CHAPTER 29

Industrial Development Projects

CROSS REFERENCES

Emergency procedures for county forfeited land commission, see Section 12‑59‑140.

**SECTION 4‑29‑10.** Definitions.

Whenever used in this chapter, unless a different meaning clearly appears from the context, the following terms, whether used in the singular or plural, shall be given the following meanings:

(1) “Bonds” shall include notes, bonds, refunding bonds, and other obligations authorized to be issued by this chapter.

(2) “Governing Board” shall mean any one of the governing bodies of the several counties and incorporated municipalities of the State as now or hereafter constituted; and in the event that any project shall be located in more than one county, the term “governing board” shall also relate to the governing bodies of the several counties wherein such project shall be located.

(3) “Project” means any land and any buildings and other improvements on the land including, without limiting the generality of the foregoing, water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by the following investors or any combination of them:

(a) any enterprise for the manufacturing, processing, or assembling of any agricultural or manufactured products;

(b) any commercial enterprise engaged in storing, warehousing, distributing, transporting, or selling products of agriculture, mining, or industry, or engaged in providing laundry services to hospitals, to convalescent homes, or to medical treatment facilities of any type, public or private, within or outside of the issuing county or incorporated municipality and within or outside of the State;

(c) any enterprise for research in connection with any of the foregoing or for the purpose of developing new products or new processes or improving existing products or processes;

(d) any enterprise engaged in commercial business including, but not limited to, wholesale, retail, or other mercantile establishments; residential and mixed use developments of two thousand five hundred acres or more; office buildings; computer centers; tourism, sports, and recreational facilities; convention and trade show facilities; and public lodging and restaurant facilities if the primary purpose is to provide service in connection with another facility qualifying under this subitem; and

(e) any enlargement, improvement, or expansion of any existing facility in subitems (a), (b), (c), and (d) of this item.

The term “project” does not include facilities for an enterprise primarily engaged in the sale or distribution to the public of electricity, gas, or telephone services. A project may be located in one or more counties or incorporated municipalities. The term “project” also includes any structure, building, machinery, system, land, interest in land, water right, or other property necessary or desirable to provide facilities to be owned and operated by any person, firm, or corporation for the purpose of providing drinking water, water, or wastewater treatment services or facilities to any public body, agency, political subdivision, or special purpose district. This definition is for purposes of industrial revenue bonds only.

Notwithstanding another provision hereof, the term “project” shall include any recovery zone property as defined in Section 1400U‑3(b) of the Internal Revenue Code and any “Qualified Conservation Purpose” as defined in Section 54D(f) of the Internal Revenue Code or other purposes set forth in Section 54D(e) of the Code. No restriction herein relating to the user or use of a project shall apply to any recovery zone property.

(4) “State Board” shall mean the State Fiscal Accountability Authority of South Carolina.

(5) “Security Agreement” shall mean any trust agreement, mortgage, security agreement or assignment by which any bond or bonds issued pursuant to this chapter may be secured.

(6) “Industry” shall mean any person, firm or corporation engaged in any one or more of the enterprises identified in item (3) of this section or any person, firm or corporation providing facilities constituting a project to be used by any one or more of the enterprises identified in item (3) of this section.

(7) “Financing Agreement” shall mean any agreement, including without limitation an agreement whereby a county or incorporated municipality shall lease or sell a project to an industry, made by and between the governing board and any one or more industries by which the industry or industries agree to pay to (and to secure if so required) the county or the incorporated municipality, as the case may be, or to any assignee thereof, the sums required to meet the payment of the principal, interest and redemption premium, if any, on any bonds.

(8) “Tourism, sports, and recreational facilities” shall mean property used for or useful in connection with theme parks, amusement parks, historical, educational or trade museums, cultural centers, or spectator or participatory sports facilities, generally available to the public, including without limitation thereto marinas, beaches, bathing facilities, golf courses, theaters, arenas, and auditoriums.

(9) (Reserved)

(10) (Reserved)

(11) (Reserved)

HISTORY: 1962 Code Section 14‑399.21; 1967 (55) 120; 1971 (57) 454; 1980 Act No. 518, Section 10B; 1981 Act No. 164, Section 2; 1981 Act No. 179 Section 9; 1984 Act No. 479, Section 9; 1985 Act No. 196, Section 2; 1997 Act No. 151, Section 3, eff for tax years beginning after 1996; 2001 Act No. 89, Sections 51C, 51D, eff July 20, 2001; 2003 Act No. 69, Section 3.ZZ.2, eff January 1, 2003; 2010 Act No. 290, Section 15.B, eff June 23, 2010.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 1997 amendment, in subsection (3), in the introductory clause, substituted “of them:” for “thereof:”; in clause (d) of the first sentence, inserted “residential and mixed use developments of two thousand five hundred acres or more;”; and added the last sentence.

The 2001 amendment rewrote the definition of “project” in paragraph (3); and added paragraphs (9), (10), and (11) defining “investor”, “investor affiliate” and “business”.

The 2003 amendment deleted items (9), (10), and (11), relating to the definitions of “Investor”, “Investor affiliate”, and “Business” respectively, and reserved these items for future use.

The 2010 amendment, in subsection (3) added the second undesignated paragraph, relating to terms defined in the Internal Revenue Code.

CROSS REFERENCES

Economic Development Authority having powers granted to counties and incorporated municipalities under this chapter, see Section 41‑43‑100.

Economic Development Fund Act, see Sections 41‑43‑10 et seq.

Attorney General’s Opinions

While term “improved real property” as used in Section 4‑29‑68 has not been explicitly defined by General Assembly, a court would most probably conclude that buildings, structural components of buildings, or office facilities as defined within term “project,” could be considered as improvements to real property, such that special source revenue bonds could be issued to pay cost of designing, acquiring, constructing, improving, or expanding same. 1993 Op Atty Gen, No. 93‑81.

Water sewage treatment and disposal facilities, air pollution control facilities, and similar improvements which are integrated into building or otherwise permanently affixed to real property would most probably be considered to be “infrastructure.” Items such as machinery, equipment, furnishings, or the like, which are readily movable, but which are unrelated to items forming a permanent part of infrastructure, would not be considered “infrastructure.” 1993 Op Atty Gen, No. 93‑81.

Deeds issued under article are exempt from documentary tax. Deeds issued under the provisions of this article are for a public purpose and exempt from the documentary tax by the provisions of Section 65‑689. 1971‑72 Op Atty Gen, No 3237, p 18.

NOTES OF DECISIONS

In general 1

1. In general

Revenue bonds may be issued on behalf of retail or commercial businesses without violating public purpose doctrine; overruling State ex rel. McLeod v. Riley, 276 S.C. 323, 278 S.E.2d 612. WDW Properties v. City of Sumter (S.C. 2000) 342 S.C. 6, 535 S.E.2d 631. Municipal Corporations 861

Legislation authorizing issuance of industrial revenue bonds to finance construction of public lodging and restaurant facilities primarily to foster tourism improves economic welfare of State, and therefore serves valid public purpose. Hucks v. Riley (S.C. 1987) 292 S.C. 492, 357 S.E.2d 458. States 119

Public lodging or restaurant facility does not necessarily have to be appurtenant to qualifying facility before it can be financed with industrial revenue bonds, and facility alone may constitute “project” under Industrial Development Bond Act (Sections 4‑29‑10 to 4‑29‑150), so long as its primary purpose is to provide service in connection with qualifying facility. Hucks v. Riley (S.C. 1987) 292 S.C. 82, 354 S.E.2d 913.

Statute which authorizes issuance of industrial revenue bonds to finance computer and office facilities for entities which are not industrial or manufacturing enterprises, and to finance commercial shopping centers is unconstitutional as authorizing issuance of revenue bonds for private as opposed to public purpose. State ex rel. McLeod v. Riley (S.C. 1981) 276 S.C. 323, 278 S.E.2d 612.

Cited in Harper v. Schooler (S.C. 1972) 258 S.C. 486, 189 S.E.2d 284.

Validity of article. The Industrial Revenue Bond Act (Sections 14‑399.21 to 14‑399.35) is a valid exercise of the legislative power of the General Assembly of this State. Elliott v. McNair (S.C. 1967) 250 S.C. 75, 156 S.E.2d 421.

The fact that a private corporation, coming within the provisions of the Industrial Revenue Bond Act (Section 14‑399.21 et seq.), may borrow money at a lesser rate of interest than others who do not qualify under the act does not afford any special privileges in violation of S.C. Const., Art. 1, Section 5 (now Art. 1, Section 3), because the provisions of the act apply equally to all corporations within the class provided for. Elliott v. McNair (S.C. 1967) 250 S.C. 75, 156 S.E.2d 421. Constitutional Law 2980; Counties 173

**SECTION 4‑29‑20.** Powers of counties and incorporated municipalities in connection with projects; joint acquisition of projects located in more than one county; authority to issue revenue bonds for certain purposes.

Subject to obtaining the approval from the State Fiscal Accountability Authority required by Section 4‑29‑140, the several counties, incorporated municipalities of the State functioning through their respective governing boards shall have, in addition to such other powers as may be vested in such counties and incorporated municipalities by laws now existing or hereafter enacted, the following powers: (1) to acquire or cause to be acquired, and, in connection with such acquisition, to enlarge, improve and expand, whether by construction, purchase, gift or lease, one or more projects which shall be located within the county, or incorporated municipality; provided, that powers given to the governing board of a county may be exercised in respect to projects anywhere within the county, including any incorporated municipality therein; (2) to enter into agreements with any industry to construct and thereafter operate, maintain and improve a project; (3) to enter into a financing agreement with such industry prescribing the terms and conditions of the payments to be made by the industry to the county or incorporated municipality, or its assignee, to meet the payments that shall become due on bonds; (4) to issue revenue bonds for the purpose of defraying the cost of acquiring, by construction and purchase, and in connection with any such acquisition, to enlarge, improve and expand any project, and to secure the payment of such bonds, all as hereinafter provided; (5) to accept any state or federal grant that might become applicable to defray any portion of the cost of any project. No governing board shall have the power to operate any project as a business or in any manner except as lessor thereof.

HISTORY: 1962 Code Section 14‑399.22; 1967 (55) 120; 1980 Act No. 518, Section 10B.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

CROSS REFERENCES

The determination and designation of indebtedness to be included within any limits on “private activity bonds” which may be imposed by federal law, see Section 1‑11‑370.

Tax increment financing for redevelopment projects, see Sections 31‑6‑10 et seq.

LIBRARY REFERENCES

64 C.J.S., Municipal Corporations Sections 1907, 1942.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bonds Section 71, Chapter 29 Industrial Development Project Bonds.

NOTES OF DECISIONS

In general 1

1. In general

The legislature intended the benefits of this article to be as far‑reaching as possible and the time of the commencement of the construction of a project had no significance as to whether the provisions of the article were available if the projects were essential to the State’s economy and the welfare of its people. Nuessner v. McNair (S.C. 1967) 250 S.C. 257, 157 S.E.2d 410. Counties 173

And to be available to industries located in State prior to its passage. It was the intention of the legislature that the benefits of this article were to be available to industries which might have located in South Carolina prior to the passage and effective date of said article but whose projects were not then completed to financed. Nuessner v. McNair (S.C. 1967) 250 S.C. 257, 157 S.E.2d 410.

Effective date of article applies solely to time when county could exercise powers therein granted. Nuessner v. McNair (S.C. 1967) 250 S.C. 257, 157 S.E.2d 410.

**SECTION 4‑29‑30.** Bonds payable solely from project revenues; bonds are not county or municipal debt; execution, form, delivery, conditions, and sale of bonds; bond anticipation notes.

All bonds issued by a governing board for a project under authority of this chapter shall be limited obligations of its county or incorporated municipality, the principal of and interest on which shall be payable solely out of the revenues derived by the county or the incorporated municipality pursuant to the financing agreement with respect to such a project which the bonds are issued to finance. Bonds and interest coupons issued under authority of this chapter shall never constitute an indebtedness of such county or incorporated municipality within the meaning of any State constitutional provision or statutory limitation but such bonds and coupons shall be indebtedness payable solely from a revenue producing project or from a special source, which source does not include revenues from any tax or license, and shall never constitute nor give rise to a pecuniary liability of the county or incorporated municipality or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond. Such bonds may be executed and delivered at any time as a single issue or from time to time as several issues, may be in such form and denominations, may be of such tenor, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding forty years from their date, may be subject to such terms of redemption, may be payable at such place or places, may bear interest at such rate or rates payable at such place or places and evidenced in such manner, and may contain such provisions not inconsistent herewith, all of which shall be provided in the proceedings of the governing board authorizing the bonds. Any bonds issued under the authority of this chapter may be sold at public or private sale at such price and in such manner and from time to time as may be determined by the governing board to be most advantageous, and the governing board may pay, as a part of the cost of acquiring any project, and out of the bond proceeds, all expenses, premiums and commissions which the governing board may deem necessary or advantageous in connection with the authorization, sale and issuance thereof. All bonds issued under the authority of this chapter except registered bonds, registered otherwise than to bearer and all interest coupons appurtenant thereto shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source. The proceedings authorizing the issuance of bonds may provide for the issuance, in the future, of further bonds on a parity with those initially issued, but such proceedings shall preclude the issuance of bonds or any obligations of any sort secured by a lien prior to the lien of the bonds or bonds afterwards issued on a parity with the bonds.

