

Bill No. CS for SB 302

Amendment No. Barcode 752252

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
---------------	----------------	--------------

1		.	
2		.	
3		.	
4		.	

5			
6			
7			
8			
9			

11 Senator Pruitt moved the following amendment:

12			
13	Senate Amendment (with title amendment)		
14	Delete everything after the enacting clause		
15			

16 and insert:

17	Section 1. <u>Short title.--Sections 1-28 of this act may</u>		
18	<u>be cited as the "Higher Educational Facilities Financing Act."</u>		

19	Section 2. <u>Findings and declarations.--It is the</u>		
20	<u>purpose of sections 1-28 of this act to provide a measure of</u>		
21	<u>assistance and an alternative method enabling private</u>		
22	<u>institutions of higher education of this state to provide the</u>		
23	<u>facilities and structures that they need and to enable those</u>		
24	<u>institutions to coordinate their budgetary needs with the</u>		
25	<u>timing of receipt of tuition revenues.</u>		

26	Section 3. <u>Definitions.--As used in sections 1-28 of</u>		
27	<u>this act, the term:</u>		

28	(1) <u>"Authority" or "educational facilities authority"</u>		
29	<u>means the public corporation created by sections 1-28 of this</u>		
30	<u>act.</u>		

31	(2) <u>"Real property" includes all lands, including</u>		
----	--	--	--

Bill No. CS for SB 302

Amendment No. Barcode 752252

1 improvements and fixtures thereon, and any such property
2 appurtenant thereto, or used in connection therewith, and
3 every estate, interest, and right, legal or equitable,
4 therein, including terms for years and liens by way of
5 judgment, mortgage, or otherwise and the indebtedness secured
6 by such liens. This definition does not affect the
7 classification of property as real property or tangible
8 personal property for purposes of ad valorem taxation under
9 chapters 192 and 193, Florida Statutes, or sales and use
10 taxation under chapter 212, Florida Statutes.

11 (3) "Project" means a dormitory, student service
12 facility, parking facility, administration building, academic
13 building, or library and includes a loan in anticipation of
14 tuition revenues by an institution of higher education, as
15 defined in subsection (6).

16 (4) "Cost," as applied to a project or any portion
17 thereof financed under sections 1-28 of this act, includes all
18 or any part of the cost of construction and acquisition of all
19 lands, structures, real property, rights, rights-of-way,
20 franchises, easements, and interests acquired or used for a
21 project; the cost of demolishing or removing any buildings or
22 structures on land so acquired, including the cost of
23 acquiring any lands to which the buildings or structures may
24 be removed; the cost of all machinery and equipment, financing
25 charges, and interest before, during, and for a period of 30
26 months after completion of the construction; provisions for
27 working capital, reserves for principal, interest, and rebate;
28 provisions for extensions, enlargements, additions, and
29 improvements; the cost of engineering, financial, and legal
30 services; the cost of plans, specifications, studies, surveys,
31 estimates of costs and revenues, administrative expenses,

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

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

14 (5) "Bond" or "revenue bond" means a revenue bond of
15 the authority issued under sections 1-28 of this act,
16 including a revenue refunding bond, notwithstanding that it
17 may be secured by mortgage or the full faith and credit of a
18 participating institution of higher education or any other
19 lawfully pledged security of a participating institution of
20 higher education.

21 (6) "Institution of higher education" means an
22 independent nonprofit college or university which is located
23 in and chartered by the state; which is accredited by the
24 Commission on Colleges of the Southern Association of Colleges
25 and Schools; which grants baccalaureate degrees; and which is
26 not a state university or state community college.

27 (7) "Participating institution" means an institution
28 of higher education, as defined in subsection (6), that
29 undertakes the financing and construction or acquisition of a
30 project or undertakes the refunding or refinancing of
31 obligations or of a mortgage or of advances as provided in and

Bill No. CS for SB 302

Amendment No. Barcode 752252

1 permitted by sections 1-28 of this act.

2 (8) "Loan in anticipation of tuition revenues" means a
3 loan to an institution of higher education under circumstances
4 in which tuition revenues anticipated to be received by the
5 institution in any budget year are estimated to be
6 insufficient at any time during the budget year to pay the
7 operating expenses or other obligations of the institution in
8 accordance with the budget of the institution.

