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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COLLEGES AND UNIVERSITIES
ANALYSIS**

BILL #: HB 281
RELATING TO: Higher Education Facilities Financing Act
SPONSOR(S): Representative(s) Alexander

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) COLLEGES AND UNIVERSITIES
 - (2) FISCAL POLICY AND RESOURCES
 - (3) COUNCIL FOR LIFELONG LEARNING
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates a statewide corporate public body known as the Higher Educational Facilities Financing Authority. The purpose of this statewide authority is to assist not-for-profit and nonpublic postsecondary education institutions in the construction, financing, and refinancing of projects throughout the State of Florida. The authority consists of five members appointed by the Governor. The authority must appoint an executive director or may discharge the duties of the executive director under a contract with the Independent Colleges and Universities of Florida or similar entity.

This bill authorizes the Higher Educational Facilities Financing Authority to issue bonds; receive and accept loans or grants for the construction of a project that is required or useful for the instruction of students, the conducting of research, or the operation of a not-for-profit and nonpublic postsecondary education institution; mortgage such projects for the benefit of holders of revenue bonds issued to finance these projects; provide loans to any not-for-profit and nonpublic postsecondary education institution for the cost of a project, including a loan in anticipation of tuition revenues; provide loans to any not-for-profit and nonpublic postsecondary education institution in order to refund outstanding obligations provided by such an institution for the cost of a project; and charge to and equitably apportion its administrative costs and expenses among participating institutions.

This bill specifically stipulates that any bonds issued by the Higher Educational Facilities Financing Authority are not secured by the full faith and credit of the State of Florida and do not constitute an obligation of the State of Florida. Additionally, this bill stipulates that revenue bonds issued by the Higher Educational Facilities Financing Authority may not be considered a debt or liability of the authority, a municipality, the state or any of its political subdivisions. A bond's principal or interest must be paid from revenues generated from the project that was undertaken.

This bill stipulates that the Higher Educational Facilities Financing Authority or its agents are not required to pay any taxes on a project, any property acquired by the authority or its agents, or any income generated from a project. Additionally, any bonds issued; income generated from the issuance of bonds; profits generated from the sale of bonds; and all notes, mortgages, security agreements, or letters of credit intended to secure the repayment of issued bonds are exempt from any tax of the state, a local unit, a political subdivision, or other instrumentality of the state. Because of the broad definition of the term "project" in this bill, this tax exemption may also extend to projects that have traditionally been private in nature and, therefore, not otherwise entitled to a statutory tax exemption. This has the potential of removing otherwise taxable projects from local tax rolls.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill does not appear to support the principle of less government because it creates the Higher Educational Facilities Financing Authority and assigns the authority to the Department of Education for administrative purposes. The purpose of the statewide authority is to assist not-for-profit and nonpublic postsecondary education institutions in the construction, financing, and refinancing of projects throughout the State of Florida.

B. PRESENT SITUATION:

Please see SECTION-BY-SECTION ANALYSIS.

C. EFFECT OF PROPOSED CHANGES:

Please see SECTION-BY-SECTION ANALYSIS.

D. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Creates an unspecified section of the Florida Statutes in order to provide a short title for this piece of legislation ("Higher Educational Facilities Financing Act").

SECTION 2: Creates an unspecified section of the Florida Statutes in order to include a statement of legislative findings and declarations.

SECTION 3: Creates an unspecified section of the Florida Statutes in order to define terms applicable to this piece of legislation. Terms defined include "authority," "real property," "project," "cost," "bond" or "revenue bond," "institution of higher education," "participating institution," and "loan in anticipation of tuition revenues." The terms "project," "institution of higher education," and "participating institution" are defined below.

