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CHAPTER 21.

 EDISTO DEVELOPMENT AUTHORITY

**SECTION 13‑21‑10.** Edisto Development Authority created; governing board; appointment and terms of board members; filling of vacancies.

There is created the Edisto Development Authority, referred to in this chapter as the “authority”. The governing body of the authority consists of a seven member board appointed by the Governor, with the advice and consent of the Senate, for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term. One member must be appointed from each of the following counties: Allendale, Bamberg, Barnwell, Calhoun, Hampton, and Orangeburg. One member must be appointed from the state at large.

**SECTION 13‑21‑20.** Board officers; committees; meetings; quorum.

The members of the authority board shall elect one member as chairman and one as vice‑chairman and shall also elect a secretary. The board shall establish other offices, committees, and positions under its bylaws as it considers necessary. The board shall meet upon the call of its chairman and in accordance with its bylaws, and four members constitute a quorum for the transaction of its business.

**SECTION 13‑21‑30.** Rights and powers of board.

The authority board has all the rights and powers of a body politic and corporate and body corporate of this State, including without limitation, all the rights and powers necessary or convenient to manage the business and affairs of the authority and to take action as it considers advisable, necessary, or convenient in carrying out its powers, including, but not limited to, the following rights and powers to:

(1) have perpetual succession;

(2) sue and be sued;

(3) adopt, use, and alter a corporate seal;

(4) adopt and amend bylaws for regulation of its affairs consistent with this chapter;

(5) notwithstanding any provision of law or regulation to the contrary, and in accordance with its own procurement procedures or regulations as approved by the State Budget and Control Board, acquire, purchase, hold, use, improve, manage, lease, mortgage, pledge, sell, transfer, and dispose of any property, real, personal, or mixed, or any interest in any property, or revenues of the authority, including as security for notes, bonds, evidences of indebtedness, or other obligations of the authority. Except for the provisions of Subarticle 3, Article 21, Chapter 35 of Title 11, in exercising the powers authorized in this chapter the authority is exempt from Title 11 of Chapter 35. The authority has no power to pledge the credit and the taxing power of the State or any of its political subdivisions;

(6) receive contributions, donations, and payments and to invest and disperse the authority’s funds;

(7) encourage, assist, promote, and cooperate in the development of the Edisto River and the streams, canals, or watercourses now or at a later time connected to or flowing into the river and to appear on behalf of the State before any agency, department, or commission of this State, of the United States, or of any other state in furtherance of the development or of any matter connected with the development or related to the development;

(8) to negotiate agreements, accords, or compacts on behalf of and in the name of the State with the United States, with any agency, department, or commission of the United States, relating to the development of the Edisto River and the development of the streams, canals, or watercourses now or at a later time connected to or flowing into the river, and particularly in reference to joint or concurrent action in the furtherance of agreements, accords, or contracts;

(9) act as a regional development agency of the State to receive, purchase, hold title to, and to manage any real property in its jurisdiction acquired by release of surplus real property, by purchase, by donation, by lease, or by exchange and to develop and promote the development of the land for recreational, transportation, residential, commercial, and industrial purposes, both public and private, and to lease, sublease, or convey title in fee simple to the real property as provided in the bylaws of the authority. The authority shall retain, carry forward, or expend any proceeds derived from the sale, lease, rental, or other use of real and personal property under the authority’s exclusive jurisdiction. The proceeds shall be used only in the development and the promotion of the authority as provided by this chapter and for the purposes authorized by this chapter;

(10) promulgate regulations governing the use of or doing business on the authority’s property or facilities, including the adoption of safety standards and insurance coverage or proof of financial responsibility including, but not limited to, providing for the licensing of persons, firms, or corporations using or doing business on such property or facilities, and for license fees to cover the expense thereof;

(11) borrow money, make and issue notes, bonds, and other evidences of indebtedness, including refunding and advanced refunding notes and bonds, of the authority; to secure the payment of the obligations or any part by mortgage, lien, pledge, or deed of trust, on any of its property, contracts, franchises, or revenues, including the proceeds of any refunding and advanced refunding notes, bonds, and other evidences of indebtedness and the investments in which proceeds are invested and the earnings on and income from the investments in which proceeds are invested in the earnings on and income from the investments; to invest its monies, including, without limitation, its revenues and proceeds of the notes, bonds, or other evidences of indebtedness, in obligations of, or obligations the principal of and interest on which are guaranteed by or are fully secured by contracts with, the United States, in obligations of any agency, instrumentality, or corporation which has been or may at a later time be created by or pursuant to an act of the United States Congress as an agency, instrumentality, or corporation, in direct and general obligations of this State, and in certificates of deposit issued by any bank, trust company, or national banking association; to make agreements with the purchasers or holders of the notes, bonds, or other evidences of indebtedness or with others in connection with any notes, bonds, or other evidences of indebtedness whether issued or to be issued, as the authority considers advisable; and to provide for the security for the notes, bonds, or other evidences of indebtedness.