Pending the issuance of bonds, bond anticipation notes may be issued, and to the end that a vehicle be provided therefor, the provisions of Sections 11‑17‑10 to 11‑17‑110, as now or hereafter amended, shall be applicable to such bond anticipatory borrowing.

HISTORY: 1962 Code Section 14‑399.23; 1967 (55) 120; 1980 Act No. 518, Section 10B.

Attorney General’s Opinions

ARTICLE VIII, Section 16 of the South Carolina Constitution does not require that a municipality conduct a referendum as a condition to receiving funds pursuant to a Community Development Block Grant and thereupon lending those funds to another entity for use in constructing a water utility system. 1987 Op Atty Gen, No. 87‑96, p 257.

**SECTION 4‑29‑40.** Security for payment of bonds; pledge of revenues and financing agreement; procedures upon default.

The principal of and interest on any bonds issued under the authority of this chapter shall be secured by a pledge of the revenues from which such bonds shall be payable, may be secured by a security agreement covering all or any part of the project from which the revenues so pledged are derived, or any property given as security by the industry pursuant to the financing agreement, and may be additionally secured by a pledge of the financing agreement with respect to such project. The proceedings under which such bonds are authorized to be issued or any such security agreement may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of obligations owning under any financing agreement for any project covered by such proceedings or security agreement, the terms to be incorporated in the financing agreements, the maintenance and insurance of the project, the creation and maintenance of special funds, and the rights and remedies available in the event of default to the bondholders or to the trustee under such security agreement, all as the governing board shall deem advisable and as shall not be in conflict with the provisions of this chapter; provided, however, that in making any such agreements or provisions a county or incorporated municipality shall not have the power to obligate itself except with respect to the project and the application of the revenues from the financing agreement, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds hereunder and any security agreement securing such bonds may provide that, in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or security agreement, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect obligations owing under any financing agreement and to apply the revenues from the project in accordance with such proceedings or the provisions of such security agreement. Any such security agreement may provide also that in the event of default in payment or the violation of any agreement contained in the security agreement, it may be foreclosed by proceedings at law or in equity, and may provide that any trustee under the security agreement or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if he is the highest bidder. No breach of any such agreement shall impose any pecuniary liability upon a county or incorporated municipality or any charge upon its general credit or against its taxing power.

The trustee or trustees under any security agreement, or any depository specified by such security agreement, may be such persons or corporations as the governing board shall designate, notwithstanding that they may be nonresident of South Carolina or incorporated under the laws of the United States or the laws of other states of the United States.

HISTORY: 1962 Code Section 14‑399.24; 1967 (55) 120; 1980 Act No. 518, Section 10B.

**SECTION 4‑29‑50.** Contracts for construction of projects.

Contracts for the construction of any projects may be let on such terms and under such conditions as the governing board shall prescribe and may be let with or without advertisement or call for bids therefor.

HISTORY: 1962 Code Section 14‑399.25; 1967 (55) 120; 1980 Act No. 518, Section 10B.

**SECTION 4‑29‑60.** Findings necessary prior to undertaking projects; required provisions in financing agreements.

Prior to undertaking any project, the governing board shall find: That the project will subserve the purposes of this chapter; that the project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation or other public benefits not otherwise provided locally; that the project will give rise to no pecuniary liability of the county or incorporated municipality or a charge against its general credit or taxing power; the amount of bonds required to finance the project; the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance the project; the amount necessary to be paid each year into any reserve funds which the governing board may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project; and, unless the terms of a financing agreement with respect to a project provide that the industry shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured. The determinations and findings of the governing board required to be made above shall be set forth in the proceedings under which the proposed bonds are to be issued.

Every financing agreement with respect to a project shall contain an agreement obligating the industry to effect the completion of the project if the proceeds of the bonds prove insufficient, and obligating the industry to pay an amount under the terms of a financing agreement, which, upon the basis of the determinations theretofore made, will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the project, (b) to build up and maintain any reserves deemed by the governing board to be advisable in connection therewith, and (c) unless the financing agreement obligates the industry to pay for the maintenance and insurance of the project, to pay the costs of maintaining the project in good repair and keeping it properly insured.

Every financing agreement in the form of a lease shall contain a provision requiring the industry to make payments to the county or counties, municipality or municipalities, school district or school districts, and other political units wherein the project shall be located in lieu of taxes, in such amounts as would result from taxes levied on the project by such county or counties, municipality or municipalities, school district or school districts, and other political unit or units, if the project were owned by the industry, but with appropriate reductions similar to the tax exemptions, if any, which would be afforded to the industry if it were the owner of the project.

HISTORY: 1962 Code Section 14‑399.26; 1967 (55) 120; 1980 Act No. 518, Section 10B; 1981 Act No. 179 Section 9.

CROSS REFERENCES

Application of this section to projects undertaken by South Carolina Jobs ‑ Economic Development Authority, see Section 41‑43‑100.

Issuance of special source revenue bonds secured by payments in lieu of taxes made pursuant to this section, see Section 4‑29‑68.

Requirement that leases and lease purchase agreements for certain projects contain a provision for a fee in lieu of taxes, see Section 4‑29‑67.

To extent this section is inconsistent with provisions governing inducement agreements providing for payment in lieu of taxes, such other provisions control, see Section 4‑29‑69.

NOTES OF DECISIONS

In general 1

1. In general

Payments in lieu of taxes are required. The payments required by contracts under this section, [Code 1962 Section 14‑399.26], in lieu of taxes, are not voluntary payments or donations but are required by this section [Code 1962 Section 14‑399.26]. Powell v. Chapman (S.C. 1973) 260 S.C. 516, 197 S.E.2d 287.

And are a tax equivalents. The amounts required to be paid by a lessee of property from a county are “tax equivalents” and not ad valorem taxes. Powell v. Chapman (S.C. 1973) 260 S.C. 516, 197 S.E.2d 287.

They were a legislative substitute for the loss of revenue which results to the various tax districts because of the ownership of the leased property by a county. Powell v. Chapman (S.C. 1973) 260 S.C. 516, 197 S.E.2d 287.

The exaction of the tax equivalent is a condition imposed by the General Assembly upon a lessee for the privilege of contracting with a county for the benefits accruing to them under the Industrial Bond Act. Powell v. Chapman (S.C. 1973) 260 S.C. 516, 197 S.E.2d 287.

The intent of the General Assembly insofar as the burden of taxation is concerned was, that the property of a county acquired and leased pursuant to this section [Code 1962 Section 14‑399.26] should share equally with the properties subject to ad valorem taxes the burden imposed by the bonds sought to be issued. Powell v. Chapman (S.C. 1973) 260 S.C. 516, 197 S.E.2d 287.

When tax equivalent plan would become operative. It is apparent that the “tax equivalent” plan provided for under this section [Code 1962 Section 14‑399.26] would become operative when the county owned property was leased to a private industry and would then be subjected to the same amount of taxes as if such industry were the true owner thereof. Powell v. Chapman (S.C. 1973) 260 S.C. 516, 197 S.E.2d 287.

Calculation of tax equivalent. Since the “tax equivalent” is the same amount that the lessee would pay if it owned the leased premises, it is arrived at by taking the assessed valuation and applying thereto the fixed mileage. Powell v. Chapman (S.C. 1973) 260 S.C. 516, 197 S.E.2d 287.

**SECTION 4‑29‑65.** Requirement of feasibility report.

After January 1, 1986, before any project may be purchased or leased from any municipality, county, agency, political subdivision, or special purpose district for the purpose of providing a project hereunder, the plan for the purchase or lease must be submitted to the applicable council of governments for the preparation of a feasibility report which shall include the fiscal impact of the proposed action on the taxpayers of each taxing authority affected by the project. The report must be submitted to the governing body of the municipality, county, agency, political subdivision, or special purpose district at least thirty days prior to the execution of the final purchase or lease arrangement.

HISTORY: 1985 Act No. 196, Section 3.

CROSS REFERENCES

This section inapplicable to certain provisions governing fee in lieu of taxes, see Section 4‑29‑67.

**SECTION 4‑29‑67.** Industrial development projects requiring a fee in lieu of property taxes; definitions.

(A)(1) As used in this section:

(a) “Department” means the South Carolina Department of Revenue.

(b) “Lease agreement” means an agreement between the county and a sponsor leasing the property at the project from the county to a sponsor.

(c) “Project” means land, buildings, and other improvements on the land including water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by a sponsor. “Project” also may consist of or include aircraft hangered or utilizing an airport in a county so long as the county expressly consents to its inclusion. Aircraft previously subject to taxation in South Carolina qualify pursuant to this provision.

(d) “Qualified nuclear plant facility” means a nuclear electric power generating plant regulated by the Nuclear Regulatory Commission and includes all real and personal property incorporated into or associated with the facility located or to be located within this State with a total minimum level of investment of one billion dollars.

(e) “Sponsor” means one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.

(f) “Sponsor affiliate” means an entity that joins with, or is an affiliate of, a sponsor and that participates in the investment in, or financing of, a project.

(2) Notwithstanding the provisions of Section 4‑29‑60, and notwithstanding that the sponsor does not request the county to issue bonds to finance the property, the county and a sponsor may enter into an inducement agreement that provides for a fee in lieu of taxes as provided in this section for certain property, title to which is held by the county and which is leased to a sponsor.

(B) For property to qualify for the fee as provided in subsection (D)(2):

(1) Title to the property must be held by the county. In the case of a project located in an industrial development park as defined in Section 4‑1‑170, title may be held by more than one county, if each county is a member of the industrial development park. Real property transferred to the county through a lease agreement must include a legal description and plat of the real property. Property titled in the name of a county pursuant to this section is considered privately owned for purposes of Section 58‑3‑240.

(2) The project must be located in a single county or an industrial development park as defined in Section 4‑1‑170. A project located on a contiguous tract of land in more than one county, but not in an industrial development park, may qualify for the fee if:

(a) the counties agree on the terms of the fee and the distribution of the fee payment;

(b) the minimum millage rate is provided for in the agreement; and

(c) all the counties are parties to all agreements establishing the terms of the fee.

(3) The minimum level of investment in the project must be at least forty‑five million dollars and must be invested within the time period provided in subsection (C). If a county has an average annual unemployment rate of at least twice the state average during the last twenty‑four months based on data available on the most recent November first, the minimum level of investment is one million dollars. The department shall designate these reduced investment counties by December thirty‑first of each year using data from the South Carolina Department of Employment and Workforce and the United States Department of Commerce. The designations are effective for a sponsor whose inducement agreement is signed in the calendar year following the county designation. Investments may include amounts expended by a sponsor or sponsor affiliate as a nonresponsible party in a voluntary cleanup contract on the property at the project pursuant to Article 7, Chapter 56, Title 44, the Brownfields Voluntary Cleanup Program, if the Department of Health and Environmental Control certifies completion of the cleanup. If the amounts under the Brownfields Voluntary Cleanup Program equal at least one million dollars, the investment threshold requirement of this section is met.

(4)(a) A sponsor and a sponsor affiliate may qualify for the fee if each sponsor and sponsor affiliate invests the minimum level of investment at the project. If the project consists of a manufacturing, research and development, corporate office, or distribution facility as those terms are defined in Section 12‑6‑3360(M) and including a qualified nuclear plant facility as defined in subsection (A)(1)(d), each sponsor or sponsor affiliate is not required to invest the minimum investment required by subsection (B)(3) if the total investment at the project exceeds forty‑five million dollars.

