CHAPTER 115

State Education Assistance Act

**SECTION 59‑115‑10.** Short title.

 This chapter may be cited as “The State Education Assistance Act.”

HISTORY: 1962 Code Section 22‑96; 1971 (57) 775.

LAW REVIEW AND JOURNAL COMMENTARIES

Public education. 25 S.C. L. Rev. 465.

NOTES OF DECISIONS

In general 1

1. In general

This chapter rests upon a valid public purpose, i.e., the promotion of higher education in the State; and all of its provisions are reasonably related to this purpose. Durham v. McLeod (S.C. 1972) 259 S.C. 409, 192 S.E.2d 202, motion denied 93 S.Ct. 1375, 410 U.S. 923, 35 L.Ed.2d 585, appeal dismissed 93 S.Ct. 3060, 413 U.S. 902, 37 L.Ed.2d 1020.

This chapter is scrupulously neutral as between religion and irreligion and as between various religions. It simply aids and encourages South Carolina residents in the pursuit of higher education, and leaves all eligible institutions free to compete for their attendance and dollars, neither advantaged or disadvantaged by the operation of the Act. Durham v. McLeod (S.C. 1972) 259 S.C. 409, 192 S.E.2d 202, motion denied 93 S.Ct. 1375, 410 U.S. 923, 35 L.Ed.2d 585, appeal dismissed 93 S.Ct. 3060, 413 U.S. 902, 37 L.Ed.2d 1020.

**SECTION 59‑115‑20.** Definitions.

 The following words and terms shall, unless the context otherwise requires, have the following meanings:

 (1) “Authority” means the State Fiscal Accountability Authority, acting as the State Education Assistance Authority.

 (2) “Eligible institution” shall mean (a) any institution of higher learning or post‑secondary business, trade or technical educational schools; and (b) vocational and training schools, which shall have received the approval as such by the Authority.

 Eligible institutions may be located within or beyond the boundaries of South Carolina.

 (3) “Loan fund” shall mean the State Education Assistance Authority loan fund which shall be established as provided by Section 59‑115‑60.

 (4) “Revenue bonds” or “student loan revenue bonds” shall mean revenue bonds of the Authority issued under the provisions of this chapter, including revenue refunding bonds.

 (5) “Sinking fund” shall mean the fund established pursuant to Section 59‑115‑70 in order to provide for the payment of the principal and interest of revenue bonds.

 (6) “Student” means any qualifying student in attendance at any eligible institution.

 (7) “Student loans” means loans made to students for the purpose of enabling them to attend eligible institutions.

 (8) “Loan Guarantee Reserve Fund” shall mean the state education assistance authority loan guarantee reserve fund which shall be established as provided by Section 59‑115‑70.

HISTORY: 1962 Code Section 22‑96.1; 1971 (57) 775; 1978 Act No. 474, Section 2; 1987 Act No. 195, Section 2; 2014 Act No. 121 (S.22), Pt VII, Section 20.O.1, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 20.O.1, in subsection (1), substituted “means the State Fiscal Accountability Authority” for “shall mean the State Budget and Control Board of South Carolina”.

**SECTION 59‑115‑30.** Function of Authority.

 The basic function of the Authority is to assist students attending eligible institutions through the exercise of the powers herein granted to it.

HISTORY: 1962 Code Section 22‑96.2; 1971 (57) 775.

LIBRARY REFERENCES

Colleges and Universities 9.25(2).

Westlaw Key Number Search: 81k9.25(2).

C.J.S. Colleges and Universities Section 34.

**SECTION 59‑115‑40.** State Education Assistance Authority.

 There is hereby created a body politic and corporate to be known as the State Education Assistance Authority (authority). The authority is hereby declared to be a public instrumentality of the State and the exercise by the authority of any power conferred herein shall be deemed and held to be the performance of an essential public function. The authority shall consist of the members, from time to time, of the State Fiscal Accountability Authority, ex officio.

HISTORY: 1962 Code Section 22‑96.3; 1971 (57) 775; 2014 Act No. 121 (S.22), Pt VII, Section 20.O.2, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 20.O.2, substituted “Fiscal Accountability Authority” for “Budget and Control Board of South Carolina”, and made other nonsubstantive changes.

LIBRARY REFERENCES

States 45.

Westlaw Key Number Search: 360k45.

