

Committee Substitute for Senate Bill No. 302

An act relating to financing for private not-for-profit institutions of higher education; creating the “Higher Educational Facilities Financing Act”; providing legislative findings and declarations; providing definitions; creating the Higher Educational Facilities Financing Authority; providing for membership of the authority; providing for its powers; providing criteria for and covenants relating to the authorization of the issuance of notes and revenue bonds not obligating the full faith and credit of the authority, any municipality, the state, or any political subdivision thereof; providing for loans from revenue bonds to participating institutions; providing for the validation of revenue bonds; providing for trust funds and remedies of bondholders; providing for a tax exemption; providing for agreement of the state; providing other powers and authorities incident thereto; requiring reports and audits; providing for construction; amending s. 196.012, F.S.; providing that institutions funded by the Higher Educational Facilities Financing Act are educational institutions for purposes of state taxation; providing an effective date.

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

Section 1. Short title.—Sections 1-28 of this act may be cited as the “Higher Educational Facilities Financing Act.”

Section 2. Findings and declarations.—It is the purpose of sections 1-28 of this act to provide a measure of assistance and an alternative method enabling private institutions of higher education of this state to provide the facilities and structures that they need and to enable those institutions to coordinate their budgetary needs with the timing of receipt of tuition revenues.

Section 3. Definitions.—As used in sections 1-28 of this act, the term:

(1) “Authority” or “educational facilities authority” means the public corporation created by sections 1-28 of this act.

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

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

(4) “Cost,” as applied to a project or any portion thereof financed under sections 1-28 of this act, includes all or any part of the cost of construction and acquisition of all lands, structures, real property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be removed; the cost of all machinery and equipment, financing charges, and interest before, during, and for a period of 30 months after completion of the construction; provisions for working capital, reserves for principal, interest, and rebate; provisions for extensions, enlargements, additions, and improvements; the cost of engineering, financial, and legal services; the cost of plans, specifications, studies, surveys, estimates of costs and revenues, administrative expenses, expenses necessary to determining the feasibility or practicability of constructing the project; and other expenses necessary for constructing and acquiring the project, financing the construction, and placing the project in operation. In the case of a loan in anticipation of tuition revenues, the term “cost” means the amount of the loan in anticipation of revenues which does not exceed the amount of tuition revenues anticipated to be received by the borrowing institution of higher education in the 1-year period following the date of the loan, plus costs related to the issuance of the loan, or the amount of the bonds, the proceeds of which fund the loans and any related cost of debt service, reserve funds, and rebate associated therewith.

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

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

(7) “Participating institution” means an institution of higher education, as defined in subsection (6), that undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in and permitted by sections 1-28 of this act.

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

Section 4. Creation of Higher Educational Facilities Financing Authority.—

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

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

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

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

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

(6) The members of the authority shall receive no compensation for the performance of their duties, but each member is entitled to reimbursement as provided in s. 112.061, Florida Statutes, for necessary expenses incurred while engaged in the performance of his or her duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Payment of expenses.—All expenses incurred in carrying out sections 1-28 of this act are payable solely from funds provided under the authority of sections 1-28 of this act, and the authority may not incur any liability or obligation beyond the extent to which moneys have been provided under sections 1-28 of this act.

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

Section 8. Conveyance of title or interest to participating institutions.—When the principal of and interest on revenue bonds of the authority issued to finance the cost of a particular project or projects at a participating institution, including any revenue refunding bonds issued to refund and

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

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

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

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

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

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

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

Section 11. Notes of authority.—The authority may issue its negotiable notes for any corporate purpose and renew any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The

authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. Any resolution authorizing notes of the authority or any issue thereof may contain any provisions that the authority is authorized to include in any resolution authorizing revenue bonds of the authority or any issue thereof, and the authority may include in any notes any terms, covenants, or conditions that it is authorized to include in any bonds. All the notes must be payable solely from the revenues of the project to be financed, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

Section 12. Revenue bonds.—

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

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

(3) The revenue bonds may be issued as serial bonds or as term bonds, or the authority may issue bonds of both types. The revenue bonds must be authorized by resolution of the authority; must bear the date of issuance, the date of maturity, not exceeding 30 years from issuance, and the interest rate of the bonds, which may be a variable rate; must be payable at a specified time; must be in specified denominations; and must be in specified form, carry registration privileges, be executed in a specified manner, be payable in lawful money of the United States at a specified place, and be subject to the terms of redemption, as the resolution provides. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates that may be exchanged for the definitive bonds. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds or coupons ceases to be that officer before the delivery of the bonds, the signature or facsimile is nevertheless valid and sufficient for all purposes as if he or she had remained in office until delivery. The authority may also provide for

the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon form or in registered form, or both, as the authority determines. Provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest; for the reconversion into coupon bonds of any bonds registered as to both principal and interest; and for the interchange of registered and coupon bonds.

(4)(a) The authority may sell such bonds at such price or prices as it may determine to be in the best interest of the state or of the participating institution on behalf of which such bonds are issued, but no such sale shall be made at an average net interest cost rate in excess of the interest rate limitation set forth in s. 215.84(3), Florida Statutes, provided, however, that such bonds may be sold at a reasonable discount to par not to exceed 3 percent. This limitation on discount does not apply to the portion of the discount that constitutes original issue discount.

