CHAPTER 109

Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning

**SECTION 59‑109‑10.** Short title.

 This chapter, when codified, may be referred to and cited as the “Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning.”

HISTORY: 1962 Code Section 22‑41.1; 1969 (56) 444; 1975 (59) 47.

**SECTION 59‑109‑20.** Legislative declaration of policy and purpose.

 It is hereby declared that for the benefit of the people of the 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 fullest opportunity to learn and to develop their intellectual and mental capacities; that it is essential that institutions for higher education within the State be provided with appropriate additional means to assist such 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 and an alternative method to enable institutions for higher education in the State to provide the facilities and structures which are sorely needed to accomplish the purposes of this chapter, all to the public benefit and good, to the extent and manner provided herein.

HISTORY: 1962 Code Section 22‑41; 1969 (56) 444.

**SECTION 59‑109‑30.** Definitions.

 As used in this chapter, unless the context otherwise requires:

 (1) “Authority” means the State Fiscal Accountability Authority, acting as the Educational Facilities Authority for Private Nonprofit Institutions of Higher Learning and serving ex officio.

 (2) “Project” means any land or any interest therein, one or more structures, buildings, additions, extensions, improvements, or other facilities, whether or not located on the same site or contiguous sites, machinery, equipment, furnishings, and other real or personal property necessary, suitable, or convenient for the instruction of students, the conducting of research, the operation of an institution for higher learning, or the orderly conduct of the affairs of an institution for higher learning, and shall include, without limitation, dormitories or other housing facilities, including housing facilities for student nurses, dining halls, student union facilities, administration or office facilities, academic facilities, libraries, laboratories, research facilities, classrooms, athletic facilities, health care facilities, and maintenance, storage, or utility facilities, and shall also include, without limitation, all necessary, convenient, or related landscaping, site preparation, furniture, equipment, furnishings, machinery, apparatus, appliances, appurtenances, and physical amenities, but shall not include any facility used or to be used for sectarian instruction or as a place of religious worship or any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

 (3) “Cost”, as applied to a project or any portion thereof, means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction, improvement, and remodeling of a project including, without limitation, all lands, structures, real or personal property, rights, rights‑of‑way, franchises, easements, and interests acquired or used for or in connection with a project; the cost of demolishing, removing, or relocating any buildings or structures, including the cost of acquiring any lands or interests therein to which such buildings or structures may be moved; the cost of all machinery, fixed and moveable equipment, apparatus, appliances, and furnishings; financing charges and interest prior to, during, and for a period of not more than two years after the estimated date of completion of construction and acquisition of a project; provisions for working capital and reserves for principal and interest and for extensions, enlargements, additions, and improvements; the cost of architectural, engineering, planning, financial, consulting and legal service, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility of practicability of constructing or acquiring a project; such other expenses as may be necessary or incident to the construction or acquisition of a project, the financing of such construction or acquisition and the placing of a project in operation; the cost of issuing bonds including, without limitation, legal and accounting fees and expenses, printing costs, and all other costs incurred in connection with issuing bonds; monies necessary to refinance or refund any indebtedness of any participating institution for higher learning incurred at any time for the purpose of providing a project; and the costs of reimbursing any participating institution for higher learning for any amounts expended for items that would have been proper costs of a project within the meaning of this definition had the expenditure been made directly by the authority.

 (4) “Bonds” means revenue bonds of the authority issued under the provisions of this chapter, including revenue refunding bonds, notwithstanding that the same may be secured by a mortgage or the full faith and credit of a participating institution for higher learning or any other lawfully pledged security of a participating institution for higher learning.

 (5) “Institution for higher learning” means a nonprofit educational institution within the State authorized by law to provide a program of education beyond the high school level and which does not receive state financial support, but shall not include any state‑supported institution.

 (6) “Participating institution for higher learning” means an institution for higher learning which, pursuant to the provisions of this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of bonds or obligations or of a mortgage or advances as provided in this chapter.

