AMENDED

April 26, 2016

**H. 4776**

Introduced by Reps. Allison, Erickson, Crosby, Yow, Gagnon, Duckworth, Clary, Govan, Neal, George, Anthony, Willis, Bannister, Bingham, R.L. Brown, Daning, Hayes, Henderson, Hixon, Long, Lucas, V.S. Moss, Murphy, Pope, Simrill, Tallon, Wells, W.J. McLeod, Kennedy, White and Whipper

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Read the first time January 28, 2016.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would increase recurring general fund expenditures by $453,276 beginning in FY 2017-2018. There would be no expenditure impact to federal funds or other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill would add Chapter 158 to Title 59 to enact the South Carolina Education Facility Authority Act. The authority would assist in the provision of financial assistance for the construction or enhancement of school facilities to school districts. In order to obtain funds for school facilities, the authority, by a resolution, can borrow money through the issuance of bonds and other forms of indebtedness. The bill further directs that the authority be funded through the general appropriations act beginning in FY 2017-18.

The Revenue and Fiscal Affairs offices estimates that if staffing levels were similar to the South Carolina Transportation Infrastructure Bank, there would be an expenditure impact of $453,276 to the general fund and two FTEs. There would be no expenditure impact to federal funds or other funds.

**Office of State Treasurer.** Assuming the authority would follow a debt issuance plan similar to other comparable authorities, such as the South Carolina Transportation Infrastructure Bank and the Tobacco Revenue Settlement Management Authority that are established by state law, the Debt Management Division of the State Treasurer’s Office would be able to absorb any additional duties using existing personnel and resources. There would be no expenditure impact to the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 158 TO TITLE 59 SO AS TO ENACT THE “SOUTH CAROLINA EDUCATION SCHOOL FACILITIES ACT” TO PROVIDE FINANCIAL ASSISTANCE TO SCHOOL DISTRICTS IN ORDER TO ACQUIRE SCHOOL FACILITIES BY USING GENERAL OBLIGATION BONDS, AND OTHER FORMS OF ASSISTANCE, TO PROVIDE THAT THE STATE BOARD OF EDUCATION SHALL DETERMINE AND SELECT ON A PRIORITY BASIS, QUALIFIED SCHOOL PROJECTS WHICH SHALL RECEIVE FINANCIAL ASSISTANCE FROM THE STATE, TO PROVIDE FOR THE POWERS AND DUTIES OF THE STATE BOARD OF EDUCATION AND STATE DEPARTMENT OF EDUCATION IN THIS REGARD, AND TO PROVIDE FOR OTHER RELATED PROVISIONS IN CONNECTION WITH THE CONSTRUCTION OR RENOVATION OF SCHOOL FACILITIES; AND TO REPEAL CHAPTER 146, TITLE 59 RELATING TO THE STATE SCHOOL FACILITIES BONDS ACT WHICH AUTHORIZED THE ISSUANCE OF SPECIFIC DOLLAR AMOUNTS OF STATE SCHOOL FACILITIES BONDS WITHIN A SPECIFIED TIME PERIOD.

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 158

South Carolina Education School Facilities Act

Article 1

School Facilities Assistance

Section 59‑158‑110. This chapter is known and may be cited as the ‘South Carolina Education School Facilities Act’.

Section 59‑158‑120. As used in this chapter:

(1) ‘Authority’ means the South Carolina State Fiscal Accountability Authority.

(2) ‘Bonds’ means general obligation bonds, notes, interim certificates, grant or bond anticipation notes, or any other similar types of indebtedness issued by the State of South Carolina.

(3) ‘Facilities plan’ means the report described in Section 59‑158‑180(B).

(4) ‘Facilities study’ means that study described in Section 59‑158‑180(A).

(5) ‘Financing agreement’ means an agreement entered into between the state board and a school district 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 school project, and those other provisions as the state board may determine.

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

(7) ‘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 state board, and in the case of federal funds, as allowed by federal law.

(8) ‘Prioritization report’ means the report described in Section 59‑158‑180 and which is prepared by the state board.

