

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 302

SPONSOR: Appropriations Subcommittee on Education, Senator Pruitt and others

SUBJECT: Financing for Private Higher Education Institutions

DATE: April 11, 2001

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/2 amendments</u>
3.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable</u>
4.	<u>McKee</u>	<u>Hickam</u>	<u>AED</u>	<u>Favorable/CS</u>
5.	<u> </u>	<u> </u>	<u>AP</u>	<u>Withdrawn: Fav/CS</u>

I. Summary:

CS/SB 302 creates a public corporation called the Higher Education Facilities Financing Authority to finance projects of private, not-for-profit higher education institutions. The effect will be to create a statewide method for private colleges to obtain tax-exempt financing under a uniform set of rules and standards, rather than the varying rules adopted by local authorities.

Projects may be for operational costs or for construction of facilities or other capital expenditures. The authority will be placed in the Department of Education (DOE) for administrative purposes; the Governor will appoint the members. The authority may issue tax exempt or taxable revenue bonds, has contractual powers, and may execute loans, leases, and other legal instruments. It may acquire real estate. Bonds issued by the authority are incontestable and do not constitute a debt or liability of the authority, the state, or any political subdivision of the state. Bonds issued by the authority and any security for the bonds are exempt from taxes except corporate income taxes imposed under ch. 220, F.S.

This bill creates 30 new sections of the Florida Statutes and amends s. 196.012, F.S.

II. Present Situation:

Counties Higher Education Facilities Authorities Law— Sections 243.18-243.40, F.S., govern conditions under which counties may establish education facilities authorities. These authorities may be established to meet the need for educational facilities or projects at the institutions for higher education within the county. The laws establish conditions under which educational facilities projects may be operated, including the issuance of bonds. The definition of a project in s. 243.20, F.S., includes the operation of an institution for higher education as well as a structure. Section 243.33, F.S., provides that “neither the authority nor its agent shall be required to pay any taxes or assessments upon or in respect of a project or any property acquired or used by the

authority or its agents under the provision of this part or upon the income therefrom, and any bonds issued under the provisions of this part, their transfer, and the income therefrom, including any profit from the sale thereof, shall at all times be free from taxation of every kind by the state, the county and by the municipalities.”

The 1999 Legislature amended ss. 243.20 and 243.22, F.S., to include the term “loan in anticipation of tuition revenues” by an institution for higher education in the definition of “project,” to provide another avenue for nonpublic higher education institutions to issue bonds or take out loans to fund operational costs as well as costs for construction or equipment. A loan in anticipation of tuition revenue is one of a list of authorized loans.

The phrase “loan in anticipation of tuition revenues” means:

a loan to an institution for 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. The loans are permitted within guidelines adopted by the authority consistent with the provisions for similar loans undertaken by school districts under s. 237.151, F.S., excluding provisions applicable to the limitations on borrowing relating to the levy of taxes and the adoption of budgets in accordance with law applicable solely to school districts.

According to staff of the Independent Colleges and Universities of Florida, the counties higher education facilities authorities have experienced problems with projects for construction as well as operations. Little activity has resulted from the increased authority granted by the 1999 amendments. Nonpublic institutions for higher education have used the anticipation of tuition income to back up loans and bond issues to fund construction projects, but they have been denied loans based on tuition income to pay operational costs.

Section 196.012, F.S., defines “educational institution” as 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 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, 240.229, and 240.331; and facilities located on property of eligible entities which will become owned by those entities on a date certain. Section 196.198, F.S., provides that educational institutions within this state and their property used by them or by any other exempt entity or educational institution exclusively for educational purposes shall be exempt from taxation.

Paragraph (a) of Section 3, Article VII of the Florida Constitution provides that “(s)uch portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.”

III. Effect of Proposed Changes:

The legislation under consideration will provide for a public corporation called the Higher Education Facilities Financing Authority to finance projects of private, not-for-profit higher education institutions. Projects may be for operational costs or for construction of facilities or other capital expenditures. The authority will be placed in the DOE for administrative purposes; the Governor will appoint the members who are subject to senate confirmation. The authority may issue tax exempt or taxable revenue bonds, has contractual powers, and may execute loans, leases, and other legal instruments. It may acquire real estate. Bonds issued by the authority are incontestable and do not constitute a debt or liability of the authority, the state, or any political subdivision of the state. Bonds issued by the authority and any security for the bonds are exempt from taxes except corporate income taxes imposed under ch. 220, F.S.

The bill's drafting convention makes it difficult to summarize. The following section-by-section analysis highlights the key provisions and any elements that may evoke discussion by interested parties.

Section 1. Title.--Higher Education Facilities Financing Act.

