CHAPTER 27

Effect of New Article X of Constitution on Bonded and Other Types of Indebtedness

**SECTION 11‑27‑10.** Definitions.

Unless the context clearly requires a different result, for the purposes of this chapter, the following terms have the meanings given thereto:

“Debt limitation” shall mean those debt limitations applicable under New Article X.

“Law” shall mean any act, law, statute, joint resolution or other enactment of the General Assembly, whether general or special, in force on the occasion of the effective date of New Article X, relating to the issuance of general obligation debt or any other form of debt by the State, its agencies, authorities or institutions and by the political subdivisions and school districts of the State.

“Ratification date” means the effective date of New Article X. “State board” means the governing body of the State Fiscal Accountability Authority. Any term defined in New Article X shall have the meanings therein given to such term.

HISTORY: 1977 Act No. 125 Section 2; 2014 Act No. 121 (S.22), Pt VII, Section 20.C, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 20.C, in the definition for “State board”, substituted “means the governing body of the State Fiscal Accountability Authority” for “shall mean the State Budget and Control Board”.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bonds Section 76, Chapter 27 and Effect of Article X of Constitution.

**SECTION 11‑27‑20.** Effect of New Article X on other laws.

Except as provided in the remaining sections of this chapter, every law shall remain in full force and effect following the ratification date except to the extent that any provision thereof be in conflict with any provision of New Article X, and to such extent, the provisions of New Article X shall control as though specifically written into such law in lieu of those provisions of such law in conflict with such provisions of New Article X.

HISTORY: 1977 Act No. 125 Section 3.

**SECTION 11‑27‑30.** Effect of New Article X on state bonds.

1. The power to issue state capital improvement bonds pursuant to the authorizations granted by Act 1377 of 1968 shall continue after the ratification date, except that all such state capital improvement bonds issued subsequent to the ratification date shall be secured only in the manner provided by subparagraph (c), paragraph 6, Section 13 of New Article X, and in lieu of the existing debt limitation imposed by Act 1377 of 1968, the debt limitation shall be the lesser of the dollar limitation set forth in Act 1377 of 1968 or that resulting from the provisions of subparagraph (c), paragraph 6, Section 13 of New Article X. On May 30, 1977, the existing statutory formula set forth in Section 20, Part II, Act 237 of 1975 shall no longer be applicable to state capital improvement bonds and, in addition, the time limitations imposed by Acts 758 and 759 of 1976 or by any other law are removed.

2. The power to issue state school bonds pursuant to the authorizations granted by Article 5, Chapter 71, Title 59, Code of Laws of South Carolina, 1976, (Article 5), shall continue after the ratification date, except that all such state school bonds issued subsequent to the ratification date shall be secured only in the manner provided by subparagraph (c), paragraph 6, Section 13 of New Article X, and in lieu of the existing debt limitation imposed by Article 5, the debt limitation shall be the lesser of the dollar limitation set forth in Article 5 or that resulting from the provisions of subparagraph (c), paragraph 6, Section 13 of New Article X. On May 30, 1977, the existing statutory formula set forth in Section 20, Part II of Act 237 of 1975 shall no longer be applicable to state school bonds and, in addition, any existing time limitations upon the issuance of state school bonds are hereby removed.

3. The power to issue highway bonds pursuant to the authorizations granted by Article 3, Chapter 11, Title 57 shall continue after the ratification date, except that all such state highway bonds issued subsequent to the ratification date shall be secured as provided by subparagraph (a), paragraph 6, Section 13 of New Article X and, in lieu of the existing debt limitation imposed by Article 3, Chapter 11, Title 57, the debt limitation shall be the lesser of the dollar limitation set forth in Article 3, Chapter 11, Title 57 or that resulting from the provisions of subparagraph (a), paragraph 6, Section 13 of New Article X.

4. The power to issue state institution bonds pursuant to the authorizations of Chapter 107, Title 59, Code of Laws of South Carolina, 1976, (Chapter 107), shall continue after the ratification date, except that all such state institutions bonds issued subsequent to the ratification date shall be secured only in the manner provided by subparagraph (b), paragraph 6, Section 13 of New Article X and, in lieu of the existing debt limitation imposed by Chapter 107, the debt limitation shall be the lesser of the dollar limitation set forth in Chapter 107 or that resulting from the provisions of subparagraph (b), paragraph 6, Section 13 of New Article X.