In the exercise of the powers granted in this section to issue advanced refunding notes, bonds, or other evidences of indebtedness the authority may, but is not required to, avail itself of or comply with any of the provisions of Chapter 21 of Title 11. The authority, when investing in certificates of deposit, shall invest in certificates of deposit issued by institutions authorized to do business in this State if the institutions offer terms which, in the opinion of the authority, are equal to or better than those offered by other institutions;

(12) loan the proceeds of notes, bonds, or other evidences of indebtedness to a person, corporation, or partnership to construct, acquire, improve, or expand the projects described in Section 13‑21‑50;

(13) to make contracts, including service contracts with a person, corporation, or partnership, to provide the services provided in Section 13‑21‑50, and to execute all instruments necessary or convenient for the carrying out of business;

(14) for the acquiring of rights‑of‑way and property necessary for the accomplishment of its duties and purposes, the authority may purchase them by negotiation or may condemn them, and should it elect the right of eminent domain, condemnation actions must be in the name of the authority. The power of eminent domain applies to all property of private persons or corporations and also to property already devoted to public use in any of the counties which are represented by members as set forth in Section 13‑21‑10;

(15) employ and dismiss, at the will and pleasure of the authority, those employees, consultants, and other providers of services as the authority considers necessary and to fix and to pay their compensation. Employees of the authority or any entity established pursuant to Section 13‑21‑200 are not considered to be state employees except for eligibility for participation in the State Retirement System and the State Health Insurance Group Plans and pursuant to Chapter 78 of Title 15. Chapter 11 of Title 8 and Article 5, Chapter 17 of Title 8 do not apply to the authority. The authority is responsible for complying with the other state and federal laws covering employers. The authority may contract with the Division of Human Resources Management of the State Budget and Control Board to establish a comprehensive human resource management program. Except for the provisions of Subarticle 3, Article 21, Chapter 35 of Title 11, the provisions of Chapter 35 of Title 11 do not apply to the authority in the employment of consultants and other providers of service, but consultants and other providers of services are subject to the authority’s procurement procedures or regulations as approved by the State Budget and Control Board;

(16) fix, alter, charge, and collect tolls, fees, rents, charges, and assessments for the use of the facilities of or for the services rendered by, the authority; these rates must be at least sufficient to provide for payment of all expenses of the authority, the conservation, maintenance, and operation of its facilities and properties, the payment of principal and interest on its notes, bonds, and other evidences of indebtedness or obligation, and to fulfill the terms and provisions of any agreements made with the purchasers and holders of these notes, bonds, or other evidences of indebtedness or obligation.

**SECTION 13‑21‑40.** Area in which authority may exercise powers and duties.

The authority may exercise any of the powers and duties conveyed under Section 13‑21‑30 in the entire area of a county or portion of a county which borders the Edisto River or is within the Edisto River Basin.

**SECTION 13‑21‑50.** Authority to issue bonds; financing agreements with respect to construction, operation, maintenance, and improvement of projects.

In furtherance of its purposes, the authority may issue revenue bonds, the interest on which may or may not be excludable from gross income for federal income tax purposes, for the purpose of raising funds needed from time to time for the financing or refinancing, in whole or in part, the acquisition, construction, equipment, maintenance, and operation of any facility, building structure, or any other matter or thing which the authority is authorized to acquire, construct, equip, maintain, or operate.

In connection with the issuance of bonds, the authority may enter into an agreement with a company to consult, operate, maintain, and improve a project, and the authority may enter into a financing agreement with the company prescribing the terms and conditions of the payments to be made by the company to the authority or its assignee, to meet the payments that become due on the bonds.