 (7) “Financing agreement” means any agreement entered into by and between the authority and any one or more participating institutions for higher learning for the purpose of assisting a participating institution for higher learning in undertaking a project pursuant to the provisions of this chapter and pursuant to which the participating institution or institutions for higher learning agree to pay to (and to secure if so required) the authority or to any assignee thereof, the sums required to meet the payment of amounts due with respect to any bonds including, without limitation, an agreement whereby the authority shall lease or sell a project to a participating institution for higher learning or any agreement whereby the authority shall loan the proceeds of bonds to a participating institution for higher learning.

HISTORY: 1962 Code Section 22‑41.2; 1969 (56) 444; 1975 (59) 47; 1993 Act No. 167, Section 1; 2014 Act No. 121 (S.22), Pt VII, Section 20.M, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 20.M, in subsection (1), substituted “Fiscal Accountability Authority,” for “Budget and Control Board”, and added “and serving ex officio” at the end.

**SECTION 59‑109‑40.** Educational Facilities Authority for Private Nonprofit Institutions of Higher Learning.

 There is hereby created a body politic and corporate to be known as the “Educational Facilities Authority for Private Nonprofit Institutions of Higher Learning,” hereinafter in this chapter called the authority. The authority is constituted a public instrumentality and the exercise by the authority of the powers conferred by this chapter must be deemed and held to be the performance of an essential public function. The authority shall consist of the members from time to time of the State Fiscal Accountability Authority, ex officio; and all the functions and powers of the authority are hereby granted to the State Fiscal Accountability Authority, as an incident of its functions in connection with the public finances of the State.

HISTORY: 1962 Code Section 22‑41.3; 1969 (56) 444; 1975 (59) 47; 2014 Act No. 121 (S.22), Pt VII, Section 20.N, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 20.N, twice substituted “Fiscal Accountability Authority” for “Budget and Control Board”, and made other nonsubstantive changes.

**SECTION 59‑109‑50.** Purpose of Authority; powers enumerated.

 The purpose of the authority is to assist institutions for higher learning in the acquisition, construction, financing, and refinancing of projects, and for this purpose the authority is authorized and empowered to:

 (1) adopt rules and regulations for the conduct of its affairs and business;

 (2) adopt an official seal and alter the same at pleasure;

 (3) maintain an office at such place or places as it may designate;

 (4) sue and be sued in its own name, plead, and be impleaded;

 (5) enter into any agreements with any participating institution for higher learning necessary or incidental to the issuance of bonds or the acquisition, construction, operation, maintenance, or improvement of a project;

 (6) determine the location and character of any project to be financed under the provisions of this chapter which is to be owned by the authority, and to construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, and to enter into contracts for any or all of such purposes, to enter into contracts for the management and operation of a project owned by the authority, and to designate a participating institution for higher learning as its agent, to determine the location and character of a project owned by the authority and undertaken by such participating institution for higher learning under the provisions of this chapter and, as the agent of the authority, to acquire, construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, and as the agent of the authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project;

 (7) enter into financing agreements with any participating institution for higher learning prescribing the payments to be made by the participating institution for higher learning to the authority or its assignee to meet the payments that shall become due with respect to any bonds, and any terms and conditions relating to the acquisition, construction, and use of a project and the issuance of bonds as the authority may determine;

 (8) issue bonds, including bond anticipation notes pursuant to Sections 11‑17‑10 to 11‑17‑110, and other obligations of the authority for any of the purposes of this chapter and to refinance or refund the same all as provided in this chapter, and to secure the payment of such bonds, bond anticipation notes, and other obligations as provided in this chapter;

 (9) fix and revise from time to time and charge and collect rates, rents, fees, and charges for the use of and for the services furnished or to be furnished by a project owned by the authority or any portion thereof and to contract with any person, partnership, association, or corporation, or other body public or private in respect of any project;

