



Item: VI. AF: A-2

**Wednesday, November 8, 2006**

**SUBJECT: DEBT MANAGEMENT GUIDELINES.**

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**PROPOSED BOARD ACTION**

Request for approval to adopt the Florida Board of Governors Debt Management Guidelines as the Florida Atlantic University Guidelines for issuance of debt.

**BACKGROUND INFORMATION**

On April 27, 2006, the Florida Board of Governors developed debt management guidelines for State universities and direct support organizations (DSOs). These guidelines were developed in accordance with Section 1010.62 F.S., which delegated to the Board of Governors certain bonding and borrowing authority which is articulated in the guidelines. The purpose of the guidelines is to confirm that the state universities and their DSOs engage in sound debt management practices. Each state university Board of Trustees is required to adopt a debt management policy consistent with the BOG guidelines.

**IMPLEMENTATION PLAN/DATE**

Upon approval of the Guidelines by the FAU Board of Trustees.

**FISCAL IMPLICATIONS**

These guidelines will establish FAU Debt Management Guidelines consistent with Board of Governors Guidelines.

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**Supporting Documentation:** BOG April 27, 2006 Agenda Item, BOG Debt Management Guidelines and 1010.62 Florida Statute.

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# BOARD OF GOVERNORS STATE UNIVERSITY SYSTEM OF FLORIDA

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### Agenda

#### Board of Governors

1605 Turlington Building  
By Telephone Conference Call  
Tallahassee, Florida

April 27, 2006  
1:00 p.m. – 2:00 p.m.

#### Call to Order and Chair's Report

Chair Carolyn Roberts

- [Agenda item for Board information \(PDF, 9KB\)](#)

#### Election of Board Officers, Chair and Vice Chair

- [Agenda item for Board action \(PDF, 14KB\)](#)

#### Approval:

- [Agenda item for Board approval \(PDF, 17KB\)](#)
- [Minutes of Regular Meeting held March 23, 2006 \(PDF, 149KB\)](#)
- [Board of Governors Resolution With Regard to the Future of Medical Education in Florida \(PDF, 24KB\)](#)
- [Minutes of Telephone Conference Call Meeting held March 13, 2006 \(PDF, 26KB\)](#)
- [Minutes of Telephone Conference Call Meeting held April 7, 2006 \(PDF, 27KB\)](#)

#### Chancellor's Report

Chancellor Mark Roberts

- [Agenda item for Board information \(PDF, 13KB\)](#)

#### Commissioner's Report

Commissioner John H. ...

- [Agenda item for Board information \(PDF, 14KB\)](#)

#### Consideration:

Ms. Vikki Shirley



- A. Debt Management Guidelines
  - [Agenda item for Board action \(PDF, 19KB\)](#)

**STATE OF FLORIDA  
FLORIDA BOARD OF GOVERNORS**

**DEBT MANAGEMENT GUIDELINES**

**April 27, 2006**

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# **DEBT MANAGEMENT GUIDELINES FOR CAPITAL OUTLAY PROJECTS**

## **I. INTRODUCTION**

### ***The Need for and Purpose of Debt Management Guidelines***

The state universities of Florida **and their direct support organizations (“DSOs”)** have funded significant **investments in** infrastructure, **such as buildings, equipment, land, and technology**, to meet the needs of a growing student population and to upgrade and maintain existing capital assets. A significant amount of the funding for this investment in infrastructure has been provided through the issuance of debt by the State for the benefit of the **state universities and by the state universities’** direct support organizations (“DSOs”).

The purpose of these guidelines is to confirm that the state universities and their DSOs **must** engage in sound debt management practices and, to that end, **the Board of Governors (“BOG”)** **has** formalized **guiding principles** for the issuance of debt by the state universities and their DSOs. Each state university shall adopt a debt management policy which is consistent with these guidelines and which shall be approved by the BOG.

The following guidelines **set forth guiding principles** regarding **state university and DSO debt-related** decisions related to:

- a) The amount of debt which may prudently be issued.
- b) The purposes for which debt may be issued.
- c) Structural features of debt being issued.
- d) The types of debt permissible.
- e) Compliance with securities laws and disclosure requirements.
- f) Compliance with federal tax laws and arbitrage compliance.

These principles will facilitate the management, control and oversight of debt **issuances, for the purpose of** facilitating ongoing access to the capital markets which is critical to the financing of needed infrastructure.

In furtherance of this objective, the provisions of these guidelines **shall** be followed in connection with the authorization, issuance and sale of university and DSO debt. However, exceptions to the general principles set forth herein may be appropriate under certain circumstances. Also, additional guidelines and policies may be necessary as new financial products and debt structures evolve over time.

For purposes of these guidelines:

- i) **“debt” means bonds, 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;

- ii) “capital outlay project” means (i) 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 (ii) any other acquisition of equipment or software; and
- iii) “financing documents” means those documents and other agreements entered into by the state university or the DSO establishing the terms, conditions and requirements of the debt issuance.

