

By the Committees on Governmental Oversight and Productivity;  
Education; and Senator Horne

302-2161-00

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          requiring bond-validation proceedings;  
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. Chapters 119 and  
23 286, Florida Statutes, shall apply to the authority.

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

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

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

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

1 to the effect that the copies are true copies, and all persons  
2 dealing with the authority may rely upon the certificates.

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

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

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

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

23 (1) Exercise all powers granted to corporations under  
24 the Florida Business Corporation Act, chapter 607, Florida  
25 Statutes.

26 (2) Have perpetual succession as a body politic and  
27 corporate and adopt bylaws for the regulation of its affairs  
28 and the conduct of its business.

29 (3) Adopt an official seal and alter the same at its  
30 pleasure.

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

3           (5) Sue and be sued in its own name, and plead and be  
4 impleaded.

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

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

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

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

24           (c) Enter into contracts for the management and  
25 operation of a project; and

26           (d) Designate a participating institution of higher  
27 education as its agent to determine the location and character  
28 of a project undertaken by a participating institution of  
29 higher education under this act and, as the agent of the  
30 authority, construct, reconstruct, maintain, repair, operate,  
31 own, lease as lessee or lessor, and regulate the project, and,



1 as the agent of the authority, enter into contracts for any of  
2 those purposes, including contracts for the management and  
3 operation of the project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the purposes of this act. In making findings and  
2 determinations, the authority may rely upon the  
3 recommendations of the entity representing independent  
4 colleges and universities.

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

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

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

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

19 (1) A project financed under this act may not be  
20 operated by the authority or any other governmental agency,  
21 except that the authority may temporarily operate or cause to  
22 be operated all or any part of a project to protect its  
23 interest therein, pending any leasing or sale of the project.  
24 A project acquired or constructed by the authority, unless  
25 sold or contracted to be sold, must be leased to one or more  
26 persons, firms, or private corporations for operation and  
27 maintenance in a manner as will effectuate the purposes of  
28 this act, under an agreement of sale, installment sale, lease  
29 or loan, in form and substance not inconsistent herewith. Any  
30 agreement may provide, among other provisions, that:

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1           (a) The owner or lessee shall at its own expense  
2 operate, repair, and maintain the project sold or leased  
3 thereunder.

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

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

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

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

28           (2) An agreement may contain additional provisions  
29 that in the determination of the authority are necessary to  
30 effectuate the purposes of this act, including provisions for  
31 extensions of the term and renewals of the sale or the lease

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

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

1 covenants, or conditions that it is authorized to include in  
2 any bonds. All the notes must be payable solely from the  
3 revenues of the project to be financed, subject only to any  
4 contractual rights of the holders of any of its notes or other  
5 obligations then outstanding.

6 Section 13. Revenue bonds.--

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

23 (2) The revenue bonds and notes of every issue must be  
24 payable solely out of revenues of the authority, including the  
25 provision of funds of the participating institution to pay all  
26 or any part of the cost of any project, subject only to any  
27 agreements with the holders of particular revenue bonds or  
28 notes pledging any particular revenues. Notwithstanding that  
29 revenue bonds and notes may be payable from a special fund,  
30 they are for all purposes negotiable instruments, subject only  
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1 to the provisions of the revenue bonds and notes for  
2 registration.  
3 (3) The revenue bonds may be issued as serial bonds or  
4 as term bonds; or the authority may issue bonds of both types.  
5 The revenue bonds must be authorized by resolution of the  
6 authority; must bear the date of issuance, the date of  
7 maturity, not exceeding 50 years from issuance, and the  
8 interest rate of the bonds, which may be a variable rate,  
9 notwithstanding any limitation in other laws relating to  
10 maximum interest rates; must be payable at a specified time;  
11 must be in specified denominations; must be in specified form,  
12 carry registration privileges, be executed in a specified  
13 manner, be payable in lawful money of the United States at a  
14 specified place, and be subject to the terms of redemption, as  
15 the resolution may provide. The revenue bonds or notes may be  
16 sold at public or private sale for the price the authority  
17 determines. Pending preparation of the definitive bonds, the  
18 authority may issue interim receipts or certificates that may  
19 be exchanged for the definitive bonds. In case any officer  
20 whose signature, or a facsimile of whose signature, appears on  
21 any bonds or coupons ceases to be that officer before the  
22 delivery of the bonds, the signature or facsimile is  
23 nevertheless valid and sufficient for all purposes as if he or  
24 she had remained in office until delivery. The authority may  
25 also provide for the authentication of the bonds by a trustee  
26 or fiscal agent. The bonds may be issued in coupon form or in  
27 registered form, or both, as the authority may determine, and  
28 provision may be made for the registration of any coupon bonds  
29 as to principal alone and also as to both principal and  
30 interest; for the reconversion into coupon bonds of any bonds  
31 registered as to both principal and interest; and for the

1 interchange of registered and coupon bonds. The authority may  
2 sell the bonds either at public or private sale, and for the  
3 price it determines will best effectuate the purpose of this  
4 act, notwithstanding any limitation in other laws relating to  
5 the maximum interest rate permitted for bonds or limitations  
6 on the manner by which bonds are sold.

