CHAPTER 17

Borrowing by State, State Agencies, and Political Units in Anticipation of Issuance of Bonds

CROSS REFERENCES

State school facilities bonds, bond anticipation notes pending bond issuance, see Section 59‑146‑70.

Transportation Infrastructure Bank, general obligation bonds, bond anticipation notes pending bond issuance, see Section 11‑43‑530.

**SECTION 11‑17‑10.** Definitions.

 (a) The term “bonds” shall mean general obligation bonds payable from ad valorem taxes, general obligation bonds additionally secured by any pledge of any assessments, or any pledge of revenues derived by the borrower from any revenue‑producing facility, bonds payable solely from the revenues of any revenue‑producing facility, and bonds payable solely from any assessments. The term “bonds” shall also include state highway bonds as defined pursuant to the provisions of item (10) of Section 57‑11‑210, as amended.

 (b) The term “borrower” shall mean the State, any agency, department or institution of the State, any county, any incorporated city or town, any school district, any special purpose district, and all other political units now existing or hereafter created, which are appropriately authorized to borrow money and issue bonds.

 (c) The term “governing body” shall mean that agency or body upon which is devolved by law the administrative and executive functions of the borrower.

 (d) The term “person” shall mean any person, firm, corporation or governmental agency.

HISTORY: 1962 Code Section 1‑621; 1965 (54) 150; 1993 Act No. 181, Section 92.

CROSS REFERENCES

Applicability of provisions of this section to anticipatory borrowing pending the issuance of special source revenue bonds by a county or municipality, see Section 4‑29‑68.

Authority of board of visitors of The Citadel to issue bonds as provided in this chapter, see Section 59‑122‑20.

Issuance of bond anticipation notes by Division of Public Railways, see Section 13‑1‑1360.

Issuance of bonds under provisions of Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning, see Section 59‑109‑50.

LAW REVIEW AND JOURNAL COMMENTARIES

The Special Fund Doctrine and Revenue Bond Financing in South Carolina. 8 SC LQ 221.

**SECTION 11‑17‑20.** Borrowing in anticipation of receipt of proceeds of bonds authorized; debt evidenced by note; form and terms of notes.

 Any borrower, whenever authorized by general or special law, to issue bonds, may, pending the sale and issuance thereof, but within the limitations set forth in Section 11‑17‑60 of this chapter, borrow in anticipation of the receipt of the proceeds of bonds from any person, and evidence the debt by a note duly executed by the officers of the borrower authorized by the governing body of the borrower. The note shall be expressed to mature not later than one year from the date of its issuance except that if the note is issued in anticipation of the sale of bonds payable solely from a revenue‑producing facility and there is in existence an agreement between the borrower and any federal agency pursuant to which such bonds are to be purchased by such federal agency, such note may be expressed to mature not later than three years from its date; such note may, but shall not be required to, be subject to redemption prior to its stated maturity, on such terms and conditions as the governing body of the borrower may prescribe, except that the maximum premium to be paid for prior redemption shall not exceed one half of one per centum. The note shall bear such rate of interest as the governing body shall determine and shall recite on its face that it is issued in anticipation of the issuance of bonds and is payable, both as to principal and interest, from the proceeds thereof.

HISTORY: 1962 Code Section 1‑622; 1965 (54) 150; 1970 (56) 2061; 1979 Act No. 194, Part I, Section 13.

CROSS REFERENCES

Applicability of provisions of this section to anticipatory borrowing pending the issuance of special source revenue bonds by a county or municipality, see Section 4‑29‑68.

Issuance of bonds under provisions of Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning, see Section 59‑109‑50.

South Carolina Research University Infrastructure Act, issuance of general obligation debt anticipation notes, see Section 11‑51‑100.

Library References

Counties 171.

Municipal Corporations 908.

States 144.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 347 to 348.

C.J.S. Municipal Corporations Sections 1646, 1652.

C.J.S. States Sections 434 to 435.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bonds Section 74, Chapter 17 Borrowing by State, State Agencies and Political Units in Anticipation of Issuance of Bonds.

Attorney General’s Opinions

County treasurer may invest funds not needed for current expenses in bond anticipation note of the county. 1991 S.C. Op.Atty.Gen. 63, 1991 S.C. Op.Atty.Gen. No. 91‑18, 1991 (March 29, 1991) WL 474748.

**SECTION 11‑17‑30.** Use of other funds for payment of notes.

 It shall at all times be lawful for any borrower to utilize any other funds applicable therefor for the payment of the principal and interest of the note.