## **II. DEBT AFFORDABILITY AND CAPITAL PLANNING**

### **Concept of Affordability**

One of the most important components of an effective debt management policy is an analysis of what level of debt is affordable given a particular set of circumstances and assumptions. More comprehensive than simply an analysis of the amount of debt that may be legally issued or supported by a security pledge, the level of debt should be analyzed in relation to the financial resources available to the university and its DSO’s on a consolidated basis, to meet its debt service obligations and provide for operating the university.

An analysis of debt affordability should address the impact of existing and proposed debt levels on an issuer’s operating budget and offer guidelines or ranges to policymakers for their use in allocating limited resources within the guidelines.

### **Debts That May Be Issued Without Board of Governors’ Approval**

The following types of financings may be engaged in by the state universities and their DSOs, as applicable, without Board of Governors approval:

- Universities may finance the acquisition of equipment and software provided such financings are accomplished in accordance with the deferred-purchase provisions in Chapter 287, Florida Statutes.
- DSOs may finance the acquisition of equipment and software financings provided the overall term of the financing, including any extension, renewal or refinancings, hereof, does not exceed five years or the estimated useful life of the equipment or software, whichever is shorter.
- DSOs may issue promissory notes and grant conventional mortgages for the acquisition of real property.
- University and DSO debt secured solely with gifts and donations and pledges of gifts so long as the maturity of the debt, including extensions, renewals and

refundings, does not exceed five years and so long as the facilities being financed have been included in the university's five-year capital improvement plan.

- Refundings for debt service savings where final maturities are not extended.
- Financing of any projects approved by the BOG or University Boards of Trustees prior to, or existing, as of January 26, 2006.
- Fully collateralized lines of credit intended to be used for temporary cash flow needs.

### **III. GENERAL DEBT ISSUANCE GUIDELINES**

#### **PROCESS FOR SUBMITTING DEBT FOR APPROVAL**

*Timing.* The submission of proposed debt for approval by the BOG shall be governed by the following process:

- a) No later than four weeks prior to the time agenda titles are due to the BOG, a copy of all information required to be submitted by these guidelines in support of the request to issue debt shall be provided to BOG staff for review.
- b) During the four-week period prior to the agenda title due date, BOG staff shall provide such information to the State Division of Bond Finance (the "DBF"), review the information submitted for compliance with these guidelines and State law, analyze general credit issues associated with the proposed indebtedness, and review any analysis provided by the DBF staff.
- c) BOG and DBF staff shall jointly discuss with the university or DSO any issues, concerns or suggestions resulting from the review during the four-week review period. As a result of these discussions, the university may amend the information submitted or give reasons why the suggestions were not incorporated. During this period, if the debt being requested for approval is to be issued by the DBF on behalf of a state university, DBF shall submit to the BOG a form of a resolution for adoption by the BOG requesting that DBF issue the debt.
- d) After the four-week review period, the BOG staff shall submit its agenda title, agenda item with supporting documentation and all appropriate and required analyses to the BOG for consideration at its next meeting. Supporting documentation for the agenda item shall also include the adopted resolution of the BOT and DSO, if applicable, and the resolution to be adopted by the BOG requesting issuance of the debt by DBF or a resolution approving issuance of the debt by the DSO.

*Information Required for Submission.* The following information shall be submitted to the BOG staff in support of a request for approval of the issuance of debt. Additionally, the university

or DSO shall provide any additional information requested by BOG or DBF staff in connection with review of any proposed debt issuance.

- a) A resolution of the DSO board of directors approving the debt issuances, if applicable, and a resolution of the university Board of Trustees (the "BOT") approving the debt issuance and authorizing the university to request BOG approval of the debt issuance. For debt to be issued by DBF, at the request of the university, DBF staff will work with the university to determine a not-to-exceed amount of debt to be included in the BOT requesting resolution to the BOG and in preparing required debt service and source-and-use schedules.
- b) A proposed agenda item.
- c) The project program, feasibility studies or consultant reports (if available), and an explanation of how the project being proposed is consistent with the mission of the university.
- d) For debt issued by DSOs, a form of a resolution to be adopted by the BOG approving issuance of the debt.
- e) Estimated project cost, draw schedule, start and completion dates, estimated useful life.
- f) The sources-and-uses of funds, clearly depicting all costs, funding sources expected to be used to complete the project and the estimated amount of the debt to be issued.
- g) An estimated debt service schedule with the assumed interest rate on the debt clearly disclosed. If the proposed debt service is not structured on a level debt service basis, an explanation shall be provided which gives the reason why it is desirable to deviate from a level debt structure.
- h) Debt service schedules showing any outstanding debt related to or impacting the debt being proposed.
- i) A description of the security supporting the repayment of the proposed debt and the lien position the debt will have on that security. If the lien is junior to any other debt, the senior debt must be described. Furthermore, a description of why the debt is proposed to be issued on a junior lien basis must be provided. A statement citing the legal authority for the source of revenues securing repayment must be provided.
- j) If debt is to be incurred on a parity basis with outstanding debt, a schedule showing estimated compliance with any additional bonds requirement set forth in the documents governing the outstanding debt. The applicable provisions of the documents for bonds of DSOs should be provided.
- k) Financial statements for five years, if available, for the auxiliary, if auxiliary revenues are pledged.



