CHAPTER 21

Advanced Refunding of Bonds of Public Agencies

**SECTION 11‑21‑10.** Definitions.

 For the purposes of this chapter the following terms shall mean:

 (1) “Advanced refunding”, means the refunding of outstanding bonds through the authorizations of this chapter and other statutes herein referred to more than six months prior to the dates on which outstanding bonds mature or may be called for payment and redemption.

 (2) “Corporate trustee”, means any incorporated bank organized under the laws of any of the states of the United States or any national banking corporation organized under the laws of the United States maintaining an established and active trust department which shall agree to perform the functions imposed upon it by the provisions of this chapter; but, unless such bank or national bank shall maintain offices in South Carolina, it shall have unimpaired capital and surplus of not less than twenty‑five million dollars.

 (3) “Governing board”, means the board, commission, municipal council, board of trustees, authority or any other public body upon which is devolved by law the administrative and executive duties with respect to any public agency.

 (4) “Outstanding bonds”, means all general obligation bonds, with or without additional security, or bonds payable solely from any revenue‑producing project, now or hereafter issued pursuant to laws now or hereafter enacted.

 (5) “Public agency”, means the State of South Carolina, its agencies and institutions, counties, all incorporated municipalities, school districts, special purpose districts, authorities and every other agency or political entity of the State which now or hereafter shall be given the power to incur debt in the form of general obligation bonds, with or without additional security, or bonds payable solely from any revenue‑producing project, now or hereafter issued pursuant to law.

 (6) “Refunding bonds”, means any bonds issued for the purpose of providing all or any part of the monies required to effect the payment upon maturity, or upon redemption, of any outstanding bonds and shall include all sums required to meet the payment of principal, redemption premiums and such interest on outstanding bonds as may be required to be funded in order to effect the advanced refunding of outstanding bonds.

HISTORY: 1962 Code Section 1‑631; 1965 (54) 551; 1981 Act No. 50, Section 2.

CROSS REFERENCES

Edisto Development Authority, in connection with issuance of advanced refunding notes, bonds, or other evidences of indebtedness, may but need not follow provisions of this Chapter, see Section 13‑21‑30.

Midlands Authority, in connection with issuance of advanced refunding notes, bonds, or other evidences of indebtedness, may but need not follow provisions of this Chapter, see Section 13‑19‑30.

Municipal paving bonds, see Section 5‑21‑610 et seq.

Provisions relating to the powers of the board of trustees of the South Carolina Research Authority, see Section 13‑17‑70.

Redemption privilege regarding municipal general obligation bonds, see Section 5‑21‑350.

Trident Economic Development Finance Authority may, but is not required to, follow provisions of this Chapter if it issues revenue bonds, see Section 13‑12‑30.

NOTES OF DECISIONS

In general 1

1. In general

Research Authority is an agency of the state, considering that the Authority is a corporation owned completely by the people of the state, and that the Authority is empowered to issue revenue bonds under the Advanced Refunding Act, which is applicable to public agencies. Code 1976, Sections 11‑21‑10 et seq., 11‑21‑10(5). Nichols v. South Carolina Research Authority (S.C. 1986) 290 S.C. 415, 351 S.E.2d 155. States 84

**SECTION 11‑21‑20.** Issuance of advanced refunding bonds authorized; purpose; amount.

 Any public agency may utilize the provisions of either Article 5, Chapter 15, Title 11 (the Refunding Act) or Chapter 17, Title 6 (the Revenue Bond Refinancing Act) as herein amplified, to effect the refunding of any of its outstanding bonds and the provisions of this chapter shall extend to and are hereby made available to the governing boards of all public agencies in order to refund outstanding bonds. If and when the authorizations of this chapter are utilized, the provisions of this chapter shall control in the event of conflict between this chapter and any provision in either the Refunding Act or the Revenue Bond Refinancing Act. To the extent that they may be required in order to effect an advanced refunding, refunding bonds may be issued in such amounts as shall be required to provide for the payment of (a) all outstanding bonds maturing subsequent to the date as of which refunding bonds shall be issued and (b) such further amount as shall be required to effect the payment of any redemption premium of the outstanding bonds, the amount required to fund interest on the outstanding bonds to the date fixed for redemption in the plan of advancing refunding, if the funding of interest on the outstanding bonds shall prove necessary, and any deposits required in connection with the refunding bonds and expenses incurred by the governing board in connection with the issuance of refunding bonds. Provided, if any governing board shall find it necessary to effect improvements at the same time as it shall undertake an advanced refunding with refunding bonds issued pursuant to Chapter 17, Title 6 and this chapter, refunding bonds in addition to those otherwise required may be issued to such extent as may be necessary to meet the costs of such improvements.

HISTORY: 1962 Code Section 1‑632; 1965 (54) 551; 1981 Act No. 50, Section 2.

CROSS REFERENCES

Pelham‑Batesville Fire District in Greenville and Spartanburg Counties, bonding, capital improvements, see Section 4‑23‑280.

Director of Division of Public Railways may use this section in issuance of refunding bonds, see Section 13‑1‑1430.

Provisions relating to the powers of the board of trustees of the South Carolina Research Authority, see Section 13‑17‑70.

Library References

Counties 175.

Municipal Corporations 913.

States 148.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 349, 351.

C.J.S. Municipal Corporations Sections 1647 to 1648, 1651, 1653.

