

By the Committee on Education and Senator Horne

304-2012-00

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; amending s.
 20 196.012, F.S.; providing that institutions
 21 funded by this act are educational institutions
 22 for purposes of state taxation; providing an
 23 effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

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

29 Section 2. Findings and declarations.--It is declared
 30 that for the benefit of the people of the state, the increase
 31 of their commerce, welfare, and prosperity, and the

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

18 Section 3. Definitions.--As used in this act, the
19 term:

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

22 (2) "Real property" includes all lands, including
23 improvements and fixtures thereon, and any such property
24 appurtenant thereto, or used in connection therewith and every
25 estate, interest and right, legal or equitable, therein,
26 including terms for years and liens by way of judgment,
27 mortgage, or otherwise and the indebtedness secured by such
28 liens. This definition does not affect the classification of
29 property as real property or tangible personal property for
30 purposes of ad valorem taxation under chapters 192 and 193,
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1 Florida Statutes, or sales and use taxation under chapter 212,
2 Florida Statutes.

3 (3) "Project" means a structure suitable for use as a
4 dormitory or other housing facility, dining hall, student
5 union, administration building, academic building, library,
6 laboratory, research facility, classroom, athletic facility,
7 health care facility, and maintenance, storage, or utility
8 facility, and other structures or facilities related thereto,
9 or required thereby, or required or useful for the instruction
10 of students, or the conducting of research, or the operation
11 of an institution of higher education, including parking and
12 other facilities or structures, essential for the orderly
13 conduct of an institution of higher education and shall also
14 include equipment and machinery and other similar items
15 necessary for the operation of a particular facility or
16 structure in the manner for which its use is intended, but the
17 term does not include such items as books, fuel, supplies, or
18 other items that are customarily considered to result in a
19 current operating charge. The term also includes a loan in
20 anticipation of tuition revenues by a private institution of
21 higher education.

22 (4) "Cost," as applied to a project or any portion
23 thereof financed under this act, embraces all or any part of
24 the cost of construction and acquisition of all lands,
25 structures, real or personal property, rights, rights-of-way,
26 franchises, easements, and interests acquired or used for a
27 project, the cost of demolishing or removing any buildings or
28 structures on land so acquired, including the cost of
29 acquiring any lands to which the buildings or structures may
30 be removed, the cost of all machinery and equipment, financing
31 charges, interest before, during, and for a period of 30

1 months after completion of the construction, provisions for
2 working capital, reserves for principal, interest and rebate,
3 and for extensions, enlargements, additions and improvements,
4 cost of engineering, financial and legal services, plans,
5 specifications, studies, surveys, estimates of cost and of
6 revenues, administrative expenses, expenses necessary to
7 determining the feasibility or practicability of constructing
8 the project and other expenses as may be necessary to the
9 construction and acquisition of the project, the financing of
10 the construction and acquisition and the placing of the
11 project in operation. In the case of a loan in anticipation of
12 tuition revenues, the term "cost" means the amount of the loan
13 in anticipation of revenues which does not exceed the amount
14 of tuition revenues anticipated to be received by the
15 borrowing institution of higher education in the 1-year period
16 following the date of the loan, plus costs related to the
17 issuance of the loans, or bonds, the proceeds of which fund
18 the loans, and any related cost of debt service reserve funds
19 and rebate associated therewith.

20 (5) "Bond" or "revenue bond" means a revenue bond of
21 the authority issued under this act, including a revenue
22 refunding bond, notwithstanding that it may be secured by
23 mortgage or the full faith and credit of a participating
24 institution of higher education or any other lawfully pledged
25 security of a participating institution of higher education.

26 (6) "Institution of higher education" means an
27 educational institution that by virtue of law or charter is a
28 nonprofit educational institution empowered to provide a
29 project of education beyond the high school level; is not
30 owned or controlled by the state or any political subdivision,
31 agency, instrumentality, district, or municipality of the

1 state; and otherwise meets the requirements of section 196.012
2 (5), Florida Statutes.

3 (7) "Participating institution" means an institution
4 of higher education that undertakes the financing and
5 construction or acquisition of a project or undertakes the
6 refunding or refinancing of obligations or of a mortgage or of
7 advances as provided in and permitted by this act.

8 (8) "Loan in anticipation of tuition revenues" means a
9 loan to an institution of higher education under circumstances
10 in which tuition revenues anticipated to be received by the
11 institution in any budget year are estimated to be
12 insufficient at any time during the budget year to pay the
13 operating expenses or other obligations of the institution in
14 accordance with the budget of the institution.

