**A** **BILL**

TO AMEND SECTIONS 11‑43‑120, 11‑43‑130, 11‑43‑150, 11‑43‑160, 11‑43‑170, 11‑43‑180, 11‑43‑220, 11‑43‑510, 11‑43‑520, 11‑43‑540, 11‑43‑550, AND 11‑43‑560, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CREATION, DUTIES, AND FUNCTIONS OF THE TRANSPORTATION INFRASTRUCTURE BANK, SO AS TO PROVIDE THAT THE BANK IS ADMINISTERED BY THE COMMISSION OF THE DEPARTMENT OF TRANSPORTATION, TO ELIMINATE ITS BOARD OF DIRECTORS, TO REVISE THE DEFINITION OF THE TERM “QUALIFIED PROJECT”, TO PROVIDE THAT A PROJECT MAY NOT BE DESIGNATED AS AN ELIGIBLE PROJECT FOR PURPOSES OF BANK FUNDING IN ADVANCE OF THE CURRENT AVAILABILITY OF FUNDING FOR THE COMPLETION OF THAT SPECIFIC PROJECT, AND TO REVISE THE CRITERIA THAT MUST BE USED IN MAKING A DETERMINATION WHETHER AN ELIGIBLE PROJECT IS A QUALIFIED PROJECT.

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

SECTION 1. Section 11‑43‑120(B) of the 1976 Code is amended to read:

“(B) The bank is ~~governed~~ administered by ~~a board of directors~~ the Commission of the Department of Transportation as provided in this chapter.”

SECTION 2. Section 11‑43‑130 of the 1976 Code is amended to read:

“Section 11‑43‑130. As used in this chapter unless the context clearly indicates otherwise:

(1) ‘Bank’ means the South Carolina Transportation Infrastructure Bank.

(2) ~~‘Board’ means the board of directors of the bank.~~ ‘Commission’ means the Commission of the Department of Transportation.

(3) ‘Bonds’ means bonds, notes, or other evidence of indebtedness except as otherwise provided in Article 3 of this chapter.

(4) ‘Department of Transportation’ means the South Carolina Department of Transportation and its successors.

(5) ‘Eligible cost’ means as applied to a qualified project to be financed from the federal accounts, the costs that are permitted under applicable federal laws, requirements, procedures, and guidelines in regard to establishing, operating, and providing assistance from the bank. As applied to a qualified project to be financed from the state highway account, these costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right‑of‑way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, facilities, and other costs necessary for the qualified project. As applied to any qualified project to be financed from the state transit account, eligible project costs are limited to capital expenditures for transit equipment and facilities.

(6) ‘Eligible project’ means a highway, including bridges, or transit project which provides public benefits by either enhancing mobility and safety, promoting economic development, or increasing the quality of life and general welfare of the public. “Eligible project” also includes mass transit including, but not limited to, monorail and monobeam mass transit systems.

(7) ‘Federal accounts’ means collectively, the separate account for federal highway funds and federal transit funds.

(8) ‘Financing agreement’ means any agreement entered into between the bank and a qualified borrower pertaining to a loan or other financial assistance. This agreement may contain, in addition to financial terms, provisions relating to the regulation and supervision of a qualified project, or other provisions as the ~~board~~ commission may determine. The term ‘financing agreement’ includes, without limitation, a loan agreement, trust indenture, security agreement, reimbursement agreement, guarantee agreement, bond or note, ordinance or resolution, or similar instrument.

(9) ‘Government unit’ means a municipal corporation, county, special purpose district, special service district, commissioners of public works, or another public body, instrumentality or agency of the State including combinations of two or more of these entities acting jointly to construct, own, or operate a qualified project, and any other state or local authority, board, commission, agency, department, or other political subdivision created by the General Assembly or pursuant to the Constitution and laws of this State which may construct, own, or operate a qualified project.

(10) ‘Loan’ means an obligation subject to repayment which is provided by the bank to a qualified borrower for all or a part of the eligible cost of a qualified project. A loan may be disbursed in anticipation of reimbursement for or direct payment of eligible costs of a qualified project.

(11) ‘Loan obligation’ means a bond, note, or other evidence of an obligation issued by a qualified borrower.

(12) ‘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~~ commission, and in the case of federal funds, as allowed by federal law.

