

By the Committee on Appropriations and Senators Pruitt and Horne

309-1813-01

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.

28  
29 Be It Enacted by the Legislature of the State of Florida:  
30  
31

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  
31

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  
31

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. However, no general  
30 revenue funds shall be expended for administrative costs and  
31 expenses incurred by the authority.

1           Section 5. Powers of the authority.--The purpose of  
2 the authority is to assist institutions of higher education in  
3 constructing, financing, and refinancing projects throughout  
4 the state and for this purpose the authority may:

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

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

11           (3) Adopt an official seal and alter the same at its  
12 pleasure.

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

15           (5) Sue and be sued in its own name, and plead and be  
16 impleaded.

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

31



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

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

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

7           (c) Enter into contracts for the management and  
8 operation of a project; and

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

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

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

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

1 of a project undertaken by the participating institution of  
2 higher education.

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

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

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

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

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

29 (16) Charge to and equitably apportion among  
30 participating institutions of higher education its  
31

1 administrative costs and expenses incurred in the exercise of  
2 the powers and duties conferred by sections 1-30 of this act.

3 (17) Do all things necessary or convenient to carry  
4 out the purposes of sections 1-30 of this act.

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

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

26 Section 8. Conveyance of title or interest to  
27 participating institutions.--When the principal of and  
28 interest on revenue bonds of the authority issued to finance  
29 the cost of a particular project or projects at a  
30 participating institution of higher education, including any  
31 revenue refunding bonds issued to refund and refinance the

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

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

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

24       (2) A financing agreement for a project may not be  
25 entered into with a participating institution that is not  
26 financially responsible and fully capable of and willing to  
27 fulfill its obligations under the financing agreement,  
28 including the obligations to make payments in the amounts and  
29 at the times required; to operate, repair, and maintain at its  
30 own expense the project owned or leased; and to serve the  
31 purposes of sections 1-30 of this act and any other

1 responsibilities that may be imposed under the financing  
2 agreement. In determining the financial responsibility of the  
3 participating institution, consideration must be given to the  
4 party's ratio of current assets to current liabilities; net  
5 worth; endowments; pledges; earning trends; coverage of all  
6 fixed charges; the nature of the project involved; its  
7 inherent stability; any guarantee of the obligations by some  
8 other financially responsible corporation, firm, or person;  
9 means by which the bonds are to be marketed to the public; and  
10 other factors determinative of the capability of the  
11 participating institution, financially and otherwise, to  
12 fulfill its obligations consistently with the purposes of  
13 sections 1-30 of this act.

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

18 (4) The costs to be paid from the proceeds of the  
19 bonds are costs of a project within the meaning of sections  
20 1-30 of this act, except for payments included in the purposes  
21 for which revenue refunding bonds may be issued under sections  
22 1-30 of this act.

23 Section 10. Approval required to issue bonds.--The  
24 authority is created for the purpose of promoting higher  
25 education and issuing bonds on behalf of the state, and the  
26 Governor may approve any bonds issued by the authority which  
27 require approval under federal law.

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

29 (1) A project financed under sections 1-30 of this act  
30 may not be operated by the authority or any other governmental  
31 agency, except that the authority may temporarily operate or

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

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

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

18 (c) The owner or lessee shall pay all other costs  
19 incurred by the authority in connection with the financing,  
20 construction, and administration of the project sold or  
21 leased, except as may be paid out of the proceeds of bonds or  
22 otherwise, including, but not limited to, insurance costs; the  
23 cost of administering the bond resolution authorizing the  
24 bonds and any trust agreement securing the bonds; and the fees  
25 and expenses of the authority, trustees, paying agents,  
26 attorneys, consultants, and others.

27 (d) The term of an agreement will terminate not  
28 earlier than the date on which all bonds and all other  
29 obligations incurred by the authority in connection with the  
30 project sold or leased thereunder are paid in full, including  
31

1 interest, principal, and redemption premiums, if any, or on  
2 which adequate funds for payment are deposited in trust.

3 (e) The owner or lessee's obligation to pay payments  
4 or rent is not subject to cancellation, termination, or  
5 abatement until payment of the bonds or provision for payment  
6 is made.

