CHAPTER 12

Trident Economic Development Finance Authority

**SECTION 13‑12‑10.** Authority created; jurisdictional area; governing body; selection and terms of members; filling of vacancies.

There is created the Trident Economic Development Finance Authority. The jurisdictional area of the authority shall consist of two or more of the counties of Berkeley, Charleston, and Dorchester which counties qualified electors have each approved their participation in the authority by referendum. The governing body of the authority is a board of not more than seven members whose members shall serve for terms of four years and until their successors are elected and qualify. The governing bodies of Berkeley and Dorchester Counties shall each elect two members of the board and the governing body of Charleston County shall elect three members of the board upon approval of their county's participation by referendum. Vacancies on the board must be filled for the unexpired term in the manner of the original election. The authority is a local political subdivision as contemplated by Section 11‑35‑310(18).

HISTORY: 1992 Act No. 515, Section 1, eff Sept. 1, 1992; 1992 Act No. 518, Section 1, eff Sept. 2, 1992.

Code Commissioner's Note

Chapter 12 of Title 13, was added by two 1992 Acts; 1992 Act No. 515, Section 1, effective September 1, 1992, and 1992 Act No. 518, Section 1, effective September 2, 1992. At the direction of the Code Commissioner, Chapter 12, as added by 1992 Act No. 518, Section 1, is set out as the latest expression of the intent of the General Assembly.

Editor's Note

1992 Act No. 518 Section 3, eff September 2, 1992, provides as follows:

"The county election commissioners for Berkeley, Dorchester, and Charleston Counties are directed to place on the ballot at the time of the November, 1992, general election the following question:

"Shall there be created a Trident Economic Development Finance Authority which shall have the power, among other things, with the approval of the governing bodies of each of the participating counties in the Berkeley, Dorchester, and Charleston County area, to issue general obligation bonds for the purpose of promoting economic development in the area of the authority?

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| --- | --- | --- |
|  |  |  |
|  | Yes | [] |
|  | No | [] |

"Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square before the word 'Yes', and those voting against the question shall deposit a ballot with a check or cross mark in the square before the word 'No'.

"If this question receives a majority of the votes cast in two or more of the counties of Charleston, Berkeley, and Dorchester, as certified by the Board of State Canvassers, this act shall be implemented on the date on which written evidence of this fact is transmitted to the Secretary of State."

**SECTION 13‑12‑15.** Referendum in nonparticipating county whether to participate in authority.

Upon the implementation of the provisions of this chapter, should only two of the three counties of Berkeley, Dorchester, and Charleston have elected to participate by approval of the initial referendum, the governing body of the nonparticipating county may thereafter call a referendum in such county on the question of participation in the authority. After one referendum has been held under the provisions of this section, no more than one such referendum may thereafter be held within a two year period. The referendum question shall read as follows:

"Shall [insert name of county] join in the Trident Economic Development Finance Authority which shall have the power, among other things, with the approval of the governing bodies of Berkeley, Dorchester, and Charleston counties, to issue general obligation bonds for the purpose of promoting economic development in the area of the authority?

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  | Yes | [] |
|  | No | [] |

"Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square before the word 'Yes', and those voting against the question shall deposit a ballot with a check or cross mark in the square before the word 'No'."

If this question receives a majority of the votes cast in the county, as certified by the Board of State Canvassers, the jurisdictional area of the authority shall be expanded to include the approving county on the date on which written evidence of this fact is transmitted to the Secretary of State.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑20.** Officers of governing board; committees; meetings; quorum.

The members of the board shall elect a chairman, vice‑chairman, and secretary. The board shall establish other offices, committees, and positions under its bylaws as it considers necessary. The board shall meet on the call of the chairman and in accordance with its bylaws. A majority of the board, including at least one member elected from each participating county, constitutes a quorum for the transaction of its business.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑30.** Rights and powers of board.

