

By Senator Horne

6-854-00

1 A bill to be entitled
2 An act relating to financing for private
3 not-for-profit institutions of higher
4 education; providing findings and declarations;
5 creating the Higher Educational Facilities
6 Financing Authority; providing for its powers;
7 providing for criteria for and covenants
8 relating to the authorization of the issuance
9 of notes and revenue bonds not obligating the
10 full faith and credit of the authority, any
11 municipality, the state, or any political
12 subdivision thereof; providing for loans from
13 revenue bonds to participating institutions;
14 providing for the validation of revenue bonds;
15 providing for trust funds and remedies of
16 bondholders; providing for a tax exemption;
17 providing for agreement of the state; providing
18 other powers and authorities incident thereto;
19 requiring reports and audits; providing an
20 effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

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24 Section 1. Short title.--This act may be referred to
25 as the "Higher Educational Facilities Financing Act."

26 Section 2. Findings and declarations.--It is declared
27 that for the benefit of the people of the state, the increase
28 of their commerce, welfare, and prosperity, and the
29 improvement of their health and living conditions, it is
30 essential that this and future generations of youth be given
31 the fullest opportunity to learn and to develop their

1 intellectual and mental capacities; that it is essential for
2 private institutions of higher education in the state to be
3 provided with appropriate additional means to assist such
4 youth in achieving the required levels of learning and
5 development of their intellectual and mental capacities; that
6 it is the purpose of this act to provide a measure of
7 assistance and an alternative method enabling private
8 institutions of higher education of this state to provide the
9 facilities and structures that are sorely needed to accomplish
10 the purposes of this act; and that it is essential to provide
11 additional assistance to private institutions of higher
12 education by enabling those institutions to coordinate their
13 budgetary needs with the timing of receipt of tuition
14 revenues.

15 Section 3. Definitions.--As used in this act, the
16 term:

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

19 (2) "Real property" includes all lands, including
20 improvements and fixtures thereon, and any property of any
21 nature appurtenant thereto, or used in connection therewith
22 and every estate, interest and right, legal or equitable,
23 therein, including terms for years and liens by way of
24 judgment, mortgage, or otherwise and the indebtedness secured
25 by such liens.

26 (3) "Project" means a structure suitable for use as a
27 dormitory or other housing facility, dining hall, student
28 union, administration building, academic building, library,
29 laboratory, research facility, classroom, athletic facility,
30 health care facility, and maintenance, storage, or utility
31 facility, and other structures or facilities related thereto,

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

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

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

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

18 (6) "Institution of higher education" means an
19 educational institution that by virtue of law or charter is an
20 accredited, nonprofit educational institution empowered to
21 provide a project of education beyond the high school level
22 and is not owned or controlled by the state or any political
23 subdivision, agency, instrumentality, district, or
24 municipality of the state.

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

30 (8) "Loan in anticipation of tuition revenues" means a
31 loan to an institution of higher education under circumstances

1 in which tuition revenues anticipated to be received by the
2 institution in any budget year are estimated to be
3 insufficient at any time during the budget year to pay the
4 operating expenses or other obligations of the institution in
5 accordance with the budget of the institution.

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

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

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

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

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

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

1 meeting, and each resolution shall take effect immediately and
2 need not be published or posted.

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

7 (7) Notwithstanding any other law to the contrary, it
8 is not a conflict of interest for a trustee, director,
9 officer, or employee of an institution of higher education to
10 serve as a member of the authority. It is not a conflict of
11 interest for a person having a favorable reputation for skill,
12 knowledge, and experience in state and municipal finance or
13 for a person having a favorable reputation for skill,
14 knowledge, and experience in the higher education loan finance
15 field to serve as a member of the authority. However, in each
16 case to which this act is applicable, the trustee, director,
17 officer, or employee of the participating institution shall
18 abstain from discussion, deliberation, action, and vote by the
19 authority in respect to an undertaking under this act in which
20 the participating institution of higher education represented
21 by such person has an interest; and the person having a
22 favorable reputation for skill, knowledge, and experience in
23 state and municipal finance shall abstain from discussion,
24 deliberation, action, and vote by the authority in respect to
25 a sale, purchase, or ownership of obligations of the authority
26 in which an investment banking firm, insurance company, bank
27 or other similar entity of which the person is a partner,
28 officer, or employee has or may have a current or future
29 interest; and the person having a favorable reputation for
30 skill, knowledge, and experience in the higher education loan
31 finance field shall abstain from discussion, deliberation,

1 action, and vote by the authority in respect to an action of
2 the authority in which a partnership, firm, joint venture,
3 sole proprietorship, or corporation of which the person is an
4 owner, venturer, participant, partner, officer, or employee
5 has or may have a current or future interest.

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

8 Section 5. 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

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,

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

1 or advances issued, made, or given by the participating
2 institution of higher education for the cost of a project.

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

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

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

14 Section 6. Payment of expenses.--All expenses incurred
15 in carrying out this act are payable solely from funds
16 provided under the authority of this act, and no liability or
17 obligation may be incurred by the authority beyond the extent
18 to which moneys have been provided under this act.