15 Section 4. Creation of Higher Educational Facilities
16 Financing Authority.--

17 (1) There is created a public body corporate and
18 politic to be known as the Higher Educational Facilities
19 Financing Authority. The authority is constituted as a public
20 instrumentality and the exercise by the authority of the
21 powers conferred by this act is considered to be the
22 performance of an essential public function.

23 (2) The authority shall consist of five members to be
24 appointed by the Governor. One member shall be a trustee,
25 director, officer, or employee of an institution of higher
26 education. Of the members first appointed, one shall serve for
27 1 year, one for 2 years, one for 3 years, one for 4 years, and
28 one for 5 years, and in each case until his or her successor
29 is appointed and has qualified. Thereafter, the Governor shall
30 appoint for terms of 5 years each a member or members to
31 succeed those whose terms expire. The Governor shall fill any

1 vacancy for an unexpired term. A member of the authority is
2 eligible for reappointment. Any member of the authority may be
3 removed by the Governor for misfeasance, malfeasance, or
4 willful neglect of duty. Each member of the authority before
5 entering upon his or her duties shall take and subscribe to
6 the oath or affirmation required by the State Constitution. A
7 record of each oath must be filed in the office of the
8 Department of State and with the authority.

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

23 (4) The executive director shall keep a record of the
24 proceedings of the authority and shall be custodian of all
25 books, documents, and papers filed with the authority and of
26 the minute book or journal of the authority and of its
27 official seal. He or she may cause copies to be made of all
28 minutes and other records and documents of the authority and
29 may give certificates under the official seal of the authority
30 to the effect that the copies are true copies, and all persons
31 dealing with the authority may rely upon the certificates.

1 (5) A majority of the members of the authority
2 constitutes a quorum, and the affirmative vote of a majority
3 of the members present at a meeting of the authority is
4 necessary for any action taken by the authority. A vacancy in
5 the membership of the authority may not impair the right of a
6 quorum to exercise all the rights and perform all the duties
7 of the authority. Any action taken by the authority under this
8 act may be authorized by resolution at any regular or special
9 meeting, and each resolution shall take effect immediately and
10 need not be published or posted.

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

15 (7) Notwithstanding any other law to the contrary, it
16 is not a conflict of interest for a trustee, director,
17 officer, or employee of an institution of higher education to
18 serve as a member of the authority. It is not a conflict of
19 interest for a person having a favorable reputation for skill,
20 knowledge, and experience in state and municipal finance or
21 for a person having a favorable reputation for skill,
22 knowledge, and experience in the higher education loan finance
23 field to serve as a member of the authority. However, in each
24 case to which this act is applicable, the trustee, director,
25 officer, or employee of the participating institution shall
26 abstain from discussion, deliberation, action, and vote by the
27 authority in respect to an undertaking under this act in which
28 the participating institution of higher education represented
29 by such person has an interest; and the person having a
30 favorable reputation for skill, knowledge, and experience in
31 state and municipal finance shall abstain from discussion,

1 deliberation, action, and vote by the authority in respect to
2 a sale, purchase, or ownership of obligations of the authority
3 in which an investment banking firm, insurance company, bank
4 or other similar entity of which the person is a partner,
5 officer, or employee has or may have a current or future
6 interest; and the person having a favorable reputation for
7 skill, knowledge, and experience in the higher education loan
8 finance field shall abstain from discussion, deliberation,
9 action, and vote by the authority in respect to an action of
10 the authority in which a partnership, firm, joint venture,
11 sole proprietorship, or corporation of which the person is an
12 owner, venturer, participant, partner, officer, or employee
13 has or may have a current or future interest.

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

16 Section 5. Powers of authority.--The purpose of the
17 authority is to assist institutions of higher education in the
18 construction, financing, and refinancing of projects
19 throughout the state and for this purpose the authority may:

20 (1) Exercise all powers granted to corporations under
21 the Florida Business Corporation Act, chapter 607, Florida
22 Statutes.

23 (2) Have perpetual succession as a body politic and
24 corporate and adopt bylaws for the regulation of its affairs
25 and the conduct of its business.

26 (3) Adopt an official seal and alter the same at its
27 pleasure.

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

30 (5) Sue and be sued in its own name, and plead and be
31 impleaded.

1 (6) Make and execute financing agreements, leases, as
2 lessee or as lessor, contracts, deeds, and other instruments
3 necessary or convenient in the exercise of the powers and
4 functions of the authority under this act, including contracts
5 with persons, firms, corporations, federal and state agencies,
6 and other authorities, which state agencies and other
7 authorities are hereby authorized to enter into contracts and
8 otherwise cooperate with the authority to facilitate the
9 financing, construction, leasing, or sale of any project or
10 the institution of any program; engage in sale-leaseback,
11 lease-purchase, lease-leaseback, or other undertakings and
12 provide for the sale of certificates of participation incident
13 thereto; enter into interlocal agreements in the manner
14 provided in section 163.01, Florida Statutes.

