**South Carolina General Assembly**

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**H. 3586**

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Currently residing in the House Committee on **Ways and Means**

Summary: South Carolina School Facilities Infrastructure Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/19/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\02-19-09.docx)‑8

2/19/2009 House Referred to Committee on **Ways and Means** [HJ](file:///h:\HJ%20Archive\2009\02-19-09.docx)‑8

2/26/2009 House Member(s) request name added as sponsor: Hutto

**VERSIONS OF THIS BILL**

[2/19/2009](file:///p:\pprever\2009-10\3586_20090219.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 75 TO TITLE 59 SO AS TO ENACT THE “SOUTH CAROLINA SCHOOL FACILITIES INFRASTRUCTURE ACT”, TO PROVIDE FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS AND SPECIAL SOURCE BONDS AND NOTES BY THE SOUTH CAROLINA SCHOOL FACILITIES INFRASTRUCTURE AUTHORITY FOR THE CONSTRUCTION OF SCHOOL FACILITIES, TO CREATE THE SOUTH CAROLINA SCHOOL FACILITIES INFRASTRUCTURE AUTHORITY AND TO PROVIDE FOR ITS POWERS AND DUTIES, TO CREATE THE SCHOOL FACILITIES REVIEW COMMISSION AND TO PROVIDE FOR ITS POWERS AND DUTIES, TO SPECIFY THE TERMS BY WHICH THE BONDS AND NOTES ARE ISSUED, TO DEFINE CERTAIN TERMS; AND TO AMEND SECTION 59‑71‑155, RELATING TO GENERAL OBLIGATION BONDS, SO AS TO PROVIDE FOR THE ADDITION OF FINANCING AGREEMENTS BETWEEN A SCHOOL DISTRICT AND THE SCHOOL FACILITIES INFRASTRUCTURE AUTHORITY.

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

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

“CHAPTER 75

South Carolina School Facilities Infrastructure Act

Article 1

General Provisions

Section 59‑75‑100. This chapter may be cited as the ‘South Carolina School Facilities Infrastructure Act’.

Section 59‑75‑110. The General Assembly finds:

(1) Adequate school facilities are an important element in the ability of a community to provide for the education of its children and the resulting continuing economic growth and development that provides jobs for the citizens of South Carolina.

(2) There are demonstrated needs for new school facilities both in areas of the State experiencing rapid growth in population and also in areas in which existing school facilities are antiquated and in disrepair.

(3) Traditional school facility financing methods in South Carolina cannot in every instance generate the resources necessary to fund the cost of school facilities which are required for an adequate education system throughout our State.

(4) There is a demonstrated need for a statewide, uniform educational facilities management, information, accountability, and reporting system.

(5) The State of South Carolina has the ability to provide for alternative methods of financing school projects which, when combined with existing financing sources and methods, will allow the State to address its school facility needs in a more timely and responsive manner.

(6) Loans, financing agreements, and other financial assistance to school districts can play an important part in meeting school facility needs. This assistance is in the public interest for the public benefit and good as a matter of legislative intent.

(7) The chapter provides a means by which the State may assist school districts in constructing and improving school facilities by providing loans, financing agreements, and other financial assistance.

Section 59‑75‑120. As used in this chapter unless the context clearly indicates otherwise:

(1) ‘Assessed value’ means the assessed value of a school district for the purpose of calculating its constitutional debt limit. ‘Assessed value’ does not include property subject to a fee in lieu of tax and amounts appropriated to school districts by the General Assembly pursuant to Sections 12‑37‑935 and 12‑37‑2870.

(2) ‘Authority’ means the South Carolina School Facilities Infrastructure Authority, as established by this chapter.

(3) ‘Board’ means the governing body of the authority.

(4) ‘Bonds’ mean SFI bonds, SIR bonds, and SIR notes.

(5) ‘Eligible cost’ means costs applied to a qualified project that are permitted under applicable laws, requirements, procedures, and guidelines in regard to establishing, operating, and providing assistance from the authority.

(6) ‘Eligible project’ means the construction, renovation, furnishing, and equipping of one or more school facilities as defined in subsection (25).

(7) ‘Facilities Review Commission’ means the School Facilities Review Commission created by this chapter.

(8) ‘Financing agreement’ means an agreement between the authority and a qualified borrower providing, among other things, for the implementation of a qualified project, the use of the qualified project by that qualified borrower, and the payment of school district payments by that qualified borrower.

(9) ‘General obligation bonds’ mean general obligation bonds issued by a qualified borrower for the purpose of making school district payments.

(10) ‘Governing body of a school district’ means the board of trustees of a school district, or other entity responsible for administering the school district.

(11) ‘Loan’ means a general obligation of a qualified borrower which is purchased by the authority from a qualified borrower in order to defray all or part of the eligible cost of a qualified project. Proceeds of a loan may be disbursed to a qualified borrower as reimbursement for or direct payment of eligible costs of a qualified project.

(12) ‘Note agreement’ means an agreement between the authority and a school district with respect to the lending and repayment of the proceeds of SIR notes.

(13) ‘OSF’ means the Office of School Facilities of the State Department of Education, or its successor.

(14) ‘Other financial assistance’ means, but is not limited to, grants, contributions, credit enhancement, capital or debt reserves for bonds or debt instrument financing, interest rate subsidies, provision of letters of credit and credit instruments, provision of bond or other debt financing instrument security, and other lawful forms of financing and methods of leveraging funds that are approved by the board.

(15) ‘Qualified borrower’ means a school district which is authorized to construct, operate, or own a qualified project or borrow proceeds of one or more SIR notes from the authority.

(16) ‘Qualified project’ means an eligible project which has been selected by the review commission to receive a grant, loan, or other financial assistance from the authority or to enter into a financing agreement with the authority or third party to defray an eligible cost or some portion of an eligible cost.

(17) ‘Qualified project contribution’ means the amount a school district must contribute to defray the cost of a qualified project in order to receive a grant of SFI bond proceeds pursuant to Section 59‑75‑310. A school district’s qualified project contribution is equal to (1‑w)c, where ‘w’ equals the school district’s wealth per pupil and ‘c’ equals the amount of the SFI contribution to be distributed to the school district.

(18) ‘Revenues’ mean receipts, fees, income, or other payments received or to be received by the authority including, but not limited to, receipts and other payments deposited in the SFI fund and investment earnings on the SFI fund.

(19) ‘SFI bonds’ mean general obligation bonds of the State issued to provide grants and loans pursuant to this chapter and Article X, Section 13(5)(a) of the Constitution of South Carolina.

(20) ‘SFI bond legislation’ means an act of the General Assembly separate from this chapter in which the issuance of SFI bonds in a stated principal amount is authorized.

