CHAPTER 107

State Institution Bonds

**SECTION 59‑107‑10.** Institutions to which chapter is applicable; “State institution” defined.

The several state‑supported institutions of higher learning, within the contemplation of this chapter, are declared to be:

The University of South Carolina,

Clemson University, in Clemson,

The Citadel,

The Medical University of South Carolina,

Winthrop University,

South Carolina State University,

Francis Marion University,

Lander University,

The College of Charleston,

Coastal Carolina University,

Technical Education Colleges and Centers.

Hereafter in this chapter such institutions shall be denoted by the term “state institution”.

HISTORY: 1962 Code Section 22‑21; 1953 (48) 169; 1954 (48) 1722; 1966 (54) 2263; 1974 (58) 2608; 1977 Act No. 249, Pt II, Section 1; 1979 Act No. 107, Section 1; 2000 Act No. 254, Section 3.

CROSS REFERENCES

Budget and Control Board to issue state institution bonds pursuant to chapter 107 on behalf of Coastal Carolina University, see Section 59‑136‑505.

Certain employees of athletic departments in institutions defined in this section, exempt from State Employee Grievance Procedure, see Section 8‑17‑370.

Attorney General’s Opinions

The Medical College of South Carolina is not a department of State government and does not come within the purview of Code 1962 Section 50‑101, relating to nepotism. 1968‑69 Op Atty Gen, No 2625, p 24.

NOTES OF DECISIONS

In general 1

1. In general

Technical education colleges and centers were properly included by the legislature within the meaning of “State Supported Institutions of Higher Learning,” so as to make them eligible to issue bonds under the permission granted by Article X of the Constitution; thus, a technical college with a demonstrated ability to generate sufficient funds for certain contemplated bonds was properly permitted to avail itself of the Bond Act upon its compliance with the tuition fee requirement. Malone v. Edwards (S.C. 1978) 271 S.C. 401, 247 S.E.2d 454. Education 1064

**SECTION 59‑107‑20.** Tuition fees required at State institutions.

Tuition fees (as such term is defined in Section 59‑107‑30) shall be required to be paid in such amount or amounts and under such conditions as the respective Board of Trustees, Area Commissions or, for any Technical Education College or Center not governed or supervised by an Area Commission, the State Board for Technical and Comprehensive Education, of such state institutions shall prescribe, with the approval of the State Fiscal Accountability Authority, hereafter in this chapter referred to as the “State Fiscal Accountability Authority”. The provisions of this section shall not be construed as requiring uniformity of tuition fees at such state institutions nor shall they preclude a higher scale for non‑residents of South Carolina.

HISTORY: 1962 Code Section 22‑22; 1953 (48) 169; 1966 (54) 2263; 1977 Act No. 249, Pt II, Section 2.

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.

LIBRARY REFERENCES

Colleges and Universities 9.20(1).

Westlaw Key Number Search: 81k9.20(1).

C.J.S. Colleges and Universities Section 31.

LAW REVIEW AND JOURNAL COMMENTARIES

The constitutionality of resident/nonresident tuition differentials. 24 S.C. L. Rev. 398.

**SECTION 59‑107‑30.** Remittance and application of tuition fees.

All tuition fees received by any State institution shall be remitted from time to time to the State Treasurer under such regulations as he shall prescribe. The State Treasurer shall apply the same as directed by this chapter. For all purposes of this chapter the term “tuition fees” shall include those fees charged by any State institution for tuition, matriculation and registration. The term “tuition fees” shall not include sums charged for enrolling in courses or classes offered at any summer school term or in any special seminar, nor shall the term relate to or include fees levied or charged for purposes other than for the purposes of this chapter.

HISTORY: 1962 Code Section 22‑23; 1953 (48) 169; 1960 (51) 1779; 1966 (54) 2263.

LIBRARY REFERENCES

Colleges and Universities 9.20(1).

Westlaw Key Number Search: 81k9.20(1).