9 Section 4. Creation of Higher Educational Facilities
10 Financing Authority.--

11 (1) There is created a public body corporate and
12 politic to be known as the Higher Educational Facilities
13 Financing Authority. The authority is constituted as a public
14 instrumentality and the exercise by the authority of the
15 powers conferred by sections 1-28 of this act is considered to
16 be the performance of an essential public function. Chapters
17 119 and 286, Florida Statutes, apply to the authority.

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

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 shall take and subscribe to the oath or affirmation required
2 by the State Constitution. A record of each oath must be filed
3 in the office of the Department of State and with the
4 authority.

5 (3) The authority shall annually elect one of its
6 members as chair and one as vice chair, and shall also appoint
7 an executive director who is not a member of the authority and
8 who serves at the pleasure of the authority and receives
9 compensation as fixed by the authority. The authority may
10 contract for the services of an executive director.

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

20 (5) A majority of the members of the authority
21 constitutes a quorum, and the affirmative vote of a majority
22 of the members present at a meeting of the authority is
23 necessary for any action taken by the authority. A vacancy in
24 the membership of the authority does not impair the right of a
25 quorum to exercise all the rights and perform all the duties
26 of the authority. Any action taken by the authority under
27 sections 1-28 of this act may be authorized by resolution at
28 any regular or special meeting, and each resolution shall take
29 effect immediately and need not be published or posted.

30 (6) The members of the authority shall receive no
31 compensation for the performance of their duties, but each

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 member is entitled to reimbursement as provided in s. 112.061,
2 Florida Statutes, for necessary expenses incurred while
3 engaged in the performance of his or her duties.

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

6 Section 5. Powers of the authority.--The purpose of
7 the authority is to assist institutions of higher education in
8 constructing, financing, and refinancing projects throughout
9 the state and, for this purpose, the authority may:

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

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

16 (3) Adopt an official seal and alter the same at its
17 pleasure.

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

20 (5) Sue and be sued in its own name, and plead and be
21 impleaded.

22 (6) Make and execute financing agreements, leases, as
23 lessee or as lessor, contracts, deeds, and other instruments
24 necessary or convenient in the exercise of the powers and
25 functions of the authority, including contracts with persons,
26 firms, corporations, federal and state agencies, and other
27 authorities, which state agencies and other authorities are
28 authorized to enter into contracts and otherwise cooperate
29 with the authority to facilitate the financing, construction,
30 leasing, or sale of any project or the institution of any
31 program; engage in sale-leaseback, lease-purchase,

Bill No. CS for SB 302

Amendment No. Barcode 752252

1 lease-leaseback, or other undertakings and provide for the
2 sale of certificates of participation incident thereto; and
3 enter into interlocal agreements in the manner provided in s.
4 163.01, Florida Statutes.

5 (7) Determine the location and character of any
6 project to be financed under sections 1-28 of this act and
7 may:

8 (a) Construct, reconstruct, maintain, repair, and
9 lease the project as lessee or lessor.

10 (b) Enter into contracts for any of those purposes.

11 (c) Designate a participating institution as its agent
12 to determine the location and character of a project
13 undertaken by a participating institution under sections 1-28
14 of this act and, as the agent of the authority, construct,
15 reconstruct, maintain, repair, own, and lease the project as
16 lessee or lessor.

17 (8) Issue bonds, bond anticipation notes, and other
18 obligations of the authority for any of its corporate
19 purposes, including the provision of funds to pay all or any
20 part of the cost of any project and to fund or refund the cost
21 of any project as provided in sections 1-28 of this act.

22 (9) Establish rules for the use of a project or any
23 portion thereof and designate a participating institution as
24 its agent to establish rules for the use of a project
25 undertaken by the participating institution.

26 (10) Employ consulting engineers, architects,
27 attorneys, accountants, construction and financial experts,
28 superintendents, managers, and other employees and agents as
29 necessary, and fix their compensation.

30 (11) Receive and accept from any public agency loans
31 or grants for or in aid of the construction of a project or

Bill No. CS for SB 302

Amendment No. Barcode 752252

1 any portion thereof, and receive and accept loans, grants,
2 aid, or contributions from any source of money, property,
3 labor, or other things of value, to be held, used, and applied
4 only for the purposes for which the loans, grants, aid, and
5 contributions are made.