"Project" is defined as "a structure suitable for use as a dormitory or other housing facility, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, and maintenance, storage, or utility facility, and other structures or facilities related thereto, or required thereby, or required or useful for the instruction of students, or the conducting of research, or the operation of an institution of higher education, including parking and other facilities or structures, essential for the orderly conduct of an institution of higher education and shall also include equipment and machinery and other similar items

necessary for the operation of a particular facility or structure in the manner for which its use is intended, but the term does not include such items as books, fuel, supplies, or other items that are customarily considered to result in a current operating charge. The term also includes a loan in anticipation of tuition revenues by a private institution of higher education." This definition is extremely broad and could include just about any construction project, including restaurants, stadiums, apartment complexes and other traditionally privately financed projects.

"Institution of higher education" is defined as "an educational institution that by virtue of law or charter is a nonprofit educational institution empowered to provide a project (sic) of education beyond the high school level; is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality of the state; and otherwise meets the requirements of s. 196.012(5), Florida Statutes." This definition is broad enough that it may include a number of private, not-for-profit educational institutions other than just colleges and universities.

"Participating institution" is defined as "an institution of higher education 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 1-30 of this act."

SECTION 4: Creates an unspecified section of the Florida Statutes in order to create the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.21, Florida Statutes, creates a corporate public body in each county known as a county educational facilities authority. The purpose of each local authority is to assist certain not-for-profit and accredited postsecondary education institutions in the construction, financing, and refinancing of projects throughout the designated county. A county's board of county commissioners may adopt an ordinance or resolution declaring a need for an educational facilities authority if its citizens do not have the opportunity to learn and develop their intellectual and mental capacities because there is a shortage of educational facilities or projects at certain not-for-profit and accredited postsecondary education institutions located within the county. The adopted ordinance or resolution must designate a minimum of five individuals as members of the local educational facilities authority. One of these members must be a trustee, director, officer, or employee of a not-for-profit and accredited postsecondary education institution located within the county. Additionally, the local educational facilities authority must appoint an executive director who must keep a record of the proceedings of the authority.

EFFECT OF PROPOSED CHANGES-

This bill creates a statewide corporate public body known as the Higher Educational Facilities Financing Authority. The Governor must appoint five individuals to serve as members of the Higher Educational Facilities Financing Authority. One of these members must be a trustee, director, officer, or employee of a not-for-profit and nonpublic postsecondary education institution. Additionally, the Higher Educational Facilities Financing Authority must appoint an executive director who must keep a record of the proceedings of the authority. The duties of the executive director may be discharged under a contract with the Independent Colleges and Universities of Florida, a not-for-profit corporation representing certain independent colleges and universities of the state, or a similar entity. Members of the authority are not compensated but are entitled to reimbursement of expenses as provided for in s. 112.061, F.S. The authority is assigned to the Department of Education for administrative purposes.

SECTION 5: Creates an unspecified section of the Florida Statutes in order to prescribe the powers of the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.22, Florida Statutes, prescribes the powers of each county educational facilities authority. Each local authority is authorized to issue bonds; receive and accept from any public agency loans or grants for the construction of a project that is required or useful for the instruction of students, the conducting of research, or the operation of a not-for-profit and accredited postsecondary education institution; mortgage projects that are required or useful for the instruction of students, the conducting of research, or the operation of a not-for-profit and accredited postsecondary education institution for the benefit of holders of revenue bonds issued to finance these projects; provide loans to any not-for-profit and accredited postsecondary education institution for the cost of a project, including a loan in anticipation of tuition revenues; and provide loans to any not-for-profit and accredited postsecondary education institution in order to refund outstanding obligations provided by such an institution for the cost of a project.

EFFECT OF PROPOSED CHANGES-

The purpose of this statewide authority is to assist certain not-for-profit and nonpublic postsecondary education institutions in the construction, financing, and refinancing of projects throughout the State of Florida. This bill authorizes the Higher Educational Facilities Financing Authority to exercise all powers granted to corporations under the Florida Business Corporation Act (chapter 607, Florida Statutes). In addition the authority has power to:

- Execute financing agreements, leases, as lessee or as lessor, contracts, 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: Creates an unspecified section of the Florida Statutes relating to the payment of expenses for the Higher Educational Facilities Financing Act.