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

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

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

20 (c) Enter into contracts for the management and
21 operation of a project; and

22 (d) Designate a participating institution of higher
23 education as its agent to determine the location and character
24 of a project undertaken by a participating institution of
25 higher education under this act and, as the agent of the
26 authority, construct, reconstruct, maintain, repair, operate,
27 own, lease as lessee or lessor, and regulate the project, and,
28 as the agent of the authority, enter into contracts for any of
29 those purposes, including contracts for the management and
30 operation of the project.

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1 (8) Issue bonds, bond anticipation notes, and other
2 obligations of the authority for any of its corporate
3 purposes, including the providing of funds to pay all or any
4 part of the cost of any project, and to fund or refund the
5 cost of any project as provided in this act.

6 (9) Generally fix and revise and charge and collect
7 rates, rents, fees, and charges for the use of and for the
8 services furnished or to be furnished by a project or any
9 portion thereof and to contract with any person, partnership,
10 association, or corporation or other body public or private in
11 respect thereof.

12 (10) Establish rules and regulations for the use of a
13 project or any portion thereof and designate a participating
14 institution of higher education as its agent to establish
15 rules and regulations for the use of a project undertaken by
16 the participating institution of higher education.

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

21 (12) Receive and accept from any public agency loans
22 or grants for or in aid of the construction of a project or
23 any portion thereof, and receive and accept loans, grants,
24 aid, or contributions from any source of either money,
25 property, labor, or other things of value, to be held, used,
26 and applied only for the purposes for which the loans, grants,
27 aid, and contributions are made.

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

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1 (14) Make loans to any participating institution of
2 higher education for the cost of a project, including a loan
3 in anticipation of tuition revenues, in accordance with an
4 agreement between the authority and the participating
5 institution of higher education; but no loan may exceed the
6 total cost of the project as determined by the participating
7 institution of higher education and approved by the authority.

8 (15) Make loans to a participating institution of
9 higher education to refund outstanding obligations, mortgages,
10 or advances issued, made, or given by the participating
11 institution of higher education for the cost of a project.

12 (16) Charge to and equitably apportion among
13 participating institutions of higher education its
14 administrative costs and expenses incurred in the exercise of
15 the powers and duties conferred by this act.

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

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

23 Section 6. Payment of expenses.--All expenses incurred
24 in carrying out this act are payable solely from funds
25 provided under the authority of this act, and no liability or
26 obligation may be incurred by the authority beyond the extent
27 to which moneys have been provided under this act.

28 Section 7. Acquisition of real property.--The
29 authority may directly, or by and through a participating
30 institution of higher education as its agent, acquire by
31 purchase or lease solely from funds provided under this act,

1 or by gift or devise, any lands, structures, property, real or
2 personal, rights, rights-of-way, franchises, easements, and
3 other interests in lands, including lands lying underwater,
4 and riparian rights, which are located within or outside the
5 state as it may consider necessary or convenient for the
6 construction or operation of a project, upon terms and at
7 prices as are considered by it to be reasonable and that can
8 be agreed upon between it and the owner thereof, and to take
9 title thereto in the name of the authority or in the name of a
10 participating institution of higher education as its agent or
11 as an owner and borrower.

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

28 Section 9. Criteria and requirements.--In undertaking
29 any project under this act, the authority shall be guided by
30 and shall observe the following criteria and requirements;
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1 however, the determination of the authority as to compliance
2 with the criteria and requirements is final and conclusive:

3 (1) The project, in the determination of the
4 authority, is appropriate to the needs and circumstances of,
5 and shall make a significant contribution to the purposes of,
6 the authority and this act as set forth in the findings and
7 declarations, and shall serve a public purpose by advancing
8 the prosperity and general welfare of the state and its
9 people.

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

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1 recommendations of the entity representing independent
2 colleges and universities.

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

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

11 Section 10. Approval required to issue bonds.--The
12 authority is created for the purpose of promoting higher
13 education and issuing bonds on behalf of the state, and the
14 Governor may approve any bonds issued by the authority which
15 require approval under federal law.

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

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

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

29 (a) The owner or lessee shall at its own expense
30 operate, repair, and maintain the project sold or leased
31 thereunder.

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

6 (c) The owner or lessee shall pay all other costs
7 incurred by the authority in connection with the financing,
8 construction, and administration of the project sold or
9 leased, except as may be paid out of the proceeds of bonds or
10 otherwise, including, but without being limited to, insurance
11 costs, the cost of administering the bond resolution
12 authorizing the bonds and any trust agreement securing the
13 bonds, and the fees and expenses of the authority, trustees,
14 paying agents, attorneys, consultants, and others.

