

Bill No. SB 1024, 1st Eng.

Amendment No.     

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Horne moved the following amendment:

**Senate Amendment (with title amendment)**

On page 9, after line 23,

insert:

Section 4. Short title.--This act may be referred to as the "Higher Educational Facilities Financing Act."

Section 5. Findings and declarations.--It is declared that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity, and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities; that it is essential for private institutions of higher education in the state to be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities; that it is the purpose of this act to provide a measure of assistance and an alternative method enabling private

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1 institutions of higher education of this state to provide the  
2 facilities and structures that are sorely needed to accomplish  
3 the purposes of this act; and that it is essential to provide  
4 additional assistance to private institutions of higher  
5 education by enabling those institutions to coordinate their  
6 budgetary needs with the timing of receipt of tuition  
7 revenues.

8           Section 6. Definitions.--As used in this act, the  
9 term:

10           (1) "Authority" or "educational facilities authority"  
11 means the public corporation created by this act.

12           (2) "Real property" includes all lands, including  
13 improvements and fixtures thereon, and any such property  
14 appurtenant thereto, or used in connection therewith and every  
15 estate, interest and right, legal or equitable, therein,  
16 including terms for years and liens by way of judgment,  
17 mortgage, or otherwise and the indebtedness secured by such  
18 liens. This definition does not affect the classification of  
19 property as real property or tangible personal property for  
20 purposes of ad valorem taxation under chapters 192 and 193,  
21 Florida Statutes, or sales and use taxation under chapter 212,  
22 Florida Statutes.

23           (3) "Project" means a structure suitable for use as a  
24 dormitory or other housing facility, dining hall, student  
25 union, administration building, academic building, library,  
26 laboratory, research facility, classroom, athletic facility,  
27 health care facility, and maintenance, storage, or utility  
28 facility, and other structures or facilities related thereto,  
29 or required thereby, or required or useful for the instruction  
30 of students, or the conducting of research, or the operation  
31 of an institution of higher education, including parking and

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1 other facilities or structures, essential for the orderly  
2 conduct of an institution of higher education and shall also  
3 include equipment and machinery and other similar items  
4 necessary for the operation of a particular facility or  
5 structure in the manner for which its use is intended, but the  
6 term does not include such items as books, fuel, supplies, or  
7 other items that are customarily considered to result in a  
8 current operating charge. The term also includes a loan in  
9 anticipation of tuition revenues by a private institution of  
10 higher education.

11 (4) "Cost," as applied to a project or any portion  
12 thereof financed under this act, embraces all or any part of  
13 the cost of construction and acquisition of all lands,  
14 structures, real or personal property, rights, rights-of-way,  
15 franchises, easements, and interests acquired or used for a  
16 project, the cost of demolishing or removing any buildings or  
17 structures on land so acquired, including the cost of  
18 acquiring any lands to which the buildings or structures may  
19 be removed, the cost of all machinery and equipment, financing  
20 charges, interest before, during, and for a period of 30  
21 months after completion of the construction, provisions for  
22 working capital, reserves for principal, interest and rebate,  
23 and for extensions, enlargements, additions and improvements,  
24 cost of engineering, financial and legal services, plans,  
25 specifications, studies, surveys, estimates of cost and of  
26 revenues, administrative expenses, expenses necessary to  
27 determining the feasibility or practicability of constructing  
28 the project and other expenses as may be necessary to the  
29 construction and acquisition of the project, the financing of  
30 the construction and acquisition and the placing of the  
31 project in operation. In the case of a loan in anticipation of

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1 tuition revenues, the term "cost" means the amount of the loan  
 2 in anticipation of revenues which does not exceed the amount  
 3 of tuition revenues anticipated to be received by the  
 4 borrowing institution of higher education in the 1-year period  
 5 following the date of the loan, plus costs related to the  
 6 issuance of the loans, or bonds, the proceeds of which fund  
 7 the loans, and any related cost of debt service reserve funds  
 8 and rebate associated therewith.

9 (5) "Bond" or "revenue bond" means a revenue bond of  
 10 the authority issued under this act, including a revenue  
 11 refunding bond, notwithstanding that it may be secured by  
 12 mortgage or the full faith and credit of a participating  
 13 institution of higher education or any other lawfully pledged  
 14 security of a participating institution of higher education.

15 (6) "Institution of higher education" means an  
 16 educational institution that by virtue of law or charter is a  
 17 nonprofit educational institution empowered to provide a  
 18 project of education beyond the high school level; is not  
 19 owned or controlled by the state or any political subdivision,  
 20 agency, instrumentality, district, or municipality of the  
 21 state; and otherwise meets the requirements of section 196.012  
 22 (5), Florida Statutes.

23 (7) "Participating institution" means an institution  
 24 of higher education that undertakes the financing and  
 25 construction or acquisition of a project or undertakes the  
 26 refunding or refinancing of obligations or of a mortgage or of  
 27 advances as provided in and permitted by this act.

28 (8) "Loan in anticipation of tuition revenues" means a  
 29 loan to an institution of higher education under circumstances  
 30 in which tuition revenues anticipated to be received by the  
 31 institution in any budget year are estimated to be

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1 insufficient at any time during the budget year to pay the  
2 operating expenses or other obligations of the institution in  
3 accordance with the budget of the institution.

4 Section 7. Creation of Higher Educational Facilities  
5 Financing Authority.--

6 (1) There is created a public body corporate and  
7 politic to be known as the Higher Educational Facilities  
8 Financing Authority. The authority is constituted as a public  
9 instrumentality and the exercise by the authority of the  
10 powers conferred by this act is considered to be the  
11 performance of an essential public function. Chapters 119 and  
12 286, Florida Statutes, shall apply to the authority.