6 (12) Mortgage any project and the site thereof for the
7 benefit of the holders of revenue bonds issued to finance
8 projects or those providing credit for that purpose.

9 (13) Make loans to any participating institution for
10 the cost of a project, including a loan in anticipation of
11 tuition revenues, in accordance with an agreement between the
12 authority and the participating institution. However, a loan
13 may not exceed the total cost of the project as determined by
14 the participating institution and approved by the authority.

15 (14) Make loans to a participating institution to
16 refund outstanding obligations, mortgages, or advances issued,
17 made, or given by the participating institution for the cost
18 of a project.

19 (15) Charge to and equitably apportion among
20 participating institutions its administrative costs and
21 expenses incurred in the exercise of the powers and duties
22 conferred by sections 1-28 of this act.

23 (16) Contract with an entity as its agent to assist
24 the authority in screening applications of institutions of
25 higher education for loans under sections 1-28 of this act and
26 receive any recommendations the entity may make.

27 (17) Do all things necessary or convenient to carry
28 out the purposes of sections 1-28 of this act.

29 Section 6. Payment of expenses.--All expenses incurred
30 in carrying out sections 1-28 of this act are payable solely
31 from funds provided under the authority of sections 1-28 of

Bill No. CS for SB 302

Amendment No. Barcode 752252

1 this act, and the authority may not incur any liability or
2 obligation beyond the extent to which moneys have been
3 provided under sections 1-28 of this act.

4 Section 7. Acquisition of real property.--The
5 authority may directly, or by and through a participating
6 institution as its agent, acquire by purchase or lease solely
7 from funds provided under sections 1-28 of this act, or by
8 gift or devise, any lands, structures, real property, rights,
9 rights-of-way, franchises, easements, and other interests in
10 lands, including lands lying underwater and riparian rights,
11 which are located within the state as it considers necessary
12 or convenient for the construction or operation of a project,
13 upon terms and at prices that are considered by it to be
14 reasonable and that can be agreed upon between it and the
15 owner thereof, and to take title thereto in the name of the
16 authority or in the name of a participating institution as its
17 agent or as an owner and borrower.

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

Bill No. CS for SB 302

Amendment No. Barcode 752252

1 participating institution, free and clear of all liens and
2 encumbrances.

3 Section 9. Criteria and requirements.--In undertaking
4 any project under sections 1-28 of this act, the authority
5 shall be guided by and shall observe the following criteria
6 and requirements:

7 (1) The project, in the determination of the
8 authority, is appropriate to the needs and circumstances of,
9 and shall make a significant contribution to the purposes of,
10 the authority and sections 1-28 of this act as set forth in
11 the findings and declarations, and shall serve a public
12 purpose by advancing the prosperity and general welfare of the
13 state and the public.

14 (2) A financing agreement for a project may not be
15 entered into with a participating institution that is not
16 financially responsible and fully capable of and willing to
17 fulfill its obligations under the financing agreement,
18 including the obligations to make payments in the amounts and
19 at the times required; to operate, repair, and maintain at its
20 own expense the project owned or leased; and to serve the
21 purposes of sections 1-28 of this act and any other
22 responsibilities that may be imposed under the financing
23 agreement. In determining the financial responsibility of the
24 participating institution, consideration must be given to the
25 party's ratio of current assets to current liabilities; net
26 worth; endowments; pledges; earning trends; coverage of all
27 fixed charges; the nature of the project involved; its
28 inherent stability; any guarantee of the obligations by some
29 other financially responsible corporation, firm, or person;
30 means by which the bonds are to be marketed to the public; and
31 other factors determinative of the capability of the

Bill No. CS for SB 302

Amendment No. Barcode 752252

1 participating institution, financially and otherwise, to
2 fulfill its obligations consistently with the purposes of
3 sections 1-28 of this act.