(21) ‘SFI contribution’ means the amount of proceeds of SFI bonds that may be applied on a grant basis to defray the cost of a qualified project of a school district, subject to the applicable SFI contribution cap.

(22) ‘SFI contribution cap’ means the limit imposed on SFI contributions pursuant to Section 59‑75‑310(H).

(23) ‘SFI fund’ means the fund established pursuant to Section 59‑75‑130(B).

(24) ‘School district payments’ mean amounts paid by school districts to the authority or to a third party pursuant to a financing agreement or loan agreement, as appropriate.

(25) ‘School facility or facilities’ mean facilities necessary for instructional and related purposes for grades K‑12 including, but not limited to, classrooms, libraries, media centers, laboratories, cafeterias, physical education spaces, related interior and exterior facilities, and the conduit, wiring, powering, acquisition, and installation of classroom computers or for area network systems and the related software. ‘School facilities’ do not include unimproved real property, centralized district administration facilities, portable classrooms, or other facilities, including those normally identified exclusively with interscholastic sports activities.

(26) ‘SIR bonds’ mean special source bonds, notes, or other evidences of indebtedness of the authority payable solely from and secured solely by school district payments, issued pursuant to the authorizations contained in this act and in Article X, Section 13(9) of the Constitution of this State.

(27) ‘SIR notes’ mean notes of the authority, the proceeds of which are loaned to school districts for the purpose set forth in Sections 11‑27‑50(4) and 59‑69‑270 or for the purpose of purchasing general obligation bonds issued by school districts in accordance with Section 59‑75‑500(H).

(28) ‘Third‑party financing’ means financing provided to a school district from a source other than SFI bonds or SIR bonds upon the approval of the commission.

(29) ‘Wealth factor’ means, as to a school district ‘x’, a number determined by the formula (g‑y)/g, where ‘g’ equals the greatest wealth per pupil of any school district and ‘y’ equals the wealth per pupil of school district ‘x’, provided that as to the school district having the greatest wealth per pupil, its wealth factor is determined by the formula ((z/g)w), where ‘g’ equals the greatest wealth per pupil of any school district, ‘z’ equals the second greatest wealth per pupil of any school district, and ‘w’ is the wealth factor of the school district having the second greatest wealth per pupil.

(30) ‘Wealth per pupil’ means the number which is equal to the assessed value of a school district divided by the enrollment of a school district, based on one hundred thirty‑five day average daily membership count. The assessed value and the enrollment used in calculating wealth per pupil must be measured as of the second fiscal year next preceding the fiscal year in which the calculation is made. Wealth per pupil must be determined by July thirtieth of each year by OSF.

Section 59‑75‑130. (A) There is created a body corporate and politic and an instrumentality of the State known as the South Carolina School Facilities Infrastructure (SFI) Authority. The authority is governed by the board as provided in this chapter. The purpose of the authority is to assist in financing qualified projects by entering into financing agreements and providing grants, loans, and other financial assistance to qualified borrowers. The exercise by the authority of a power conferred in this chapter is an essential public function.

(B) The authority shall establish and maintain the School Facilities Infrastructure (SFI) Fund into which monies for the purpose of the authority are deposited.

Section 59‑75‑140. (A) The following sources may be applied to capitalize the SFI fund and used by the authority to carry out its purposes:

(1) appropriations to the SFI fund made by the General Assembly;

(2) federal funds made available to the State or the authority;

(3) contributions and donations from government units, private entities, and other sources as may become available to the authority;

(4) money paid or credited to the authority, by contract or otherwise, payments of principal and interest on financing agreements, general obligation bonds or other financial assistance made from the authority, and interest earnings which may accrue from the investment or reinvestment of the authority’s money;

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

(6) other lawful sources as determined appropriate by the board.

(B) The authority may establish accounts and subaccounts within the SFI fund to effectuate the purposes of this chapter, or to meet the requirements of a state or federal law, regulation, or program. Accounts must be held in trust by the State Treasurer. The State Treasurer may appoint a financial institution exercising corporate trust powers to serve as trustee for the SFI fund or an account or subaccount created pursuant to this chapter.

(C) Amounts in the SFI fund may be invested in accordance with Section 11‑9‑660, provided that rating criteria applicable to bonds of school districts of the State may be disregarded. Investment earnings must be credited to the SFI fund.

Section 59‑75‑150. (A) The authority is governed by a board, which shall consist of five members:

(1) the Governor or his designee;

(2) the State Treasurer;

(3) the Comptroller General;

(4) the Chairman of the Senate Finance Committee; and

(5) the Chairman of the House Ways and Means Committee.

The Governor shall serve as chairman. In the absence of the Governor, meetings must be chaired by the State Treasurer. Members serve ex officio.

(B) Members of the board serve without pay but are allowed the usual mileage, per diem, and subsistence as provided by law for members of state boards, committees, and commissions.

(C) Members of the board and its employees are subject to the provisions of Chapter 13, Title 8, the Ethics, Government Accountability, and Campaign Reform Act, and Chapter 17, Title 2, relating to lobbying.

(D) The board may obtain administrative assistance from the Office of the State Treasurer and the State Budget and Control Board, and a successor agency, office, or division, each of which must provide the assistance requested by the board at no cost to the board or to the authority other than for expenses incurred and paid to entities that are not agencies or departments of the State. The board shall retain ultimate responsibility and provide proper oversight for the implementation of this chapter.

(E) The board shall exercise the powers of the authority. A majority of the members of the board constitutes a quorum for the purpose of conducting business. The board shall determine the number of personnel it requires, their compensation, and their duties.

Section 59‑75‑160. (A) In addition to the powers contained elsewhere in this chapter, the board has all power necessary, useful, or appropriate to fund, operate, and administer the authority, and to perform its other functions including, but not limited to, the power to:

(1) have perpetual succession;

(2) adopt, promulgate, amend, and repeal bylaws, not inconsistent with provisions in this chapter, for the administration of the authority’s affairs and the implementation of its functions;

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

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

(5) act upon recommendations made to it by the review commission pursuant to Section 59‑75‑170;

(6) enter into financing agreements with qualified borrowers to finance the eligible costs of qualified projects, to acquire and hold financing agreements and loans at prices and in a manner as the board determines advisable, and to pledge and assign all revenues derived from financing agreements and loans to the repayment of bonds;

(7) provide qualified borrowers with loans and other financial assistance necessary to defray eligible costs of a qualified project;

(8) enter into contracts, arrangements, and agreements with qualified borrowers and other persons and issue, execute, and deliver financing agreements and other instruments necessary or convenient to the exercise of the powers granted pursuant to this chapter;

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

(10) establish policies and procedures for the making and administering of loans, financing agreements, and other financial assistance, and establish fiscal controls and accounting procedures to ensure proper accounting and reporting by the authority and school districts;