(13) ‘Private entity’ means a private person or entity that has entered into a contract with a government unit to design, finance, construct, and operate a highway, bridge, tunnel, or approach that is within the jurisdiction of the government unit that is responsible for complying with applicable federal requirements.

(14) ‘Project revenues’ means all rates, rents, fees, assessments, charges, and other receipts derived or to be derived by a qualified borrower from a qualified project or made available from a special source, and, as provided in the applicable financing agreement, derived from any system of which the qualified project is a part of, from any other revenue producing facility under the ownership or control of the qualified borrower including, without limitation, proceeds of grants, gifts, appropriations and loans, including the proceeds of loans made by the bank, investment earnings, reserves for capital and current expenses, proceeds of insurance or condemnation and proceeds from the sale or other disposition of property and from any other special source as may be provided by the qualified borrower.

(15) ‘Qualified borrower’ means any government unit or private entity which is authorized to construct, operate, or own a qualified project.

(16) ‘Qualified project’ means an eligible project ~~which has been selected by the bank to~~ that shall be ranked in priority order using the criteria set out in Section 57‑1‑370(8) and selected for funding based on the results of the ranking process that may receive a loan or other financial assistance from the bank to defray an eligible cost.

(17) ‘Revenues’ means, when used with respect to the bank, any receipts, fees, income, or other payments received or to be received by the bank including, without limitation, receipts and other payments deposited in the bank and investment earnings on its funds and accounts.

(18) ‘State accounts’ means, collectively, the separate account for state highway funds and state transit funds.”

SECTION 3. Section 11‑43‑150 of the 1976 Code is amended to read:

“Section 11‑43‑150. (A) In addition to the powers contained elsewhere in this chapter, the bank has all power necessary, useful, or appropriate to fund, operate, and administer the bank, 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 bank’s affairs and the implementation of its functions including the right of the ~~board~~ commission to select qualifying projects and to provide loans and other financial assistance;

(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 bank;

(5) make loans to qualified borrowers to finance the eligible costs of qualified projects and to acquire, hold, and sell loan obligations at prices and in a manner as the ~~board~~ commission determines advisable;

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

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

(8) enter into agreements with a department, agency, or instrumentality of the United States or of this State or another state for the purpose of planning and providing for the financing of qualified projects;

(9) establish:

(a) policies and procedures for the making and administering of loans and other financial assistance; and

(b) fiscal controls and accounting procedures to ensure proper accounting and reporting by the bank, government units, and private entities;

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

(11) procure insurance, guarantees, letters of credit, and other forms of collateral or security or credit support from any public or private entity, including any department, agency, or instrumentality of the United States or this State, for the payment of any bonds issued by it, including the power to pay premiums or fees on any insurance, guarantees, letters of credit, and other forms of collateral or security or credit support;

(12) collect or authorize the trustee under any trust indenture securing any bonds to collect amounts due under any loan obligations owned by it, including taking the action required to obtain payment of any sums in default;

(13) unless restricted under any agreement with holders of bonds, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any loan obligations owned by it;

(14) borrow money through the issuance of bonds and other forms of indebtedness as provided in this chapter;

(15) expend funds to obtain accounting, management, legal, financial consulting, and other professional services necessary to the operations of the bank;

(16) expend funds credited to the bank as the ~~board~~ commission determines necessary for the costs of administering the operations of the bank;

(17) establish advisory committees as the ~~board~~ commission determines appropriate, which may include individuals from the private sector with banking and financial expertise;

(18) 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 to establish cash reserves to enable it to act as a self‑insurer against any and all such losses;

(19) collect fees and charges in connection with its loans or other financial assistance;

(20) 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;

(21) enter into contracts or agreements for the servicing and processing of financial agreements; and

(22) do all other things necessary or convenient to exercise powers granted or reasonably implied by this chapter.

(B) The bank is not authorized or empowered to be or to constitute a bank or trust company within the jurisdiction or under the control of the State or an agency of it or the Comptroller of the Currency or the Treasury Department of the United States, or a bank, banker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers’ law of the United States or this State.

(C) The bank is subject to the provisions of Article 1, Chapter 23 ~~of~~, Title 1, the Administrative Procedures Act.”

