CHAPTER 3

Pollution Control Facilities

**SECTION 48‑3‑10.** Definitions.

 Whenever used in this chapter, unless a different meaning clearly appears from the context, the following terms, whether used in the singular or plural, shall be given the following meanings:

 (1) "Bonds" shall include notes, bonds, refunding notes or bonds, and other obligations authorized to be issued by this chapter.

 (2) "Governing board" shall mean the governing bodies of the several counties and incorporated municipalities of the State as now or hereafter constituted; and in the event that any pollution control facilities shall be located in more than one county, the term "governing board" shall also relate to the governing bodies of the several counties wherein such pollution control facilities shall be located.

 (3) "Pollution control facilities" shall mean any facilities which are designed for the elimination, mitigation or prevention of air or water pollution, and shall include all things which are required to collect, treat and thereafter dispose of all waste of any sort originating in or about any industrial enterprise. Pollution control facilities may include facilities designed both for water and air pollution. Pollution control facilities may be constructed as part of, and may include, facilities also designed for the recovery of chemicals or to serve some other purpose, but which also contribute to the elimination, mitigation or prevention of air or water pollution. It is not intended that the meaning of pollution control facilities shall be limited to only those facilities which can be financed under the provisions of the Internal Revenue Code by the issuance of tax exempt bonds. Pollution control facilities financed pursuant to this chapter by an incorporated municipality shall not be a part of such municipality's municipal water or sewer system.

 (4) "Industry" shall mean any person, firm or corporation operating any enterprise or facility for the manufacturing, processing, assembling, distributing or shipping of any type of product, from which operation, conditions result which would, unless eliminated, mitigated or prevented, bring about the pollution of the atmosphere or which would create water pollution problems.

 (5) "Authority" shall mean the State Fiscal Accountability Authority of South Carolina.

 (6) "Department" shall mean the Department of Health and Environmental Control of South Carolina.

 (7) "Loan agreement" shall mean any agreement including without limitation an agreement, whereby a county or incorporated municipality shall lease pollution control facilities to the industry, made by and between the governing board and the industry by which the industry agrees to pay to (and to secure if so required) the county or the incorporated municipality, as the case may be, or to any assignee thereof, the sums required to meet the payment of the principal, interest and redemption premium, if any, on any bonds.

HISTORY: 1962 Code Section 63‑195.51; 1971 (57) 134.

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.

**SECTION 48‑3‑20.** Powers of counties and incorporated municipalities generally.

 Subject to obtaining approvals from the State Fiscal Accountability Authority and the Department required by Sections 48‑3‑140 and 48‑3‑60, the several counties and incorporated municipalities of the State functioning through their respective governing boards shall be empowered: (1) to enter into agreements with any industry to construct and thereafter operate, maintain and improve pollution control facilities; (2) to enter into loan agreement with such industry prescribing the terms and conditions of the payments to be made by the industry to the county or the incorporated municipality, or its assignee, to meet the payments that shall become due on bonds; (3) to issue bonds for the purpose of defraying the cost of acquiring by construction and purchase pollution control facilities or to issue bonds for any enlargement, improvement or expansion of any then existing pollution control facility and to secure the payment of such bonds as hereafter provided; and (4) to accept any State or Federal grant that might become applicable to defray any portion of the cost of any pollution control facility.

HISTORY: 1962 Code Section 63‑195.52; 1971 (57) 134.

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.

