

By Senator Pruitt

27-337-01

1 A bill to be entitled
2 An act relating to financing for private
3 not-for-profit institutions of higher
4 education; creating the "Higher Educational
5 Facilities Financing Act"; providing
6 legislative findings and declarations;
7 providing definitions; creating the Higher
8 Educational Facilities Financing Authority;
9 providing for membership of the authority;
10 providing for its powers; providing criteria
11 for and covenants relating to the authorization
12 of the issuance of notes and revenue bonds not
13 obligating the full faith and credit of the
14 authority, any municipality, the state, or any
15 political subdivision thereof; providing for
16 loans from revenue bonds to participating
17 institutions; providing for the validation of
18 revenue bonds; providing for trust funds and
19 remedies of bondholders; providing for a tax
20 exemption; providing for agreement of the
21 state; providing other powers and authorities
22 incident thereto; requiring reports and audits;
23 amending s. 196.012, F.S.; providing that
24 institutions funded by the Higher Educational
25 Facilities Financing Act are educational
26 institutions for purposes of state taxation;
27 providing an effective date.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Short title.--Sections 1-30 of this act may
2 be cited as the "Higher Educational Facilities Financing Act."

3 Section 2. Findings and declarations.--It is declared
4 that for the benefit of the public; the increase of their
5 commerce, welfare, and prosperity; and the improvement of
6 their health and living conditions, it is essential that this
7 and future generations of youth be given the fullest
8 opportunity to learn and to develop their intellectual and
9 mental capacities. The Legislature finds that it is essential
10 for private institutions of higher education in the state to
11 be provided with appropriate additional means to assist such
12 youth in achieving the required levels of learning and
13 development of their intellectual and mental capacities. It is
14 the purpose of sections 1-30 of this act to provide a measure
15 of assistance and an alternative method enabling private
16 institutions of higher education of this state to provide the
17 facilities and structures that are sorely needed to accomplish
18 these purposes. The Legislature declares that it is essential
19 to provide additional assistance to private institutions of
20 higher education by enabling those institutions to coordinate
21 their budgetary needs with the timing of receipt of tuition
22 revenues.

23 Section 3. Definitions.--As used in sections 1-30 of
24 this act, the term:

25 (1) "Authority" or "educational facilities authority"
26 means the public corporation created by sections 1-30 of this
27 act.

28 (2) "Real property" includes all lands, including
29 improvements and fixtures thereon, and any such property
30 appurtenant thereto, or used in connection therewith, and
31 every estate, interest and right, legal or equitable, therein,

1 including terms for years and liens by way of judgment,
2 mortgage, or otherwise and the indebtedness secured by such
3 liens. This definition does not affect the classification of
4 property as real property or tangible personal property for
5 purposes of ad valorem taxation under chapters 192 and 193,
6 Florida Statutes, or sales and use taxation under chapter 212,
7 Florida Statutes.

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

27 (4) "Cost," as applied to a project or any portion
28 thereof financed under sections 1-30 of this act, includes all
29 or any part of the cost of construction and acquisition of all
30 lands, structures, real or personal property, rights,
31 rights-of-way, franchises, easements, and interests acquired

1 or used for a project; the cost of demolishing or removing any
2 buildings or structures on land so acquired, including the
3 cost of acquiring any lands to which the buildings or
4 structures may be removed; the cost of all machinery and
5 equipment, financing charges, and interest before, during, and
6 for a period of 30 months after completion of the
7 construction; provisions for working capital, reserves for
8 principal, interest, and rebate; provisions for extensions,
9 enlargements, additions, and improvements; the cost of
10 engineering, financial, and legal services; the cost of plans,
11 specifications, studies, surveys, estimates of costs and
12 revenues, administrative expenses, expenses necessary to
13 determining the feasibility or practicability of constructing
14 the project; and other expenses necessary for constructing and
15 acquiring the project, financing the construction, and placing
16 the project in operation. In the case of a loan in
17 anticipation of tuition revenues, the term "cost" means the
18 amount of the loan in anticipation of revenues which does not
19 exceed the amount of tuition revenues anticipated to be
20 received by the borrowing institution of higher education in
21 the 1-year period following the date of the loan, plus costs
22 related to the issuance of the loan, or the amount of the
23 bonds, the proceeds of which fund the loans and any related
24 cost of debt service, reserve funds, and rebate associated
25 therewith.