PRESENT SITUATION-

Section 243.23, Florida Statutes, specifies that all expenses incurred as a result of carrying out the provisions relating to the local educational facilities authority law must be payable from funds provided under a county's educational facilities authority.

EFFECT OF PROPOSED CHANGES-

This bill specifies that all expenses incurred as a result of carrying out the provisions relating to the Higher Educational Facilities Financing Act must be payable from funds provided under the authority of the act. The authority may not incur any liability or obligation beyond the extent to which monies have been provided under the act.

SECTION 7: Creates an unspecified section of the Florida Statutes relating to the acquisition of real property by the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.24, Florida Statutes, authorizes a county educational facilities authority to purchase certain real property located within or outside of the state for the construction or operation of a project that is required or useful for the instruction of students, the conducting of research, or the operation of a not-for-profit and accredited postsecondary education institution.

EFFECT OF PROPOSED CHANGES-

This bill authorizes the Higher Educational Facilities Financing Authority to purchase or lease certain real property located within or outside of the state for the construction or operation of a project that is required or useful for the instruction of students, the conducting of research, or the operation of a not-for-profit and nonpublic postsecondary education institution.

SECTION 8: Creates an unspecified section of the Florida Statutes relating to the conveyance of title or interest to not-for-profit and nonpublic postsecondary education institutions that undertake the financing and construction or acquisition of a project.

PRESENT SITUATION-

Section 243.25, Florida Statutes, directs a county educational facilities authority to execute deeds and conveyances as are necessary and required to convey a title to a not-for-profit and accredited postsecondary education institution that undertakes the financing and construction or acquisition of a project when the principal and interest on revenue bonds issued to finance the cost of the particular project have been fully paid.

EFFECT OF PROPOSED CHANGES-

This bill directs the Higher Educational Facilities Financing Authority to execute deeds and conveyances necessary and required to convey a title to a not-for-profit and nonpublic postsecondary education institution that undertakes the financing and construction or acquisition of a project when the principal and interest on revenue bonds issued to finance the cost of the particular project have been fully paid.

SECTION 9: Creates an unspecified section of the Florida Statutes specifying the criteria and requirements that guide the Higher Educational Facilities Financing Authority when undertaking a specific project.

PRESENT SITUATION-

Current statutory provisions do not specify the criteria and requirements that guide a county educational facilities authority when undertaking a specific project that is required or useful for the instruction of students, the conducting of research, or the operation of a not-for-profit and accredited postsecondary education institution.

EFFECT OF PROPOSED CHANGES-

The bill provides four requirements that a project must meet to be financed by the authority. However, the bill also says that the determination of the authority as to compliance with the criteria and requirements is final and conclusive:

- 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: Creates an unspecified section of the Florida Statutes relating to the Higher Educational Facilities Financing Authority's required approval to issue bonds.

PRESENT SITUATION-

Current statutory provisions do not address approval by the Governor of bonds issued by a county educational facilities authority that require approval under federal law.

EFFECT OF PROPOSED CHANGES-

This bill permits the Governor to approve any bonds issued by the Higher Educational Facilities Financing Authority that require approval under federal law.

SECTION 11: Creates an unspecified section of the Florida Statutes relating to the sale, lease, or loan of a project that is required or useful for the instruction of students, the conducting of research, or the operation of a not-for-profit and nonpublic postsecondary education institution.

PRESENT SITUATION-

Current statutory provisions do not address the provisions that may be included in agreements relating to the sale, lease, or loan of a project that is required or useful for the instruction of students, the conducting of research, or the operation of a not-for-profit and accredited postsecondary education institution.

EFFECT OF PROPOSED CHANGES-

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.

This section seems to contemplate that a project may be sold, loaned or leased to an entity other than an institution of higher education.