**SECTION 48‑3‑30.** Terms, form, execution, and sale of bonds; bond anticipation notes.

 All bonds issued by a governing board under authority of this chapter shall be limited obligations of its county or incorporated municipality, as the case may be. The principal, interest and redemption premium, if any, shall be payable solely out of the moneys to be derived by such county or incorporated municipality pursuant to the loan agreement. Bonds and interest coupons issued under authority of this chapter shall never constitute an indebtedness of such county or incorporated municipality within the meaning of any State constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the county or incorporated municipality, or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond. Such bonds may be executed and delivered at any time as a single issue or from time to time as several issues, may be in such form and denominations, may be of such tenor, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding forty years from their date, may be subject to such terms of redemption, may be payable at such place or places, may bear interest at such rate or rates as the governing board and the industry shall agree upon without limitation, may be payable at such place or places and evidenced in such manner, and may contain such provisions not inconsistent herewith, all of which shall be provided in the proceedings of the governing board authorizing the bonds. Any bonds issued under the authority of this chapter may be sold at public or private sale at such price and in such manner and from time to time as may be determined by the governing board to be most advantageous, and the governing board may pay, as a part of the cost of acquiring any pollution control facility, and out of the bond proceeds, all expenses, premiums and commissions which the governing board may deem necessary or advantageous in connection with the authorization, sale and issuance thereof. All bonds issued under the authority of this chapter, except registered bonds which are registered otherwise than to bearer, and all interest coupons appurtenant thereto shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source. The proceedings authorizing the issuance of bonds may provide for the issuance, in the future, of further bonds on a parity with those initially issued, but such proceedings shall preclude the issuance of bonds or any obligations of any sort secured by any lien or claim prior to any lien or claim securing such of the bonds or bonds afterwards issued on a parity with such bonds.

 Pending the issuance of bonds, bond anticipation notes may be issued, and to the end that a vehicle be provided therefor, the provisions of Sections 11‑17‑10 to 11‑17‑110, as now or hereafter amended, shall be applicable to such bond anticipatory borrowing.

HISTORY: 1962 Code Section 63‑195.53; 1971 (57) 134.

**SECTION 48‑3‑40.** Security for bonds.

 The principal, interest and premium, if any, on any bonds shall be secured by a pledge of the revenues payable to the county or the incorporated municipality, as the case may be, pursuant to the loan agreement and may also be secured by a lien on any property given as security by the industry pursuant to the loan agreement and any bonds may be issued pursuant to and secured by a trust indenture. The proceedings under which bonds are authorized to be issued or any such trust indenture may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of the sums payable by the industry to the county or the incorporated municipality, as the case may be, pursuant to the loan agreement, the maintenance and insurance of the pollution control facilities, the creation and maintenance of special funds by the industry, and the rights and remedies available in the event of default to the bondholders or to the trustee under such trust indenture, all as the governing board shall deem advisable. Provided, however, that in making any such agreements or provisions no county or incorporated municipality shall have the power to obligate itself except with respect to any security pledged, mortgaged or otherwise made available by the industry for the securing of the bonds, and the application of the revenues from the loan agreement, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds hereunder and any trust indenture securing such bonds may provide that in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or trust indenture, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with such powers as may be necessary to enforce the obligations thereof. No breach of any such agreement shall impose any pecuniary liability upon any county or incorporated municipality, as the case may be, or any charge upon its general credit or against its taxing power.

 The trustee or trustees under any trust indenture, or any depository specified by such trust indenture, may be such persons or corporations as the governing board shall designate, notwithstanding that they may be nonresidents of South Carolina or incorporated under the laws of the United States or the laws of other states of the United States.

HISTORY: 1962 Code Section 63‑195.54; 1971 (57) 134.

**SECTION 48‑3‑50.** Letting of contracts for construction of pollution control facilities.

 Contracts for the construction of any pollution control facilities may be let on such terms and under such conditions as the governing board and the industry agree upon and may be let with or without advertisement or call for bids.

HISTORY: 1962 Code Section 63‑195.55; 1971 (57) 134.

**SECTION 48‑3‑60.** Finding of necessity by department prerequisite to undertaking financing of facility.

 Prior to undertaking the financing of any pollution control facility the governing board shall obtain from the Department a finding that the pollution control facilities are necessary and that the design thereof will result in the elimination, mitigation and prevention of air or water pollution.

HISTORY: 1962 Code Section 63‑195.56; 1971 (57) 134.