26 (5) "Bond" or "revenue bond" means a revenue bond of
27 the authority issued under sections 1-30 of this act,
28 including a revenue refunding bond, notwithstanding that it
29 may be secured by mortgage or the full faith and credit of a
30 participating institution of higher education or any other
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1 lawfully pledged security of a participating institution of
2 higher education.

3 (6) "Institution of higher education" means an
4 educational institution that by virtue of law or charter is a
5 nonprofit educational institution empowered to provide a
6 project of education beyond the high school level; is not
7 owned or controlled by the state or any political subdivision,
8 agency, instrumentality, district, or municipality of the
9 state; and otherwise meets the requirements of section
10 196.012(5), Florida Statutes.

11 (7) "Participating institution" means an institution
12 of higher education that undertakes the financing and
13 construction or acquisition of a project or undertakes the
14 refunding or refinancing of obligations or of a mortgage or of
15 advances as provided in and permitted by sections 1-30 of this
16 act.

17 (8) "Loan in anticipation of tuition revenues" means a
18 loan to an institution of higher education under circumstances
19 in which tuition revenues anticipated to be received by the
20 institution in any budget year are estimated to be
21 insufficient at any time during the budget year to pay the
22 operating expenses or other obligations of the institution in
23 accordance with the budget of the institution.

24 Section 4. Creation of Higher Educational Facilities
25 Financing Authority.--

26 (1) There is created a public body corporate and
27 politic to be known as the Higher Educational Facilities
28 Financing Authority. The authority is constituted as a public
29 instrumentality and the exercise by the authority of the
30 powers conferred by sections 1-30 of this act is considered to
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1 be the performance of an essential public function. Chapters
2 119 and 286, Florida Statutes, apply to the authority.

3 (2) The authority shall consist of five members to be
4 appointed by the Governor, subject to confirmation by the
5 Senate. One member shall be a trustee, director, officer, or
6 employee of an institution of higher education. Of the members
7 first appointed, one shall serve for 1 year, one for 2 years,
8 one for 3 years, one for 4 years, and one for 5 years, and in
9 each case until his or her successor is appointed and has
10 qualified. Thereafter, the Governor shall appoint for terms of
11 5 years each a member or members to succeed those whose terms
12 expire. The Governor shall fill any vacancy for an unexpired
13 term. A member of the authority is eligible for reappointment.
14 Any member of the authority may be removed by the Governor for
15 misfeasance, malfeasance, or willful neglect of duty. Each
16 member of the authority before entering upon his or her duties
17 shall take and subscribe to the oath or affirmation required
18 by the State Constitution. A record of each oath must be filed
19 in the office of the Department of State and with the
20 authority.

21 (3) The authority shall annually elect one of its
22 members as chair and one as vice chair, and shall also appoint
23 an executive director who is not a member of the authority and
24 who serves at the pleasure of the authority and receives
25 compensation as fixed by the authority. The duties of the
26 executive director may be discharged under a contract with the
27 Independent Colleges and Universities of Florida, a
28 not-for-profit corporation representing the independent
29 colleges and universities of the state, or any successor
30 corporation or other such entity providing similar
31 representation chosen by the authority, or an agency or other

1 entity representing independent colleges and universities
2 providing such services, in which case the entity shall
3 designate a person to perform those duties.

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

13 (5) A majority of the members of the authority
14 constitutes a quorum, and the affirmative vote of a majority
15 of the members present at a meeting of the authority is
16 necessary for any action taken by the authority. A vacancy in
17 the membership of the authority does not impair the right of a
18 quorum to exercise all the rights and perform all the duties
19 of the authority. Any action taken by the authority under
20 sections 1-30 of this act may be authorized by resolution at
21 any regular or special meeting, and each resolution takes
22 effect immediately and need not be published or posted.