19 Section 7. Acquisition of real property.--The
20 authority may directly, or by and through a participating
21 institution of higher education as its agent, acquire by
22 purchase or lease solely from funds provided under this act,
23 or by gift or devise, any lands, structures, property, real or
24 personal, rights, rights-of-way, franchises, easements, and
25 other interests in lands, including lands lying underwater,
26 and riparian rights, which are located within or outside the
27 state as it may consider necessary or convenient for the
28 construction or operation of a project, upon terms and at
29 prices as are considered by it to be reasonable and that can
30 be agreed upon between it and the owner thereof, and to take
31 title thereto in the name of the authority or in the name of a

1 participating institution of higher education as its agent or
2 as an owner and borrower.

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

19 Section 9. Criteria and requirements.--In undertaking
20 any project under this act, the authority shall be guided by
21 and shall observe the following criteria and requirements;
22 however, the determination of the authority as to compliance
23 with the criteria and requirements is final and conclusive:

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

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1 (2) A financing agreement for a project may not be
2 entered into with a participating institution that is not
3 financially responsible and fully capable of and willing to
4 fulfill its obligations under the financing agreement,
5 including the obligations to make payments in the amounts and
6 at the times required; to operate, repair, and maintain at its
7 own expense the project owned or leased; and to serve the
8 purposes of this act and any other responsibilities that may
9 be imposed under the financing agreement. In determining the
10 financial responsibility of the participating institution,
11 consideration must be given to the party's ratio of current
12 assets to current liabilities; net worth; endowments; pledges;
13 earning trends; coverage of all fixed charges; the nature of
14 the project involved; its inherent stability; any guarantee of
15 the obligations by some other financially responsible
16 corporation, firm, or person; means by which the bonds are to
17 be marketed to the public; and other factors determinative of
18 the capability of the participating institution, financially
19 and otherwise, to fulfill its obligations consistently with
20 the purposes of this act. In making findings and
21 determinations, the authority may rely upon the
22 recommendations of the entity representing independent
23 colleges and universities.

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

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

1 Section 10. Approval required to issue bonds.--The
2 authority is created for the purpose of promoting higher
3 education and issuing bonds on behalf of the state, and the
4 Governor may approve any bonds issued by the authority which
5 require approval under federal law.

6 Section 11. Agreements of sale, lease, or loan.--

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

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

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

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

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

1 costs, the cost of administering the bond resolution
2 authorizing the bonds and any trust agreement securing the
3 bonds, and the fees and expenses of the authority, trustees,
4 paying agents, attorneys, consultants, and others.

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

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

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

1 the purchase price of the project may not be less than an
2 amount sufficient to pay in full all of the bonds, including
3 all principal, interest, and redemption premium, if any,
4 issued for the project then outstanding and all other
5 obligations incurred by the authority in connection with the
6 project.

7 Section 12. Notes of authority.--The authority may
8 issue its negotiable notes for any corporate purpose and renew
9 any notes by the issuance of new notes, whether the notes to
10 be renewed have or have not matured. The authority may issue
11 notes partly to renew notes or to discharge other obligations
12 then outstanding and partly for any other purpose. The notes
13 may be authorized, sold, executed, and delivered in the same
14 manner as bonds. Any resolution authorizing notes of the
15 authority or any issue thereof may contain any provisions that
16 the authority is authorized to include in any resolution
17 authorizing revenue bonds of the authority or any issue
18 thereof, and the authority may include in any notes any terms,
19 covenants, or conditions that it is authorized to include in
20 any bonds. All the notes must be payable solely from the
21 revenues of the project to be financed, subject only to any
22 contractual rights of the holders of any of its notes or other
23 obligations then outstanding.

24 Section 13. Revenue bonds.--

25 (1) The authority may issue its negotiable revenue
26 bonds for any corporate purpose, including the provision of
27 funds to pay all or any part of the cost of any project. In
28 anticipation of the sale of revenue bonds, the authority may
29 issue negotiable bond anticipation notes and may renew them
30 from time to time, but the maximum maturity of any note,
31 including renewals thereof, may not exceed 5 years from the

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

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

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

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

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

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

1 revenue bonds, subject to any agreements with bondholders as
2 may then exist.

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

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

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

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

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

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

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

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

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

1 (5) Neither the members of the authority nor any
2 person executing the revenue bonds or notes is liable
3 personally on the revenue bonds or notes or is subject to any
4 personal liability or accountability by reason of the issuance
5 thereof.

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

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

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

25 Section 14. Authority reporting requirement.--

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

31

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

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

27 Section 16. Validity of bonds; validation
28 proceedings.--Any bonds issued by the authority are
29 incontestable in the hands of bona fide purchasers or holders
30 for value and are not invalid because of any irregularity or
31 defect in the proceedings for the issue and sale thereof.

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

29 Section 17. Act furnishes full authority for issuance
30 of bonds.--This act constitutes full authority for the
31 issuance of bonds and the exercise of the powers of the

1 authority provided in this act. Any bonds issued by the
2 authority are not secured by the full faith and credit of the
3 state and do not constitute an obligation, either general or
4 special, of the state.