- l) A five-year history, if available, and five-year projection of the revenues securing payment and debt service coverage. To the extent applicable, the projections must be shown on the individual project as well as the entire system. All revenue items securing repayment must be clearly set forth as separate line items. An explanation should be provided with regard to growth assumptions, and to the amount and status of approval of any rate increases. The effect of the rate increases on the projections and expected revenues and expenses for the new facility should be clearly set forth as a separate line item. If rate increases are necessary, a commitment must be made to increase rates to the needed levels. Major categories of any operating expenses should be set forth as separate line items with an explanation of assumptions regarding increases or decreases.
- m) Evidence that the project is consistent with the university's master plan, or a statement that the project is not required to be in the master plan.
- n) For variable rate debt proposals:
- i) the expected reduction in total borrowing costs based on a comparison of fixed versus variable interest rates;
  - ii) the average monthly balance, over the last year, of the short-term investments which will be hedged or the other products, such as interest rate caps, which will be used to mitigate the effect of rising interest rates, or an explanation as to why such protections are not being provided;
  - iii) a pro forma showing the fiscal feasibility of the project using current market interest rates plus 200 basis points;
  - iv) the amount of debt proposed for approval as a percentage of the total amount of university and DSO debt outstanding; and
  - v) the individual or position that will be responsible for the reporting requirements for variable rate debt as set forth in these guidelines.
- o) If the financing is contemplated to be done on a taxable basis, then evidence demonstrating that the issuance of taxable debt is in the best interest of the university must be submitted.
- p) A statement explaining whether legislative approval is required, and if required, an explanation as to when legislative approval will be sought or evidence that legislative approval has already been obtained.
- q) A statement that the debt issuance is in accordance with the university's debt management policy or, if not, an explanation of the specific variances as well as the reasons supporting the variances.

*Approval.* The BOG will consider the following factors in connection with its review and approval of university or DSO debt issuance.

- a) The debt is to provide funding for needed infrastructure of the university for purposes consistent with the mission of the university.
- b) The debt is being issued in compliance with the principles and guidelines set forth herein.
- c) The project information submitted is reasonable and supportable.
- d) The five-year projection of pledged revenues available to pay debt service should provide debt service coverage of at least 1.20x for both outstanding parity debt and for the proposed new debt for all years within the five-year projection period after giving credit for any capitalized interest and other revenues available for payment.
- e) Any requirements for the issuance of additional parity debt can be reasonably expected to be met.

### ***Purposes For Which Debt May Be Issued***

Debt may be issued only to finance or refinance capital outlay projects as defined in these guidelines, including equipment and software; debt may not be approved to finance or refinance operating expenses of a university or a DSO.

Refunding bonds may be issued to achieve debt service savings. Refunding bonds may also be issued to restructure outstanding debt service or to revise provisions of Financing Documents if it can be demonstrated that the refunding is in the best interest of the university.

### ***Committing University Resources for Debt Issued by Direct Support Organizations***

There may be occasions where the university considers committing its financial resources on a long-term basis in support of debt issued by a DSO or other component unit. While the nature of the commitment may not constitute a legal debt obligation of the university, it may affect the university's debt position and its available financial resources. Therefore, the university should evaluate the long-term fiscal impact upon the university's debt position and available resources before authorizing any such financial commitment. Additionally, the debt of any DSO may not be secured by an agreement or contract with the university unless the source of payments under such agreement or contract is limited to revenues that the university is authorized to use for the payment of debt service. Any such contract or agreement shall also be subject to the requirements set forth under "Security Features – Pledged Revenues" herein.

### **Credit Ratings**

In order to access the credit markets at the lowest possible borrowing cost, it is recognized that credit ratings are critical. Therefore, for all publicly offered debt:

- a) For existing bond programs, universities and DSOs shall strive to maintain or improve current credit ratings without adversely impacting the amount of debt which may be issued for any particular program.
- b) For all new financings; the university or DSO shall seek to structure the transaction to achieve a minimum rating of “A” from at least two nationally recognized rating agencies. Credit enhancement may be used to achieve this goal.

