

## 2006 LEGISLATIVE ISSUE FORM

### BOG/SUS ISSUE: Direct Support Organizations and Bonding



***PROPOSED STATUTORY LANGUAGE: To Be Determined***

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#### **1. Change Needed:** Section 1004.28, Florida Statutes

Amend Florida statutes to clarify the authority of, and provide guidance to, university direct support organizations regarding issuance of tax-exempt debt, including, but not limited to, bonds and certificates of participation. The proposed language could require that issues under this statute be approved by the Board of Governors rather than by the Legislature before contracts are signed.

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#### **2. Current Condition:**

University direct support organizations (DSOs) currently have the authority pursuant to section 1004.28 of the Florida Statutes to finance the construction of facilities through the issuance of certificates of participation. However, during the last legislative session, proviso language was inserted in the appropriations bill restricting the ability of DSOs to finance projects through the issuance of certificates of participation. This was because of concerns by the Division of Bond Finance that DSOs were creating liabilities for the State of Florida without prior approval. The Division was concerned that such liabilities could negatively impact the state's credit rating.

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#### **3. Rationale for Change:**

Changes are needed to restore the authority of university direct support organizations to use various means of financing facilities that is prohibited by proviso language passed during the 2005 Legislative session.

#### **Current Law**

S. 1004.28(6), F.S., currently provides:

*Facilities.--In addition to issuance of indebtedness pursuant to s. 1010.60(2), each direct-support organization is authorized to enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities necessary and desirable to serve the needs and purposes of the university, as determined by the system wide strategic plan adopted by the State Board of Education.*

This statute allows direct support organizations to issue certificates of participation to lease-purchase facilities to support the needs of the university. Proviso language in the appropriation bill restricted the ability of direct support organizations to exercise this authority, which closes off an effective means of financing or acquiring facilities needed to operate the university.

## Proviso Language

### First Provision

Limitation on university and direct-support organization financings. No project may be financed by or on behalf of a university or a direct-support organization through... any financing mechanism, including, but not limited to revenue bonds, promissory notes, certificates of participation, lease-purchase agreements, or any other form of indebtedness, without prior approval of the project by the Legislature by an act relating to appropriations or general law. This section expires July 1, 2006.

### Effect of Provision

Because the legislature only approves projects once per year in its General Appropriations Act (generally passed in May of each year to become effective July 1), opportunities to acquire some properties would be lost causing the universities to lose millions of dollars in non-state revenues.

### Second Provision

*“State universities and state university direct support organizations shall not pledge or use any revenues .... from state general revenue operating appropriations, state trust fund operating appropriations, or tuition for the financing of any fixed capital outlay project through any financing mechanism, including, but not limited to, revenue bonds, promissory notes, certificates of participation, lease-purchase agreements or any other form of indebtedness.”*

### Effect of Provision

The proviso language does not allow direct support organizations to use appropriated funds for the lease purchase of property that is owned by a university direct support organization. However, the university could use appropriated funds to pay rent for space in a privately owned building, even if the rent would be higher than what would be paid for a Foundation owned building.

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#### **4. Fiscal Impact:** None

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#### **5. Justification for BOARD OF GOVERNOR’S Priority (if applicable):**

DSOs use these funding mechanisms that allow universities to acquire buildings that supplement facilities built using state dollars.

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#### **6. Link to BOG Strategic Plan:**

This flexibility promotes 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 BOG 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:**

Ben Watkins, Director, Division of Bond Financing, will present draft language for statutory changes and creation of regulations to govern the issuance of bonds by university direct support organizations.

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