(11) acquire by purchase, lease, donation, or other lawful means and sell, convey, pledge, lease, exchange, transfer, and dispose of its properties and assets of every kind and character or interest in it to further the public purpose of the authority;

(12) procure insurance, guarantees, letters of credit, and other forms of collateral, security, or credit support from a public or private entity, including, but not limited to, a department, agency, or instrumentality of the United States or this State, a federally‑ or state‑chartered bank, an insurance company, or other financial institution, for the payment of bonds, including the power to pay premiums or fees on insurance, guarantees, letters of credit, and other forms of collateral, security, or credit support;

(13) enter into, amend, and terminate agreements in the nature of interest rate swaps, forward security supply contracts, agreements for the management of interest rate risks, agreements for the management of cash flow, and other agreements of a similar nature, with respect to bonds issued pursuant to this chapter;

(14) collect or authorize the trustee under a trust indenture securing bonds to collect amounts due under financing agreements owned by it, including taking the action required to obtain payment of sums in default;

(15) unless restricted under an agreement with holders of bonds, consent to a modification with respect to the rate of interest, time, and payment of installment of principal or interest, or other terms of financing agreements owned by it;

(16) borrow money through the issuance of SIR bonds, SIR notes, and SFI bonds as provided in this chapter;

(17) enter into contracts and expend funds to obtain accounting, management, legal, financial advisory, and other professional services necessary to the operations of the authority;

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

(19) collect fees and charges in connection with its provision of financing agreements, loans, and other financial assistance;

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

(21) do other things necessary or convenient to exercise powers granted or reasonably implied by this chapter or that may be necessary for the fulfillment of the purposes of this chapter.

(B) The purpose of this chapter is remedial in nature and the powers of the authority are to be construed liberally. In the exercise of its powers in this chapter, the board and the authority may obtain services in accordance with the procedures, guidelines, and criteria established by the board for that purpose and are not restricted by Chapter 35, Title 11, or a successor provision.

Section 59‑75‑170. (A) There is created the School Facilities Review Commission. The review commission consists of nine voting members:

(1) the Governor, ex officio, or his designee;

(2) the State Superintendent of Education, ex officio, or his designee;

(3) one member appointed by the State Treasurer, who shall serve as chairman;

(4) one member appointed by the Speaker of the House of Representatives;

(5) one member appointed by the President Pro Tempore of the Senate;

(6) one member appointed by the Chairman of the House Ways and Means Committee;

(7) one member appointed by the Chairman of the Senate Finance Committee;

(8) one member appointed by the Chairman of the House Education and Public Works Committee; and

(9) one member appointed by the Chairman of the Senate Education Committee.

Appointed members shall serve terms coterminous with those of their appointing authority. The vice chairman must be elected by the board. A person appointed to fill a vacancy must be appointed in the same manner as the original appointee for the remainder of the unexpired term.

(B) The review commission assumes the following powers and duties:

(1) promulgate regulations and adopt guidelines and procedures in which school districts may submit proposals for and receive grants, loans, and other financial assistance from the authority and enter into financing agreements with the authority in order to defray the eligible cost of qualified projects. Promulgation of regulations, guidelines, and procedures by the review commission is not subject to Chapter 23, Title 1;

(2) review proposals for the implementation and financing of school facility building programs with representatives of school districts;

(3) develop and promote the use of prototype building components and energy efficient building technologies for use by school districts receiving funds pursuant to this chapter;

(4) determine which projects proposed for financing are eligible projects, and which eligible projects are designated as qualified projects in accordance with Section 59‑75‑180;

(5) recommend in a written report the funding of qualified projects through the issuance of SFI bonds and SIR bonds by the authority and the provision of other financial assistance in the form of credit support, reserve funds, bond insurance, surety bonds, and other assistance to be financed with proceeds of a borrowing by the authority;

(6) recommend in its written report the granting of other financial assistance to qualified borrowers in the form of grants, interest rate subsidies, and other assistance which requires the application of available amounts in the SFI fund for the benefit of a specific qualified borrower. Other financial assistance recommended pursuant to this item must be made available only to a qualified borrower whose wealth per pupil ranks in the bottom half of all school districts in the State;

(7) authorize a school district to undertake third‑party financing of an eligible project from a source other than bonds. This authorization must take into account the factors described in Section 59‑75‑180, as well as the negative impact of inclusion of the eligible project in a proposed issuance of bonds; and

(8) provide a written recommendation to the authority for the issuance of SIR notes, the identity of the school districts which are qualified borrowers, the purpose of the issuance, and the maximum principal amount necessary to accomplish this purpose.

Section 59‑75‑180. In reviewing and considering the designation of eligible projects as qualified projects, the review commission shall review the following factors and provide its findings in its written report to the authority:

(A) the need demonstrated by a school district for the eligible projects, which may be established by growth patterns, either district‑wide or in a limited locality, the age and condition of facilities, suitability of facilities for curriculum needs, current use of portable classrooms, current and projected enrollments, and other factors deemed to be relevant by the members of the review commission;

(B) the estimated cost of the eligible project that takes into account inflation and other cost overruns;

(C) the impact of the proposed financing on the taxpayers of a school district and the extent to which the impact, if any, demonstrates a need for other financial assistance; and

(D) the available debt limit of the school district, excepting eligible projects to be financed pursuant to the provisions of Section 59‑75‑310.

The review commission shall receive assistance from OSF as may be necessary to fully and fairly evaluate eligible projects.

Section 59‑75‑190. (A) The review commission may recommend in its written report that a qualified project may be financed from the proceeds of SFI bonds or SIR bonds. The review commission shall further recommend whether additional financial assistance, if any, should be provided to the qualified borrower. The review commission shall notify the authority in its written report of its recommendation that other financial assistance be granted pursuant to Section 59‑75‑170(F).

(B) By December first of each year, the review commission shall deliver to the House Education and Public Works Committee, the Senate Education Committee, and the State Department of Education a report describing each application for funding made by a school district in the fiscal year ending on June thirtieth of that year, a description of the facility proposed for funding, the type of funding, and other financial assistance, if any, recommended for the facility to the authority.

(C) The review commission shall make written findings with respect to a proposal submitted by a school district that does not result in either a recommendation for funding to the authority or consent to utilize third‑party financing. The school district has thirty days following the receipt of these written findings to appeal and present additional information in its favor. The review commission shall respond in writing to the appeal within sixty days of receipt. The review commission may not forward its report to the authority until it has responded to outstanding appeals.

Section 59‑75‑200. Upon the receipt of a written report from the review commission that recommends the financing of eligible costs of qualified projects, the board shall meet and consider the report. The board may approve the financing of qualified projects as recommended by the review commission, return the written report to the review commission with a request for additional information, or disapprove the financing of the qualified projects as recommended by the review commission.