### ***Tax Status***

The universities have traditionally issued tax exempt debt which results in significant interest cost savings compared with the interest cost on taxable debt. Accordingly, all university and DSO debt should be issued to take advantage of the exemption from federal income taxes unless the university demonstrates that the issuance of taxable debt is in the university’s best interest. With respect to debt which has a management contract with a private entity as part of the security feature, the management contract should comply, to the greatest extent practical, with tax law requirements to obtain tax exemption for the debt.

### ***Security Features***

*Pledged Revenues.* The debt issued by universities and their DSOs may only be secured by revenues (including fund balances and budget surpluses) authorized for such purpose. The revenues which may secure debt include the following:

- a) Activity and Service Fee, subject to the limitation that annual debt service payable from these fees does not exceed five percent of the revenues derived therefrom.
- b) Athletic Fee, subject to the limitation that annual debt service payable from these fees does not exceed five percent of the revenues derived therefrom.
- c) Health Fee.
- d) Transportation Access Fee.
- e) Hospital Revenue.
- f) Licenses and Royalties for facilities that are functionally related to the university operation or DSO reporting such royalties and licensing fees.
- g) Gifts and Donations for debt not longer than five years.
- h) Overhead and indirect costs and other monies not required for the payment of direct costs of grants.
- i) Assets of University Foundations and DSOs and earnings thereon.

- j) Auxiliary Enterprise Revenues, e.g., housing, parking, food service, athletic, retail sales, research activities.

Revenues which are not enumerated above may not be pledged to secure debt unless authorized by law for such purpose. In the case of university-issued debt, the pledge of revenues which secures debt should specifically identify the sources pledged and not use general or vague terms such as “lawfully available revenues.” Specifically identifying revenues used to secure debt will provide certainty and transparency as to the revenues that are encumbered and avoid ambiguity or uncertainty as to the issuer’s legal liability and universities and their DSOs should take this into consideration when determining the nature of the security it will provide in connection with a debt issuance. The guidelines for pledging revenues and securing debt shall also apply to debt structures which involve an agreement, contract or lease with a university or its DSOs, i.e., the revenues being pledged to secure debt must be specifically identified and lawfully available for such purpose. It is preferable, whenever possible, to secure debt with system pledges comprised of multiple facilities within a system, e.g., housing and parking, rather than stand-alone project finances.

*Lien Status.* All bonds of a particular program should be secured by a first lien on specified revenues. Additionally, bonds should generally be equally and ratably secured by the revenues pledged to the payment of any outstanding bonds of a particular bond program. However, the creation of a subordinate lien is permissible if a first lien is not available or circumstances require.

*Reserve Fund.* Debt service reserve requirements may be satisfied by a deposit of bond proceeds, purchase of a reserve fund credit facility, or funding from available resources over a specified period of time. In the submission of a request for debt issuance, it is preferred, though not required, that the bond size for the proposed debt include provision for funding a reserve from bond proceeds. This will ensure that in the event the university is unable to obtain a reserve fund credit facility it will still have an authorized bond amount sufficient to fund its needs. Debt service reserve requirements may also be satisfied with cash balances.

*Credit Enhancement.* Credit enhancement is used primarily to achieve interest cost savings. Accordingly, the state universities and their DSOs should consider the cost effectiveness of bond insurance or other credit enhancements when evaluating a debt issuance and the overall cost thereof. Any bond insurance or credit enhancement should be chosen through a competitive selection process analyzing the cost of the insurance or credit enhancement and the expected interest cost savings to result from their use. The primary determinant in selecting insurance or other credit enhancement should be price and expected interest cost savings; however, consideration may also be given to the terms of any arrangement with the provider of insurance or other credit enhancement.

*Capitalized Interest.* Capitalized interest from bond proceeds is used to pay debt service until a revenue producing project is completed or to manage cash flows for debt service in special circumstances. Because the use of capitalized interest increases the cost of the financing, it should only be used when necessary for the financial feasibility of the project.

## *Structural Features*

*Length of Maturity.* In addition to any restriction on the final maturity imposed by the constitution or laws of the State, as a general guideline, the final maturity on bonds should not exceed thirty years.

Debt secured by gifts and donations shall not be considered long-term financing but may be used as a temporary or construction loan to accelerate construction of facilities. Accordingly, the maturity of debt secured by gifts and donations shall not exceed five years, including roll-overs or refinancings except refinancings to implement permanent financing. Debt issued to finance equipment and software may not be longer than five years or the useful life of the asset being financed, whichever is shorter. Lastly, the final maturity of the debt should not exceed the estimated useful life of the assets being financed.

*Debt Service Structure.* Generally, debt should be structured on a level debt basis, i.e., so that the annual debt service repayments will, as nearly as practicable, be the same in each year. A deviation from these preferences is permissible if it can be demonstrated to be in the university's best interest, such as restructuring debt to avoid a default and not to demonstrate feasibility of a particular project.