Section 2. Findings.--It is essential for private institutions of higher education to assist youth to develop their intellectual and mental capacities. It is essential to enable private institutions to provide facilities and structures and to coordinate their budgetary needs with the timing of receipt of tuition revenues.

Section 3. Definitions.--Several terms are provided definitions that differ from their plain meaning:

The definition of "institution of higher education" limits the term to nonpublic, nonprofit, institutions.

The word "project" also has a broad definition and includes a loan in anticipation of tuition revenues.

The definition of the word "cost" uses the word "cost" (or its plural, "costs") nine times in a list that includes financing charges, and interest before, during, and for 30 months after completion of construction. A special definition is provided for the use of the word in the case of a loan in anticipation of tuition revenue: it does not exceed the amount of tuition revenues anticipated for the 1-year period following the date of the loan.

Section 4. Creation of the Authority.--The authority consists of five members to be appointed by the Governor to 5-year staggered terms. Senate confirmation is provided. One member will be a trustee, director, officer, or employee of an institution of higher education. The authority annually elects one of its members as chair and one as vice chair, and also appoints 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 duties of the executive director may be discharged under a contract with the Independent Colleges and Universities of Florida.

The authority is assigned to the DOE for administrative purposes; however, no general revenue funds may be expended for administrative costs or expenses of the authority.

Section 5. Powers of Authority.--The authority has all the powers granted to corporations under ch. 607, F.S., the Florida Business Corporation Act. Among the specific powers listed in the bill, the following are notable. The authority may:

- Execute financing agreements, leases, as lessee or as lessor, contracts, and deeds.
- Enter into interlocal agreements in the manner provided in section 163.01, F.S.
- Issue bonds, bond anticipation notes, and other obligations to pay the cost of any project, and to fund or refund the cost of any project.
- Fix and revise and charge and collect rates, rents, fees, and charges for the use of a project.
- Employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents, and fix their compensation.
- Mortgage any project for the benefit of the holders of revenue bonds issued to finance projects or those providing credit.
- Make loans to any participating institution of higher education for the cost of a project, including a loan in anticipation of tuition revenues; but no loan may exceed the total cost of the project as determined by the participating institution of higher education.
- Charge participating institutions for the administrative costs and expenses of the authority.

Section 6. Payment of expenses.--No liability or obligation may be incurred by the authority beyond the extent to which moneys have been provided. Section 5. of the bill provides that the authority may charge the institutions for administrative costs and expenses.

Section 7. Acquisition of real property.--The authority may directly, or through a participating institution, acquire by purchase or lease any lands, structures, property, real or personal, rights, rights-of-way, franchises, easements, and other interests in lands, including lands lying underwater, and riparian rights, which are located within or outside the state for the construction or operation of a project, upon terms and at prices as are considered by it to be reasonable and that can be agreed upon between it and the owner. This acquisition may be accomplished solely from funds provided under the bill or by gift.

Section 8. Conveyance of title.--When bonds on a project have been fully retired, the authority must convey title to the project to the participating institution.

Section 9. Criteria and requirements.--The bill provides four requirements that a project must meet to be financed by the authority. However, the bill also says that the authority may determine whether the project has complied with the criteria and requirements:

- The project must make a significant contribution to the purposes of the authority and serve a public purpose by advancing the prosperity and general welfare of the state and its people.
- The authority may not enter into a financing agreement with a participating institution that is not financially responsible. In determining the financial responsibility of the participating institution, the authority must consider its 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; and means by which the bonds are to be marketed to the public.

- The authority must require the owner or the lessee to incur the expense of the operation, repair, and maintenance of the project and for the payment of principal of and interest on the bonds.
- The costs to be paid from the proceeds of the bonds are costs of a project, except for payments included in the purposes for which revenue refunding bonds may be issued. Revenue refunding bonds are governed by section 24 of the bill.

Section 10. Approval to issue bonds.--The Governor may approve any bonds that require approval under federal law.

Section 11. Agreements of sale, lease, or loan.--The authority may not operate a project it finances except temporarily to protect its interest pending lease or sale of the project. The agreement to lease, sell, or loan a project may provide that:

- The owner or lessee will at its own expense operate, repair, and maintain the project.
- The payments or rent payable will be sufficient to pay all of the interest, principal, and redemption premiums on the bonds that will be issued.
- The owner or lessee will pay all other costs incurred in connection with the financing, construction, and administration of the project, except what is paid out of the proceeds of bonds, including insurance costs, the cost of administering the bond resolution authorizing the bonds and any trust agreement securing the bonds, and the fees and expenses of the authority, trustees, paying agents, attorneys, consultants, and others.
- The term of an agreement will not terminate before all bonds and all other obligations incurred by the authority are paid in full unless adequate funds for payment are deposited in trust.
- The owner or lessee's obligation to make payments or rent may not be canceled until payment of the bonds or provision for payment is made.