(9) ‘Qualified school projects’ mean school facilities that are constructed, renovated or equipped with money generated under the provisions of this chapter and in accordance with the provisions of this chapter.

(10) ‘School district’ means a public body corporate and politic operating as a school district under the provisions of Chapter 17, Title 59, and charter schools within the meaning of Chapter 40, Title 59.

(11) ‘School facilities’ means only facilities necessary for instructional and related supporting purposes including, but not limited to, classrooms, libraries, media centers, laboratories, cafeterias, physical education spaces, related interior and exterior facilities, and the conduit, wiring, and powering of hardware installations for classroom computers or for area network systems. School facilities under this chapter also include:

(a) health and safety upgrades;

(b) technology upgrades inside school facilities;

(c) upgrades associated with career and technology education programs;

(d) deferred maintenance needs as described in the district’s capital improvement plan.

‘School facilities’ does not include unimproved real property, centralized district administration facilities, or other facilities, including those normally identified with interscholastic sports activities.

(12) ‘South Carolina Education School Facilities General Obligation Bonds’ means bonds issued under the authority of Article 3 of this chapter.

(13) ‘State board’ means the State Board of Education.

Section 59‑158‑130. (A) Consistent with the definition of school facilities in Section 59‑158‑120(11), funds made available through this chapter must be used for permanent school instructional facilities, health and safety upgrades, technology access inside the school, and fixed building assets including the costs for construction, improvement, enlargement, or renovation of school facilities.

(B) Funds made available under this chapter must be allocated to school districts for school facilities according to priorities established by the Office of School Facilities of the Department of Education as approved by the State Board of Education.

Section 59‑158‑140. (A) The State Board of Education’s responsibilities in regard to this chapter include:

(1) developing policies and standards for a uniform assessment of facilities’ needs and standardized cost allowances for estimating the cost in meeting these needs in order to provide for a systematic reporting of each district’s needs to be used in calculating the priority allotment of funds under this chapter. Any standardized cost allowances must take into account regional variances that are beyond the control of individual districts. Facilities’ needs include, but are not limited to, facility need capacity and condition, space requirements, program standards, and pupil growth. Cost allowances shall be developed to include such measures as costs per square foot, costs per pupil, or costs per teaching unit with such costs adjusted annually to reflect changes in the cost of labor and materials. These standards and cost allowances are to be used only for providing a uniform reporting of districts’ needs for allotment and priority purposes and are not intended to limit district options in determining the most appropriate manner in which to meet individual district needs; and

(2) adopting policies and standards to ensure the accuracy of district reporting required under this chapter and the use of funds disbursed under this chapter.

(B) In order to implement the provisions of this chapter, the state board also shall:

(1) establish policies, procedures, and priorities for the making and administering of grants, loans or a combination of these to the various school districts which policies, procedures, and priorities must be established by appropriate regulations of the state board;

(2) enter into agreements with departments, agencies, or instrumentalities of the United States or of this State, including particularly the Offices of State Auditor, State Treasurer, and Comptroller General, for the purposes of administering operations and establishing fiscal controls and accounting procedures that promote financial integrity of the programs contemplated in this chapter;

(3) maintain an application process for school districts to request funding for qualified school projects; and

(4) develop financial and operating conditions to which school districts must agree prior to receiving financial assistance provided for in this chapter.

(C) In order to fulfill its duties set forth in this section, the state board may:

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

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

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

(4) 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;

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

(6) promulgate regulations considered necessary to effect the responsibilities set forth in this chapter; in order to aid the state board in the performance of its duties, the State Department of Education shall provide staff and technical assistance as necessary; and

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

Section 59‑158‑150. The Department of Education’s responsibilities under this chapter to assist the state board in the performance of its duties shall include:

(1) providing staffing assistance to the state board in the development of policies and standards, and regulations implementing this chapter;

(2) ensuring compliance with state standards and requirements, inspecting construction projects for education facilities, and approving completed construction pursuant to Chapter 23 of this title for projects financed in whole or in part with funds allocated under this chapter;

(3) defining capital improvement plans that shall include maintenance and construction plans, student growth projections, cross district cooperation, partnership with local technical colleges and information technology needs; and

(4) ranking the projects in priority order according to need and submitting the rankings for approval to the State Board of Education.