23 (6) The members of the authority shall receive no
24 compensation for the performance of their duties, but each
25 member is entitled to reimbursement as provided in section
26 112.016, Florida Statutes, for necessary expenses incurred
27 while engaged in the performance of his or her duties.

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

30 Section 5. Powers of the authority.--The purpose of
31 the authority is to assist institutions of higher education in

1 constructing, financing, and refinancing projects throughout
2 the state and for this purpose the authority may:

3 (1) Exercise all powers granted to corporations under
4 the Florida Business Corporation Act, chapter 607, Florida
5 Statutes.

6 (2) Have perpetual succession as a body politic and
7 corporate and adopt bylaws for the regulation of its affairs
8 and the conduct of its business.

9 (3) Adopt an official seal and alter the same at its
10 pleasure.

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

13 (5) Sue and be sued in its own name, and plead and be
14 impleaded.

15 (6) Make and execute financing agreements, leases, as
16 lessee or as lessor, contracts, deeds, and other instruments
17 necessary or convenient in the exercise of the powers and
18 functions of the authority, including contracts with persons,
19 firms, corporations, federal and state agencies, and other
20 authorities, which state agencies and other authorities are
21 authorized to enter into contracts and otherwise cooperate
22 with the authority to facilitate the financing, construction,
23 leasing, or sale of any project or the institution of any
24 program; engage in sale-leaseback, lease-purchase,
25 lease-leaseback, or other undertakings and provide for the
26 sale of certificates of participation incident thereto; and
27 enter into interlocal agreements in the manner provided in
28 section 163.01, Florida Statutes.

29 (7) Determine the location and character of any
30 project to be financed under sections 1-30 of this act and
31 may:

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

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

4 (c) Enter into contracts for the management and
5 operation of a project; and

6 (d) Designate a participating institution of higher
7 education as its agent to determine the location and character
8 of a project undertaken by a participating institution of
9 higher education under sections 1-30 of this act and, as the
10 agent of the authority, construct, reconstruct, maintain,
11 repair, operate, own, lease as lessee or lessor, and regulate
12 the project, and, as the agent of the authority, enter into
13 contracts for any of those purposes, including contracts for
14 the management and operation of the project.

15 (8) Issue bonds, bond anticipation notes, and other
16 obligations of the authority for any of its corporate
17 purposes, including the providing of funds to pay all or any
18 part of the cost of any project and to fund or refund the cost
19 of any project as provided in sections 1-30 of this act.

20 (9) Generally fix and revise and charge and collect
21 rates, rents, fees, and charges for the use of and for the
22 services furnished or to be furnished by a project or any
23 portion thereof and to contract with any person, partnership,
24 association, or corporation or other body public or private in
25 respect thereof.

26 (10) Establish rules for the use of a project or any
27 portion thereof and designate a participating institution of
28 higher education as its agent to establish rules for the use
29 of a project undertaken by the participating institution of
30 higher education.

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1 (11) Employ consulting engineers, architects,
2 attorneys, accountants, construction and financial experts,
3 superintendents, managers, and other employees and agents as
4 necessary, and fix their compensation.

5 (12) Receive and accept from any public agency loans
6 or grants for or in aid of the construction of a project or
7 any portion thereof, and receive and accept loans, grants,
8 aid, or contributions from any source of money, property,
9 labor, or other things of value, to be held, used, and applied
10 only for the purposes for which the loans, grants, aid, and
11 contributions are made.

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

15 (14) Make loans to any participating institution of
16 higher education for the cost of a project, including a loan
17 in anticipation of tuition revenues, in accordance with an
18 agreement between the authority and the participating
19 institution of higher education. However, a loan may not
20 exceed the total cost of the project as determined by the
21 participating institution of higher education and approved by
22 the authority.