13 (2) The authority shall consist of five members to be  
14 appointed by the Governor, subject to confirmation by the  
15 Senate. One member shall be a trustee, director, officer, or  
16 employee of an institution of higher education. Of the members  
17 first appointed, one shall serve for 1 year, one for 2 years,  
18 one for 3 years, one for 4 years, and one for 5 years, and in  
19 each case until his or her successor is appointed and has  
20 qualified. Thereafter, the Governor shall appoint for terms of  
21 5 years each a member or members to succeed those whose terms  
22 expire. The Governor shall fill any vacancy for an unexpired  
23 term. A member of the authority is eligible for reappointment.  
24 Any member of the authority may be removed by the Governor for  
25 misfeasance, malfeasance, or willful neglect of duty. Each  
26 member of the authority before entering upon his or her duties  
27 shall take and subscribe to the oath or affirmation required  
28 by the State Constitution. A record of each oath must be filed  
29 in the office of the Department of State and with the  
30 authority.

31 (3) The authority shall annually elect one of its

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1 members as chair and one as vice chair, and shall also appoint  
2 an executive director who is not a member of the authority and  
3 who serves at the pleasure of the authority and receives  
4 compensation as fixed by the authority. The duties of the  
5 executive director may be discharged under a contract with the  
6 Independent Colleges and Universities of Florida, a  
7 not-for-profit corporation representing the independent  
8 colleges and universities of the state, or any successor  
9 corporation or other such entity providing similar  
10 representation, chosen by the authority, or an agency or other  
11 entity representing independent colleges and universities  
12 providing such services, in which case the entity shall  
13 designate a person to perform those duties.

14 (4) The executive director shall keep a record of the  
15 proceedings of the authority and shall be custodian of all  
16 books, documents, and papers filed with the authority and of  
17 the minute book or journal of the authority and of its  
18 official seal. He or she may cause copies to be made of all  
19 minutes and other records and documents of the authority and  
20 may give certificates under the official seal of the authority  
21 to the effect that the copies are true copies, and all persons  
22 dealing with the authority may rely upon the certificates.

23 (5) A majority of the members of the authority  
24 constitutes a quorum, and the affirmative vote of a majority  
25 of the members present at a meeting of the authority is  
26 necessary for any action taken by the authority. A vacancy in  
27 the membership of the authority may not impair the right of a  
28 quorum to exercise all the rights and perform all the duties  
29 of the authority. Any action taken by the authority under this  
30 act may be authorized by resolution at any regular or special  
31 meeting, and each resolution shall take effect immediately and

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1 need not be published or posted.

2 (6) The members of the authority shall receive no  
3 compensation for the performance of their duties, but each  
4 member shall be paid his or her necessary expenses incurred  
5 while engaged in the performance of his or her duties.

6 (7) The authority is assigned to the Department of  
7 Education for administrative purposes.

8 Section 8. Powers of authority.--The purpose of the  
9 authority is to assist institutions of higher education in the  
10 construction, financing, and refinancing of projects  
11 throughout the state and for this purpose the authority may:

12 (1) Exercise all powers granted to corporations under  
13 the Florida Business Corporation Act, chapter 607, Florida  
14 Statutes.

15 (2) Have perpetual succession as a body politic and  
16 corporate and adopt bylaws for the regulation of its affairs  
17 and the conduct of its business.

18 (3) Adopt an official seal and alter the same at its  
19 pleasure.

20 (4) Maintain an office at any place in the state that  
21 it may designate.

22 (5) Sue and be sued in its own name, and plead and be  
23 impleaded.

24 (6) Make and execute financing agreements, leases, as  
25 lessee or as lessor, contracts, deeds, and other instruments  
26 necessary or convenient in the exercise of the powers and  
27 functions of the authority under this act, including contracts  
28 with persons, firms, corporations, federal and state agencies,  
29 and other authorities, which state agencies and other  
30 authorities are hereby authorized to enter into contracts and  
31 otherwise cooperate with the authority to facilitate the

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1 financing, construction, leasing, or sale of any project or  
2 the institution of any program; engage in sale-leaseback,  
3 lease-purchase, lease-leaseback, or other undertakings and  
4 provide for the sale of certificates of participation incident  
5 thereto; enter into interlocal agreements in the manner  
6 provided in section 163.01, Florida Statutes.

7 (7) Determine the location and character of any  
8 project to be financed under this act and may:

9 (a) Construct, reconstruct, maintain, repair, operate,  
10 lease as lessee or lessor, and regulate the project;

11 (b) Enter into contracts for any of those purposes;

12 (c) Enter into contracts for the management and  
13 operation of a project; and

14 (d) Designate a participating institution of higher  
15 education as its agent to determine the location and character  
16 of a project undertaken by a participating institution of  
17 higher education under this act and, as the agent of the  
18 authority, construct, reconstruct, maintain, repair, operate,  
19 own, lease as lessee or lessor, and regulate the project, and,  
20 as the agent of the authority, enter into contracts for any of  
21 those purposes, including contracts for the management and  
22 operation of the project.

23 (8) Issue bonds, bond anticipation notes, and other  
24 obligations of the authority for any of its corporate  
25 purposes, including the providing of funds to pay all or any  
26 part of the cost of any project, and to fund or refund the  
27 cost of any project as provided in this act.

28 (9) Generally fix and revise and charge and collect  
29 rates, rents, fees, and charges for the use of and for the  
30 services furnished or to be furnished by a project or any  
31 portion thereof and to contract with any person, partnership,



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1 association, or corporation or other body public or private in  
2 respect thereof.

3 (10) Establish rules and regulations for the use of a  
4 project or any portion thereof and designate a participating  
5 institution of higher education as its agent to establish  
6 rules and regulations for the use of a project undertaken by  
7 the participating institution of higher education.