Section 59‑158‑160. All money of the state board received under this chapter, except as otherwise authorized by law or provided in this chapter, must be deposited with and invested by the State Treasurer. Funds of the state board 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.

Section 59‑158‑170. Following the close of each state fiscal year, the state board shall submit an annual report of its activities for the preceding year to the Governor and to the General Assembly. An independent certified public accountant shall perform an audit of the books and accounts of the state board at least once in each state fiscal year.

Section 59‑158‑180. (A) The State Department of Education shall conduct a facilities study of all school districts’ facilities and physical assets. The facilities study shall provide an assessment of the facilities presently being utilized by the various school districts and outline the required construction, renovation and equipping of facility needs of each school district in order to enable each school district to provide for comparable access to school amenities, educational space and infrastructure, and safety to students regardless of their school district of residence. The facilities study shall be completed by October 1, 2017, and delivered to the state board, and shall be utilized by the state board in the performance of its duties and functions under this chapter. The facilities study shall be updated from time to time by the department as necessary to enable the state board to perform its duties and functions under this chapter.

(B) By October 1, 2017, and the first day of October of each year thereafter, each school district shall provide annually to the department a thorough facilities plan that describes the school facilities in that school district. Each facilities plan shall:

(1) describe the present facilities being utilized by the school district;

(2) describe the deficiencies of these facilities; and

(3) provide the school district’s recommendations to remedy these deficiencies, including appropriate designs, and an estimated cost of implementing such recommendations, including a cost estimate of utility and other infrastructure to be provided by public entities necessary to serve each proposed facility.

In doing so, the school districts must undertake a study of future enrollment trends so that both the construction and closing of buildings is considered. Additionally, each school district’s facilities plan shall ensure that school districts have a building maintenance plan. Failure on the part of a school district to prepare an annual facility plan and deliver it to the state board shall prohibit that school district from receiving funds as provided in this chapter.

(C) Upon receipt of the facilities study and the facilities plan prepared by the school districts, the department annually shall prepare a prioritization report which ranks the needs of each school district beginning with those most in need of school facilities in accordance with the provisions of this chapter. Factors which must be used by the department in creating its ranking within the prioritization report are comprised of the following:

(1) the current condition of school facilities in each school district;

(2) school district population trends;

(3) school district millage and fee levels;

(4) school district financial health which includes whether the school district has achieved balanced budgets;

(5) ability of a school district to pay bonded indebtedness; and

(6) ability of a school district to incur debt, without the necessity of a referendum, under the provisions of Section 15, Article X of the Constitution.

(D) Each annual prioritization report shall list the qualified school projects required by each school district and a recommendation of those qualified school projects which should be undertaken immediately and cost in the aggregate not more than two hundred million dollars. The department also shall provide a recommendation within the prioritization report whether assistance for a specific qualified school project of a particular school district shall be by way of grants, loans or a combination of both.

(E) All designs of qualified school projects are subject to approval by the department, which may periodically amend design standards to improve the efficiency, safety, or effectiveness of each qualified school project.

(F) All facilities studies, facilities plans, prioritization reports, and related material prepared by the department under this section must be submitted to the state board for its approval and implementation.

Section 59‑158‑190. The state board, with the assistance of the department, by regulation shall develop and implement financial incentives in the form of additional allocations of school facility funding under this chapter to encourage school districts and their governing bodies to combine their purchasing, procurement, accounting, food service, transportation, human resources, or other noninstructional functions with another school district or districts in the county or with an adjoining school district or districts in another county, or to consolidate with one or more other school districts in their county. Nothing in this section prevents a school district from receiving additional allocations in both categories. However, together with the additional allocations authorized by this section, the total allocations for all school districts may not exceed in any year the total amount of general obligation bonds authorized to be issued as provided by Section 59‑158‑310 for that year.

