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CHAPTER 41.

STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT

**SECTION 11‑41‑10.** Short title.

This chapter may be cited as the "State General Obligation Economic Development Bond Act.

HISTORY: 2002 Act No. 254, Section 1.

**SECTION 11‑41‑20.** Increase in general obligation debt limitation.

As incident to this chapter, the General Assembly finds:

(1) That by Section 4, Act 10 of 1985, the General Assembly ratified an amendment to Section 13(6)(c), Article X, Constitution of this State, 1895. One amendment in Section 13(6)(c), Article X limits the issuance of general obligation debt of the State such that maximum annual debt service on all general obligation bonds of the State, excluding highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, must not exceed five percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds.

(2) That Section 13(6)(c), Article X, further provides that the percentage rate of general revenues of the State by which general obligation bond debt service is limited may be reduced to four or increased to seven percent by legislative enactment passed by a two‑thirds vote of the total membership of the Senate and a two‑thirds vote of the total membership of the House of Representatives.

(3) That pursuant to Section 13(6)(c), Article X, the General Assembly, in Act 254 of 2002 and Act 187 of 2004, increased to five and one‑half percent the percentage rate of the general revenues of the State by which general obligation bond debt service is limited with the additional debt service capacity available at any time as a consequence of the increase available only for the repayment of general obligation bonds issued to provide infrastructure required for significant economic development projects within the State, including those related to the life sciences industry that create high‑paying jobs and meet certain investment criteria.

(4) That pursuant to Section 13(6)(c), Article X, the General Assembly, in Act 187 of 2004, increased to six percent the percentage rate of the general revenues of the State by which general obligation bond debt service is limited with the additional debt service capacity available at any time as a consequence of the increase available only for the repayment of general obligation bonds issued to advance economic development and to facilitate and increase research within the State at the research universities.

(5) That Section 13(5), Article X of the Constitution of this State, 1895, provides that if general obligation debt be authorized by two‑thirds of the members of each House of the General Assembly, then there shall be no conditions or restrictions limiting the incurring of such indebtedness except those restrictions and limitations imposed in the authorization to incur such indebtedness, and the provisions of Section 13(3), Article X of the Constitution of this State.

(6) That Section 13(5), Article X provides additional constitutional authority for bonds authorized by this chapter.

(7) In order to continue fostering economic development within the State as set out in subsections (3) and (4) of this section, it is in the best interests of the State that the General Assembly authorize an additional amount of general obligation debt pursuant to Section 13(5), Article X, of the Constitution of this State, with such indebtedness limited to a principal amount of general obligation debt not exceeding one hundred seventy million dollars at any time, provided that no more than a total of one hundred seventy million dollars of proceeds may be used for any one project regardless of available capacity.

HISTORY: 2002 Act No. 254, Section 1; 2004 Act No. 187, Section 3.A; 2009 Act No. 124, Section 5.B.

**SECTION 11‑41‑30.** Definitions.

As used in this chapter:

(1) "Department" means the State Department of Commerce.

(2)(a) "Economic development project" or " project" means a project in this State as defined in Section 12‑44‑30(16) in which a total of at least four hundred million dollars is invested in the project by the sponsor and at least four hundred new jobs are created at the project by the sponsor.

(b) "Project" also includes a life sciences facility in this State defined as a business engaged in pharmaceutical, medicine, and related laboratory instrument manufacturing, processing, or research and development. Included in this definition are the following North American Industrial Classification Systems, NAICS Codes published by the Office of Management and Budget of the federal government:

(i) 3254 Pharmaceutical and Medical Manufacturing;

(ii) 334516 Analytical Laboratory Instrument Manufacturing.

With respect to a life sciences facility, the sponsor must invest in the project at least one hundred million dollars and create at the project at least two hundred new jobs with an average annual cash compensation level of at least twice the annual per capita income in this State. Per capita income must be determined by using the most recent per capita income data available at the time the request for funding is made pursuant to this chapter.

(c) To qualify as an economic development project as defined in subsections (a) and (b) above for purposes of this chapter, the investment and job creation requirements must be attained no later than the eighth year after the project first begins operations.

(d) "Economic development project" or "project" also includes training and research facilities and the necessary equipment therefor, owned by the State or any agency, instrumentality, or political subdivision thereof, for a program for purposes of providing the necessary trained personnel to support the state's economically vital tourism industry. A project as defined in this subsection is also referred to herein as a "tourism training infrastructure project". A tourism training infrastructure project is not subject to the job creation and capital investment requirements imposed on projects as defined in subsections (a) and (b) above.