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

29 Section 12. Notes of authority.--The authority may  
30 issue its negotiable notes for any corporate purpose and renew  
31 any notes by the issuance of new notes, whether the notes to

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

15 Section 13. Revenue bonds.--

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



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

11           (3) The revenue bonds may be issued as serial bonds or  
12 as term bonds, or the authority may issue bonds of both types.  
13 The revenue bonds must be authorized by resolution of the  
14 authority; must bear the date of issuance, the date of  
15 maturity, not exceeding 50 years from issuance, and the  
16 interest rate of the bonds, which may be a variable rate,  
17 notwithstanding any limitation in other laws relating to  
18 maximum interest rates; must be payable at a specified time;  
19 must be in specified denominations; and must be in specified  
20 form, carry registration privileges, be executed in a  
21 specified manner, be payable in lawful money of the United  
22 States at a specified place, and be subject to the terms of  
23 redemption, as the resolution provides. The revenue bonds or  
24 notes may be sold at public or private sale for the price the  
25 authority determines. Pending preparation of the definitive  
26 bonds, the authority may issue interim receipts or  
27 certificates that may be exchanged for the definitive bonds.  
28 In case any officer whose signature, or a facsimile of whose  
29 signature, appears on any bonds or coupons ceases to be that  
30 officer before the delivery of the bonds, the signature or  
31 facsimile is nevertheless valid and sufficient for all

1 purposes as if he or she had remained in office until  
2 delivery. The authority may also provide for the  
3 authentication of the bonds by a trustee or fiscal agent. The  
4 bonds may be issued in coupon form or in registered form, or  
5 both, as the authority determines. Provision may be made for  
6 the registration of any coupon bonds as to principal alone and  
7 also as to both principal and interest; for the reconversion  
8 into coupon bonds of any bonds registered as to both principal  
9 and interest; and for the interchange of registered and coupon  
10 bonds. The authority may sell the bonds at public or private  
11 sale and for the price it determines will best effectuate the  
12 purpose of sections 1-30 of this act, notwithstanding any  
13 limitation in other laws relating to the maximum interest rate  
14 permitted for bonds or limitations on the manner by which  
15 bonds are sold.

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

19 (a) Pledging of all or any part of the revenues of a  
20 project or any revenue-producing contract made by the  
21 authority with any individual, partnership, corporation, or  
22 association or other body, public or private, to secure the  
23 payment of the revenue bonds or of any particular issue of  
24 revenue bonds, subject to any agreements with bondholders as  
25 may then exist.

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

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

31

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

3           (e) Limitations on the purpose to which the proceeds  
4 of sale of any issue of revenue bonds then or thereafter to be  
5 issued may be applied and the pledging of the proceeds to  
6 secure the payment of the revenue bonds or any issue of the  
7 revenue bonds.

8           (f) Limitations on the issuance of additional bonds,  
9 the terms upon which additional bonds may be issued and  
10 secured, and the refunding of outstanding bonds.

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

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

18           (i) The acts or omissions to act that constitute a  
19 default in the duties of the authority to holders of its  
20 obligations and provisions for the rights and remedies of the  
21 holders in the event of a default.

22           (j) The mortgaging of or granting of a security  
23 interest in the project or the site thereof for the purpose of  
24 securing the bondholders.

25           (5) Neither the members of the authority nor any  
26 person executing the revenue bonds or notes is liable  
27 personally on the revenue bonds or notes or is subject to any  
28 personal liability or accountability by reason of the issuance  
29 thereof.

30           (6) The authority may purchase its bonds or notes out  
31 of any funds available therefor. The authority may hold,

1 pledge, cancel, or resell the bonds, subject to and in  
2 accordance with agreements with bondholders.

