HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 375 Postsecondary Revenue Bonds and Debt
SPONSOR(S): Higher Education Appropriations Subcommittee, Alexander and Lee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1712

REFERENCE	**ACTION**	**ANALYST**	**STAFF DIRECTOR** or **BUDGET/POLICY CHIEF**
1) Higher Education Appropriations Subcommittee	11 Y, 0 N, As CS	Crowley	Lloyd
2) Ways & Means Committee	16 Y, 0 N	Aldridge	Langston
3) Appropriations Committee	26 Y, 0 N	Crowley	Leznoff

SUMMARY ANALYSIS

CS/HB 375 modifies restrictions on state university debt payments to authorize the use of federal grant and contract funds due to a state university to pay debt service on revenue bonds only as required through the United States Department of Education Historically Black College and University Capital Financing Program (HBCU Program).

The HBCU Program provides HBCUs with low-cost capital to finance infrastructure improvements, facilitating the repair, renovation, and construction of classrooms, libraries, laboratories, dormitories, instructional equipment, and research instrumentation. In order to participate in the HBCU Program, the institution must permit the use of revenue from federal grants and contracts via administrative offset if the pledged revenues are insufficient to pay debt service.

Current state law allows the Board of Governors to authorize construction of new capital projects, provided that no state funds or direct federal research grant funds are used to pay debt service, and that the use of federal grant revenues is limited to indirect and overhead expenses.

By modifying these restrictions to permit the use of federal grant and contract funds to cover debt payments, CS/HB 375 would allow Florida Agricultural and Mechanical University to participate in the federal HBCU Program, thereby providing new opportunities for the institution to fund needed capital improvements.

There is no fiscal impact to the State of Florida since no state funds may be used for this revenue bond exemption.

The bill is effective July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation:

Historically Black College and University Capital Financing Program

The Higher Education Act of 1965, as amended, defines a historically black college and university (HBCU) as "... any historically black college or university that was established prior to 1964, whose principal mission was, and is, the education of Black Americans, and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary [of Education] to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation...."[1]

The Historically Black College and University Capital Financing Program (HBCU Program), administered by the United States Department of Education (USDOE), provides low-cost capital to finance improvements to the infrastructure of the nation's HBCUs.[2] Specifically, the HBCU Program provides HBCUs with access to capital financing or refinancing for the repair, renovation, and construction of classrooms, libraries, laboratories, dormitories, instructional equipment, and research instrumentation.[3]

This assistance comes through the issuance of federal guarantees on the full payment of principal and interest on qualified bonds, the proceeds of which are used for loans.[4] Nationally, to date, public HBCUs have received about $530 million in loan proceeds and private HBCUs have received about $1.27 billion in loan proceeds.[5]

The HBCU Program specifies, as a part of the loan agreement, the procedures for repayment of the loan, and procedures in the event of delinquency or default on the loan.[6] Federal law requires that, for delinquent debt or a default on debt to the United States, the debts or payments may be collected by administrative offset.[7] Accordingly, in order to borrow funds from the USDOE under the HBCU Program, the participating HBCU must permit the use of revenue from grants and contracts via administrative offset if the pledged revenues are insufficient to pay debt service.[8] Under the federal requirement regarding collection by administrative offset, in the event of default on the loan, the USDOE may hold other federal funds, including grants and contracts owed to the HBCU, and apply those federal funds to debt service for the HBCU Program loan.[9]

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[1] U.S. Department of Education, *Historically Black College and University Capital Financing Program*, *Eligibility*, https://www2.ed.gov/programs/hbcucapfinance/eligibility.html (last visited Feb. 5, 2018). The Florida HBCUs are Florida Agricultural and Mechanical University (public), Bethune-Cookman University (private), Edward Waters College (private), and Florida Memorial University (private). National Center for Education Statistics, *College Navigator*, https://nces.ed.gov/COLLEGENAVIGATOR/?s=FL&sp=4 (last visited Feb. 5, 2018).
[2] U.S. Department of Education, *Historically Black College and University Capital Financing Program, Purpose*, https://www2.ed.gov/programs/hbcucapfinance/index.html (last visited Feb. 5, 2018).
[3] *Id.*
[4] *Id.*
[5] U.S. Department of Education, *Historically Black College and University Capital Financing Program*, *Awards*, https://www2.ed.gov/programs/hbcucapfinance/awards.html (last visited Feb. 5, 2018). Since September 2009, Florida Memorial University has received two HBCU Capital Financing program loans totaling $44,060,000. Since July 1997, Bethune-Cookman College has received two HBCU Capital Financing program loans totaling $20,295,000. *Id.*
[6] U.S. Department of Education, *Legislation, Regulations, and Guidance*, https://www2.ed.gov/programs/hbcucapfinance/legislation.html (last visited Feb. 5, 2018).
[7] 31 C.F.R. 901.3. "Administrative offset" means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim. 31 U.S.C., s. 3701.
[8] Telephone interview, Senate Education Committee staff with Board of Governors staff (Feb. 2, 2018).
[9] Telephone interview, Senate Education Committee staff with Board of Governors staff (Feb. 2, 2018).