 (10) establish rules and regulations for the use of a project owned by the authority or any portion thereof and to designate a participating institution for higher learning as its agent to establish rules and regulations for the use of a project owned by the authority and undertaken for such participating institution for higher learning;

 (11) employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and fix their compensation;

 (12) receive and accept from any public agency loans or grants for or in aid of the acquisition or construction of a project or any portion thereof, and to receive and accept loans, grants, aid, or contributions from any source of either money, property, labor, or other things of value to be held, used, and applied only for the purposes for which such loans, grants, aid, and contributions are made;

 (13) mortgage any project owned by the authority or any portion thereof for the benefit of the holders of bonds;

 (14) issue bonds to refinance or refund outstanding obligations, mortgages, or advances issued, made, or given by a participating institution for higher learning for the cost of a project;

 (15) charge to and apportion among participating institutions for higher learning its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter;

 (16) make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this chapter, with persons, firms, corporations, governmental agencies, and others;

 (17) make the proceeds of any bonds available by way of a loan to a participating institution for higher learning pursuant to a financing agreement;

 (18) lease or sell a project to a participating institution for higher learning pursuant to a financing agreement;

 (19) pledge or assign any money, rents, charges, fees, or other revenues, including any proceeds of insurance or condemnation awards, pursuant to any financing agreement to the payment of bonds;

 (20) do all things necessary or convenient to carry out the purposes of this chapter.

HISTORY: 1962 Code Section 22‑41.4; 1969 (56) 444; 1993 Act No. 167, Section 2.

**SECTION 59‑109‑60.** Expenses.

 All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this chapter.

HISTORY: 1962 Code Section 22‑41.5; 1969 (56) 444.

**SECTION 59‑109‑70.** Acquisition of property by Authority.

 The authority is authorized and empowered directly or by and through a participating institution for higher learning, as its agent, to acquire by purchase solely from funds provided under the authority of this chapter, or by gift or devise, such lands, structures, property, real or personal, rights, rights‑of‑way, franchises, easements, and other interests in lands, including lands lying under water and riparian rights, which are located within the State as it considers necessary or convenient for the acquisition, construction, or operation of a project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the authority or in the name of a participating institution for higher learning as its agent.

HISTORY: 1962 Code Section 22‑41.6; 1969 (56) 444; 1993 Act No. 167, Section 3.

**SECTION 59‑109‑80.** Transfer of property to participating institution after payment of bonds; option to renew lease or purchase project prior to retirement of bonds.

 (A) When the principal of and interest on bonds of the authority issued to finance the cost of a particular project or projects owned by the authority and leased to a participating institution for higher learning, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the trust agreement authorizing the same have been satisfied and the lien of such trust agreement has been released in accordance with the provisions thereof, the authority shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey title to such project or projects to such participating institution for higher learning, free and clear of all liens and encumbrances, all to the extent that title to such project or projects shall not, at the time, then be vested in such participating institution for higher learning.

 (B) Any financing agreement in the form of a lease of any project may include a provision that the participating institution for higher learning shall have options to renew such lease and/or to purchase any or all of such project prior to the retirement of the bonds issued to finance such project or any bonds issued to refund or refinance such bonds on such terms, at such times, and upon such consideration as the authority shall determine. The consideration for any renewal of such lease or for the purchase of any or all of such project need not require the payment by the participating institution for higher learning of the full market value thereof, but may be fixed at such consideration as the authority shall determine.

HISTORY: 1962 Code Section 22‑41.7; 1969 (56) 444; 1993 Act No. 167, Section 4.

**SECTION 59‑109‑90.** Bond anticipation notes; issuance, terms, form and execution of bonds and notes.

 (A) In anticipation of the sale of bonds, the authority may issue bond anticipation notes.

 (B) The bonds and notes of every issue shall be payable solely out of revenues derived by the authority pursuant to the financing agreement or agreements with respect to the project or projects which such bonds or notes are issued to finance.