SECTION 4. Section 11‑43‑160 of the 1976 Code is amended to read:

“Section 11‑43‑160. (A) The following sources may be used to capitalize the bank and for the bank to carry out its purposes:

(1) an annual contribution set by the ~~board~~ commission of an amount not to exceed revenues produced by one cent a gallon of the tax on gasoline imposed pursuant to Section 12‑28‑310;

(2) federal funds made available to the State;

(3) federal funds made available to the State for the bank;

(4) contributions and donations from government units, private entities, and any other source as may become available to the bank including, but not limited to, appropriations from the General Assembly;

(5) all monies paid or credit to the bank, by contract or otherwise, payments of principal and interest on loans or other financial assistance made from the bank, and interest earnings which may accrue from the investment or reinvestment of the bank’s monies;

(6) proceeds from the issuance of bonds as provided in this chapter;

(7) other lawful sources as determined appropriate by the ~~board~~ commission; and

(8) loans from the Department of Transportation to the bank to be repaid from revenues committed to the bank for the following year.

(B) Beginning in fiscal year ~~1998‑99~~ 1998‑1999, the revenues collected pursuant to Sections 56‑3‑660 and 56‑3‑670 and placed in the state highway account, as created by this chapter, must be used to provide capital for the bank.”

SECTION 5. Section 11‑43‑170(B) of the 1976 Code is amended to read:

“(B) For necessary and convenient administration of the bank, the ~~board~~ commission shall direct the State Treasurer to establish federal and state accounts and subaccounts within the bank necessary to meet any applicable federal law requirements or as the bank shall determine necessary or desirable in order to implement the provisions of this chapter.”

SECTION 6. Section 11‑43‑180 of the 1976 Code is amended to read:

“Section 11‑43‑180. (A) The bank may provide loans and other financial assistance to a government unit or private entity to pay for all or part of the eligible cost of a qualified project. Prior to providing a loan or other financial assistance to a qualified borrower, the ~~board~~ commission must obtain the review and approval of the Joint Bond Review Committee. The term of the loan or other financial assistance must not exceed the useful life of the project. The bank may require the government unit or private entity to enter into a financing agreement in connection with its loan obligation or other financial assistance. The ~~board~~ commission shall determine the form and content of loan applications, financing agreements, and loan obligations including the term and rate or rates of interest on a financing agreement. The terms and conditions of a loan or other financial assistance from federal accounts shall comply with applicable federal requirements.

(B) The ~~board~~ commission shall determine which projects are eligible projects ~~and then select from among the eligible project~~s those qualified to receive from the bank a loan or other financial assistance. In addition to the requirements provided pursuant to Section 11‑43‑130(6), a project may not be designated as an eligible project by the commission unless funding for the specific project is currently available. ~~Preference must be given to eligible projects which have local financial support.~~ In selecting qualified projects, the ~~board~~ commission shall consider the projected feasibility of the project, the amount of local financial support, and the amount and degree of risk to be assumed by the bank. All proposed projects determined to be eligible projects must be ranked in priority order using the criteria contained in Section 57‑1‑370(8), and selected for funding based upon the results of this ranking process. ~~The board also may consider, but must not be limited to, the following criteria in making its determination that an eligible project is a qualified project:~~

~~(1)~~ ~~the local support of the project, expressed by resolutions by the governing bodies in the areas in which the project will be located, and the financial or in‑kind contributions to the project;~~

~~(2)~~ ~~maximum economic benefit, enhancement of mobility, enhancement of public safety, acceleration of project completion, and enhancement of transportation services;~~

~~(3)~~ ~~the ability of the applicant to repay a loan according to the terms and conditions established pursuant to this chapter, consideration of which may include, at the option of the bank board, the existence of current investment grade rating on existing debt of the applicant secured by the same revenues to be pledged to secure repayment under the loan repayment agreement;~~

~~(4)~~ ~~the financial or in‑kind contributions to the project;~~

~~(5)~~ ~~greater weighting in recommending priorities for eligible projects to areas of the State experiencing high unemployment; and~~

~~(6)~~ ~~whether the governing bodies of the county or the incorporated municipality in which the project is to be located provides to the bank a resolution which makes a finding that the project is essential to economic development in the political subdivisions, or the bank receives a resolution or certificate from the Advisory Coordinating Council for Economic Development of the Department of Commerce that the project is essential to economic development in the State, or both, at the option of the board.~~”

SECTION 7. Section 11‑43‑220 of the 1976 Code is amended to read:

“Section 11‑43‑220. Neither the ~~board~~ commission nor any officer, employee, or committee of the bank acting on behalf of it, while acting within the scope of this authority, is subject to any liability resulting from carrying out any of the powers given in this chapter.”