*Redemption Prior to Maturity.* A significant tool in structuring governmental bonds is the ability to make the bonds callable after a certain period of time has elapsed after issuance. This provides the advantage of enabling the issuer to achieve savings through the issuance of refunding bonds in the event interest rates decline. Although the ability to refund bonds for a savings is advantageous, there may be situations where a greater benefit of lower interest rates may be realized by issuing the bonds as non-callable. Accordingly, there is a strong preference that bonds issued by a university or DSO be structured with the least onerous call features as may be practical under then prevailing market conditions. Bonds of a particular issue may be sold as non-callable if it is shown to be in the best interest of the university or DSO.

*Debt Issued With a Forward Delivery Date.* Debt issued by a university or DSO may be issued that has a delivery date significantly later than that which is usual and customary. This debt typically carries an interest rate penalty associated with the delay in delivery. There are also additional risks that delivery will not occur. Debt with a forward delivery date may be issued if the advantages outweigh the interest rate penalty which will be incurred and the university and DSO are protected from adverse consequences of a failure to deliver the debt.

## *Interest Accrual Features*

*Fixed Rate, Current Interest Debt.* Fixed rate debt will continue to be the primary means of financing infrastructure and other capital needs. However, there may be circumstances where variable rate debt is more appropriate, in which case, the state university or DSO shall provide documentation as noted in these guidelines for such debt.

*Derivatives.* Alternative financing arrangements, generally referred to as derivatives, are available in the market as an alternative to traditional bonds. Under certain market conditions, the use of alternative financing arrangements may be more cost effective than the traditional fixed income markets. However, these alternative financing instruments, such as floating to fixed swap agreements, have characteristics and carry risks peculiar to the nature of the instrument which are different from those inherent in the typical fixed rate financing. Although the universities and their DSOs should normally continue issuing conventional fixed rate bonds, alternative financing instruments may be used when the inherent risks and additional costs are identified and proper provision is made to protect the Board of Governors, university and DSO from such risks. In determining when to utilize alternative financing arrangements, the availability of the requisite technical expertise to properly execute the transaction and manage the associated risks should be evaluated along with any additional ongoing administrative costs of monitoring the transaction. Also, a comprehensive derivatives policy should be established by the university or their DSOs and approved by the BOG prior to approving transactions using derivatives products.

*Capital Appreciation Bonds.* Normally capital appreciation bonds, which do not require current debt service payments, should not be used. However, when a compelling university interest is demonstrated capital appreciation bonds may be issued.

*Variable Rate Bonds.* Variable rate debt may be issued where, considering the totality of the circumstances, such bonds can reasonably be expected to reduce the total borrowing cost to the university or the DSO over the term of the financing and the availability of the requisite technical expertise to properly manage the risks and execution of the variable rate transaction should be evaluated along with any additional ongoing administrative costs of monitoring the transaction. There should be a solid understanding of the liquidity risk and interest rate risks associated with variable rate debt. Further, there should be a debt management plan that mitigates, to the extent possible, these risks over the life of the debt. The following guidelines should apply to the issuance of variable rate debt:

- a) *Expected reduction in total borrowing cost.* In determining reasonably expected savings, a comparison should be made between a fixed rate financing at then current interest rates and a variable rate transaction, based on an appropriate floating rate index. The cost of the variable rate transaction should take into account all fees associated with the borrowing which would not typically be incurred in connection with fixed rate bonds, such as tender agent, remarketing agent, or liquidity provider fees.
- b) *Limitation on variable rate debt.* The amount of variable rate debt and interest derivative exposure is dependent on several factors associated with these types of debts. Included in the factors associated with these instruments are the university's/DSO's operating

flexibility and tightness of budget, access to short and long term capital, the likelihood of a collateral call or termination payment, and the university's/DSO's financial expertise. The level to which universities may utilize variable rate debt obligation (VRDO) and interest derivatives (like swaps, collars, and caps) is subject to an understanding of the risks associated and a debt policy that adequately addresses the additional risks.

c) *Budgetary controls.* To avoid a situation in which debt service on variable rate bonds exceeds the annual amount budgeted, the following guidelines should be followed in establishing a variable rate debt service budget:

i) A principal amortization schedule should be established, with provision made for payment of amortization installments in each respective annual budget;

ii) Provide for payment of interest for each budget year using an assumed budgetary interest rate which allows for fluctuations in interest rates on the bonds without exceeding the amount budgeted. The budgetary interest rate may be established by: (1) using an artificially high interest rate given current market conditions; or (2) setting the rate based on the last 12 months actual rates of an appropriate index plus a 200 basis point cushion or spread to anticipate interest rate fluctuations during the budget year. The spread should be determined by considering the historical volatility of short-term interest rates, the dollar impact on the budget and current economic conditions and forecasts; or, (3) any other reasonable method determined by the university or DSO and approved by the BOG;

iii) The amount of debt service actually incurred in each budget year should be monitored monthly by the university or DSO to detect any significant deviations from the annual budgeted debt service. Any deviations in interest rates which might lead to a budgetary problem should be addressed immediately; and

iv) As part of the effort to monitor actual variable rate debt service in relation to the budgeted amounts and external benchmarks, the university or DSO should establish a system to monitor the performance of any service provider whose role it is to periodically reset the interest rates on the debt, i.e., the remarketing agent or auction agent.

