**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 158 TO TITLE 59 SO AS TO ENACT THE “SOUTH CAROLINA EDUCATION FACILITY AUTHORITY ACT” IN ORDER TO PROVIDE ASSISTANCE TO ENABLE SCHOOL DISTRICTS TO PROVIDE SCHOOL FACILITIES, TO ESTABLISH A BOARD OF DIRECTORS, TO PROVIDE THE POWERS AND DUTIES OF THE AUTHORITY, TO PROVIDE FOR FUNDING OF THE AUTHORITY, TO AUTHORIZE THE ISSUANCE OF SOUTH CAROLINA EDUCATION FACILITY REVENUE BONDS, AND TO SPECIFY THE MANNER IN WHICH BOND PROCEEDS ARE ALLOCATED TO SCHOOL DISTRICTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 59 of the 1976 Code is amended by adding:

“CHAPTER 158

South Carolina Education Facility Authority Act

Article 1

South Carolina Education Facility Authority

Section 59‑158‑10. This chapter may be referred to as the ‘South Carolina Education Facility Authority Act’.

Section 59‑158‑20. It is declared that, for the benefit of the people of this State, the increase of their commerce, welfare, and prosperity, and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the full opportunity to learn and to develop their intellectual and mental capacities; that it is essential that school districts of this State be provided with adequate educational facilities, access to technology, and appropriate additional means to assist the youth in achieving the required levels of learning and development of their intellectual and mental capacities; and that it is the purpose of this chapter to provide a measure of assistance to enable school districts in this State to provide the facilities and structures which are needed to accomplish the purposes of this chapter, all to the public benefit and good, to the extent and manner provided in this chapter.

Section 59‑158‑30. (A) There is created a body corporate and politic and an instrumentality of the State to be known as the South Carolina Education Facility Authority.

(B) The Authority is governed by a board of directors as provided in this chapter.

(C) The corporate purpose of the Authority is to select and assist in the provision of financial assistance for the construction or enhancement of school facilities to school districts. The exercise by the Authority of a power conferred in this chapter is an essential public function.

Section 59‑158‑40. As used in this chapter:

(1) ‘Authority’ means the South Carolina Education Facility Authority.

(2) ‘Board’ means the board of directors of the Authority.

(3) ‘Bonds’ means any bonds, notes, debentures, interim certificates, grant or revenue anticipation notes, or any other evidence of indebtedness of the Authority incurred pursuant to Article 3.

(4) ‘School district’ means a public body corporate and politic operating as a school district under the provisions of Chapter 17, Title 59.

(5) ‘School facilities’ means only those facilities defined as ‘school facilities’ in Section 59‑144‑30.

(6) ‘South Carolina Education Facility Revenue Bonds’ mean bonds issued under the authority of this chapter.

Section 59‑158‑50. The board of directors is the governing board of the Authority. The board consists of nine voting directors. The board shall be composed of one director from each congressional district elected by the General Assembly in a joint assembly, one at‑large member appointed by the Governor, and one at‑large member appointed by the State Treasurer. Elected directors shall serve a term of four years, and appointed directors shall serve terms coterminous with those of their appointing authority; provided, however, that of the first members of the board elected by the General Assembly, members elected from congressional districts two, four, and six shall serve initial terms of two years each. The chairman and vice chairman must be elected by the board. Directors shall serve until their successor is appointed or elected, as applicable, and qualified. Any person elected or appointed to fill a vacancy must be elected or appointed in the same manner, as applicable, and shall serve for the remainder of the unexpired term.

Section 59‑158‑60. (A) In addition to the powers contained elsewhere in this chapter, the Authority has all power necessary, useful, or appropriate to fund, operate, and administer the Authority, and to perform its other functions including, but not limited to, the power to:

(1) have perpetual succession;

(2) adopt, promulgate, amend, and repeal bylaws, not inconsistent with provisions in this chapter for the administration of the Authority’s affairs and the implementation of its functions including the right of the board to select qualifying projects and to provide loans and other financial assistance;

(3) sue and be sued in its own name;

(4) have a seal and alter it at its pleasure, although the failure to affix the seal does not affect the validity of an instrument executed on behalf of the Authority;

(5) acquire, hold, and sell bonds at prices and in a manner as the board determines advisable;