State University Revenue Bonds and Debt

The Board of Governors, each state university, and any state university direct-support organization must comply with the provisions of law in order to issue or enter into agreements for the issuance of revenue bonds or debt.[10] The law authorizes the Board of Governors to request the issuance of revenue bonds[11] to finance or refinance capital outlay projects[12] permitted by law.[13]

Revenue bonds may not be secured by or be payable from, directly or indirectly, the following sources:[14]

- Revenues from grants and contracts, except for money received for overhead and indirect costs and other moneys not required for the payment of direct costs;
- Tuition;
- The financial aid fee;
- Sales and services of educational departments; and
- Any other operating revenues of a state university.

The issuance of debt must be approved by the Board of Governors, and must be:[15]

- For a purpose consistent with the mission of the state university.
- Structured in a manner appropriate for the prudent financial management of the state university.
- Secured by revenues adequate to provide for all payments relating to the debt.
- Analyzed by the Division of Bond Finance,[16] and issues raised by such analysis must be appropriately considered by the Board of Governors.
- Consistent with the requirements of any policies or criteria adopted by the Board of Governors for the approval of debt.[17]

Effect of Proposed Changes:

CS/HB 375 modifies restrictions on the payment of debt by a state university to authorize grant and contract funds due to a state university from the federal government to be used to pay debt service on revenue bonds only as required through the Historically Black College and University Capital Financing Program (HBCU Program).

The bill authorizes Florida Agricultural and Mechanical University (FAMU), which is the only public historically black college and university (HBCU) in the state, to participate in the HBCU Program by permitting FAMU to, in the event of default on a debt, pledge revenue from federal grants and contracts for the repayment of revenue bonds. The authorization under the bill to pledge federal grants and contracts for

[10] Section 1010.62(8), F.S.

[11] Revenue bonds may be issued by the state or its agencies without a vote of the electors to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, and shall be payable solely from funds derived directly from sources other than state tax revenues. Art. VII, s. 11(d), Fla. Const.

[12] A capital outlay project is any project to acquire, construct, improve, or change the functional use of land, buildings, and other facilities, including furniture and equipment necessary to operate a new or improved building or facility. Section 1010.62(1)(b), F.S.

[13] Section 1010.62(2)(a), F.S.

[14] *Id.*

[15] *Id.* At (3)(b).

[16] The duties of the Division of Bond Finance within the State Board of Administration include the issuance of bonds for or on behalf of State agencies and providing technical assistance on new financing programs.

[17] The Board of Governors *Debt Management Guidelines* confirm that the state universities and their direct-support organizations must engage in sound debt management practices and, to that end, the Board of Governors has formalized guiding principles for the issuance of debt by the state universities and their DSOs, Board of Governors, *Debt Management Guidelines* (June 17, 2016), *available at* http://www.flbog.edu/documents_regulations/guidelines/REVISED%20FAC%207%202%20Debt%20Management%20Guidelines%202016%20-%20DRAFT.pdf, at 1.

the repayment of debt aligns with the federal requirements regarding collection by administrative offset.

The bill does not change the prohibition on the use of state funds to pay debt service on revenue bonds. Additionally, the bill does not change the requirement for the Board of Governors to approve the issuance of debt and for analysis by the Division of Bond Finance.

The bill may provide FAMU access to competitive financing through the HBCU Program, which may result in interest rate savings for FAMU.[18] The benefits may be extended to refinancing existing revenue bonds and for loans under the HBCU Program for future capital outlay projects.[19]

According to the Board of Governors (board), the board may be required to revise the Debt Management Guidelines to include revenue from contracts and grants as authorized revenue to secure debt under the HBCU Program.[20]

The bill takes effect July 1, 2018.

B. SECTION DIRECTORY:

Section 1. Amends s. 1010.62, F.S, providing a specific exemption for Florida A&M University to utilize the United States Department of Education HBCU Capital Financing Program

Section 2. Provides and effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This exemption provides Florida A&M University with the ability to utilize a federal revenue bond program. Which may assist them in renovating campus facilities.

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[18] Board of Governors, *2018 Agency Analysis for HB 375*, at 1.
[19] Telephone interview, Senate Education Committee staff with Board of Governors staff (Feb. 2, 2018).
[20] Board of Governors, *2018 Agency Analysis for HB 375*, at 2.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2018, the Higher Education Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that state funds may not be used to make payments on debt accrued through the HBCU Program. The analysis is drafted to the committee substitute.