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

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

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

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

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

(a) Pledging of all or any part of the revenues of a project or any revenue-producing contract made by the authority with any individual, partnership, corporation, or association or other body, public or private, to secure the

payment of the revenue bonds or of any particular issue of revenue bonds, subject to any agreements with bondholders as may then exist.

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

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

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

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

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

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

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

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

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

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

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

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

Section 13. Covenants.—Any resolution authorizing the issuance of bonds may contain any covenants the authority considers advisable, includ-

ing those provisions set forth in section 12(5), and all those covenants constitute valid and legally binding and enforceable contracts between the authority and the bondholders, regardless of the time of issuance thereof. The covenants may include, without limitation, covenants concerning the disposition of the bond proceeds; the use and disposition of project revenues; the pledging of revenues and assessments; the obligations of the authority with respect to the operation of the project and the maintenance of adequate project revenues; the issuance of additional bonds; the appointment, powers, and duties of trustees and receivers; the acquisition of outstanding bonds and obligations; restrictions on the establishment of competing projects or facilities; restrictions on the sale or disposal of the assets and property of the authority; the maintenance of deposits to assure the payment of the bonds issued under sections 1-28 of this act; acceleration upon default; the execution of necessary instruments; the procedure for amending or abrogating covenants with the bondholders; and any other covenants considered necessary for the security of the bondholders.

Section 14. Validation.—Bonds issued pursuant to this act may be validated in the manner provided by law through proceedings instituted by the authority under chapter 75, Florida Statutes. In actions to validate bonds to be issued pursuant to this act, the complaint shall be filed in the circuit court of the county where the seat of state government is situated or, in the discretion of the authority, in the circuit court of the county where the project is to be situated. The notice required to be published by s. 75.06, Florida Statutes, shall be published only in the county where the complaint is filed, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending.

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

Section 16. Security of bondholders.—In the discretion of the authority, any revenue bonds issued under sections 1-28 of this act may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the state. The trust agreement or the resolution providing for the issuance of revenue bonds may pledge or assign the revenues to be received or the proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. The trust agreement or resolution providing for the issuance of revenue bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly those provisions specifically authorized by sections 1-28 of this act to be included in any resolution of the authority authorizing revenue bonds. Any bank or trust company incorporated under the laws of this state or of any other state or the United States which may legally act as depository of the proceeds of bonds or of revenues or other moneys or security may furnish indemnifying bonds or pledge securities required by

the authority, if any. Any trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition, any trust agreement or resolution may contain any other provisions the authority considers reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the trust agreement or resolution may be treated as a part of the cost of the operation of a project.

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

Section 18. Rates, rents, fees, and charges.—

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

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

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

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

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

(3) The use and disposition of moneys to the credit of a sinking or other similar fund must be subject to the resolution authorizing the issuance of the bonds or of the trust agreement. Except as otherwise provided in the resolution or the trust agreement, the sinking or other similar fund must be a fund for all revenue bonds issued to finance projects at a particular institution of higher education without distinction or priority of one over another. However, the authority in any resolution or trust agreement may provide that the sinking or other similar fund be the fund for a particular project at a participating institution and for payment of the revenue bonds issued to finance that project, and may, additionally, permit and provide for the issuance of revenue bonds having a subordinate lien in respect of the security authorized to other revenue bonds of the authority, and, in such case, the authority may create separate sinking or other similar funds in respect of the subordinate lien bonds.

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

Section 20. Remedies of bondholders.—Any holder of revenue bonds issued under sections 1-28 of this act or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights given may be restricted by any resolution authorizing the issuance of, or any such trust agreement securing, the bonds may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any rights under the laws of the state or granted hereunder or

under the resolution or trust agreement, and may enforce and compel the performance of all duties required by sections 1-28 of this act or by the resolution or trust agreement to be performed by the authority or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of the rates, rents, fees, and charges authorized and required by the provisions of the resolution or trust agreement to be fixed, established, and collected.

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

Section 22. Refunding bonds.—

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

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

(3) Any escrowed proceeds, pending use, may be invested and reinvested in direct obligations of the United States, or in certificates of deposit or time deposits secured by direct obligations of the United States, or in other investments as the resolution authorizing the issuance and sale of the bonds or the trust agreement provides, maturing at the time or times as is appropriate to assure the prompt payment, as to principal, interest, and redemption premium, if any, of the outstanding revenue bonds to be refunded. The

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

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

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

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

Section 24. Reports; audits.—

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

(a) Its operations and accomplishments.

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

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

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

(e) Any other information the authority deems appropriate.

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

(3) The Auditor General may, pursuant to his or her own authority or at the direction of the Legislative Auditing Committee, conduct an audit of the authority or any programs or entities created by the authority.

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

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

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

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

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

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

(5) “Educational institution” means a federal, state, parochial, church, or private school, college, or university conducting regular classes and courses

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

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

Approved by the Governor May 30, 2001.

Filed in Office Secretary of State May 30, 2001.