

CHAPTER 43
South Carolina Transportation Infrastructure Bank Act

ARTICLE 1
South Carolina Transportation Infrastructure Bank

SECTION 11-43-110. Short title.

This chapter may be referred to as the "South Carolina Transportation Infrastructure Bank Act."

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-120. Creation of South Carolina Transportation Infrastructure Bank; board of directors; corporate purpose; accounts.

(A) There is created a body corporate and politic and an instrumentality of the State to be known as the South Carolina Transportation Infrastructure Bank.

(B) The bank is governed by a board of directors as provided in this chapter.

(C) The corporate purpose of the bank is to select and assist in financing major qualified projects by providing loans and other financial assistance to government units and private entities for constructing and improving highway and transportation facilities necessary for public purposes including economic development. The exercise by the bank of a power conferred in this chapter is an essential public function.

(D) The bank shall establish and maintain at least the four following accounts: state highway account, state transit account, federal highway account, and federal transit account.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-130. Definitions.

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.

(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 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, 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 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.

HISTORY: 1997 Act No. 148, Section 2; 1999 Act No. 100, Part II, Section 22.

SECTION 11-43-140. Board of directors; members; terms; vacancies.

The board of directors is the governing board of the bank. The board consists of seven voting directors as follows: the Chairman of the Department of Transportation Commission, ex officio; one director appointed by the Governor who shall serve as chairman; one director appointed by the Governor; one director appointed by the Speaker of the House of Representatives; one member of the House of Representatives appointed by the Speaker, ex officio; one director appointed by the President Pro Tempore of the Senate; and one member of the Senate appointed by the President Pro Tempore of the Senate, ex officio. Directors appointed by the Governor, the Speaker, and the President Pro Tempore shall

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

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-150. Powers of bank; limitations.

(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 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 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 determines necessary for the costs of administering the operations of the bank;

(17) establish advisory committees as the board 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.

(D) Before providing a loan or other financial assistance to a qualified borrower on a qualified project, the board of directors must submit the decision to the Department of Transportation Commission for its consideration. The Department of Transportation Commission can approve or reject the board of directors' decisions or request additional information from the board of directors. This requirement does not apply to decisions by the board that relate to any payment or contractual obligations that the Department of Transportation has to the bank that are pledged to any bonds issued by the bank.

HISTORY: 1997 Act No. 148, Section 2; 1999 Act No. 100, Part II, Section 22; 2016 Act No. 275 (S.1258), Section 5, eff July 1, 2016.

Effect of Amendment

2016 Act No. 275, Section 5, added (D), relating to approval of loans.

SECTION 11-43-160. Sources for capitalization and purposes of bank; use of state highway account revenues.

(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 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; 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, 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.

HISTORY: 1997 Act No. 148, Section 2; 1999 Act No. 100, Part II, Section 22.

SECTION 11-43-165. South Carolina Transportation Infrastructure Bank.

Each fiscal year, the South Carolina Department of Transportation shall transfer fifty million dollars from nontax sources to the South Carolina Transportation Infrastructure Bank. The department may transfer the total amount in one lump sum or it may transfer the amount quarterly in four equal installments. The general fund revenue appropriated to the department for "Highway Engineering Permanent Improvements" in the annual general appropriations act is exempt from any across-the-board reductions. The transferred funds must be used solely by the bank to finance bridge replacement, rehabilitation projects, and expansion and improvements to existing mainline interstates. The department shall submit a list of bridge and road projects to the bank for its consideration. Transferred funds may not be used for projects approved by the bank before July 1, 2013. The bank shall submit all projects proposed to be financed by this section to the Joint Bond Review Committee as provided in Section 11-43-180, prior to approving a project for financing.

HISTORY: 2013 Act No. 98, Section 4.A, eff July 1, 2013.

Editor's Note

2013 Act No. 98, Section 4.B., provides as follows:

"B. This section takes effect July 1, 2013. Implementation of Section 11-43-165 is contingent upon fifty million dollars being appropriated to the South Carolina Department of Transportation in the 2013-2014 General Appropriations Act for the purposes provided for in Section 11-43-165."

SECTION 11-43-167. Fees and fines credited to the State Highway Fund.