(6) enter into contracts, arrangements, and agreements with persons and execute and deliver all instruments necessary or convenient to the exercise of the powers granted in this chapter;

(7) enter into agreements with a department, agency, or instrumentality of the United States or of this State or another state for the purpose of planning and providing for the financing of school facilities;

(8) establish:

(a) policies and procedures for the making and administering of financial assistance; and

(b) fiscal controls and accounting procedures to ensure proper accounting and reporting by the Authority, the State Department of Education, the State Board of Education, and school districts;

(9) procure insurance, guarantees, letters of credit, and other forms of collateral or security or credit support from any public or private entity, including any school district, department, agency, or instrumentality of the United States or this State, for the payment of any bonds issued by it, including the power to pay premiums or fees on any insurance, guarantees, letters of credit, and other forms of collateral or security or credit support;

(10) borrow money through the issuance of bonds and other forms of indebtedness as provided in this chapter;

(11) expend funds to obtain accounting, management, legal, financial consulting, and other professional services necessary to the operations of the Authority;

(12) expend funds credited to the Authority as the board determines necessary for the costs of administering the operations of the Authority;

(13) establish advisory committees as the board determines appropriate, which may include individuals from the private sector with banking and financial expertise;

(14) procure insurance against losses in connection with its property, assets, or activities including insurance against liability for its acts or the acts of its employees or agents or to establish cash reserves to enable it to act as a self‑insurer against any and all such losses;

(15) collect fees and charges in connection with its loans or other financial assistance;

(16) apply for, receive and accept from any source, aid, grants, and contributions of money, property, labor, or other things of value to be used to carry out the purposes of this chapter subject to the conditions upon which financial assistance is granted;

(17) enter into contracts or agreements for the servicing and processing of financial assistance; and

(18) do all other things necessary or convenient to exercise powers granted or reasonably implied by this chapter.

(B) The Authority is not authorized or empowered to be or to constitute a bank or trust company within the jurisdiction or under the control of the State or an agency of it or the Comptroller of the Currency or the Treasury Department of the United States, or a bank, banker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers’ law of the United States or this State.

(C) The Authority is subject to the provisions of Article 1, Chapter 23, Title 1, the Administrative Procedures Act.

Section 59‑158‑70. (A) The following sources may be used to capitalize the Authority and for the Authority to carry out its purposes:

(1) federal funds made available to the State;

(2) federal funds made available to the State for the Authority;

(3) contributions and donations from government units, private entities, and any other source as may become available to the Authority including, but not limited to, appropriations from the General Assembly;

(4) all monies paid or credited to the Authority, and interest earnings which may accrue from the investment or reinvestment of the Authority’s monies;

(5) proceeds from the issuance of bonds as provided in this chapter; and

(6) other lawful sources as determined appropriate by the board, including funds received by the Authority under Section 59‑158‑80.

Section 59‑158‑80. Beginning in Fiscal Year 2017‑2018, the Authority shall be funded through the general appropriations act.

Section 59‑158‑90. The Authority is performing an essential governmental function in the exercise of the powers conferred upon it and is not required to pay taxes or assessments upon property or upon its operations or the income from them.

Section 59‑158‑100. (A) The proceeds received from the issuance of South Carolina Education Facility Revenue Bonds, after deducting the costs of issuance, must be allocated annually to the school districts of this State, according to the formula provided in Section 59‑144‑100(A). The State Department of Education shall provide assistance to the Authority board in making the required allocation computations.

(B) In addition to the allocations made to a school district under subsection (A), any school district which, after the effective date of this chapter, has combined a majority of its purchasing, procurement, accounting, food service, transportation, human resources, or other noninstructional functions with another school district or districts in the county or with an adjoining school district or districts in another county which has resulted in a cost‑savings to the affected districts of at least twenty‑five percent of the former costs of these functions as determined and certified by the State Department of Education shall receive an additional allocation from the board under this chapter for a period of five years equal to ten percent of its original allocation for that year. Additionally, a school district that is the result of the consolidation of one or more school districts in a county which occurred after the effective date of this chapter also shall receive an additional allocation from the board under this chapter for a period of five years equal to ten percent of its original allocation for that year. Nothing in this subsection prevents a school district from receiving additional allocations in both categories.