SECTION 8. Section 11‑43‑510 of the 1976 Code is amended to read:

“Section 11‑43‑510. As used in this article:

(1) ~~‘Board’ means the Board of Directors of the South Carolina Transportation Infrastructure Bank.~~ ‘Commission’ means the Commission of the Department of Transportation.

(2) ‘State board’ means the State Budget and Control Board.

(3) ‘Transportation infrastructure bonds’ means all general obligation bonds of this State designated as transportation infrastructure bonds, which are now outstanding and which may hereafter be issued pursuant to the authorizations of this article.”

SECTION 9. Section 11‑43‑520 of the 1976 Code is amended to read:

“Section 11‑43‑520. Whenever it shall become necessary that monies be raised for qualified projects, including monies to be used to refund any transportation infrastructure bonds then outstanding, the ~~board~~ commission may make a request to the state board for the issuance of transportation infrastructure bonds pursuant to this article. ~~This request may be in the form of a resolution adopted at any regular or special meeting of the board.~~ The request shall set forth on the face thereof or by schedules attached thereto:

(1) the amount then required for qualified projects;

(2) a tentative time schedule setting forth the period of time during which the sum requested will be expended; and

(3) a debt service table showing the annual principal and interest requirements for all the transportation infrastructure bonds then outstanding.”

SECTION 10. Section 11‑43‑540 of the 1976 Code is amended to read:

“Section 11‑43‑540. The issuance of transportation infrastructure bonds is subject to the limitations contained in ~~Article X,~~ Section 13(6)(c), Article X of the Constitution of this State. Within such limitations, transportation infrastructure bonds may be issued for qualified projects or to refund transportation infrastructure bonds from time to time under the conditions prescribed by this article. The review and approval of the Joint Bond Review Committee must be obtained prior to the issuance of any transportation infrastructure bonds. No transportation infrastructure bonds may be issued unless the ~~board~~ commission has a source of revenues to pay the principal and interest on the bonds.”

SECTION 11. Section 11‑43‑550 of the 1976 Code is amended to read:

“Section 11‑43‑550. For the payment of the principal of and interest on all transportation infrastructure bonds, whether or not outstanding or hereafter issued, as they come due, 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), Article X 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 transportation infrastructure bonds. In addition to the full faith, credit, and taxing power, there also is pledged such revenue as may be available to the ~~board~~ commission, and the State Treasurer is authorized to use such revenue when pledged, without further action of the ~~board~~ commission, for the payment of the principal and interest on transportation infrastructure bonds as the bonds respectively mature. If the revenues so pledged prove insufficient to meet the payments of the interest on and principal of the transportation infrastructure bonds in the fiscal year, then the State Treasurer shall set aside from the general tax revenues received in the fiscal year so much of the general tax revenues as are needed for the purpose and shall apply these revenues to the punctual payment of the interest on and principal of transportation infrastructure bonds due or to become due in the fiscal year.”

SECTION 12. Section 11‑43‑560 of the 1976 Code is amended to read:

“Section 11‑43‑560. The ~~board~~ commission is authorized to request the state board to issue transportation infrastructure bonds. In order to effect the issuance of bonds pursuant to this article, the state board may adopt a resolution providing for the issuance of transportation infrastructure bonds, upon written request by the ~~board~~ commission, and may transmit a certified copy thereof to the Governor and to the State Treasurer, with the request that they issue and deliver transportation infrastructure bonds in accordance with the terms and conditions of such resolution. This resolution must set forth:

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

(2) the date as of which the same shall be issued;

(3) the maturity schedule for the retirement of the transportation infrastructure bonds;

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

(5) the maximum 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 shall 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) such other matters as may be considered necessary in order to effect the sale, issuance, and delivery thereof.”

SECTION 13. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 14. This act takes effect upon approval by the Governor and applies retroactively to all “eligible projects” selected by the board of directors of the South Carolina Infrastructure Bank for which funding was not available on this date.

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