(b)(i) Investments by sponsor affiliates within the time periods provided in subsection (C)(1) and (2) qualify for the fee regardless of whether or not the sponsor affiliate was part of the inducement agreement, so long as sponsor affiliates are approved specifically by the county and agree to be bound by agreements with the county relating to the fee; except that sponsor affiliates are not bound by agreements, or portions of agreements, to the extent those agreements do not affect the county. The investments pursuant to this subsection must be at the same project. The inducement agreement or the lease agreement may provide for a process for approval of sponsor affiliates.

(ii) The department must be notified in writing of all sponsor affiliates that have investments subject to the fee on or before ninety days after the end of the calendar year during which the project or pertinent phase of the project is placed in service. The department may extend this period upon written request. Failure to meet this notice requirement does not affect adversely the fee, but a penalty of up to ten thousand dollars a month or portion of a month with the total penalty not to exceed one hundred twenty thousand dollars may be assessed by the department for late notification.

(iii) A. Except as provided in subsection (D)(4) if, at any time, a sponsor no longer has the minimum level of investment as provided in subsection (B)(3), that sponsor no longer qualifies for the fee.

B. Except as provided in subsection (Q), if a sponsor qualifies for the fee pursuant to subsection (D)(4), the sponsor must maintain the applicable level of investment, without regard to depreciation, and any applicable job requirements provided in (D)(4). If the sponsor fails to maintain the applicable investment or any job requirements provided in (D)(4), it no longer qualifies for the fee.

C. Except as provided in subsection (Q), if an inducement agreement or a lease agreement provides for an investment above the minimum investment provided in subsection (B)(3), and the sponsor fails to maintain the investment provided for in the agreement, the sponsor no longer qualifies for the fee.

(C)(1) Except as provided in subsection (W)(1), from the end of the property tax year in which the sponsor and the county execute an inducement agreement, the sponsor has five years in which to enter into an initial lease agreement with the county.

(2)(a) From the end of the property tax year in which the sponsor and the county execute the initial lease agreement, the sponsor has five years in which to complete its investment for purposes of qualifying for this section. If the sponsor does not anticipate completing the project within five years, the sponsor may apply to the county before the end of the five‑year period for making the investment for an extension of time to complete the project. If the county agrees to grant the extension, it must be in writing, and a copy must be delivered to the department within thirty days of the date the extension was granted. The extension may not exceed five years. If a project receives an extension of less than five years, the sponsor may apply to the county before the end of the extension period for an additional extension of time to complete the project for an aggregate extension of not more than five years. Unless approved as part of the original lease documentation, the county council of the county may approve any extension by resolution, a copy of which must be delivered to the department within thirty days of the date the resolution was adopted.

(b) An extension of the five‑year period in which to meet the minimum level of investment is not allowed. If the minimum level of investment is not met within five years, all property covered by the lease agreement or agreements reverts retroactively to the payments required by Section 4‑29‑60. The difference between the fee actually paid by the sponsor and the payment due pursuant to Section 4‑29‑60 is subject to interest, as provided in Section 12‑54‑25(D). To the extent necessary to determine if a sponsor or sponsor affiliate has met its investment requirements, any statute of limitation that might apply pursuant to Section 12‑54‑85 is suspended for all sponsors and sponsor affiliates and the department or the county may seek to collect any amounts that may be due pursuant to this section.

(c) Unless property qualifies as replacement property pursuant to a contract provision enacted pursuant to subsection (F)(2), property placed in service after the five‑year period, or the ten‑year period in the case of a project which has received an extension, is not part of the fee agreement pursuant to subsection (D)(2) and is subject to the payments required by Section 4‑29‑60 if the county has title to the property or ad valorem property taxes, if the sponsor has title to the property.

(d) For purposes of those businesses qualifying under subsection (D)(4), the five‑year period referred to in this subsection is eight years. For those sponsors which, after qualifying pursuant to subsection (D)(4), have more than five hundred million dollars in capital invested in this State and employ more than one thousand people in this State, the five‑year period referred to in this subsection is ten years, and the ten‑year period is fifteen years.

(3) The annual fee provided by subsection (D)(2) is available for no more than thirty years for an applicable piece of property. The sponsor may apply to the county prior to the end of the thirty‑year period for an extension of the fee period for up to ten years. The county council of the county may approve an extension by resolution upon a finding of substantial public benefit. A copy of the resolution shall be delivered to the department within thirty days of the date the resolution was adopted. For projects which are completed and placed in service during more than one year, each year’s investment may be subject to the fee in subsection (D)(2) for thirty years or, if extended as provided in this subsection, up to forty years, for an aggregate maximum fee period of up to fifty years. For those sponsors qualifying under subsection (D)(4), the annual fee is available for no more than forty years for an applicable piece of property and for those projects placed in service in more than one year, the annual fee is available for an aggregate fee period of up to fifty‑three years or, for those sponsors qualifying pursuant to item (2)(d), fifty‑five years.

(4) During the time period allowed to meet the minimum investment level, the investor annually must inform the appropriate county official of the total amount invested.

(D) The inducement agreement must provide for fee payments, to the extent applicable, as follows:

(1)(a) Any property is subject to an annual fee payment as provided in Section 4‑29‑60 before being placed in service.

(b) Any undeveloped land is subject to an annual fee payment as provided in Section 4‑29‑60 before being developed and placed in service. The time during which fee payments are made pursuant to Section 4‑29‑60 is not considered part of the maximum periods provided in subsection (C)(2) and (3), and a lease is not an “initial lease agreement” for purposes of this section until the first day of the calendar year for which a fee payment is due pursuant to subsection (D)(2) in connection with the lease.

(2) After property qualifying pursuant to subsection (B) is placed in service, an annual fee payment, determined in accordance with one of the following, is due:

(a) an annual payment in an amount not less than the property taxes that would be due on the project if it were taxable, but using:

(i) an assessment ratio of at least six percent, or four percent for those projects qualifying pursuant to subsection (D)(4);

(ii) a fixed millage rate as provided in subsection (G); and

(iii) a fair market value estimate determined by the department as follows:

A. for real property, using the original income tax basis for South Carolina income tax purposes without regard to depreciation. If real property is constructed for the fee or is purchased in an arms‑length transaction, using the original tax basis, otherwise the property must be reported at its fair market value for ad valorem property tax purposes as determined by appraisal. The fair market value established for the first year of the fee remains the fair market value for the life of the fee. The county and the sponsor or sponsor affiliate may instead provide in the fee agreement or any amendment thereto that any real property subject to the fee shall be reported at its fair market value for ad valorem property taxes as determined by the department’s appraisal as if such property were not subject to the fee; provided, the department may not undertake such an appraisal more than once every five years; and

B. for personal property, using the original tax basis for South Carolina income tax purposes, less depreciation allowable for property tax purposes; except that the sponsor is not entitled to any extraordinary obsolescence;

(b) an annual payment based on an alternative arrangement yielding a net present value of the sum of the fees for the life of the agreement not less than the net present value of the fee schedule as calculated pursuant to subsection (D)(2)(a). Net present value calculations performed pursuant to this subsection must use a discount rate equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published during the month in which the inducement agreement is executed. If no yield is available for the month in which the inducement agreement is executed, the last published yield for the appropriate maturity must be used. If there are no bonds of appropriate maturity available, bonds of different maturities may be averaged to obtain the appropriate maturity; or

(c) an annual payment as provided in subsection (D)(2)(a), except that every fifth year the applicable millage rate may increase or decrease in step with the average actual millage rate applicable in the district where the project is located based on the preceding five‑year period.

(3) At the conclusion of the payments determined pursuant to items (1) and (2) of this subsection the annual fee payment is equal to the taxes due on the project as if it were taxable. When the property is no longer subject to the fee pursuant to subsection (D)(2), the fee or property taxes must be assessed:

(a) with respect to real property, based on the fair market value as of the latest reassessment date for similar taxable property; and

(b) with respect to personal property, based on the then‑depreciated value applicable to the property under the fee, and after that continuing with the South Carolina property tax depreciation schedule.

(4)(a) The assessment ratio may not be lower than four percent:

(i) in the case of a single sponsor investing at least one hundred fifty million dollars and which is creating at least one hundred twenty‑five new full‑time jobs at the project;

(ii) in the case of a single sponsor investing at least four hundred million dollars in this State;

(iii) in the case of a project that satisfies the requirements of Section 11‑41‑30(2)(a), and for which the Secretary of Commerce has delivered certification pursuant to Section 11‑41‑70(2)(a).

For purposes of this item, if a single sponsor enters into a financing arrangement of the type described in subsection (O)(2), the investment in or financing of the property by a developer, lessor, financing entity, or other third party in accordance with this arrangement is considered investment by the sponsor. Investment by a related person to the sponsor, as described in Section 12‑10‑80(D)(2), is considered investment by the sponsor.

(b) The new full‑time jobs requirement of this item does not apply in the case of a business that paid more than fifty percent of all property taxes actually collected in the county for more than the twenty‑five years ending on the date of the lease agreement.

(c) In an instance in which the governing body of a county has provided, by contractual agreement, for a change in fee in lieu of taxes arrangements conditioned on a future legislative enactment, a new enactment does not bind the original parties to the agreement unless the change is ratified by the governing body of the county.

(5) Notwithstanding the use of the term “assessment ratio”, a sponsor qualifying for the fee may negotiate an inducement agreement with a county using differing assessment ratios for different assessment years or levels of investment covered by the inducement agreement. The lowest assessment ratio allowed is the lowest ratio for which the sponsor may qualify under this section.

(E) Calculations pursuant to subsection (D)(2) must be made on the basis that the property, if taxable, is allowed all applicable property tax exemptions except the exemption allowed pursuant to Section 3(g) of Article X of the Constitution of this State and the exemptions allowed pursuant to Section 12‑37‑220(B)(32) and (34).

(F) With regard to calculation of the fee provided in subsection (D)(2), the inducement agreement may provide for the disposal of property and the replacement of property subject to the fee as follows:

(1) If a sponsor disposes of property subject to the fee, the fee must be reduced by the amount of the fee applicable to that property. Property is disposed of only when it is scrapped or sold or removed from the project. If it is removed from the project, it becomes subject to ad valorem property taxes to the extent it remains in the State. If the sponsor used any method to compute the fee other than that provided in subsection (D)(2)(a), the fee on the property which was disposed of must be recomputed in accordance with subsection (D)(2)(a) and to the extent the amount that would have been paid pursuant to subsection (D)(2)(a) exceeds the fee actually paid by the sponsor, the sponsor must pay the difference with the next fee payment due after the property is disposed of. If the sponsor used the method provided in subsection (D)(2)(c), the millage rate provided in subsection (D)(2)(c) must be used to calculate the amount which would have been paid pursuant to subsection (D)(2)(a). If there is no provision in the agreement dealing with the disposal of property in accordance with this subsection, the fee remains fixed and no adjustment to the fee is allowed for disposed property.

(2) Property placed in service as a replacement for property that is subject to the fee payment may become part of the fee payment as provided in this item:

(a) Replacement property may have a function that differs from the property it is replacing. Replacement property is considered to replace the oldest real or personal property subject to the fee and disposed of in the same property tax year as the replacement property is placed in service. Replacement property qualifies for fee treatment provided in subsection (D)(2) only up to the original income tax basis of fee property it replaces. More than one piece of replacement property may replace a single piece of fee property. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property it replaces, the excess amount is subject to payments as provided in Section 4‑29‑60. Replacement property is entitled to the fee payment for the period of time remaining on the twenty‑year fee period for the property it replaces.

(b) The new replacement property that qualifies for the fee provided in subsection (D)(2) is recorded using its income tax basis, and the fee is calculated using the millage rate and assessment ratio provided on the original fee property. The fee payment for replacement property must be based on subsection (D)(2)(a) or (c) if the investor originally used that method, without regard to present value.

(c) To qualify as replacement property, title to the replacement property must be held by the county.

(d) If there is no provision in the inducement agreement dealing with replacement property, any property placed in service after the time period allowed for investments as provided by subsection (C)(2), is subject to the payments required by Section 4‑29‑60 if the county has title to the property or ad valorem property taxes, if the sponsor has title to the property.

(G)(1) The county and the sponsor may enter into a millage rate agreement to establish the millage rate for purposes of calculating payments pursuant to subsection (D)(2)(a) and the first five years pursuant to subsection (D)(2)(c). This millage rate agreement may be executed at any time up to and including, but not later than, the date of the initial lease agreement. This millage rate agreement may be a separate agreement or may be made a part of either the inducement agreement or the initial lease agreement.