23 (15) Make loans to a participating institution of
24 higher education to refund outstanding obligations, mortgages,
25 or advances issued, made, or given by the participating
26 institution of higher education for the cost of a project.

27 (16) Charge to and equitably apportion among
28 participating institutions of higher education its
29 administrative costs and expenses incurred in the exercise of
30 the powers and duties conferred by sections 1-30 of this act.

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1 (17) Contract with an entity representing independent
2 colleges and universities as its agent to assist the authority
3 in screening applications of institutions of higher education
4 for loans under sections 1-30 of this act and receive any
5 recommendations the entity may make.

6 (18) Do all things necessary or convenient to carry
7 out the purposes of sections 1-30 of this act.

8 Section 6. Payment of expenses.--All expenses incurred
9 in carrying out sections 1-30 of this act are payable solely
10 from funds provided under the authority of sections 1-30 of
11 this act, and the authority may not incur any liability or
12 obligation beyond the extent to which moneys have been
13 provided under sections 1-30 of this act.

14 Section 7. Acquisition of real property.--The
15 authority may directly, or by and through a participating
16 institution of higher education as its agent, acquire by
17 purchase or lease solely from funds provided under sections
18 1-30 of this act, or by gift or devise, any lands, structures,
19 property, real or personal, rights, rights-of-way, franchises,
20 easements, and other interests in lands, including lands lying
21 underwater and riparian rights, which are located within or
22 outside the state as it considers necessary or convenient for
23 the construction or operation of a project, upon terms and at
24 prices that are considered by it to be reasonable and that can
25 be agreed upon between it and the owner thereof, and to take
26 title thereto in the name of the authority or in the name of a
27 participating institution of higher education as its agent or
28 as an owner and borrower.

29 Section 8. Conveyance of title or interest to
30 participating institutions.--When the principal of and
31 interest on revenue bonds of the authority issued to finance

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

14 Section 9. Criteria and requirements.--In undertaking
15 any project under sections 1-30 of this act, the authority
16 shall be guided by and shall observe the following criteria
17 and requirements; however, the determination of the authority
18 as to compliance with the criteria and requirements is final
19 and conclusive:

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

27 (2) A financing agreement for a project may not be
28 entered into with a participating institution that is not
29 financially responsible and fully capable of and willing to
30 fulfill its obligations under the financing agreement,
31 including the obligations to make payments in the amounts and

1 at the times required; to operate, repair, and maintain at its
2 own expense the project owned or leased; and to serve the
3 purposes of sections 1-30 of this act and any other
4 responsibilities that may be imposed under the financing
5 agreement. In determining the financial responsibility of the
6 participating institution, consideration must be given to the
7 party's ratio of current assets to current liabilities; net
8 worth; endowments; pledges; earning trends; coverage of all
9 fixed charges; the nature of the project involved; its
10 inherent stability; any guarantee of the obligations by some
11 other financially responsible corporation, firm, or person;
12 means by which the bonds are to be marketed to the public; and
13 other factors determinative of the capability of the
14 participating institution, financially and otherwise, to
15 fulfill its obligations consistently with the purposes of
16 sections 1-30 of this act. In making findings and
17 determinations, the authority may rely upon the
18 recommendations of the entity representing independent
19 colleges and universities.

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

24 (4) The costs to be paid from the proceeds of the
25 bonds are costs of a project within the meaning of sections
26 1-30 of this act, except for payments included in the purposes
27 for which revenue refunding bonds may be issued under sections
28 1-30 of this act.