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

21 (e) The owner or lessee's obligation to pay payments
22 or rent is not subject to cancellation, termination, or
23 abatement until payment of the bonds or provision for payment
24 is made.

25 (2) An agreement may contain additional provisions
26 that in the determination of the authority are necessary to
27 effectuate the purposes of this act, including provisions for
28 extensions of the term and renewals of the sale or the lease
29 and vesting in the lessee an option to purchase the project
30 leased thereunder pursuant to any terms and conditions
31 consistent with this act that are prescribed in the lease;

1 however, except as is otherwise expressly stated in the
2 agreement and except to provide for any contingencies
3 involving the damaging, destruction, or condemnation of the
4 project or any substantial portion thereof, an option to
5 purchase may not be exercised unless all bonds issued for the
6 project, including all principal, interest, and redemption
7 premiums, if any, and all other obligations incurred by the
8 authority in connection with the project have been paid in
9 full or sufficient funds have been deposited in trust or
10 sufficient arrangements have been made for payment. However,
11 the purchase price of the project may not be less than an
12 amount sufficient to pay in full all of the bonds, including
13 all principal, interest, and redemption premium, if any,
14 issued for the project then outstanding and all other
15 obligations incurred by the authority in connection with the
16 project.

17 Section 12. Notes of authority.--The authority may
18 issue its negotiable notes for any corporate purpose and renew
19 any notes by the issuance of new notes, whether the notes to
20 be renewed have or have not matured. The authority may issue
21 notes partly to renew notes or to discharge other obligations
22 then outstanding and partly for any other purpose. The notes
23 may be authorized, sold, executed, and delivered in the same
24 manner as bonds. Any resolution authorizing notes of the
25 authority or any issue thereof may contain any provisions that
26 the authority is authorized to include in any resolution
27 authorizing revenue bonds of the authority or any issue
28 thereof, and the authority may include in any notes any terms,
29 covenants, or conditions that it is authorized to include in
30 any bonds. All the notes must be payable solely from the
31 revenues of the project to be financed, subject only to any

1 contractual rights of the holders of any of its notes or other
2 obligations then outstanding.

3 Section 13. Revenue bonds.--

4 (1) The authority may issue its negotiable revenue
5 bonds for any corporate purpose, including the provision of
6 funds to pay all or any part of the cost of any project. In
7 anticipation of the sale of revenue bonds, the authority may
8 issue negotiable bond anticipation notes and may renew them
9 from time to time, but the maximum maturity of any note,
10 including renewals thereof, may not exceed 5 years from the
11 date of issue of the original note. The notes must be paid
12 from any revenues of the authority available therefor or of
13 the project and not otherwise pledged, or from the proceeds of
14 sale of the revenue bonds of the authority in anticipation of
15 which they were issued. The notes must be issued in the same
16 manner as the revenue bonds. The notes and the resolution
17 authorizing them may contain any provisions, conditions, or
18 limitations that a bond resolution of the authority may
19 contain.

20 (2) The revenue bonds and notes of every issue must be
21 payable solely out of revenues of the authority, including the
22 provision of funds of the participating institution to pay all
23 or any part of the cost of any project, subject only to any
24 agreements with the holders of particular revenue bonds or
25 notes pledging any particular revenues. Notwithstanding that
26 revenue bonds and notes may be payable from a special fund,
27 they are for all purposes negotiable instruments, subject only
28 to the provisions of the revenue bonds and notes for
29 registration.

30 (3) The revenue bonds may be issued as serial bonds or
31 as term bonds; or the authority may issue bonds of both types.

1 The revenue bonds must be authorized by resolution of the
2 authority; must bear the date of issuance, the date of
3 maturity, not exceeding 50 years from issuance, and the
4 interest rate of the bonds, which may be a variable rate,
5 notwithstanding any limitation in other laws relating to
6 maximum interest rates; must be payable at a specified time;
7 must be in specified denominations; must be in specified form,
8 carry registration privileges, be executed in a specified
9 manner, be payable in lawful money of the United States at a
10 specified place, and be subject to the terms of redemption, as
11 the resolution may provide. The revenue bonds or notes may be
12 sold at public or private sale for the price the authority
13 determines. Pending preparation of the definitive bonds, the
14 authority may issue interim receipts or certificates that may
15 be exchanged for the definitive bonds. In case any officer
16 whose signature, or a facsimile of whose signature, appears on
17 any bonds or coupons ceases to be that officer before the
18 delivery of the bonds, the signature or facsimile is
19 nevertheless valid and sufficient for all purposes as if he or
20 she had remained in office until delivery. The authority may
21 also provide for the authentication of the bonds by a trustee
22 or fiscal agent. The bonds may be issued in coupon form or in
23 registered form, or both, as the authority may determine, and
24 provision may be made for the registration of any coupon bonds
25 as to principal alone and also as to both principal and
26 interest; for the reconversion into coupon bonds of any bonds
27 registered as to both principal and interest; and for the
28 interchange of registered and coupon bonds. The authority may
29 sell the bonds either at public or private sale, and for the
30 price it determines will best effectuate the purpose of this
31 act, notwithstanding any limitation in other laws relating to

1 the maximum interest rate permitted for bonds or limitations
2 on the manner by which bonds are sold.