(2) The millage rate established pursuant to item (1) of this subsection must be no lower than the cumulative property tax millage rate levied by or on behalf of all taxing entities within which the project is to be located on either:

(a) June thirtieth of the year preceding the year in which the millage rate agreement is executed or the initial lease agreement is executed if no millage rate agreement is executed; or

(b) June thirtieth of the year in which the millage rate agreement is executed if a millage rate agreement is not executed the lease agreement is deemed to be the millage rate agreement for purposes of this item.

(H)(1) Upon agreement of the parties, and except as provided in subsection (H)(2), an inducement agreement, a millage rate agreement, or both, may be amended or terminated and replaced with regard to all matters including, but not limited to, the addition or removal of sponsors or sponsor affiliates.

(2) An amendment or a replacement of an inducement agreement or millage rate agreement may not be used to lower the millage rate, discount rate, assessment ratio, or, except as provided in subsections (C)(2) and (C)(4) increase the term of the agreement; except that an existing inducement agreement that has not been implemented by the execution and delivery of a millage rate agreement or a lease agreement may be amended up to the date of execution and delivery of a millage rate agreement or a lease agreement in the discretion of the governing body.

(I) Investment expenditures incurred by a sponsor in connection with the project, or relevant phase of a project, for a project completed and placed in service in more than one year, qualify as expenditures subject to the fee in subsection (D)(2), so long as these expenditures are incurred before the end of the applicable five‑year, eight‑year, ten‑year, or fifteen‑year period referenced in subsection (C)(2) or (3). An inducement agreement must be executed within two years after the date the county adopts an inducement resolution; otherwise, only investment expenditures made or incurred by a sponsor after the date of the inducement agreement in connection with a project qualify as expenditures subject to the fee in subsection (D)(2).

(J) Subject to subsection (K), project expenditures incurred within the applicable time period provided in subsection (I) by an entity whose investments are not computed at the level of investment for purposes of subsection (B) or (C) qualify as investment expenditures subject to the fee in subsection (D)(2) if the:

(a) expenditures are part of the original cost of property that is transferred, within the applicable time period provided in subsection (I) to one or more other investors or investor affiliates whose investments are being computed at the level of investment for purposes of subsection (B) or (C);

(b) property would have qualified for the fee in subsection (D)(2) if it had been initially acquired by the sponsor instead of the transferor entity;

(c) the income tax basis of the property immediately before the transfer equal the income tax basis of the property immediately after the transfer; except that, to the extent income tax basis of the property immediately after the transfer unintentionally exceeds the income tax basis of the property immediately before the transfer, the excess is subject to payments pursuant to Section 4‑29‑60;

(d) the county agrees to an inclusion in the fee of the property described in subsection (J).

(K)(1) Property previously subject to property taxes in South Carolina does not qualify for the fee except as provided in this subsection:

(a) land, excluding improvements on it, on which a new project is located may qualify for the fee even if it has previously been subject to South Carolina property taxes;

(b) property that has been subject previously to South Carolina property taxes, but has never been placed in service in South Carolina, or which was placed in service in South Carolina pursuant to an inducement agreement or other preliminary approval by the county prior to execution of the lease agreement pursuant to subsection (C)(1), may qualify for the fee; and

(c) property placed in service in South Carolina and subject to South Carolina property taxes that is purchased in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined pursuant to Chapter 6, Title 12 as of the time of the transfer, may qualify for the fee if the sponsor invests at least an additional forty‑five million dollars in the project.

(2) Repairs, alterations, or modifications to real or personal property which are not subject to a fee are not eligible for a fee, even if they are capitalized expenditures, except for modifications to existing real property improvements constituting an expansion of the improvements.

(L)(1) For a project not located in an industrial development park as defined in Section 4‑1‑170, distribution of the fee in lieu of taxes on the project must be made in the same manner and proportion that the millage levied for school and other purposes would be distributed if the property were taxable but without regard to exemptions otherwise available to a project pursuant to Section 12‑37‑220 for that year.

(2) For a project located in an industrial development park as defined in Section 4‑1‑170, distribution of the fee in lieu of taxes on the project must be made in the manner provided for by the agreement establishing the industrial development park.

(3) A county or municipality or special purpose district that receives and retains revenues from a payment in lieu of taxes may use a portion of this revenue for the purposes outlined in Section 4‑29‑68 without the requirement of issuing special source revenue bonds or the requirements of Section 4‑29‑68(A)(4) by providing a credit against or payment derived from the fee due from the sponsor.

(4) Misallocations of the distribution of the fee in lieu of taxes on the project pursuant to this chapter may be corrected by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations. To the extent distributions are made improperly in prior years, a claim for adjustment must be made within one year of the distribution.

(M) As a directly foreseeable result of negotiating the fee, gross revenue of a school district in which a project is located in any year a fee negotiated pursuant to this section is paid may not be less than gross revenues of the district in the year before the first year for which a fee in lieu of taxes is paid. In negotiating the fee, the parties shall assume that the formulas for the distribution of state aid at the time of the execution of the inducement agreement must remain unchanged for the duration of the lease agreement.

(N) Projects on which a fee in lieu of taxes is paid pursuant to this section are considered taxable property at the level of the negotiated payments for purposes of bonded indebtedness pursuant to Sections 14 and 15 of Article X of the Constitution of this State, and for purposes of computing the index of taxpaying ability pursuant to Section 59‑20‑20(3). However, for a project located in an industrial development park as defined in Section 4‑1‑170, projects are considered taxable property in the manner provided in Section 4‑1‑170 for purposes of bonded indebtedness pursuant to Sections 14 and 15 of Article X of the Constitution of this State, and for purposes of computing the index of taxpaying ability pursuant to Section 59‑20‑20(3). Provided, however, that the computation of bonded indebtedness limitation is subject to the requirements of Section 4‑29‑68(E).

(O)(1) An interest in an inducement agreement, millage rate agreement, and lease agreement, and property to which these agreements relate, may be transferred to another entity at any time. Notwithstanding another provision of this chapter, an equity interest in a sponsor or sponsor affiliate may be transferred to another entity or person at any time. To the extent an agreement is transferred, the transferee assumes the current basis the sponsor has in the property subject to the fee for purposes of calculating the fee.

(2) A sponsor or county may enter into a lending, financing, security, lease, or similar arrangement, or succession of such arrangements, with a financing entity, concerning all or part of a project including, without limitation, a sale‑leaseback arrangement, equipment lease build‑to‑suit‑lease, synthetic lease, Nordic lease, defeased tax benefit, transfer lease, assignment, sublease, or similar arrangement, or succession of such arrangements, with one or more financing entities, concerning all or part of a project, regardless of the identity of the income tax owner of the property which is subject to the fee payment pursuant to subsection (D)(2). Even though income tax basis is changed for income tax purposes, neither the original transfer to the financing entity nor the later transfer from the financing entity back to the original sponsor pursuant to terms in the sale‑leaseback agreement, affects the amount of the fee due.

(3) A transfer undertaken with respect to other projects to effect a financing authorized by subsection (O) must meet the following requirements:

(a) The department and the county shall receive written notification, within sixty days after the transfer, of the identity of each transferee and other information required by the department with the appropriate returns. Failure to meet this notice requirement does not affect adversely the fee, but a penalty up to ten thousand dollars a year or portion of a year up to a maximum penalty of fifty thousand dollars may be assessed by the department for late notification.

(b) If the financing entity is the income tax owner of property, either the financing entity is primarily liable for the fee as to that portion of the project to which the transfer relates with the sponsor remaining secondarily liable for the payment of the fee or the sponsor agrees to be primarily liable for the payment of the fee as to that portion of the project to which the transfer relates.

(4) A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement, if it obtains the prior approval, or subsequent ratification, of the county with which it entered into the original agreement. The county’s prior approval or subsequent ratification may be evidenced by any one of the following, in the absolute and sole discretion of the county providing the approval or ratification: (i) a letter or other writing executed by an authorized county representative as designated in the respective inducement, millage rate, or lease agreement; (ii) a resolution passed by the county council; or (iii) an ordinance passed by the county council following three readings and a public hearing. That approval is not required in connection with transfers to sponsor affiliates or other financing‑related transfers.

(P) An inducement agreement, a millage rate agreement, or a lease agreement, or the rights of a sponsor or sponsor affiliate pursuant to that agreement including, without limitation, the availability of the subsection (D)(2) fee, may not be affected adversely if the bonds issued pursuant to that agreement are purchased by one or more of the entities that are or become sponsor or sponsor affiliates.

(Q) Except as provided in subsection (B)(4)(a), if a sponsor fails to make the minimum investment required by subsection (D)(2) or an investment under subsection (D)(4) if applicable, within the time provided in subsection (C)(2), then the sponsor is entitled to the benefits of Chapter 12 of this title if and to the extent allowed pursuant to an applicable agreement between the sponsor and the county, and if the requirements of subsection (B)(4)(a) are satisfied. Otherwise, the fee provided in subsection (D)(2) or (D)(4) is no longer available and the sponsor must make the payments due pursuant to Section 4‑29‑60 for the remainder of the lease period.

(R) The minimum amount of the initial investment provided in subsection (B)(3) of this section may not be reduced except by a special vote which, for purposes of this section, means an affirmative vote in each branch of the General Assembly by two‑thirds of the members present and voting, but not less than three‑fifths of the total membership in each branch.

(S)(1) The sponsor shall file the returns, contracts, and other information that may be required by the department.

(2) Fee payments, and returns showing investments and calculating fee payments, are due at the same time as property tax payments and property tax returns would be due if the property were owned by the sponsor obligated to make the fee payments and file such returns.

(3) Failure to make a timely fee payment and file required returns results in penalties being assessed as if the payment or return were a property tax payment or return.

(4) The department may issue rulings and promulgate regulations necessary or appropriate to carry out the purpose of this section.

(5) The provisions of Chapters 4 and 54, Title 12, applicable to property taxes, apply to this section, and, for purposes of that application, the fee is considered a property tax. Sections 12‑54‑20, 12‑54‑80, and 12‑54‑155 do not apply to this section.

(6) Within thirty days of the date of execution of an inducement or lease agreement, a copy of the agreement must be filed with the department and the county auditor and the county assessor for every county in which the project is located. If the project is located in an industrial development park, the agreements must be filed with the auditors and assessors for all counties participating in the industrial development park.

(7) The department, for good cause, may allow additional time for filing of returns required under this section. The request for an extension may be granted only if the request is filed with the department on or before the date the return is due. However, the extension must not exceed sixty days from the date the return is due. The department shall develop applicable forms and procedures for handling and processing extension requests. An extension may not be granted to a sponsor who has been granted an extension for a previous period and has not fulfilled the requirements of the previous period.

(8) To the extent a form or return is filed with the department, the sponsor must file a copy of the form or return with the county auditor, assessor, and treasurer of the county or counties in which the project is physically located. To the extent requested, the county auditor of the county in which the project is physically located shall make these forms and returns available to any county auditor of a county participating in an industrial development park in which the project is located.

(9) Upon the direction of the governing body of the county, a county official may request and obtain such financial books and records from a sponsor that support the sponsor’s fee in lieu of taxes return as may be reasonably necessary to verify the calculations of the sponsor’s fee in lieu of taxes payment or the calculations of the sponsor’s special source revenue credit.

(T) Except as otherwise expressly provided in subsection (C)(2), a loss of fee benefits pursuant to this section is prospective only from the date of noncompliance and, subject to subsection (Q), only with respect to that portion of the project to which the noncompliance relates; except that the loss of fee benefits may not result in the recovery from the sponsor of fee payments for more than:

(1) three years from the date a return concerning the fee is filed for the time period during which the noncompliance occurs. A showing of bad faith noncompliance increases the three‑year period to a ten‑year period; or

(2) ten years if a return is not filed for the time period during which the noncompliance occurs.

(U) Section 4‑29‑65 does not apply to this section. All references in this section to taxes mean South Carolina taxes unless otherwise expressly stated.

(V)(1) Notwithstanding another provision of this section, in the case of a project consisting of a qualified recycling facility, the annual fee is available for no more than thirty years, and for those projects constructed or placed in service during a period of more than one year, the annual fee is available for a maximum of forty years.

(2) Notwithstanding another provision of this section, for a qualified recycling facility, the assessment ratio must be at least three percent.

(3) Any machinery and equipment foundations, port facilities, or railroad track systems used, or to be used, for a qualified recycling facility is considered tangible personal property.

(4) Notwithstanding subsections (F) and (I) of this section, the total costs of all investments made for a qualified recycling facility are eligible for fee payments as provided in this section.