C.J.S. States Sections 79 to 80, 82, 136.

**SECTION 59‑115‑50.** Powers of Authority.

 The Authority shall be empowered as follows:

 (a) To make student loans under such terms and conditions as the Authority shall from time to time prescribe;

 (b) To insure student loans under such terms and conditions as the Authority shall from time to time prescribe;

 (c) To guarantee student loans under such terms and conditions as the Authority shall from time to time prescribe;

 (d) To acquire contingent interest in student loans from banks or other lending institutions (up to one hundred percent of the face amount thereof) under such terms and conditions as the Authority shall from time to time prescribe;

 (e) To develop and administer all programs and to perform all functions necessary or convenient to promote and facilitate the making, guaranteeing and insuring of student loans and to provide such other student loan assistance and services as the authority shall deem necessary or desirable and to enable it to qualify for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans;

 (f) To appoint one or more banking institutions as its fiscal agent to perform such functions with respect to student loans and its revenue bonds as the Authority shall from time to time prescribe; and

 (g) To approve as eligible, institutions otherwise qualified as such.

 (h) To sell or otherwise hypothecate student loans or other securities held by the authority in any fund created hereby.

HISTORY: 1962 Code Section 22‑96.4; 1971 (57) 775; 1978 Act No. 474, Sections 3, 4.

CROSS REFERENCES

State Education Assistance Authority regulations, see S.C. Code of Regulations R. 42‑10 et seq.

LIBRARY REFERENCES

Colleges and Universities 9.25(2).

Westlaw Key Number Search: 81k9.25(2).

C.J.S. Colleges and Universities Section 34.

**SECTION 59‑115‑60.** State Education Assistance Authority Loan Fund.

 There shall be established and maintained by the authority a fund which shall be designated the “State Education Assistance Authority Loan Fund”. There shall be deposited to the credit of the loan fund the proceeds, exclusive of accrued interest, derived from the sale of the revenue bonds of the authority and any other moneys made available to the authority for making student loans.

 There also may be deposited in the loan fund the “spread” or difference between the average rate of interest paid by the authority on its revenue bonds and the interest received by the authority on student loans as well as any state appropriated funds or other funds made available for administration of the loan program authorized herein.

 Moneys in the loan fund shall be used only for the following purposes:

 (a) To make direct loans to students.

 (b) To make loans to any not‑for‑profit corporate entity approved by the authority for the purpose of enabling the entity to make student loans on terms and under conditions approved by the authority.

 (c) To defray the expenses of operation and administration of the authority and its programs for which other funds are not available to the authority.

 (d) To remedy any deficiency in the loan guarantee reserve fund.

 (e) To remedy any deficiency in the sinking fund.

 Pending the use of moneys in the loan fund for any of its authorized purposes the moneys shall be invested and reinvested by the State Treasurer. All earnings from the investments shall be added to and become a part of the loan fund.

HISTORY: 1962 Code Section 22‑96.5; 1971 (57) 775; 1978 Act No. 474, Section 5.

CROSS REFERENCES

Loan fund, defined, see Section 59‑115‑20.

LIBRARY REFERENCES

Colleges and Universities 9.25(2).

Westlaw Key Number Search: 81k9.25(2).

C.J.S. Colleges and Universities Section 34.

**SECTION 59‑115‑70.** Sinking fund; State Education Assistance Authority Loan Guarantee Reserve Fund.

 Prior to the issuance of any revenue bonds a sinking fund shall be established, the custodian of which shall be the State Treasurer. There shall be deposited in the sinking fund the revenues from all of the sources pledged for the payment of the revenue bonds including all moneys received directly or indirectly by way of principal and interest, exclusive of the “spread” referred to in Section 59‑115‑60, from the repayment of student loans. Except to the extent of any surplus therein, moneys in the sinking fund shall be used for the sole purpose of paying the principal of and interest on revenue bonds of the authority from time to time outstanding.