(C)(1) To qualify for the bond proceeds under this chapter, each school district shall meet the requirements of this chapter and any guidelines set forth pursuant to this chapter. Allocations and funds may be withheld from a school district when inappropriate reporting of facilities’ needs is found, when inappropriate use of funds is documented, or when other violations of this chapter occur, including the provisions of this subsection.

(2) In addition, as a condition of receiving funds from the Authority as provided in this chapter, the Authority shall require districts to undergo a thorough efficiency audit that highlights the operation of school buildings. The Authority shall stipulate that districts also undertake a study of future enrollment trends so that both the construction and closing of buildings is considered. Additionally, it shall ensure that districts have a building maintenance plan, and the wherewithal to implement it.

(3) Lastly, districts receiving funds under the provisions of this chapter must agree to prioritize its school building needs and construction requirements after the effective date of this chapter to take into account and be based on the results of a facilities study of all school districts’ needs which the State Department of Education conducts or causes to be conducted.

Section 59‑158‑110. Neither the board nor any officer, employee, or committee of the Authority acting on behalf of it, while acting within the scope of this authority, is subject to any liability resulting from carrying out any of the powers given in this chapter.

Section 59‑158‑120. Notice, proceeding, or publication, except those required in this chapter, are not necessary to the performance of any act authorized in this chapter nor is any act of the Authority subject to any referendum.

Section 59‑158‑130. All money of the Authority, except as authorized by law or provided in this chapter, must be deposited with and invested by the State Treasurer. Funds of the Authority not needed for immediate use or disbursement may be invested by the State Treasurer in obligations or securities which are declared to be legal obligations by the provisions of Section 11‑9‑660.

Section 59‑158‑140. Following the close of each state fiscal year, the Authority shall submit an annual report of its activities for the preceding year to the Governor and to the General Assembly. An independent certified public accountant shall perform an audit of the books and accounts of the Authority at least once in each state fiscal year.

Section 59‑158‑150. The responsibilities and duties of the State Department of Education and State Board of Education shall be as outlined in Sections 59‑144‑120, 59‑144‑130, and 59‑144‑140.

Section 59‑158‑160. This chapter, being for the welfare of this State and its inhabitants, must be liberally construed to effect the purposes specified in this chapter.

Article 3

South Carolina Education Facility Revenue Bonds

Section 59‑158‑310. In order to obtain funds for allocation to school districts for school facilities, there shall be issued from time to time South Carolina Education Facility Revenue Bonds under the conditions prescribed by this chapter.

Section 59‑158‑320. The Authority may pledge any of its revenue or funds to the payment of its bonds, subject only to any prior agreements with the holders of particular bonds which may have pledged specific money or revenue. Bonds may be secured by a pledge of any loan obligation owned by the Authority, any grant, contribution, or guaranty from the United States, the State, or any corporation, association, institution, or person, any other property or assets of the Authority, or a pledge of any money, income, or revenue of the Authority from any source.

Section 59‑158‑330. Bonds issued by the Authority do not constitute a debt or a pledge of the full faith and credit of this State, or any of its political subdivisions other than the Authority, but are payable solely from the revenue, money, or property of the Authority as provided in this chapter. The bonds issued do not constitute an indebtedness of the State within the meaning of any constitutional or statutory limitation. A member of the Authority or any person executing bonds of the Authority is not liable personally on the bonds by reason of their issuance or execution. Each bond issued under this article must contain on its face a statement to the effect that:

(1) neither the State, nor any of its political subdivisions, nor the Authority is obligated to pay the principal of or interest on the bond or other costs incident to the bond except from the revenue, money, or property of the Authority pledged;

(2) neither the full faith and credit nor the taxing power of the State, or any of its political subdivisions, is pledged to the payment of the principal of or interest on the bond; and

(3) the Authority does not have taxing power.

Section 59‑158‑340. The bonds of the Authority must be authorized by a resolution of the Authority. The bonds must bear the date and mature at the time which 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 executed in the manner, 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 Authority before their issuance. The bonds may bear interest payable at a time and at a rate as determined by the Authority, including the determination by agents designated by the Authority under guidelines established by it. Bonds may be sold by the Authority at public or private sale at the price it determines and approves. The State Treasurer shall issue the bonds of the Authority not later than sixty days upon the resolution of the Authority authorizing the issuance of the bonds.