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

6 (a) Pledging of all or any part of the revenues of a
7 project or any revenue-producing contract made by the
8 authority with any individual, partnership, corporation, or
9 association or other body, public or private, to secure the
10 payment of the revenue bonds or of any particular issue of
11 revenue bonds, subject to any agreements with bondholders as
12 may then exist.

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

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

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

20 (e) Limitations on the purpose to which the proceeds
21 of sale of any issue of revenue bonds then or thereafter to be
22 issued may be applied and pledging the proceeds to secure the
23 payment of the revenue bonds or any issue of the revenue
24 bonds.

25 (f) Limitations on the issuance of additional bonds,
26 the terms upon which additional bonds may be issued and
27 secured, and the refunding of outstanding bonds.

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

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

4 (i) The acts or omissions to act that constitute a
5 default in the duties of the authority to holders of its
6 obligations and providing the rights and remedies of the
7 holders in the event of a default.

8 (j) The mortgaging of or granting of a security
9 interest in the project or the site thereof for the purpose of
10 securing the bondholders.

11 (5) Neither the members of the authority nor any
12 person executing the revenue bonds or notes is liable
13 personally on the revenue bonds or notes or is subject to any
14 personal liability or accountability by reason of the issuance
15 thereof.

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

20 (7) Incident to its powers to issue bonds and notes,
21 the authority may enter into interest rate swap agreements,
22 collars, caps, forward securities purchase agreements, delayed
23 delivery bond purchase agreements, and any other financial
24 agreements considered to be in the best interest of the
25 authority.

26 (8) Bonds may be issued under this act without
27 obtaining, except as otherwise expressly provided in this act,
28 the consent of any department, division, commission, board,
29 body, bureau, or agency of the state or any local government,
30 and without any other proceedings or the happening of any
31 conditions or things other than those proceedings, conditions,

1 or things that are specifically required by this act and the
2 resolution authorizing the issuance of bonds or the trust
3 agreement securing them.

4 Section 14. Authority reporting requirement.--

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

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

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

1 necessary instruments, the procedure for amending or
2 abrogating covenants with the bondholders, and any other
3 covenants considered necessary for the security of the
4 bondholders.

5 Section 16. Validity of bonds; validation
6 proceedings.--Any bonds issued by the authority are
7 incontestable in the hands of bona fide purchasers or holders
8 for value and are not invalid because of any irregularity or
9 defect in the proceedings for the issue and sale thereof.
10 Before the issuance of any bonds, the authority shall publish
11 a notice at least once in a newspaper or newspapers published
12 or of general circulation in the county or counties in the
13 state in which the project will be located, stating the date
14 of adoption of the resolution authorizing the obligations, the
15 amount, maximum rate of interest, and maturity of the
16 obligations, and the purpose in general terms for which the
17 obligations are to be issued, and further stating that no
18 action or proceeding questioning the validity of the
19 obligations or of the proceedings authorizing the issuance
20 thereof, or of any covenants made therein, must be instituted
21 within 20 days after the first publication of the notice, or
22 the validity of the obligations, proceedings, and covenants
23 may not be thereafter questioned in any court. If no action or
24 proceeding is instituted within the 20-day period, then the
25 validity of the obligations, proceedings, and covenants is
26 conclusive, and all persons or parties whatsoever are forever
27 barred from questioning the validity of the obligations,
28 proceedings, or covenants in any court. Notwithstanding this
29 section, the bonds, notes, or other obligations issued by the
30 authority and the obligations of any participating
31 institution, or others providing credit for the obligations,

1 who may be before the jurisdiction of the court, may be
2 validated in the manner provided by chapter 75, Florida
3 Statutes, and the jurisdiction of the action may be in the
4 jurisdiction of the circuit court where the project is to be
5 located, or in the discretion of the authority, in the county
6 seat of state government.

7 Section 17. Act furnishes full authority for issuance
8 of bonds.--This act constitutes full authority for the
9 issuance of bonds and the exercise of the powers of the
10 authority provided in this act. Any bonds issued by the
11 authority are not secured by the full faith and credit of the
12 state and do not constitute an obligation, either general or
13 special, of the state.