Section 59‑75‑210. The review commission shall report in writing to the General Assembly on the condition of school facilities in each school district within eighteen months of the adoption of this chapter. This report shall describe the capital needs as have been identified by OSF pursuant to Section 59‑75‑220 and the extent to which those needs have been met, and shall provide recommendations as to the funding required to meet those needs which have been identified but not met. The review commission shall receive assistance from OSF as may be necessary to satisfy the requirements of this section.

Section 59‑75‑220. (A) There is established a uniform system to measure and determine accountability for the expenditures made by the authority throughout the State. This accountability and information system must be based on existing school district software systems to the extent feasible in order to preserve existing district system investments. The uniform accountability system must be established in accordance with Section 59‑75‑160(A)(10), must be administered by OSF, and must initially measure the following six minimum standards:

(1) a formal maintenance management program that records maintenance activities on a work order basis and tracks the timing and costs, including labor and materials, of maintenance activities in sufficient detail to produce reports of planned and completed work;

(2) an energy management plan that records energy consumption for utilities on a monthly basis for each building;

(3) a custodial program that includes a schedule of custodial activities for each building based on type of work and scope of effort;

(4) a maintenance training program that specifies training for custodial and maintenance staff and records training received by each person;

(5) a renewal and replacement schedule that identifies the construction cost of major building systems, including electrical, mechanical, structural, and other components; evaluates and establishes the life expectancy of those systems; compares life expectancy to the age and condition of the systems; and uses the data to forecast a renewal and replacement year and cost for each system; and

(6) a capital planning program that allows for assessment of existing school facilities, deferred maintenance, planning for future renewal needs, and planning for new facilities.

(B) Upon the establishment of a capital planning program established pursuant to item (A)(6) and the conclusion of the initial gathering, compilation, and analysis of data required, the OSF shall deliver to the review commission and the General Assembly a comprehensive report of school facility conditions and needs in each school district of the State.

(C) Reports generated from the accountability system must be delivered by OSF to the review commission.

Article 2

SFI Bonds

Section 59‑75‑300. (A) The authority is authorized to make loans to qualified borrowers from the proceeds of SFI general obligation bonds and from amounts retained in the SFI Fund not otherwise restricted, provided, however, that the proceeds of SFI general obligation bonds issued pursuant to Section 59‑75‑310 must be granted to the school districts of the State in accordance with that section. The issuance of SFI bonds is subject to adoption by the General Assembly in the case of one or more acts authorizing the issuance of SFI bonds.

(B) Loans made to qualified borrowers must be secured by a note of the qualified borrower and a loan agreement executed by the authority and the qualified borrower. Each note and loan agreement must be in the form prescribed by the authority. Each note must bear interest at a rate as determined by or in the manner as prescribed by the authority. Each note is subject to redemption only as may be prescribed by the authority. Each loan agreement must contain a schedule of school district payments due. Except as provided in this chapter, the forms of note and loan agreement to be executed and delivered pursuant to this section must be prescribed by the board.

(C) A note shall pledge the full faith, credit, and taxing power of the qualified borrower and shall constitute a general obligation bond of the qualified borrower within the meaning of Article X, Section 15 of the Constitution of South Carolina. The authority is entitled to the rights and privileges of the holder of a general obligation bond of the qualified borrower. The term of a note may not exceed the expected useful life of the qualified project, as certified to the authority by a licensed architect or engineer retained by the qualified borrower.

(D) The authority may require a qualified borrower to pay an origination fee, not exceeding either two dollars per one thousand dollars principal amount of a loan or more than ten thousand dollars in order to provide capital for the SFI fund. The authority may establish and impose a schedule of fees graduated according to wealth per pupil of the school districts of the State.

(E) A qualified borrower may deliver a note and enter into a loan agreement with the authority pursuant to this section without prior solicitation or other advertisement. Upon the delivery of a note and loan agreement, the qualified borrower must provide opinions of counsel as may be required by the authority. No note or loan agreement may be delivered, however, prior to adoption by the governing body approving the implementation of the qualified projects, the execution and delivery of the note and loan agreement, and other relevant matters the authority may prescribe. Persons charged with handling funds advanced to a qualified borrower must be adequately bonded, as determined by the authority, against defalcation.

(F) Principal, interest, and redemption premium of a note is payable to the authority on dates determined by the authority.

(G) Notes issued by a qualified borrower pursuant to this section are deemed ‘bonds’ for purposes of Sections 11‑15‑10 and 11‑15‑30. The authority is deemed a ‘bona fide purchaser for value’ within the meaning of Section 11‑15‑30, to the extent that it has advanced funds to a qualified borrower pursuant to a note and loan agreement.

(H) Funds may be made available to a qualified borrower pursuant to a note either by way of reimbursement or by direct payment to contractors, engineers, counsel, architects, vendors, and other sources of eligible costs. The authority may establish procedures for the processing of these requests or may engage the services of a bank acting as trustee for such purposes.

Section 59‑75‑310. (A) Initially, the proceeds of SFI bonds issued must be granted to the school district in accordance with this section.

(B) Until the uniform assessment system described in Section 59‑75‑220 has been established and a comprehensive report delivered to the General Assembly and the review commission pursuant to Section 59‑75‑220(B), or the authority has distributed at least three hundred million dollars of SFI bond proceeds to school districts pursuant to this section, one hundred percent of the proceeds of the SFI bond must be distributed strictly in accordance with the priority outlined in subsections (C) and (D). Following the occurrence of either of these events, the provisions of subsection (J) become effective.

(C) The first three million dollars of SFI bond proceeds, or a lesser amount determined sufficient by OSF, must be applied to defray the cost of the portions of the uniform assessment system described in Section 59‑75‑220 which will constitute capital expenditures under generally accepted accounting principles.

(D) Following satisfaction of the requirements of subsection (C), proceeds of SFI bonds must be distributed to school districts in the order of priority established by this subsection, except as provided in paragraph (J) of this section. Priority is ordered according to wealth per pupil, with the school district having the least wealth per pupil having the highest priority and the school district having the most wealth per pupil having the lowest priority.

(E) Upon the adoption by the General Assembly of an act authorizing the issuance of SFI bonds, the review commission shall notify the superintendents of the school districts of the State of the availability of SFI bond proceeds and request the submission by school districts of proposals for the funding of eligible projects. The review commission shall allow school districts at least one hundred eighty days following the publication of the delivery of this notice to submit proposals for funding. These proposals must be reviewed and processed by the review commission in accordance with the provisions of Sections 59‑75‑170 and 59‑75‑180.

(F) A school district is not eligible to receive an SFI contribution for a qualified project until it provides assurances to the review commission that the school district is able to provide funds to defray the cost of this qualified project in an amount at least equal to its qualified project contribution and will provide the same as may be required by the review commission.