d) *Establish a hedge with short-term investments.* In determining the appropriate amount of variable rate debt which may be issued by the universities or their DSOs, consideration should be given to mitigating the variable interest rate risk by creating a hedge with short-term investments. This “hedge” mitigates the financial impact of debt service increases due to higher interest rates because, as debt service increases, the university’s or DSO’s earnings on short-term investments also increases. Appropriate personnel should monitor the hedge monthly. Short-term investment as a hedge is one of several methods of mitigating interest rate risk. The ratio of such short-term investments to variable debt needs to be examined in conjunction with other interest rate risk hedging, striking an overall balance to minimize interest rate risk.

- e) *Variable interest rate ceiling.* The bond documents should include an interest rate ceiling of no greater than 12%.
- f) *Mitigating interest rate risks with derivatives.* Universities and DSOs are allowed to use various derivatives to mitigate the risk of rising interest rates on variable rate debt. However, the introduction of these derivatives also presents other risks for which the university must mitigate. These risks include rollover risk, basis risk, tax event risk, termination risk, counterparty credit risk and collateral posting risk. As a minimum, a university/DSO engaging in this type of interest rate risk mitigation must provide:
- i) Evidence that the counterparty is rated at a minimum of an A/A1; and
  - ii) Provide a swap management plan that details the following:
    - a) Why the university is engaging in the swap and what the objectives of the swap are.
    - b) The swap counterparty's rating.
    - c) An understanding by the issuer of the cash flow projections that detail costs and benefits for the swap.
    - d) The plan of action addressing the aforementioned risks associated with swaps.
    - e) Identifying the events that trigger an early termination (both voluntary and involuntary) under the swap documents, the cost of this event and how such would be paid.
    - f) Identifying the method for rehedging variable rate exposure should early termination be exercised.
    - g) A list of key personnel involved in monitoring the terms of the swap and counterparty credit worthiness.
- g) *Liquidity.* One of the features typical of variable rate debt instruments is the bondholder's right to require the issuer to repurchase the debt at various times and under certain conditions. This, in theory, could force the issuer to repurchase large amounts of its variable rate debt on short notice, requiring access to large amounts of liquid assets. There are generally two methods for addressing this issue. With the first method, issuers which do not have large amounts of liquid assets may establish a liquidity facility with a financial institution which will provide the money needed to satisfy the repurchase. The liquidity provider should have a rating of A1/P1 or higher. The liquidity agreement does not typically run for the life of long-term debt. Accordingly, there is a risk that the provider will not renew the agreement or that it could be renewed only at substantially higher cost. Similar issues may arise if the liquidity provider encounters credit problems or an event occurs which results in early termination of the liquidity arrangement; in



either case the issuer must arrange for a replacement liquidity facility. With the second method, issuers with significant resources may choose to provide their own liquidity. This approach eliminates the costs that would be charged by a third party liquidity provider and could mitigate the renewal/replacement risk. If a university/DSO chose to provide its own liquidity, the institution must maintain liquid assets or facilities equal to 100% of the outstanding VRDOs.

h) Submission of periodic reports. The university will prepare and submit to the BOG an annual report showing the position during the previous period of the university or DSO variable rate debt with respect to the following measures:

i) the total principal amount of variable rate debt to principal amount of total debt;

ii) the amount of debt service accrued during the reporting period in relation to the pro-rata amount of annual budgeted debt service for the reporting period. If the amount of debt service which accrued during the reporting period exceeded the pro-rata amount of annual budgeted debt service for the period, the university shall explain what actions were taken to assure that there would be sufficient revenues and budget authority to make timely payments of debt service during the subsequent years; and

iii) the amount of variable rate debt in relation to the amount of the university's and/or DSO's short-term investments, and any other strategies used to hedge interest rate risk.

### ***Other Types of Financings***

*Refunding Bonds.* Generally, refunding bonds are issued to achieve debt service savings by redeeming high interest rate debt with lower interest rate debt. Refunding bonds may also be issued to restructure debt or modify covenants contained in the bond documents. Current tax law limits to one time the issuance of tax-exempt advance refunding bonds to refinance bonds issued after 1986. There is no similar limitation for tax-exempt current refunding bonds. The following guidelines should apply to the issuance of refunding bonds, unless circumstances warrant a deviation there from:

a) Refunding bonds should be structured to achieve level annual debt service savings.

b) The life of the refunding bonds should not exceed the remaining life of the bonds being refunded.

c) Advance refunding bonds issued to achieve debt service savings should have a minimum target savings level measured on a present value basis equal to 5% of the par amount of the bonds being advance refunded. The 5% minimum target savings level for advance refundings should be used as a general guide to guard against prematurely using the one advance refunding opportunity for post-1986 bond issues. However, because of the numerous considerations involved in the sale of advance refunding bonds, the 5% target

should not prohibit advance refundings when the circumstances justify a deviation from the guideline.

