2006 LEGISLATIVE ISSUE FORM

BOG/SUS ISSUE: University and Direct Support Organization Bonding

PROPOSED STATUTORY LANGUAGE: *Attached*

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1. Change Needed: Section1010.62, Florida Statutes
Amend Florida statutes to clarify the authority of, and provide guidance to, universities and their direct support organizations (DSOs) regarding issuance of debt, including, but not limited to, bonds, certificates of participation, promissory notes, lease purchase agreements and any other form of indebtedness. The proposed statutory language would provide for the following:

- Require Board of Governors review and approval of all University and DSO debt, regardless of the form of indebtedness, and the facilities or equipment being financed thereby

- Specify the revenues that are appropriate for capital outlay and can be pledged to secure University or DSO debt

- Authorize the Board of Governors to enter into covenants and commitments in connection with the issuance of debt

- Authorize the issuance of University or DSO debt without Board of Governors review and approval for lease purchase of equipment or software, acquisition of real property and short-term loans (five years or less) secured by gifts and donations

- Provide that the issuance of University and DSO debt be initiated by the request of the University Board of Trustees

- Provide that projects being financed by debt for housing, transportation, healthcare, research, foodservice, retail sales, equipment and software are automatically approved by the Legislature and that all other projects being financed with debt be specifically authorized by the Legislature

- Provide for Board of Governors policies that would specify other more detailed requirements and criteria for the issuance of debt by Universities and DSOs

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2. Current Condition:
The abolition of the Board of Regents, the statutory creation of the University Boards of Trustees and State Board of Education and the constitutional creation of the Board of Governors has created confusion and uncertainty regarding the authority to issue debt and pledge revenues for

the security thereof. The uncertainty regarding the appropriate process for authorizing and issuing University and DSO debt has lead to situations in which debt has been incurred and facilities constructed without review or approval by the Legislature or the Board of Governors. Issuing debt without the requisite approvals is inconsistent with historical practice, precipitated legislative action to prohibit financing of facilities without legislative approval, and created concern about debt and financial management issues for the State and the State University System. Additionally, HB1001 which became law in 2005 reserved to the Legislature the power regarding construction of facilities and bond financing. The proposed, legislation would clarify the process for authorizing and issuing debt, and aid the Board of Governors in exercising its constitutional responsibility for overseeing the management of the State University System.

The legislation would also specify which revenues are permitted to be pledged in order to secure University or DSO debt, consistent with the power reserved by the Legislature in HB1001. The proposed legislation is coupled with a companion Board of Governors policy containing the essential elements of the proposed framework for authorizing and issuing debt and pledging revenues to the security thereof. It is expected that a more detailed and comprehensive Board of Governors policy will be drafted and submitted for consideration setting forth the process and criteria for reviewing and approving University and DSO debt, including fiscally prudent financial and debt management policies and practices.

3. Rationale for Change:

Changes are needed to establish clear guidelines by which university direct support organizations could use various means of financing facilities that facilitates the ability of universities to acquire the use or ownership of buildings necessary to carry out their missions.

4. Fiscal Impact: None

5. Justification for BOARD OF GOVERNOR'S Priority (if applicable):

These legislative changes would clarify how universities and their direct support organizations could incur debt as a means of financing fixed capital outlay projects. The changes would also clearly establish which revenue sources could be pledged to secure debt and require Board of Governors approval for debt incurred by or on behalf of universities when financing fixed capital outlay projects.

6. Link to BOG Strategic Plan:

These changes promote Goal A on access, Goal C on building world class academic programs and research capacity, and Goal D on meeting community needs and fulfilling unique institutional responsibilities of the Board of Governors strategic plan. Some dollars from donors support programs or build facilities used for classes and research. In turn, this helps to build world-class research universities by providing facilities and funds for our research programs. Finally, donations from these donors allow universities to meet local community needs and individual institutional responsibilities.

7. Proposed Statutory Language:

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LEGISLATION - BOARD OF GOVERNORS

A bill to be entitled.......

Section 1. Section 1010.62, Florida Statutes, is created to read:

1010.62 Revenue Bonds and Debt.- -

(1) As used in this section, the term:

(a) “debt“ means bonds, except revenue bonds as defined in paragraph (d), loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanism or financial arrangement, whether or not a debt for legal purposes, for financing or refinancing, for or on behalf of a state university or a direct support organization, the acquisition, construction, improvement or purchase of capital outlay projects.