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

8 (4) The costs to be paid from the proceeds of the
9 bonds are costs of a project within the meaning of sections
10 1-28 of this act, except for payments included in the purposes
11 for which revenue refunding bonds may be issued under sections
12 1-28 of 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. Notes of authority.--The authority may
19 issue its negotiable notes for any corporate purpose and renew
20 any notes by the issuance of new notes, whether the notes to
21 be renewed have or have not matured. The authority may issue
22 notes partly to renew notes or to discharge other obligations
23 then outstanding and partly for any other purpose. The notes
24 may be authorized, sold, executed, and delivered in the same
25 manner as bonds. Any resolution authorizing notes of the
26 authority or any issue thereof may contain any provisions that
27 the authority is authorized to include in any resolution
28 authorizing revenue bonds of the authority or any issue
29 thereof, and the authority may include in any notes any terms,
30 covenants, or conditions that it is authorized to include in
31 any bonds. All the notes must be payable solely from the

Bill No. CS for SB 302

Amendment No. Barcode 752252

1 revenues of the project to be financed, subject only to any
2 contractual rights of the holders of any of its notes or other
3 obligations then outstanding.

4 Section 12. Revenue bonds.--

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

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

31 (3) The revenue bonds may be issued as serial bonds or

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

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

28 (4)(a) The authority may sell such bonds at such price
29 or prices as it may determine to be in the best interest of
30 the state or of the participating institution on behalf of
31 which such bonds are issued, but no such sale shall be made at

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 an average net interest cost rate in excess of the interest
2 rate limitation set forth in s. 215.84(3), Florida Statutes,
3 provided, however, that such bonds may be sold at a reasonable
4 discount to par not to exceed 3 percent. This limitation on
5 discount does not apply to the portion of the discount that
6 constitutes original issue discount.

7 (b) All of such bonds shall be sold at public sale at
8 such place or places within the state as the authority shall
9 determine to receive proposals for the purchase of such bonds.
10 Notice of such sale shall be published at least once at least
11 10 days prior to the date of sale in one or more newspapers or
12 financial journals published within or without the state and
13 shall contain such terms as the authority shall deem advisable
14 and proper under the circumstances, provided that if no bids
15 are received at the time and place called for by such notice
16 of sale, or if all bids received are rejected, such bonds may
17 again be offered for public sale by competitive bid or
18 negotiated sale, as provided herein, upon a shorter period of
19 reasonable notice provided for by resolution of the authority.
20 However, unless the public sale by competitive bid of such
21 bonds is required by law, the authority may, by resolution
22 adopted at a public meeting, determine that a negotiated sale
23 of such bonds is in the best interest of the authority, and
24 may negotiate for sale of such bonds to any underwriter
25 designated by the authority.

26 1. In the resolution authorizing the negotiated sale,
27 the authority shall provide specific findings as to the
28 reasons requiring the negotiated sale.

29 2. A resolution authorizing a negotiated bond sale may
30 be the same resolution as that authorizing the issuance of
31 such bonds.

Bill No. CS for SB 302

Amendment No. Barcode 752252

1 (c) All proposals for the purchase of any bonds
 2 offered for sale by the authority shall be opened in public.
 3 When competitively bid, bonds shall be awarded to the lowest
 4 bidder by the official of the authority as provided in the
 5 resolution authorizing the issuance of the bonds. The basis
 6 of award of a competitive bid may be either the lowest net
 7 interest cost or the lowest true interest cost, as set forth
 8 in the resolution authorizing the issuance or sale of the
 9 bonds.

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

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

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

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

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

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

Bill No. CS for SB 302

Amendment No. Barcode 752252

1 (f) Limitations on the issuance of additional bonds,
2 the terms upon which additional bonds may be issued and
3 secured, and the refunding of outstanding bonds.

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

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

11 (i) The acts or omissions to act that constitute a
12 default in the duties of the authority to holders of its
13 obligations and provisions for the rights and remedies of the
14 holders in the event of a default.

15 (j) The mortgaging of or granting of a security
16 interest in the project or the site thereof for the purpose of
17 securing the bondholders.

18 (6) Neither the members of the authority nor any
19 person executing the revenue bonds or notes is liable
20 personally on the revenue bonds or notes or is subject to any
21 personal liability or accountability by reason of the issuance
22 thereof.

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

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

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 authority.