The board has all the rights and powers of a body politic and body corporate of this State, including without limitation, all the rights and powers necessary or convenient to manage the business and affairs of the authority and to take action as it considers advisable, necessary, or convenient in carrying out its powers, including, but not limited to, the right and power to:

(a) have perpetual succession;

(b) sue and be sued;

(c) adopt, use, and alter a seal;

(d) make and amend bylaws for regulation of its affairs consistent with the provisions of this chapter;

(e) acquire, purchase, hold, use, improve, lease, mortgage, pledge, sell, transfer, and dispose of any property, real, personal, or mixed, or any interest in any property, or revenues of the authority as security for notes, bonds, evidences of indebtedness, or other obligations of the authority. The authority has no power to pledge the credit and the taxing power of the State. If revenue financing is used, neither the faith and credit of the State nor of any county lying within the authority nor of the authority itself shall be pledged to the payment of the principal and interest of the obligations and there shall be on the face of such obligation a statement, plainly worded, to that effect;

(f) issue general obligation bonded indebtedness pursuant to Article X, Section 14 of the South Carolina Constitution, secured in whole or in part by a pledge of the full faith, credit, and taxing power of all taxable property in the authority;

(g) receive contributions, grants, donations, and payments from any source and to invest and disperse the authority's funds;

(h) encourage, assist, promote, and cooperate in the development of the area of the authority and to appear before any agency, department, or commission of this State, of the United States, or of any other state in furtherance of the development or of any matter connected with the development or related to the development;

(i) develop and promote the development of the land for recreational, transportation, residential, commercial, and industrial purposes, both public and private, and to lease, sublease, or convey title in fee simple to the real property. The authority may retain, carry forward, and expend any proceeds derived from the sale, lease, rental, or other use of real and personal property under the authority's exclusive jurisdiction. The proceeds only may be used in the development and the promotion of the authority as provided by this chapter and for the purposes authorized by this chapter;

(j) develop policies governing the use of, management, business, and control of the authority's property or facilities;

(k) borrow money, make and issue notes, bonds, and other evidences of indebtedness, including revenue bonds as described in (e), general obligation bonds as described in (f) above, and refunding and advanced refunding notes and bonds, of the authority; to secure the payment of the obligations or any part by pledge of the full faith, credit, and tax power of the authority, mortgage, lien, pledge, or deed of trust on any of its property, contracts, franchises, or revenues, including the proceeds of any refunding and advanced refunding notes, bonds, and other evidences of indebtedness and the investments in which proceeds are invested and the earnings on and income from the investments; to invest its monies, including without limitation its revenues and proceeds of the notes, bonds, or other evidences of indebtedness as set forth in Section 6‑5‑10 as now or hereafter amended; to make agreements with the purchasers or holders of the notes, bonds, or other evidences of indebtedness or with others in connection with any notes, bonds, or other evidences of indebtedness, whether issued or to be issued, as the authority considers advisable; and to provide for the security for the notes, bonds, or other evidences of indebtedness and the rights of the holders of the notes, bonds, or other evidences of indebtedness. In the exercise of the powers granted in this section to issue advanced refunding notes, bonds, or other evidences of indebtedness the authority may, but is not required to, avail itself of or comply with any of the provisions of Chapter 21 of Title 11 in the event revenue bonds are issued or Chapter 15 of Title 11 in the event general obligation bonds are issued;

(l) loan the proceeds of notes, bonds, or other evidences of indebtedness to a person, corporation, or partnership to construct, acquire, improve, or expand the projects described in Section 13‑12‑40;

(m) make contracts, including service contracts with a person, corporation, or partnership, to provide the services provided in Section 13‑12‑40, and to execute all instruments necessary or convenient for the carrying out of business;

(n) acquire rights‑of‑way and property necessary for the accomplishment of its duties and purposes. The authority may purchase them by negotiation or may condemn them, and should it elect to exercise the right of eminent domain, condemnation actions must be in the name of the authority. The power of eminent domain pursuant to the procedures provided in Chapter 2 of Title 28 applies to all property of private persons or corporations and also to property already devoted to public use in Berkeley, Charleston, and Dorchester counties;

(o) enter into joint or cooperative agreements with the federal or state governments or any political subdivision of the State to perform any or all of its functions.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑40.** Authority may issue general obligation or revenue bonds; agreements for construction, operation, maintenance, or improvement of project; financing agreements.