5. The state board is declared to be the agency empowered to incur on behalf of the State general obligation indebtedness in anticipation of state tax collections pursuant to paragraph 7, Section 13 of New Article X and the state board shall be fully empowered to issue tax anticipation notes in accordance with the conditions and limitations of paragraph 7, Section 13 of New Article X and upon such other terms and conditions as it shall prescribe by resolution duly adopted.

6. The provisions of Chapter 17, Title 11 relating to the issuance of bond anticipation notes shall continue in force and effect after the ratification date with respect to the State and any of its agencies, authorities or institutions, and the state board is declared to be the agency empowered to make provision for the issuance of all bond anticipation notes of the State issued in anticipation of the issuance of general obligation debt by the State in accordance with the provisions of Chapter 17, Title 11 and the limitations imposed by paragraph 8, Section 13 of New Article X.

7. All laws in force on May 30, 1977 permitting the State or any of its agencies, authorities or institutions to incur indebtedness for any public purpose payable solely from a revenue‑producing project or from a special source, which source does not involve revenues from any tax but may include fees paid for the use of any toll bridge, toll road or tunnel, shall continue in force and effect after the ratification date but all indebtedness so incurred shall contain a statement on the face thereof specifying the sources from which payment is to be made.

8. All state general obligation bonds, revenue bonds, tax anticipation notes, and bond anticipation notes shall be issued, executed, authenticated, registered, and delivered in such form or manner as the state board or other authority may determine in the resolution authorizing the issuance of such obligations.

9. Notwithstanding any other provision of law, state general obligation bonds may be issued in accordance with the following:

(a) The bonds must be sold at public sale, after advertisement of the sale in a newspaper having general circulation in this State or in a financial publication published in the City of New York, as determined by the state board. The advertisement must appear no fewer than seven days before the occasion set for the sale and may set as a date for the sale a fixed date no fewer than seven days following publication, or in the alternative, may advise that the sale date will be at least seven days following the date of publication. If a fixed date of sale is not set forth in the advertisement as published in accordance with this item, the date selected for the receipt of bids also must be disseminated via an electronic information service at least forty‑eight hours before the time set for the receipt of bids. If a fixed date of sale is set forth in the advertisement, it may be modified by notice disseminated via an electronic information service at least forty‑eight hours before the time set for the receipt of bids on the modified date of sale. No bonds may be sold pursuant to this item on a date which is more than sixty days after the date of the most recent publication of advertisement relating to the sale. Bids for the purchase of bonds may be received in the form determined by the state board.

(b) The bonds may be disposed of at private sale if there are no bids received or if all bids are rejected.

HISTORY: 1977 Act No. 125 Section 4; 1991 Act No. 65, Section 9; 2001 Act No. 27, Section 1.

Library References

States 148.

Westlaw Topic No. 360.

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

**SECTION 11‑27‑40.** Effect of New Article X on bonds of political subdivisions.

The governing body of each of the political subdivisions of the State shall be empowered to incur general obligation debt for their respective political subdivisions as permitted by Section 14, New Article X and in accordance with its provisions and limitations. All laws shall continue in force and effect after the ratification date, but each of such laws is amended as follows:

1. If no election be prescribed in such law and an election is required by New Article X, then in every such instance, a majority vote of the qualified electors of the political subdivision voting in the referendum herein authorized is declared a condition precedent to the issuance of bonds pursuant to such law. The governing body of each of the political subdivisions shall be empowered to order any such referendum as is required by New Article X or any other provision of the Constitution, to prescribe the notice thereof and to conduct or cause such referendum to be conducted in the manner prescribed by Title 7, Code of Laws of South Carolina, 1976.

2. If an election be prescribed by the provisions of such law, but is not required by the provisions of New Article X, then in every such instance, no election need be held (notwithstanding the requirement therefor in such law) and the remaining provisions of such law shall constitute a full and complete authorization to issue bond in accordance with such remaining provisions.

