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RECALLED

April 27, 2011

**H. 3191**

Introduced by Rep. Huggins

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Read the first time January 11, 2011.

**A** **BILL**

TO AMEND SECTION 41‑43‑90, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWERS OF THE JOBS‑ECONOMIC DEVELOPMENT AUTHORITY, SO AS TO FURTHER PROVIDE FOR THE POWER OF THE AUTHORITY TO USE PROGRAM FUNDS TO PURCHASE INSURANCE, THE BENEFITS OF WHICH MUST BE USED TO FUND, DIRECTLY OR INDIRECTLY, PROJECTS OR ACTIVITIES WHICH CREATE JOBS OR PROVIDE OTHER SIGNIFICANT PUBLIC BENEFITS; TO AMEND SECTION 41‑43‑110, AS AMENDED, RELATING TO THE ISSUANCE OF BONDS BY THE AUTHORITY, SO AS TO SPECIFY THAT THE AUTHORITY MAY ISSUE BONDS TO FINANCE THE ACQUISITION BY CONSTRUCTION OR PURCHASE OF TANGIBLE OR INTANGIBLE ASSETS; TO AMEND SECTION 41‑43‑140, RELATING TO THE CREATION OF AN INSURANCE FUND BY THE AUTHORITY AS SECURITY FOR BOND HOLDERS, SO AS TO FURTHER PROVIDE FOR THE CREATION OF THE INSURANCE FUND AND THE USE OF FUNDS THEREIN; TO AMEND SECTION 41‑43‑150, RELATING TO PERSONS AND PROJECTS ELIGIBLE FOR ASSISTANCE FROM THE AUTHORITY, SO AS TO FURTHER PROVIDE FOR PERSONS AND PROJECTS ELIGIBLE FOR ASSISTANCE AND THE CRITERIA THEREFOR; AND TO AMEND SECTION 41‑43‑160, AS AMENDED, RELATING TO LOAN PROGRAMS OF THE AUTHORITY, SO AS TO PROVIDE THE USE WHICH CAN BE MADE OF PROCEEDS OF LOANS MADE UNDER THIS SECTION.

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

SECTION 1. Section 41‑43‑90(L) of the 1976 Code is amended to read:

“(L) Use program funds:

(1) to purchase or provide for insurance as additional security for any bonds issued by the authority; or

(2) to purchase insurance, the benefits of which must be used to fund, directly or indirectly, projects or activities that create jobs or provide other significant public benefits.”

SECTION 2. Section 41‑43‑110(A) of the 1976 Code, as last amended by Act 404 of 1992, is further amended to read:

“(A) The authority may issue bonds to provide funds for any program authorized by this chapter, including without limitation bonds issued to finance the acquisition by construction or purchase of tangible or intangible assets. The bonds authorized by this chapter are limited obligations of the authority. The principal and interest are payable solely out of the revenues derived by the authority. The bonds issued do not constitute an indebtedness of the State or the authority within the meaning of any state constitutional provision or statutory limitation. They are an indebtedness payable solely from a revenue producing source or from a special source which does not include revenues from any tax or license. The bonds do not constitute nor give rise to a pecuniary liability of the State or the authority or a charge against the general credit of the authority or the State or taxing powers of the State and this fact must be plainly stated on the face of each bond. The bonds may be executed and delivered at any time as a single issue or from time to time as several issues, may be in such form and denominations, may be of such tenor, may be in coupon or registered form, may be payable in such installments and at such time, may be subject to terms of redemption, may be payable at such place, may bear interest at such rate payable at such place and evidenced in such manner, and may contain such provisions not inconsistent herewith, all of which are provided in the resolution of the authority authorizing the bonds. Subject to the State Budget and Control Board approval, any bonds issued under this section may be sold at public or private sale as may be determined to be most advantageous. The bonds may be sold at public or private sale and, if by private sale, the authority shall designate the syndicate manager or managers. The authority may pay all expenses, premiums, insurance premiums, and commissions which it considers necessary from proceeds of the bonds or program funds in connection with the sale of bonds. The interest rate of bonds issued pursuant to this section is not subject to approval by the State Budget and Control Board.”

SECTION 3. Section 41‑43‑140 of the 1976 Code is amended to read:

“Section 41‑43‑140. The authority may create an insurance fund pursuant to Section 41‑43‑90(L)(1), consisting solely of program funds which must be held as security for the holders of bonds issued under this act. Such funds ~~shall~~ must be held in the custody of the State Treasurer, or with his approval may be held in the custody of one or more commercial banks or trust companies having a principal place of business in this State. The authority also may use program funds to purchase insurance to be pledged for the security of the holders of any bonds issued under this act or for any other purpose authorized by law.

In any case in which insurance is pledged as security, whether obtained through the insurance funds authorized to be created under this section or purchased with program funds, it ~~must~~ expressly must state the limitation of the liability of the authority and further that neither the credit nor taxing power of the State or any political subdivision thereof is available to satisfy any obligations with respect thereto.”

SECTION 4. Section 41‑43‑150 of the 1976 Code is amended to read:

“Section 41‑43‑150. (A) The programs established by this act are administered so as to ensure that each application for assistance is evaluated without regard to race, creed, sex, or national origin and that no person, firm, association, partnership, corporation, agency, or entity, or group thereof, receives disproportionate benefits from the programs.