2 Section 13. Covenants.--Any resolution authorizing the
3 issuance of bonds may contain any covenants the authority
4 considers advisable, including those provisions set forth in
5 section 12(5), and all those covenants constitute valid and
6 legally binding and enforceable contracts between the
7 authority and the bondholders, regardless of the time of
8 issuance thereof. The covenants may include, without
9 limitation, covenants concerning the disposition of the bond
10 proceeds; the use and disposition of project revenues; the
11 pledging of revenues and assessments; the obligations of the
12 authority with respect to the operation of the project and the
13 maintenance of adequate project revenues; the issuance of
14 additional bonds; the appointment, powers, and duties of
15 trustees and receivers; the acquisition of outstanding bonds
16 and obligations; restrictions on the establishment of
17 competing projects or facilities; restrictions on the sale or
18 disposal of the assets and property of the authority; the
19 maintenance of deposits to assure the payment of the bonds
20 issued under sections 1-28 of this act; acceleration upon
21 default; the execution of necessary instruments; the procedure
22 for amending or abrogating covenants with the bondholders; and
23 any other covenants considered necessary for the security of
24 the bondholders.

25 Section 14. Validation.--Bonds issued pursuant to this
26 act may be validated in the manner provided by law through
27 proceedings instituted by the authority under chapter 75,
28 Florida Statutes. In actions to validate bonds to be issued
29 pursuant to this act, the complaint shall be filed in the
30 circuit court of the county where the seat of state government
31 is situated or, in the discretion of the authority, in the

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 circuit court of the county where the project is to be
2 situated. The notice required to be published by s. 75.06,
3 Florida Statutes, shall be published only in the county where
4 the complaint is filed, and the complaint and order of the
5 circuit court shall be served only on the state attorney of
6 the circuit in which the action is pending.

7 Section 15. Act furnishes full authority for issuance
8 of bonds.--Sections 1-28 of this act constitute full authority
9 for the issuance of bonds and the exercise of the powers of
10 the authority provided in sections 1-28 of this act. Any bonds
11 issued by the authority are not secured by the full faith and
12 credit of the state and do not constitute an obligation,
13 either general or special, of the state.

14 Section 16. Security of bondholders.--In the
15 discretion of the authority, any revenue bonds issued under
16 sections 1-28 of this act may be secured by a trust agreement
17 by and between the authority and a corporate trustee or
18 trustees, which may be any trust company or bank having the
19 powers of a trust company within or without the state. The
20 trust agreement or the resolution providing for the issuance
21 of revenue bonds may pledge or assign the revenues to be
22 received or the proceeds of any contract or contracts pledged
23 and may convey or mortgage the project or any portion thereof.
24 The trust agreement or resolution providing for the issuance
25 of revenue bonds may contain provisions for protecting and
26 enforcing the rights and remedies of the bondholders as may be
27 reasonable and proper and not in violation of law, including
28 particularly those provisions specifically authorized by
29 sections 1-28 of this act to be included in any resolution of
30 the authority authorizing revenue bonds. Any bank or trust
31 company incorporated under the laws of this state or of any

Bill No. CS for SB 302

Amendment No. ___ Barcode 752252

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

13 Section 17. Payment of bonds.--Revenue bonds issued
14 under sections 1-28 of this act are not a debt or liability of
15 the authority, any municipality, the state, or any political
16 subdivision thereof, and are not a pledge of the faith and
17 credit of the state, the authority, any municipality, or any
18 political subdivision thereof, 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 nor any
29 municipality, the state, or 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

Bill No. CS for SB 302

Amendment No. Barcode 752252

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 sections 1-28 of this act may not
6 directly, indirectly, or contingently obligate the authority,
7 any municipality, the state, or any political subdivision
8 thereof to levy or to pledge any form of taxation therefor or
9 to make any appropriation for their payment.

10 Section 18. Rates, rents, fees, and charges.--

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

20 (a) 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) 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) Create and maintain reserves required or provided
28 for in any resolution authorizing, or trust agreement
29 securing, the revenue bonds of the authority.

30 (2) A sufficient amount of the revenues derived in
31 respect of a project, except the part of the revenues

Bill No. CS for SB 302

Amendment No. Barcode 752252

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

24 (3) The use and disposition of moneys to the credit of
25 a sinking or other similar fund must be subject to the
26 resolution authorizing the issuance of the bonds or of the
27 trust agreement. Except as otherwise provided in the
28 resolution or the trust agreement, the sinking or other
29 similar fund must be a fund for all revenue bonds issued to
30 finance projects at a particular institution of higher
31 education without distinction or priority of one over another.