3. If a statutory debt limitation be prescribed by any such law, then in lieu thereof, the debt limitation shall be that resulting from the provisions of Section 14, New Article X.

4. Notwithstanding any contrary provision in any law, any issue of general obligation bonds maturing not later than ten years from their date of issuance and in the amount of not exceeding one million five hundred thousand dollars may be sold at private sale and without advertisement, if not less than seven days prior to their delivery, notice of intention to sell such bonds at private sale shall be given by publication in a newspaper of general circulation in such political subdivision. Such notice shall set forth the purchaser, the purchase price, interest rates, and maturity schedule of such bonds.

5. As permitted by paragraph 8, Section 14 of New Article X, all political subdivisions are authorized and empowered to incur general obligation debt in anticipation of the collection of ad valorem taxes or licenses (tax anticipation notes). Tax anticipation notes shall be expressed to mature not later than ninety days from the date on which such taxes or license fees may be paid without penalty. In the case of counties and incorporated municipalities, tax anticipation notes shall be issued pursuant to an ordinance adopted in the manner provided by law. In the case of any special purpose district, tax anticipation notes may be authorized by a resolution of its governing body but such action shall be authorized, approved, or ratified by an ordinance of the governing body or governing bodies (as the case may be) of the county or counties wherein such special purpose district is situate. The provisions of this item shall take effect upon May 30, 1977.

6. The provisions of Chapter 17, Title 11, relating to the issuance of bond anticipation notes, shall continue in force and effect after the ratification with respect to all political subdivisions and the governing body of each political subdivision is hereby authorized and empowered to issue bond anticipation notes pursuant to and in accordance with the provisions of that chapter and the limitations imposed by paragraph 9, Section 14 of New Article X.

7. All laws now in force permitting any political subdivisions to incur indebtedness (and to issue bonds or other evidences of debt) which shall be payable solely from a revenue‑producing project or from a special source, which source does not involve revenues from any tax or license, shall continue in force and effect after the ratification date. Evidences of such indebtedness shall contain a statement on the face thereof specifying the sources from which payment is to be made and shall state that the full faith, credit, and taxing powers of the issuer are not pledged therefor.

Any law containing any provisions inconsistent herewith (including Chapter 19, Title 11, as amended) is herewith amended by the removal therefrom of such inconsistent provisions.

8. The initiative and referendum provisions contained in Article 13, Chapter 9, Title 4 and Chapter 17, Title 5 of the 1976 Code shall not be applicable to any other ordinance authorizing the issuance of general obligation bonds unless a notice, signed by not less than five qualified electors, of the intention to seek a referendum, be filed both in the office of the clerk of court of the county wherein such political subdivision is situate and with the clerk or other recording officer of the political subdivision. Such notices of intention to seek a referendum shall be so filed within twenty days following the publication by the governing body of the political subdivision of notice in a newspaper of general circulation in such political subdivision of the adoption of such ordinance.

9. Notwithstanding any other provision of law, a political subdivision may issue general obligation bonds in accordance with one or more of the following provisions:

(a) The principal amount of the bonds maturing in a given year shall be in an amount as prescribed by the governing body of the political subdivision. The first maturing bonds of an issue shall mature within five years from the date on which they are issued; and no bond shall mature later than thirty years from the date on which it is issued.

(b) The bonds shall be sold at public sale, after advertisement of the sale in a newspaper having general circulation in the State or in a financial publication published in the City of New York. The advertisement must appear not less than seven days prior to the date set for the sale. The advertisement may set as a sale date a fixed date not less than seven days following publication, or the advertisement may advise that the sale date will be at least seven days following the date of publication. If a fixed date of sale is not set forth in the notice of sale published in accordance with this subitem, the date selected for the receipt of bids must be disseminated via an electronic information service at least forty‑eight hours prior to the time set for the receipt of bids. If a fixed date of sale is set forth in the notice of sale, it may be modified by notice disseminated via an electronic information service at least forty‑eight hours prior to the time set for the receipt of bids on the modified date of sale. No bonds may be sold pursuant to this subitem on a date that is more than sixty days after the date of the most recent publication of the notice of sale. Bids for the purchase of bonds may be received in such form as determined by the governing body of the issuer.