SECTION 12: Creates an unspecified section of the Florida Statutes relating to the issuance of notes by the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.26, Florida Statutes, authorizes each county educational facilities authority to issue negotiable notes for any corporate purpose. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. All of the notes must be payable solely from the revenues of the local authority.

EFFECT OF PROPOSED CHANGES-

This bill permits the Higher Educational Facilities Financing Authority to issue negotiable notes for any corporate purpose. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. All of the notes must be payable solely from the revenues of the project to be financed.

SECTION 13: Creates an unspecified section of the Florida Statutes relating to the issuance of revenue bonds by the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.27, Florida Statutes, authorizes each county educational facilities authority to issue negotiable revenue bonds for any corporate purpose. The revenue bonds must be payable solely from the revenues of the county educational facilities authority. The revenue bonds must be authorized by resolution of the members of the county educational facilities authority. Any resolution authorizing any revenue bonds may contain provisions that must be a part of the contract with the holders of the revenue bonds. The provisions that may be included in the contract are:

- the county educational facilities authority must pledge at least part of the revenues of a project in order to secure the payment of the revenue bonds;
- the rentals, fees, assessed charges, and the amounts to be raised in each year;
- limitations on the right of the county educational facilities authority to restrict and regulate the use of the project;
- limitations on the issuance of additional bonds;
- limitations on the amount of monies derived from the project to be expended for the county educational facilities authority's operating, administrative, and other expenses; and the mortgaging of a project and the site for the purpose of securing the bondholders.

EFFECT OF PROPOSED CHANGES-

This bill permits the Higher Educational Facilities Financing Authority to issue negotiable revenue bonds for any corporate purpose. The revenue bonds must be payable solely from revenues of the Higher Educational Facilities Financing Authority. The revenue bonds must be authorized by resolution of the Higher Educational Facilities Financing Authority. Any resolution authorizing any revenue bonds may contain provisions that must be a part of the contract with the holders of the revenue bonds. The provisions that may be included in the contract are:

- the authority must pledge at least part of the revenues of a project in order to secure the payment of the revenue bonds;
- the rentals, fees, assessed charges, and the amounts to be raised in each year;
- limitations on the right of the authority to restrict and regulate the use of the project;
- limitations on the issuance of additional bonds; limitations on the amount of monies derived from the project to be expended for the authority's operating, administrative, and other expenses; and
- the mortgaging of a project and the site for the purpose of securing the bondholders. The bill also permits bonds to be issued without obtaining the consent of any local government, department, division, commission, board, body, bureau, or agency of the state.

SECTION 14: Creates an unspecified section of the Florida Statutes requiring the Higher Educational Facilities Financing Authority to submit a required report when issuing revenue bonds.

PRESENT SITUATION-

The provisions of chapter 243, Florida Statutes, do not require a county educational facilities authority that issues revenue bonds to submit a copy of the report required in section 103, Internal Revenue Code of 1954, to the Division of Bond Finance.

EFFECT OF PROPOSED CHANGES-

This bill requires the Higher Educational Facilities Financing Authority to submit a copy of the report required in section 103, Internal Revenue Code of 1954, to the Division of Bond Finance.

SECTION 15: Creates an unspecified section of the Florida Statutes relating to covenants associated with the issuance of bonds.

PRESENT SITUATION-

Current statutory provisions do not specifically address whether or not a resolution authorizing the issuance of bonds may contain any covenants the county educational facilities authority considers advisable.

EFFECT OF PROPOSED CHANGES-

This bill permits a resolution authorizing the issuance of bonds to contain any covenants the Higher Educational Facilities Financing Authority considers advisable. The covenants may include the disposition of 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, the issuance of additional bonds, the acquisition of outstanding bonds and obligations, restrictions on the establishment of competing projects or facilities, and others.

SECTION 16: Creates an unspecified section of the Florida Statutes relating to the validity of bonds issued by the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Current statutory provisions require a county educational facilities authority to go through the bond validation procedures established in Chapter 75, F.S.