C.J.S. Colleges and Universities Section 31.

LAW REVIEW AND JOURNAL COMMENTARIES

The constitutionality of resident/nonresident tuition differentials. 24 S.C. L. Rev. 398.

NOTES OF DECISIONS

In general 1

1. In general

University did not exercise significant degree of autonomy, weighing in favor of conclusion that university was arm of State of South Carolina and entitled to Eleventh Amendment immunity, where, among other things, university was required to remit all tuition payments that it received to State Treasurer for deposit in State’s general fund, university had to prepare annual budget for submission to General Assembly through South Carolina Commission on Higher Education, university could issue institution bonds and auxiliary and athletic facilities revenue bonds only with consent of State Budget and Control Board and only to extent permitted by General Assembly. Martin v. Clemson University, 2009, 654 F.Supp.2d 410. Federal Courts 2388(3)

Technical education colleges and centers were properly included by the legislature within the meaning of “State Supported Institutions of Higher Learning,” so as to make them eligible to issue bonds under the permission granted by Article X of the Constitution; thus, a technical college with a demonstrated ability to generate sufficient funds for certain contemplated bonds was properly permitted to avail itself of the Bond Act upon its compliance with the tuition fee requirement. Malone v. Edwards (S.C. 1978) 271 S.C. 401, 247 S.E.2d 454. Education 1064

**SECTION 59‑107‑40.** Application for funds for permanent improvements and other expenses; content of application.

The respective Boards of Trustees, Area Commissions, through the State Board for Technical and Comprehensive Education, or the State Board for Technical and Comprehensive Education for any Technical Education College or Center not governed and supervised by an Area Commission of such state institutions may make application to the State Fiscal Accountability Authority or the Department of Administration, as appropriate, for funds to be used for any one or more of the following purposes: (a) to construct, reconstruct, maintain, improve, furnish and refurnish the buildings and other permanent improvements for such state institutions, (b) to defray the costs of acquiring or improving land needed as sites for such improvements or for the campus of any such state institution, (c) to reimburse such institution for expenses incurred in anticipation of the issuance of such bonds, or (d) to refund state institution bonds heretofore issued for such institutions and which shall on such occasion be outstanding. Such application shall contain:

(1) A description of the improvement sought, or the amount of outstanding bonds it wishes to have refunded;

(2) An estimate of cost, or an estimate of the money required to effect the refunding;

(3) A statement establishing the aggregate sum received from tuition fees for the fiscal year immediately preceding the fiscal year in which such application is dated;

(4) The schedule of tuition fees in effect;

(5) A suggested maturity schedule for bonds issued pursuant to this chapter; and

(6) A statement showing the unmatured state institution bonds theretofore issued for such state institution.

The application shall contain an agreement upon the part of the Board of Trustees, Area Commission, or State Board for Technical and Comprehensive Education that such schedule of tuition fees shall be revised from time to time and whenever necessary to provide the annual principal and interest requirements on the proposed bonds and on all outstanding state institution bonds issued for such state institution.

HISTORY: 1962 Code Section 22‑24; 1953 (48) 169; 1954 (48) 1708; 1961 (52) 476; 1963 (53) 583; 1966 (54) 2263; 1977 Act No. 249, Pt II, Section 3; 1991 Act No. 65, Section 1.

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

Defeasance of bonds, see Section 59‑107‑180.

LIBRARY REFERENCES

Colleges and Universities 4.

Westlaw Key Number Search: 81k4.

C.J.S. Colleges and Universities Section 7.