(G) A school district is deemed to have satisfied the requirements of subsection (E) if it has, at the time of submitting its application to the review commission, or will have, taking into account its proposed contribution to the qualified project in question, general obligation bonds outstanding and chargeable against its constitutional debt limit in principal amount equal to at least seventy‑five percent of its constitutional debt limit at the time of calculation.

(H) The principal amount of general obligation bonds outstanding for purposes of subsection (F) shall include amounts owed by a school district in the next following fiscal year pursuant to an agreement between the school district and either the review commission or a corporation for the acquisition by the school district of school facilities on a periodic or installment basis. The principal amount of general obligation bonds outstanding for purposes of subsection (F) excludes an issue of general obligation bonds with weighted average maturity of less than two years.

(I) The review commission may require that a school district expend toward the eligible cost a portion of its qualified project contribution before SFI bond proceeds are provided to meet the eligible cost.

(J) Notwithstanding subsections (D) and (K), the amount of SFI contribution to a school district for eligible projects is subject to the following SFI contribution cap:

(1) The first fourteen school districts having priority under the order established by subsection (D) are subject to an SFI contribution cap of six thousand dollars per pupil, based upon one hundred thirty‑five day average daily membership for the preceding fiscal year.

(2) The next fourteen school districts having priority under the order established by subsection (D) are subject to an SFI contribution cap of four thousand and five hundred dollars per pupil, based upon one hundred thirty‑five day average daily membership for the preceding fiscal year.

(3) The next twenty‑eight school districts having priority under the order established by subsection (D) are subject to an SFI contribution cap of three thousand dollars per pupil, based upon one hundred thirty‑five day average daily membership for the preceding fiscal year.

(4) The final twenty‑nine school districts having priority under the order established by subsection (D) are subject to an SFI contribution cap of one thousand and five hundred dollars per pupil, based upon one hundred thirty‑five day average daily membership for the preceding fiscal year.

(K) Notwithstanding the priority established by subsection (D), up to twenty percent of the proceeds of those SFI bonds issued following the earlier of the distribution by the authority of at least three hundred million dollars of SFI bond proceeds to school districts or the delivery of the comprehensive report required by Section 59‑75‑160(B), may, in the discretion of the review commission, be distributed, without regard to the priority, as follows:

(1) up to ten percent of the proceeds of the SFI bonds may be distributed to remedy facility needs resulting from growth in enrollment; and

(2) up to ten percent of the proceeds of the SFI bonds may be distributed to address the physical condition and adequacy of school facilities within a particular attendance area of a school district.

Section 59‑75‑320. Following the receipt of a written report by the review commission recommending the financing of one or more qualified projects and the enactment by the General Assembly of SFI bond legislation, the board shall review the report and, upon the approval, may, by adopted resolution, effect the issuance of SFI bonds, and, pending their issuance, effect the issuance of bond anticipation notes.

Section 59‑75‑330. The issuance of SFI bonds is subject to the limitations contained in Article X, Section 13(6) of the Constitution of this State. Within these limitations, SFI bonds may be issued for qualified projects or to refund SFI bonds under the conditions prescribed by this article.

Section 59‑75‑340. For the payment of principal and interest on SFI bonds, there is pledged the full faith, credit, and taxing power of this State, and in accordance with the provisions of Article X, Section 13(4) of the Constitution of this State, the General Assembly authorizes the allocation on an annual basis of sufficient tax revenues to provide for the punctual payment of the principal and interest on SFI bonds. In addition to the full faith, credit, and taxing power, there is pledged school district payments received by the board pursuant to notes issued by qualified borrowers, and the State Treasurer is authorized to use these school district payments, without further action of the board, for the payment of the principal and interest on SFI bonds as the bonds respectively mature. If the revenues so pledged prove insufficient to meet the payments of the interest and principal of the SFI bonds in the fiscal year, the State Treasurer shall set aside from the general tax revenues received in the fiscal year as much of the general tax revenues as needed and shall apply these revenues to the punctual payment of the interest and principal of SFI bonds due or to become due in the fiscal year.

Section 59‑75‑350. The board shall adopt a resolution providing for the issuance of SFI bonds and shall transmit a certified copy of the resolution to the Governor and to the State Treasurer, with the request that they issue and deliver SFI bonds in accordance with the terms and conditions of the resolution. This resolution must set forth:

(1) the amount, denomination, and numbering of SFI bonds to be issued;

(2) the date which the SFI bonds shall be issued;

(3) the maturity schedule for the retirement of the SFI bonds;

(4) the redemption provisions, if any, applicable to the bonds;

(5) the maximum fixed rate or rates of interest the bonds shall bear;

(6) the purposes for which the bonds are to be issued;

(7) the occasion on which bids must be received for the sale of the bonds;

(8) the form of advertisement of sale;

(9) the form of the bonds of the particular issue; and

(10) other matters as may be considered necessary in order to effect the sale, issuance, and delivery of the bonds.

The SFI bonds and their issuance are subject to the provisions of Sections 11‑15‑20 and 11‑15‑30 and successor provisions. Following receipt of a certified copy of the resolution of the board, the Governor and the State Treasurer shall issue SFI bonds in accordance with the provisions of the resolution.

Section 59‑75‑360. SFI bonds must be issued in the form, in the denominations, and with provisions as to time, place, or places and medium of payment as may be determined by the board, subject to the provisions of this article.

Section 59‑75‑370. SFI bonds must be issued as fully registered bonds with both principal and interest made payable only to the registered holder. The fully registered bonds are subject to transfer under the conditions the board prescribes.

Section 59‑75‑380. SFI bonds shall bear interest, payable on occasions as are prescribed not more than thirty years after such date. The installments or series may be equal or unequal in amount. SFI bonds, in the discretion of the board, may be made subject to redemption at par and accrued interest, plus redemption premium as it shall approve and on the occasions as it may prescribe, and mandatory sinking fund redemption at par. SFI bonds are not redeemable before maturity unless they contain a statement to that effect.

Section 59‑75‑390. (A) SFI bonds issued under this article, and their interest, are exempt from state, county, municipal, school district, and other taxes or assessments, direct or indirect, general or special, imposed by this State, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, or transfer taxes.

(B) Executors, administrators, guardians, committees, and other fiduciaries may invest in SFI bonds. Nothing contained in this section may be construed as relieving a person from the duty of exercising reasonable care in selecting investments.

Section 59‑75‑400. SFI bonds must 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 seven 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. The bonds must be awarded to the bidder offering to purchase the SFI bonds at the lowest net interest cost or true interest cost, as determined by the board, to the State at a price of not less than par and accrued interest to the date of delivery, but the right is reserved to reject all bids and to readvertise the bonds for sale and to waive technicalities in the bidding. The Governor and the State Treasurer may determine to sell all or a portion of an issue of SFI bonds in denominations of less than five thousand dollars to individual residents of the State, in which case the advertisement and conditions of sale and the manner of award must be established by the Governor and the State Treasurer.