**SECTION 13‑21‑60.** Resolution by board authorizing issuance of revenue bonds.

Revenue bonds issued under this chapter for any project described in Section 13‑21‑50 must be authorized by resolution of the board of the authority. The resolution may contain provisions which are a part of the contract between the authority and the several holders of the bonds as to:

(1) the custody, security, use, expenditure, or application of the proceeds of the bonds;

(2) the acquisition, construction, and completion of any project for which the bonds are issued;

(3) the use, regulation, operation, maintenance, insurance, or disposition of the project for which the bonds are issued, or any restrictions on the exercise of the powers of the board to dispose of or limit or regulate the use of the project;

(4) the payment of the principal of or interest on the bonds and the sources and methods of payment, the rank or priority of any bonds as to any lien or security, or the acceleration of the maturity of any bonds;

(5) the use and disposition of the revenues derived from the operation of any project;

(6) the pledging, setting aside, depositing, or entrusting of the revenues from which the bonds are made payable to secure the payment of the principal of and interest on the bonds or the payments of expenses of operation and maintenance of the project;

(7) the setting aside of revenues, reserves, or sinking funds and the source, custody, security, regulation, and disposition of the revenues, reserves, or sinking funds;

(8) the determination of the definition of revenues or of the expenses of operation and maintenance of the project for which the bonds are issued;

(9) the rentals, fees, or other charges derived from the use of the project and the fixing, establishing, collection, and enforcement of the rentals, fees, or other charges, the amount or amounts of revenues to be produced by the rentals, fees, or other charges, and the disposition and application of the amounts charged or collected;

(10) limitations on the issuance of additional bonds or any other obligations or the incurrence of indebtedness payment from the same revenues from which the bonds are payable;

(11) rules to insure the use of the project by the public or private sector to the maximum extent to which the project is capable of serving the public or private sector;

(12) any other matter or course of conduct, which, by recital in the resolution authorizing the bonds, is declared to further secure the payment of the principal of or interest on the bonds.

**SECTION 13‑21‑70.** Terms and particulars pertaining to bonds.

The bonds may be issued in one or more series, may bear date, may mature at a time not exceeding forty years from their respective dates, may bear interest at the rate or rates a year as approved by the State Budget and Control Board, may be payable in the medium of payment and at a place, may be in a denomination, may be in a form, either coupon or registered, may carry registration privileges, may be subject to terms or redemption before maturity, with or without premium, and may contain terms, covenants, and conditions as the resolution authorizing the issuance of the bonds may provide. The interest rate on bonds issued by the authority, the proceeds of which are loaned to a company pursuant to a financing agreement to construct or acquire a project authorized under Section 13‑21‑50, are not subject to approval by the State Budget and Control Board. The bonds are fully negotiable within the meaning of and for the purposes of the Uniform Commercial Code.

**SECTION 13‑21‑80.** Bond principal and interest, security agreements, indentures, and financing agreements exempt from taxation.

The principal of and interest on bonds issued under this chapter are exempt from taxation, as provided in Section 12‑2‑50. All security agreements, indentures, and financing agreements made pursuant to the provisions of this chapter are exempt from state stamp and transfer taxes.

**SECTION 13‑21‑90.** Bond issue to have approval of State Budget and Control Board; proposal; disposition of proposal.

No bonds may be issued pursuant to the provisions of this chapter until the proposal of the board of the authority to issue the bonds receives the approval of the State Budget and Control Board. When the board proposes to issue bonds, it shall file a proposal with the State Budget and Control Board setting forth:

(1) a brief description of the project proposed to be undertaken and its anticipated effect upon the economy of the area in which the project is to be located;

(2) a reasonable estimate of the cost of the project;

(3) a general summary of the terms and conditions of any financing agreement and security agreement.

Upon the filing of the proposal, the State Budget and Control Board shall, as soon as practicable, make an independent investigation, as it considers necessary or appropriate, and if it finds that the project is intended to promote the purposes of this chapter, it may approve the project. At any time following the approval, the board may proceed with the acquisition and financing of the project. If the proceeds of the bonds are to be made available to a company to construct a project, as provided in Section 13‑21‑50, notice of the approval of any project by the State Budget and Control Board must be published at least once by the authority in a newspaper having general circulation in the county where the project is to be located.

Any interested party may, within twenty days after the date of the publication notice, but not after the twenty days, challenge the validity of the approval in the court of common pleas in the county where the project is to be located.

**SECTION 13‑21‑100.** Signature and attestation of bonds.

The bonds must be signed in the name of the board of the authority by the manual or facsimile signature of the chairman of the board and attested with the manual or facsimile signature of the secretary of the board. The bonds may be issued notwithstanding that any of the officials signing them or whose facsimile signatures appear on the bonds or the coupons have ceased to hold office at the time of issue or at the time of the delivery of the bonds to the purchaser.