- d) Refunding bonds which do not achieve debt service savings may be issued to restructure debt or provisions of bond documents if such refunding serves a compelling university interest.

*Certificates of Participation and Lease-Type Financing.* The universities or their DSOs may utilize these financing structures for all purposes, but it shall be considered as debt for the purposes of these guidelines and the universities shall always budget and make available monies necessary to pay debt service, notwithstanding the right to cancel the lease. Additionally, for lease purchase financings of equipment, universities and DSOs should consider using the State's consolidated equipment financing program if it will reduce costs and ensure a market interest rate on the financing.

#### **IV. METHOD OF SALE AND USE OF PROFESSIONALS**

##### **Analysis of Method of Sale**

It is in the best interests of the universities and their DSOs to use the method of sale for their debt that is expected to achieve the best sale results. Based upon the facts and circumstances with regard to each individual financing, it may be more appropriate to sell debt through either a competitive sale or through negotiation. Accordingly, the universities and their DSOs may utilize either a competitive or negotiated sale. If, however, a request is made for a DSO to sell debt using a negotiated sale, the university must provide the BOG with an analysis showing that a negotiated sale is desirable. The analysis should include, but not necessarily be limited to, a consideration of the following factors:

- a) Debt Structure
  - i) pledged revenues – strong revenue stream vs. limited revenue base;
  - ii) security structure – conventional resolution, cash flow, rate and coverage covenants vs. unusual or weak covenants;
  - iii) debt instrument – traditional serial and term bonds vs. innovative, complex issues requiring special marketing; and
  - iv) size – a smaller transaction of a size which can be comfortably managed by the market vs. a large size which the market cannot readily handle.

b) Credit Quality

i) ratings – “A” or better vs. below single “A”; and

ii) outlook – stable vs. uncertain.

c) Issuer

i) type of organization – well-known, general purpose vs. special purpose, independent authority;

ii) frequency of issuance – regular borrower vs. new or infrequent borrower; and

iii) market awareness – active secondary market vs. little or no institutional awareness.

d) Market

i) interest rates – stable; predictable vs. volatile;

ii) supply and demand – strong investor demand, good liquidity vs. oversold, heavy supply; and

iii) changes in law – none vs. recent or anticipated

Bonds may also be sold through a private or limited placement, but only if it is determined that a public offering through either a competitive or negotiated sale is not in the best interests of the university or DSO.

***Allocation of Bonds***

In the event a negotiated sale by a DSO is determined by the university to be in the university’s best interest, syndicate rules shall be established which foster competition among the syndicate members and ensure that all members of the syndicate have an opportunity to receive a fair and proper allocation of bonds based upon their ability to sell the bonds.

***Report on Sale of Bonds***

The university or DSO shall prepare a report on the sale of bonds or anytime it incurs debt. The report shall be prepared and provided to the BOG as soon as practicable but in no event later than seven business days after closing the transaction including the following:

a) The amount of the debt.

b) The interest rate on the debt.

- c) A final debt service schedule or estimated debt service schedule if a variable rate debt or the interest rate is subject to adjustment.
- d) Any aspect of the transaction that was different from the transaction submitted for approval.
- e) Itemized list of all fees and expenses incurred on the transaction.
- f) For negotiated sale of bonds:
  - i) the underwriters' spread detailing the management fee;
  - ii) takedown by maturity and aggregate takedown;
  - iii) any risk component and an itemized list of the expense component;
  - iv) orders placed by each underwriter and final bond allocation;
  - v) total compensation received by each underwriter; and
  - vi) any report or opinion of the financial advisor.
- g) Final official statement for publicly offered bonds.
- h) Bond insurance or any other form of credit enhancement and the terms thereof.
- i) Credit rating reports.

### ***Selection of Financing Professionals***

The use of underwriters for negotiated financings and the use of financial advisors for negotiated and competitive offerings is necessary to assist in the proper structuring and sale of debt. To assure fairness and objectivity in the selection of professionals and to help select the most qualified professional, the selection of underwriters and financial advisors should be accomplished through a competitive selection process. A competitive selection process allows the universities and their DSOs to compare more professionals and obtain the best price and level of service.

## ***V. DISCLOSURE***

### ***Primary Disclosure***

Universities and DSOs shall use best practices in preparing disclosure documents in connection with the public offer and sale of debt so that accurate and complete financial and operating information needed by the markets to assess the credit quality and risks of each particular debt issue is provided.