(c) The bonds may be disposed of at private sale if there are no bids received or if all bids are rejected. The provisions of this section shall not prevent a sale at private sale to the United States of America or any agency thereof.

(d) Bonds issued pursuant to this section may be issued with a provision for their redemption prior to their maturity at par and accrued interest, plus such redemption premium as may be prescribed by the governing body of the issuer, but no bond shall be redeemable before maturity unless it contains a statement to that effect. In the proceedings authorizing the issuance of the bonds, provisions shall be made specifying the manner of call and the notice that must be given.

HISTORY: 1977 Act No. 125 Section 5; 1999 Act No. 113, Section 22.

CROSS REFERENCES

Refunding bond issuance, see Section 11‑15‑440.

Library References

Municipal Corporations 906.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations Sections 1645 to 1646, 1702.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

A county may incur indebtedness in anticipation of a federal grant as provided by Section 14(10), Article X of the South Carolina Constitution and Chapter 19 of Title 11. 1989 S.C. Op.Atty.Gen. 293, 1989 S.C. Op.Atty.Gen. No. 89‑109, (Oct. 6, 1980) 1989 WL 406199.

NOTES OF DECISIONS

In general 1

1. In general

New constitutional provision governing bonded indebtedness of political subdivisions as implemented by statute repealed, by implication if not expressly, previous constitutional requirement of a petition signed by a majority of freeholders of a municipality as a condition precedent to municipality authorizing a special election for the purpose of obtaining authority to issue general obligation bonds. Const. art. 10, Section 14; art. 17, Section 7B; Code 1976, Sections 5‑21‑250, 11‑27‑40. Hanna v. City of Florence (S.C. 1979) 273 S.C. 670, 258 S.E.2d 500.

**SECTION 11‑27‑50.** Effect of New Article X on bonds of school districts.

The board of trustees or other governing body (the governing body) of each of the school districts of the State shall be empowered to incur general obligation debt for their respective school districts as permitted by Section 15 of New Article X and in accordance with its provisions and limitations. All laws relating to such matters shall continue in force and effect after the ratification date, but all such laws are amended as follows:

1. If no election be prescribed in such law and an election is required by New Article X, then in every such instance, a majority vote of the qualified electors of the school district voting in the referendum herein authorized is declared a condition precedent to the issuance of bonds pursuant to such law. The governing body of each of the school districts shall be empowered to order any such referendum as is required by New Article X or any other provisions of the Constitution, to prescribe the notice thereof and to conduct or cause to be conducted such referendum in the manner prescribed by Article 1, Chapter 71, Title 59, Code of Laws of South Carolina, 1976.

2. If an election be prescribed by the provisions of such law, but is not required by the provisions of New Article X, then in every such instance, no election need be held and the remaining provisions of such law shall constitute a full and complete authorization to issue bonds in accordance with such remaining provisions.

3. If a statutory debt limitation be prescribed by any such law, then in lieu thereof, the debt limitation shall be that resulting from the provisions of Section 15 of New Article X.

4. As permitted by paragraph 7, Section 15 of New Article X, all school districts are authorized and empowered to incur general obligation debt in anticipation of the collection of ad valorem taxes (tax anticipation notes). Tax anticipation notes shall be expressed to mature not later than ninety days from the date as of which such taxes may be paid without penalty. Tax anticipation notes shall be issued pursuant to a resolution adopted by the governing body.

5. The provisions of Chapter 17, Title 11, relating to the issuance of bond anticipation notes, shall continue in force and effect after the ratification date with respect to all school districts, and the governing body of each school district is hereby authorized and empowered to issue bond anticipation notes pursuant to and in accordance with the provisions of Chapter 17, Title 11 and the limitations imposed by paragraph 8, Section 15 of New Article X.