EFFECT OF PROPOSED CHANGES-

This bill specifies that a bond issued by the Higher Educational Facilities Financing Authority is not invalid because of any irregularity or defect in the proceedings relating to the issuance and sale of the bond. The bill allows the Higher Educational Facilities Financing Authority to validate the bonds by publishing a notice at least once in a newspaper whose circulation is in the county or counties where the project is to be located, instead of going through the bond validation procedure established in Chapter 75, F.S.

SECTION 17: Creates an unspecified section of the Florida Statutes relating to the state's obligation relating to bonds issued by the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.29, Florida Statutes, stipulates that revenue bonds issued by a county educational facilities authority cannot be considered a debt or liability of the state or the county. Additionally, revenue bonds issued by such an authority cannot be considered a pledge of the faith and credit of the state or the county. All issued revenue bonds must include a statement that does not obligate the state or the local authority from having to pay the principal or interest.

EFFECT OF PROPOSED CHANGES-

This bill stipulates that any bonds issued by the Higher Educational Facilities Financing Authority are not secured by the full faith and credit of the State of Florida and do not constitute an obligation of the State of Florida.

SECTION 18: Creates an unspecified section of the Florida Statutes relating to the security of bondholders.

PRESENT SITUATION-

Section 243.28, Florida Statutes, provides a county educational facilities authority with the discretion of securing any issued revenue bonds through a trust agreement. The trust agreement may contain provisions that protect and enforce the rights and remedies of the bondholders.

EFFECT OF PROPOSED CHANGES-

This bill provides the Higher Educational Facilities Financing Authority with the discretion of securing any issued revenue bonds through a trust agreement. The trust agreement may contain provisions that protect and enforce the rights and remedies of the bondholders.

SECTION 19: Creates an unspecified section of the Florida Statutes relating to the payment of bonds issued by the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.29, Florida Statutes, stipulates that revenue bonds issued by a county educational facilities authority cannot be considered a debt or liability of the state or the county. Additionally, revenue bonds issued by such an authority cannot be considered a pledge of the faith and credit of the state or the county. All issued revenue bonds must include a statement that does not obligate the state or the local authority from having to pay the principal or interest. The principal and interest associated with an issued revenue bond must be paid from revenues generated from the project that was undertaken.

EFFECT OF PROPOSED CHANGES-

This bill stipulates that revenue bonds issued by the Higher Educational Facilities Financing Authority may not be considered a debt or liability of the authority, a municipality, the state or any of its political subdivisions. Additionally, revenue bonds issued by the authority may not be considered a pledge of the faith and credit of the state, the authority, a municipality, or a political subdivision. All revenue bonds must include a statement that does not obligate the authority, a municipality, the state, or a political subdivision from having to pay the bonds principal or interest. A bonds principal or interest must be paid from revenues generated from the project that was undertaken.

SECTION 20: Creates an unspecified section of the Florida Statutes relating to the Higher Educational Facilities Financing Authority's assessment of rates, rents, fees, and charges on a specific project.

PRESENT SITUATION-

Section 243.30, Florida Statutes, authorizes a county educational facilities authority to assess rates, rents, fees, and charges for the use of and for the services furnished by each project that is undertaken. These rates, rents, fees, and charges must be used to pay the cost of maintaining, repairing, and operating the project; pay the principal and interest on outstanding revenue bonds; and create and maintain reserves in order to secure the revenue bonds of the local authority. A sufficient amount of revenues derived from a project must be periodically set aside in a sinking fund or similar fund to pay a revenue bond's principal and interest.

EFFECT OF PROPOSED CHANGES-

This bill permits the Higher Educational Facilities Financing Authority to assess rates, rents, fees, and charges for the use of and for the services furnished by each project undertaken. These rates, rents, fees, and charges must be used to pay the cost of maintaining, repairing, and operating the project; pay the principal and interest on outstanding revenue bonds; and create and maintain

reserves in order to secure the revenue bonds of the authority. A sufficient amount of revenues derived from a project must be periodically set aside in a sinking fund or similar fund to pay a revenue bond's principal and interest.