29 Section 10. Approval required to issue bonds.--The
30 authority is created for the purpose of promoting higher
31 education and issuing bonds on behalf of the state, and the

1 Governor may approve any bonds issued by the authority which
2 require approval under federal law.

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

4 (1) A project financed under sections 1-30 of this act
5 may not be operated by the authority or any other governmental
6 agency, except that the authority may temporarily operate or
7 cause to be operated all or any part of a project to protect
8 its interest therein, pending any leasing or sale of the
9 project. A project acquired or constructed by the authority,
10 unless sold or contracted to be sold, must be leased to one or
11 more persons, firms, or private corporations for operation and
12 maintenance in a manner that will effectuate the purposes of
13 sections 1-30 of this act, under an agreement of sale,
14 installment sale, lease, or loan, in a form and substance not
15 inconsistent with this subsection. Any agreement may provide,
16 among other provisions, that:

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

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

24 (c) The owner or lessee shall pay all other costs
25 incurred by the authority in connection with the financing,
26 construction, and administration of the project sold or
27 leased, except as may be paid out of the proceeds of bonds or
28 otherwise, including, but not limited to, insurance costs; the
29 cost of administering the bond resolution authorizing the
30 bonds and any trust agreement securing the bonds; and the fees

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

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

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

13 (2) An agreement may contain additional provisions
14 that the authority finds are necessary to effectuate the
15 purposes of sections 1-30 of this act, including provisions
16 for extending the term and renewals of the sale or the lease
17 and vesting in the lessee an option to purchase the project
18 leased thereunder pursuant to any terms and conditions
19 consistent with sections 1-30 of this act which are prescribed
20 in the lease. However, except as is otherwise expressly stated
21 in the agreement and except to provide for any contingencies
22 involving the damaging, destruction, or condemnation of the
23 project or any substantial portion thereof, an option to
24 purchase may not be exercised unless all bonds issued for the
25 project, including all principal, interest, and redemption
26 premiums, if any, and all other obligations incurred by the
27 authority in connection with the project have been paid in
28 full or sufficient funds have been deposited in trust or
29 sufficient arrangements have been made for payment. The
30 purchase price of the project may not be less than an amount
31 sufficient to pay in full all of the bonds, including all

1 principal, interest, and redemption premium, if any, issued
2 for the project then outstanding and all other obligations
3 incurred by the authority in connection with the project.

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

21 Section 13. Revenue bonds.--

22 (1) The authority may issue its negotiable revenue
23 bonds for any corporate purpose, including the provision of
24 funds to pay all or any part of the cost of any project. In
25 anticipation of the sale of revenue bonds, the authority may
26 issue negotiable bond anticipation notes and may renew them
27 from time to time, but the maximum maturity of any note,
28 including renewals thereof, may not exceed 5 years following
29 the date of issue of the original note. The notes must be paid
30 from any revenues of the authority available therefor or of
31 the project and not otherwise pledged, or from the proceeds of

1 sale of the revenue bonds of the authority in anticipation of
2 which they were issued. The notes must be issued in the same
3 manner as the revenue bonds. The notes and the resolution
4 authorizing them may contain any provisions, conditions, or
5 limitations that a bond resolution of the authority may
6 contain.

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

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

1 bonds, the authority may issue interim receipts or
2 certificates that may be exchanged for the definitive bonds.
3 In case any officer whose signature, or a facsimile of whose
4 signature, appears on any bonds or coupons ceases to be that
5 officer before the delivery of the bonds, the signature or
6 facsimile is nevertheless valid and sufficient for all
7 purposes as if he or she had remained in office until
8 delivery. The authority may also provide for the
9 authentication of the bonds by a trustee or fiscal agent. The
10 bonds may be issued in coupon form or in registered form, or
11 both, as the authority determines. Provision may be made for
12 the registration of any coupon bonds as to principal alone and
13 also as to both principal and interest; for the reconversion
14 into coupon bonds of any bonds registered as to both principal
15 and interest; and for the interchange of registered and coupon
16 bonds. The authority may sell the bonds at public or private
17 sale and for the price it determines will best effectuate the
18 purpose of sections 1-30 of this act, notwithstanding any
19 limitation in other laws relating to the maximum interest rate
20 permitted for bonds or limitations on the manner by which
21 bonds are sold.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (8) Bonds may be issued under sections 1-30 of this
15 act without obtaining, except as otherwise expressly provided
16 in sections 1-30 of this act, the consent of any department,
17 division, commission, board, body, bureau, or agency of the
18 state or any local government, and without any other
19 proceedings or the happening of any conditions or things other
20 than those proceedings, conditions, or things that are
21 specifically required by sections 1-30 of this act and the
22 resolution authorizing the issuance of bonds or the trust
23 agreement securing them.