6. Notwithstanding provision of law to the contrary, an issue of general obligation bonds maturing not later than ten years from their date of issuance and in the amount of not exceeding one million five hundred thousand dollars may be sold at private sale and without advertisement, if not less than seven days prior to their delivery, notice of intention to sell such bonds at private sale is given by publication in a newspaper of general circulation in the school district. Such notice shall set forth the purchaser, the purchase price, interest rates, and maturity schedule of such bonds.

7. Notwithstanding any other provision of law, a school district may issue general obligation bonds in accordance with one or more of the following provisions:

(a) The principal amount of the bonds maturing in a given year shall be in an amount as prescribed by the governing body. The first maturing bonds of an issue shall mature within five years from the date on which they are issued; and no bond shall mature later than thirty years from the date on which it is issued.

(b) The bonds shall be sold at public sale, after advertisement of the sale in a newspaper having general circulation in the State or in a financial publication published in the City of New York or, in the discretion of the authorities, in both publications. The advertisement must appear not less than seven days prior to the date set as a sale date for the sale. The advertisement may set a fixed date not less than seven days following publication, or the advertisement may advise that the sale date will be at least seven days following the date of publication. If a fixed date of sale is not set forth in the notice of sale published in accordance with this subitem, the date selected for the receipt of bids must be disseminated via an electronic information service at least forty‑eight hours prior to the time set for the receipt of bids. If a fixed date of sale is set forth in this notice of sale, it may be modified by notice disseminated via an electronic information service at least forty‑eight hours prior to the time set for the receipt of bids on the modified date of sale. No bonds may be sold pursuant to this section on a date that is more than sixty days after the date of the most recent publication of the notice of sale. Bids for the purchase of bonds may be received in such form as determined by the governing body of the issuer.

(c) The bonds may be disposed of at private sale if there are no bids received or if all bids are rejected. The provisions of this section shall not prevent a sale at private sale to the United States of America or any agency thereof.

(d) Any bonds issued pursuant to this section may be issued with a provision for their redemption prior to their maturity at par and accrued interest, plus such redemption premium as may be prescribed by the governing body of the issuer, but no bond shall be redeemable before maturity unless it contains a statement to that effect. In the proceedings authorizing the issuance of the bonds, provisions shall be made specifying the manner of call and the notice that must be given.

8. Notwithstanding any other provision of law, bonds issued as Qualified School Construction Bonds in amounts not exceeding one and a half million dollars pursuant to the provisions of 26 U.S.C. Section 54F may be sold at public or private sale at the price determined by the governing body of the issuer.

HISTORY: 1977 Act No. 125 Section 6; 1999 Act No. 113, Section 22; 2009 Act No. 68, Section 5.

Editor’s Note

2009 Act No. 68 Section 6 provides as follows:

“The powers and authorizations conferred by this act shall be in addition to all other powers and authorizations previously conferred upon the State Superintendent of Education, the State Department of Education, and the school districts of the State. The provisions of this act are remedial in nature and shall be liberally construed in order to give full force and effect to its provisions.”

CROSS REFERENCES

Refunding bond issuance, see Section 11‑15‑440.

Library References

Schools 97(1).

Westlaw Topic No. 345.

C.J.S. Schools and Schools Districts Sections 756 to 758, 761 to 762, 764.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

Discussion of whether Section 59‑71‑155 applies to a Tax Anticipation Note. S.C. Op.Atty.Gen. (August 8, 2014) 2014 WL 4165337.

**SECTION 11‑27‑60.** Prior bond issues unaffected.

All contracts made by the State, its agencies, authorities or institutions, and by the political subdivisions and school districts of the State prior to the ratification date obligating any of such entities to issue bonds or other evidences of indebtedness shall be effective notwithstanding that the ratification date shall intervene between the date of any such contract and the actual delivery of such bonds or other evidences of debt and any such bonds or evidences of debt may be delivered in accordance with the laws pursuant to which they have been contracted to be issued and without regard to the provisions of New Article X. In so providing, the General Assembly intends to protect and preserve the obligations of such contracts as written. The enactment of this section is not an essential inducement to the enactment of the remaining provisions of this chapter and if this section or any action taken pursuant to it be held to contravene any provisions of New Article X, then such holding shall not affect the remaining provisions of this chapter.