HISTORY: 1962 Code Section 1‑622.1; 1970 (56) 2061.

CROSS REFERENCES

Applicability of provisions of this section to anticipatory borrowing pending the issuance of special source revenue bonds by a county or municipality, see Section 4‑29‑68.

Issuance of bonds under provisions of Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning, see Section 59‑109‑50.

Library References

Counties 171.

Municipal Corporations 908.

States 144.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 347 to 348.

C.J.S. Municipal Corporations Sections 1646, 1652.

C.J.S. States Sections 434 to 435.

**SECTION 11‑17‑40.** Manner of issuing notes.

 The governing body may arrange the issuance of notes authorized by this chapter by negotiation or may cause them to be advertised and bids therefor received, under such conditions as the governing body shall prescribe.

HISTORY: 1962 Code Section 1‑623; 1965 (54) 150.

CROSS REFERENCES

Applicability of provisions of this section to anticipatory borrowing pending the issuance of special source revenue bonds by a county or municipality, see Section 4‑29‑68.

Issuance of bonds under provisions of Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning, see Section 59‑109‑50.

Library References

Counties 171.

Municipal Corporations 908.

States 144.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 347 to 348.

C.J.S. Municipal Corporations Sections 1646, 1652.

C.J.S. States Sections 434 to 435.

**SECTION 11‑17‑50.** Necessity of holding election before issuance of notes.

 Whenever the favorable result of an election is prescribed by the Constitution or applicable statute as a condition precedent to the issuance of bonds by the borrower, then prior to the issuance of any notes pursuant to this chapter, the election shall have been held and shall have resulted favorably to the issuance of such bonds.

HISTORY: 1962 Code Section 1‑624; 1965 (54) 150.

CROSS REFERENCES

Applicability of provisions of this section to anticipatory borrowing pending the issuance of special source revenue bonds by a county or municipality, see Section 4‑29‑68.

Constitutional provision regarding special election for bonding municipality, see SC Const, Art 17, Section 7B.

Issuance of bonds under provisions of Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning, see Section 59‑109‑50.

Library References

Counties 171.

Municipal Corporations 908.

States 144.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 347 to 348.

C.J.S. Municipal Corporations Sections 1646, 1652.

C.J.S. States Sections 434 to 435.

**SECTION 11‑17‑60.** Resolution of governing body; consent or approval required; renewal or refunding.

 Prior to the issuance of notes pursuant to this chapter, the governing body of the borrower shall adopt a resolution obligating the borrower to issue and sell, in the manner prescribed by law, bonds of the borrower in a specified amount and notes of the borrower may be issued pursuant to this chapter to the extent of not exceeding the amount of bonds so specified.

 Provided, however, if any consent or approval shall be necessary prior to the issuance of bonds by the borrower, the borrower must obtain the same consent or approval prior to the issuance of temporary financing as provided herein.

 All notes issued pursuant to this chapter may from time to time be renewed or refunded.

HISTORY: 1962 Code Section 1‑625; 1965 (54) 150; 1966 (54) 2382; 1969 (56) 809.

CROSS REFERENCES

Applicability of provisions of this section to anticipatory borrowing pending the issuance of special source revenue bonds by a county or municipality, see Section 4‑29‑68.

Issuance of bonds under provisions of Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning, see Section 59‑109‑50.

Library References

Counties 171.

Municipal Corporations 908.

States 144.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 347 to 348.

C.J.S. Municipal Corporations Sections 1646, 1652.

C.J.S. States Sections 434 to 435.

**SECTION 11‑17‑70.** Notes secured by full faith, credit, and taxing power of borrower.

 Notes issued pursuant to this chapter in anticipation of the issuance of general obligation bonds shall be general obligations of the borrower also secured by a pledge of the full faith, credit and taxing power of the borrower, and any governing body is authorized to make such a pledge in the proceedings providing for the issuance of any notes pursuant to this chapter in anticipation of the issuance of general obligation bonds.

HISTORY: 1962 Code Section 1‑625.1; 1969 (56) 809.

CROSS REFERENCES

Applicability of provisions of this section to anticipatory borrowing pending the issuance of special source revenue bonds by a county or municipality, see Section 4‑29‑68.

Issuance of bonds under provisions of Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning, see Section 59‑109‑50.

Library References

Counties 171.

Municipal Corporations 908.

States 144.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 347 to 348.

C.J.S. Municipal Corporations Sections 1646, 1652.

C.J.S. States Sections 434 to 435.