(A) The fees and fines collected pursuant to Sections 12-37-2740(D), 38-73-470, 56-1-140(B)(2), 56-1-143, 56-1-148(D), 56-1-170(B)(3), 56-1-200, 56-1-220(B), 56-1-286(K)(1), 56-1-390(2), 56-1-395(G), 56-1-400(A), 56-1-460(A)(1)(e)(iii), 56-1-550, 56-1-740(B)(3), 56-1-746(D)(3), 56-1-1320(B), 56-1-2080, 56-1-3350(B)(2), 56-3-210(B), 56-3-355, 56-3-1335, 56-3-1290, 56-3-1920(C), 56-3-2330(B), 56-3-2335(B)(2), 56-3-2340(C), 56-3-3500(B), 56-3-3600(B), 56-3-3710(B), 56-3-3950, 56-3-4100(B), 56-3-4200(C), 56-3-4410(B), 56-3-4510(C), 56-3-4600(B), 56-3-4800(B), 56-3-4910(B), 56-3-5200(B), 56-3-5400(B), 56-3-7200(B), 56-3-7300(B), 56-3-7310, 56-3-7320, 56-3-7330(B)(2), 56-3-7360, 56-3-7700(B), 56-3-7750 (B), 56-3-7780(B), 56-3-7860, 56-3-7910(B), 56-3-7950(B), 56-3-8000(C), 56-3-8100(B), 56-3-8100(F), 56-3-8200(A), 56-3-8300(A), 56-3-8400(A), 56-3-8600(B), 56-3-8710(C), 56-3-9400(B), 56-3-9600(B), 56-3-9710(B), 56-3-10010(B), 56-3-13710(B), 56-5-750(G)(3), 56-5-2942(J), 56-5-2951(B)(1), 56-5-2951(H)(3), 56-9-330, 56-10-240(C), 56-10-245, 56-10-552, 56-10-260(B)(3), 56-19-265(D), 56-19-420(C), and 56-19-520(A)(4) must be credited to the State Highway Fund as established by Section 57-11-20, to be distributed as provided in this section.

(B)(1) The Department of Transportation shall allocate the funds credited to the State Highway Fund pursuant to subsection (A) to the state-funded resurfacing program. The Department of Transportation shall develop and implement a needs-based methodology to distribute revenue within the state-funded resurfacing program, which shall include consideration on a county-by-county basis, to ensure that each county in the State is guaranteed funding for resurfacing.

(2) The Department of Transportation shall reduce the allocation to the state-funded resurfacing program required in item (1) in proportion to the amounts transferred to the South Carolina Transportation Infrastructure Bank pursuant to subsection (C).

(C)(1) The Department of Transportation shall identify bridge and road projects to be financed utilizing non-tax revenue transferred to the bank by the Department of Transportation in an amount equal to the financing requirements related to projects selected pursuant to this section.

(2) Funds transferred to the bank pursuant to this section may not be used to finance projects approved by the bank before July 1, 2013. The bank shall submit all projects proposed to be financed pursuant to subsection (B) to the Joint Bond Review Committee as provided in Section 11-43-180, prior to approving a project for financing.

(3) Following consideration by the Joint Bond Review Committee, the bank shall approve the projects to be financed. Upon approval, the bank shall provide the Department of Transportation with written notice that identifies each project selected, the amount of non-tax revenue that must be transferred to the bank for financing each project, a schedule for the transfers, and any other information necessary to carrying out the financing of each project.

(4) Upon receipt of the notice provided in item (3), the Department of Transportation shall transfer non-tax revenue to the bank in the amounts and upon the schedule provided in the notice. The department shall take any other action identified in the notice that is necessary for financing each project.

(5) Projects financed utilizing funds transferred pursuant to this subsection shall not require a local match.

(D) The Secretary of Transportation shall apply funds supplanted by the operation of this section to prioritized bridge and resurfacing needs.

HISTORY: 2016 Act No. 275 (S.1258), Section 8, eff July 1, 2016.

SECTION 11-43-170. Earnings on federal and state accounts; establishment of accounts and subaccounts; commingling of funds, compliance with federal law.

(A) Earnings on balances in the federal accounts must be credited and invested according to federal law. Earnings on state accounts must be credited to the state highway account or state transit account that generates the earnings. The bank may establish accounts and subaccounts within the state accounts and federal accounts as considered desirable to effectuate the purposes of this chapter, or to meet the requirements of any state or federal programs. All accounts must be held in trust by the State Treasurer.