14 Section 18. Security of bondholders.--In the
15 discretion of the authority any revenue bonds issued under
16 this act may be secured by a trust agreement by and between
17 the authority and a corporate trustee or trustees, which may
18 be any trust company or bank having the powers of a trust
19 company within or without the state. The trust agreement or
20 the resolution providing for the issuance of revenue bonds may
21 pledge or assign the revenues to be received or the proceeds
22 of any contract or contracts pledged and may convey or
23 mortgage the project or any portion thereof. The trust
24 agreement or resolution providing for the issuance of revenue
25 bonds may contain provisions for protecting and enforcing the
26 rights and remedies of the bondholders as may be reasonable
27 and proper and not in violation of law, including particularly
28 those provisions specifically authorized by this act to be
29 included in any resolution of the authority authorizing
30 revenue bonds. Any bank or trust company incorporated under
31 the laws of this state or of any other state or the United

1 States which may legally act as depository of the proceeds of
2 bonds or of revenues or other moneys or security may furnish
3 indemnifying bonds or pledge securities required by the
4 authority, if any. Any trust agreement may set forth the
5 rights and remedies of the bondholders and of the trustee or
6 trustees, and may restrict the individual right of action by
7 bondholders. In addition any trust agreement or resolution may
8 contain any other provisions the authority may consider
9 reasonable and proper for the security of the bondholders. All
10 expenses incurred in carrying out the trust agreement or
11 resolution may be treated as a part of the cost of the
12 operation of a project.

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

1 they are issued, and that neither the faith and credit nor the
2 taxing power of the authority, any municipality, the state, or
3 any political subdivision thereof is pledged to the payment of
4 the principal of or the interest on the bonds. The issuance of
5 revenue bonds under this act may not directly or indirectly or
6 contingently obligate the authority, any municipality, the
7 state, or any political subdivision thereof to levy or to
8 pledge any form of taxation therefor or to make any
9 appropriation for their payment.

10 Section 20. Rates, rents, fees, and charges.--

11 (1) The authority may fix, revise, charge, and collect
12 rates, rents, fees, and charges for the use of and for the
13 services furnished or to be furnished by each project and may
14 contract with any person, partnership, association or
15 corporation, or other body, public or private, in respect
16 thereof. The rates, rents, fees, and charges must be fixed and
17 adjusted in respect of the aggregate of rates, rents, fees,
18 and charges from the project so as to provide funds sufficient
19 with other revenues, if any:

20 (a) To pay the cost of maintaining, repairing, and
21 operating the project and each portion thereof, to the extent
22 that the payment of the cost has not otherwise been adequately
23 provided for.

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

27 (c) To create and maintain reserves required or
28 provided for in any resolution authorizing, or trust agreement
29 securing, the revenue bonds of the authority. The rates,
30 rents, fees, and charges are not subject to supervision or
31

1 regulation by any department, commission, board, body, bureau,
2 or agency of this state other than the authority.

3 (2) A sufficient amount of the revenues derived in
4 respect of a project, except the part of the revenues
5 necessary to pay the cost of maintenance, repair, and
6 operation and to provide reserves and for renewals,
7 replacements, extensions, enlargements, and improvements
8 provided for in the resolution authorizing the issuance of any
9 revenue bonds of the authority or in the trust agreement
10 securing them must be set aside at regular intervals as
11 provided in the resolution or trust agreement in a sinking or
12 other similar fund that is hereby pledged to, and charged
13 with, the payment of the principal of and the interest on the
14 revenue bonds as they become due and the redemption price or
15 the purchase price of bonds retired by call or purchase as
16 therein provided. The pledge must be valid and binding from
17 the time when the pledge is made; the rates, rents, fees,
18 charges, and other revenues or other moneys so pledged and
19 thereafter received by the authority must immediately be
20 subject to the lien of the pledge without any physical
21 delivery thereof or further act, and the lien of any pledge is
22 valid and binding as against all parties having claims of any
23 kind in tort, contract, or otherwise against the authority,
24 irrespective of whether the parties have notice thereof.
25 Neither the resolution nor any trust agreement by which a
26 pledge is created need be filed or recorded except in the
27 records of the authority.

28 (3) The use and disposition of moneys to the credit of
29 a sinking or other similar fund must be subject to the
30 resolution authorizing the issuance of the bonds or of the
31 trust agreement. Except as may otherwise be provided in the

1 resolution or the trust agreement, the sinking or other
2 similar fund must be a fund for all revenue bonds issued to
3 finance projects at a particular institution for higher
4 education without distinction or priority of one over another.
5 However, the authority in any resolution or trust agreement
6 may provide that the sinking or other similar fund be the fund
7 for a particular project at an institution for higher
8 education and for the revenue bonds issued to finance a
9 particular project, and may, additionally, permit and provide
10 for the issuance of revenue bonds having a subordinate lien in
11 respect of the security authorized to other revenue bonds of
12 the authority, and, in such case, the authority may create
13 separate sinking or other similar funds in respect of the
14 subordinate lien bonds.