24 Section 14. Authority reporting requirement.--

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

31

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

4 Section 15. Covenants.--Any resolution authorizing the
5 issuance of bonds may contain any covenants the authority
6 considers advisable, including those provisions set forth in
7 section 13(4), and all those covenants constitute valid and
8 legally binding and enforceable contracts between the
9 authority and the bondholders, regardless of the time of
10 issuance thereof. The covenants may include, without
11 limitation, covenants concerning the disposition of the bond
12 proceeds; the use and disposition of project revenues; the
13 pledging of revenues and assessments; the obligations of the
14 authority with respect to the operation of the project and the
15 maintenance of adequate project revenues; the issuance of
16 additional bonds; the appointment, powers, and duties of
17 trustees and receivers; the acquisition of outstanding bonds
18 and obligations; restrictions on the establishing of competing
19 projects or facilities; restrictions on the sale or disposal
20 of the assets and property of the authority; the maintenance
21 of deposits to assure the payment of the bonds issued under
22 sections 1-30 of this act; acceleration upon default; the
23 execution of necessary instruments; the procedure for amending
24 or abrogating covenants with the bondholders; and any other
25 covenants considered necessary for the security of the
26 bondholders.

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

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

28 Section 17. Act furnishes full authority for issuance
29 of bonds.--Sections 1-30 of this act constitute full authority
30 for the issuance of bonds and the exercise of the powers of
31 the authority provided in sections 1-30 of this act. Any bonds

1 issued by the authority are not secured by the full faith and
2 credit of the state and do not constitute an obligation,
3 either general or special, of the state.

4 Section 18. Security of bondholders.--In the
5 discretion of the authority, any revenue bonds issued under
6 sections 1-30 of this act may be secured by a trust agreement
7 by and between the authority and a corporate trustee or
8 trustees, which may be any trust company or bank having the
9 powers of a trust company within or without the state. The
10 trust agreement or the resolution providing for the issuance
11 of revenue bonds may pledge or assign the revenues to be
12 received or the proceeds of any contract or contracts pledged
13 and may convey or mortgage the project or any portion thereof.
14 The trust agreement or resolution providing for the issuance
15 of revenue bonds may contain provisions for protecting and
16 enforcing the rights and remedies of the bondholders as may be
17 reasonable and proper and not in violation of law, including
18 particularly those provisions specifically authorized by
19 sections 1-30 of this act to be included in any resolution of
20 the authority authorizing revenue bonds. Any bank or trust
21 company incorporated under the laws of this state or of any
22 other state or the United States which may legally act as
23 depository of the proceeds of bonds or of revenues or other
24 moneys or security may furnish indemnifying bonds or pledge
25 securities required by the authority, if any. Any trust
26 agreement may set forth the rights and remedies of the
27 bondholders and of the trustee or trustees, and may restrict
28 the individual right of action by bondholders. In addition,
29 any trust agreement or resolution may contain any other
30 provisions the authority considers reasonable and proper for
31 the security of the bondholders. All expenses incurred in