(B) For necessary and convenient administration of the bank, the board 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.

(C) The bank shall comply with all applicable federal laws and regulations prohibiting the commingling of certain federal funds deposited in the bank.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-180. Loans and other financial assistance; approval by Joint Bond Review Committee; term; financing agreement; terms and conditions; selection of projects, preference, considerations.

(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 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 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 shall determine which projects are eligible projects and then select from among the eligible projects those qualified to receive from the bank a loan or other financial assistance. Preference

must be given to eligible projects which have local financial support. In selecting qualified projects, the board shall consider the projected feasibility of the project and the amount and degree of risk to be assumed by the bank. 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.

(C) The bank may not provide any loans or other financial assistance, including bond proceeds, to any project unless the eligible costs of the project are at least twenty-five million dollars.

HISTORY: 1997 Act No. 148, Section 2; 2016 Act No. 275 (S.1258), Section 6, eff June 8, 2016.

Editor's Note

2016 Act No. 275, Section 90(D), provides as follows:

"(D) Notwithstanding the effective date provided in subsection (A), SECTION 6 [amending this section] and SECTION 7 take effect upon approval by the Governor. The provisions contained in SECTION 6 and SECTION 7 only apply to projects selected by the bank thereafter."

Effect of Amendment

2016 Act No. 275, Section 6, added (C), relating to minimum project costs for loans.

SECTION 11-43-190. Financing agreements; application of other statutes or provisions; obligations secured by ad valorem taxes; security interest in project revenues; expenditure of proceeds.

(A) Qualified borrowers are authorized to obtain loans or other financial assistance from the bank through financing agreements. Qualified borrowers entering into financing agreements and issuing loan obligations to the bank may perform any acts, take any action, adopt any proceedings, and make and carry out any contracts or agreements with the bank as may be agreed to by the bank and any qualified borrower for the carrying out of the purposes contemplated by this chapter.

(B) In addition to the authorizations contained in this chapter, all other statutes or provisions permitting government units to borrow money and issue obligations including, but not limited to, the Revenue Bond Act for Utilities and the Revenue Bond Refinancing Act of 1937, may be utilized by any government unit in obtaining a loan or other financial assistance from the bank to the extent determined necessary or useful by the government unit in connection with any financing agreement and the issuance, securing, or sale of loan obligations to the bank. Notwithstanding the foregoing, obligations secured by ad valorem taxes may be issued by a government unit and purchased by the bank without regard to any public bidding requirement.

(C) A qualified borrower may receive, apply, pledge, assign, and grant security interest in project revenues, and, in the case of a governmental unit, its project revenues, revenues derived from a special source or ad valorem taxes, to secure its obligations as provided in this chapter, and may fix, revise, charge, and collect fees, rates, rents, assessments, and other charges of general or special application for

the operation or services of a qualified project, the system of which it is a part, and any other revenue producing facilities from which the qualified borrower derives project revenues, to meet its obligations under a financing agreement or to provide for the construction and improving of a qualified project.

(D) A qualified borrower must comply with the provisions of Section 12-27-1320 and Section 12-28-2930 in the expenditure of the proceeds of a loan or other financial assistance provided by the bank for a qualified project.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-200. Exemption from taxes or assessments.

The bank is performing an essential governmental function in the exercise of the powers conferred upon it and 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 or loan obligations acquired or used by the bank or upon the income from them.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-210. Failure of governmental unit to remit amounts due; withholding of funds.

(A) If a government unit fails to collect and remit in full all amounts due to the bank on the date these amounts are due under the terms of any note or other obligation of the government unit, the bank shall notify the State Treasurer who, subject to the withholding of amounts under Section 14, Article X of the Constitution, shall withhold all or a portion of the funds of the State and all funds administered by the State, its agencies, boards, and instrumentalities allotted or appropriated to the government unit and apply an amount necessary to the payment of the amount due.

(B) Nothing contained in this section mandates the withholding of funds allocated to a government unit or private entity which would violate contracts to which the State is a party, the requirements of federal law imposed on the State, or judgments of a court binding on the State.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-220. Liability.

