CHAPTER 147

Higher Education Revenue Bond Act

**SECTION 59‑147‑10.** Short title.

 This chapter may be cited as the “Higher Education Revenue Bond Act”.

HISTORY: 1996 Act No. 302, Section 1.

**SECTION 59‑147‑20.** Definitions.

 As used in this chapter:

 (1) “board” means the board of trustees of the university;

 (2) “equipment” means items with a useful life of at least fifteen years;

 (3) “facilities” means the real and personal property and equipment specified in Section 59‑147‑20(2) of this chapter whether or not the acquisition or construction thereof is financed from the proceeds of bonds issued pursuant to this chapter;

 (4) “revenues” means the revenues derived or to be derived from the operation, sale, lease, or other disposition of the facilities; and

 (5) “university” means all research and four‑year public institutions of higher education.

HISTORY: 1996 Act No. 302, Section 1.

**SECTION 59‑147‑30.** Issuance of revenue bonds; purpose.

 Subject to the approval of the State Fiscal Accountability Authority or Department of Administration, as appropriate, by resolution duly adopted, the university may issue revenue bonds of the university for the purpose of financing or refinancing in whole or in part the cost of acquisition, construction, reconstruction, renovation and improvement of land, buildings, and other improvements to real property and equipment for the purpose of providing facilities serving the needs of the university including, but not limited to:

 (1) dormitories, apartment buildings, dwelling houses, bookstores and other university operated stores, laundries, dining halls, cafeterias, parking facilities, student recreational, entertainment and fitness related facilities, inns, conference and other nondegree educational facilities and similar auxiliary facilities of the university and any other facilities which are auxiliary to any of the foregoing excluding, however, athletic department projects which primarily serve varsity athletic teams of the university; and

 (2) those academic facilities as may be authorized by joint resolution of the General Assembly.

HISTORY: 1996 Act No. 302, Section 1; 2009 Act No. 2, Section 1, eff upon approval (became law without the Governor’s signature on April 9, 2009).

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 2009 amendment designated item (1) from existing text and added item (2) relating to academic facilities as may be authorized by the General Assembly.

CROSS REFERENCES

Midlands Technical College Enterprise Campus Authority, issuance of bonds, see Section 59‑53‑1785.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

NOTES OF DECISIONS

In general 1

1. In general

University did not exercise significant degree of autonomy, weighing in favor of conclusion that university was arm of State of South Carolina and entitled to Eleventh Amendment immunity, where, among other things, university was required to remit all tuition payments that it received to State Treasurer for deposit in State’s general fund, university had to prepare annual budget for submission to General Assembly through South Carolina Commission on Higher Education, university could issue institution bonds and auxiliary and athletic facilities revenue bonds only with consent of State Budget and Control Board and only to extent permitted by General Assembly. Martin v. Clemson University, 2009, 654 F.Supp.2d 410. Federal Courts 2388(3)

**SECTION 59‑147‑40.** Requirement of university board resolution; content of authorizing resolution.

 Revenue bonds issued under this chapter must be authorized by a resolution or resolutions of the board of the university. The resolution of the university may, in the discretion of the board, contain provisions which shall constitute a part of the contract between the university and the several holders of the bonds, as to any of the following:

 (1) the custody, security, use, expenditure, or application of the proceeds of the bonds including, without limitation, the use of bond proceeds to pay the cost of acquisition, construction, reconstruction or renovation of facilities, expenses of issuance of the bonds, interest on the bonds for such period of time as the board may determine and the cost of bond insurance or other credit enhancement and to fund reserves established with respect to the bonds;

 (2) the acquisition, renovation, construction, reconstruction, or completion of the facilities for which the bonds are issued;

 (3) the use, regulation, operation, maintenance, insurance, or disposition of the facilities the revenues from which are pledged to secure payments with respect to the bonds or restrictions on the exercise of the powers of the board to dispose of or to limit or regulate the use of such facilities;

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

 (5) the use and disposition of the revenues including, without limitation, the pledging, setting aside, or depositing with a trustee all or part of the revenues to secure the payment of the principal of, redemption premium, if any, and interest on the bonds and the payment of expenses of operation and maintenance of the facilities;

 (6) the setting aside out of bond proceeds, the revenues or other available funds of reserves or sinking funds and the source, custody, security, regulation, and disposition of them;

 (7) the determination of the revenues, subject to the provisions of Section 59‑147‑110 or other available funds to be pledged as security for payments with respect to the bonds and for the expenses of operation and maintenance of the facilities;

 (8) the fixing, establishment, collection, and enforcement of the rentals, fees, or other charges from students, faculty members, and others using or being served by, or having the right to use or be served by, the facilities the revenues from which are pledged to secure payments with respect to the bonds and the disposition and application of the revenues so charged and collected;