(5) For purposes of fees that may be due on undeveloped property for which title has been transferred to the county by or for the owner or operator of a qualified recycling facility, the assessment ratio is three percent.

(6) Notwithstanding subsection (D)(2)(b) of this section, in the case of a qualified recycling facility, net present value calculations performed pursuant to that subsection must use a discount rate equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published on any day selected by the sponsor during the year in which assets are placed into service or in which the inducement agreement is executed.

(7) As used in this subsection, “qualified recycling facility” and “investment” have the meaning provided in Section 12‑6‑3460.

(W)(1) Notwithstanding subsection (C)(1), in the case of a qualified nuclear plant facility, the sponsor has five years from the end of the calendar year in which the Nuclear Regulatory Commission grants the sponsor a combined license to construct and operate a nuclear power plant to enter into an initial lease agreement with the county but in no event more than fifteen years from the latter of the adoption of an inducement resolution or execution of an inducement agreement by the county.

(2) Notwithstanding subsection (C)(2)(d), in the case of a qualified nuclear plant facility, the sponsor has fifteen years from the end of the calendar year in which the initial lease agreement is executed to meet the minimum investment and fifteen years from the end of the calendar year in which the first piece of property is placed into service to complete the project.

(X)(1) All agreements entered into pursuant to this section must include as the first portion of the document a recapitulation of the remaining contents of the document which includes, but is not limited to, the following:

(a) the legal name of each party to the agreement;

(b) the county and street address of the project and property to be subject to the agreement;

(c) the minimum investment agreed upon;

(d) the length and term of the agreement;

(e) the assessment ratio applicable for each year of the agreement;

(f) the millage rate applicable for each year of the agreement;

(g) a schedule showing the amount of the fee and its calculation for each year of the agreement;

(h) a schedule showing the amount to be distributed annually to each of the affected taxing entities;

(i) a statement answering the following questions:

(i) Is the project to be located in a multi‑county park formed pursuant to Chapter 29, Title 4?;

(ii) Is disposal of property subject to the fee allowed?;

(iii) Will special source revenue bonds be issued or credits for infrastructure investment be allowed in connection with this project?;

(iv) Will payment amounts be modified using a net present value calculation?; and

(v) Do replacement property provisions apply?;

(j) any other feature or aspect of the agreement which may affect the calculation of subitems (g) and (h) of this item;

(k) a description of the effect upon the schedules required by subitems (g) and (h) of this item of any feature covered by subitems (i) and (j) not reflected in the schedules for subitems (g) and (h);

(l) which party or parties to the agreement are responsible for updating any information contained in the summary document.

(2) The auditor shall prepare a bill for each installment of the fee according to the schedule set forth in subitem (1)(g) or as modified pursuant to subitem (1)(j), (k), or (l) and that payment must be distributed to the affected taxing entities according to the schedule in subitem (1)(g) or as modified pursuant to subitem (1)(j), (k), or (l).

(3) The county and the sponsor and sponsor affiliates may agree to waive any or all of the items described in this subsection.

HISTORY: 1988 Act No. 487, eff May 2, 1988; 1989 Act No. 173, Section 1, eff June 8, 1989; 1992 Act No. 361, Section 37, eff May 4, 1992; 1993 Act No. 123, Section 3, eff June 14, 1993; 1993 Act No 181 Section 58, eff July 1, 1993; 1994 Act No. 497, Part II, Section 118, eff June 29, 1994; 1995 Act No. 32, Section 2, eff April 6, 1995; 1996 Act No. 462, Sections 7A, eff July 2, 1996, Section B(1), eff January 1, 1996; 1997 Act No. 149, Section 6, eff June 24, 1997; 1997 Act No. 151, Sections 4, 5, eff for tax years beginning after 1996; 1999 Act No. 114, Section 4, eff for property tax years beginning after 1998; 2000 Act No. 279, Section 1, eff May 19, 2000; 2001 Act No. 89, Sections 51E, 58, 59, 61C, 64, and 65B, eff July 20, 2001; 2002 Act No. 280, Section 2, eff May 28, 2002; 2002 Act No. 334, Sections 3, 7C, 7D, 7E, eff June 24, 2002; 2003 Act No. 69, Section 3.ZZ.1, eff June 18, 2003; 2005 Act No. 71, Section 4, eff May 23, 2005; 2005 Act No. 145, Section 44.C, eff June 7, 2005; 2005 Act No. 161, Section 40.C, eff upon approval (became law without the Governor’s signature on June 9, 2005); 2006 Act No. 384, Sections 17, 20, eff June 14, 2006; 2006 Act No. 386, Section 58, eff June 14, 2006; 2007 Act No. 116, Section 7.C, eff June 28, 2007; 2008 Act No. 313, Sections 2.G, 2.I.7, eff upon approval (became law without the Governor’s signature on June 12, 2008); 2008 Act No. 352, Section 2.G, eff upon approval (became law without the Governor’s signature on June 12, 2008); 2010 Act No. 161, Sections 1.A to 1.D, eff May 12, 2010; 2010 Act No. 290, Section 6.A, eff June 23, 2010 and January 1, 2011; 2012 Act No. 187, Section 5, eff June 7, 2012.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 122, “Department of Employment and Workforce” was substituted for all references to “Employment Security Commission”, and “Executive Director of the Department of Employment and Workforce” or “executive director” was substituted for all references to the “Chairman of the Employment Security Commission” or “chairman” that refer to the Chairman of the Employment Security Commission, as appropriate.

At the direction of the Code Commissioner, subitem (A)(1)(cc), as added by 2010 Act 161, Section 1.A., was redesignated as subitem (A)(1)(d), and subitems (A)(1)(d) and (A(1)(e) were redesignated as subitems (A)(1)(e) and (A)(1)(f).

At the direction of the Code Commissioner in 2014, the reference to Section 12‑7‑1275(A) in subsection (V)(7) was changed to Section 12‑6‑3460.

Editor’s Note

This section was amended by 1993 Act No. 181, Section 58, and by 1993 Act No. 123, Section 3. As set out above, this section reads as appearing in Act No. 123, with the name changes of Act No. 181 incorporated, pursuant to the direction of 1993 Act No. 181, Section 1614, which reads as follows:

“SECTION 1614. Notwithstanding any permanent or temporary provision of law, any enactment, or portion thereof, of the General Assembly in 1993 in conflict with any provision of this act shall be suspended as to its force and effect until March 1, 1994. Where there is no conflict the provisions of any other enactments shall supersede the provisions of this act. For the purposes of this section, ‘conflict’ shall not include:

“(1) where provisions of the Code of Laws of 1976, as amended, are repeated herein so as to incorporate only changes in the names of agencies, divisions or departments, except so far as such change in name conflicts with another enactment or a portion of another enactment, or.

“(2) where provisions of the Code of Laws of 1976, as amended, are repeated herein so as to incorporate only changes in the governance or structure of an agency, division or department except so far as such governance or structure is in conflict with another enactment or some portion of another enactment.”

1992 Act No. 361, Section 39, eff May 4, 1992, provides as follows:

“SECTION 39. (A) In connection with a written agreement between the county and the investor executed in good faith prior to March 15, 1992, concerning the method for calculating the fee allowed pursuant to Section 4‑29‑67 of the 1976 Code, the method provided in the agreement by the parties will be binding except as provided in subsections (D) and (E) of this section.

“(B) If the investor and county are operating under an existing agreement which does not discuss replacement property or the disposal of property subject to the fee, the parties can agree to follow any previously written opinion of the Attorney General or Department of Revenue concerning these issues.

“(C) The investor and the county who are operating under an existing fee agreement may renegotiate the payment to include provisions concerning property which is disposed of and replacement property which is consistent with Section 4‑29‑67(F) of the 1976 Code.

“(D) The investor and the county who are operating under an existing fee agreement may agree to an extension as provided in Section 4‑29‑67(C)(2) of the 1976 Code. In no event may an existing or modified agreement exceed in total the time period provided in Section 4‑29‑67(C)(1) of the 1976 Code.

“(E) An existing agreement may not provide that the terms of the agreement can be amended except as provided in Section 4‑29‑67(H) of the 1976 Code.”

1993 Act No. 123, Sections 5 and 7, eff June 14, 1993, provide as follows:

“SECTION 5. Nothing in this act may be construed as amending or repealing any provision of Section 39, Act 361 of 1992.”

“SECTION 7. This act takes effect upon approval by the Governor and applies prospectively to any project for which an inducement agreement was not entered into before the effective date of this act; provided, however, that projects with respect to which an inducement agreement, millage rate agreement, or both, have been entered into before the effective date of this act are entitled but not required to use the provisions of Section 4‑29‑67 of the 1976 Code, as amended by this act, and also one or more of the provisions of the following subsections of Section 4‑29‑67 of the 1976 Code as in existence before the amendments contained in this act: (B); (F)(1)(c); (F)(2); (G); and (I); and provided further that investors having a lease agreement which was entered into before the effective date of this act meeting the eighty‑five million dollar minimum level of investment required under Section 4‑29‑67(C) within five years from the date the lease agreement was signed shall have seven years from the date the lease agreement was signed to complete the investment, unless a longer period is otherwise stipulated in the lease agreement. The last sentence of Section 4‑29‑67(I) of the 1976 Code, as amended by this act, is not applicable to any project with respect to which an inducement agreement was entered into or an inducement or similar resolution was adopted by the governing body of the county before the effective date of this act; provided, however, that if an inducement agreement has not been entered into before the effective date of this act, such an agreement must be entered into with respect to any such project within one year of the effective date of this act in order for pre‑inducement agreement project expenditures to qualify for the fee provided in subsection (D)(2). Any lease which was entered into with a county prior to the effective date of this act, in order to preserve the eligibility of certain property for subsequent inclusion in a fee in lieu of taxes arrangement, and which lease provides for lease payments within two dollars of what the property taxes on the leased property would otherwise have been, shall not be considered a lease agreement of any kind for purposes of beginning the running of any time period provided under Section 4‑29‑67 of the 1976 Code, including, but not limited to, the five, seven, and twenty‑year periods provided therein. For purposes of this SECTION 7, references to inducement or millage rate agreements shall be considered to exclude any amendments or replacements of such agreements.”

1996 Act No. 462, Sections 7 B(2), C, provide as follows:

“SECTION 7. B.(2) This item [the reservation of item (Z) effected by Section B.(1)] is effective January 1, 1996.”

“SECTION 7. C. The amendments to Section 4‑29‑67 of the 1976 Code contained in this section are effective for inducement resolutions, inducement agreements, millage rate agreements, and lease agreements with regard to projects for which lease agreements are entered into after December 31, 1995. However, the provisions affecting Section 4‑29‑67(B)(3), (B)(4)(b)(iii), (H), (K)(1)(c), (O), and (U) of the 1976 Code are effective for inducement resolutions, inducement agreements, millage rate agreements, and lease agreements with regard to projects for which lease agreements have been entered into on or before December 31, 1995, if the investor and the county agree to modify the agreement to allow these provisions to apply to their agreement. However, except as provided in Section 4‑29‑67(H) of the 1976 Code, no amendment to an inducement agreement or millage rate agreement may reduce the millage rate, discount rate, or assessment ratio under such agreements.”

2000 Act No. 279, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and applies to fee payments due after June 30, 2000.”

2002 Act No. 280, Section 7, provides as follows:

“The incentives offered in this act apply only to projects receiving a certification of completion from the Department of Health and Environmental Control after the effective date of this act.”

2003 Act No. 69, Section 3.ZZ.3, provides in part as follows:

“(i) for those projects which have been granted a two‑year extension of time to complete the project and that two‑year period has not expired, the sponsor may at any time during the two‑year extension request an additional three years to complete the project, and (ii) the county and the sponsor may agree to waive the provisions of subsection (W) under any agreement whenever executed.”

2010 Act No. 290, Section 6.B, provides:

“The provisions of this section take effect upon approval by the Governor except that the provisions of Section 4‑29‑67(C)(3) take effect January 1, 2011, provided that a county may amend an existing fee‑in‑lieu agreement at any time prior to the expiration of the fee to incorporate the amendments to Section 4‑29‑67(C)(3) as contained in subsection A. Also, except that Section 4‑29‑67(D) shall take effect in each county in the first property tax year in which a countywide reassessment program is implemented after December 31, 2010.”

Effect of Amendment

The 1989 amendment rewrote this section.

The 1992 amendment rewrote this section.

The first 1993 amendment rewrote this section, so as to revise the manner in which and conditions under which fees in lieu of taxes are authorized.

The second 1993 amendment changed “Tax Commission” to “Department of Revenue” throughout.