15 Section 21. Trust funds.--All moneys received under
16 the authority of this act, whether as proceeds from the sale
17 of bonds or as revenues, are considered to be trust funds to
18 be held and applied solely as provided in this act. Any
19 officer with whom, or any bank or trust company with which,
20 the moneys are deposited shall act as trustee of the moneys
21 and shall hold and apply them for the purposes of this act,
22 subject to the regulations this act and the resolution
23 authorizing the bonds of any issue or the trust agreement
24 securing the bonds provides.

25 Section 22. Remedies of bondholders.--Any holder of
26 revenue bonds issued under this act or any of the coupons
27 appertaining thereto, and the trustee or trustees under any
28 trust agreement, except to the extent the rights given may be
29 restricted by any resolution authorizing the issuance of, or
30 any such trust agreement securing, the bonds, may, either at
31 law or in equity, by suit, action, mandamus, or other

1 proceedings, protect and enforce any rights under the laws of
2 the state or granted hereunder or under the resolution or
3 trust agreement, and may enforce and compel the performance of
4 all duties required by this act or by the resolution or trust
5 agreement to be performed by the authority or by any officer,
6 employee, or agent thereof, including the fixing, charging,
7 and collecting of the rates, rents, fees, and charges
8 authorized and required by the provisions of the resolution or
9 trust agreement to be fixed, established, and collected.

10 Section 23. Tax exemption.--The exercise of the powers
11 granted by this act will be in all respects for the benefit of
12 the people of this state, for the increase of their commerce,
13 education, welfare, and prosperity, and for the improvement of
14 their health and living conditions, and because the operation
15 and maintenance of a project by the authority or its agent or
16 the owner or lessee thereof, as authorized in this act, will
17 constitute the performance of an essential public function,
18 neither the authority nor its agent is required to pay any
19 taxes or assessments upon or in respect of a project or any
20 property acquired or used by the authority or its agent under
21 the provisions of this act or upon the income therefrom, and
22 any bonds issued under this act, any security therefor, their
23 transfer, and the income therefrom, including any profit made
24 on the sale thereof, and all notes, mortgages, security
25 agreements, letters of credit, or other instruments that arise
26 out of or are given to secure the repayment of bonds issued in
27 connection with a project financed under this part, shall at
28 all times be free from taxation by the state or any local
29 unit, political subdivision, or other instrumentality of the
30 state. The exemption granted by this section is not applicable
31 to any tax imposed by chapter 220, Florida Statutes, on

1 interest, income, or profits or on debt obligations owned by
2 corporations.

3 Section 24. Refunding bonds.--

4 (1) The authority may provide for the issuance of
5 revenue bonds of the authority for the purpose of refunding
6 any revenue bonds of the authority then outstanding, including
7 the payment of any redemption premium thereon and any interest
8 accrued or to accrue to the earliest or subsequent date of
9 redemption, purchase, or maturity of the revenue bonds, and,
10 if considered advisable by the authority, for the additional
11 purpose of paying all or any part of the cost of constructing
12 and acquiring additions, improvements, extensions, or
13 enlargements of a project or any portion thereof.

14 (2) The proceeds of any revenue bonds issued for the
15 purpose of refunding outstanding revenue bonds may be applied
16 to the purchase or retirement at maturity or redemption of the
17 outstanding revenue bonds either on their earliest or any
18 subsequent redemption date or upon the purchase or at the
19 maturity thereof and may, pending the application, be placed
20 in escrow to be applied to the purchase or retirement at
21 maturity or redemption on the date as may be determined by the
22 authority.

23 (3) Any escrowed proceeds, pending use, may be
24 invested and reinvested in direct obligations of the United
25 States of America, or in certificates of deposit or time
26 deposits secured by direct obligations of the United States,
27 or other investments as the resolution authorizing the
28 issuance and sale of the bonds, or the trust agreement, may
29 provide, maturing at the time or times as shall be appropriate
30 to assure the prompt payment, as to principal, interest, and
31 redemption premium, if any, of the outstanding revenue bonds

1 to be so refunded. The interest, income, and profits, if any,
2 earned or realized on any such investment may also be applied
3 to the payment of the outstanding revenue bonds to be so
4 refunded. After the terms of the escrow have been fully
5 satisfied and carried out, any balance of the proceeds and
6 interest, income and profits, if any, earned or realized on
7 the investments thereof may be returned to the authority or to
8 the participating institution for use by it in any lawful
9 manner.