(B) To qualify for assistance under the programs established pursuant to Sections 41‑43‑160, 41‑43‑170 and 41‑43‑190 the following conditions must be met:

(1) The recipient must be a person, firm, association, partnership, corporation, or other entity engaged in business on a for‑profit or nonprofit basis.

(2) The assistance must be requested for use by a business enterprise located within the State.

(3) The recipient must be able to demonstrate to the authority that the assistance will result in creation or maintenance of employment within the State or result in other significant economic benefit to the State.

(4) The recipient and the project or the financing must meet any further requirements for eligibility as are set forth in this act with respect to the specific program under which assistance is requested.

(5) The recipient and the project must satisfy any applicable requirements set forth by the authority in its regulations.

(C) The authority may authorize assistance to an eligible recipient under the programs established pursuant to Sections 41‑43‑160, 41‑43‑170 and 41‑43‑190 only after it has made the following findings:

(1) The recipient is a responsible party.

(2) The number of jobs or other economic benefits resulting from the assistance bears a reasonable relationship to the amount of program funds committed, taking into account factors such as the amount of dollars invested per employee or relative to other economic benefits at comparable facilities.

(3) The amount of program funds committed bears a reasonable relationship to the amount of private funds committed.

(4) The size and scope of the business being assisted is such that a definite benefit to the economy of the State may reasonably be expected to result from the project being financed.

(5) The terms of the agreements to be entered into in connection with the transaction are reasonable and proper, taking into account such factors as the type of program involved, the amount of program funds involved, ~~and~~ the number and type of jobs involved, and the type and scope of other economic benefits to the State involved.

(6) The public interest is adequately protected by the terms of the agreements to be entered into in connection with the transaction.

In making its findings, the authority is entitled to rely upon its own investigation or upon such information and evidence furnished to it by recipient businesses or by lending institutions participating in programs established pursuant to the provisions of this act as the authority considers appropriate. Compliance by a recipient or any lending institution participating in any of the authority’s programs under the provisions of this act with the terms of any agreement may be enforced by decree of a circuit court of this State. The authority may require as a condition of any loan to, or purchase of loans from, any national banking association or federally chartered savings and loan association or any nonresident seller, consent to the jurisdiction of the circuit courts of this State over any enforcement proceeding.”

SECTION 5. Section 41‑43‑160 of the 1976 Code, as last amended by Act 404 of 1992, is further amended to read:

“Section 41‑43‑160. The authority may utilize any of its program funds to establish loan programs pursuant to this section for the purpose of reducing the cost of capital to business enterprises which meet the eligibility requirements of Section 41‑43‑150. Proceeds of loans under this section ~~are~~ may be utilized:

(i) to acquire, by construction or purchase, land and buildings or other improvements thereon, machinery, equipment, office furnishings or other ~~depreciable~~ assets, tangible or intangible, or for research and design costs, legal and accounting fees, or other expenses in connection with the acquisition or construction thereof; or

(ii) for the research, testing, and developing of new products, machinery, equipment, and industrial or commercial processes, and the initial marketing thereof. Loan proceeds also may be used to finance working capital. The authority shall require as a condition of each loan made pursuant to this section that the loan must be serviced by a loan administrator which meets criteria established by the authority.

The authority may make direct loans to any eligible business enterprises upon terms which require the proceeds of the loan to be used for qualified purposes and upon such other terms and conditions as the authority may require.

The authority may make loans to lending institutions upon terms and conditions which require each lending institution to disburse the loan proceeds for new loans to eligible businesses for qualified purposes in an aggregate principal amount of not less than the amount of the loan. The authority must require of each lender to which it has made a loan evidence satisfactory to it of the making of new loans which satisfy the requirements of this item and of the regulations of the authority. In this connection, the authority, through its agents, may inspect the books and records of such lender to verify that the requirements are being met.

The authority must require that each lender receiving a loan pursuant to this section issue and deliver to the authority evidence of its indebtedness to the authority which constitutes a general obligation of the lender. The evidence of indebtedness must bear a date, time of maturity, be subject to prepayment, and contain any other provisions consistent with this section and related to protecting the security of the authority’s investment and the bonds issued by the authority in connection with such loan.

The authority may purchase, and make advance commitments to purchase, from lending institutions loans to eligible business enterprises. The purchase price for each loan which the authority purchases pursuant to this paragraph is not to exceed the total of the unpaid principal balance of the loan purchased plus accrued interest. The authority must require each lender from which the authority purchases, or commits to purchase, a loan to submit evidence satisfactory to the authority that the loan satisfies the conditions of this section and of the regulations of the authority. In this connection, the authority, through its agents, may inspect the books and records of a lender to verify that the conditions have been met.

The authority must require the recording of an assignment of each mortgage or secured loan purchased by it from a lender and need not notify the borrower of its purchase of the mortgage or secured loan. The authority is not required to inspect or take possession of the loan documents if the lender from which the loan document is purchased enters into a contract to service the loan and account for it to the authority.

The authority may:

(i) renegotiate a loan in default, waive a default, or consent to the modification of the terms of a loan;

(ii) forgive or forbear all or part of a loan;

(iii) prosecute and enforce a judgment in any action, including but not limited to a foreclosure action; or

(iv) protect or enforce any right conferred upon it by law, or by any loan, contract, or other agreement. In connection with any action, the authority may bid for and purchase collateral or take possession of it, administer it, or pay the principal of and interest on any obligation incurred in connection with the collateral and dispose of and otherwise deal with the property securing the loan in default.”

SECTION 6. This act takes effect upon approval by the Governor.

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