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 However, the authority in any resolution or trust agreement
 2 may provide that the sinking or other similar fund be the fund
 3 for a particular project at a participating institution and
 4 for payment of the revenue bonds issued to finance that
 5 project, and may, additionally, permit and provide for the
 6 issuance of revenue bonds having a subordinate lien in respect
 7 of the security authorized to other revenue bonds of the
 8 authority, and, in such case, the authority may create
 9 separate sinking or other similar funds in respect of the
 10 subordinate lien bonds.

11 Section 19. Trust funds.--All moneys received under
 12 sections 1-28 of this act, whether as proceeds from the sale
 13 of bonds or as revenues, are considered to be trust funds to
 14 be held and applied solely as provided in sections 1-28 of
 15 this act. Any officer with whom, or any bank or trust company
 16 with which, the moneys are deposited shall act as trustee of
 17 the moneys and shall hold and apply them for the purposes of
 18 sections 1-28 of this act, subject to the provisions of
 19 sections 1-28 of this act and the resolution authorizing the
 20 bonds of any issue or the trust agreement securing the bonds.

21 Section 20. Remedies of bondholders.--Any holder of
 22 revenue bonds issued under sections 1-28 of this act or any of
 23 the coupons appertaining thereto, and the trustee or trustees
 24 under any trust agreement, except to the extent the rights
 25 given may be restricted by any resolution authorizing the
 26 issuance of, or any such trust agreement securing, the bonds
 27 may, either at law or in equity, by suit, action, mandamus, or
 28 other proceedings, protect and enforce any rights under the
 29 laws of the state or granted hereunder or under the resolution
 30 or trust agreement, and may enforce and compel the performance
 31 of all duties required by sections 1-28 of this act or by the

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 resolution or trust agreement to be performed by the authority
2 or by any officer, employee, or agent thereof, including the
3 fixing, charging, and collecting of the rates, rents, fees,
4 and charges authorized and required by the provisions of the
5 resolution or trust agreement to be fixed, established, and
6 collected.

7 Section 21. Tax exemption.--The exercise of the powers
8 granted by sections 1-28 of this act is in all respects for
9 the benefit of the people of this state. Because the operation
10 and maintenance of a project by the authority or a
11 participating institution constitutes the performance of an
12 essential public function, neither the authority nor a
13 participating institution is required to pay any taxes or
14 assessments upon or in respect of a project or any property
15 acquired or used by the authority or a participating
16 institution under sections 1-28 of this act or upon the income
17 therefrom, and any bonds issued under sections 1-28 of this
18 act, any security therefor, their transfer, and the income
19 therefrom, including any profit made on the sale thereof, and
20 all notes, mortgages, security agreements, letters of credit,
21 or other instruments that arise out of or are given to secure
22 the repayment of bonds issued in connection with a project
23 financed under sections 1-28 of this act, shall at all times
24 be free from taxation by the state or any local unit,
25 political subdivision, or other instrumentality of the state.
26 The exemption granted by this section is not applicable to any
27 tax imposed by chapter 220, Florida Statutes, on interest,
28 income, or profits or on debt obligations owned by
29 corporations.

30 Section 22. Refunding bonds.--

31 (1) The authority may provide for the issuance of

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

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

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

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

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 any, earned or realized on the investments thereof may be
2 returned to the authority or to the participating institution
3 for use by it in any lawful manner.

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

19 (5) All refunding revenue bonds are subject to
20 sections 1-28 of this act in the same manner and to the same
21 extent as other revenue bonds issued under sections 1-28 of
22 this act.

23 Section 23. Legal investment.--Bonds issued by the
24 authority under sections 1-28 of this act are made securities
25 in which all public officers and public bodies of the state
26 and its political subdivisions, and all insurance companies,
27 trust companies, banking associations, investment companies,
28 executors, administrators, trustees, and other fiduciaries may
29 properly and legally invest funds, including capital in their
30 control or belonging to them. The bonds are made securities
31 that may properly and legally be deposited with and received

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 by any state or municipal officer or any agency or political
2 subdivision of the state for any purpose for which the deposit
3 of bonds or obligations of the state is now or may hereafter
4 be authorized by law.

5 Section 24. Reports; audits.--

6 (1) The authority shall submit to the Governor and the
7 presiding officers of each house of the Legislature, within 2
8 months after the end of its fiscal year, a complete and
9 detailed report setting forth:

10 (a) Its operations and accomplishments.