 In the event that the authority shall undertake to guarantee student loans, there shall be established and maintained by the authority a trust fund which shall be designated the “State Education Assistance Authority Loan Guarantee Reserve Fund”. The fund shall be used by the authority to remedy defaults on student loans to the extent such defaulted loans are not covered by any existing or future program of federal insurance or reinsurance. There shall be deposited to the credit of the loan guarantee reserve fund all premiums received by the authority for guaranteeing student loans and all moneys made available to the authority for the guaranteeing of student loans including federal funds made available for such purpose. Moneys in the fund shall not be pledged to the repayment of the authority’s revenue bonds, but if all liability of the authority to remedy defaults on student loans have been extinguished such moneys remaining in the loan guarantee reserve fund shall be deposited in the sinking fund. The liability of the State upon its obligation to guarantee student loans shall not constitute a pledge of the faith and credit of the State but shall be payable solely from moneys in the loan guarantee reserve fund.

HISTORY: 1962 Code Section 22‑96.6; 1971 (57) 775; 1978 Act No. 474, Section 6.

LIBRARY REFERENCES

Colleges and Universities 9.25(2).

Westlaw Key Number Search: 81k9.25(2).

C.J.S. Colleges and Universities Section 34.

**SECTION 59‑115‑80.** Authority empowered to issue revenue bonds.

 The General Assembly authorizes the authority to provide for the issuance, at one time or from time to time, of revenue bonds of the authority for any of its authorized purposes, including the use of a portion of the proceeds of any issue of bonds for the establishment of a reserve for the payment of principal and interest of the bonds. The reserve may be deposited in the sinking fund. Prior to the issuance of a series of bonds, the authority shall establish its compliance with the most restrictive of each parity bond test then imposed by the authority or by any nationally recognized rating agency which maintains a current rating of bonds of the authority. The bonds must be designated, subject to such additions or changes as the authority considers advisable, “State Education Assistance Authority Revenue Bonds, Series \_\_\_\_\_\_\_\_\_\_,” inserting in the blank space a letter or numerals identifying particular series of bonds.

 The principal of and interest on such bonds shall be payable solely from the sources herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate (within the limitation imposed by Section 11‑9‑350), shall mature at such time not exceeding twenty years from their date, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination of the bonds and the place of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Authority may also provide for the authentication of the bonds by its fiscal agent. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effectuate the purposes of this chapter.

 The authority shall provide in any resolution authorizing the issuance of revenue bonds for the pledging or assigning as security therefor so much of its income, receipts, funds or other assets of whatsoever kind from time to time acquired or owned by the authority, including all donations, grants and other money or property made available to it, payments received on student loans, including the principal, interest and penalties and other income derived from services rendered in connection with student loans, the proceeds of property or insurance, earnings and profits on investments of funds and from sales, purchases, endorsements of student loans, and other securities and instruments, contract rights, any funds, rights, proceeds of insurance or other benefits acquired pursuant to any federal law or contract to the extent not in conflict therewith, money recovered through the enforcement of any remedies or rights, and any other funds or things of value becoming the property of the authority, excluding the loan guarantee reserve fund, which, in the determination of the authority, may enhance the marketability of its revenue bonds. Moneys in the sinking fund shall be disbursed in such manner and under such restrictions as the authority may provide in the resolution authorizing the issuance of the bonds. Unless otherwise provided in the bond resolution, the revenue bonds at any time issued hereunder shall be entitled to payment from the sinking fund without preference or priority. Bonds may be issued under the provisions of this chapter without obtaining, except as otherwise expressly provided in this chapter, the consent of any department or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this chapter and the provisions of the resolution authorizing the issuance of such bonds.

HISTORY: 1962 Code Section 22‑96.7; 1971 (57) 775; 1977 Act No. 140; 1978 Act No. 474, Sections 7, 8; 1979 Act No. 194, Part I, Section 3; 1981 Act No. 91, Section 1; 1983 Act No. 15, Section 2; 1985 Act No. 116, Section 1; 1990 Act No. 509, Section 1; 1993 Act No. 179, Section 2.

CROSS REFERENCES

Loan guarantee reserve fund, defined, see Section 59‑115‑20.

Sinking fund, defined, see Section 59‑115‑20.

LIBRARY REFERENCES

States 146.

Westlaw Key Number Search: 360k146.

C.J.S. States Section 252.

Attorney General’s Opinions

The State Constitution prohibits the pledging of the State’s credit against the bonds issued by the State Education Assistance Authority, and therefore, Section 425(b)(1)(C)(ii) of Public Law 94‑482 would be applicable to the loans made by the South Carolina Student Loan Corporation 1976‑77 Op Atty Gen, No 77‑72, p 67.