Section 59‑158‑200. In addition to all other provisions of this chapter, as a condition of receiving funds from the state board as provided in this chapter, the department shall require districts to undergo a thorough energy audit that highlights the operation of school buildings in terms of being energy efficient and as cost effective as possible. Designs for new school facilities to be built in whole or in part with funds provided under this chapter also must be as energy efficient and cost effective as possible. The state board may require recommendations made by the energy audit to be incorporated into existing facilities and into new facilities as a condition of receiving funds under this chapter to the extent funds are available to make these recommended energy improvements.

Section 59‑158‑210. To qualify for funding under this chapter, each school district shall meet the requirements of this chapter and any regulations promulgated pursuant to this chapter. Funds may be withheld from a school district by the state board when the Department of Education finds inappropriate reporting of facilities’ needs, inappropriate use of funds, or other violations of this chapter, including the provisions of this section.

Section 59‑158‑220. Neither the state board, state department, nor any officer, employee, or committee of the state board or department 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 59‑158‑230. By December 1, 2018, the State Board of Education shall recommend to the General Assembly changes to be made to this chapter regarding program objectives, appropriate funding levels, and funding allotments formulas.

Article 3

Process and Procedures

Section 59‑158‑310. (A) By January first of each year, the facilities study, as originally completed or updated from time to time, each facilities plan, as originally completed or as updated from time to time, and the prioritization report, as originally completed or as updated from time to time, must be submitted by the state board to the following:

(1) Governor of South Carolina;

(2) President Pro Tempore of the South Carolina Senate;

(3) Speaker of the South Carolina House of Representatives; and

(4) State Treasurer of South Carolina;

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

(6) Chairman of the Senate Finance Committee;

(7) Chairman of the House Education and Public Works Committee; and

(8) Chairman of the Senate Education Committee.

The above must be accompanied by a certificate of the state board which contains the following information:

(1) a description of each qualified school project;

(2) an estimate of the cost of each qualified school project; and

(3) certificates of the State Auditor and State Treasurer setting forth the available debt limit under Section 13(6)(c), Article X of the South Carolina Constitution.

(B) Upon the review of the information provided within this section, the General Assembly may by proviso to the budget for the then fiscal year or by joint resolution set the principal amount of the State School Facilities General Obligation Bonds to be considered.

Section 59‑158‑320. Within thirty days after the effective date of the general appropriations bill or a joint resolution setting forth the amount of general obligation bonds which may be issued as provided in Section 59‑158‑310, the prioritization report, together with the certificate of the state board, must be submitted to the Joint Bond Review Committee for its review.

Section 59‑158‑330. Thereafter, the prioritization report must be submitted to the Authority, together with a resolution providing for the issuance of bonds, with a certificate of the state board setting forth the following:

(1) that it is necessary for bonds to be issued in the amount proposed; and

(2) that the bonds are being issued in accordance with Section 13(6)(c), Article X of the South Carolina Constitution and Article 3 of this chapter.

Section 59‑158‑340. Those state entities charged with the responsibility of issuing or approving the issuance of these bonds are directed to synchronize their duties and functions under this chapter so that a continuous stream of revenue will be available to the school districts to defray the costs of qualified school projects.

Article 5

Education School Facilities General Obligation Bonds

Section 59‑158‑510. Following the receipt of the information presented pursuant to Section 59‑158‑330, the Authority, upon its approval, by resolution duly adopted, shall effect the issuance of the bonds, or pending the issuance of the bonds, effect the issuance of bond anticipation notes pursuant to Chapter 17, Title 11.

Section 59‑158‑520. In order to effect the issuance of the bonds, the Authority shall adopt a resolution providing for the issuance of the bonds pursuant to the provisions of this chapter. The authorizing resolution must include:

(1) the list of qualified school projects and the estimated cost of each as set forth in the prioritization report;

(2) schedules setting forth the aggregate of all general obligation debt of the State, excluding highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, together with certificates of the State Treasurer and State Auditor evidencing compliance with the provisions of Section 13(6)(c), Article X of the South Carolina Constitution;

(3) a schedule showing the aggregate of bonds issued, the purposes for which they were issued, the annual payments required to retire the bonds, the interest on the bonds, and the amount of any special funds applicable to the retirement of outstanding bonds;

(4) the amount of bonds to be issued; and

(5) a schedule showing future annual principal requirements and estimated annual interest requirements on the bonds to be issued.