8 (11) Employ consulting engineers, architects,  
9 attorneys, accountants, construction and financial experts,  
10 superintendents, managers, and other employees and agents as  
11 may be necessary in its judgment, and fix their compensation.

12 (12) Receive and accept from any public agency loans  
13 or grants for or in aid of the construction of a project or  
14 any portion thereof, and receive and accept loans, grants,  
15 aid, or contributions from any source of either money,  
16 property, labor, or other things of value, to be held, used,  
17 and applied only for the purposes for which the loans, grants,  
18 aid, and contributions are made.

19 (13) Mortgage any project and the site thereof for the  
20 benefit of the holders of revenue bonds issued to finance  
21 projects or those providing credit for that purpose.

22 (14) Make loans to any participating institution of  
23 higher education for the cost of a project, including a loan  
24 in anticipation of tuition revenues, in accordance with an  
25 agreement between the authority and the participating  
26 institution of higher education; but no loan may exceed the  
27 total cost of the project as determined by the participating  
28 institution of higher education and approved by the authority.

29 (15) Make loans to a participating institution of  
30 higher education to refund outstanding obligations, mortgages,  
31 or advances issued, made, or given by the participating

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1 institution of higher education for the cost of a project.

2 (16) Charge to and equitably apportion among  
3 participating institutions of higher education its  
4 administrative costs and expenses incurred in the exercise of  
5 the powers and duties conferred by this act.

6 (17) Contract with an entity representing independent  
7 colleges and universities as its agent to assist the authority  
8 in screening applications of institutions of higher education  
9 for loans under this act and receive any recommendations the  
10 entity may make.

11 (18) Do all things necessary or convenient to carry  
12 out the purposes of this act.

13 Section 9. Payment of expenses.--All expenses incurred  
14 in carrying out this act are payable solely from funds  
15 provided under the authority of this act, and no liability or  
16 obligation may be incurred by the authority beyond the extent  
17 to which moneys have been provided under this act.

18 Section 10. Acquisition of real property.--The  
19 authority may directly, or by and through a participating  
20 institution of higher education as its agent, acquire by  
21 purchase or lease solely from funds provided under this act,  
22 or by gift or devise, any lands, structures, property, real or  
23 personal, rights, rights-of-way, franchises, easements, and  
24 other interests in lands, including lands lying underwater,  
25 and riparian rights, which are located within or outside the  
26 state as it may consider necessary or convenient for the  
27 construction or operation of a project, upon terms and at  
28 prices as are considered by it to be reasonable and that can  
29 be agreed upon between it and the owner thereof, and to take  
30 title thereto in the name of the authority or in the name of a  
31 participating institution of higher education as its agent or

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1 as an owner and borrower.

2           Section 11. Conveyance of title or interest to  
3 participating institutions.--When the principal of and  
4 interest on revenue bonds of the authority issued to finance  
5 the cost of a particular project or projects at a  
6 participating institution of higher education, including any  
7 revenue refunding bonds issued to refund and refinance the  
8 revenue bonds, have been fully paid and retired, or when  
9 adequate provision has been made to pay fully and retire them,  
10 and all other conditions of the resolution or trust agreement  
11 authorizing and securing the revenue bonds have been satisfied  
12 and the lien of the resolution or trust agreement has been  
13 released in accordance with the provisions thereof, the  
14 authority shall promptly execute deeds and conveyances  
15 necessary and required to convey title to the project or  
16 projects to the participating institution of higher education,  
17 free and clear of all liens and encumbrances.

18           Section 12. Criteria and requirements.--In undertaking  
19 any project under this act, the authority shall be guided by  
20 and shall observe the following criteria and requirements;  
21 however, the determination of the authority as to compliance  
22 with the criteria and requirements is final and conclusive:

23           (1) The project, in the determination of the  
24 authority, is appropriate to the needs and circumstances of,  
25 and shall make a significant contribution to the purposes of,  
26 the authority and this act as set forth in the findings and  
27 declarations, and shall serve a public purpose by advancing  
28 the prosperity and general welfare of the state and its  
29 people.

30           (2) A financing agreement for a project may not be  
31 entered into with a participating institution that is not

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1 financially responsible and fully capable of and willing to  
2 fulfill its obligations under the financing agreement,  
3 including the obligations to make payments in the amounts and  
4 at the times required; to operate, repair, and maintain at its  
5 own expense the project owned or leased; and to serve the  
6 purposes of this act and any other responsibilities that may  
7 be imposed under the financing agreement. In determining the  
8 financial responsibility of the participating institution,  
9 consideration must be given to the party's ratio of current  
10 assets to current liabilities; net worth; endowments; pledges;  
11 earning trends; coverage of all fixed charges; the nature of  
12 the project involved; its inherent stability; any guarantee of  
13 the obligations by some other financially responsible  
14 corporation, firm, or person; means by which the bonds are to  
15 be marketed to the public; and other factors determinative of  
16 the capability of the participating institution, financially  
17 and otherwise, to fulfill its obligations consistently with  
18 the purposes of this act. In making findings and  
19 determinations, the authority may rely upon the  
20 recommendations of the entity representing independent  
21 colleges and universities.

22 (3) Adequate provision must be made for the operation,  
23 repair, and maintenance of the project at the expense of the  
24 owner or lessee and for the payment of principal of and  
25 interest on the bonds.

26 (4) The costs to be paid from the proceeds of the  
27 bonds are costs of a project within the meaning of this act,  
28 except for payments included in the purposes for which revenue  
29 refunding bonds may be issued under this act.

30 Section 13. Approval required to issue bonds.--The  
31 authority is created for the purpose of promoting higher

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1 education and issuing bonds on behalf of the state, and the  
2 Governor may approve any bonds issued by the authority which  
3 require approval under federal law.

