Federal Deposit Insurance Corporation.

~~(c)~~ **(d)** The state educational institution shall:

(1) hold the check required by subsection ~~(a)~~ **(b)** as a guaranty of the performance of:

(A) the bid, if the bid is accepted; or

(B) the contract, if the contract is signed; and

(2) return the check required under subsection ~~(a)~~ **(b)** to a bidder if that bidder's bid is not accepted.

~~(d)~~ **(e)** If a bid is accepted and the bidder fails to perform the bid, the check required under subsection ~~(a)~~ **(b)** and the proceeds of the check are:

(1) the property of the state educational institution; and

(2) considered liquidated damages to the state educational institution arising from the default.

~~(e)~~ **(f)** A contract for the purchase of bonds at negotiated sale must provide that if the purchaser fails to perform the purchaser's obligation to pay for the bonds, the check required under subsection ~~(a)~~ **(b)** and the proceeds from the check are:

(1) the property of the state university or college; and

(2) considered liquidated damages to the state educational institution arising from the default.

SECTION 5. IC 21-34-1-2, AS ADDED BY P.L.2-2007, SECTION 275, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. This article, **except IC 21-34-11-5,** does not apply to the acquisition, construction, financing, or refinancing of any revenue producing facility that a state educational institution is authorized to acquire, construct, or finance under ~~IC 21-35-2 or~~ IC 21-35-3.

SECTION 6. IC 21-34-1-7, AS ADDED BY P.L.2-2007, SECTION 275, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. **(a)** "Building facility" means the following:

(1) Any buildings, structures, improvements, or facilities.

(2) Any utilities, other services, and appurtenances related to an item described in subdivision (1) (including facilities for the production and transmission of heat, light, water and power, sewage disposal facilities, streets and walks, and parking facilities).

(3) The land required for items described in subdivision (1) or (2).

(b) The term includes:

(1) equipment;

(2) software; and

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(3) costs of customization, installation, and training in regard to equipment or software, or both.

SECTION 7. IC 21-34-1-12, AS ADDED BY P.L.2-2007, SECTION 275, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. "Fee replacement" means payments to a state educational institution to be used to pay indebtedness resulting from financing the cost of:

(1) planning;
(2) purchasing;
(3) rehabilitation;
(4) construction;
(5) repair;
(6) leasing;
(7) lease-purchasing; or
(8) otherwise acquiring;

land, buildings, facilities, and equipment to be used for ~~academic and~~ **educational, administrative, or** instructional purposes.

SECTION 8. IC 21-34-1-13, AS ADDED BY P.L.2-2007, SECTION 275, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. "Grant" means money received **under a written agreement or written agreements for a grant or gift** from **any one (1) or more of the following sources:**

(1) The United States government or its agencies.
(2) The state or any of its agencies. ~~or~~
(3) A private corporation, **individual,** trust, or foundation, ~~to be used for the~~ **if the money is provided for the purpose of** acquisition, improvement, renovation, or construction of building facilities that a state educational institution may lawfully undertake.

SECTION 9. IC 21-34-1-14.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 14.2. "Grant anticipation note" refers to a note executed to evidence a grant anticipation loan.**

SECTION 10. IC 21-34-7-2, AS ADDED BY P.L.2-2007, SECTION 275, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A grant anticipation loan may not exceed ~~eighty percent (80%) of~~ the estimated **aggregate** amount of the grant **or grants** in anticipation of which the loan is made. ~~The board of trustees of the state educational institution shall make prepayments of the outstanding balance of its note or retire one (1) or more of its series of outstanding notes promptly upon partial~~

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~~receipt of grant funds so that the outstanding amount of any loan does not exceed the balance of the grant funds yet to be received.~~ **The grant anticipation note must be structured to amortize and to pay principal of and interest on the loan in accordance with anticipated receipts of the grant or grants. A grant anticipation note may also be payable from other revenues or amounts available for pledge under IC 21-34-6-2.**

SECTION 11. IC 21-34-10-1, AS ADDED BY P.L.2-2007, SECTION 275, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Bonds may not be issued by ~~the board of trustees of~~ a state educational institution under this article without the specific approval of: ~~the:~~

(1) **the budget agency, if:**

(A) the bonds are issued for the refunding or advance refunding of any outstanding bonds approved under this chapter; and

(B) the board of trustees of the issuing state educational institution makes the findings described in subsection (b); or

(2) the budget committee,

~~(2)~~ **the** budget agency, and

~~(3)~~ **the** governor, **if subdivision (1) does not apply.**

~~(b)~~ The budget agency may request and consider the recommendation of the staff of the Indiana finance authority with respect to the approval of a bond issue under this section.