HISTORY: 1977 Act No. 125 Section 7.

**SECTION 11‑27‑70.** “Sources of revenue,” tuition fees, and general revenues to be established by State Auditor.

The amount of the “sources of revenue” referred to in subparagraph (a), paragraph (6), Section 13 of New Article X, the amount of the tuition fees referred to in subparagraph (6), paragraph (6), Section 13 of New Article X, and the amount of the general revenues of the State referred to in subparagraph (c), paragraph (6), Section 13 of New Article X shall be established by an appropriate certificate of the State Auditor.

HISTORY: 1977 Act No. 125 Section 8.

**SECTION 11‑27‑80.** Outstanding bonds, notes, or other evidences of indebtedness not impaired.

Every bond, note or other evidence of indebtedness outstanding on the ratification date which has been issued by the State, or any agency, authority or institution of the State, or by any political subdivision or school district of the State is hereby declared to be a legal, valid and binding obligation of the issuer in accordance with the tenor and terms of such instrument.

HISTORY: 1977 Act No. 125 Section 9.

Library References

Municipal Corporations 935.

States 159.

Westlaw Topic Nos. 268, 360.

C.J.S. Municipal Corporations Section 1696.

**SECTION 11‑27‑90.** Form, sale, and maturity of bonds or other obligations.

Notwithstanding any contrary provision of any law relating to the form, sale and maturity of bonds or other obligations of any county, city, town, township, public service district, special purpose district, public housing authority, school district or any other agency or political subdivision of the State:

(a) Such bonds may be in fully registered form and the interest thereon may be payable at such intervals as the governing body of the issuer shall prescribe;

(b) Such bonds may be sold at private sale to the United States of America or any agency or department thereof; and

(c) If such bonds are sold to the United States of America or any agency or department thereof, they may be expressed to mature not later than fifty years from the date as of which they shall be issued or such shorter period as may be required by New Article X of the Constitution of South Carolina, and the amount, date and frequency of the maturities of such bonds or other obligations shall be as prescribed by the governing body of the issuer.

HISTORY: 1977 Act No. 125 Section 10; 1979 Act No. 91 Section 1.

Library References

Counties 183(2), 185.

Municipal Corporations 925, 936.

States 154, 156.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties Sections 357 to 358, 360.

C.J.S. Municipal Corporations Sections 1684 to 1685, 1690 to 1693, 1697 to 1698, 1700.

C.J.S. States Sections 438, 441, 446 to 447.

NOTES OF DECISIONS

In general 1

1. In general

South Carolina empowered public service district to issue general obligation bonds to obtain loans from the Rural Development Association (RDA), and thus agreed to the conditions unambiguously set forth in the Consolidated Farm and Rural Development Act, providing that the service provided by such a district shall not be curtailed or limited by inclusion in the area of a municipal corporation; South Carolina Constitution specifically provides special purpose districts with the power to incur bonded general obligation debt, the district’s enabling act expressly authorized it to issue and sell general obligation bonds to the United States, and the South Carolina General Assembly has prohibited municipalities from taking actions that impinge on districts’ ability to pay RDA loans. James Island Public Service Dist. v. City of Charleston, South Carolina (C.A.4 (S.C.) 2001) 249 F.3d 323. United States 315(2)

**SECTION 11‑27‑100.** Duties of State Treasurer.

Upon the ratification of New Article X, the State Treasurer is authorized to promulgate regulations to implement the provisions of Item (5), Section 14 and Item (4), Section 15 of that Article.

HISTORY: 1977 Act No. 125 Section 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bonds Section 76, Chapter 27 and Effect of Article X of Constitution.