4 Section 14. Agreements of sale, lease, or loan.--

5 (1) A project financed under this act may not be  
6 operated by the authority or any other governmental agency,  
7 except that the authority may temporarily operate or cause to  
8 be operated all or any part of a project to protect its  
9 interest therein, pending any leasing or sale of the project.

10 A project acquired or constructed by the authority, unless  
11 sold or contracted to be sold, must be leased to one or more  
12 persons, firms, or private corporations for operation and  
13 maintenance in a manner as will effectuate the purposes of  
14 this act, under an agreement of sale, installment sale, lease  
15 or loan, in form and substance not inconsistent herewith. Any  
16 agreement may provide, among other provisions, that:

17 (a) The owner or lessee shall at its own expense  
18 operate, repair, and maintain the project sold or leased  
19 thereunder.

20 (b) The payments or rent payable under the agreement  
21 will in the aggregate be not less than an amount sufficient to  
22 pay all of the interest, principal, and redemption premiums,  
23 if any, on the bonds that will be issued by the authority to  
24 pay the cost of the project sold or leased thereunder.

25 (c) The owner or lessee shall pay all other costs  
26 incurred by the authority in connection with the financing,  
27 construction, and administration of the project sold or  
28 leased, except as may be paid out of the proceeds of bonds or  
29 otherwise, including, but without being limited to, insurance  
30 costs, the cost of administering the bond resolution  
31 authorizing the bonds and any trust agreement securing the

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1 bonds, and the fees and expenses of the authority, trustees,  
2 paying agents, attorneys, consultants, and others.

3 (d) The term of an agreement will terminate not  
4 earlier than the date on which all bonds and all other  
5 obligations incurred by the authority in connection with the  
6 project sold or leased thereunder are paid in full, including  
7 interest, principal, and redemption premiums, if any, or on  
8 which adequate funds for payment are deposited in trust.

9 (e) The owner or lessee's obligation to pay payments  
10 or rent is not subject to cancellation, termination, or  
11 abatement until payment of the bonds or provision for payment  
12 is made.

13 (2) An agreement may contain additional provisions  
14 that in the determination of the authority are necessary to  
15 effectuate the purposes of this act, including provisions for  
16 extensions of the term and renewals of the sale or the lease  
17 and vesting in the lessee an option to purchase the project  
18 leased thereunder pursuant to any terms and conditions  
19 consistent with this act that are prescribed in the lease;  
20 however, except as is otherwise expressly stated in the  
21 agreement and except to provide for any contingencies  
22 involving the damaging, destruction, or condemnation of the  
23 project or any substantial portion thereof, an option to  
24 purchase may not be exercised unless all bonds issued for the  
25 project, including all principal, interest, and redemption  
26 premiums, if any, and all other obligations incurred by the  
27 authority in connection with the project have been paid in  
28 full or sufficient funds have been deposited in trust or  
29 sufficient arrangements have been made for payment. However,  
30 the purchase price of the project may not be less than an  
31 amount sufficient to pay in full all of the bonds, including



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1 the project and not otherwise pledged, or from the proceeds of  
2 sale of the revenue bonds of the authority in anticipation of  
3 which they were issued. The notes must be issued in the same  
4 manner as the revenue bonds. The notes and the resolution  
5 authorizing them may contain any provisions, conditions, or  
6 limitations that a bond resolution of the authority may  
7 contain.

8       (2) The revenue bonds and notes of every issue must be  
9 payable solely out of revenues of the authority, including the  
10 provision of funds of the participating institution to pay all  
11 or any part of the cost of any project, subject only to any  
12 agreements with the holders of particular revenue bonds or  
13 notes pledging any particular revenues. Notwithstanding that  
14 revenue bonds and notes may be payable from a special fund,  
15 they are for all purposes negotiable instruments, subject only  
16 to the provisions of the revenue bonds and notes for  
17 registration.

18       (3) The revenue bonds may be issued as serial bonds or  
19 as term bonds; or the authority may issue bonds of both types.  
20 The revenue bonds must be authorized by resolution of the  
21 authority; must bear the date of issuance, the date of  
22 maturity, not exceeding 50 years from issuance, and the  
23 interest rate of the bonds, which may be a variable rate,  
24 notwithstanding any limitation in other laws relating to  
25 maximum interest rates; must be payable at a specified time;  
26 must be in specified denominations; must be in specified form,  
27 carry registration privileges, be executed in a specified  
28 manner, be payable in lawful money of the United States at a  
29 specified place, and be subject to the terms of redemption, as  
30 the resolution may provide. The revenue bonds or notes may be  
31 sold at public or private sale for the price the authority



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1 determines. Pending preparation of the definitive bonds, the  
2 authority may issue interim receipts or certificates that may  
3 be exchanged for the definitive bonds. In case any officer  
4 whose signature, or a facsimile of whose signature, appears on  
5 any bonds or coupons ceases to be that officer before the  
6 delivery of the bonds, the signature or facsimile is  
7 nevertheless valid and sufficient for all purposes as if he or  
8 she had remained in office until delivery. The authority may  
9 also provide for the authentication of the bonds by a trustee  
10 or fiscal agent. The bonds may be issued in coupon form or in  
11 registered form, or both, as the authority may determine, and  
12 provision may be made for the registration of any coupon bonds  
13 as to principal alone and also as to both principal and  
14 interest; for the reconversion into coupon bonds of any bonds  
15 registered as to both principal and interest; and for the  
16 interchange of registered and coupon bonds. The authority may  
17 sell the bonds either at public or private sale, and for the  
18 price it determines will best effectuate the purpose of this  
19 act, notwithstanding any limitation in other laws relating to  
20 the maximum interest rate permitted for bonds or limitations  
21 on the manner by which bonds are sold.