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

1 expenses incurred in carrying out the trust agreement or
2 resolution may be treated as a part of the cost of the
3 operation of a project.

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

1 Section 20. Rates, rents, fees, and charges.--
2 (1) The authority may fix, revise, charge, and collect
3 rates, rents, fees, and charges for the use of and for the
4 services furnished or to be furnished by each project and may
5 contract with any person, partnership, association or
6 corporation, or other body, public or private, in respect
7 thereof. The rates, rents, fees, and charges must be fixed and
8 adjusted in respect of the aggregate of rates, rents, fees,
9 and charges from the project so as to provide funds sufficient
10 with other revenues, if any:
11 (a) To pay the cost of maintaining, repairing, and
12 operating the project and each portion thereof, to the extent
13 that the payment of the cost has not otherwise been adequately
14 provided for.
15 (b) To pay the principal of and the interest on
16 outstanding revenue bonds of the authority issued in respect
17 of the project as the bonds become due and payable.
18 (c) To create and maintain reserves required or
19 provided for in any resolution authorizing, or trust agreement
20 securing, the revenue bonds of the authority. The rates,
21 rents, fees, and charges are not subject to supervision or
22 regulation by any department, commission, board, body, bureau,
23 or agency of this state other than the authority.
24 (2) A sufficient amount of the revenues derived in
25 respect of a project, except the part of the revenues
26 necessary to pay the cost of maintenance, repair, and
27 operation and to provide reserves and for renewals,
28 replacements, extensions, enlargements, and improvements
29 provided for in the resolution authorizing the issuance of any
30 revenue bonds of the authority or in the trust agreement
31 securing them must be set aside at regular intervals as

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

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

1 respect of the security authorized to other revenue bonds of
2 the authority, and, in such case, the authority may create
3 separate sinking or other similar funds in respect of the
4 subordinate lien bonds.

5 Section 21. Trust funds.--All moneys received under
6 the authority of this act, whether as proceeds from the sale
7 of bonds or as revenues, are considered to be trust funds to
8 be held and applied solely as provided in this act. Any
9 officer with whom, or any bank or trust company with which,
10 the moneys are deposited shall act as trustee of the moneys
11 and shall hold and apply them for the purposes of this act,
12 subject to the regulations this act and the resolution
13 authorizing the bonds of any issue or the trust agreement
14 securing the bonds provides.

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

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1 Section 23. Tax exemption.--The exercise of the powers
2 granted by this act will be in all respects for the benefit of
3 the people of this state, for the increase of their commerce,
4 education, welfare, and prosperity, and for the improvement of
5 their health and living conditions, and because the operation
6 and maintenance of a project by the authority or its agent or
7 the owner or lessee thereof, as authorized in this act, will
8 constitute the performance of an essential public function,
9 neither the authority, its agent, nor the owner of a project
10 is required to pay any taxes or assessments upon or in respect
11 of a project or any property acquired or used by the
12 authority, its agent, or the owner under the provisions of
13 this act or upon the income therefrom, and any bonds issued
14 under this act, any security therefor, their transfer, and the
15 income therefrom, including any profit made on the sale
16 thereof, are at all times free from taxation of every kind by
17 the state, the county, and the municipalities and other
18 political subdivisions in the state. The exemption granted by
19 this section is not applicable to any tax imposed by chapter
20 220, Florida Statutes, on interest, income, or profits or on
21 debt obligations owned by corporations.

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

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

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

30 (4) The portion of the proceeds of any revenue bonds
31 issued for the additional purpose of paying all or any part of

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

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

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

30 Section 26. Reports.--Within the first 90 days of each
31 calendar year, the authority shall make a report to the

1 Department of Education of its activities for the preceding
2 calendar year. Each report must set forth a complete operating
3 and financial statement covering its operations during the
4 year. The authority shall cause an audit of its books and
5 accounts to be made at least once each year by a certified
6 public accountant and the cost of the audit shall be paid by
7 the authority from funds available to it under this act.

8 Section 27. State agreement.--The state agrees with
9 the holders of any obligations issued under this act, and with
10 those parties who may enter into contracts with the authority
11 under this act, that the state will not limit or alter the
12 rights vested in the authority until the obligations, together
13 with the interest thereon, are fully met and discharged and
14 the contracts are fully performed on the part of the
15 authority. However, this act does not preclude any limitation
16 or alteration if adequate provision is made by law for the
17 protection of the holders of the obligations of the authority
18 or those entering into contracts with the authority. The
19 authority is authorized to include this pledge and undertaking
20 for the state in any obligations or contracts.

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

1 municipality or political subdivision or any commission,
2 board, body, bureau, official, or agency thereof or of the
3 state.

4 Section 29. Liberal construction.--This act shall be
5 liberally construed to effectively carry out its purposes.

6 Section 30. Act controlling.--To the extent that this
7 act is inconsistent with any general statute or special act or
8 parts thereof, this act controls.

9 Section 31. This act shall take effect upon becoming a
10 law.

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13 SENATE SUMMARY

14 Creates the Higher Educational Facilities Financing
15 Authority to enable private institutions of higher
16 education to expand their services and facilities through
17 revenue bond financing arrangements.

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