**SECTION 59‑115‑90.** Bond resolution; custody of moneys received; expenses payable from loan fund.

 The resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, including covenants setting forth the duties of the authority in relation to the purchase or sale of obligations, the making of student loans, the insurance or guarantee of student loans, the fees, charges and premiums to be fixed and collected, the terms and conditions for the issuance of additional bonds and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. Any such resolution may set forth the rights and remedies of the bondholders and may restrict the individual right of action by bondholders. All expenses incurred in carrying out the provisions of such resolution may be treated as a part of the cost of administering this chapter and may be payable, together with other expenses of operation and administration under this chapter incurred by the authority, from the loan fund.

HISTORY: 1962 Code Section 22‑96.8; 1971 (57) 775; 1978 Act No. 474, Section 9.

LIBRARY REFERENCES

States 152.

Westlaw Key Number Search: 360k152.

C.J.S. States Section 254.

**SECTION 59‑115‑100.** Fees, charges, interest and premiums; contracts with United States and others; pledge of money in sinking fund.

 The authority is authorized to fix and collect fees, charges, interest and premiums for making, insuring or guaranteeing student loans, purchasing, endorsing or guaranteeing obligations and any other services performed under this chapter. The authority is further authorized to contract with the United States of America or any agency or officer thereof and with any person, partnership, association, banking institution or other corporation respecting the carrying out of the authority’s functions under this chapter. The authority shall at all times endeavor to fix and collect such fees, charges, receipts, premiums and other income so as to have available in the sinking fund at all times an amount which, together with any other funds made available therefor, shall be sufficient to pay the principal of and interest on such bonds as they shall become due and payable and to create reserves for such purposes. Money in the sinking fund, except such part thereof as may be necessary to provide such reserves for the bonds as may be provided for in the resolution authorizing the issuance of such bonds, shall be set aside in the sinking fund at such regular intervals as may be provided in such resolution and is hereby pledged to, and charged with, the payment of the principal of and interest on such bonds as they shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees, charges, receipts, proceeds and other revenues and moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. The resolution by which a pledge is created need not be filed or recorded except that a record of the proceedings covering the issuance of the bonds shall be filed in the office of the Secretary of State of South Carolina, as required by Section 11‑15‑20. The use and disposition of money to the credit of the sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds. Any such resolution may, in the discretion of the authority, provide for the transfer of surplus money in the sinking fund to the credit of the loan fund. Except as may otherwise be provided in such resolution, such sinking fund shall be a fund for all such bonds without distinction or priority.

HISTORY: 1962 Code Section 22‑96.9; 1971 (57) 775; 1978 Act No. 474, Section 10.

LIBRARY REFERENCES

Colleges and Universities 9.25(2).

States 165.

Westlaw Key Number Searches: 81k9.25(2); 360k165.

C.J.S. Colleges and Universities Section 34.

C.J.S. States Sections 259 to 260.

**SECTION 59‑115‑110.** All money received deemed trust funds; investment thereof.

 Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of the chapter, whether as proceeds from the sale of bonds, sale of property or insurance, or as payments of student loans, whether principal, interest or penalties, if any, thereon, or as insurance premiums, or from the purchase or sale of obligations, or as any other receipts or revenues derived hereunder, shall be deemed as trust funds to be held and applied solely as provided in this chapter. The resolution authorizing the bonds of any issue may provide that any of such money may be temporarily invested in securities authorized by Sections 6‑5‑10 to 6‑5‑40, pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such money shall be deposited shall act as trustee of such money and shall hold and apply the money for the purposes hereof, subject to such regulations as this chapter and such resolution may provide.

HISTORY: 1962 Code Section 22‑96.10; 1971 (57) 775.

LIBRARY REFERENCES

Colleges and Universities 9.25(2).

Westlaw Key Number Search: 81k9.25(2).

C.J.S. Colleges and Universities Section 34.

NOTES OF DECISIONS

In general 1

1. In general

The student loan fund under this chapter is held by the Authority as a trust fund. Durham v. McLeod (S.C. 1972) 259 S.C. 409, 192 S.E.2d 202, motion denied 93 S.Ct. 1375, 410 U.S. 923, 35 L.Ed.2d 585, appeal dismissed 93 S.Ct. 3060, 413 U.S. 902, 37 L.Ed.2d 1020.