SECTION 21: Creates an unspecified section of the Florida Statutes relating to trust funds of the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.31, Florida Statutes, specifies that all monies received by a county educational facilities authority are deemed to be trust funds. These funds include the local authority's revenues or proceeds from the sale of bonds.

EFFECT OF PROPOSED CHANGES-

This bill specifies that all monies received by the Higher Educational Facilities Financing Authority are considered to be trust funds. These funds include the authority's revenues or proceeds from the sale of bonds.

SECTION 22: Creates an unspecified section of the Florida Statutes relating to the remedies of bondholders.

PRESENT SITUATION-

Section 243.32, Florida Statutes, stipulates that any holder of revenue bonds issued by a county educational facilities authority may protect and enforce any rights under the laws of the state and may enforce and compel the performance of all duties required to be performed by a county educational facilities authority via suit, action, mandamus, or other proceeding.

EFFECT OF PROPOSED CHANGES-

This bill stipulates that any holder of revenue bonds issued by the Higher Educational Facilities Financing Authority may protect and enforce any rights under the laws of the state and may enforce and compel the performance of all duties required to be performed by the authority via suit, action, mandamus, or other proceeding.

SECTION 23: Creates an unspecified section of the Florida Statutes in order to provide a tax exemption to the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.33, Florida Statutes, stipulates that a county educational facilities authority or its agents are not required to pay any taxes on a project, any property acquired by the authority, or any income generated from a project. Additionally, any bonds issued, income generated from the issuance of bonds, and profits generated from the sale of bonds are exempt from any tax of the state, a county, a municipality, and another political subdivision in the state.

EFFECT OF PROPOSED CHANGES-

This bill stipulates that the Higher Educational Facilities Financing Authority or its agents are not required to pay any taxes on a project, any property acquired by the authority or its agents, or any income generated from a project. Additionally, any bonds issued; income generated from the issuance of bonds; profits generated from the sale of bonds; and all notes, mortgages, security agreements, or letters of credit intended to secure the repayment of issued bonds are exempt from any tax of the state, a local unit, a political subdivision, or other instrumentality of the state.

Property owned by institutions of higher education that is used for educational purposes is already entitled to an ad valorem property tax exemption. However, with the broad definition of the term "project" in this bill, this tax exemption could extend to a number of construction projects that have

traditionally been private in nature and, therefore, not entitled to any statutory tax exemption. This has the potential of removing otherwise taxable projects from local tax rolls.

SECTION 24: Creates an unspecified section of the Florida Statutes relating to the refunding of revenue bonds issued by the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.34, Florida Statutes, authorizes a county educational facilities authority to issue revenue bonds for the purpose of refunding any outstanding revenue bonds. The proceeds of any revenue bonds issued for the purpose of refunding any outstanding revenue bonds may be applied to the purchase of an outstanding revenue bond.

EFFECT OF PROPOSED CHANGES-

This bill permits the Higher Educational Facilities Financing Authority to issue revenue bonds for the purpose of refunding any outstanding revenue bonds. The proceeds of any revenue bonds issued for the purpose of refunding any outstanding revenue bonds may be applied to the purchase of an outstanding revenue bond.

SECTION 25: Creates an unspecified section of the Florida Statutes relating to the legal investment of bonds issued by the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.35, Florida Statutes, specifies that bonds issued by a county educational facilities authority are made securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest the funds.

EFFECT OF PROPOSED CHANGES-

This bill specifies that bonds issued by the Higher Educational Facilities Financing Authority are made securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest the funds.

SECTION 26: Creates an unspecified section of the Florida Statutes specifying the reporting requirements for the Higher Educational Facilities Financing Authority.