**SECTION 59‑107‑50.** Authority of State Fiscal Accountability Authority as to applications.

The State Fiscal Accountability Authority may approve, in whole or in part, or modify in any way that it sees fit any application made by any Board of Trustees, Area Commission, or by the State Board for Technical and Comprehensive Education of any of the state institutions and may direct the application of the principal proceeds of any bonds, issued pursuant to this chapter for such purpose if it shall have found:

(1) That a definite and immediate need therefor exists, or, in the event that the issuance of refunding bonds is sought, that it is to the advantage of the institution to effect the refunding of its outstanding bonds;

(2) That a satisfactory and proper schedule of tuition fees is in effect at such State institution;

(3) That the annual debt service on all state institution bonds issued for such state institution, including the bonds then proposed to be issued, shall not exceed ninety percent of the sums received by such state institution of higher learning from tuition fees for the preceding fiscal year;

(4) That the Board of Trustees, Area Commission, or State Board for Technical or Comprehensive Education of the state institution has agreed that such schedule of tuition fees may be revised from time to time and whenever necessary to provide not less than the sum needed to pay the annual principal and interest requirements on the proposed bonds and on all outstanding state institution bonds issued for such state institution.

HISTORY: 1962 Code Section 22‑25; 1953 (48) 169; 1957 (50) 138; 1961 (52) 476; 1966 (54) 2263; 1976 Act No. 582, Section 1; 1977 Act No. 249, Pt II, Section 4; 1991 Act No. 65, Section 2.

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

Sale of bonds, see Section 59‑107‑160.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

NOTES OF DECISIONS

In general 1

1. In general

University did not exercise significant degree of autonomy, weighing in favor of conclusion that university was arm of State of South Carolina and entitled to Eleventh Amendment immunity, where, among other things, university was required to remit all tuition payments that it received to State Treasurer for deposit in State’s general fund, university had to prepare annual budget for submission to General Assembly through South Carolina Commission on Higher Education, university could issue institution bonds and auxiliary and athletic facilities revenue bonds only with consent of State Budget and Control Board and only to extent permitted by General Assembly. Martin v. Clemson University, 2009, 654 F.Supp.2d 410. Federal Courts 2388(3)

The Supreme Court, in a taxpayer’s suit to determine the validity of bonds proposed to be issued under this chapter, may determine the minimum coverage deemed necessary to adequately secure the bonds so issued. Arthur v. Byrnes (S.C. 1953) 224 S.C. 51, 77 S.E.2d 311. States 168.5

The coverage of 110% formerly provided in paragraph (3) of this section [Code 1962 Section 22‑25] was too small to meet the test for the sufficiency of a special fund to secure the payment of general State obligations where the question of the creation of such obligations was not submitted to the qualified electors of the State as required by SC Const, Art 10, Section 11. [Decided prior to the 1957 amendment, which changed the percentage requirement in paragraph (3) of this section [Code 1962 Section 22‑25] from 110% to 150%] Arthur v. Byrnes (S.C. 1953) 224 S.C. 51, 77 S.E.2d 311.

No application by any State‑supported institution for the issuance of bonds under the terms of this chapter shall be granted unless it is found, in addition to the other requirements set forth therein, that “such schedule of tuition fees, as applied to the regularly enrolled students at such State institutions, on the basis of the number of students regularly enrolled at such State institution at the close of the last preceding academic semester or term (exclusive of any summer school semester or term), will, if multiplied by the number of years for which the bonds herein provided for shall be outstanding, result in the production of a sum equal to not less than ‘150%’ of the estimated aggregate principal and interest requirements of all State institution bonds issued for such State institution to be outstanding if such application be approved.” [Decided prior to the 1957 amendment, which changed the percentage requirement in paragraph (3) of this section [Code 1962 Section 22‑25] from 110% to 150%] Arthur v. Byrnes (S.C. 1953) 224 S.C. 51, 77 S.E.2d 311.