Section 59‑75‑410. The proceeds derived from the sale of SFI bonds must be applied only to the purposes set forth in the resolution of the board pursuant to which the bonds are issued.

Article 3

SIR Bonds and SIR Notes

Section 59‑75‑500. (A) The authority may enter into financing agreements with qualified borrowers and apply the proceeds of SIR bonds issued pursuant to Section 59‑75‑410 and amounts retained in the SFI funds not otherwise restricted to those financing agreements.

(B) An eligible project may be implemented on land and using existing facilities, if any, leased or conveyed to the authority by a qualified borrower, and this land and these facilities may be thereafter leased or sold on an installment basis by the authority to the qualified borrower. A lease or conveyance to the authority is not subject to approval by another governmental entity. The governing body of a qualified borrower must approve by written resolution the form of the financing agreement before the written resolution may be executed and delivered. Upon the delivery of a financing agreement, the qualified borrower must provide opinions of counsel that may be required by the authority.

(C) The authority shall provide for the use of school facilities pursuant to the terms of a financing agreement between the authority and a qualified borrower with terms that are not inconsistent with this chapter.

(D) A financing agreement shall include a schedule of school district payments to be paid by a qualified borrower to the authority as rental for use of the school facilities. The schedule of school district payments must be established so as to provide sufficient funds to repay, ratably, SIR bonds issued to finance one or more qualified projects of the qualified borrower.

(E) The authority may require qualified borrowers to pay an origination fee, not exceeding three dollars per one thousand dollars principal amount of a loan or more than twenty thousand dollars in order to provide capital for the SFI fund. The authority may establish and impose a schedule of fees graduated according to wealth per pupil of the school districts of the State. A school district that is authorized by the review commission to enter into third‑party financing shall, prior to the closing of financing, pay to the authority a fee equal to one‑half of the origination fee that it would otherwise pay as a qualified borrower pursuant to this subsection.

(F) Persons charged with handling funds advanced to a qualified borrower pursuant to a financing agreement must be adequately bonded, as determined by the authority, against defalcation.

(G) A financing agreement shall provide that, upon the satisfaction of school district payments due and to become due, the school facilities shall from then on be titled in the name of the qualified borrower which is the party to the financing agreement without encumbrance except as may have been agreed to by the qualified borrower.

(H) School district payments are payable on the dates as are provided in the applicable financing agreement. School district payments made within a given fiscal year may be derived from the proceeds of general obligation bonds of a qualified borrower or another source, except from the proceeds of ad valorem taxes levied for operational purposes within the fiscal year. Provided, however, that upon the filing by a qualified borrower of a certificate executed by two financial advisory firms selected by the authority to the effect that the qualified borrower’s access to capital markets is limited so that it cannot presently borrow funds at prevailing interest rates, the qualified borrower may use funds available to it, subject to Section 6‑1‑320(A), to make school district payments falling due in the fifteen months following the date of the certificate. The issuance of general obligation bonds for the purpose of making school payments and paying costs of issuance of general obligation bonds is authorized and is not subject to the approval of another governmental entity.

(I) A qualified borrower may not enter into a financing agreement unless it provides proof satisfactory to the authority that the maximum aggregate school district payment due in a fiscal year does not exceed seventy‑five percent of the applicable constitutional debt limit of the qualified borrower.

(J) Financing agreements are deemed ‘bonds’ for purposes of Sections 11‑15‑10 and 11‑15‑30. The authority is deemed a ‘bona fide purchaser for value’ within the meaning of Section 11‑15‑30 to the extent that it has advanced funds to a qualified borrower pursuant to a financing agreement.

(K) The obligation of a qualified borrower under a financing agreement is a year‑to‑year obligation. The governing body of a qualified borrower which is a party to a financing agreement has the absolute right to terminate a financing agreement by failing to appropriate funds, whether the proceeds of general obligation bonds or otherwise, in a fiscal year for the purpose of making school district payments. Upon the failure by a qualified borrower to make school district payments as provided in the applicable financing agreement or upon prior notice to the authority that it will not appropriate funds for that purpose, the qualified borrower shall vacate the school facilities and the board shall then control the school facilities as provided in the financing agreement. The board shall take action as it deems prudent to protect the interest of bondholders affected by the financing agreement termination, including, but not limited to, leasing the school facilities to one or more third parties. The right of the authority to control school facilities as provided in this paragraph shall cease upon the termination or expiration of the authority’s interest in the school facilities. This interest shall continue not less than five years beyond the date of the final scheduled school district payment.

(L) A contract, lease, arrangement, or agreement pursuant to which a school district makes school district payments to the authority or to a third party upon the approval of the review commission for the purpose of acquiring the use and ownership of real property and eligible projects is not a ‘financing agreement’ within the meaning of Section 11‑27‑110, provided that a contract, arrangement, or agreement entered into after the effective date of this chapter is subject to the provisions of subsections (H) and (I) of this section. A contract, lease, arrangement, or agreement entered into between a school district and the authority or a third party, if approved by the review commission, is deemed to be a ‘financing agreement’ within the meaning of this chapter for purposes of subsection (J). A transaction, contract, lease, agreement, or arrangement between a school district and a not‑for‑profit corporation entered into prior to January 1, 2007, in which the school district acquires use and ownership of school facilities in exchange for periodic payments, is hereby ratified and confirmed, and is deemed valid and enforceable in all respects under the law of the State.

(M) Funds may be made available to a qualified borrower pursuant to a financing agreement either by way of reimbursement or by direct payment to contractors, engineers, counsel, architects, vendors, and other sources of eligible costs. The authority may establish procedures for the processing of these requests or may engage the services of a bank acting as trustee for these purposes.

(N) The authority may assign to a trustee the rights it has or a portion of the rights under a financing agreement for the benefit of the holders of bonds.

Section 59‑75‑510. (A) The authority is authorized to enter into note agreements with school districts and to apply the proceeds of SIR notes issued pursuant to Section 59‑75‑560 and amounts retained in the SFI funds not otherwise restricted to those note agreements.

(B) The governing body of a qualified borrower must approve by written resolution the form of the note agreement before the agreement may be executed and delivered. The authority shall require a qualified borrower to present certifications and opinions of counsel as are usual and customary for the issuance of these instruments.

(C) The authority may require qualified borrowers to pay an origination fee, not exceeding two dollars per one thousand dollars principal amount of a loan or more than twenty thousand dollars in order to provide capital for the SFI fund. The authority may establish and impose a schedule of fees graduated according to wealth per pupil of the school districts of the State.

(D) Persons charged with handling funds advanced to a qualified borrower pursuant to a note agreement must be adequately bonded, as determined by the authority, against defalcation.