Neither the board 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.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-230. Notice, proceeding, or publication not necessary; bank not subject to referendum.

Notice, proceeding, or publication, except those required in this chapter, are not necessary to the performance of any act authorized in this chapter nor is any act of the bank subject to any referendum.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-240. Deposit and investments.

All money of the bank, except as authorized by law or provided in this chapter, must be deposited with and invested by the State Treasurer. Funds of the bank 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. All federal funds must be invested as required by applicable federal law.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-250. Annual report; audit of books and accounts.

Following the close of each state fiscal year, the bank shall submit an annual report of its activities for the preceding year to the Governor and to the General Assembly. The bank also shall submit an annual report to the appropriate federal agency in accordance with requirements of any federal program. An independent certified public accountant shall perform an audit of the books and accounts of the bank at least once in each state fiscal year.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-260. Liberal construction.

This chapter, being for the welfare of this State and its inhabitants, must be liberally construed to effect the purposes specified in this chapter. However, nothing in this chapter must be construed as affecting any proceeding, notice, or approval required by law for the issuance by a government unit or private entity of the loan obligations, instruments, or security for loan obligations.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-265. Prioritization of projects.

(A) Notwithstanding any other provision of law and subject to the provisions of subsection (B), the bank must prioritize all projects in accordance with the prioritization criteria provided in Section 57-1-370(B)(8).

(B) The General Assembly may enact a joint resolution allowing the bank to fund a project without using the prioritization criteria provided in subsection (A). The joint resolution must be specific as to the project and the amount authorized to be funded.

HISTORY: 2016 Act No. 275 (S.1258), Section 7, eff June 8, 2016.

Editor's Note

2016 Act No. 275, Section 90(D), provides as follows:

"(D) Notwithstanding the effective date provided in subsection (A), SECTION 6 and SECTION 7 [adding this section] take effect upon approval by the Governor. The provisions contained in SECTION 6 and SECTION 7 only apply to projects selected by the bank thereafter."

SECTION 11-43-270. Severability of provisions.

If any provision of this chapter is held or determined to be unconstitutional, invalid, or otherwise unenforceable by a court of competent jurisdiction, it is the intention of the General Assembly that the provision is severable from the remaining provisions of the chapter and that the holding does not invalidate or render unenforceable another provision of the chapter.

HISTORY: 1997 Act No. 148, Section 2.

ARTICLE 3

South Carolina Transportation Infrastructure Bank Revenue Bonds

SECTION 11-43-310. Definitions.

As used in this article, unless a different meaning clearly appears from the context:

- (1) "Bank" means the South Carolina Transportation Infrastructure Bank.
- (2) "Bonds" means any bonds, notes, debentures, interim certificates, grant or revenue anticipation notes, or any other evidence of indebtedness of the bank incurred pursuant to this article.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-315. Issuance of bonds; review and approval of Joint Bond Review Committee.

Whenever it shall become necessary that monies be raised for qualified projects, including monies to be used to refund any bonds then outstanding, the bank may issue bonds as provided in this article. The review and approval of the Joint Bond Review Committee must be obtained prior to the issuance of the bonds.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-320. Pledges of revenue or funds to bond payment; bonds secured by pledge.

The bank may pledge any of its revenue or funds to the payment of its bonds, subject only to any prior agreements with the holders of particular bonds which may have pledged specific money or revenue. Bonds may be secured by a pledge of any loan obligation owned by the bank, any grant, contribution, or guaranty from the United States, the State, or any corporation, association, institution, or person, any other property or assets of the bank, or a pledge of any money, income, or revenue of the bank from any source.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-330. Bonds not debt or pledge of full faith and credit of State; personal liability; statement.

Bonds issued by the bank do not constitute a debt or a pledge of the full faith and credit of this State, or any of its political subdivisions other than the bank, but are payable solely from the revenue, money, or property of the bank as provided in this chapter. The bonds issued do not constitute an indebtedness of the State within the meaning of any constitutional or statutory limitation. No member of the bank or any person executing bonds of the bank is liable personally on the bonds by reason of their issuance or execution. Each bond issued under this article must contain on its face a statement to the effect that:

(1) neither the State, nor any of its political subdivisions, nor the bank is obligated to pay the principal of or interest on the bond or other costs incident to the bond except from the revenue, money, or property of the bank pledged;

(2) neither the full faith and credit nor the taxing power of the State, or any of its political subdivisions, is pledged to the payment of the principal of or interest on the bond;

(3) the bank does not have taxing power.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-340. Bonds authorized by resolution; execution; payability; other provisions; interest; public or private sale, price; time of issuance.