**SECTION 59‑107‑60.** Request for issuance of State institution bonds.

Upon making the finding required of it by Section 59‑107‑50, the State Fiscal Accountability Authority shall transmit to the Governor and to the State Treasurer a request for the issuance of State institution bonds. Such request shall set forth:

(1) The name of the State institution seeking funds, the amount of its application, and the annual principal and interest requirements on all outstanding State institution bonds issued for such State institution;

(2) A statement that the State Fiscal Accountability Authority has made the findings required of it by Section 59‑107‑50, and the extent to which it has approved or modified the original application;

(3) The proposed maturity schedule of the bonds;

(4) The anticipated interest cost for each year during the life of the bonds;

(5) The anticipated aggregate annual principal and interest requirements for the bonds;

(6) The numbers and maturity dates of the bonds which shall be subject to redemption prior to their stated maturities;

(7) The proposed redemption premium schedule;

(8) The sum received by such state institution from tuition fees for the fiscal year preceding the fiscal year in which the application was made pursuant to Section 59‑107‑40; and

(9) The tuition fee schedule in effect at such State institution.

HISTORY: 1962 Code Section 22‑26; 1953 (48) 169; 1966 (54) 2263; 1991 Act No. 65, Section 3.

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

Effect of new Article X of Constitution on bonds issued pursuant to this chapter, see Section 11‑27‑30.

Payment of bonds issued pursuant to this chapter, see Sections 11‑29‑10 et seq.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑107‑70.** Governor and State Treasurer empowered to authorize issuance of bonds.

It shall be the duty of the Governor and the State Treasurer to examine the request mentioned in Section 59‑107‑60, and if they shall jointly approve it, and, for themselves, determine that the schedule of tuition fees in force at such state institution will, upon the basis of the sum received by such state institution from tuition fees for the fiscal year preceding the fiscal year in which the application made pursuant to Section 59‑107‑40, produce funds sufficient to meet the principal and interest requirements on the proposed bonds and on all outstanding state institution bonds issued for such state institution, and provide the margin for such principal and interest requirements to the extent required by paragraph (3) of Section 59‑107‑50, they shall be empowered to provide for the issuance of state institution bonds in the amount approved by the State Fiscal Accountability Authority.

HISTORY: 1962 Code Section 22‑27; 1953 (48) 169; 1966 (54) 2263; 1991 Act No. 65, Section 4.

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.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑107‑80.** Single issue of bonds may cover several applications.

If it shall happen that more than one application by State institutions shall receive the approvals required by Sections 59‑107‑50 to 59‑107‑70, at approximately the same time, the State institution bonds in an amount equal to the aggregate of the approved applications may be issued as a single issue.

HISTORY: 1962 Code Section 22‑28; 1953 (48) 169.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑107‑90.** Maximum amount of outstanding bonds.

The maximum amount of annual debt service on all outstanding state institution bonds for each state institution shall not exceed ninety percent of the sums received by such state institution from tuition fees for the preceding fiscal year, as provided in Section 13(6)(b) of Article X of the South Carolina Constitution.

HISTORY: 1962 Code Section 22‑29; 1953 (48) 169; 1957 (50) 404; 1961 (52) 476; 1966 (54) 2263; 1967 (55) 689; 1968 (55) 3049; 1976 Act No. 582, Section 2; 1979 Act No. 194, Part I, Section 8; 1995 Act No. 145, Part II, Section 109; 1998 Act No. 419, Part II, Section 56; 1999 Act No. 40, Section 1.

CROSS REFERENCES

Effect of new Article X of Constitution on debt limitation of bonds issued pursuant to this chapter, see Section 11‑27‑30.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑107‑100.** Full faith, credit and taxing power of State pledged to pay bonds.

For the payment of the principal and interest on all state institution bonds, whose issuance is authorized by this chapter, there shall be pledged the full faith, credit, and taxing power of the State, and in addition, the revenues derived from the tuition fees received by the particular institution of higher learning for which such state institution bonds are issued must also be pledged.

HISTORY: 1962 Code Section 22‑30; 1953 (48) 169; 1991 Act No. 65, Section 5.

CROSS REFERENCES

Effect of new Article X of Constitution on securing of bonds issued pursuant to this chapter, see Section 11‑27‑30.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑107‑110.** Negotiability and registration.