(b) The board of trustees of a state educational institution may provide for refunding or advance refunding of any outstanding bonds under subsection (a)(1) whenever the board of trustees of the state educational institution finds that the refunding or advance refunding will benefit the state educational institution because:

(1) a net savings to the state educational institution will be effected; or

(2) the net present value of principal and interest payments on the bonds is less than the net present value of the principal and interest payments on the outstanding bonds to be refunded.

SECTION 12. IC 21-34-11 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 11. Research Intensive State Educational Institutions

Sec. 1. This chapter is supplemental to the authorizations contained in IC 21-34-6 through IC 21-34-10 and applies to a

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research intensive state educational institution as specified in this chapter.

Sec. 2. As used in this chapter, "general revenues" means the general revenues of a research intensive state educational institution, including mandatory student fees and tuition and state appropriations for the general operating support of the research intensive state educational institution, subject to any prior or parity lien granted in favor of bondholders under IC 21-35-2, IC 21-35-3, or IC 21-35-5. However, the term does not include specifically dedicated appropriations and gift, grant, or investment revenues specifically dedicated under law or by the instrument creating the revenues for other purposes.

Sec. 3. As used in this chapter, "research" means an activity carried out for a purpose described in IC 21-35-3-2(2)(A) or IC 21-35-3-2(2)(B).

Sec. 4. As used in this chapter, "research intensive state educational institution" means Purdue University.

Sec. 5. In addition to the purposes specified in IC 21-34-6-1 for which bonds may be issued, and notwithstanding IC 21-34-1-2, the board of trustees of a research intensive state educational institution may issue bonds under IC 21-34-6 through IC 21-34-10 to:

(1) pay part or all of the cost to create or enhance endowments used to establish, attract, and retain faculty or to establish distinguished professorships or similar designations;

(2) pay part or all of the cost to build or acquire research equipment or research facilities, including renovations;

(3) pay part or all of the cost to establish or invest in research programs, excluding compensation costs;

(4) pay part or all of the cost to establish and invest in research centers in partnerships with federal, state, industrial, and university sponsors, excluding compensation costs;

(5) pay part or all of the cost to provide bridge funding for research support, excluding compensation costs; and

(6) pay part or all of the costs of any facility improvement, equipment, or work authorized under IC 21-35-2, IC 21-35-3, and IC 21-35-5.

Sec. 6. In addition to the sources specified in IC 21-34-6-2, the board of trustees of a research intensive state educational institution may issue bonds under IC 21-34-6 through IC 21-34-10 that are payable from general revenues, subject to any prior or parity liens as set forth in section 2 of this chapter or IC 21-34-6-2.

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Sec. 7. (a) Notwithstanding IC 21-34-10-2, IC 21-33-3-5, IC 21-33-3-9, IC 21-35-2-2, IC 21-35-2-23, or any other law, the board of trustees of a research intensive state educational institution may issue bonds:

(1) payable from the sources specified in section 6 of this chapter; or

(2) payable from or secured by the revenues or revenue generating assets specified in IC 21-34-6-2;

without the prior approval of the general assembly for either the bonds or the project to be financed by the bonds so long as the bonds are not eligible for, or the subject of, fee replacement appropriations.

(b) IC 21-34-10-1 and IC 21-34-10-5 apply to bonds authorized by this section.

SECTION 13. IC 21-35-3-7, AS ADDED BY P.L.2-2007, SECTION 276, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) This section and any other provisions of this chapter related to implementing this section apply only to the following state educational institutions:

(1) Indiana University.

(2) Purdue University.

(b) The board of trustees of Indiana University and the board of trustees of Purdue University may, if the boards of trustees of the state educational institutions find that a necessity exists, erect, construct, reconstruct, extend, remodel, improve, complete, equip, furnish, operate, control, and manage research facilities, if revenue from state, federal, local, or private gifts, grants, contractual payments, or reimbursements is available in an amount that is reasonably expected to at least equal the annual debt service requirements of the bonds and the costs to operate the research facility for each fiscal year that the bonds are outstanding at or in connection with any of the following campuses of Indiana University or Purdue University:

(1) Purdue University-West Lafayette Campus.

(2) Indiana University-Purdue University at Indianapolis (IUPUI).

(3) Indiana University-Bloomington Campus.

(c) Student fees and money appropriated by the general assembly may not be used to pay the debt service requirements ~~or the maintenance expenses~~ of ~~a~~ research ~~facility.~~ **facilities, to the extent they are financed under this chapter.**

SECTION 14. IC 21-35-2-22 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 15. **An emergency is declared for this act.**

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