The authority may issue general obligation bonds or revenue bonds for the purpose of financing or refinancing, in whole or in part, the cost of the following projects:

(a) purchasing real estate;

(b) constructing, reconstructing, or improving any capital improvements; and

(c) operating and maintenance costs.

In connection with the issuance of bonds, the authority may enter into an agreement with a company to construct, operate, maintain, and improve a project, and the authority may enter into a financing agreement with the company prescribing the terms and conditions of the payments to be made by the company to the authority, or its assignee, to meet the payments that become due on bonds.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑50.** Resolution of board authorizing bonds; provisions of resolution become part of contract between authority and bondholders.

General obligation bonds or revenue bonds issued under this chapter for any project described in Section 13‑12‑40 must be authorized by resolution of the board. The resolution may contain provisions which are a part of the contract between the authority and the several holders of the bonds as to:

(a) the custody, security, use, expenditure, or application of the proceeds of the bonds;

(b) the acquisition, construction, and completion of any project for which the bonds are issued;

(c) the use, regulation, operation, maintenance, insurance, or disposition of the project for which the bonds are issued, or any restrictions on the exercise of the powers of the board to dispose of or limit or regulate the use of the project;

(d) the payment of the principal of or interest on the bonds and the sources and methods of payment, including the ad valorem tax levy or the authority, the rank or priority of any bonds as to any lien or security, or the acceleration of the maturity of any bonds;

(e) the use and disposition of the revenues derived or to be derived from the operation of any project;

(f) the pledging, setting aside, depositing, or entrusting of the revenues from which the bonds are made payable to secure the payment of the principal of and interest on the bonds or the payment of expenses of operation and maintenance of the project;

(g) the setting aside of revenues, reserves, or sinking funds and the source, custody, security, regulation, and disposition of the revenues, reserves, or sinking funds;

(h) the determination of the definition of revenues or of the expenses of operation and maintenance of the project for which the bonds are issued;

(i) the rentals, fees, or other charges derived from the use of the project and the fixing, establishing, collection, and enforcement of the rentals, fees, or other charges, the amount or amounts of revenues to be produced by the rentals, fees, or other charges, and the disposition and application of the amounts charged or collected;

(j) 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;

(k) rules to ensure the use of the project by the public or private sector to the maximum extent to which the project is capable of serving the public or private sector;

(l) any other matter or course of conduct which, by recital in the resolution authorizing the bonds, is declared to further secure the payment of the principal of or interest on the bonds.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑60.** Governing bodies of participating counties may authorize authority to issue general obligation bonds; public hearing requirement.

The governing bodies of the participating counties are empowered to authorize the authority to issue general obligation bonds whose proceeds must be used in furtherance of any power of the authority under the procedures prescribed in this chapter. If, upon its own finding or upon petition of the authority, a participating county's governing body shall determine that it may be in the interest of the authority to raise moneys for the furtherance of any power of the authority, it shall order a public hearing to be held upon the question of the issuance of bonds of the authority. Two or more of the county governing bodies may elect to jointly hold the public hearing required by this section.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑70.** Notice requirements with respect to hearing on bond issue.

Notice of the public hearing required by Section 13‑12‑60 shall be published by each county once a week for three successive weeks in a newspaper of general circulation in the county. The notice shall state:

(a) the time of the public hearing, which shall be not less than sixteen days following the first publication of the notice;

(b) the place of the hearing;

(c) the maximum amount of general obligation bonds proposed to be issued by the authority;

(d) a statement setting forth the purpose for which the proceeds of such bonds are to be expended; and

(e) a brief summary of the reasons for the issuance of such bonds and the method by which the principal and interest of such bonds are to be paid.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑80.** Public hearing.

The hearing shall be conducted publicly and both proponents and opponents of the proposed action shall be given full opportunity to be heard.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑90.** Finding and ordinance; authorization by governing bodies of participating counties whether and to what extent to issue bonds.