State institution bonds issued pursuant to this chapter may be in the form of negotiable coupon bonds, payable to bearer, with the privilege to the holder of having them registered in his name on the books of the State Treasurer as to principal only, or as to both principal and interest, and such principal, or both principal and interest, as the case may be, thus made payable to the registered holder, subject to such conditions as the State Treasurer may prescribe. State institution bonds so registered as to principal in the name of the holder may thereafter be registered as payable to bearer and made payable accordingly.

State institution bonds may also be issued as fully registered bonds with both principal and interest thereof made payable only to the registered holder. Such fully registered bonds shall be subject to transfer under such conditions as the State Treasurer may prescribe. Such fully registered bonds may, if the proceedings authorizing their issuance so provide, be convertible into negotiable coupon bonds with the attributes set forth in the first paragraph of this section.

HISTORY: 1962 Code Section 22‑31; 1953 (48) 169; 1957 (50) 138, 404.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑107‑120.** Denominations of bonds; interest rate; maturity; redemption.

The state institution bonds must be in the denomination of one thousand dollars or in any multiple thereof. They shall bear interest, payable semiannually, at a rate or rates not exceeding the maximum interest rate specified in the State Fiscal Accountability Authority’s request for the issuance of the state institution bonds. Each issue of state institution bonds shall mature in annual series or installments, the last of which shall mature not more than twenty years after the date of the bonds. The installments or series may be equal or unequal in amount. The state institution bonds may, in the discretion of the State Fiscal Accountability Authority, be made subject to redemption at par and accrued interest, plus such redemption premium as it may approve, and on such occasions as may be specified in the request for the issuance of the state institution bonds. State institution bonds may not be redeemable before maturity unless they contain a statement to that effect.

HISTORY: 1962 Code Section 22‑32; 1953 (48) 169; 1957 (50) 138, 404; 1961 (52) 476; 1966 (54) 2263; 1984 Act No. 337, Section 1.

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.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Arthur v. Byrnes (S.C. 1953) 224 S.C. 51, 77 S.E.2d 311.

**SECTION 59‑107‑140.** Bonds exempt from taxes.

The bonds authorized by this chapter and all interest to become due thereon shall have the tax‑exempt status prescribed by Section 12‑1‑60.

HISTORY: 1962 Code Section 22‑34; 1953 (48) 169.

LIBRARY REFERENCES

Taxation 218.

Westlaw Key Number Search: 371k218.

C.J.S. Taxation Section 304.

**SECTION 59‑107‑150.** Bonds as legal investments.

It shall be lawful for all executors, administrators, guardians, fiduciaries and sinking fund commissions to invest any moneys in their hands in State institution bonds.

HISTORY: 1962 Code Section 22‑35; 1953 (48) 169.

**SECTION 59‑107‑160.** Sale of bonds.

State institution bonds may be privately placed if the terms and conditions of such disposition shall be approved by resolution duly adopted by the State Fiscal Accountability Authority and the terms of such proposal meet the financial test prescribed in the second paragraph of this section.

All other state institution bonds shall be sold by the Governor and the State Treasurer upon sealed proposals, after publication of notice of the sale one or more times at least ten days before the sale in a newspaper of general circulation in the State and also in a financial paper published in New York City which regularly publishes notices of sale of state or municipal bonds. In all calls for bids, the right shall be reserved to reject all bids and readvertise for the sale of the bonds. Upon the opening of bids the Governor and the State Treasurer shall determine the most advantageous bid, and if such bid produces principal and interest payments on such proposed issue which are in compliance with the provisions outlined in paragraph (3) of Section 59‑107‑50, they may award the state institution bonds on such bid, at a price not less than par and accrued interest to the date of delivery. For the purpose of bringing about a successful sale of such bonds, the State Fiscal Accountability Authority may do all things ordinarily and customarily done in connection with the sale of state or municipal bonds. All expenses incident to the sale of the bonds shall be paid from the proceeds of the bonds.