**SECTION 11‑27‑110.** Lease purchase or financing agreement subject to constitutional debt limit.

(A) As used in this section:

(1) “asset” means any real property and permanent improvements thereon including structures, buildings, and fixtures;

(2) “bond act” means:

(a) the county bond act, as contained in Chapter 15 of Title 4;

(b) the municipal bond act, as contained in Article 5, Chapter 21 of Title 5;

(c) the school bond act as contained in Article 1, Chapter 71 of Title 59;

(d) the provisions contained in Articles 3 and 5, Chapter 11, Title 6 pertaining to special purpose districts;

(e) any provision of law by which the State may issue obligations secured in whole or in part by the full faith, credit, and taxing power of the State; and

(f) any other law, general or special, providing for the issuance of general obligation bonds by the State or any of its political subdivisions;

(3) “constitutional debt limit” for the State or any political subdivision of the State which has the power to incur general obligation bonded indebtedness, means the limitation of the principal amount of general obligation bonded indebtedness specified in Article X of the Constitution;

(4) “enterprise charge” means a local accommodations tax or a local hospitality tax, or both of them, imposed by one or more governmental entities, the proceeds from which may be used only for limited purposes which either (i) has been imposed within the two fiscal years prior to the date of an enterprise financing agreement, or (ii) to the extent a governmental entity pledges such a charge in connection with an enterprise financing agreement, the governmental entity covenants and agrees not to increase disbursements from its general fund to pay for costs which could have been paid from the charge for a period of two fiscal years after the date of the acquisition or completion of the asset provided by the enterprise financing agreement;

(5) “enterprise financing agreement” means a financing agreement entered into to provide an asset for a governmental enterprise (i) the revenues from which are expected to be sufficient to pay the amounts due under the financing agreement, or (ii) for which an enterprise charge has been imposed in an amount expected to be sufficient to pay the amounts due under the financing agreement, or (iii) a combination of revenues described under (i) and (ii) are expected to produce an amount sufficient to pay the amounts due under the financing agreement;

(6) “financing agreement” means, with respect to any governmental entity, any contract entered into after December 31, 1995, under the terms of which a governmental entity acquires the use of an asset which provides:

(a) for payments to be made in more than one fiscal year, whether by the stated term of the contract or under any renewal provisions, optional or otherwise;

(b) that the payments thereunder are divided into principal and interest components or which contain any reference to any portion of any payment under the agreement being treated as interest;

(c) that title to the asset will be in the name of or be transferred to the governmental entity if all payments scheduled or provided for in the financing agreement are made; and

(d) for any contract entered into after December 31, 2006, pursuant to which installment payments of the purchase price are to be paid by a school district or other political subdivision to a nonprofit corporation, political subdivision, or any other entity in order to finance the acquisition, construction, renovation, or repair of school buildings or other school facilities. This item shall apply to any contracts entered into after August 31, 2006, pursuant to which installment payments of the purchase price are to be paid by a school district or other political subdivision to a non‑profit corporation, political subdivision, or any other entity, from any source other than the issuance of general obligation indebtedness by the school district, in order to finance the acquisition, construction, renovation, or repair of school buildings or other school facilities.

However, the term excludes any refinancing agreement and contracts entered into in connection with issues of general obligation bonds or revenue bonds issued pursuant to authorization provided in Article X of the Constitution;

(7) “governmental enterprise” means any activity undertaken by a governmental entity which either (i) derives revenues from or because of an activity on a basis other than the exercise of the power of taxation by that governmental entity, or (ii) is entitled to be paid or supported from an enterprise charge;

(8) “governmental entity” means:

(a) the State, whose general obligation debt service payments are limited pursuant to Section 13, Article X of the Constitution; or

(b) any political subdivision of the State including a municipality, county, school district, special purpose district, or similar entity, whose general obligation debt is limited as provided in Sections 14 and 15, in Article X of the Constitution;

(9) “limited bonded indebtedness” means the amount of bonded indebtedness that may be incurred by a governmental entity without a referendum or, where the context requires, the amount of such indebtedness then outstanding;

(10) “principal balance” means the total amount, excluding any amount characterized as interest, payable as of any time of consideration under any financing agreement, including any renewals or extensions of the agreement; and

(11) “refinancing agreement” means an agreement or agreements that would be a financing agreement except that (i) it refinances an asset acquired under the terms of a contract or contracts that is not a financing agreement solely by virtue of being dated prior to January 1, 1996, September 1, 2006, or January 1, 2007, and (ii) the sum of all payments to be made under such agreement is less than the sum of the payments under the contract or contracts it refinances.