 Notwithstanding that bonds and notes may be payable from a special fund, they shall be and be deemed to be, for all purposes, negotiable instruments, subject only to the provisions of the bonds and notes for registration.

 (C) The bonds may be issued as serial bonds or as term bonds, or both, as determined by the authority. The bonds shall be authorized by resolution of the authority and shall bear such date, mature at such time, not exceeding fifty years from their respective dates, bear interest at such rate, payable at such time, be in denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place, and be subject to such terms of redemption, as the authority shall determine. The bonds or notes may be sold at public or private sale for such price as the authority shall determine.

 (D) Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

HISTORY: 1962 Code Section 22‑41.8; 1969 (56) 444; 1993 Act No. 167, Section 5.

**SECTION 59‑109‑100.** Trust agreement to secure bonds.

 (A) In the discretion of the authority any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State. Any bank or trust company which may act as depository of the proceeds of bonds or of revenues or other monies may furnish such indemnifying bonds or pledge such securities as may be required by the authority. All expenses incurred in carrying out the provisions of such trust agreement or proceedings may be treated as a part of the cost of the operation of a project.

 (B) The proceedings authorizing or any trust agreement providing for any bonds and any financing agreement related thereto may contain any agreements and provisions, which shall be a part of the contract with the holders of such bonds, as the authority considers necessary or convenient including, without limiting the generality of the foregoing, provisions as to:

 (1) pledging all or any part of the revenues of a project, including revenues to be derived pursuant to a financing agreement, to secure the payment of the bonds issued to defray the cost, or any portion of the cost, of such project;

 (2) the fixing and collection of the sums payable by the participating institution for higher learning to the authority pursuant to the financing agreement;

 (3) the rentals, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

 (4) the setting aside of reserves or sinking funds, and the regulation and disposition thereof;

 (5) limitations on the right of the authority or its agent or a participating institution for higher learning to restrict and regulate the use of the project;

 (6) limitations on the purpose to which the proceeds of sale of any issue of revenue bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the revenue bonds or any issue of the revenue bonds;

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

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

 (9) limitations on the amount of monies derived from the project to be expended for operating, administrative, or other expenses of the authority;

 (10) defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of the trustee and such holders in the event of a default and any restrictions thereon; and

 (11) the mortgaging of a project or any portion thereof for the purpose of securing the bondholders.

HISTORY: 1962 Code Section 22‑41.9; 1969 (56) 444; 1993 Act No. 167, Section 6.

**SECTION 59‑109‑110.** Bonds not deemed debt or liability of State or any political subdivision.

 Bonds issued under the provisions of this chapter shall not be considered to constitute a debt or liability of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor. All such bonds shall contain on the face thereof a statement to the effect that neither the State of South Carolina nor the authority shall be obligated to pay the same or the interest thereon except from amounts to be paid by the participating institution for higher learning pursuant to the financing agreement relating to such bonds and that neither the faith and credit nor the taxing power of the State of South Carolina or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

HISTORY: 1962 Code Section 22‑41.10; 1969 (56) 444; 1993 Act No. 167, Section 7.

**SECTION 59‑109‑120.** Institutions to complete projects if bond proceeds insufficient; payments required; disposition of monies received.

 Every financing agreement shall contain covenants obligating such participating institution for higher learning to effect the completion of the project if the proceeds of the bonds available therefor prove insufficient. Every financing agreement shall obligate the participating institution for higher learning to make payments which shall be sufficient (1) to pay the cost of maintaining, repairing, and operating the project and each and every portion thereof, to the extent that the payment of such cost has not otherwise been adequately provided for, (2) to pay the principal of and the premium, if any, and the interest on outstanding bonds of the authority issued in respect of such project as the same shall become due, and payable and (3) to create and maintain reserves deemed by the authority to be advisable in connection with the project. Such payments shall not be subject to supervision or regulation by any department, commission, board, body, bureau, or agency of this State other than the authority. In connection with any bonds, the authority may set aside from amounts derived from a financing agreement, or may cause a participating institution for higher learning to set aside, at such time or times as shall be determined by the authority, such amounts as may be determined by the authority in a sinking or other similar fund which may be pledged to, and charged with, the payment of the principal of and the interest on such revenue bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by redemption or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the monies so pledged and thereafter received by the authority or the participating institution for higher learning shall immediately be subject to the lien of such pledge without physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise, against the authority or the participating institution for higher learning, irrespective of whether such parties have notice thereof.