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

3 Section 19. Payment of bonds.--Revenue bonds issued
4 under sections 1-30 of this act are not a debt or liability of
5 the authority, any municipality, the state, or any political
6 subdivision thereof, and are not a pledge of the faith and
7 credit of the state, the authority, any municipality, or any
8 political subdivision, but are payable solely from revenues of
9 the authority pertaining to the project relating to the issue;
10 payments by participating institutions of higher education,
11 banks, insurance companies, or others under letters of credit
12 or purchase agreements; investment earnings from funds or
13 accounts maintained under the bond resolution; insurance
14 proceeds; loan funding deposits; proceeds of sales of
15 education loans; proceeds of refunding obligations; and fees,
16 charges, and other revenues of the authority from the project.
17 All revenue bonds must contain on the face thereof a statement
18 to the effect that neither the authority, any municipality,
19 the state, or any political subdivision thereof is obligated
20 to pay the bond or the interest thereon except from revenues
21 of the project or the portion thereof for which they are
22 issued, and that neither the faith and credit nor the taxing
23 power of the authority, any municipality, the state, or any
24 political subdivision thereof is pledged to the payment of the
25 principal of or the interest on the bonds. The issuance of
26 revenue bonds under sections 1-30 of this act may not
27 directly, indirectly, or contingently obligate the authority,
28 any municipality, the state, or any political subdivision
29 thereof to levy or to pledge any form of taxation therefor or
30 to make any appropriation for their payment.

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

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

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

14 (b) Pay the principal of and the interest on
15 outstanding revenue bonds of the authority issued in respect
16 of the project as the bonds become due and payable.

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

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

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

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

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

4 Section 21. Trust funds.--All moneys received under
5 sections 1-30 of this act, whether as proceeds from the sale
6 of bonds or as revenues, are considered to be trust funds to
7 be held and applied solely as provided in sections 1-30 of
8 this act. Any officer with whom, or any bank or trust company
9 with which, the moneys are deposited shall act as trustee of
10 the moneys and shall hold and apply them for the purposes of
11 sections 1-30 of this act, subject to the provisions of
12 sections 1-30 of this act and the resolution authorizing the
13 bonds of any issue or the trust agreement securing the bonds.

14 Section 22. Remedies of bondholders.--Any holder of
15 revenue bonds issued under sections 1-30 of this act or any of
16 the coupons appertaining thereto, and the trustee or trustees
17 under any trust agreement, except to the extent the rights
18 given may be restricted by any resolution authorizing the
19 issuance of, or any such trust agreement securing, the bonds,
20 may, either at law or in equity, by suit, action, mandamus, or
21 other proceedings, protect and enforce any rights under the
22 laws of the state or granted hereunder or under the resolution
23 or trust agreement, and may enforce and compel the performance
24 of all duties required by sections 1-30 of this act or by the
25 resolution or trust agreement to be performed by the authority
26 or by any officer, employee, or agent thereof, including the
27 fixing, charging, and collecting of the rates, rents, fees,
28 and charges authorized and required by the provisions of the
29 resolution or trust agreement to be fixed, established, and
30 collected.

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1 Section 23. Tax exemption.--The exercise of the powers
2 granted by sections 1-30 of this act is in all respects for
3 the benefit of the people of this state; for the increase of
4 their commerce, education, welfare, and prosperity; and for
5 the improvement of their health and living conditions. Because
6 the operation and maintenance of a project by the authority or
7 its agent or the owner or lessee thereof, as authorized in
8 sections 1-30 of this act, constitutes the performance of an
9 essential public function, neither the authority nor its agent
10 is required to pay any taxes or assessments upon or in respect
11 of a project or any property acquired or used by the authority
12 or its agent under sections 1-30 of this act or upon the
13 income therefrom, and any bonds issued under sections 1-30 of
14 this act, any security therefor, their transfer, and the
15 income therefrom, including any profit made on the sale
16 thereof, and all notes, mortgages, security agreements,
17 letters of credit, or other instruments that arise out of or
18 are given to secure the repayment of bonds issued in
19 connection with a project financed under sections 1-30 of this
20 act, shall at all times be free from taxation by the state or
21 any local unit, political subdivision, or other
22 instrumentality of the state. The exemption granted by this
23 section is not applicable to any tax imposed by chapter 220,
24 Florida Statutes, on interest, income, or profits or on debt
25 obligations owned by corporations.