22 (4) Any resolution authorizing any revenue bonds may  
23 contain provisions, which are a part of the contract with the  
24 holders of the revenue bonds to be authorized, as to:

25 (a) Pledging of all or any part of the revenues of a  
26 project or any revenue-producing contract made by the  
27 authority with any individual, partnership, corporation, or  
28 association or other body, public or private, to secure the  
29 payment of the revenue bonds or of any particular issue of  
30 revenue bonds, subject to any agreements with bondholders as  
31 may then exist.

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1           (b) The rentals, fees, and other charges to be  
2 charged, and the amounts to be raised in each year thereby,  
3 and the use and disposition of the revenues.

4           (c) The setting aside of reserves or sinking funds and  
5 the regulation and disposition thereof.

6           (d) Limitations on the right of the authority or its  
7 agent to restrict and regulate the use of the project.

8           (e) Limitations on the purpose to which the proceeds  
9 of sale of any issue of revenue bonds then or thereafter to be  
10 issued may be applied and pledging the proceeds to secure the  
11 payment of the revenue bonds or any issue of the revenue  
12 bonds.

13           (f) Limitations on the issuance of additional bonds,  
14 the terms upon which additional bonds may be issued and  
15 secured, and the refunding of outstanding bonds.

16           (g) The procedure, if any, by which the terms of any  
17 contract with bondholders may be amended or abrogated,  
18 including the amount of bonds the holders of which must  
19 consent thereto and the manner in which consent may be given.

20           (h) Limitations on the amount of moneys derived from  
21 the project to be expended for operating, administrative, or  
22 other expenses of the authority.

23           (i) The acts or omissions to act that constitute a  
24 default in the duties of the authority to holders of its  
25 obligations and providing the rights and remedies of the  
26 holders in the event of a default.

27           (j) The mortgaging of or granting of a security  
28 interest in the project or the site thereof for the purpose of  
29 securing the bondholders.

30           (5) Neither the members of the authority nor any  
31 person executing the revenue bonds or notes is liable

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1 personally on the revenue bonds or notes or is subject to any  
2 personal liability or accountability by reason of the issuance  
3 thereof.

4 (6) The authority may purchase its bonds or notes out  
5 of any funds available therefor. The authority may hold,  
6 pledge, cancel, or resell the bonds, subject to and in  
7 accordance with agreements with bondholders.

8 (7) Incident to its powers to issue bonds and notes,  
9 the authority may enter into interest rate swap agreements,  
10 collars, caps, forward securities purchase agreements, delayed  
11 delivery bond purchase agreements, and any other financial  
12 agreements considered to be in the best interest of the  
13 authority.

14 (8) Bonds may be issued under this act without  
15 obtaining, except as otherwise expressly provided in this act,  
16 the consent of any department, division, commission, board,  
17 body, bureau, or agency of the state or any local government,  
18 and without any other proceedings or the happening of any  
19 conditions or things other than those proceedings, conditions,  
20 or things that are specifically required by this act and the  
21 resolution authorizing the issuance of bonds or the trust  
22 agreement securing them.

23 Section 17. Authority reporting requirement.--

24 (1) Any authority that issues any revenue bonds under  
25 this act shall supply the Division of Bond Finance of the  
26 State Board of Administration with a copy of the report  
27 required in s. 103 of the Internal Revenue Code of 1954, as  
28 amended, at the times required under that section.

29 (2) The Division of Bond Finance shall, upon receipt,  
30 provide a copy of the information supplied under subsection  
31 (1) to the Department of Education.

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1           Section 18. Covenants.--Any resolution authorizing the  
2 issuance of bonds may contain any covenants the authority  
3 considers advisable, including those provisions set forth in  
4 section 13(4), and all those covenants constitute valid and  
5 legally binding and enforceable contracts between the  
6 authority and the bondholders, regardless of the time of  
7 issuance thereof. The covenants may include, without  
8 limitation, covenants concerning the disposition of the bond  
9 proceeds, the use and disposition of project revenues, the  
10 pledging of revenues and assessments, the obligations of the  
11 authority with respect to the operation of the project and the  
12 maintenance of adequate project revenues, the issuance of  
13 additional bonds, the appointment, powers, and duties of  
14 trustees and receivers, the acquisition of outstanding bonds  
15 and obligations, restrictions on the establishing of competing  
16 projects or facilities, restrictions on the sale or disposal  
17 of the assets and property of the authority, the maintenance  
18 of deposits to assure the payment of the bonds issued  
19 hereunder, acceleration upon default, the execution of  
20 necessary instruments, the procedure for amending or  
21 abrogating covenants with the bondholders, and any other  
22 covenants considered necessary for the security of the  
23 bondholders.

24           Section 19. Validity of bonds; validation  
25 proceedings.--Any bonds issued by the authority are  
26 incontestable in the hands of bona fide purchasers or holders  
27 for value and are not invalid because of any irregularity or  
28 defect in the proceedings for the issue and sale thereof.  
29 Before the issuance of any bonds, the authority shall publish  
30 a notice at least once in a newspaper or newspapers published  
31 or of general circulation in the county or counties in the

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1 state in which the project will be located, stating the date  
2 of adoption of the resolution authorizing the obligations, the  
3 amount, maximum rate of interest, and maturity of the  
4 obligations, and the purpose in general terms for which the  
5 obligations are to be issued, and further stating that no  
6 action or proceeding questioning the validity of the  
7 obligations or of the proceedings authorizing the issuance  
8 thereof, or of any covenants made therein, must be instituted  
9 within 20 days after the first publication of the notice, or  
10 the validity of the obligations, proceedings, and covenants  
11 may not be thereafter questioned in any court. If no action or  
12 proceeding is instituted within the 20-day period, then the  
13 validity of the obligations, proceedings, and covenants is  
14 conclusive, and all persons or parties whatsoever are forever  
15 barred from questioning the validity of the obligations,  
16 proceedings, or covenants in any court. Notwithstanding this  
17 section, the bonds, notes, or other obligations issued by the  
18 authority and the obligations of any participating  
19 institution, or others providing credit for the obligations,  
20 who may be before the jurisdiction of the court, must be  
21 validated in the manner provided by chapter 75, Florida  
22 Statutes, and the jurisdiction of the action may be in the  
23 jurisdiction of the circuit court where the project is to be  
24 located, or in the discretion of the authority, in the county  
25 seat of state government.