Section 12. Notes of authority.--The authority may issue its negotiable notes for any corporate purpose. All the notes must be payable from the revenues of the project to be financed.

Section 13. Revenue bonds.--The authority may issue its negotiable revenue bonds and negotiable bond anticipation notes and may renew them. The maximum maturity of any note may not exceed 5 years from the date of issue of the original note.

The revenue bonds and notes of every issue must be payable solely out of revenues of the authority.

Revenue bonds may be serial bonds or term bonds or both. The revenue bonds or notes may be sold at public or private sale for the price the authority determines, notwithstanding any limitation in other laws relating to the maximum interest rate permitted for bonds or limitations on the manner by which bonds are sold.

Neither the members of the authority nor any person executing the revenue bonds or notes is liable personally on the revenue bonds or notes. The authority may purchase its bonds or notes. The authority may hold, pledge, cancel, or resell the bonds, subject to agreements with bondholders. 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.

Bonds may be issued without obtaining the consent of any department, division, commission, board, body, bureau, or agency of the state or any local government.

Section 14. Reporting requirement.--The authority must supply the Division of Bond Finance of the State Board of Administration with a copy of the report required in s. 103 of the Internal Revenue Code of 1954, as amended, at the times required under that section.

Section 15. Covenants.--Covenants with bondholders are authorized and constitute valid and legally binding contracts. The list of covenants authorized includes:

- The disposition of the bond proceeds,
- The use and disposition of project revenues,
- The pledging of revenues and assessments,
- The obligations of the authority to operate the project and maintain adequate revenues,
- The issuance of additional bonds,
- The appointment, powers, and duties of trustees and receivers,
- The acquisition of outstanding bonds and obligations,
- Restrictions on establishing competing projects or facilities and the sale or disposal of the assets and property of the authority,
- The maintenance of deposits to assure the payment of the bonds, and
- Acceleration upon default.

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

Section 17. Full authority.--The authority accepts full authority to issue bonds. Any bonds issued by the authority are not secured by the full faith and credit of the state and do not constitute an obligation of the state.

Section 18. Security of bondholders.--This section permits the revenue bonds to be secured by a trust agreement between the authority and a trust company or bank.

Section 19. Payment of bonds.--This section restates the assurances of section 17. of the bill and requires the bonds to contain on their face a statement that neither the authority, any municipality, the state, nor any political subdivision thereof is obligated to pay the bond or the interest thereon except from revenues of the project, 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.

Section 20. Rates, rents, fees, and charges.--This section permits the authority to charge fees for any services furnished by a project and to contract for the collection of fees. It authorizes fees for operating the project, to pay the principal and interest on revenue bonds, and to maintain reserves required by the revenue bonds.

This section also includes requirements for the authority's use of sinking funds: The authority may provide that the sinking fund be the fund for a particular project and for the revenue bonds issued to finance a particular project. It may also issue revenue bonds having a subordinate lien; in that case, the authority may create separate sinking funds in respect of the subordinate lien bonds.

Section 21. Trust Funds.--This section provides that all moneys received as proceeds from the sale of bonds or as revenues are considered trust funds. If the authority deposits money in a bank, the bank acts as trustee of the money.

Section 22. Remedies of bondholders.--Any holder of revenue bonds and the trustee under any trust agreement may enforce the performance of the duties required by the resolution or trust agreement. These duties include the fixing, charging, and collecting of the rates, rents, fees, and charges. This enforcing may be by suit or other proceedings.

Section 23. Tax exemption.--This section provides for certain tax exemptions for the authority, its agents, and the educational institutions for which it provides financing. Those parties will be exempt from "any taxes or assessments upon or in respect to" projects, as defined in Section 3. of the bill, and any property "acquired or used by the authority or its agent," financed under the bill's provisions. They will also be exempt from any tax on income from those projects. Bonds issued according to the bill, any security for those bonds, the transfer of the bonds, and the income from the bonds (including profit on their sale) will be exempt from any kind of taxation by the state and its political subdivisions. The exemption will not extend to any income tax imposed on corporate holders of the bonds under ch. 220, F.S. This is very similar to the tax exemption granted to counties higher education facilities authorities under s. 243.33, F.S.

Section 24. Refunding bonds.--This section permits the authority to issue revenue bonds to refund outstanding revenue bonds of the authority. The permission includes the payment of any redemption premium and any interest accrued and for paying the cost of constructing additions, improvements, extensions, or enlargements of a project.