C.J.S. States Sections 437, 443 to 445.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bonds Section 75, Chapter 21 Advanced Refunding of Bonds of Public Agencies.

**SECTION 11‑21‑30.** Time of issuance.

 Advanced refunding pursuant to this chapter may be effected at any time under the conditions prescribed by this chapter.

HISTORY: 1962 Code Section 1‑633; 1965 (54) 551; 1981 Act No. 50, Section 2.

CROSS REFERENCES

Director of Division of Public Railways may use this section in issuance of refunding bonds, see Section 13‑1‑1430.

Provisions relating to the powers of the board of trustees of the South Carolina Research Authority, see Section 13‑17‑70.

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States 148.

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C.J.S. Counties Sections 349, 351.

C.J.S. Municipal Corporations Sections 1647 to 1648, 1651, 1653.

C.J.S. States Sections 437, 443 to 445.

**SECTION 11‑21‑40.** Findings to be made by governing board.

 Prior to any advanced refunding the governing board of any public agency which shall have outstanding bonds shall find either:

 (a) That a savings can be effected through advanced refunding;

 (b) That existing covenants and agreements in the proceedings authorizing the outstanding bonds payable from revenue‑producing projects hamper or impede the ability of the public agency to borrow monies which are then or thereafter required to provide for improvements, enlargements and extensions to such revenue‑producing projects.

 In the event any governing board shall undertake to effect an advanced refunding pursuant to Chapter 17, Title 6 and this chapter, and at the same time to borrow for the purpose of constructing improvements to its revenue‑producing project, it shall likewise have found that such improvements are then necessary and can be accomplished with the monies provided by the proceeds of the refunding bonds issued pursuant to Chapter 17, Title 6 and this chapter for the purpose of constructing such improvements.

HISTORY: 1962 Code Section 1‑634; 1965 (54) 551; 1967 (55) 489; 1981 Act No. 50, Section 2.

CROSS REFERENCES

Director of Division of Public Railways may use this section in issuance of refunding bonds, see Section 13‑1‑1430.

Provisions relating to the powers of the board of trustees of the South Carolina Research Authority, see Section 13‑17‑70.

Library References

Counties 175.

Municipal Corporations 913.

States 148.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 349, 351.

C.J.S. Municipal Corporations Sections 1647 to 1648, 1651, 1653.

C.J.S. States Sections 437, 443 to 445.

**SECTION 11‑21‑50.** Optional redemption; agreement as to use of proceeds; notice.

 The governing board shall not be required to effect the payment or redemption of the outstanding bonds through the means of any optional redemption provision and it may provide in the agreement required by Section 11‑21‑60 that the proceeds of the refunding bonds be used for the payment of the outstanding bonds as and when the same mature. Whenever refunding bonds are issued pursuant to this chapter, the public agency issuing such bonds shall give published notice in a financial paper published in the City of New York of the purpose for which the proceeds of the refunding bonds will be used.

HISTORY: 1962 Code Section 1‑635; 1965 (54) 551; 1981 Act No. 50, Section 2.

CROSS REFERENCES

Director of Division of Public Railways may use this section in issuance of refunding bonds, see Section 13‑1‑1430.

Provisions relating to the powers of the board of trustees of the South Carolina Research Authority, see Section 13‑17‑70.

Library References

Counties 182.

Municipal Corporations 921(3).

States 153.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 365 to 366.

C.J.S. Municipal Corporations Sections 1679 to 1683.

C.J.S. States Sections 451 to 453.

**SECTION 11‑21‑60.** Disposition of proceeds of refunding bonds.

 On the delivery of any refunding bonds issued pursuant to this chapter, the proceeds of the bonds, less the proceeds of that portion of any refunding bonds issued pursuant to Chapter 17, Title 6 for improvements, must be deposited with a corporate trustee and held by it under a written trust agreement and in a special trust account, except that the accrued interest, if any, must be used to discharge in part the first interest to become due on the refunding bonds. It is the duty of the corporate trustee to keep the proceeds invested and reinvested to the extent practical in obligations of the United States or any agency of the United States and to apply the principal and interest of the trust so established in the manner prescribed in the trust agreement.

HISTORY: 1962 Code Section 1‑636; 1965 (54) 551; 1981 Act No. 50, Section 2; 1991 Act No. 65, Section 10; 2004 Act No. 184, Section 2.

CROSS REFERENCES

Director of Division of Public Railways may use this section in issuance of refunding bonds, see Section 13‑1‑1430.

Provisions relating to the powers of the board of trustees of the South Carolina Research Authority, see Section 13‑17‑70.

Library References

Counties 182.

Municipal Corporations 921(3).

States 153.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 365 to 366.

C.J.S. Municipal Corporations Sections 1679 to 1683.

C.J.S. States Sections 451 to 453.

**SECTION 11‑21‑80.** Effect of partial invalidity of chapter.

 If it be held that the application of this chapter to the refunding of general obligation bonds is invalid, such holding shall not disturb the right of governing boards to effect advanced refundings of bonds payable from the revenues of any revenue‑producing project.

HISTORY: 1962 Code Section 1‑638; 1965 (54) 551.

CROSS REFERENCES

Director of Division of Public Railways may use this section in issuance of refunding bonds, see Section 13‑1‑1430.

Provisions relating to the powers of the board of trustees of the South Carolina Research Authority, see Section 13‑17‑70.