26 Section 20. Act furnishes full authority for issuance  
27 of bonds.--This act constitutes full authority for the  
28 issuance of bonds and the exercise of the powers of the  
29 authority provided in this act. Any bonds issued by the  
30 authority are not secured by the full faith and credit of the  
31 state and do not constitute an obligation, either general or

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1 special, of the state.

2           Section 21. Security of bondholders.--In the  
3 discretion of the authority any revenue bonds issued under  
4 this act may be secured by a trust agreement by and between  
5 the authority and a corporate trustee or trustees, which may  
6 be any trust company or bank having the powers of a trust  
7 company within or without the state. The trust agreement or  
8 the resolution providing for the issuance of revenue bonds may  
9 pledge or assign the revenues to be received or the proceeds  
10 of any contract or contracts pledged and may convey or  
11 mortgage the project or any portion thereof. The trust  
12 agreement or resolution providing for the issuance of revenue  
13 bonds may contain provisions for protecting and enforcing the  
14 rights and remedies of the bondholders as may be reasonable  
15 and proper and not in violation of law, including particularly  
16 those provisions specifically authorized by this act to be  
17 included in any resolution of the authority authorizing  
18 revenue bonds. Any bank or trust company incorporated under  
19 the laws of this state or of any other state or the United  
20 States which may legally act as depository of the proceeds of  
21 bonds or of revenues or other moneys or security may furnish  
22 indemnifying bonds or pledge securities required by the  
23 authority, if any. Any trust agreement may set forth the  
24 rights and remedies of the bondholders and of the trustee or  
25 trustees, and may restrict the individual right of action by  
26 bondholders. In addition any trust agreement or resolution may  
27 contain any other provisions the authority may consider  
28 reasonable and proper for the security of the bondholders. All  
29 expenses incurred in carrying out the trust agreement or  
30 resolution may be treated as a part of the cost of the  
31 operation of a project.

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1           Section 22. Payment of bonds.--Revenue bonds issued  
2 under this act may not be considered to constitute a debt or  
3 liability of the authority, any municipality, the state or any  
4 political subdivision thereof or a pledge of the faith and  
5 credit of the state, of the authority, of any municipality or  
6 of any political subdivision, but are payable solely from  
7 revenues of the authority pertaining to the project relating  
8 to the issue; payments by participating institutions of higher  
9 education, banks, insurance companies, or others under letters  
10 of credit or purchase agreements; investment earnings from  
11 funds or accounts maintained under the bond resolution;  
12 insurance proceeds; loan funding deposits; proceeds of sales  
13 of education loans; proceeds of refunding obligations; and  
14 fees, charges, and other revenues of the authority from the  
15 project. All revenue bonds must contain on the face thereof a  
16 statement to the effect that neither the authority, any  
17 municipality, the state, nor any political subdivision thereof  
18 is obligated to pay the bond or the interest thereon except  
19 from revenues of the project or the portion thereof for which  
20 they are issued, and that neither the faith and credit nor the  
21 taxing power of the authority, any municipality, the state, or  
22 any political subdivision thereof is pledged to the payment of  
23 the principal of or the interest on the bonds. The issuance of  
24 revenue bonds under this act may not directly or indirectly or  
25 contingently obligate the authority, any municipality, the  
26 state, or any political subdivision thereof to levy or to  
27 pledge any form of taxation therefor or to make any  
28 appropriation for their payment.

29           Section 23. Rates, rents, fees, and charges.--

30           (1) The authority may fix, revise, charge, and collect  
31 rates, rents, fees, and charges for the use of and for the

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1 services furnished or to be furnished by each project and may  
2 contract with any person, partnership, association or  
3 corporation, or other body, public or private, in respect  
4 thereof. The rates, rents, fees, and charges must be fixed and  
5 adjusted in respect of the aggregate of rates, rents, fees,  
6 and charges from the project so as to provide funds sufficient  
7 with other revenues, if any:

8       (a) To pay the cost of maintaining, repairing, and  
9 operating the project and each portion thereof, to the extent  
10 that the payment of the cost has not otherwise been adequately  
11 provided for.

12       (b) To pay the principal of and the interest on  
13 outstanding revenue bonds of the authority issued in respect  
14 of the project as the bonds become due and payable.

15       (c) To create and maintain reserves required or  
16 provided for in any resolution authorizing, or trust agreement  
17 securing, the revenue bonds of the authority. The rates,  
18 rents, fees, and charges are not subject to supervision or  
19 regulation by any department, commission, board, body, bureau,  
20 or agency of this state other than the authority.

21       (2) A sufficient amount of the revenues derived in  
22 respect of a project, except the part of the revenues  
23 necessary to pay the cost of maintenance, repair, and  
24 operation and to provide reserves and for renewals,  
25 replacements, extensions, enlargements, and improvements  
26 provided for in the resolution authorizing the issuance of any  
27 revenue bonds of the authority or in the trust agreement  
28 securing them must be set aside at regular intervals as  
29 provided in the resolution or trust agreement in a sinking or  
30 other similar fund that is hereby pledged to, and charged  
31 with, the payment of the principal of and the interest on the



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1 revenue bonds as they become due and the redemption price or  
2 the purchase price of bonds retired by call or purchase as  
3 therein provided. The pledge must be valid and binding from  
4 the time when the pledge is made; the rates, rents, fees,  
5 charges, and other revenues or other moneys so pledged and  
6 thereafter received by the authority must immediately be  
7 subject to the lien of the pledge without any physical  
8 delivery thereof or further act, and the lien of any pledge is  
9 valid and binding as against all parties having claims of any  
10 kind in tort, contract, or otherwise against the authority,  
11 irrespective of whether the parties have notice thereof.  
12 Neither the resolution nor any trust agreement by which a  
13 pledge is created need be filed or recorded except in the  
14 records of the authority.