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

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

19 Section 14. Authority reporting requirement.--

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

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

29 Section 15. Covenants.--Any resolution authorizing the  
30 issuance of bonds may contain any covenants the authority  
31 considers advisable, including those provisions set forth in

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

21           Section 16. Validity of bonds; validation  
22 proceedings.--Any bonds issued by the authority are  
23 incontestable in the hands of bona fide purchasers or holders  
24 for value and are not invalid because of any irregularity or  
25 defect in the proceedings for the issue and sale thereof.  
26 Before the issuance of any bonds, the authority must publish a  
27 notice at least once in a newspaper or newspapers published or  
28 of general circulation in the county in the state in which the  
29 project will be located, stating the date of adoption of the  
30 resolution authorizing the obligations; the amount, maximum  
31 rate of interest, and maturity of the obligations; and the

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

22       Section 17. Act furnishes full authority for issuance  
23 of bonds.--Sections 1-30 of this act constitute full authority  
24 for the issuance of bonds and the exercise of the powers of  
25 the authority provided in sections 1-30 of this act. Any bonds  
26 issued by the authority are not secured by the full faith and  
27 credit of the state and do not constitute an obligation,  
28 either general or special, of the state.

29       Section 18. Security of bondholders.--In the  
30 discretion of the authority, any revenue bonds issued under  
31 sections 1-30 of this act may be secured by a trust agreement

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

28       Section 19. Payment of bonds.--Revenue bonds issued  
29 under sections 1-30 of this act are not a debt or liability of  
30 the authority, any municipality, the state, or any political  
31 subdivision thereof, and are not a pledge of the faith and

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

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

26 (1) The authority may fix, revise, charge, and collect  
27 rates, rents, fees, and charges for the use of and for the  
28 services furnished or to be furnished by each project and may  
29 contract with any person, partnership, association,  
30 corporation, or other body, public or private, in respect  
31 thereof. The rates, rents, fees, and charges must be fixed and



1 adjusted in respect of the aggregate of rates, rents, fees,  
2 and charges from the project so as to provide funds sufficient  
3 with other revenues, if any, to:

4 (a) Pay the cost of maintaining, repairing, and  
5 operating the project and each portion thereof, to the extent  
6 that the payment of the cost has not otherwise been adequately  
7 provided for.

8 (b) Pay the principal of and the interest on  
9 outstanding revenue bonds of the authority issued in respect  
10 of the project as the bonds become due and payable.

11 (c) Create and maintain reserves required or provided  
12 for in any resolution authorizing, or trust agreement  
13 securing, the revenue bonds of the authority. The rates,  
14 rents, fees, and charges are not subject to supervision or  
15 regulation by any department, commission, board, body, bureau,  
16 or agency of this state other than the authority.

17 (2) A sufficient amount of the revenues derived in  
18 respect of a project, except the part of the revenues  
19 necessary to pay the cost of maintenance, repair, and  
20 operation and to provide reserves and provide for renewals,  
21 replacements, extensions, enlargements, and improvements  
22 provided for in the resolution authorizing the issuance of any  
23 revenue bonds of the authority or in the trust agreement  
24 securing them, must be set aside at regular intervals as  
25 provided in the resolution or trust agreement in a sinking or  
26 other similar fund that is hereby pledged to, and charged  
27 with, the payment of the principal of and the interest on the  
28 revenue bonds as they become due and the redemption price or  
29 the purchase price of bonds retired by call or purchase as  
30 therein provided. The pledge must be valid and binding from  
31 the time when the pledge is made. The rates, rents, fees,

1 charges, and other revenues or other moneys so pledged and  
2 thereafter received by the authority must immediately be  
3 subject to the lien of the pledge without any physical  
4 delivery thereof or further act, and the lien of any pledge is  
5 valid and binding as against all parties having claims of any  
6 kind in tort, contract, or otherwise against the authority,  
7 irrespective of whether the parties have notice thereof.  
8 Neither the resolution nor any trust agreement by which a  
9 pledge is created need be filed or recorded except in the  
10 records of the authority.

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

29 Section 21. Trust funds.--All moneys received under  
30 sections 1-30 of this act, whether as proceeds from the sale  
31 of bonds or as revenues, are considered to be trust funds to

1 be held and applied solely as provided in sections 1-30 of  
2 this act. Any officer with whom, or any bank or trust company  
3 with which, the moneys are deposited shall act as trustee of  
4 the moneys and shall hold and apply them for the purposes of  
5 sections 1-30 of this act, subject to the provisions of  
6 sections 1-30 of this act and the resolution authorizing the  
7 bonds of any issue or the trust agreement securing the bonds.