(E) Note agreements are deemed ‘bonds’ for purposes of Sections 11‑15‑10 and 11‑15‑30. The authority is deemed a ‘bona fide purchaser for value’ within the meaning of Section 11‑15‑30 to the extent that it has advanced funds to a qualified borrower pursuant to a note agreement.

(F) Notwithstanding another law, a school district may enter into a note agreement with the authority without prior advertisement or solicitation for bids from another party.

(G) The authority may assign to a trustee the rights or a portion of the rights it may have under a note agreement for the benefit of the holders of bonds.

Section 59‑75‑520. The authority is not required to pay taxes or assessments upon property or upon its operations or the income from them, or taxes or assessments upon property, loans, or financing agreements acquired or used by the authority or upon the income from them.

Section 59‑75‑530. Neither the authority nor an officer, employee, or committee of the authority acting on its behalf, while acting within the scope of its authority, is subject to liability resulting from the execution of the powers given in this chapter.

Section 59‑75‑540. Notice, proceeding, or publication, except those required in this chapter, are unnecessary to the performance of an action of the authority, the review commission, or school district authorized in this chapter, nor is an act of the authority subject to a referendum.

Section 59‑75‑550. All money of the authority and in the SFI fund, except as authorized by law or provided in this chapter, must be deposited with and invested by the State Treasurer. Funds of the authority not needed for immediate use or disbursement may be invested by the State Treasurer in obligations or securities which are declared to be legal obligations by the provisions of Section 11‑9‑660, provided that rating criteria applicable to bonds of school districts of the State may be disregarded.

Section 59‑75‑560. Following the receipt of a written report by the review commission recommending the financing of one or more qualified projects by means of a financing agreement, the board shall review the report and, upon approval, may, by adopted resolution, effect the issuance of State SIR bonds, and pending their issuance, effect the issuance of bond anticipation notes.

Section 59‑75‑570. The issuance of SIR bonds is subject to the limitations contained in Article X, Section 13(9) of the Constitution of this State. Within these limitation, SIR bonds may be issued for qualified projects or to refund SIR bonds from time to time under the conditions prescribed by this article.

Section 59‑75‑580. (A) SIR bonds must be secured solely by and be payable from school district payments as provided in this article. The board may apply other funds available to it to the payment of SIR bonds; these other funds may be pledged to or otherwise secure the payment of SIR bonds in the discretion of the board. The board may not authorize or enter into a covenant that purports to create a general or legal obligation of this State or its political subdivisions or to pledge the full faith, credit, or taxing power of the State or its political subdivisions. A covenant in violation of this subsection is void and of no effect. Neither the members of the board, the board, nor a person executing SIR bonds are liable personally on SIR bonds or are subject to personal liability or accountability by reason of the issuance of SIR bonds.

(B) The board may not pledge the faith, credit, or taxing power of this State or its political subdivisions in connection with the issuance of SIR bonds, and each SIR bond must recite on its face that it is a special source bond of the authority issued pursuant to and in accordance with this act and Article X, Section 13(9) of the Constitution of this State, that it is secured solely by and payable solely from school district payments, that it is neither a general nor legal obligation of the State or its political subdivisions, and that it is not backed by the full faith, credit, or taxing power of this State or its political subdivisions. Failure to include this language on the face of a SIR bond does not cause the bond to become a general or legal obligation of the State or its political subdivisions, or a pledge of the full faith, credit, or taxing power of this State or its political subdivisions.

(C) A pledge of school district payments made by the board is valid and binding from the time in which the pledge is made. School district payments pledged and then or thereafter received by the board are immediately subject to the lien of the pledge without physical delivery of the receipt or further act. The lien of the pledge is valid and binding against all parties having claims in tort, contract, or otherwise against the board, irrespective of whether the parties have notice of them. Neither the resolution of the board nor another instrument by which a pledge is created need be recorded or filed to perfect the pledge.

(D) In the discretion of the board, bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be a trust company or bank having the powers of a trust company within or without the State. The trust agreement or the resolution providing for the issuance of SIR bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustees as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders.

Section 59‑75‑590. The board may adopt a resolution providing for the issuance of SIR bonds, upon written request by the board, and may transmit a certified copy to the Governor and to the State Treasurer, with the request that they issue and deliver SIR bonds in accordance with the terms and conditions of the resolution. This resolution must set forth:

(1) the maximum amount, denomination, and numbering of SIR bonds to be issued;

(2) the date the resolution must be issued, or means of determining the date;

(3) the maturity schedule for the retirement of the SIR bonds, which is subject to adjustment by the State Treasurer to further effectuate the purposes of this chapter;

(4) the redemption provisions, if any, applicable to SIR bonds, or method of determining the redemption;

(5) the maximum fixed rate or rates of interest that SIR bonds shall bear;

(6) the purposes for which SIR bonds are to be issued;

(7) the conditions under which additional bonds may be issued if requested by the board;

(8) the underwriters with whom the State is authorized to negotiate for the sale of SIR bonds, or, if SIR bonds are to be sold by competitive sale, the terms and conditions of the sale and the form of notice;

(9) the form of SIR bonds of the particular issue; and

(10) other matters as may be considered necessary in order to effect the sale, issuance, and delivery of the bonds.

Section 59‑75‑600. Following receipt of a certified copy of the resolution of the board, the Governor and the State Treasurer shall issue SIR bonds in accordance with the provisions of the resolution of the board.

Section 59‑75‑610. SIR bonds must be issued in the form, in the denominations, and with provisions as to time, place, or places and medium of payment as may be determined by the board, subject to the provisions of this article.

Section 59‑75‑620. SIR bonds must be issued as fully registered bonds with both principal and interest made payable only to the registered holder. The fully registered bonds are subject to transfer under the conditions the board prescribes.

Section 59‑75‑630. SIR bonds, in the discretion of the board, may be made subject to optional redemption at par and accrued interest, plus a redemption premium as it shall approve and on the occasions as it may prescribe, and mandatory sinking fund redemption at par. SIR bonds are not redeemable before maturity unless they contain a statement to that effect.

Section 59‑75‑640. (A) SIR bonds issued under this article, and their interest, are exempt from state, county, municipal, school district, and other taxes or assessments, direct or indirect, general or special, imposed by the State, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, or transfer taxes.

(B) Executors, administrators, guardians, committees, and other fiduciaries may invest in SIR bonds. Nothing contained in this section may be construed as relieving a person from the duty of exercising reasonable care in selecting investments.

Section 59‑75‑650. Subject to the requirements of this chapter, the board may authorize the issuance of SIR bonds for the following purposes:

(1) refunding outstanding SIR bonds of the authority on a current or advance‑refunding basis;

(2) obtaining funds to finance qualified projects;

(3) establishing reserves for the payment of SIR bonds;

(4) paying the premiums for policies of insurance securing SIR bonds and providing reserves; and

(5) payment of costs of issuance of SIR bonds.