15 (3) The use and disposition of moneys to the credit of  
16 a sinking or other similar fund must be subject to the  
17 resolution authorizing the issuance of the bonds or of the  
18 trust agreement. Except as may otherwise be provided in the  
19 resolution or the trust agreement, the sinking or other  
20 similar fund must be a fund for all revenue bonds issued to  
21 finance projects at a particular institution for higher  
22 education without distinction or priority of one over another.  
23 However, the authority in any resolution or trust agreement  
24 may provide that the sinking or other similar fund be the fund  
25 for a particular project at an institution for higher  
26 education and for the revenue bonds issued to finance a  
27 particular project, and may, additionally, permit and provide  
28 for the issuance of revenue bonds having a subordinate lien in  
29 respect of the security authorized to other revenue bonds of  
30 the authority, and, in such case, the authority may create  
31 separate sinking or other similar funds in respect of the

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1 subordinate lien bonds.

2           Section 24. Trust funds.--All moneys received under  
3 the authority of this act, whether as proceeds from the sale  
4 of bonds or as revenues, are considered to be trust funds to  
5 be held and applied solely as provided in this act. Any  
6 officer with whom, or any bank or trust company with which,  
7 the moneys are deposited shall act as trustee of the moneys  
8 and shall hold and apply them for the purposes of this act,  
9 subject to the regulations this act and the resolution  
10 authorizing the bonds of any issue or the trust agreement  
11 securing the bonds provides.

12           Section 25. Remedies of bondholders.--Any holder of  
13 revenue bonds issued under this act or any of the coupons  
14 appertaining thereto, and the trustee or trustees under any  
15 trust agreement, except to the extent the rights given may be  
16 restricted by any resolution authorizing the issuance of, or  
17 any such trust agreement securing, the bonds, may, either at  
18 law or in equity, by suit, action, mandamus, or other  
19 proceedings, protect and enforce any rights under the laws of  
20 the state or granted hereunder or under the resolution or  
21 trust agreement, and may enforce and compel the performance of  
22 all duties required by this act or by the resolution or trust  
23 agreement to be performed by the authority or by any officer,  
24 employee, or agent thereof, including the fixing, charging,  
25 and collecting of the rates, rents, fees, and charges  
26 authorized and required by the provisions of the resolution or  
27 trust agreement to be fixed, established, and collected.

28           Section 26. Tax exemption.--The exercise of the powers  
29 granted by this act will be in all respects for the benefit of  
30 the people of this state, for the increase of their commerce,  
31 education, welfare, and prosperity, and for the improvement of

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1 their health and living conditions, and because the operation  
2 and maintenance of a project by the authority or its agent or  
3 the owner or lessee thereof, as authorized in this act, will  
4 constitute the performance of an essential public function,  
5 neither the authority nor its agent is required to pay any  
6 taxes or assessments upon or in respect of a project or any  
7 property acquired or used by the authority or its agent under  
8 the provisions of this act or upon the income therefrom, and  
9 any bonds issued under this act, any security therefor, their  
10 transfer, and the income therefrom, including any profit made  
11 on the sale thereof, and all notes, mortgages, security  
12 agreements, letters of credit, or other instruments that arise  
13 out of or are given to secure the repayment of bonds issued in  
14 connection with a project financed under this part, shall at  
15 all times be free from taxation by the state or any local  
16 unit, political subdivision, or other instrumentality of the  
17 state. The exemption granted by this section is not applicable  
18 to any tax imposed by chapter 220, Florida Statutes, on  
19 interest, income, or profits or on debt obligations owned by  
20 corporations.

21 Section 27. Refunding bonds.--

22 (1) The authority may provide for the issuance of  
23 revenue bonds of the authority for the purpose of refunding  
24 any revenue bonds of the authority then outstanding, including  
25 the payment of any redemption premium thereon and any interest  
26 accrued or to accrue to the earliest or subsequent date of  
27 redemption, purchase, or maturity of the revenue bonds, and,  
28 if considered advisable by the authority, for the additional  
29 purpose of paying all or any part of the cost of constructing  
30 and acquiring additions, improvements, extensions, or  
31 enlargements of a project or any portion thereof.

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1           (2) The proceeds of any revenue bonds issued for the  
2 purpose of refunding outstanding revenue bonds may be applied  
3 to the purchase or retirement at maturity or redemption of the  
4 outstanding revenue bonds either on their earliest or any  
5 subsequent redemption date or upon the purchase or at the  
6 maturity thereof and may, pending the application, be placed  
7 in escrow to be applied to the purchase or retirement at  
8 maturity or redemption on the date as may be determined by the  
9 authority.

10           (3) Any escrowed proceeds, pending use, may be  
11 invested and reinvested in direct obligations of the United  
12 States of America, or in certificates of deposit or time  
13 deposits secured by direct obligations of the United States,  
14 or other investments as the resolution authorizing the  
15 issuance and sale of the bonds, or the trust agreement, may  
16 provide, maturing at the time or times as shall be appropriate  
17 to assure the prompt payment, as to principal, interest, and  
18 redemption premium, if any, of the outstanding revenue bonds  
19 to be so refunded. The interest, income, and profits, if any,  
20 earned or realized on any such investment may also be applied  
21 to the payment of the outstanding revenue bonds to be so  
22 refunded. After the terms of the escrow have been fully  
23 satisfied and carried out, any balance of the proceeds and  
24 interest, income and profits, if any, earned or realized on  
25 the investments thereof may be returned to the authority or to  
26 the participating institution for use by it in any lawful  
27 manner.