**SECTION 48‑3‑70.** Required provisions in loan agreements; provision for additional parity bonds.

 Every loan agreement shall contain a covenant obligating the industry to effect the completion of the pollution control facilities if the proceeds of the bonds prove insufficient, and each such loan agreement shall obligate the industry to make payments which shall be sufficient (a) to pay the principal of and interest on the bonds issued for such pollution control facilities, (b) to build up and maintain any reserves deemed by the governing board to be advisable in connection therewith, and (c) to pay the costs of maintaining the pollution control facilities in good repair and the cost of keeping it properly insured. The loan agreement may provide for the issuance of additional parity bonds as required in order to complete the pollution control facility.

HISTORY: 1962 Code Section 63‑195.57; 1971 (57) 134.

**SECTION 48‑3‑80.** Optional provisions in loan agreements.

 Any loan agreement may provide that the pollution control facilities will be owned by the county or incorporated municipality, as the case may be, and leased to the industry; may provide the industry with an option to purchase the pollution control facility upon such terms and conditions as the governing board and the industry shall agree upon at a price which may be a nominal amount or less than the true value at the time of purchase; or may provide that the pollution control facilities shall become the property of the industry upon the acquisition thereof. Any loan agreement may also include a guaranty agreement whereby a corporation, foreign or domestic, other than the industry guarantees in whole or in part the obligations of the industry under the loan agreement upon such terms and conditions as the governing board may deem appropriate.

HISTORY: 1962 Code Section 63‑195.58; 1971 (57) 134.

**SECTION 48‑3‑90.** Use of proceeds from sale of bonds.

 The proceeds from the sale of any bonds issued under authority of this chapter shall be applied only for the purpose for which the bonds were issued; provided, however, that any premium and accrued interest received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided, further, that if for any reason any portion of the proceeds shall not be needed for the purpose for which the bonds were issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or interest on the bonds. The cost of acquiring any pollution control facilities shall be deemed to include the following: The actual cost of the construction of any part of any pollution control facilities which may be constructed, including architect's and engineers' fees; the purchase price of any land necessary therefor; the purchase price of any part of any pollution control facilities that may be acquired by purchase; all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and the interest on the bonds for a reasonable time prior to construction, during construction, and for not exceeding one year after completion of the construction.

HISTORY: 1962 Code Section 63‑195.59; 1971 (57) 134.

**SECTION 48‑3‑100.** Refunding bonds.

 Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by the county or the incorporated municipality, as the case may be, but only with the approval of the State Fiscal Accountability Authority being first obtained, by the issuance of its refunding bonds in such amount as the governing board may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest thereon and any premiums, expenses, and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded have matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds for the payment of the bonds to be refunded, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. All refunding bonds issued under the authority of this chapter shall be payable in the same manner and under the same terms and conditions as are herein provided for the issuance of bonds. In addition to the powers herein granted for the issuance of refunding bonds any governing board may avail itself of the provision of Sections 11‑21‑10 to 11‑21‑80, (the Advanced Refunding Act).

HISTORY: 1962 Code Section 63‑195.60; 1971 (57) 134.

Code Commissioner's Note

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**SECTION 48‑3‑110.** Investment in bonds legal.

 It shall be lawful for all executors, administrators, guardians, committees and other fiduciaries to invest any moneys in their hands in bonds issued under the provisions of this chapter.

HISTORY: 1962 Code Section 63‑195.61; 1971 (57) 134.

**SECTION 48‑3‑120.** Exemptions from taxation generally.

 The bonds authorized by this chapter and the income therefrom, all trust indentures and mortgages executed as security therefor, all lease agreements made pursuant to the provisions hereof, and the revenues derived from any loan agreement thereof shall be exempt from all taxation in the State of South Carolina except for inheritance, estate or transfer taxes; and all trust indentures, mortgages and loan agreements made pursuant to the provisions of this chapter shall be exempt from South Carolina stamp and transfer taxes.