**SECTION 13‑21‑110.** Sale of bonds upon terms and conditions set by State Budget and Control Board.

The bonds must be sold at public or private sale upon terms and conditions as the State Budget and Control Board considers advisable.

**SECTION 13‑21‑120.** Description of financial obligations to be filed with State Treasurer.

The board of the authority or its proper administrative officers shall file with the State Treasurer within thirty days from the date of their issuance a complete description of all obligations entered into by the board with the rates of interest, maturity dates, annual payments, and all pertinent data.

**SECTION 13‑21‑130.** Resolutions, covenants and agreements pertaining to issuance of bonds are binding; enforceability.

All provisions of a resolution authorizing the issuance of the bonds in accordance with this chapter and any covenants and agreements constitute legally binding contracts between the authority and the several holders of the bonds, regardless of the time of issuance of the bonds, and are enforceable by any holder by mandamus or other appropriate action, suit, or proceeding at law or in equity in any court of competent jurisdiction.

**SECTION 13‑21‑140.** Limited obligation of bonds; state not to incur liability; security; trustee under security agreement or indenture.

The bonds authorized by this chapter are limited obligations of the authority. The principal and interest are payable solely out of the revenues derived by the authority, including any revenues that may be derived by the authority pursuant to the financing agreement with respect to the projects which the bonds are issued to finance. The bonds are an indebtedness payable solely from a revenue producing source or from a special source which does not include revenues from any tax or license. The bonds do not constitute nor give rise to a pecuniary liability of the authority, the State, or any political subdivision of the State, or to a charge against the general credit of the authority, the State, or any political subdivision of the State or taxing powers of the State, or any political subdivision of the State, and this fact must be plainly stated on the face of each bond. The principal of and interest on any bonds issued under this chapter must be secured by a pledge of the revenues from which the bonds are payable, may be secured by a security agreement, including a mortgage or any property given as security pursuant to a financing agreement, and may be additionally secured by a pledge of the financing agreement with respect to the project. In making any agreements or provisions, the board of the authority does not have the power to obligate itself with respect to any project for which the proceeds of bonds issued under this chapter have been loaned to a company, except with respect to the project and the application of the revenues from the financing agreement, and does not have the power to incur a pecuniary liability or a charge upon its general credit.

The trustee under any security agreement or indenture, or any depository specified by the security agreement or indenture, may be any person, or corporation as the authority designates, notwithstanding that the trustee may be a nonresident of this State or incorporated under the laws of the United States or the laws of other states.

**SECTION 13‑21‑150.** Investment of funds by state treasurer; net earnings.

All funds of the authority must be invested by the State Treasurer and, upon approval and designation by the State Treasurer of a financial institution or institutions, all funds must be deposited in such institutions by the board in accordance with policies and guidelines formulated by the board. Funds of the authority must be paid out only upon warrants issued in accordance with policies established by the board. No warrants may be drawn or issued disbursing any of the funds of the authority except for a purpose authorized by this chapter.

The net earnings of the authority, beyond that necessary for retirement of its bonds or other obligations or to implement the purposes of this chapter, may not inure to the benefit of any person other than the authority. Upon termination of the existence of the authority, title to all property, real and personal, owned by it, including net earnings, vests in the State.

**SECTION 13‑21‑160.** Carryover of unexpended funds from year to year.

The authority shall retain unexpended funds at the close of the state fiscal year regardless of the source of the funds and expend the funds in subsequent fiscal years.

**SECTION 13‑21‑170.** Determinations required to be made by authority prior to undertaking projects; terms which must be included in financing agreement.

(A) Prior to undertaking any project authorized by Section 13‑21‑50, the board of the authority shall make a determination:

(1) that the project shall serve the purposes of this chapter;

(2) that the project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise provided locally;

(3) that the project shall give rise to no pecuniary liability of the authority, the State, or a political subdivision of the State, or charge against the general credit of the authority, the State, or a political subdivision of the State, or taxing power of the State or a political subdivision of the State if the proceeds are loaned by the authority to a company to construct a project;

(4) as to the amount of bonds required to finance the project;

(5) as to the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance the project;

(6) as to the amount necessary to be paid each year into any reserve funds which the board may consider advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project.

The determinations of the board must be set forth in the proceedings under which the proposed bonds are to be issued.

(B) Every financing agreement between the authority and a company with respect to a project shall contain an agreement obligating the company to complete the project if the proceeds of the bonds prove insufficient, and obligating the company to pay an amount under the terms of a financing agreement, which, upon the basis of the determinations made by the board, is sufficient:

(1) to pay the principal of and interest on the bonds issued to finance the project;

(2) to build up and maintain a reserve considered by the board to be advisable in connection with the project;

(3) to pay the costs of maintaining the project in good repair and keeping it properly insured, unless the financing agreement obligates the company to pay for the maintenance and insurance of the project.