Section 25. Legal investment.--Bonds issued by the authority are made securities in which all public officers and public bodies may invest funds. The bonds may be deposited with any state or municipal officer for any purpose authorized by law.

Section 26. Reports.--Within the first 90 days of each calendar year, the authority will make a report to the Department of Education of its activities for the preceding calendar year. Each report must include an operating and financial statement covering its operations during the year. At least

once a year, the authority will have an audit of its books and accounts by a certified public accountant.

Section 27. State agreement.--The state will not limit or alter the rights vested in the authority until the obligations are fully met and the contracts are fully performed.

Section 28. Alternative means.--This section provides assurance that the authority may use permissions provided by other laws to carry out its responsibilities. However, if it chooses to use the laws created by this act, it is not subject to the supervision or regulation of, and it does not require the approval or consent of, any municipality or political subdivision or any commission, board, body, bureau, official, or agency of the state.

Section 29. Liberal construction.--The act must be liberally construed.

Section 30. Act controlling.--The act controls if it is inconsistent with any general statute or special act.

Section 31. The bill amends s. 196.012, F.S., to add institutions of higher education as defined by this act to the definition of educational institution for *ad valorem* tax purposes.

Section 32. Provides an effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Ordinarily, the *ad valorem* tax exemption provided by sections 23. and 31. of the bill would require a two-thirds vote of the Legislature, under Art. VII, s. 18(b), of the Florida Constitution: *Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.* Where the property to be acquired would have been tax exempt because of its predominant use for an educational purpose, this bill would not decrease local revenue. The likely revenue of this bill has not been estimated.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

Section 23 provides for certain tax exemptions for the authority, its agents, and the educational institutions for which it provides financing. Those parties will be exempt from “any taxes or assessments upon or in respect to” projects, as defined in Section 3. of the bill, and any property “acquired or used by the authority or its agent,” financed under the bill’s provisions. They will also be exempt from any tax on income from those projects. Bonds issued according to the bill, any security for those bonds, the transfer of the bonds, and the income from the bonds (including profit on their sale) will be exempt from any kind of taxation by the state and its political subdivisions. The exemption will not extend to any income tax imposed on corporate holders of the bonds under ch. 220, F.S. This language is similar to the tax exemptions provided in current law to counties higher education facilities authorities under s. 243.33, F.S, and to the extent that the new authority replaces the existing county authorities this bill would not create new tax exemptions. Adding “institutions of higher education” as defined by this bill, to the definition of educational institution for *ad valorem* tax purposes in s. 196.012, F.S., could allow property appraisers to consider additional properties for exemption; however, these properties will be required to meet the predominant use test required by the Florida Constitution. The revenue impact of this bill has not been estimated.

B. Private Sector Impact:

Independent nonprofit education institutions will have an opportunity to finance projects for operational costs and facilities construction through the authority, in addition to other avenues such as regular loans or bond financing through Counties Higher Educational Facilities Authorities.

The bill requires that each participating institution maintain financial sufficiency. This would appear to preclude the issuance of any general purpose debt which could be used for an institution unable to meet minimum requirements with that debt cross-subsidized by the other participants.

C. Government Sector Impact:

The members of the authority are not salaried, but are eligible for reimbursement for travel and per diem. Funds will also be needed to support the executive director function. The Higher Educational Facilities Financing Authority is assigned to the Department of Education for administrative purposes; however, the bill specifies that no general revenue funds may be used for administrative costs and expenses of the authority. The bill allows the authority to charge participating institutions for such administrative costs and expenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On March 1, 2001 the Division of Bond Finance reported the results of a 10-year survey of similar funding devices used for non-public educational institutions. Over that period local governments engaged in 74 bond issuances on behalf of public and private schools. Many of the issuances were concentrated in Miami-Dade, Pinellas, Hillsborough, and Orange Counties. Industrial development as well as educational facilities authorities statutes were used for this debt issuance. At least one of these issuers defaulted on its obligations (Leon County).

There are 27 institution members of the Independent Colleges and Universities of Florida. Under Florida law they are required to be licensed by a unit of the Florida Department of Education, the State Board of Independent Colleges and Universities. That Board licenses a total of 131 post-secondary institutions. Several of the member institutions have availed themselves of the county-based bonding provisions in ss. 243.18-243.40, F.S.; however, not every county in Florida has resolved to create such a mechanism.

The Independent Colleges and Universities of Florida organization is given a unique role in this bill. The organization, itself the representative of only 27 institutions, may act as the designated executive authority for the corporation. The organization describes itself on its website (www.icuf.org) as having a primary responsibility “. . .in lobby(ing) the Florida Legislature in behalf of our members.”

VIII. Amendments:

None.