(b) “direct support organization” means those created pursuant to s. 1004.28 or any entity specifically established to incur debt.

(c) “capital outlay project” means

1. 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, and

2 any other acquisition of equipment or software.

(d) "revenue bonds" means any obligation which constitutes a revenue bond pursuant to Article VII, Section 11 (d) of the Florida Constitution.

(2) (a) The Board of Governors may request the issuance of revenue bonds pursuant to the State Bond Act and s. 11(d), Art. VII of the State Constitution to finance or refinance capital outlay projects permitted by law. Revenue bonds may only be secured by or payable from those revenues authorized for such purpose, including the health fee, transportation access fee, hospital revenues or those revenues derived from or received in relation to sales and services of auxiliary enterprises or component units of the university, including, but not limited to, housing, transportation, healthcare, research or research related activities, foodservice, retail sales, athletic activities or other similar services, other revenues attributable to the projects to be financed or refinanced, any other revenue approved by the Legislature for facilities construction or for securing revenue bonds issued pursuant to s. 11(d), Art. VII of the State Constitution, or any other revenues permitted by law. The assets of a university foundation and the earnings thereon may also be used to pay and secure revenue bonds of the university or its direct support organizations. Revenues from royalties and licensing fees may also be used to pay and secure revenue bonds so long as the facilities being financed are functionally related to the university operation or direct support organization reporting such royalties and licensing fees. Revenue bonds may not be secured by or be payable from, either directly or indirectly, tuition, the financial aid fee, the activity and service fee, the athletic fee, sales and services of educational departments, 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, or any other operating revenues of a state university. Revenues

from one auxiliary enterprise or component unit may not be used to secure revenue bonds of another unless such activities and facilities are functionally related.

(b) In connection with the issuance of revenue bonds, the Board of Governors, and the state university if so designated by the Board of Governors, shall comply with all covenants, commitments or other provisions relating to the revenue bonds. Such covenants, commitments, or other provisions, in addition to those provided in the State Bond Act, may relate to:

1. pledging the fees, charges, and other revenues which secure the revenue bonds;

2. fixing and maintaining fees, rates, and other charges pledged to the payment of the revenue bonds;

3. providing a lien on the revenues pledged;

4. preventing or providing for the creation of other liens on the fees, charges, and other revenues which secure the revenue bonds;

5. establishing and maintaining reserves for debt service payments on revenue bonds;

6. providing for the operation, maintenance, and improvement of facilities which are related to the generation of the fees, revenues, and other charges pledged to the payment of the revenue bonds; and,

7. establishing any other covenants, commitments, or provisions which are deemed necessary or advisable to enhance the security of the revenue bonds, or the marketability thereof, and which are customary in accordance with the market requirements for the sale of such revenue bonds.

(3) (a) No state university or direct support organization may issue debt without the approval of the Board of Governors. The Board of Governors may only approve the issuance of debt by a state university or a direct support organization when such debt is used to finance or refinance capital outlay projects which are necessary and desirable to serve the needs and purposes of the state university. The debt may only be secured by or payable from those revenues authorized for such purpose including the health fee, transportation access fee, hospital revenues or those revenues derived from or received in relation to sales and services of auxiliary enterprises or component units of the university, including, but not limited to, housing, transportation, healthcare, research or research related activities, foodservice, retail sales, athletic activities, or other similar services. The assets of university foundations and the earnings thereon may be used to pay and secure debt of the university or its direct support organizations. Gifts and donations or pledges of gifts may also be used to secure debt so long as the maturity of the debt, including extensions, renewals and refundings, does not exceed five years. Revenues from royalties and licensing fees may also be used to secure debt so long as the facilities being financed are functionally related to the university operation or direct support organization reporting such royalties and licensing fees. The debt may not be secured by or be payable from, either directly or indirectly, tuition, the financial aid fee, the activity and service fee, the athletic fee, sales and services of educational departments, 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 of grants, or any other operating revenues of a state university. The debt of direct support

organizations may not be secured by or be payable under an agreement or contract with a state university unless the source of payments under such agreement or contract is limited to revenues that universities are authorized to use for payment of debt service. Revenues from one auxiliary enterprise or component unit may not be used to secure debt of another unless such activities and facilities are functionally related. No debt may be approved to finance or refinance operating expenses of a state university or a direct support organization. The maturity of debt used to finance or refinance the acquisition of equipment or software, including any extensions, renewals or refundings thereof, shall be limited to five years or the estimated useful life of the equipment or software, whichever is shorter. The Board of Governors may establish conditions and limitations on such debt as it determines to be advisable.