The 1994 amendment added subsection (Z).

The 1995 amendment added subsection (AA).

The 1996 amendment revised subsections (A)‑(U) and reserved (Z).

The first 1997 amendment (by Act No. 149), in subsection (W), added paragraph (6).

The second 1997 amendment (by Act No. 151), by Section 4, in subsection (B)(4)(a), added the last sentence; and, by Section 5, in subsection (D)(4)(a), added item (iv).

The 1999 amendment revised the replacement property provisions in subparagraph (F)(2)(a).

The 2000 amendment added subsection (BB).

The 2001 amendments revised the section, providing for investors and investor affiliates, with guidelines for their qualification for the 4% fee; providing for time periods for executing millage rate agreements and computations relating to cumulative property tax millage and alternative determination of the millage rate; providing for adjustments for misallocations; and making technical changes.

The first 2002 amendment added paragraph (B)(5).

The second 2002 amendment, in item (C)(2)(a), in the second sentence, substituted “five” for “two”; in item (C)(2)(c), in the introductory paragraph, substituted “up to ten” for “seven”; added paragraph (S)(7) and added subsection (W).

The 2003 amendment rewrote this section.

The first 2005 amendment, in subsection (D)(4), in the introductory statement to subparagraph (a) substituted “may not be lower than” for “must be at least”; in subparagraph (a)(iv)A, substituted “project” for “facility”; and added subparagraph (a)(v).

The second and third 2005 amendments added a virtually identical subparagraph (D)(4)(a)(v) to that added by the first 2005 amendment.

The first 2006 amendment, in subparagraph (B)(1), added the fourth sentence relating to property titled in the name of a county; and, in subparagraph (D)(4)(a), in (i) substituted “one hundred fifty” for “two hundred” and “three hundred” for “four hundred” million dollars and “one hundred twenty‑five” for “two hundred” new full‑time jobs, deleted (iii), redesignated (iv) as (iii), merged the paragraph designated as “A” into it and deleted the paragraph designated as “B”; redesignated (v) as (iv); and made conforming amendments.

The second 2006 amendment added an identical fourth sentence in subparagraph (B)(1) to that added by the first 2006 amendment.

The 2007 amendment, in subparagraph (C)(2)(a), added the fifth and sixth sentences; rewrote paragraph (C)(3) and subparagraph (D)(4)(a); in subparagraph (D)((4)(b), substituted “lease” for “inducement”; in subparagraph (H)(2), added “, or except as provided in Sections 4‑29‑67(C)(2) and (C)(4)”; and, in paragraph (L)(3) added “or payment derived from” and deleted the second sentence relating to a direct payment of cash to a sponsor.

The first 2008 amendment, in subparagraph (D)(4)(a), added the undesignated paragraph at the end applicable to tax years beginning on or after January 1, 2008; and, in subparagraph (A)(1)(c), added the second sentence and, in paragraph (O)(4), added the second sentence relating to evidence of county’s prior approval or subsequent ratification applicable for property tax years beginning after 2007.

The second 2008 amendment added an identical undesignated paragraph at the end of subparagraph (D)(4)(a) effective upon approval.

The first 2010 amendment, 2010 Act No. 161, Sections 1.A to 1.D, in subsection (A) added the definition of “qualified nuclear plant facility”; in subitem (B)(4)(a) inserted “and including a qualified nuclear plant facility as defined in Section 12‑44‑30(16A)” in the second sentence; in subsection (C)(1) inserted the exception; and added subsection (X).

The second 2010 amendment, 2010 Act No. 290, Section 6, rewrote the section.

The 2012 amendment added subsection (S)(9).

CROSS REFERENCES

Annexation of property by municipality by means of petition of all or seventy‑five percent of landowners, see Section 5‑3‑150.

Credit, against tax due pursuant to this section, for corporate headquarters, see Section 12‑6‑3410.

Issuance of special source revenue bonds secured by payments in lieu of taxes made pursuant to this section, see Section 4‑29‑68.

Provisions governing inducement agreement in lieu of property taxes do not apply to any construction of this section, and to extent such other provisions conflict with this section, such other provisions govern, see Section 4‑29‑69.

Transfer of title, qualification for a fee in lieu of taxes, see Section 12‑44‑160.

Federal Aspects

Controlled group of corporations defined in Section 1563 of Internal Revenue Code of 1986, see 26 U.S.C.A. Section 1563.

RESEARCH REFERENCES

ALR Library

114 ALR 5th 561 , When is Property Owned by State or Local Governmental Body Put to Public Use So as to be Eligible for Property Tax Exemption.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Tax law 43 S.C. L. Rev. 170 (Autumn 1991).

Attorney General’s Opinions

The millage rate to be used to calculate the amount of fees in lieu of payments cannot be less than the millage rate applicable at the time of the execution of the agreement; the period in Section 4‑29‑67 (A)(1) for the annual payments under the agreement would begin to run when the industrial development is complete for the use intended; the statute does not authorize modification of the agreement to add investments or extend time limits. 1989 Op Atty Gen, No. 89‑90, p 241.

Municipality may agree to sell utility services to industrial park in adjacent county provided such agreement is in accordance with applicable provisions of Sections 5‑31‑1510, et seq., 5‑31‑17, et seq. and 5‑31‑1910, et seq. Park serviced by agreement would not qualify as jointly developed industrial park under Article VIII, Section 13(D) of State Constitution. 1990 Op Atty Gen No. 90‑29.

Five year property tax exemption for new or expanded manufacturing establishments applies to manufacturing establishments in jointly developed industrial parks unless such developments are specifically excluded from exemption by other statutory authority. 1990 Op Atty Gen No. 90‑29.

Neither Article VIII, Section 13(D) of State Constitution nor Section 4‑1‑170 requires that school districts receive fees from jointly developed industrial parks at same percentage as general taxes are to school taxes. Such, however, may be required by other statutory provisions. 1990 Op Atty Gen No. 90‑29.

Lawful contract by county officials will normally be sustained by court regardless of fact such officials may have made bad bargain. 1990 Op Atty Gen No. 90‑29.

A portion of the payment in lieu of taxes required by Section 4‑29‑67 should be allocated to the bond debt of a school district or other political entity. 1989 Op Atty Gen, No. 89‑107, p 287.

Legislation allowing counties to negotiate fees in lieu of taxes for exceptionally large industries willing to locate or expand their facilities in this State most probably would be deemed constitutional if challenged on the basis of equal protection. 1988 Op Atty Gen, No. 88‑35, p 111.

To be classified as taxing entity for purposes of Section 4‑1‑170(3), taxing entity would be determined by right to tax as opposed to existing millage. 1993 Op Atty Gen No. 93‑46.

NOTES OF DECISIONS

In general 1

Allocation of funds 2

1. In general

Fees that landowners pay to county in lieu of taxes on exempt property in multi‑county business park (MCBP) need not be distributed in the same proportion that they would be if the property were taxable, and, thus, a county has discretion to allocate to a school district a smaller proportion of the fees than it would receive in property taxes. Horry County School Dist. v. Horry County (S.C. 2001) 346 S.C. 621, 552 S.E.2d 737. Counties 195; Education 219

A statute did not imply a grant of fiscal autonomy to 2 school districts to the extent that their boards of trustees could compel a tax levy for additional funding they deemed necessary, independent of any action or approval by the county, where the statute only provided the grant of autonomy to a third district, and specifically provided that the tax levy for the other 2 districts “shall be determined” by the county council. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747. Education 216

A county was required by Section 59‑21‑1030 to appropriate projected Educational Improvement Act minimum local effort as submitted by the school district and reported by the department of education, rather than adopting the county auditor’s independent calculation of the effort, since Section 59‑21‑1030 requires the district to maintain at least the level of financial effort per pupil as in the prior year, adjusting for an inflation factor, and thus the auditor was required to set millage so that the minimum effort per pupil would be generated. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747. Education 216

Under Section 4‑29‑67, fees‑in‑lieu are to be treated in the same manner as property taxes, and are to be distributed among school district and other purposes in proportion to their respective property tax millage, and thus the respective shares of the fees‑in‑lieu cannot be determined until after the millage is determined. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747. Education 219

Under Section 4‑29‑67(C), fees‑in‑lieu are to be treated in the same manner as property taxes, and are to be distributed among school district and other purposes in proportion to their respective property tax millage. Respective shares of the fees‑in‑lieu of taxes cannot be determined until after the millage is determined. Only after the respective millage rates are established for each county entity entitled to a portion of the fee‑in‑lieu of taxes can the apportionment of this fee be determined. Section 4‑29‑67(C) requires that the fee be apportioned according to the percentage each participating entity’s millage bears to the sum of all participating entities millages. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747. Education 219

Section 4‑29‑67 does not violate the uniformity provisions in Art X of the South Carolina Constitution because the property which is the subject of the negotiated fee is used exclusively for public purposes and is therefore exempt from ad valorem taxation under Art X, Section 3(a). The statute does not violate equal protection on the grounds that only those industries investing $85 million may take advantage of the negotiated fee and different results may obtain in the negotiation process from those who qualify, since the classification scheme created by the statute is rationally related to its legislative purpose of attracting large capital‑intensive industries to South Carolina, and all such businesses are granted the opportunity to negotiate for fees in lieu of taxes, provided the requirements of the Industrial Revenue Bond Act are met. Quirk v. Campbell (S.C. 1990) 302 S.C. 148, 394 S.E.2d 320.

2. Allocation of funds

Even if a fee is a tax equivalent for purposes of the bonded indebtedness that a school district can incur, the revenue from the fee need not be distributed in the same proportion as if it were a tax when the statute does not otherwise support such a conclusion. Horry County School Dist. v. Horry County (S.C. 2001) 346 S.C. 621, 552 S.E.2d 737. Education 219

**SECTION 4‑29‑68.** Special source revenue bonds.

(A) A county or municipality or special purpose district that receives and retains revenues from a payment in lieu of taxes pursuant to Section 4‑29‑60, Section 4‑29‑67, Section 4‑12‑20, or Section 4‑12‑30 may issue special source revenue bonds secured by and payable from all or a part of such revenues, subject to the following terms and conditions:

(1) The issuance of bonds is authorized by a duly adopted ordinance of the governing body of the issuer or, if the issuer is a special purpose district, an ordinance of the county council or councils in the county or counties in which the special purpose district is located, and a resolution of the governing body of the issuer, after a public hearing is held at least fifteen days after notice of the hearing is published in a newspaper of general circulation in the county or municipality or special purpose district.

(2)(i) The bonds are issued for the purpose of paying the cost of designing, acquiring, constructing, improving, or expanding (a) the infrastructure serving the issuer or the project, (b) for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise, or (c) aircraft which qualifies as a project pursuant to Section 12‑44‑30(16), which property is determined by the issuer to enhance the economic development of the issuer. Costs of issuance of the bonds also may be paid from bond proceeds. Bonds issued pursuant to this section to finance the acquisition of real or personal property may be additionally secured by a mortgage of that real or personal property.

(ii) To the extent that the bonds or any credit or offset against a fee in lieu of taxes that is allowed in lieu of the issuance of the bonds, is used as payment for personal property, including machinery and equipment, and the personal property is removed from the project at any time during the life of the fee, the amount of the fee in lieu of taxes due on the personal property for the year in which the personal property was removed from the project also shall be due for the two years immediately following the removal. The amounts will be remitted by the department to the county in which the project is located.

(a) To the extent that any payment amounts were used for both real property and personal property or infrastructure and personal property, all amounts will be presumed to have been first used for personal property.

(b) If personal property is removed from the project but is replaced with qualifying replacement property, then the personal property will not be considered to have been removed from the property.

(3) The bonds may include amounts for capitalized interest for a period not to extend beyond the later of (a) the date that is three years from the date of issuance of the bonds and (b) the first date on which any ad valorem taxes (including, but not limited to, county or school district taxes) would have been payable on the property (other than unimproved real property) which is the subject of the payment in lieu of taxes.

(4) The issuer may use proceeds of the bonds (including by establishment of a reserve fund to be used) (a) directly for infrastructure owned or controlled by the issuer or (b) to make loans or grants to, or to participate in joint undertakings with, other agencies or political subdivisions of the State that own or control the infrastructure referred to in item (2) of this subsection.