**SECTION 13‑21‑180.** Disposition of proceeds of sale of bonds; costs associated with project.

The proceeds from the sale of any bonds issued under authority of this chapter may be applied only for the purpose for which the bonds were issued, except any premium and accrued interest received in any sale must be applied to the payment of the principal of or the interest on the bonds sold, and if for any reason any portion of the proceeds are not needed for the purpose for which the bonds were issued, that portion of the proceeds must be applied to the payment of the principal of or the interest on the bonds. The cost of acquiring any project includes the following:

(1) the actual cost of the construction of any part of a project, including architects’, engineers’, and attorneys’ fees;

(2) the purchase price of any part of any project that may be acquired by purchase;

(3) all expenses in connection with the authorization, sale, and issuance of the bonds to finance the acquisition;

(4) the interest on the bonds for a reasonable time prior to construction and for not exceeding one year after completion of the construction.

**SECTION 13‑21‑190.** Regulations promulgated by authority to be in accord with Title 1, Chapter 23.

The regulations of the authority must be promulgated in accordance with Chapter 23 of Title 1.

**SECTION 13‑21‑200.** Establishment of profit or not‑for‑profit corporations to carry out purposes of chapter; grants and loans thereto; loan guarantees and limitations of liability in connection therewith.

The authority may establish profit or not‑for‑profit corporations as the authority considers necessary to carry out the purposes of this chapter. Officials or employees of the authority may act as officials or employees of any such corporations created pursuant to this section without additional compensation. Any corporations created pursuant to this section are considered to be “public procurement units” for purposes of Article 19, Chapter 35 of Title 11.

The authority may make grants or loans to, or make guarantees for, the benefit of a not‑for‑profit corporation which the authority has caused to be formed whose articles of incorporation require that its directors be elected by members of the authority and all assets of which, upon dissolution, must be distributed to the authority if it is in existence, or, if it is not in existence, then to this State.

These grants, loans, or guarantees may be made upon a determination by the authority that the receiving not‑for‑profit corporation is able to carry out the purposes of this chapter and on the terms and conditions imposed by the authority.

A guarantee made by the authority does not create an obligation of the State or its political subdivisions and is not a grant or loan of the credit of the State or a political subdivision. A guarantee issued by the authority must be a special obligation of the authority. Neither this State nor any political subdivision is liable on a guarantee nor may they be payable out of any funds other than those of the authority and a guarantee issued by the authority must contain on its face a statement to that effect.

**SECTION 13‑21‑210.** Tax exemption of Authority property; payment in lieu of taxes.

The property of the authority is not subject to any taxes or assessments, but the authority shall negotiate a payment in lieu of taxes with the appropriate taxing authorities.

**SECTION 13‑21‑220.** Purposes for which authority is or is not “agency,” “state agency,” or state institution.

Notwithstanding any provision of law or regulation, the authority continues to be an “agency” for purposes of Chapter 78 of Title 15; however, the authority is not considered to be an “agency” or “state agency” or any other form of state institution for purposes of Sections 2‑7‑65 and 2‑57‑60.

**SECTION 13‑21‑230.** Severability.

If any term or provision of this chapter is found to be illegal or unenforceable, the remainder of this chapter nonetheless remains in full force and effect and the illegal or unenforceable term or provision is deleted and severed from this chapter.

**SECTION 13‑21‑240.** Chapter not to affect generation, transmission, distribution, or provision of electricity at wholesale, retail or otherwise.

Nothing in this chapter may be construed to provide for the regulation of the generation, transmission, distribution, or provision of electricity at wholesale, retail, or in any other capacity. The provisions of this chapter shall not modify or abridge the rights, duties, and privileges of electric suppliers, electrical utilities, municipal electric utilities, or governmental entities (supplying electricity) under any state statute including, but not limited to, Title 58, Chapter 27 and Section 5‑7‑60.

Nothing in this chapter may be construed to allow the exercise of the right of eminent domain for the condemnation of property used for the generation, transmission, and/or distribution of electricity at wholesale or retail.

Nothing in this chapter may be construed to authorize a joint or cooperative agreement with the federal or state government or any political subdivision of the state affecting or relating to the regulation of the generation, transmission and/or distribution of electricity at wholesale or retail.