HISTORY: 1962 Code Section 63‑195.62; 1971 (57) 134; 1975 (59) 61.

**SECTION 48‑3‑130.** Exemption from taxation of pollution control facilities.

 The issuance of bonds pursuant to this chapter is not intended to provide the pollution control facilities financed thereby with any exemption from taxation and whether or not pollution control facilities financed pursuant to this chapter are exempt from taxation shall be determined in accordance with the provisions of the applicable general laws providing for tax exemption and without regard to the fact that the pollution control facilities have been financed through the issuance of bonds pursuant to this chapter.

HISTORY: 1975 (59) 61.

**SECTION 48‑3‑140.** Approval required before issuance of bonds; application for and granting of approval.

 (A) No bonds may be issued pursuant to the provisions of this chapter until the proposal of the governing board to issue the bonds receives the approval of the State Fiscal Accountability Authority. Whenever a governing board proposes to issue bonds pursuant to the provisions of this chapter, it shall file its petition with the State Fiscal Accountability Authority or the Department of Administration, as applicable, setting forth:

 (1) a brief description of the pollution control facilities proposed to be undertaken;

 (2) a statement setting forth the action taken by the Department of Health and Environmental Control in connection with the pollution control facilities;

 (3) a reasonable estimate of the cost of the pollution control facilities;

 (4) a general summary of the terms and conditions of the loan agreement; and

 (5) such other information as the State Fiscal Accountability Authority or the Department of Administration, as applicable, requires.

 (B) Upon the filing of the petition the State Fiscal Accountability Authority or the Department of Administration, as applicable, as soon as practicable, shall conduct the review as it considers advisable, and if it finds that the proposal of the governing board is intended to promote the purposes of this chapter, it is authorized to approve the proposal. Any time following the approval, the governing board may proceed with the issuance of bonds for the pollution control facilities in accordance with the proposal approved by the State Fiscal Accountability Authority or the Department of Administration, as applicable. Notice of the approval of the proposal by the State Fiscal Accountability Authority or the Department of Administration, as applicable, must be published at least once by the state board in a newspaper having general circulation in the county where the pollution control facilities are to be located.

 (C) Any interested party, within twenty days after the date of the publication of the notice, but not afterwards, may challenge the validity of the approval by action de novo in the court of common pleas in the county where the pollution control facilities are to be located.

HISTORY: 1962 Code Section 63‑195.63; 1971 (57) 134; 1994 Act No. 426, Section 3.

Code Commissioner's Note

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**SECTION 48‑3‑150.** Chapter to be construed as cumulative; execution of authorization.

 Neither this chapter nor anything contained shall be construed as a restriction or limitation upon any powers which a county or incorporated municipality might otherwise have under any laws of this State, but shall be construed as cumulative. The authorization herein granted may be carried out by any governing board acting at any regular or special meeting and without publication of the proceedings by a resolution to become effective upon its adoption at the meeting at which it is presented, notwithstanding any restriction, limitation, or other procedure, imposed upon the governing board by any other statute.

HISTORY: 1962 Code Section 63‑195.64; 1971 (57) 134.

**SECTION 48‑3‑160.** Existing powers of incorporated municipalities not affected.

 Nothing contained in this chapter shall be construed to restrict or limit the power of incorporated municipalities to construct and finance water pollution control facilities pursuant to the authorizations contained in the Revenue Bond Act for Utilities, Chapter 21, Title 6, as amended, and the Revenue Bond Refinancing Act, Chapter 17, Title 6, and the General Assembly hereby confirms that the public works and enterprises authorized by the Revenue Bond Act for Utilities and the Revenue Bond Refinancing Act include facilities designed for the elimination, mitigation or prevention of water pollution, including things which are required to collect, treat and thereafter dispose of all waste of any sort originating in or about any industrial enterprise.

HISTORY: 1962 Code Section 63‑195.65; 1971 (57) 134.