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

 (10) rules to ensure the use of the facilities by students or members of the faculty of the university to the maximum extent to which the building or equipment is capable of serving the students or faculty members;

 (11) the procedure, if any, by which the terms of any covenant or contract with, or duty to, the holders of the bonds may be amended or abrogated, the amount of bonds to which the holders of which must consent, and the manner in which the consent may be given or evidenced; and

 (12) any other matter or course of conduct which, by recital in the resolution or resolutions authorizing or providing for the bonds, is declared to further secure the payment of the principal of or the interest on the bonds or to further the purposes for which the facilities are being acquired, constructed, reconstructed, renovated, or equipped and the bonds being issued.

HISTORY: 1996 Act No. 302, Section 1.

CROSS REFERENCES

Effect of authorizing resolution as binding contract, see Section 59‑147‑100.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑147‑50.** Authorized revenue bonds; terms; negotiability

 Revenue bonds may be issued in one or more series at such prices, may bear such date or dates, may mature at such time or times, not exceeding forty years from their respective date, may bear interest at such fixed or variable rate or rates, may be payable in such medium of payment and at such place or places, may be in such denomination or denominations, may be in such form, either coupon or registered and either certified or uncertified, may carry such registration privileges, may be subject to such terms of redemption before maturity, with or without premium, and may contain such terms, covenants, and conditions as the resolution authorizing the issuance of the bonds may provide. Except as otherwise specified in the authorizing resolution, the bonds shall be fully negotiable within the meaning of and for all the purposes of the Uniform Commercial Code.

HISTORY: 1996 Act No. 302, Section 1.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑147‑60.** Bond exemptions.

 The bonds shall be exempt from all state, county, municipal, and school taxes and franchise and license fees.

HISTORY: 1996 Act No. 302, Section 1.

LIBRARY REFERENCES

Taxation 218.

Westlaw Key Number Search: 371k218.

C.J.S. Taxation Section 304.

**SECTION 59‑147‑70.** Signature of bonds.

 The bonds must be signed in the corporate name of the university by the manual or facsimile signature of the acting chairman of the board of the university, under the corporate seal of the university attested by the manual or facsimile signature of the acting secretary of the board. Any interest coupons attached to the bonds must be signed by the facsimile signatures of these officers. The bonds may be issued notwithstanding that any of the officials signing them or whose facsimile signatures appear on the coupons have ceased to hold office at the time of the issue or at the time of the delivery of the bonds to the purchaser.

HISTORY: 1996 Act No. 302, Section 1.

CROSS REFERENCES

Liability of signers for payment of bonds, see Section 59‑147‑110.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑147‑80.** Sale of bonds.

 The bonds must be sold at public or private sale upon such terms and conditions as the board of the university considers advisable.

HISTORY: 1996 Act No. 302, Section 1.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑147‑90.** Required filing of obligation with State Treasurer.

 The board 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.

HISTORY: 1996 Act No. 302, Section 1.

**SECTION 59‑147‑100.** Effect of authorizing resolution to issue bonds; enforceability of contract.

 All provisions of a resolution authorizing or providing for the issuance of the bonds in accordance with Section 59‑147‑40 and of the covenants and agreements constitute valid and legally binding contracts between the university and the several holders of the bonds, regardless of the time of issuance of the bonds, and are enforceable by the holder or holders by mandamus or other appropriate action, suit, or proceeding at law or in equity in any court of competent jurisdiction.

HISTORY: 1996 Act No. 302, Section 1.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑147‑110.** Sources of revenue or funds for payment of bonds; liability of signers.

 The bonds must be made payable solely from all or such portion of the revenues as the university in its discretion may designate pursuant to the authorizing resolution and also from any other available funds of the university designated by the university pursuant to the authorizing resolution except funds of the university derived from appropriations received from the General Assembly and any tuition funds pledged to the repayment of state institution bonds. The use of academic fees must be approved by the university’s board. The bonds are not general obligations of the State. Neither the members of the board nor any person signing the bonds shall be personally liable for the bonds. No bonds may be issued pursuant to this chapter unless an identified source or sources of revenue are designated for the repayment of the bonds.

HISTORY: 1996 Act No. 302, Section 1.

LIBRARY REFERENCES

Colleges and Universities 6(1).

Westlaw Key Number Search: 81k6(1).

C.J.S. Colleges and Universities Section 10.

**SECTION 59‑147‑120.** Repealed by 2009 Act No. 2, Section 2, eff April 9, 2009.

Editor’s Note

Former Section 59‑147‑120 was entitled “Limitations on issuance of revenue bonds” and was derived from 1996 Act No. 302, Section 1.