26 Section 24. Refunding bonds.--

27 (1) The authority may provide for the issuance of
28 revenue bonds of the authority for the purpose of refunding
29 any revenue bonds of the authority then outstanding, including
30 the payment of any redemption premium thereon and any interest
31 accrued or to accrue to the earliest or subsequent date of

1 redemption, purchase, or maturity of the revenue bonds, and,
2 if considered advisable by the authority, for the additional
3 purpose of paying all or any part of the cost of constructing
4 and acquiring additions, improvements, extensions, or
5 enlargements of a project or any portion thereof.

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

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

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

16 (5) All refunding revenue bonds are subject to
17 sections 1-30 of this act in the same manner and to the same
18 extent as other revenue bonds issued under sections 1-30 of
19 this act.

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

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1 of bonds or obligations of the state is now or may hereafter
2 be authorized by law.

3 Section 26. Reports.--Within the first 90 days of each
4 calendar year, the authority shall make a report to the
5 Department of Education of its activities for the preceding
6 calendar year. Each report must set forth a complete operating
7 and financial statement covering its operations during the
8 year. The authority shall cause an audit of its books and
9 accounts to be made at least once each year by a certified
10 public accountant and the cost of the audit shall be paid by
11 the authority from funds available to it under sections 1-30
12 of this act.

13 Section 27. State agreement.--The state agrees with
14 the holders of any obligations issued under sections 1-30 of
15 this act, and with those parties who may enter into contracts
16 with the authority under sections 1-30 of this act, that the
17 state will not limit or alter the rights vested in the
18 authority until the obligations, together with the interest
19 thereon, are fully met and discharged and the contracts are
20 fully performed on the part of the authority. However,
21 sections 1-30 of this act do not preclude any limitation or
22 alteration if adequate provision is made by law for the
23 protection of the holders of the obligations of the authority
24 or those entering into contracts with the authority. The
25 authority may include this pledge and undertaking for the
26 state in any obligations or contracts.

27 Section 28. Alternative means.--Sections 1-30 of this
28 act provide an additional and alternative method for the doing
29 of the things authorized, and shall be regarded as
30 supplemental and additional to powers conferred by other laws;
31 but the issuance of notes, certificates of participation,

1 revenue bonds, and revenue refunding bonds under sections 1-30
2 of this act need not comply with the requirements of any other
3 law applicable to the issuance of bonds or such obligations.
4 Except as otherwise expressly provided in sections 1-30 of
5 this act, the powers granted to the authority under sections
6 1-30 of this act are not subject to the supervision or
7 regulation of, or require the approval or consent of, any
8 municipality or political subdivision or any commission,
9 board, body, bureau, official, or agency thereof or of the
10 state.

11 Section 29. Liberal construction.--Sections 1-30 of
12 this act shall be liberally construed to effectively carry out
13 their purpose.

14 Section 30. Act controlling.--To the extent that
15 sections 1-30 of this act are inconsistent with any general
16 statute or special act or parts thereof, sections 1-30
17 control.

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

20 196.012 Definitions.--For the purpose of this chapter,
21 the following terms are defined as follows, except where the
22 context clearly indicates otherwise:

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

1 education credit by a board of the Division of Medical Quality
2 Assurance; educational direct-support organizations created
3 pursuant to ss. 229.8021, 240.299, and 240.331; ~~and~~ facilities
4 located on the property of eligible entities which will become
5 owned by those entities on a date certain; and institutions of
6 higher education, as defined under and participating in the
7 Higher Educational Facilities Financing Act.

8 Section 32. This act shall take effect upon becoming a
9 law.

10 *****

11 SENATE SUMMARY

12
13 Creates the Higher Educational Facilities Financing
14 Authority to enable private institutions of higher
15 education to expand their services and facilities through
16 financing agreements, leases, and the issuance of revenue
17 notes and bonds by the authority. Provides that notes and
18 bonds issued by the authority are not secured by the full
19 faith and credit of the state and do not constitute an
20 obligation of the state. Provides that an educational
21 institution funded under the act is exempt from state
22 property tax. (See bill for details.)
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