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. In order to address concerns about oversight by the Legislature, the proposed language could require that issues under this statute be approved by the Board of Governors 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:
See Exhibit A attached.

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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.

Exhibit A
Direct Support Organizations and Issuance of Debt.

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 means that universities cannot construct 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

Example: A DSO is presented with an opportunity to purchase and finance income-producing buildings to house university programs. The cost of the acquisitions is financed from the revenues received from private tenants in the buildings, thereby eliminating the need for state money to pay for these facilities and allowing the Foundation to build equity in the building.

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

Example: A university needs space to house programs but PECO funds will not be available for several years. The Foundation is presented with an opportunity to purchase a building in an adjacent research park which would satisfy university space needs. Rent to be paid by the university would cover debt service on the building. Because of the proviso language, the Foundation can only finance this project if the university has sufficient non-appropriated funds to fulfill its rent obligation.

However, if a private developer purchased the building, the university could use appropriated funds to pay rent for space in the building, even though the rent would be higher than paid to the Foundation in order for the developer to pay property and income taxes and still make a profit.

Effect: Private developers, rather than the Foundation, enjoy profits and the appreciation of the building and the university pays higher rents.

Rationale for Provisions

The Legislature added the proviso because it thought it necessary to protect the state's credit rating.

Reality

University projects have been financed through the issuance of Certificates of Participation that are non-recourse, insured and rated. The source of repayment is the revenue generated by the project. Full Faith and credit of state is not pledged. Therefore the state's credit rating is not at risk.