(e) "Economic development project" or "project" also includes a national and international convention and trade show center in this State, owned by the State or any agency, instrumentality, or political subdivision thereof. A "national and international convention and trade show center" means a not less than two hundred thousand square foot facility consisting of meeting and exhibit space at which are held major conventions, trade shows, and special events that bring delegates into the State and community including, but not limited to, consumer shows, sporting events, and other meetings. A national and international convention and trade show center is not subject to the job creation and capital investment requirements imposed on projects as defined in subsections (a) and (b) above.

(3) "Infrastructure" must relate specifically to, but is not required to be located at, the economic development project and means:

(a) land acquisition;

(b) site preparation;

(c) road and highway improvements;

(d) rail spur construction;

(e) water service;

(f) wastewater treatment;

(g) employee training which may include equipment used for such purpose;

(h) environmental mitigation;

(i) training and research facilities and the necessary equipment therefor.

(j) buildings and renovations to buildings whether new or existing (i) associated with an economic development project as defined in Section 11‑41‑30(2) that includes air carrier hub terminal facilities as defined in Section 55‑11‑500(a), or (ii) located on land that is owned by the State or an agency, instrumentality, or political subdivision thereof.

(4) "Investment" means money expended by the sponsor on capital assets directly related to the economic development project and does not include amounts expended in aid of the project by the State pursuant to this chapter or otherwise, or amounts expended in aid of the project by a county, municipality, or a special purpose district, however financed.

(5) "Sponsor" means a sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity or any combination of these entities.

(6) "State general obligation economic development bonds" or "economic development bonds" or "bonds" means general obligation bonds of this State issued under the authority of this chapter.

(7) "New job" means a full‑time job created in this State at an economic development project. The term does not include a job created when an employee is shifted from an existing location in this State to a new or expanded facility whether the transferred job is from, or to, a project of the sponsor or a related person. A related person includes any entity or person that bears a relationship to the sponsor as described in Section 267 of the Internal Revenue Code of 1986. Full time means a job requiring a minimum of thirty‑five hours of an employee's time a week for the entire normal year of sponsor operations or a job requiring a minimum of thirty‑five hours of an employee's time a week for a year if the employee was hired initially for or transferred to the project. Two half‑time jobs are considered one full‑time job. A half‑time job is a job requiring a minimum of twenty hours of an employee's time a week otherwise meeting the full‑time job requirements.

HISTORY: 2002 Act No. 254, Section 1; 2004 Act No. 187, Section 3.B; 2004 Act No. 227, Section 3.D; 2005 Act No. 33, Section 2; 2005 Act No. 114, Sections 2.A to 2.C.

**SECTION 11‑41‑40.** Issuance of bonds pursuant to chapter.

To obtain funds for allocation to the department or to the State or agency, instrumentality, or political subdivision, as the case may be, for financing of infrastructure, there are issued from time to time state general obligation economic development bonds under the conditions prescribed by this chapter.

HISTORY: 2002 Act No. 254, Section 1; 2005 Act No. 114, Section 3.

**SECTION 11‑41‑50.** Maximum annual debt service on all general obligation bonds of State; additional authorization for issuance.

(A) Pursuant to Section 13(6)(c), Article X of the Constitution of this State, 1895, the General Assembly provides that economic development bonds may be issued pursuant to this subsection at such times as the maximum annual debt service on all general obligation bonds of the State, including economic development bonds outstanding and being issued, but excluding research university infrastructure bonds pursuant to Chapter 51 of this title, highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, will not exceed five and one‑half percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds. The State at any time may not issue general obligation bonds, excluding economic development bonds issued pursuant to this chapter, research university infrastructure bonds issued pursuant to Chapter 51 of this title, highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, if at the time of issuance the maximum annual debt service on all such general obligation bonds, outstanding and being issued exceeds five percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds.

(B) In addition to and exclusive of the economic development bonds provided for and issued pursuant to subsection (A) of this section, the General Assembly provides that pursuant to Section 13(5), Article X of the Constitution of this State, 1895, (i) additional economic development bonds may be issued under this chapter in an aggregate principal amount that does not exceed one hundred seventy million dollars, and (ii) in addition to the authorization contained in the preceding clause, additional economic development bonds may be issued provided that the aggregate principal amount of economic development bonds then outstanding under clauses (i) and (ii), together with the economic development bonds to be issued pursuant to this clause (ii), does not at any time exceed the principal amount specified in clause (i). From the proceeds of the economic development bonds authorized pursuant to this subsection, no more than a total of one hundred seventy million dollars of proceeds may be used for any one project regardless of available capacity.

HISTORY: 2002 Act No. 254, Section 1; 2004 Act No. 184, Section 9; 2009 Act No. 124, Section 5.C.

**SECTION 11‑41‑60.** Maximum annual debt service on bonds issued pursuant to chapter.

The maximum annual debt service on bonds issued pursuant to subsection (A) of Section 11‑41‑50 must not exceed one‑half of one percent of the general revenues for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds. Bonds issued pursuant to subsection (B) of Section 11‑41‑50 shall not be subject to the limitation on maximum annual debt service prescribed by Section 13(6)(c), Article X of the Constitution of this State, 1895.