No public money or credit, within the meaning of SC Const, Art 11, Section 9, is employed in making or guaranteeing loans to students in religious sponsored institutions. Durham v. McLeod (S.C. 1972) 259 S.C. 409, 192 S.E.2d 202, motion denied 93 S.Ct. 1375, 410 U.S. 923, 35 L.Ed.2d 585, appeal dismissed 93 S.Ct. 3060, 413 U.S. 902, 37 L.Ed.2d 1020.

**SECTION 59‑115‑120.** Rights of bondholders.

 Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by such resolution authorizing the issuance of such bonds, may either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution authorizing the issuance of such bonds, or under any contract executed by the Authority pursuant to this chapter, and may enforce and compel the performance of all duties required by this chapter or by such resolution to be performed by the Authority or any officer thereof, including the fixing, charging and collecting of fees, charges and premiums and the collection of principal, interest and penalties, if any, on student loans or obligations evidencing such loans.

HISTORY: 1962 Code Section 22‑96.11; 1971 (57) 775.

LIBRARY REFERENCES

States 168.

Westlaw Key Number Search: 360k168.

**SECTION 59‑115‑130.** Bonds as negotiable instruments.

 Notwithstanding any of the foregoing provisions of this chapter or any recitals in any bonds issued under the provisions of this chapter, all revenue bonds and interest coupons appertaining thereto shall be and are hereby made negotiable instruments under the laws of this State.

HISTORY: 1962 Code Section 22‑96.12; 1971 (57) 775.

**SECTION 59‑115‑140.** Bonds as legal investments.

 Bonds issued by the Authority under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law.

HISTORY: 1962 Code Section 22‑96.13; 1971 (57) 775.

Attorney General’s Opinions

The State Constitution prohibits the pledging of the State’s credit against the bonds issued by the State Education Assistance Authority, and therefore, Section 425(b)(1)(C)(ii) of Public Law 94‑482 would be applicable to the loans made by the South Carolina Student Loan Corporation 1976‑77 Op Atty Gen, No 77‑72, p 67.

**SECTION 59‑115‑150.** Security for bonds.

 Notwithstanding any other provision to the contrary herein, the Authority is hereby authorized to pledge as security for any bonds issued hereunder any contract between the Authority and the United States of America under which the United States agrees to make funds available to the Authority for any of the purposes of this chapter, to insure or guarantee the payment of principal of or interest on student loans, or otherwise to aid in promoting or facilitating student loans.

HISTORY: 1962 Code Section 22‑96.14; 1971 (57) 775.

LIBRARY REFERENCES

States 152.

Westlaw Key Number Search: 360k152.

C.J.S. States Section 254.

**SECTION 59‑115‑160.** Liability of State and Authority; expenses of Authority.

 Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this chapter shall contain on the face a statement to the effect that the Authority shall not be obligated to pay the principal of the bond nor the interest thereon except from the revenues, proceeds and other funds pledged therefor and neither the faith and credit nor the taxing power of the State or of any political subdivision is pledged to the payment of the principal of or the interest on such bonds. Expenses incurred by the Authority in carrying out the provisions of this chapter may be made payable from funds provided pursuant to this chapter and no liability or obligations shall be incurred by the Authority beyond the extent to which moneys shall have been so provided.

HISTORY: 1962 Code Section 22‑96.15; 1971 (57) 775.

LIBRARY REFERENCES

States 147.

Westlaw Key Number Search: 360k147.

C.J.S. States Section 252.

**SECTION 59‑115‑170.** Exemption of bonds from taxation.

 The principal of and interest on bonds issued pursuant to this chapter shall have the tax exempt status prescribed by Section 12‑1‑60.

HISTORY: 1962 Code Section 22‑96.16; 1971 (57) 775.

LIBRARY REFERENCES

Taxation 218.

Westlaw Key Number Search: 371k218.

C.J.S. Taxation Section 304.

**SECTION 59‑115‑180.** Annual report of Authority; audit.

 The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the General Assembly. Each such report shall set forth a complete operating and financial statement covering the operation of the Authority during such year. The Authority shall cause an audit on its books and accounts to be made at least once in each year by the State Auditor or by certified public accountants.

HISTORY: 1962 Code Section 22‑96.17; 1971 (57) 775.