(B) A governmental entity described in subsection (A) (8)(b) of this section may not enter into a financing agreement, other than an enterprise financing agreement, a loan agreement for energy conservation measures as provided for in Section 48‑52‑650, a lease purchase agreement for energy efficiency products as provided for in Section 48‑52‑660, or a guaranteed energy savings contract as provided for in Section 48‑52‑670, where no such lease agreement or contract shall constitute in any manner an agreement, consent, authority, or otherwise, to provide retail sales of energy by an energy or power provider or creates the authority to sell or provide retail energy or power, if the principal balance of the financing agreement, when added to the principal amount of limited bonded indebtedness outstanding on the date of execution of the financing agreement exceeds eight percent of the assessed value of taxable property in the jurisdiction of the governmental entity unless the financing agreement is approved by a majority of the electors voting on the agreement in a referendum duly called for this purpose by the governmental entity.

(C) If a governmental entity described in subsection (A)(8)(b) of this section has outstanding any financing agreement, other than an enterprise financing agreement, a loan agreement for energy conservation measures as provided for in Section 48‑52‑650, or a lease purchase agreement for energy efficiency products as provided in Section 48‑52‑660, or a guaranteed energy savings contract as provided in Section 48‑52‑670, where no such lease agreement or contract shall constitute in any manner an agreement, consent, authority, or otherwise, to provide retail sales of energy by an energy or power provider or creates the authority to sell or provide retail energy or power, on the date of issuance of any limited bonded indebtedness pursuant to any bond act, the amount of this limited bonded indebtedness plus the amount of all other limited bonded indebtedness of the governmental entity, when added to the principal balance under any financing agreement or agreements of the governmental entity must not exceed the amount of the governmental entity’s constitutional debt limit unless this bonded indebtedness is approved by a majority of the electors voting on the bonded indebtedness in a referendum duly called for this purpose by the governmental entity. This requirement applies notwithstanding any other provision of any bond act and is in addition to the terms and conditions specified in any bond act.

(D) A payment made by the State pursuant to a financing agreement is deemed general obligation debt service subject to the debt service limitation provided in Section 13, Article X of the Constitution.

HISTORY: 1995 Act No. 55, Section 1; 1997 Act No. 106, Section 6; 1999 Act No. 89, Section 1; 2006 Act No. 388, Part V, Section 4.

Library References

Counties 173.1.

Municipal Corporations 914.

Schools 97(3).

States 149.

Westlaw Topic Nos. 104, 268, 345, 360.

C.J.S. Counties Sections 349, 352.

C.J.S. Municipal Corporations Sections 1654 to 1657.

C.J.S. Schools and Schools Districts Sections 756 to 760, 762.

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

Attorney General’s Opinions

Proposed agreement between County School District and a private business, to construct and improve numerous facilities for use by the School District is not covered by the literal language of the “anti‑lease purchase law”. S.C. Op.Atty.Gen. (Nov. 13, 2000) 2000 WL 1803581.

NOTES OF DECISIONS

Finance agreements 1

Justiciability 2

1. Finance agreements

Resolution for renovating existing public school facilities and acquiring new public school facilities and resolution’s attendant agreements did not constitute a “financing agreement” which implicated school district’s constitutional and statutory debt limits; resolution and its attendant agreements specifically provided that school district was not obligated to make any payments to nonprofit corporation, which would fund renovation and construction of schools, unless the school district appropriated funds for that purpose. Colleton County Taxpayers Ass’n v. School Dist. of Colleton County (S.C. 2006) 371 S.C. 224, 638 S.E.2d 685. Education 238

2. Justiciability

Claim of county citizens and taxpayer organizations, that resolution for renovating existing public school facilities and acquiring new public school facilities and resolution’s attendant agreements improperly created contracts without complying with competitive bidding requirement in school district’s procurement code, was not ripe for judicial review; no public funds had been appropriated as installment payments, and claim assumed district would award renovation and construction contracts in a manner other than by competitive sealed bidding. Colleton County Taxpayers Ass’n v. School Dist. of Colleton County (S.C. 2006) 371 S.C. 224, 638 S.E.2d 685. Education 157; Public Contracts 161