HISTORY: 2002 Act No. 254, Section 1; 2009 Act No. 124, Section 5.C.

**SECTION 11‑41‑70.** Bond notification requirements.

Before issuing economic development bonds, the department or in the case of a tourism training infrastructure project or a national and international convention and trade show center, the State or agency, instrumentality, or political subdivision thereof that will own such project shall notify the Joint Bond Review Committee and the State Budget and Control Board of the following:

(1) the amount then required for allocation to the department or to the State or agency, instrumentality, or political subdivision thereof to defray the costs of the proposed infrastructure;

(2) a description of the infrastructure for which the bonds are to be issued, including a certification by the secretary of the department or in the case of a tourism training infrastructure project or a national and international convention and trade show center by an appropriate official of the State or agency, instrumentality, or political subdivision thereof that will own such project that the economic development project to benefit from the expenditure of the proceeds of the bonds consists of the following:

(a) in the case of an economic development project as defined in Section 11‑41‑30(2)(a), an investment by the sponsor at the project of not less than four hundred million dollars and creation by the sponsor at the project of no fewer than four hundred new jobs; or

(b) in the case of a life sciences facility, an investment by the sponsor in the project of not less than one hundred million dollars and creation by the sponsor at the project of no fewer than two hundred new jobs with an average cash compensation of at least twice the per capita income in this State. Per capita income must be determined by using the most recent per capita income data available at the time the request for funding is made pursuant to this chapter; or

(c) in the case of a tourism training infrastructure project, training and research facilities including the necessary equipment therefor, owned by the State or any agency, instrumentality, or political subdivision thereof, for a program for which project there has been executed an agreement between the State and the state agency, instrumentality, or political subdivision owning such facilities providing that, upon the termination of the program the proceeds of the sale of any facilities financed with the proceeds of bonds issued pursuant to this chapter will be reimbursed by such state agency, instrumentality, or political subdivision to the general fund of the State; or

(d) in the case of a national and international convention and trade show center, partial payment of costs for infrastructure associated with a meeting and exhibit space as defined in Section 11‑41‑30(2)(e), owned by the State or any agency, instrumentality, or political subdivision thereof for which project there has been executed an agreement between the State and the state agency, instrumentality, or political subdivision owning such meeting and exhibit space providing that, upon either the sale of the meeting and exhibit space partially financed with proceeds of bonds issued pursuant to this chapter or the failure of the state agency, instrumentality, or political subdivision to (1) purchase land within eighteen months of the effective date of this item (d), (2) begin construction within five years of the effective date of this item (d) of a meeting and exhibit space as defined in Section 11‑41‑30(2)(e), or (3) complete the project within ten years of the effective date of this item (d), then the state agency, instrumentality, or political subdivision owning such meeting and exhibit space will reimburse the amount of bond proceeds to the general fund of the State, plus interest thereon from the date of expenditure to the date of such reimbursement at a rate equal to the total interest cost rate on the issuance of bonds used to make such expenditure. The state agency, instrumentality, or political subdivision must notify the State Treasurer immediately upon the sale of any land acquired with proceeds of bonds issued pursuant to this chapter. The state agency, instrumentality, or political subdivision must also provide sufficient proof to the State Treasurer that the deadlines to purchase land, begin construction, and complete the project imposed pursuant to this item have been met. If the state agency, instrumentality, or political subdivision sells the land or fails to meet any of these deadlines, then the State Treasurer shall take the appropriate action necessary to recover all bond proceeds and interest disbursed to the state agency, instrumentality, or political subdivision to finance the project;

(3) a tentative time schedule setting forth the period of time during which the sum requested is to be expended;

(4) a debt service table showing the annual principal and interest requirements for all bonds then outstanding; and

(5) the total amount of all bonds issued.

HISTORY: 2002 Act No. 254, Section 1; 2004 Act No. 187, Section 3.C; 2005 Act No. 114, Section 4.

**SECTION 11‑41‑80.** Adoption of resolution effecting issue of bonds.

Following the receipt of the notification presented pursuant to Section 11‑41‑70 and after approval by the Joint Bond Review Committee, the State Budget and Control Board, by resolution duly adopted, shall effect the issue of bonds, or pending the issue of the bonds, effect the issue of bond anticipation notes pursuant to Chapter 17 of this title.

HISTORY: 2002 Act No. 254, Section 1.