(5) The bonds are, and must state on their face that they are, (a) payable solely from all or a specifically described part of the payments in lieu of taxes received and retained by the issuer under Section 4‑29‑60, Section 4‑29‑67, Section 4‑12‑20, Section 4‑12‑30, or Section 13 of Article VIII of the Constitution of this State, (b) not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of the issuer, (c) not an indebtedness of the issuer within the meaning of any state constitutional provision or statutory limitation but are payable solely from a special source that does not include revenues from any tax or license, and (d) not a pecuniary liability of the issuer or a charge against the issuer’s general credit or taxing power.

(6) The ordinance authorizing the issuance of the bonds shall specifically describe the portion of the payments in lieu of taxes received and retained by the issuer from which the bonds are payable and by which the bonds are secured.

(7) The bonds may be executed and delivered at any time as a single issue or from time to time as several issues, be in the form and denominations, be of the tenor, be payable in the installments and at the time or times not to exceed the time over which payments in lieu of taxes are scheduled to be received, be subject to the terms of redemption, be payable at the place or places, bear interest at the rate or rates which is payable at the place or places, and contain provisions not inconsistent with this section, all of which must be provided in the ordinance authorizing the bonds.

(8) The bonds may be sold at public or private sale at the prices and in the manner and from time to time as may be determined by the governing board to be most advantageous, and the governing board may pay, as a part of the costs described in item (2) of this subsection, and out of the bond proceeds, all expenses, premiums, commissions, and expenses which the governing board considers necessary or advantageous in connection with the authorization, sale, and issuance of the bonds.

(9) The ordinance may provide for the issuance, in the future, of further bonds on a parity with those initially issued, but the proceedings may preclude the issuance of bonds or any obligations of any sort secured by a lien prior to the lien of the bond or bonds afterward issued on a parity with the bonds.

(10) Pending the issuance of bonds, bond anticipation notes may be issued, and to the end that a vehicle be provided therefor, the provisions of Section 11‑17‑10 to Section 11‑17‑110, as now or hereafter amended, are applicable to the bond anticipatory borrowing.

(11) The ordinance authorizing the issuance of the bonds may contain agreements and provisions customarily contained in the instruments securing revenue or special source bonds as the governing board considers advisable, but the issuer does not have the power to obligate itself to impose or maintain any particular level of tax rates.

(B) A county or municipality or special purpose district that receives and retains revenues from a payment in lieu of taxes pursuant to Section 4‑29‑60, Section 4‑29‑67, Section 4‑12‑20, or Section 4‑12‑30 may pledge the revenues as additional security for general obligation debt or revenue debt of the issuer if the general obligation debt or revenue debt is issued in accordance with items (1) and (2) of this subsection.

(C) A county or municipality or special purpose district that receives and retains revenues from a payment in lieu of taxes pursuant to Section 4‑29‑60, Section 4‑29‑67, Section 4‑12‑20, or Section 4‑12‑30 may pledge the revenues as additional security for general obligation debt or revenue debt of other agencies or political subdivisions of the State referred to in item (4)(b) of this subsection if the pledge is authorized by a duly‑adopted ordinance of the governing body of the county or municipality or special purpose district after a public hearing is held at least fifteen days after notice of the hearing is published in a newspaper of general circulation in the county or municipality or special purpose district, and if the general obligation debt or revenue debt to which the revenues received from a payment in lieu of taxes are pledged is issued solely for the purpose of paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the county or municipality or special purpose district in order to enhance the economic development of the county or municipality or special purpose district and costs of issuance of the bonds.

(D) Revenues received by a county or municipality or special purpose district which may be pledged or from which bonds may be payable and secured pursuant to this Section 4‑29‑68 or Section 4‑1‑175 may be used jointly to pay or secure a single series of bonds.

(E) A political subdivision of this State subject to the limitation of Section 14(7)(a) of Article X of the Constitution of this State pledging pursuant to this section all or a portion of the revenues received and retained by that subdivision from a payment in lieu of taxes to the repayment of any bonds shall not include in the assessed value of taxable property located in the political subdivision for the purposes of calculating the limit imposed by that section of the Constitution any amount representing the value of the property that is the basis of the pledged portion of revenues. If the political subdivision, before pledging revenues pursuant to this section, has included an amount representing the value of a parcel or item of property that is the subject of a payment in lieu of taxes in the assessed value of taxable property located in the political subdivision and has issued general obligation debt within the debt limit calculated on the basis of such assessed value, then it may not pledge pursuant to this section revenues based on the item or parcel of property, to the extent that the amount representing its value is necessary to permit the outstanding general obligation debt within the debt limit of the political subdivision.

(F) A county, municipality, or special purpose district that receives and retains revenues from a payment in lieu of taxes pursuant to Section 4‑1‑170, 4‑12‑30, 4‑29‑60, 4‑29‑67, or Chapter 44, Title 12 in which these revenues are derived in whole or in part from a redevelopment project area established pursuant to Title 31, Chapter 6 shall allocate these revenues in accordance with the ordinance of the municipality adopted pursuant to Section 31‑6‑70 as if these revenues remained ad valorem taxes. All fees collected in the redevelopment project area which are not subject to the ordinance of the municipality adopted pursuant to Section 31‑6‑70 become payments in lieu of taxes and the portion collected by the municipality may be pledged to secure special source revenue bonds issued by the municipality pursuant to Section 4‑1‑175 or this section.

(G) If the stream of payments from a fee in lieu of tax agreement becomes insufficient to completely service the payments of interest and principal due pursuant to a debt obligation issued pursuant to Section 4‑29‑68, a penalty must be imposed, in addition to any amount of fee in lieu of tax payment otherwise due or payable, in the amount necessary to pay all amounts of interest and principal which are not otherwise paid by the pledged fee revenue. This penalty does not apply if the entity obligated to make the fee payments or a member of the control group associated with the entity owns the entire bond issue one year before any such default of payment.

HISTORY: 1992 Act No. 361, Section 35, eff May 4, 1992; 1993 Act No. 123, Section 4, eff June 14, 1993; 1995 Act No. 4, Section 1, eff January 10, 1995; 1995 Act No. 125, Section 4B, approved June 7, 1995 and effective for taxable years beginning after 1995; 1996 Act No. 462, Section 23, eff July 2, 1996; 1997 Act No. 149, Section 7, eff June 24, 1997; 1999 Act No. 114, Section 4, eff June 30, 1999; 2007 Act No. 116, Section 67, eff June 28, 2007; 2010 Act No. 290, Section 7, eff January 1, 2011.

Code Commissioner’s Note

Subsection (G) was originally codified at the direction of the Code Commissioner as Section 12‑44‑180. On March 12, 1999, it was redesignated as Section 4‑29‑68(G), at the direction of the Code Commissioner.

Editor’s Note

1993 Act No. 123, Section 7, eff June 14, 1993, provides as follows:

“SECTION 7. This act takes effect upon approval by the Governor and applies prospectively to any project for which an inducement agreement was not entered into before the effective date of this act; provided, however, that projects with respect to which an inducement agreement, millage rate agreement, or both, have been entered into before the effective date of this act are entitled but not required to use the provisions of Section 4‑29‑67 of the 1976 Code, as amended by this act, and also one or more of the provisions of the following subsections of Section 4‑29‑67 of the 1976 Code as in existence before the amendments contained in this act: (B); (F)(1)(c); (F)(2); (G); and (I); and provided further that investors having a lease agreement which was entered into before the effective date of this act meeting the eighty‑five million dollar minimum level of investment required under Section 4‑29‑67(C) within five years from the date the lease agreement was signed shall have seven years from the date the lease agreement was signed to complete the investment, unless a longer period is otherwise stipulated in the lease agreement. The last sentence of Section 4‑29‑67(I) of the 1976 Code, as amended by this act, is not applicable to any project with respect to which an inducement agreement was entered into or an inducement or similar resolution was adopted by the governing body of the county before the effective date of this act; provided, however, that if an inducement agreement has not been entered into before the effective date of this act, such an agreement must be entered into with respect to any such project within one year of the effective date of this act in order for pre‑inducement agreement project expenditures to qualify for the fee provided in subsection (D)(2). Any lease which was entered into with a county prior to the effective date of this act, in order to preserve the eligibility of certain property for subsequent inclusion in a fee in lieu of taxes arrangement, and which lease provides for lease payments within two dollars of what the property taxes on the leased property would otherwise have been, shall not be considered a lease agreement of any kind for purposes of beginning the running of any time period provided under Section 4‑29‑67 of the 1976 Code, including, but not limited to, the five, seven, and twenty‑year periods provided therein. For purposes of this SECTION 7, references to inducement or millage rate agreements shall be considered to exclude any amendments or replacements of such agreements.”

Effect of Amendment

The 1993 amendment added references throughout to “special purpose district”; in subsection (A) rewrote paragraphs (1), (2), (4) and (9); and in subsection (E), first sentence, deleted “or Section 15(6)” preceding “of Article X.”

The first 1995 amendment, Act No. 4, Section 1, added subsection (F).

The second 1995 amendment, Act No. 125, Section 4B, added references to Sections 4‑12‑20 and 4‑12‑30 in subsections (A) through (C).

The 1996 amendment revised subsection (A) paragraph (2).

The 1997 amendment added subsection (G).

The 1999 amendment inserted “4‑12‑30” and “Chapter 44, Title 12”, changed “taxes” to “fees” and made grammatical changes in subsection (F).

The 2007 amendment rewrote paragraph (A)(2).

The 2010 amendment rewrote paragraph (A)(2).

CROSS REFERENCES

Certain joint developments between counties, computation of bonded indebtedness limitation is subject to requirements of this section, see Section 4‑1‑170.

Computation of bonded indebtedness limitation for projects to which fee agreement applies are subject to requirements of this section, see Section 12‑44‑150.

Issuance of special source revenue bonds, pledging of revenues, and determination of debt limitation, see Section 4‑1‑175.

Use of revenues from payment in lieu of taxes for purposes set forth in this section, see Section 4‑1‑175.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

While term “improved real property” as used in Section 4‑29‑68 has not been explicitly defined by General Assembly, a court would most probably conclude that buildings, structural components of buildings, or office facilities as defined within term “project,” could be considered as improvements to real property, such that special source revenue bonds could be issued to pay cost of designing, acquiring, constructing, improving, or expanding same. 1993 Op Atty Gen No. 93‑81.

Water sewage treatment and disposal facilities, air pollution control facilities, and similar improvements which are integrated into building or otherwise permanently affixed to real property would most probably be considered to be “infrastructure.” Items such as machinery, equipment, furnishings, or the like, which are readily movable, but which are unrelated to items forming a permanent part of infrastructure, would not be considered “infrastructure.” 1993 Op Atty Gen No. 93‑81.

Union County has discretion in determining how to distribute proceeds of revenues it will receive under multi‑county industrial park agreement, including issuing special source revenue bonds secured by and payable from all or part of revenues. 1993 Op Atty Gen No. 93‑46.

County or other political subdivision owning infrastructure or improved property including building, may lease same to industry at minimal or other lease rate below fair market value with purchase option at less than fair market value. It is policy decision of political subdivision to determine fair and reasonable return for disposition of its property. 1993 Op Atty Gen No. 93‑81.

Single county or municipality or special purpose district, though participating in multi‑county park, may issue special source revenue bonds if such will “enhance the economic development of the issuer.” 1993 Op Atty Gen No. 93‑81.

**SECTION 4‑29‑69.** Inducement agreement providing for payment in lieu of property taxes.

(A) For purposes of this section:

(1) “Qualified property” means all real and tangible personal property owned, leased, licensed, or acquired by a qualified manufacturer during the consolidation period regardless of (a) when the property is placed into service in this State, and (b) whether the property has been previously subject to property taxes in this State.

(2) “Qualified manufacturer” means a manufacturing facility in this State which:

(a) employed at least seven hundred persons at the beginning of the consolidation period; and

(b) is located in a county which is designated at the beginning of the consolidation period as a less‑developed county by the South Carolina Department of Revenue pursuant to Section 12‑7‑1220.

(3) “Qualified consolidation” means:

(a) a restructuring or transfer or series of transfers involving assets of a manufacturing facility in this State and a manufacturing facility which is located in a state other than this State, pursuant to which all or a portion of the assets of the manufacturing facility located in the other state are transferred to a manufacturing facility in this State;

(b) during the consolidation period, (i) the corporations which own or lease the manufacturing facility in the other state and the facility in this State are members of the same controlled group as defined under Internal Revenue Code Section 1563, or (ii) the same corporation owns or leases the facility in this State and the facility in the other state;

(c) at least one hundred new jobs are created at the facility in this State during the consolidation period; and

(d) during the consolidation period, at least ten million dollars of original cost, without regard to depreciation at the time of the transfer to the facility, of manufacturing and related property are added to the facility in this State, either from the manufacturing facility in the other state, or purchased or leased from a third party.