 The use and disposition of money to the credit of such sinking or other similar fund shall be subject to the provisions of the proceedings authorizing the issuance of such bonds or of the trust agreement securing such bonds. Any such proceedings or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular project at an institution for higher learning from which such funds are derived and for the bonds issued to finance such project and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security herein authorized to other revenue bonds of the authority and, in such case, the authority may create separate or other similar funds in respect of such subordinate lien bonds.

HISTORY: 1962 Code Section 22‑41.11; 1969 (56) 444; 1993 Act No. 167, Section 8.

**SECTION 59‑109‑130.** Monies received deemed trust funds.

 All monies received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. Any officer with whom, or any bank or trust company with which, such monies shall be deposited shall act as trustees of such monies and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and the proceedings authorizing the bonds of any issue or the trust agreement securing such bonds may provide.

HISTORY: 1962 Code Section 22‑41.12; 1969 (56) 444; 1993 Act No. 167, Section 9.

**SECTION 59‑109‑140.** Enforcement of rights of bondholders.

 Any holder of bonds issued under the provisions of this chapter and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by any proceedings authorizing the issuance of or any such trust agreement securing such bonds, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such proceedings or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such proceedings or trust agreement to be performed by the authority or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of the rates, rents, fees, charges, and other amounts herein authorized and required by the provisions of such proceedings or trust agreement to be fixed, established, and collected.

HISTORY: 1962 Code Section 22‑41.13; 1969 (56) 444; 1993 Act No. 167, Section 10.

**SECTION 59‑109‑150.** Exemption from taxation.

 The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of this State, for the increase of their commerce, welfare, and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a project by the authority or its agent or a participating institution for higher learning will constitute the performance of an essential public function, neither the authority nor its agent shall be required to pay any taxes or assessments upon or in respect of a project or any property acquired or owned by the authority under the provisions of this chapter or upon the income therefrom, and any bonds issued under the provisions of this chapter, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the State and by the municipalities and other political subdivisions in the State.”

HISTORY: 1962 Code Section 22‑41.14; 1969 (56) 444; 1993 Act No. 167, Section 11.

**SECTION 59‑109‑160.** Bonds as legal investments.

 Bonds issued by authority under the provisions of this chapter are hereby made securities in which all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

HISTORY: 1962 Code Section 22‑41.15; 1969 (56) 444.

**SECTION 59‑109‑170.** Annual reports.

 The authority shall keep an accurate account of all its activities and of all its receipts and expenditures and annually in the month of January shall make a report of it to its members and to the Governor in a form prescribed by the members.

HISTORY: 1962 Code Section 22‑41.16; 1969 (56) 444; 2005 Act No. 164, Section 33, eff June 10, 2005.

Effect of Amendment

The 2005 amendment deleted “and to the State Auditor, such reports to be” following “Governor” and at the end “, with the written approval of the Auditor” and made nonsubstantive and conforming amendments throughout.

**SECTION 59‑109‑180.** Chapter as supplemental; Authority not subject to regulation, approval or consent of other agencies or the like.

 The foregoing sections of this chapter shall be deemed to provide a complete, additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws; provided, the issuance of revenue bonds and revenue refunding bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. Except as otherwise expressly provided in this chapter none of the powers granted to the Authority under the provisions of this chapter shall be subject to the supervision or regulation or require the approval or consent of any municipality or political subdivision or any department, division, commission, board, body, bureau, official or agency thereof or of the State.

HISTORY: 1962 Code Section 22‑41.17; 1969 (56) 444.