28           (4) The portion of the proceeds of any revenue bonds  
29 issued for the additional purpose of paying all or any part of  
30 the cost of constructing and acquiring additions,  
31 improvements, extensions, or enlargements of a project may be

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1 invested and reinvested in direct obligations of the United  
2 States, or in certificates of deposit or time deposits secured  
3 by direct obligations of the United States, or other  
4 investments as the resolution authorizing the issuance and  
5 sale of the bonds, or the trust agreement, may provide,  
6 maturing not later than the time or times when the proceeds  
7 will be needed for the purpose of paying all or any part of  
8 the cost. The interest, income, and profits, if any, earned or  
9 realized on the investment may be applied to the payment of  
10 all or any part of the cost or may be used by the authority or  
11 the participating institution in any lawful manner.

12 (5) All refunding revenue bonds are subject to this  
13 act in the same manner and to the same extent as other revenue  
14 bonds issued under this act.

15 Section 28. Legal investment.--Bonds issued by the  
16 authority under this act are made securities in which all  
17 public officers and public bodies of the state and its  
18 political subdivisions, all insurance companies, trust  
19 companies, banking associations, investment companies,  
20 executors, administrators, trustees, and other fiduciaries may  
21 properly and legally invest funds, including capital in their  
22 control or belonging to them. The bonds are made securities  
23 that may properly and legally be deposited with and received  
24 by any state or municipal officer or any agency or political  
25 subdivision of the state for any purpose for which the deposit  
26 of bonds or obligations of the state is now or may hereafter  
27 be authorized by law.

28 Section 29. Reports.--Within the first 90 days of each  
29 calendar year, the authority shall make a report to the  
30 Department of Education of its activities for the preceding  
31 calendar year. Each report must set forth a complete operating

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1 and financial statement covering its operations during the  
2 year. The authority shall cause an audit of its books and  
3 accounts to be made at least once each year by a certified  
4 public accountant and the cost of the audit shall be paid by  
5 the authority from funds available to it under this act.

6       Section 30. State agreement.--The state agrees with  
7 the holders of any obligations issued under this act, and with  
8 those parties who may enter into contracts with the authority  
9 under this act, that the state will not limit or alter the  
10 rights vested in the authority until the obligations, together  
11 with the interest thereon, are fully met and discharged and  
12 the contracts are fully performed on the part of the  
13 authority. However, this act does not preclude any limitation  
14 or alteration if adequate provision is made by law for the  
15 protection of the holders of the obligations of the authority  
16 or those entering into contracts with the authority. The  
17 authority is authorized to include this pledge and undertaking  
18 for the state in any obligations or contracts.

19       Section 31. Alternative means.--This act provides an  
20 additional and alternative method for the doing of the things  
21 authorized, and shall be regarded as supplemental and  
22 additional to powers conferred by other laws; but the issuance  
23 of notes, certificates of participation, revenue bonds, and  
24 revenue refunding bonds under this act need not comply with  
25 the requirements of any other law applicable to the issuance  
26 of bonds or such obligations. Except as otherwise expressly  
27 provided in this act, the powers granted to the authority  
28 under this act are not subject to the supervision or  
29 regulation of, or require the approval or consent of, any  
30 municipality or political subdivision or any commission,  
31 board, body, bureau, official, or agency thereof or of the

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1 state.

2 Section 32. Liberal construction.--This act shall be  
3 liberally construed to effectively carry out its purposes.

4 Section 33. Act controlling.--To the extent that this  
5 act is inconsistent with any general statute or special act or  
6 parts thereof, this act controls.

7 Section 34. Subsection (5) of section 196.012, Florida  
8 Statutes, is amended to read:

9 196.012 Definitions.--For the purpose of this chapter,  
10 the following terms are defined as follows, except where the  
11 context clearly indicates otherwise:

12 (5) "Educational institution" means a federal, state,  
13 parochial, church, or private school, college, or university  
14 conducting regular classes and courses of study required for  
15 eligibility to certification by, accreditation to, or  
16 membership in the State Department of Education of Florida,  
17 Southern Association of Colleges and Schools, or the Florida  
18 Council of Independent Schools; a nonprofit private school the  
19 principal activity of which is conducting regular classes and  
20 courses of study accepted for continuing postgraduate dental  
21 education credit by a board of the Division of Medical Quality  
22 Assurance; educational direct-support organizations created  
23 pursuant to ss. 229.8021, 240.299, and 240.331; and facilities  
24 located on the property of eligible entities which will become  
25 owned by those entities on a date certain; and institutions of  
26 higher education as defined under and participating in the  
27 Higher Educational Facilities Financing Act created pursuant  
28 to chapter 2000- , Laws of Florida.

29  
30 (Redesignate subsequent sections.)

31

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1 ===== T I T L E    A M E N D M E N T =====

2 And the title is amended as follows:

3            On page 1, line 18, after the semicolon

4

5 insert:

6            providing findings and declarations; creating  
7            the Higher Educational Facilities Financing  
8            Authority; providing for its powers; providing  
9            for criteria for and covenants relating to the  
10            authorization of the issuance of notes and  
11            revenue bonds not obligating the full faith and  
12            credit of the authority, any municipality, the  
13            state, or any political subdivision thereof;  
14            providing for loans from revenue bonds to  
15            participating institutions; requiring  
16            bond-validation proceedings; providing for  
17            trust funds and remedies of bondholders;  
18            providing for a tax exemption; providing for  
19            agreement of the state; providing other powers  
20            and authorities incident thereto; requiring  
21            reports and audits; amending s. 196.012, F.S.;  
22            providing that institutions funded by this act  
23            are educational institutions for purposes of  
24            state taxation;

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