(4) “Payment in lieu of taxes” means one or more payments made to the county at the times and in the amounts as the county, and entity or entities which will initially make the payment in lieu of taxes, may agree, pursuant to a transfer of title to the property which is subject to such payments to the county, and a lease of the property by the county to the entity or entities which will initially make such payments.

(5) “Consolidation period” means the eighteen‑month period beginning on the first date that assets are transferred to the facility in this State from the manufacturing facility in the other state. The South Carolina Economic Development Board shall certify in writing to the South Carolina Department of Revenue the specific date that the consolidation period begins.

(B) In the case of a financing agreement in the form of a lease or a lease purchase, the county and the investor may enter into an inducement agreement which provides for a payment in lieu of property taxes under this section for qualified property owned by, or leased or licensed to, one or more qualified manufacturers which complete a qualified consolidation between June 1, 1992, and December 31, 1993.

(C) Any interest in the assets which are subject to the payment in lieu of taxes, or the lease relating to the assets, may be freely transferred without restriction, except as the county, and the entity or entities which will make such payment, may otherwise agree. This agreement, and any inducement agreement, may be freely amended or replaced at any time.

(D) Distribution of the payment in lieu of taxes on the project must be made in the same manner and proportion that the millage levied for school and other purposes would be distributed if the property were taxable.

(E) The provisions of this section do not apply to any construction of Section 4‑29‑67, and to the extent that Sections 4‑29‑60, 4‑29‑67, or any other provision of Title 4 are inconsistent with this section, this section controls.

HISTORY: 1993 Act No. 123, Section 1, eff June 14, 1993.

Editor’s Note

1993 Act No. 123, Section 7, effective June 14, 1993, provides as follows:

“SECTION 7. This act takes effect upon approval by the Governor and applies prospectively to any project for which an inducement agreement was not entered into before the effective date of this act; provided, however, that projects with respect to which an inducement agreement, millage rate agreement, or both, have been entered into before the effective date of this act are entitled but not required to use the provisions of Section 4‑29‑67 of the 1976 Code, as amended by this act, and also one or more of the provisions of the following subsections of Section 4‑29‑67 of the 1976 Code as in existence before the amendments contained in this act: (B); (F)(1)(c); (F)(2); (G); and (I); and provided further that investors having a lease agreement which was entered into before the effective date of this act meeting the eighty‑five million dollar minimum level of investment required under Section 4‑29‑67(C) within five years from the date the lease agreement was signed shall have seven years from the date the lease agreement was signed to complete the investment, unless a longer period is otherwise stipulated in the lease agreement. The last sentence of Section 4‑29‑67(I) of the 1976 Code, as amended by this act, is not applicable to any project with respect to which an inducement agreement was entered into or an inducement or similar resolution was adopted by the governing body of the county before the effective date of this act; provided, however, that if an inducement agreement has not been entered into before the effective date of this act, such an agreement must be entered into with respect to any such project within one year of the effective date of this act in order for pre‑inducement agreement project expenditures to qualify for the fee provided in subsection (D)(2). Any lease which was entered into with a county prior to the effective date of this act, in order to preserve the eligibility of certain property for subsequent inclusion in a fee in lieu of taxes arrangement, and which lease provides for lease payments within two dollars of what the property taxes on the leased property would otherwise have been, shall not be considered a lease agreement of any kind for purposes of beginning the running of any time period provided under Section 4‑29‑67 of the 1976 Code, including, but not limited to, the five, seven, and twenty‑year periods provided therein. For purposes of this SECTION 7, references to inducement or millage rate agreements shall be considered to exclude any amendments or replacements of such agreements.”

CROSS REFERENCES

Annexation of property by municipality by means of petition of all or seventy‑five percent of landowners, see Section 5‑3‑150.

Federal Aspects

Internal Revenue Code Section 1563, see 26 U.S.C.A. Section 1563.

Attorney General’s Opinions

Union County has discretion in determining how to distribute proceeds of revenues it will receive under multi‑county industrial park agreement, including issuing special source revenue bonds secured by and payable from all or part of revenues. 1993 Op Atty Gen No. 93‑46.

**SECTION 4‑29‑70.** Options in leases; consideration for renewal of lease or purchase of project.

Any financing agreement in the form of a lease of any project may include a provision that the industry shall have options to renew such lease and/or to purchase any or all of the leased project on such terms, at such times, and upon such considerations as the governing board shall agree to. The consideration for any renewal of the lease or for the purchase of any or all of the project need not require the payment by the industry of the full market value thereof, but may be fixed at such lesser consideration as the governing board shall determine to be in the interest of the county or incorporated municipality and in furtherance of the policy of this chapter.

HISTORY: 1962 Code Section 14‑399.27; 1967 (55) 120; 1980 Act No. 518, Section 10B.

**SECTION 4‑29‑80.** Additional powers of governing boards.

The governing board has the power to provide that the project and improvements must be acquired by the county or incorporated municipality, the industry, or both, on real estate owned by the county, incorporated municipality, or other agency or political subdivision of the State or the industry, that bond proceeds must be disbursed by the trustee bank or banks or depository during construction upon the estimate, order, or certificate of the industry, and if the financing agreement is in the form of a lease that the project need not be conveyed to the county or incorporated municipality for lease to the industry until its completion. The governing board may authorize the industry to acquire real estate and commence construction in anticipation of the issuance of bonds and to provide that the industry must be reimbursed for the expenditures from the proceeds of the bonds if and when issued. In making the agreements or provisions the governing board does not have the power to obligate the county or incorporated municipality except with respect to the project and the application of the revenues therefrom and does not have the power to incur a pecuniary liability or a charge upon the general credit of the county or incorporated municipality or against its taxing powers.

HISTORY: 1962 Code Section 14‑399.28; 1967 (55) 120; 1980 Act No. 518, Section 10B; 1992 Act No. 361, Section 38, eff May 4, 1992.

Effect of Amendment

The 1992 amendment revised this section.

**SECTION 4‑29‑90.** Application of proceeds from sale of bonds; cost of acquiring project.

The proceeds from the sale of any bonds issued under authority of this chapter shall be applied only for the purpose for which the bonds were issued; provided, however, that any premium and accrued interest received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided, further, that if for any reason any portion of the proceeds shall not be needed for the purpose for which the bonds were issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds. The cost of acquiring any project shall be deemed to include the following: The actual cost of the construction of any part of a project which may be constructed, including architects’ and engineers’ fees; the purchase price of any part of a project that may be acquired by purchase; all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and the interest on the bonds for a reasonable time prior to construction, during construction, and for not exceeding one year after completion of the construction.

HISTORY: 1962 Code Section 14‑399.29; 1967 (55) 120; 1980 Act No. 518, Section 10B.

**SECTION 4‑29‑100.** Payments from county or municipal general funds prohibited; use of lands owned by county or municipality; donations of property or money.

No county or incorporated municipality shall have the power to pay out of its general funds or otherwise contribute, any part of the costs of acquiring a project, except that lands owned by any county or incorporated municipality not required for any other public purpose, may be utilized to the extent required for a project, but under such circumstances the reasonable value of the lands shall be deemed a part of the cost of construction, and shall be paid out of the proceeds of the bonds to the general fund of the county or incorporated municipality. The determination by the governing board of the reasonable value of the land shall be conclusive but review of the determination may be instituted by any interested party within twenty days, but not afterwards, following the publication of notice of the determination in a newspaper of general circulation in each county in which the land is situated, by proceedings de novo in the court of common pleas of the county. The entire cost of acquiring any project shall be paid out of the proceeds from the sale of bonds issued under the authority of this chapter; provided, however, that this provision shall not be construed to prevent a county or incorporated municipality from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.

HISTORY: 1962 Code Section 14‑399.30; 1967 (55) 120; 1980 Act No. 518, Section 10B.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 4‑29‑110.** Refunding bonds.

Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by a county or incorporated municipality, but only with the approval of the State Fiscal Accountability Authority being first obtained, by the issuance of its refunding bonds in such amount as the governing board may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest thereon and any premiums, expenses and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded have matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds for the payment of the bonds to be refunded, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. All refunding bonds issued under the authority of this chapter shall be payable in the same manner and under the same terms and conditions as are herein provided for the issuance of bonds. In addition to the powers herein granted for the issuance of refunding bonds the county boards may avail themselves of the provisions of Sections 11‑21‑10 to 11‑21‑80 (the Advanced Refunding Act).

HISTORY: 1962 Code Section 14‑399.31; 1967 (55) 120; 1980 Act No. 518, Section 10B.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

**SECTION 4‑29‑120.** Bonds deemed to be legal investments.

It shall be lawful for all executors, administrators, guardians, committees and other fiduciaries to invest any moneys in their hands in bonds issued under the provisions of this chapter.

HISTORY: 1962 Code Section 14‑399.32; 1967 (55) 120; 1980 Act No. 518, Section 10B.

**SECTION 4‑29‑130.** Bonds, income therefrom, security agreements, financing agreements, and projects are exempt from certain taxes.

The bonds authorized by this chapter and the income therefrom, all security agreements executed as security therefor, all financing agreements made pursuant to the provisions hereof, and all projects so long as county or municipalities owned and the revenue derived from any financing agreement shall be exempt from all taxation in the State of South Carolina except for inheritance, estate or transfer taxes; and all security agreements and financing agreements made pursuant to the provisions of this chapter shall be exempt from South Carolina stamp and transfer taxes.

HISTORY: 1962 Code Section 14‑399.33; 1967 (55) 120; 1980 Act No. 518, Section 10B.

LIBRARY REFERENCES

84 C.J.S., Taxation Section 214.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Powell v. Chapman (S.C. 1973) 260 S.C. 516, 197 S.E.2d 287.

**SECTION 4‑29‑140.** Fiscal Accountability Authority shall approve proposal of governing board; petition shall be filed; investigation; notice of approval; challenging validity of approval.

(A) No bonds may be issued pursuant to the provisions of this chapter until the proposal of the governing board to issue the bonds receives the approval of the State Fiscal Accountability Authority. Whenever a governing board proposes to issue bonds pursuant to the provisions of this chapter, it shall file its petition with the State Fiscal Accountability Authority setting forth:

(1) a brief description of the project proposed to be undertaken and its anticipated effect upon the economy of the county or incorporated municipality in which the project is to be located and of the areas adjacent to it;

(2) a reasonable estimate of the cost of the project;

(3) a general summary of the terms and conditions of the financing agreement and security agreement to be made, including a statement establishing the basis for the payment of sums in lieu of taxes as required by Section 4‑29‑60; and

(4) such other information as the State Fiscal Accountability Authority requires.

Upon the filing of the petition the State Fiscal Accountability Authority, as soon as practicable, shall conduct such review as it considers advisable, and if it finds that the proposal of the governing board is intended to promote the purposes of this chapter, it is authorized to approve the proposal. At any time following the approval, the governing board may proceed with the acquisition and financing of the project in accordance with the proposal as approved by the State Fiscal Accountability Authority. Notice of the approval of a proposal by the State Fiscal Accountability Authority must be published at least once by the State Fiscal Accountability Authority in a newspaper having general circulation in the county where the project is to be located.

(B) Any interested party, within twenty days after the date of the publication of the notice, but not afterwards, may challenge the validity of the approval by action de novo in the court of common pleas in the county where the project is to be located.

HISTORY: 1962 Code Section 14‑399.34; 1967 (55) 120; 1980 Act No. 518, Section 10B; 1994 Act No. 426, Section 1, eff May 27, 1994.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 1994 amendment organized this section into lettered and numbered subsections and paragraphs; in subsection (A) added paragraph (4) reading “such other information as the state board requires”; in subsection (B) deleted “and is reasonably anticipated to effect such result” following “intended to promote the purposes of this chapter”; and made grammatical changes.

**SECTION 4‑29‑150.** Chapter provisions are cumulative; governing board may act at regular or special meeting without notice of proceedings.

Neither this chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers which a county or incorporated municipality might otherwise have under any laws of this State, but shall be construed as cumulative. Subject to the limitations and requirements of Chapter 9, Title 4, of the 1976 Code, the authorizations herein granted may be carried out by any governing board acting at any regular or special meeting and without publication of the proceedings, notwithstanding any restriction, limitation, or other procedure, imposed upon the governing board by any other statute.

HISTORY: 1962 Code Section 14‑399.35; 1967 (55) 120; 1980 Act No. 518, Section 10B.