SIR bonds and their issuance are subject to the provisions of Sections 11‑15‑20 and 11‑15‑30 and successor provisions. In proceedings authorizing the issuance of a series of SIR bonds, the board may establish a debt service reserve fund and prescribe as the reserve requirement the amount of cash and securities required to be maintained. The proceedings shall provide for valuation of the reserve fund not less than annually. Proceeds of SIR bonds and other funds and securities available to the board may be applied to establish the reserve fund. The board also may provide for the acquisition and deposit of a surety bond in lieu of money within the reserve fund.

Section 59‑75‑660. Following the receipt of a written report by the review commission recommending the issuance of SIR notes, the board shall review the report and, upon approval, may, by adopted resolution, effect the issuance of the notes.

Section 59‑75‑670. The issuance of SIR notes is subject to the limitations contained in Article X, Section 13(9) of the Constitution of this State. Within these limitations, SIR notes may be issued from time to time under the conditions prescribed by this article.

Section 59‑75‑680. (A) SIR notes must be secured solely by and be payable from school district payments as provided in this chapter. The board may apply other funds available to it to the payment of SIR notes, and they may be pledged or otherwise secure the payment of SIR notes in the discretion of the board. The board may not authorize or enter into a covenant that purports to create a general or legal obligation of this State or its political subdivisions or to pledge the full faith, credit, or taxing power of the State or its political subdivisions, except pledges given by school districts as borrowers of the proceeds of SIR notes. A covenant in violation of this subsection is void and of no effect. Neither the members of the board, the board, nor a person executing SIR notes are liable personally on SIR notes or are subject to personal liability or accountability by reason of the issuance of SIR notes.

(B) The board may not pledge the faith, credit, or taxing power of this State or its political subdivisions in connection with the issuance of SIR notes, and each SIR bond must recite on its face that it is a special source bond of the authority issued pursuant to and in accordance with this act and Article X, Section 13(9) of the Constitution of this State, that it is secured solely by and payable solely from school district payments, that it is neither a general nor legal obligation of the State or its political subdivisions, and that it is not backed by the full faith, credit, or taxing power of this State or its political subdivisions. Failure to include this language on the face of a SIR note does not cause the SIR note to become a general or legal obligation of the State or its political subdivisions, or a pledge of the full faith, credit, or taxing power of this State or its political subdivisions.

(C) A pledge of school district payments made by the board is valid and binding from the time in which the pledge is made. School district payments pledged and then or thereafter received by the board are immediately subject to the lien of the pledge without physical delivery of the receipt or further act. The lien of the pledge is valid and binding against all parties having claims in tort, contract, or otherwise against the board, irrespective of whether the parties have notice of them. Neither the resolution of the board nor another instrument by which a pledge is created need be recorded or filed to perfect the pledge.

(D) In the discretion of the board, SIR notes issued under the provisions of this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be a trust company or bank having the powers of a trust company within or without the State. The trust agreement or the resolution providing for the issuance of SIR notes may contain provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustees as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders.

Section 59‑75‑690. The board may adopt a resolution providing for the issuance of the notes, upon written request by the board, and may transmit a certified copy to the Governor and to the State Treasurer, with the request that they issue and deliver SIR notes in accordance with the terms and conditions of the resolution. This resolution must set forth:

(1) the maximum amount, denomination, and numbering of SIR notes to be issued;

(2) the date which the resolution must be issued, or means of determining the date;

(3) the maturity schedule for the retirement of the SIR notes, which is subject to adjustment by the State Treasurer to further effectuate the purposes of this chapter;

(4) the redemption provisions, if any, applicable to SIR notes, or method of determining the redemption;

(5) the maximum rate or rates of interest that SIR notes shall bear;

(6) the purposes for which SIR notes are to be issued;

(7) the underwriters with whom the State is authorized to negotiate for the sale of SIR notes, or, if SIR notes are to be sold by competitive sale, the terms and conditions of the sale and the form of notice of the sale;

(8) the form of SIR notes of the particular issue; and

(9) other matters as may be considered necessary in order to effect the sale, issuance, and delivery of the bonds.

Section 59‑75‑700. Following receipt of a certified copy of the resolution of the board, the Governor and the State Treasurer shall issue SIR notes in accordance with the provisions of the resolution of the board.

Section 59‑75‑710. SIR notes must be issued in the form, in the denominations, and with provisions as to time, place, or places and medium of payment as may be determined by the board, subject to the provisions of this article.

Section 59‑75‑720. SIR notes must be issued in fully registered form, with both principal and interest made payable only to the registered holder. SIR notes are subject to transfer under the conditions the board prescribes.

Section 59‑75‑730. SIR notes, in the discretion of the board, may be made subject to optional redemption at par and accrued interest, plus a redemption premium as it shall approve and on the occasions as it may prescribe. SIR notes are not redeemable before maturity unless they contain a statement to that effect.”

SECTION 2. Section 59‑71‑155 of the 1976 Code is amended by adding:

“(F) The authority may elect, with the agreement of the school district, that the provisions of this section shall apply to a financing agreement with respect to one or more years in which school district payments are due under a financing agreement. This election must be clearly stated in the financing agreement. Following a default by a school district or the exercise by a school district of its right of nonappropriation under a financing agreement, the authority shall notify the State Treasurer, and he shall transfer to the authority from the general fund of the State the amounts as would have been paid by the school district pursuant to the financing agreement absent such default or nonappropriation on the dates the payments would have been made. However, the total amount to be advanced to operating school units for this purpose and for the purposes described in Section 59‑71‑155(B) in a fiscal year may not exceed the amount appropriated in that year under the Education Finance Act. The State Treasurer shall withhold from the school district sufficient monies necessary to reimburse the general fund of the State for the sums applied to pay the amounts paid by the State Treasurer to the authority and for the investment earnings that would have been received on the monies advanced from the general fund. In addition, if provided in a financing agreement, the State Treasurer may direct the school district and the county treasurer of the county in which the school district is situated to apply to the payment due on the bonds any monies being held by the school district or county treasurer in any fund, other than the school district’s sinking fund, derived from state revenue for the school district.”

SECTION 3. Section 59‑71‑155(A) of the 1976 Code is amended to read:

“(A) This section applies to existing and future general obligation bonds issued by an operating school unit. For purposes of this section, general obligation bonds are obligations expressly secured by the full faith, credit, and taxing power of the operating school unit that issues the bonds. Subsection (F) applies to a financing agreement between a school district and the School Facilities Infrastructure Authority in which the authority and the school district have agreed that school district payments under the financing agreement are secured.”

SECTION 4. This act takes effect upon approval by the Governor.

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