**SECTION 11‑41‑90.** Authorizing resolution.

To effect the issuance of bonds, the State Budget and Control Board shall adopt a resolution providing for the issuance of bonds pursuant to the provisions of this chapter. The authorizing resolution must include:

(1) a statement of whether the bonds are being authorized and issued pursuant to Section 11‑41‑50(A) or Section 11‑41‑50(B);

(2) a schedule showing the aggregate of bonds issued, the annual principal payments required to retire the bonds, and the interest on the bonds;

(3) the amount of bonds proposed to be issued;

(4) a schedule showing future annual principal requirements and estimated annual interest requirements on the bonds to be issued; and

(5) certificates evidencing that the provisions of Sections 11‑41‑50 and 11‑41‑60 have been or will be met.

HISTORY: 2002 Act No. 254, Section 1; 2009 Act No. 124, Section 5.D.

**SECTION 11‑41‑100.** Bond maturity date and terms; determination of interest rate.

The bonds must bear the date and mature at the time that the resolution provides, except that a bond may not mature more than thirty years from its date of issue. The bonds may be in the denominations, be payable in the medium of payment, be payable at the place and at the time, and be subject to redemption or repurchase and contain other provisions determined by the State Budget and Control Board before their issue. The bonds may bear interest payable at the times and at the rates determined by the State Budget and Control Board.

HISTORY: 2002 Act No. 254, Section 1.

**SECTION 11‑41‑110.** Bonds exempt from taxation.

All bonds issued under this chapter are exempt from taxation as provided in Section 12‑2‑50.

HISTORY: 2002 Act No. 254, Section 1.

**SECTION 11‑41‑120.** Executive signature and State seal requirements.

All bonds issued under this chapter must be signed by the Governor and the State Treasurer and attested by the Secretary of State. The Governor, State Treasurer, and Secretary of State may sign these obligations by a facsimile of their signatures. The Great Seal of the State must be affixed to, impressed on, or reproduced upon each of them. The delivery of the bonds executed and authenticated, as provided in the resolution, is valid notwithstanding changes in officers or seal occurring after the execution or authentication.

HISTORY: 2002 Act No. 254, Section 1; 2004 Act No. 187, Section 3.D.

**SECTION 11‑41‑130.** Payment of principal and interest.

For the payment of the principal and interest on all bonds issued and outstanding pursuant to this chapter there is pledged the full faith, credit, and taxing power of this State, and in accordance with the provisions of Section 13(4), Article X of the Constitution of this State, 1895, the General Assembly allocates on an annual basis sufficient tax revenues to provide for the punctual payment of the principal and interest on the debt authorized by this chapter.

HISTORY: 2002 Act No. 254, Section 1.

**SECTION 11‑41‑140.** Sale of bonds.

Bonds must be sold by the Governor and the State Treasurer upon sealed proposals, after publication of notice of the sale one or more times at least seven days before the sale, in a financial paper published in New York City which regularly publishes notices of sale of state or municipal bonds. The bonds may be awarded upon the terms and in the manner as prescribed by the State Treasurer. The right is reserved to reject all bids and to readvertise the bonds for sale. For the purpose of bringing about successful sales of the bonds, the State Treasurer may do all things ordinarily and customarily done in connection with the sale of state or municipal bonds. All expenses incident to the sale of the bonds must be paid from the proceeds of the sale of the bonds.

HISTORY: 2002 Act No. 254, Section 1.

**SECTION 11‑41‑150.** Application of proceeds; liability of purchasers for misapplication.

The proceeds of the sale of bonds must be received by the State Treasurer and applied by the State Treasurer to the purposes for which issued, except that the accrued interest, if any, may be used to discharge in part the first interest to become due on the bonds, but the purchasers of the bonds in no way are liable for the proper application of the proceeds to the purposes for which they are intended.

HISTORY: 2002 Act No. 254, Section 1; 2004 Act No. 184, Section 3.

**SECTION 11‑41‑160.** Purchase by fiduciaries.

It is lawful for all executors, administrators, guardians, and other fiduciaries to invest any monies in their hands in bonds issued pursuant to this chapter.

HISTORY: 2002 Act No. 254, Section 1.

**SECTION 11‑41‑170.** Expenditure of proceeds.

The proceeds received from the issuance of bonds, after deducting the costs of issuance, must be expended only for the purpose of providing infrastructure.

HISTORY: 2002 Act No. 254, Section 1.

**SECTION 11‑41‑180.** Infrastructure procurement procedures for research universities.

All procurements of infrastructure, as defined in Section 11‑41‑30 and owned by a research university, as defined in Section 11‑51‑30(5), shall be exempt from Title 11, Chapter 35, except that such research university must work in conjunction with the Budget and Control Board's Chief Procurement Officer to establish alternative procurement procedures. The research university shall submit its alternative procurement procedures to the State Budget and Control Board for approval. Such procurement process shall include provisions for audit and recertification.

HISTORY: 2004 Act No. 187, Section 3.E.