The disclosure recommendations of the Government Finance Officers Association's "Disclosure for State and Local Governments Securities," and the National Federation of Municipal Analysts' "Recommended Best Practices in Disclosure for Private Colleges and Universities" should be followed to the extent practicable, specifically including the recommendation that financial statements be prepared and presented according to generally accepted accounting principles.

#### *Continuing Disclosure*

DSOs shall fulfill all continuing disclosure requirements set forth in the transaction documents and as required under Rule 15c2-12 of the Securities and Exchange Commission.

#### **VI. POST-ISSUANCE CONSIDERATIONS**

##### *Investment of Proceeds of Debt Issued by DSOs*

*Construction Funds.* Funds held for payment of debt service and all other funds held as required by the documents of any financing shall be invested consistent with the terms of the Financing Documents.

##### *Arbitrage Compliance*

The university will comply with federal arbitrage regulations. Any arbitrage rebate liabilities should be calculated and funded annually.

#### **VII. EFFECT**

The foregoing guidelines shall be effective immediately and may be modified from time to time by the Board of Governors as circumstances warrant. The guidelines are intended to apply prospectively to all university and DSO debt, and not to adversely affect any university or DSO debt currently outstanding or projects approved by the BOG or University Boards of Trustees prior to, or existing, as of January 26, 2006.

## 1010.62 Revenue bonds and debt.--

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

(a) "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.
2. Any other acquisition of equipment or software.

(b) "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 or for the acquisition, construction, improvement, or purchase of capital outlay projects.

(c) "Direct-support organization" means an organization created pursuant to s. 1004.28 or any entity specifically established to incur debt.

(d) "Revenue bonds" means any obligation that constitutes a revenue bond pursuant to s. 11(d), Art. VII of the State 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 be secured by or payable only from those revenues authorized for such purpose, including the Capital Improvement Trust Fund fee, the building fee, the health fee, the 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, health care, research or research-related activities, food service, 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. Revenues from the activity and service fee and the athletic fee may be used to pay and secure revenue bonds except that the annual debt service shall not exceed an amount equal to 5 percent of the fees collected during the most recent 12 consecutive months for which collection information is available prior to the sale of the bonds. 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, directly or indirectly, tuition, the financial aid 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 may not be used to secure revenue bonds of another unless the Board of Governors, after review and analysis, determines that the facilities being financed are functionally related to the auxiliary enterprise revenues being used to secure such revenue bonds.

(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 that 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 that 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 that 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 that are deemed necessary or advisable to enhance the security of the revenue bonds, or the marketability thereof, and that are customary in accordance with the market requirements for the sale of such revenue bonds.

(c) Revenue bonds issued pursuant to this subsection are not required to be validated pursuant to chapter 75.

(3)(a) A state university or direct-support organization may not issue debt without the approval of the Board of Governors. The Board of Governors may approve the issuance of debt by a state university or a direct-support organization only when such debt is used to finance or refinance capital outlay projects. The debt may be secured by or payable only from those revenues authorized for such purpose, including the health fee, the 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, health care, research or research-related activities, food service, retail sales, athletic activities, or other similar services. Revenues derived from the activity and service fee and the athletic fee may be used to pay and secure debt except that the annual debt service shall not exceed an amount equal to 5 percent of the fees collected during the most recent 12 consecutive months for which collection information is available prior to incurring the debt. 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 5 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, directly or indirectly, tuition, the financial aid 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 may not be used to secure debt of another unless the Board of Governors, after review and analysis, determines that the facilities being financed are functionally related to the auxiliary enterprise revenues being used to secure such debt. Debt may not 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 5 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 secured by revenues adequate to provide for all payments relating to the debt;
4. 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
5. Is consistent with the requirements of any policies or criteria adopted by the Board of Governors for the approval of debt.

(c) Notwithstanding paragraphs (a) and (b), state universities and direct-support organizations may engage in the following activities without the approval of the Board of Governors:

1. State universities may lease-purchase equipment and software in accordance with the deferred-purchase provisions in chapter 287 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 refinancing thereof, does not exceed 5 years or the estimated useful life of the equipment or software, whichever is shorter;
2. Direct-support organizations may issue promissory notes and grant conventional mortgages for the acquisition of real property; and
3. 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 5-year capital improvement plan that has been approved by the Board of Governors and the maturity of the debt, including any extension, renewal, or refunding, does not exceed 5 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 under this section 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 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 approves capital outlay projects meeting 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 that are 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, health care, research or research-related activities, food service, retail sales, or student activities 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 refinancing thereof, does not exceed 5 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 in order 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 under this section. Such policies may include categories of debt, other than revenue bonds, which may be issued without approval of the specific issuance by the Board of Governors if 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 that were lawfully entered into before 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 increase the financial obligation of the Board of Governors, a state university, or a direct-support organization.

**History.**--s. 5, ch. 2006-27.