Section 59‑158‑350. (A) Bonds may be secured by a trust indenture between the Authority and a corporate trustee, which may be the State Treasurer or any bank having trust powers or any trust company, designated by the State Treasurer doing business in South Carolina. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders which are reasonable and proper, including covenants setting forth the duties of the Authority in relation to the exercise of its powers and the custody, safekeeping, and application of its money. The Authority may provide by the trust indenture for the payment of the proceeds of the bonds and all or any part of the revenues of the Authority to the trustee under the trust indenture or to some other depository, and for the method of its disbursement with safeguards and restrictions prescribed by it. All expenses incurred in performing the obligations of the Authority under the trust indenture may be treated as part of its operating expenses.

(B) Any resolution or trust indenture pursuant to which bonds are issued may contain provisions which are part of the contract with the holders of the bonds as to:

(1) pledging all or any part of the revenue of the Authority to secure the payment of the bonds;

(2) pledging all or any part of the assets of the Authority owned by it to secure the payment of the bonds;

(3) the establishment of reserves, sinking funds, and other funds and accounts, and their regulation and disposition;

(4) limitations on the purposes to which the proceeds from the sale of the bonds may be applied, and limitations on pledging the proceeds to secure the payment of the bonds;

(5) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(6) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds, if any, the holders of which must consent to, and the manner in which any consent may be given;

(7) limitations on the amount of money to be expended by the Authority for its operating expenses;

(8) vesting in a trustee property, rights, powers, and duties as the Authority may determine, limiting or abrogating the right of bondholders to appoint a trustee, and limiting the rights, powers, and duties of the trustee;

(9) defining the acts or omissions which constitute a default, the obligations or duties of the Authority to the holders of the bonds, and the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver, and all other rights generally available to creditors; and

(10) any other matter relating to the terms of the bonds or the security or protection of the holders of the bonds which may be considered appropriate.

Section 59‑158‑360. Any pledge made by the Authority is valid and binding from the time the pledge is made. The revenue, money, or property pledged and thereafter received by the Authority is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of whether the parties have notice of the pledge. A recording or filing of the resolution authorizing the issuance of bonds, the trust indenture securing the bonds, or any other instrument including filings under the Uniform Commercial Code is not necessary to create or perfect any pledge or security interest granted by the Authority to secure any bonds, but the record of the proceedings relative to the issuance of any bonds must be filed as prescribed in Section 11‑15‑20.

Section 59‑158‑370. The Authority, subject to agreements with bondholders as may then exist, may purchase outstanding bonds of the Authority with any available funds, at any reasonable price. If the bonds are then redeemable, the price must not exceed the redemption price then applicable plus accrued interest to the next interest payment date.

Section 59‑158‑380. Bonds of the Authority must be in a form and must be executed in a manner prescribed by the Authority.

Section 59‑158‑390. If any of the members or officers of the Authority cease to be members before the delivery of any bonds signed by them, their signatures or authorized facsimile signatures are nevertheless valid and sufficient for all purposes as if they had remained in office until the delivery of the bonds.

Section 59‑158‑400. Subsequent amendments to this article may not limit the rights vested in the Authority with respect to any agreements made with, or remedies available to, the holders of bonds issued pursuant to this article before the enactment of the amendments until the bonds, with all premiums and interest on them, and all costs and expenses in connection with any proceeding by or on behalf of the holders, are fully met and discharged.

Section 59‑158‑410. Any bonds issued by the Authority, the transfer of bonds, and the income from them, are free from taxation and assessment of every kind by the State and by the local governments and other political subdivisions of the State.

Section 59‑158‑420. The bonds issued by the Authority are legal investments in which all public officers or public bodies of the State, its political subdivisions, all municipalities and political subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, banking associations, trust companies, savings banks, savings associations, including savings and loan association investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are now or may be authorized in the future to invest in bonds or other obligations of the State, may invest funds in their control or belonging to them. The bonds of the Authority are also securities which may be deposited with and received by all public officers and bodies of the State or any agency or political subdivision of the State and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the State is now or may later be required by law.”

SECTION 2. This act takes effect upon approval by the Governor.

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