HISTORY: 1962 Code Section 22‑36; 1953 (48) 169; 1957 (50) 138; 1961 (52) 476; 1965 (54) 148; 1991 Act No. 65, Section 6.

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.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

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 59‑107‑170.** Deposit and use of proceeds of bonds.

The proceeds of sale of state institution bonds must be received by the State Treasurer and placed in a fund to the credit of the State Fiscal Accountability Authority subject to withdrawal on their order, except that all accrued interest received must be used by the State Treasurer to discharge the first installment of interest coming due. On the occasion that he receives the proceeds of state institution bonds from the purchaser, the State Treasurer shall segregate the proceeds for the account of the state institution or institutions for which the bonds are issued. The purchasers of the state institution bonds are not liable for the application of the proceeds of the bonds to the purposes for which they are intended.

HISTORY: 1962 Code Section 22‑37; 1953 (48) 169; 2004 Act No. 184, Section 7, eff March 15, 2004.

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 2004 amendment, in the first sentence, substituted “the State Treasurer” for “him” preceding “ to discharge” and deleted the final clause which read “, and any premium shall be used to discharge the first installment of principal coming due on such bonds”, and substituted “must” for “shall” throughout.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑107‑180.** Tuition fees placed in special fund to pay bonds; application of surplus.

Immediately following the issuance of state institution bonds, the State Treasurer shall segregate into a special fund all tuition fees of the state institution for which state institution bonds have been issued and shall apply such special fund to the payment of the principal, interest, and redemption premium, if any, on all bonds issued pursuant to this chapter for such institution; provided, however, that in the event the monies on deposit in such special fund at any time shall exceed all payments of principal and interest due in the then current fiscal year, plus the maximum annual debt service requirements in any succeeding fiscal year of all state institution bonds outstanding for such institution that were issued prior to March 1, 1991, plus any additional amount described in the last sentence of this section, the State Treasurer shall thereupon establish within the special fund created by this section separate funds for each issuance of state institution bonds for such state institution to be designated “special debt service and reserve funds”, and (1) shall deposit in the special debt service and reserve fund for each issuance of state institution bonds that was issued prior to March 1, 1991, an amount equal to all payments of principal and interest due in the then current fiscal year on such issuance, plus the maximum annual debt service requirements in any succeeding fiscal year of such issuance, and (2) shall deposit in the special debt service and reserve fund for each issuance of such state institution bonds that was issued on or after March 1, 1991, an amount equal to all payments of principal and interest due on such issuance of state institution bonds in the then current fiscal year. Upon the establishment and funding of such special debt service and reserve funds for the state institution bonds for any state institution in accordance with the foregoing sentence, the State Treasurer shall apply tuition fees later received to maintain the levels of the special debt service and reserve funds at the level required by the foregoing sentence as such level may be adjusted as current annual and maximum annual requirements vary, and may apply any remaining tuition fees and any monies still remaining in the general special fund after the complete funding of the special debt service and reserve funds: to the defeasance of state institution bonds for such institution as provided in Section 59‑107‑200; or to any purpose set forth in subitems (a), (b), and (c) of the first paragraph of Section 59‑107‑40. In the event the surplus is to be applied to the defeasance of bonds, the computation of annual debt service requirements for purposes of this section shall be made as though the bonds to be defeased had already been defeased. Notwithstanding the foregoing, it is expressly provided that the State Treasurer may increase the required level for a special debt service and reserve fund for an issuance of state institution bonds issued on or after March 1, 1991, to an amount equal to all payments of principal and interest due on such issuance of state institution bonds in the then current fiscal year plus an amount equal to all payments of principal and interest due on such issuance of state institution bonds to become due between the end of the then current fiscal year and the date at which the State Treasurer anticipates receiving sufficient deposits of tuition fees from such state institution in the ensuing fiscal year to provide an adequate cash flow to meet debt service requirements for such ensuing fiscal year.