**SECTION 11‑17‑80.** Purpose of bonds deemed to include payment of notes.

 Whenever any borrower shall be authorized to issue bonds for any specific purpose, the purpose shall be deemed to include the monies required to meet the payment of the principal and interest of notes issued pursuant to this chapter.

HISTORY: 1962 Code Section 1‑626; 1965 (54) 150.

CROSS REFERENCES

Applicability of provisions of this section to anticipatory borrowing pending the issuance of special source revenue bonds by a county or municipality, see Section 4‑29‑68.

Issuance of bonds under provisions of Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning, see Section 59‑109‑50.

**SECTION 11‑17‑90.** Application of proceeds of notes.

 It shall be the duty of the governing body to apply the proceeds of any notes issued pursuant to this chapter to the purpose for which bonds are to be issued, but no purchaser of any notes shall be liable for the proper application of the proceeds.

HISTORY: 1962 Code Section 1‑627; 1965 (54) 150.

CROSS REFERENCES

Applicability of provisions of this section to anticipatory borrowing pending the issuance of special source revenue bonds by a county or municipality, see Section 4‑29‑68.

Issuance of bonds under provisions of Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning, see Section 59‑109‑50.

Library References

Counties 171.

Municipal Corporations 908.

States 144.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 347 to 348.

C.J.S. Municipal Corporations Sections 1646, 1652.

C.J.S. States Sections 434 to 435.

Attorney General’s Opinions

Interest earned by investing the proceeds of a bond anticipation note is to be expended for the same purposes for which the bonds are to be issued. 1981 S.C. Op.Atty.Gen. 13, 1981 S.C. Op.Atty.Gen. No. 81‑2, (Jan. 9, 1981) 1981 WL 96529.

**SECTION 11‑17‑100.** Application of proceeds of bonds to payment of notes.

 Upon delivery of the bonds in anticipation of which a note or notes pursuant to this chapter have been issued, sufficient of the proceeds of such bonds shall be applied by the borrower to meet the payment of the principal and interest of such notes, unless the stated maturity of the notes shall be subsequent to the date as of which such bonds are issued; but, in all such instances, upon the delivery of the bonds, sufficient of the proceeds thereof shall be deposited in an irrevocable trust with the paying agent of the notes, or other financial institution, for the payment of the principal and interest of the notes upon their stated maturity.

HISTORY: 1962 Code Section 1‑627.1; 1970 (56) 2061.

CROSS REFERENCES

Applicability of provisions of this section to anticipatory borrowing pending the issuance of special source revenue bonds by a county or municipality, see Section 4‑29‑68.

Issuance of bonds under provisions of Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning, see Section 59‑109‑50.

Library References

Counties 171.

Municipal Corporations 908.

States 144.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 347 to 348.

C.J.S. Municipal Corporations Sections 1646, 1652.

C.J.S. States Sections 434 to 435.

**SECTION 11‑17‑110.** Tax exempt status of notes.

 All notes issued pursuant to this chapter and all interest to accrue thereon shall have the tax exempt status prescribed by Section 12‑1‑60.

HISTORY: 1962 Code Section 1‑628; 1965 (54) 150.

CROSS REFERENCES

Applicability of provisions of this section to anticipatory borrowing pending the issuance of special source revenue bonds by a county or municipality, see Section 4‑29‑68.

Issuance of bonds under provisions of Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning, see Section 59‑109‑50.

Library References

Taxation 2316.

Westlaw Topic No. 371.

C.J.S. Taxation Section 304.

**SECTION 11‑17‑120.** Determining whether bonds for funding bond anticipation notes are issued within prescribed time limitation.

 Whenever, after the issuance of general obligation bond anticipation notes, it becomes necessary to determine whether or not general obligation bonds issued to provide funds with which to pay such notes (or any notes refunding such notes) have been issued within any time limitation prescribed therefor or in obedience to any condition imposed by law, the date of the issuance of the original notes shall be used for the purposes of such determination.

HISTORY: 1981 Act No. 3, Section 1.

Library References

Counties 171.

Municipal Corporations 908.

States 144.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 347 to 348.

C.J.S. Municipal Corporations Sections 1646, 1652.

C.J.S. States Sections 434 to 435.

Attorney General’s Opinions

Inasmuch as bond anticipation notes constitute “general obligation debt” for purposes of Art. X, Section 15(5), the five year limitation imposed by this provision of the Constitution has been met by the issuance of the bond anticipation notes. Such conclusion is in accord with section 11‑17‑120. S.C. Op.Atty.Gen. (Jan. 18, 2005) 2005 WL 292227.