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

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

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

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

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

24 (e) Limitations on the purpose to which the proceeds  
25 of sale of any issue of revenue bonds then or thereafter to be  
26 issued may be applied and pledging the proceeds to secure the  
27 payment of the revenue bonds or any issue of the revenue  
28 bonds.

29 (f) Limitations on the issuance of additional bonds,  
30 the terms upon which additional bonds may be issued and  
31 secured, and the refunding of outstanding bonds.

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

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

8       (i) The acts or omissions to act that constitute a  
9 default in the duties of the authority to holders of its  
10 obligations and providing the rights and remedies of the  
11 holders in the event of a default.

12       (j) The mortgaging of or granting of a security  
13 interest in the project or the site thereof for the purpose of  
14 securing the bondholders.

15       (5) Neither the members of the authority nor any  
16 person executing the revenue bonds or notes is liable  
17 personally on the revenue bonds or notes or is subject to any  
18 personal liability or accountability by reason of the issuance  
19 thereof.

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

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

30       (8) Bonds may be issued under this act without  
31 obtaining, except as otherwise expressly provided in this act,

1 the consent of any department, division, commission, board,  
2 body, bureau, or agency of the state or any local government,  
3 and without any other proceedings or the happening of any  
4 conditions or things other than those proceedings, conditions,  
5 or things that are specifically required by this act and the  
6 resolution authorizing the issuance of bonds or the trust  
7 agreement securing them.

8 Section 14. Authority reporting requirement.--

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

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

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

1 projects or facilities, restrictions on the sale or disposal  
2 of the assets and property of the authority, the maintenance  
3 of deposits to assure the payment of the bonds issued  
4 hereunder, acceleration upon default, the execution of  
5 necessary instruments, the procedure for amending or  
6 abrogating covenants with the bondholders, and any other  
7 covenants considered necessary for the security of the  
8 bondholders.

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

1 proceedings, or covenants in any court. Notwithstanding this  
2 section, the bonds, notes, or other obligations issued by the  
3 authority and the obligations of any participating  
4 institution, or others providing credit for the obligations,  
5 who may be before the jurisdiction of the court, must be  
6 validated in the manner provided by chapter 75, Florida  
7 Statutes, and the jurisdiction of the action may be in the  
8 jurisdiction of the circuit court where the project is to be  
9 located, or in the discretion of the authority, in the county  
10 seat of state government.

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

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

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

17       Section 19. Payment of bonds.--Revenue bonds issued  
18 under this act may not be considered to constitute a debt or  
19 liability of the authority, any municipality, the state or any  
20 political subdivision thereof or a pledge of the faith and  
21 credit of the state, of the authority, of any municipality or  
22 of any political subdivision, but are payable solely from  
23 revenues of the authority pertaining to the project relating  
24 to the issue; payments by participating institutions of higher  
25 education, banks, insurance companies, or others under letters  
26 of credit or purchase agreements; investment earnings from  
27 funds or accounts maintained under the bond resolution;  
28 insurance proceeds; loan funding deposits; proceeds of sales  
29 of education loans; proceeds of refunding obligations; and  
30 fees, charges, and other revenues of the authority from the  
31 project. All revenue bonds must contain on the face thereof a

1 statement to the effect that neither the authority, any  
2 municipality, the state, nor any political subdivision thereof  
3 is obligated to pay the bond or the interest thereon except  
4 from revenues of the project or the portion thereof for which  
5 they are issued, and that neither the faith and credit nor the  
6 taxing power of the authority, any municipality, the state, or  
7 any political subdivision thereof is pledged to the payment of  
8 the principal of or the interest on the bonds. The issuance of  
9 revenue bonds under this act may not directly or indirectly or  
10 contingently obligate the authority, any municipality, the  
11 state, or any political subdivision thereof to levy or to  
12 pledge any form of taxation therefor or to make any  
13 appropriation for their payment.

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

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

24 (a) To pay the cost of maintaining, repairing, and  
25 operating the project and each portion thereof, to the extent  
26 that the payment of the cost has not otherwise been adequately  
27 provided for.

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

31



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

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

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

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

29           Section 22. Remedies of bondholders.--Any holder of  
30 revenue bonds issued under this act or any of the coupons  
31 appertaining thereto, and the trustee or trustees under any

1 trust agreement, except to the extent the rights given may be  
2 restricted by any resolution authorizing the issuance of, or  
3 any such trust agreement securing, the bonds, may, either at  
4 law or in equity, by suit, action, mandamus, or other  
5 proceedings, protect and enforce any rights under the laws of  
6 the state or granted hereunder or under the resolution or  
7 trust agreement, and may enforce and compel the performance of  
8 all duties required by this act or by the resolution or trust  
9 agreement to be performed by the authority or by any officer,  
10 employee, or agent thereof, including the fixing, charging,  
11 and collecting of the rates, rents, fees, and charges  
12 authorized and required by the provisions of the resolution or  
13 trust agreement to be fixed, established, and collected.