PRESENT SITUATION-

Section 243.36, Florida Statutes, requires a county educational facilities authority to submit a report to the board of county commissioners within 90 days after the New Year. This report must outline the local authority's activities for the preceding year and must include a complete operating and financial statement covering the local authority's operations for the preceding year.

EFFECT OF PROPOSED CHANGES-

This bill requires the Higher Educational Facilities Financing Authority to submit a report to the Department of Education within 90 days after the New Year. This report must outline the authority's activities for the preceding year and must include a complete operating and financial statement covering the authority's operations for the preceding year. The bill requires the audit by any certified public accountant instead of an audit by the Auditor General or the Comptroller's Office.

SECTION 27: Creates an unspecified section of the Florida Statutes relating to state agreements.

PRESENT SITUATION-

Section 243.37, Florida Statutes, stipulates that the State of Florida agrees with the holders of any obligations not to limit or alter the rights vested in a county educational facilities authority until the obligations are fully met and discharged.

EFFECT OF PROPOSED CHANGES-

This bill stipulates that the State of Florida agrees with the holders of any obligations not to limit or alter the rights vested in the Higher Educational Facilities Financing Authority until the obligations are fully met and discharged.

SECTION 28: 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. This would exempt the authority from the normal oversight of the Auditor General and Comptroller's Office as well as the bond validation procedures set forth in Chapter 75, F.S., among other things.

SECTION 29: Creates an unspecified section of the Florida Statutes stipulating that this piece of legislation must be liberally construed in order to effectively carry out its purposes.

SECTION 30: Creates an unspecified section of the Florida Statutes that provides that this piece of legislation controls in case of an inconsistency with any other general statute or special act.

SECTION 31: Amends the definition of "educational institution" contained in s. 196.012, F.S. to include "institutions of higher education as defined under and participating in the Higher Educational Facilities Financing Act." According to the Department of Revenue, this would be a more expansive definition than what currently exists.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill stipulates that the Higher Educational Facilities Financing Authority or its agents are not required to pay any taxes on a project, any property acquired by the authority or its agents, or any income generated from a project. Additionally, any bonds issued; income generated from the issuance of bonds; profits generated from the sale of bonds; and all notes, mortgages, security agreements, or letters of credit intended to secure the repayment of issued bonds are exempt from any tax of the state, a local unit, a political subdivision, or other instrumentality of the state.

2. Expenditures:

This bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill stipulates that the Higher Educational Facilities Financing Authority or its agents are not required to pay any taxes on a project, any property acquired by the authority or its agents, or any income generated from a project. Additionally, any bonds issued; income generated from the issuance of bonds; profits generated from the sale of bonds; and all notes, mortgages, security agreements, or letters of credit intended to secure the repayment of issued bonds are exempt from any tax of the state, a local unit, a political subdivision, or other instrumentality of the state.

2. Expenditures:

This bill does not appear to have an impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Higher Educational Facilities Financing Authority is created to assist not-for-profit and nonpublic postsecondary education institutions in the construction, financing, and refinancing of projects that are required or useful for the instruction of students, the conducting of research, or the operation of not-for-profit and nonpublic postsecondary education institutions throughout the State of Florida.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

To the extent that this bill exempts all projects financed through the Higher Education Facilities Financing Authority from all state and local taxes, it may reduce the authority that municipalities and counties have to raise revenues. If this is the case, and it is not determined to be an insignificant impact, then this bill may require a two-thirds vote of the Legislature for passage pursuant to Article VII, Section 18(b), Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The county higher educational facilities authorities, created in Chapter 243, Florida Statutes, was challenged on grounds that it violated the Establishment Clause of the U.S. and Florida

constitutions, among other grounds. The Florida Supreme Court considered these issues in the case of Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla. 1971), and found the statute to be constitutional. Since the framework of this bill is based on the same premise as the county higher educational facilities authorities, it is likely that this bill would withstand any constitutional challenges similar to the issues decided in Nohrr.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON COLLEGES AND UNIVERSITIES:

Prepared by:

Staff Director:

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Betty Tilton