The bonds of the bank must be authorized by a resolution of the bank. The bonds must bear the date and mature at the time which the resolution provides, except that no bond may mature more than forty years from its date of issue. The bonds may be in the denominations, be executed in the manner, 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 bank prior to their issuance. The bonds may bear interest payable at a time and at a rate as determined by the bank, including the determination by agents designated by the bank under guidelines established by it. Bonds may be sold by the bank at public or private sale at the price it determines and approves. The State Treasurer shall issue the bonds of the bank not later than sixty days upon the resolution of the bank authorizing the issuance of the bonds.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-350. Trust indenture.

(A) Bonds may be secured by a trust indenture between the bank and a corporate trustee, which may be the State Treasurer or any bank having trust powers or any trust company, designated by the State Treasurer doing business in South Carolina. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders which are reasonable and proper, including covenants setting forth the duties of the bank in relation to the exercise of its powers and the custody, safekeeping, and application of its money. The bank may provide by the trust indenture for the payment of the proceeds of the bonds and all or any part of the revenues of the bank to the trustee under the trust indenture or to some other depository, and for the method of its disbursement with safeguards and restrictions prescribed by it. All expenses incurred in performing the obligations of the bank under the trust indenture may be treated as part of its operating expenses.

(B) Any resolution or trust indenture pursuant to which bonds are issued may contain provisions which are part of the contract with the holders of the bonds as to:

- (1) pledging all or any part of the revenue of the bank to secure the payment of the bonds;
- (2) pledging all or any part of the assets of the bank including loan obligations owned by it to secure the payment of the bonds;
- (3) the use and disposition of the gross income from, and payment of the principal of, and interest on loan obligations owned by the bank;
- (4) the establishment of reserves, sinking funds, and other funds and accounts, and their regulation and disposition;
- (5) limitations on the purposes to which the proceeds from the sale of the bonds may be applied, and limitations on pledging the proceeds to secure the payment of the bonds;
- (6) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;
- (7) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds, if any, the holders of which must consent to, and the manner in which any consent may be given;
- (8) limitations on the amount of money to be expended by the bank for its operating expenses;
- (9) vesting in a trustee property, rights, powers, and duties as the bank may determine, limiting or abrogating the right of bondholders to appoint a trustee, and limiting the rights, powers, and duties of the trustee;
- (10) defining the acts or omissions which constitute a default, the obligations or duties of the bank to the holders of the bonds, and the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver, and all other rights generally available to creditors;
- (11) requiring the bank or the trustee under the trust indenture to take any and all other action to obtain payment of all sums required to eliminate any default as to any principal of and interest on loan obligations owned by the bank or held by a trustee, which may be authorized by the laws of this State; and
- (12) any other matter relating to the terms of the bonds or the security or protection of the holders of the bonds which may be considered appropriate.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-360. Validity of pledge; lien; recording or filing of resolution not necessary; filing of record of issuance proceedings.

Any pledge made by the bank is valid and binding from the time the pledge is made. The revenue, money, or property pledged and thereafter received by the bank is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the bank, irrespective of whether the parties have notice of the pledge. No recording or filing of the resolution authorizing the issuance of bonds, the trust indenture securing the bonds, or any other instrument including filings under

the Uniform Commercial Code is necessary to create or perfect any pledge or security interest granted by the bank to secure any bonds, but the record of the proceedings relative to the issuance of any bonds must be filed as prescribed by Section 11-15-20.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-370. Purchase of outstanding bonds; price.

The bank, subject to agreements with bondholders as may then exist, may purchase outstanding bonds of the bank with any available funds, at any reasonable price. If the bonds are then redeemable, the price must not exceed the redemption price then applicable plus accrued interest to the next interest payment date.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-380. Form and execution of bonds.

Bonds of the bank must be in a form and must be executed in a manner prescribed by the bank.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-390. Members or officers ceasing to be members before delivery of bonds; validity of signatures.