14       Section 23. Tax exemption.--The exercise of the powers  
15 granted by this act will be in all respects for the benefit of  
16 the people of this state, for the increase of their commerce,  
17 education, welfare, and prosperity, and for the improvement of  
18 their health and living conditions, and because the operation  
19 and maintenance of a project by the authority or its agent or  
20 the owner or lessee thereof, as authorized in this act, will  
21 constitute the performance of an essential public function,  
22 neither the authority nor its agent is required to pay any  
23 taxes or assessments upon or in respect of a project or any  
24 property acquired or used by the authority or its agent under  
25 the provisions of this act or upon the income therefrom, and  
26 any bonds issued under this act, any security therefor, their  
27 transfer, and the income therefrom, including any profit made  
28 on the sale thereof, and all notes, mortgages, security  
29 agreements, letters of credit, or other instruments that arise  
30 out of or are given to secure the repayment of bonds issued in  
31 connection with a project financed under this part, shall at

1 all times be free from taxation by the state or any local  
2 unit, political subdivision, or other instrumentality of the  
3 state. The exemption granted by this section is not applicable  
4 to any tax imposed by chapter 220, Florida Statutes, on  
5 interest, income, or profits or on debt obligations owned by  
6 corporations.

7 Section 24. Refunding bonds.--

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

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

27 (3) Any escrowed proceeds, pending use, may be  
28 invested and reinvested in direct obligations of the United  
29 States of America, or in certificates of deposit or time  
30 deposits secured by direct obligations of the United States,  
31 or other investments as the resolution authorizing the

1 issuance and sale of the bonds, or the trust agreement, may  
2 provide, maturing at the time or times as shall be appropriate  
3 to assure the prompt payment, as to principal, interest, and  
4 redemption premium, if any, of the outstanding revenue bonds  
5 to be so refunded. The interest, income, and profits, if any,  
6 earned or realized on any such investment may also be applied  
7 to the payment of the outstanding revenue bonds to be so  
8 refunded. After the terms of the escrow have been fully  
9 satisfied and carried out, any balance of the proceeds and  
10 interest, income and profits, if any, earned or realized on  
11 the investments thereof may be returned to the authority or to  
12 the participating institution for use by it in any lawful  
13 manner.

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

29 (5) All refunding revenue bonds are subject to this  
30 act in the same manner and to the same extent as other revenue  
31 bonds issued under this act.

1           Section 25. Legal investment.--Bonds issued by the  
2 authority under this act are made securities in which all  
3 public officers and public bodies of the state and its  
4 political subdivisions, all insurance companies, trust  
5 companies, banking associations, investment companies,  
6 executors, administrators, trustees, and other fiduciaries may  
7 properly and legally invest funds, including capital in their  
8 control or belonging to them. The bonds are made securities  
9 that may properly and legally be deposited with and received  
10 by any state or municipal officer or any agency or political  
11 subdivision of the state for any purpose for which the deposit  
12 of bonds or obligations of the state is now or may hereafter  
13 be authorized by law.

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

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

1 protection of the holders of the obligations of the authority  
2 or those entering into contracts with the authority. The  
3 authority is authorized to include this pledge and undertaking  
4 for the state in any obligations or contracts.

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

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

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

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

26       196.012 Definitions.--For the purpose of this chapter,  
27 the following terms are defined as follows, except where the  
28 context clearly indicates otherwise:

29       (5) "Educational institution" means a federal, state,  
30 parochial, church, or private school, college, or university  
31 conducting regular classes and courses of study required for

1 eligibility to certification by, accreditation to, or  
2 membership in the State Department of Education of Florida,  
3 Southern Association of Colleges and Schools, or the Florida  
4 Council of Independent Schools; a nonprofit private school the  
5 principal activity of which is conducting regular classes and  
6 courses of study accepted for continuing postgraduate dental  
7 education credit by a board of the Division of Medical Quality  
8 Assurance; educational direct-support organizations created  
9 pursuant to ss. 229.8021, 240.299, and 240.331; and facilities  
10 located on the property of eligible entities which will become  
11 owned by those entities on a date certain; and institutions of  
12 higher education as defined under and participating in the  
13 Higher Educational Facilities Financing Act created pursuant  
14 to chapter 2000- , Laws of Florida.

15 Section 32. This act shall take effect upon becoming a  
16 law.

17

18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
19 COMMITTEE SUBSTITUTE FOR  
20 CS for SB 1450

21 The Committee Substitute provides for Senate confirmation of  
22 the corporation's board members, removes a specific provision  
23 providing a separate legal standard for conflict of interest,  
24 requires all bonds issued to be validated under ch. 75, F.S.,  
and provides that the public records provisions and open  
meetings provisions in chs. 119 and 286, F.S., respectively,  
apply to the corporation.

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