11 (b) Its receipts and expenditures during its fiscal
12 year in accordance with the categories or classifications
13 established by the authority for its operating and capital
14 outlay purposes.

15 (c) Its assets and liabilities at the end of its
16 fiscal year and the status of reserve, special, or other
17 funds.

18 (d) A schedule of its bonds outstanding at the end of
19 its fiscal year, together with a statement of the principal
20 amounts of bonds issued and redeemed during the fiscal year.

21 (e) Any other information the authority deems
22 appropriate.

23 (2) The authority shall submit, with the annual report
24 required by this section, a copy of an annual financial audit
25 of its accounts and records and an annual compliance audit of
26 its programs conducted by an independent certified public
27 accountant and performed in accordance with generally accepted
28 auditing standards and government auditing standards.

29 (3) The Auditor General may, pursuant to his or her
30 own authority or at the direction of the Legislative Auditing
31 Committee, conduct an audit of the authority or any programs

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 or entities created by the authority.

2 Section 25. State agreement.--The state agrees with
3 the holders of any obligations issued under sections 1-28 of
4 this act, and with those parties who may enter into contracts
5 with the authority under sections 1-28 of this act, that the
6 state will not limit or alter the rights vested in the
7 authority until the obligations, together with the interest
8 thereon, are fully met and discharged and the contracts are
9 fully performed on the part of the authority. However,
10 sections 1-28 of this act do not preclude any limitation or
11 alteration if adequate provision is made by law for the
12 protection of the holders of the obligations of the authority
13 or those entering into contracts with the authority. The
14 authority may include this pledge and undertaking for the
15 state in any obligations or contracts.

16 Section 26. Alternative means.--Sections 1-28 of this
17 act provide an additional and alternative method for the doing
18 of the things authorized, and shall be regarded as
19 supplemental and additional to powers conferred by other laws;
20 but, except as otherwise specifically provided in sections
21 1-28 of this act, the issuance of notes, certificates of
22 participation, revenue bonds, and revenue refunding bonds
23 under sections 1-28 of this act need not comply with the
24 requirements of any other law applicable to the issuance of
25 bonds or such obligations. Except as otherwise expressly
26 provided in sections 1-28 of this act, the powers granted to
27 the authority under sections 1-28 of this act are not subject
28 to the supervision or regulation of, and do not require the
29 approval or consent of, any municipality or political
30 subdivision or any commission, board, body, bureau, official,
31 or agency thereof or of the state.

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 Section 27. Liberal construction.--Sections 1-28 of
2 this act shall be liberally construed to effectively carry out
3 their purpose.

4 Section 28. Act controlling.--To the extent that
5 sections 1-28 of this act are inconsistent with any general
6 statute or special act or part thereof, sections 1-28 control.

7 Section 29. Subsection (5) of section 196.012, Florida
8 Statutes, is amended to read:

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

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

28 Section 30. This act shall take effect upon becoming a
29 law.

30
31

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

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

2 And the title is amended as follows:

3 Delete everything before the enacting clause

4

5 and insert:

6 A bill to be entitled

7 An act relating to financing for private

8 not-for-profit institutions of higher

9 education; creating the "Higher Educational

10 Facilities Financing Act"; providing

11 legislative findings and declarations;

12 providing definitions; creating the Higher

13 Educational Facilities Financing Authority;

14 providing for membership of the authority;

15 providing for its powers; providing criteria

16 for and covenants relating to the authorization

17 of the issuance of notes and revenue bonds not

18 obligating the full faith and credit of the

19 authority, any municipality, the state, or any

20 political subdivision thereof; providing for

21 loans from revenue bonds to participating

22 institutions; providing for the validation of

23 revenue bonds; providing for trust funds and

24 remedies of bondholders; providing for a tax

25 exemption; providing for agreement of the

26 state; providing other powers and authorities

27 incident thereto; requiring reports and audits;

28 providing for construction; amending s.

29 196.012, F.S.; providing that institutions

30 funded by the Higher Educational Facilities

31 Financing Act are educational institutions for

Bill No. CS for SB 302

Amendment No. ____ Barcode 752252

1 purposes of state taxation; providing an
2 effective date.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31