10 (4) The portion of the proceeds of any revenue bonds
11 issued for the additional purpose of paying all or any part of
12 the cost of constructing and acquiring additions,
13 improvements, extensions, or enlargements of a project may be
14 invested and reinvested in direct obligations of the United
15 States, or in certificates of deposit or time deposits secured
16 by direct obligations of the United States, or other
17 investments as the resolution authorizing the issuance and
18 sale of the bonds, or the trust agreement, may provide,
19 maturing not later than the time or times when the proceeds
20 will be needed for the purpose of paying all or any part of
21 the cost. The interest, income, and profits, if any, earned or
22 realized on the investment may be applied to the payment of
23 all or any part of the cost or may be used by the authority or
24 the participating institution in any lawful manner.

25 (5) All refunding revenue bonds are subject to this
26 act in the same manner and to the same extent as other revenue
27 bonds issued under this act.

28 Section 25. Legal investment.--Bonds issued by the
29 authority under this act are made securities in which all
30 public officers and public bodies of the state and its
31 political subdivisions, all insurance companies, trust

1 companies, banking associations, investment companies,
2 executors, administrators, trustees, and other fiduciaries may
3 properly and legally invest funds, including capital in their
4 control or belonging to them. The bonds are made securities
5 that may properly and legally be deposited with and received
6 by any state or municipal officer or any agency or political
7 subdivision of the state for any purpose for which the deposit
8 of bonds or obligations of the state is now or may hereafter
9 be authorized by law.

10 Section 26. Reports.--Within the first 90 days of each
11 calendar year, the authority shall make a report to the
12 Department of Education of its activities for the preceding
13 calendar year. Each report must set forth a complete operating
14 and financial statement covering its operations during the
15 year. The authority shall cause an audit of its books and
16 accounts to be made at least once each year by a certified
17 public accountant and the cost of the audit shall be paid by
18 the authority from funds available to it under this act.

19 Section 27. State agreement.--The state agrees with
20 the holders of any obligations issued under this act, and with
21 those parties who may enter into contracts with the authority
22 under this act, that the state will not limit or alter the
23 rights vested in the authority until the obligations, together
24 with the interest thereon, are fully met and discharged and
25 the contracts are fully performed on the part of the
26 authority. However, this act does not preclude any limitation
27 or alteration if adequate provision is made by law for the
28 protection of the holders of the obligations of the authority
29 or those entering into contracts with the authority. The
30 authority is authorized to include this pledge and undertaking
31 for the state in any obligations or contracts.

1 Section 28. Alternative means.--This act provides an
2 additional and alternative method for the doing of the things
3 authorized, and shall be regarded as supplemental and
4 additional to powers conferred by other laws; but the issuance
5 of notes, certificates of participation, revenue bonds, and
6 revenue refunding bonds under this act need not comply with
7 the requirements of any other law applicable to the issuance
8 of bonds or such obligations. Except as otherwise expressly
9 provided in this act, the powers granted to the authority
10 under this act are not subject to the supervision or
11 regulation of, or require the approval or consent of, any
12 municipality or political subdivision or any commission,
13 board, body, bureau, official, or agency thereof or of the
14 state.

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

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

20 Section 31. Subsection (5) of section 196.012, Florida
21 Statutes, is amended to read:

22 196.012 Definitions.--For the purpose of this chapter,
23 the following terms are defined as follows, except where the
24 context clearly indicates otherwise:

25 (5) "Educational institution" means a federal, state,
26 parochial, church, or private school, college, or university
27 conducting regular classes and courses of study required for
28 eligibility to certification by, accreditation to, or
29 membership in the State Department of Education of Florida,
30 Southern Association of Colleges and Schools, or the Florida
31 Council of Independent Schools; a nonprofit private school the

1 principal activity of which is conducting regular classes and
2 courses of study accepted for continuing postgraduate dental
3 education credit by a board of the Division of Medical Quality
4 Assurance; educational direct-support organizations created
5 pursuant to ss. 229.8021, 240.299, and 240.331; and facilities
6 located on the property of eligible entities which will become
7 owned by those entities on a date certain; and institutions of
8 higher education as defined under and participating in the
9 Higher Educational Facilities Financing Act created pursuant
10 to chapter 2000- , Laws of Florida.

11 Section 32. This act shall take effect upon becoming a
12 law.

13

14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 SB 1450

17 For ad valorem tax purposes, the Committee Substitute
18 classifies consistently the educational institutions funded
19 under its provisions. It deletes the "owner" of the property
20 from the tax exemption; only the educational institution, the
21 authority, or their agent will be exempt.

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