Section 59‑158‑530. The bonds must bear the date and mature at the time that the resolution provides, except that no bond may mature more than thirty years from its date of issue. The bonds may be in the denominations, be payable in the medium of payment, be payable at the place and at the time, and be subject to redemption or repurchase and contain other provisions determined by the Authority before their issuance. The bonds may bear interest payable at the times and at the rates as determined by the Authority.

Section 59‑158‑540. All bonds issued under this chapter are exempt from taxation as provided in Section 12‑2‑50.

Section 59‑158‑550. All bonds issued under this chapter must be signed by the Governor and the State Treasurer. The Governor and the State Treasurer may sign these obligations by a facsimile of their signatures. The Great Seal of the State must be affixed to, impressed on, or reproduced upon each of them and each must be attested by the Secretary of State. The delivery of the bonds executed and authenticated is valid notwithstanding changes in officers or seal occurring after the execution or authentication.

Section 59‑158‑560. For the payment of the principal and interest on all bonds issued and outstanding pursuant to this chapter there is pledged the full faith, credit, and taxing power of the State of South Carolina, and in accordance with the provisions of Section 13(4), Article X of the South Carolina Constitution, the General Assembly hereby allocates on an annual basis sufficient tax revenues to provide for the punctual payment of the principal and interest on the bonds authorized by this chapter.

Section 59‑158‑570. Bonds must be sold by the Governor and the State Treasurer at public sale, after publication of notice of the sale one or more times at least seven days before the sale, in a financial paper published in New York City which regularly publishes notices of sale of state or municipal bonds. The right is reserved to waive technicalities or to reject all bids and to readvertise the bonds for sale. For the purpose of bringing about successful sales of the bonds, the Authority may do all things ordinarily and customarily done in connection with the sale of state or municipal bonds. All expenses incident to the sale of the bonds must be paid from the proceeds of the sale of the bonds.

Section 59‑158‑580. The proceeds of the sale of bonds must be received by the State Treasurer and applied to the purposes for which issued, except that the accrued interest, if any, must be used to discharge in part the first interest to become due on the bonds, but the purchasers of the bonds are not liable for the proper application of the proceeds to the purposes for which they are intended.

Section 59‑158‑590. It is lawful for all executors, administrators, guardians, and other fiduciaries to invest any monies in their hands in bonds issued pursuant to this chapter.

Section 59‑158‑600. The proceeds received from the issuance of bonds, after deducting the costs of issuance, must be deposited at the Office of State Treasurer and used to defray the costs of the qualified school projects as provided in the resolution of the Authority.

Section 59‑158‑610. The financial assistance received for a particular qualified school project must be used by that school district and its governing body for that qualified school project. The state board, together with the Office of State Treasurer, is responsible for establishing a program to ensure that the proceeds are utilized by the receiving school districts in accordance with the requirements of this chapter.

Section 59‑158‑620. The bonds are legal investments in which all public officers or public bodies of the State, its political subdivisions, all municipalities and political subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, banking associations, trust companies, savings banks, savings associations, including savings and loan association investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are now or may be authorized in the future to invest in bonds or other obligations of the State, may invest funds in their control or belonging to them. The bonds are also securities which may be deposited with and received by all public officers and bodies of the State or any agency or political subdivision of the State and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the State is now or may later be required by law.

Article 7

Nonrecurring Maintenance Grants

Section 59‑158‑710. The State Board of Education shall establish a revolving fund with such monies as may be appropriated by the General Assembly to operate a grant program to provide nonrecurring aid to school districts for facility maintenance expenses to include roof and heating and air conditioning repairs or replacements. The state board must manage the fund and promulgate regulations setting forth the requirements for a school district to become an aid recipient. In making aid determinations, the state board by regulation must establish a priority system where school districts with the most critical needs shall receive priority funding first, based on the requirements developed by the state board in these regulations.”

SECTION 2. Chapter 146, Title 59 of the 1976 Code is repealed.

SECTION 3. This act takes upon approval by the Governor.

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