(b) Approval by the Board of Governors of the issuance of debt shall be based upon a determination that the debt:

1. is for a purpose consistent with the mission of the state university;

2. is structured in a manner appropriate for the prudent financial management of the state university;

3. is to be incurred in a manner consistent with policies governing the issuance of State debt;

4. is secured by revenues adequate to provide for all payments relating to the debt; and

5. has been analyzed by the Division of Bond Finance and issues raised by such analysis have been appropriately considered by the Board of Governors; and is

consistent with the requirements of any policies or criteria adopted by the Board of Governors for the approval of debt.

(c) Notwithstanding the foregoing, state universities and direct support organizations may engage in the following activities without Board of Governors' approval:

(i) state universities may lease-purchase equipment and software in accordance with the deferred-purchase provisions in Chapter 287, Florida Statutes and direct support organizations may lease-purchase equipment and software to the extent that the overall term of the financing, including any extension, renewal or refinancings thereof, does not exceed five years or the estimated useful life of the equipment or software, whichever is shorter;

(ii) direct support organizations may issue promissory notes and grant conventional mortgages for the acquisition of real property; and

(iii) state universities and direct support organizations may secure debt with gifts and donations and pledges of gifts so long as the facilities being financed thereby have been included in the university's five-year capital improvement plan which has been approved by the Board of Governors and the maturity of the debt, including extensions, renewals and refundings, does not exceed five years.

(4) The approval by the Board of Governors of revenue bonds, except refunding bonds, or debt must be requested by a resolution of the board of trustees of each state university involved in the issuance of the revenue bonds or debt.

(5) Revenue bonds or debt issued hereunder may be secured on a parity with prior revenue bonds or debt issued by or on behalf of one or more universities or a direct support organization.

(6) Capital outlay projects to be financed by revenue bonds or debt are limited to those approved by the Legislature either through approval of the specific project or general approval of the type or category of capital outlay project.

(7) (a) As required pursuant to s. 11 (d), Art. VII of the State Constitution and subsection (6), the legislature hereby approves those capital outlay projects which meet the following requirements:

1. the project is located on a campus of a state university or on land leased to the university or is used for activities relating to the state university;

2. the project is included in the master plan of the state university or is for facilities not required to be in a university's master plan;

3. the project is approved by the Board of Governors as being consistent with the strategic plan of the state university and the programs offered by the state university; and

4. the project is for purposes relating to the housing, transportation, healthcare, research or research related activities, foodservice, retail sales, of the state university.

(b) Capital outlay projects for the acquisition of equipment or software are also approved for purposes of subsection (6), to the extent that the overall term of the financing, including any extension, renewal or refinancings thereof, does not exceed five years or the estimated useful life of the equipment or software, whichever is shorter.

(8) Notwithstanding any other law, the Board of Governors, each state university, and any direct support organization must comply with the provisions of this section to issue or enter into agreements for the issuance of revenue bonds or debt.

(9) The Board of Governors may adopt such policies as may be necessary or desirable for carrying out all of the requirements of this section and may do all things necessary or desirable to carry out the powers granted herein. Such policies may include categories of debt, other than revenue bonds, which may be issued without Board of Governors' approval of the specific issuance, provided the issuance complies with any terms, conditions or requirements included in such policy and laws governing the imposition of fees and laws requiring specific authority to pledge revenues to secure debt.

(10) Any legal commitments, contracts, or other obligations relating to the financing of capital outlay projects, which were lawfully entered into prior to the effective date of this section shall remain in full force and effect. Any such legal commitment, contract or other obligation may be amended without compliance with this section but only to the extent that such amendment does not extend the term of the underlying obligation or increase the financial obligation of the Board of Governors, a state university or a direct support organization.