If any of the members or officers of the bank cease to be members before the delivery of any bonds signed by them, their signatures or authorized facsimile signatures are nevertheless valid and sufficient for all purposes as if they had remained in office until the delivery of the bonds.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-400. Vested rights; application of subsequent amendments to this article.

Subsequent amendments to this article may not limit the rights vested in the bank with respect to any agreements made with, or remedies available to, the holders of bonds issued under this article before the enactment of the amendments until the bonds, with all premiums and interest on them, and all costs and expenses in connection with any proceeding by or on behalf of the holders, are fully met and discharged.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-410. Exemption from taxation and assessment.

Any bonds issued by the bank, the transfer of bonds, and the income from them, are free from taxation and assessment of every kind by the State and by the local governments and other political subdivisions of the State.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-420. Bonds legal investments, securities.

The bonds issued by the bank 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 of the bank 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.

HISTORY: 1997 Act No. 148, Section 2.

ARTICLE 5
Transportation Infrastructure Bank General Obligation Bonds

SECTION 11-43-510. Definitions.

As used in this article:

- (1) "Board" means the Board of Directors of the South Carolina Transportation Infrastructure Bank.
- (2) "State board" means the governing board of the State Fiscal Accountability Authority.
- (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.

HISTORY: 1997 Act No. 148, Section 2; 2014 Act No. 121 (S.22), Pt VII, Section 20.I, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 20.I, in subsection (2), substituted "governing board of the State Fiscal Accountability Authority" for "State Budget and Control Board".

SECTION 11-43-520. Request for issuance of transportation infrastructure bonds; contents.

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 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.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-530. Review of request; approval of bonds or bond anticipation notes.

Following the receipt of any request pursuant to Section 11-43-520, the state board shall review the same and it shall approve such request, by resolution duly adopted, to effect the issuance of transportation infrastructure bonds, or pending the issuance thereof, effect the issuance of bond anticipation notes pursuant to Chapter 17 of Title 11.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-540. Limitations; review by Joint Bond Review Committee; payment of principal and interest.

The issuance of transportation infrastructure bonds is subject to the limitations contained in 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 has a source of revenues to pay the principal and interest on the bonds.

HISTORY: 1997 Act No. 148, Section 2; 2004 Act No. 184, Section 11.

SECTION 11-43-550. Pledge of full faith, credit, taxing power, and other revenue of State for payment of principal and interest; allocation of tax revenues.

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 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, and the State Treasurer is authorized to use such revenue when pledged, without further action of the board, 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.

HISTORY: 1997 Act No. 148, Section 2; 2004 Act No. 184, Section 12.

SECTION 11-43-560. Request for issuance of transportation infrastructure bonds; resolution, contents.

The board 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, 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.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-570. Issuance of bonds.

Following receipt of a certified copy of the resolution of the state board the Governor and State Treasurer shall issue transportation infrastructure bonds in accordance with the provisions of the resolution of the state board.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-580. Form, denominations, provisions of bonds.

Transportation infrastructure bonds shall be issued in such form, in such denominations, and with such provisions as to time, place, or places and medium of payment as may be determined by the state board, subject to the provisions of this article.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-590. Issuance as fully registered bonds; transfer.

Transportation infrastructure bonds must be issued as fully registered bonds with both principal and interest thereof made payable only to the registered holder. Such fully registered bonds are subject to transfer under such conditions as the state board prescribes.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-600. Interest; redemption.

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

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-610. Exemption from taxes or assessments.

All transportation infrastructure bonds issued under this article, and the interest thereon, are exempt from all 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.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-620. Sale upon sealed proposals; notice; awarding of bonds; rejection, readvertising.

Transportation infrastructure bonds must be sold by the Governor and the State Treasurer upon sealed proposals, after publication of notice of such sale one or more times at least seven days before such 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 transportation infrastructure bonds at the lowest net interest cost to the State at a price of not less than ninety-nine percent of 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.

HISTORY: 1997 Act No. 148, Section 2.

SECTION 11-43-630. Application of proceeds.

The proceeds derived from the sale of transportation infrastructure bonds must be applied only to the purposes set forth in the resolution of the state board pursuant to which the bonds are issued.

HISTORY: 1997 Act No. 148, Section 2.