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

25       Section 23. Tax exemption.--The exercise of the powers  
26 granted by sections 1-30 of this act is in all respects for  
27 the benefit of the people of this state; for the increase of  
28 their commerce, education, welfare, and prosperity; and for  
29 the improvement of their health and living conditions. Because  
30 the operation and maintenance of a project by the authority or  
31 its agent or the owner or lessee thereof, as authorized in

1 sections 1-30 of this act, constitutes the performance of an  
2 essential public function, neither the authority nor its agent  
3 is required to pay any taxes or assessments upon or in respect  
4 of a project or any property acquired or used by the authority  
5 or its agent under sections 1-30 of this act or upon the  
6 income therefrom, and any bonds issued under sections 1-30 of  
7 this act, any security therefor, their transfer, and the  
8 income therefrom, including any profit made on the sale  
9 thereof, and all notes, mortgages, security agreements,  
10 letters of credit, or other instruments that arise out of or  
11 are given to secure the repayment of bonds issued in  
12 connection with a project financed under sections 1-30 of this  
13 act, shall at all times be free from taxation by the state or  
14 any local unit, political subdivision, or other  
15 instrumentality of the state. The exemption granted by this  
16 section is not applicable to any tax imposed by chapter 220,  
17 Florida Statutes, on interest, income, or profits or on debt  
18 obligations owned by corporations.

19 Section 24. Refunding bonds.--

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

30 (2) The proceeds of any revenue bonds issued for the  
31 purpose of refunding outstanding revenue bonds may be applied

1 to the purchase or retirement at maturity or redemption of the  
2 outstanding revenue bonds on their earliest or any subsequent  
3 redemption date or upon the purchase or at the maturity  
4 thereof and may, pending the application, be placed in escrow  
5 to be applied to the purchase or retirement at maturity or  
6 redemption on the date determined by the authority.

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

25 (4) The portion of the proceeds of any revenue bonds  
26 issued for the additional purpose of paying all or any part of  
27 the cost of constructing and acquiring additions,  
28 improvements, extensions, or enlargements of a project may be  
29 invested and reinvested in direct obligations of the United  
30 States, or in certificates of deposit or time deposits secured  
31 by direct obligations of the United States, or other

1 investments as the resolution authorizing the issuance and  
2 sale of the bonds, or the trust agreement provides, maturing  
3 not later than the time or times when the proceeds will be  
4 needed for the purpose of paying all or any part of the cost.  
5 The interest, income, and profits, if any, earned or realized  
6 on the investment may be applied to the payment of all or any  
7 part of the cost or may be used by the authority or the  
8 participating institution in any lawful manner.

9 (5) All refunding revenue bonds are subject to  
10 sections 1-30 of this act in the same manner and to the same  
11 extent as other revenue bonds issued under sections 1-30 of  
12 this act.

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

26 Section 26. Reports.--Within the first 90 days of each  
27 calendar year, the authority shall make a report to the  
28 Department of Education of its activities for the preceding  
29 calendar year. Each report must set forth a complete operating  
30 and financial statement covering its operations during the  
31 year. The authority shall cause an audit of its books and

1 accounts to be made at least once each year by a certified  
2 public accountant and the cost of the audit shall be paid by  
3 the authority from funds available to it under sections 1-30  
4 of this act.

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

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

1 board, body, bureau, official, or agency thereof or of the  
2 state.

3 Section 29. Liberal construction.--Sections 1-30 of  
4 this act shall be liberally construed to effectively carry out  
5 their purpose.

6 Section 30. Act controlling.--To the extent that  
7 sections 1-30 of this act are inconsistent with any general  
8 statute or special act or parts thereof, sections 1-30  
9 control.

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

12 196.012 Definitions.--For the purpose of this chapter,  
13 the following terms are defined as follows, except where the  
14 context clearly indicates otherwise:

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

31



1           Section 32. This act shall take effect upon becoming a  
2 law.

3

4                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
5   COMMITTEE SUBSTITUTE FOR  
6   SB 302

6

7 Removes a provision authorizing the Independent Colleges and  
8 Universities of Florida to act as an application screening  
agent on behalf of the Authority.

9 Removes a provision permitting the Authority to rely upon  
10 representations made by the Independent Colleges and  
Universities of Florida on the financial responsibility of the  
11 applying institutions.

12 Specifies that no general revenue funds are to be expended for  
administrative costs and expenses of the authority.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31