HISTORY: 1962 Code Section 22‑38; 1953 (48) 169; 1966 (54) 2263; 1976 Act No. 582, Section 3; 1991 Act No. 65, Section 7.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

NOTES OF DECISIONS

In general 1

1. In general

The provisions of this section [Code 1962 Section 22‑38] setting apart tuition fees as a special fund were not impliedly repealed by Section 72 of the 1953 general appropriation act [1953 (48) 504]. Arthur v. Byrnes (S.C. 1953) 224 S.C. 51, 77 S.E.2d 311.

Fees collected long prior to issuance of bonds not segregated. This section [Code 1962 Section 22‑38] does not contemplate the segregation of tuition fees earned and collected long prior to the issuance of bonds. Arthur v. Byrnes (S.C. 1953) 224 S.C. 51, 77 S.E.2d 311.

**SECTION 59‑107‑190.** Declaration of sufficiency of tuition fees to pay bonds.

The General Assembly finds that the tuition fees charged at the several State institutions, if maintained and applied in the manner prescribed by this chapter, will be sufficient to provide for the payment of the principal and interest on State institution bonds issued pursuant to this chapter, without resorting to a property tax.

HISTORY: 1962 Code Section 22‑39; 1953 (48) 169.

NOTES OF DECISIONS

In general 1

1. In general

Legislative finding not binding on courts. Arthur v. Byrnes (S.C. 1953) 224 S.C. 51, 77 S.E.2d 311.

**SECTION 59‑107‑200.** Defeasance of bonds; trust fund established.

Upon the direction of the State Fiscal Accountability Authority, the State Treasurer may apply all or any part of the excess, as defined in Section 59‑107‑180, of the special fund established pursuant to Section 59‑107‑180, applicable to the state institution bonds of any state institution to the defeasance of any of such bonds by establishing an irrevocable trust therefor which shall consist of either monies in an amount which shall be sufficient, or direct obligations of the United States of America, or obligations unconditionally guaranteed by the United States of America, the principal and interest on which when due will provide the sums required to pay the principal, interest, and redemption premium, if any, of the particular state institution bonds sought to be defeased. The trust fund shall be established in such manner as to designate the state institution bonds intended to be defeased. When so established, the state institution bonds shall be deemed to be defeased and shall not be deemed to be outstanding for all purposes of this chapter. Notwithstanding the establishment of the irrevocable trust fund, the obligation of the State to pay to the holders of the defeased bonds all sums due by way of principal and interest shall not be deemed to be impaired.

The General Assembly is mindful of the fact that the law in effect at the time of the issuance of any state institution bonds is a part of the contract between the State and the holders of such bonds.

It is not intended that Sections 59‑107‑50, 59‑107‑90, 59‑107‑180 and 59‑107‑200 shall impair or modify the contract existing between the State and the holders of state institution bonds now outstanding. Accordingly, the use of surplus money in the sinking funds established by Section 59‑107‑180 for capital improvements shall not be undertaken until all bonds outstanding on May 11, 1976 have been paid or provision for their payment has been made. It is further prescribed that in the event of a deficiency in revenues required to pay the principal or interest of any state institution bonds outstanding on May 11, 1976, resort may be had by the holders of such bonds to any special trust established to defease other state institution bonds outstanding on May 11, 1976 and, in which event, it shall become the duty of the trustees, Area Commissions, or the State Board for Technical and Comprehensive Education of the applicable state institutions to increase tuition fees to the extent necessary to restore such special Trust Fund.

HISTORY: 1962 Code Section 22‑40; 1976 Act No. 582, Sections 4, 5; 1977 Act No. 249, Pt II, Section 5; 1991 Act No. 65, Section 8.

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

Maximum amount of outstanding bonds, see Section 59‑107‑90.

Modification of application for funds by state board, see Section 59‑107‑50.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.