Following the hearing, the governing body of each county shall, by ordinance, make a finding as to whether and to what extent bonds of the authority should be issued, and may thereupon authorize the governing body of the authority to issue bonds to the extent it finds necessary. No general obligation bonds of the authority may be issued without authorization of the governing body of each participating county.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑100.** Notice of governing bodies' actions; call for election.

The governing body of each county shall thereupon cause notice of its action to be published for three successive weeks in a newspaper of general circulation in the county which shall state:

(a) the results of its action;

(b) the extent to which bonds of the authority are to be issued and the method to be provided for their payment;

(c) whether or not an election shall be ordered in the authority upon the question of the issuance of bonds of the authority.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑110.** Right to challenge action taken by county governing bodies.

A person affected by the action of the governing body of each county may, by action de novo instituted in the court of common pleas for such county, within twenty days following the last publication of notice prescribed by Section 13‑12‑100, but not afterwards, challenge the action of the governing body of the county.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑120.** Manner of election; majority vote required.

If an election is ordered as provided in Section 13‑12‑100, the election shall be conducted in the same manner and under the procedure applicable to the issuance of general obligation bonds of the counties of the State by the provisions of Chapter 15, Title 4, as now or hereafter amended. Approval of the question put to the electorate shall require an affirmative vote by a majority of all qualified electors voting on the question throughout the jurisdictional boundaries of the authority.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑130.** Issuance of bonds following authorization.

Bonds of the authority issued following authorization given pursuant to Sections 13‑12‑60 to 13‑12‑120 shall be issued by the governing body of the authority on behalf of the authority in accordance with the provisions of Sections 6‑11‑900 through 6‑11‑1010, as now or hereafter amended.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑140.** Bond principal and interest, security agreements, indentures, and financing agreements exempt from taxation.

The principal of and interest on bonds issued under this chapter are exempt from taxation, as provided in Section 12‑2‑50. All security agreements, indentures, and financing agreements made pursuant to the provisions of this chapter are exempt from state stamp and transfer taxes.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑150.** Signature and attestation of bonds and interest coupons.

The bonds must be signed in the name of the board of the authority by the manual or facsimile signature of the chairman of the board and attested with the manual or facsimile signature of the secretary of the board. Interest coupons attached to the bonds must be signed by the facsimile signatures of the officers. The bonds may be issued notwithstanding that any of the officials signing them or whose facsimile signatures appear on the bonds or the coupons have ceased to hold office at the time of issue or at the time of the delivery of the bonds to the purchaser.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑160.** Resolutions, covenants, and agreements pertaining to issuance of bonds are binding; enforceability.

All provisions of a resolution authorizing the issuance of the bonds in accordance with this chapter and any covenants and agreements constitute legally binding contracts between the authority and the several holders of the bonds, regardless of the time of issuance of the bonds, and are enforceable by any holder by mandamus or other appropriate action, suit, or proceeding at law or in equity in any court of competent jurisdiction.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑170.** General obligation bonds secured by full faith and credit and taxing power; revenue bonds of limited obligation; security; trustee of security agreement or indenture.

General obligation bonds authorized by this chapter shall be secured by the full faith, credit, and taxing power of the authority. Revenue bonds authorized by the chapter are limited obligations of the authority. The principal and interest of the general obligation bonds are secured in whole or in part by a pledge of the full faith, credit and taxing power of the authority. The principal and interest of the revenue bonds are payable solely out of the revenues derived by the authority, including revenues that may be derived by the authority pursuant to the financing agreement with respect to the project which the revenue bonds are issued to finance. The revenue bonds are an indebtedness payable solely from a revenue producing source or from a special source which does not include revenues from any tax or license. The revenue bonds do not constitute or give rise to a pecuniary liability of the authority, the State, or any political subdivision of the State, or to a charge against the general credit of the authority, the State, or any political subdivision of the State or taxing powers of the State, or any political subdivision of the State, and this fact must be plainly stated on the face of each revenue bond. The principal of and interest on any revenue bonds issued under this chapter must be secured by a pledge of the revenues from which the revenue bonds are payable, may be secured by a security agreement, including a mortgage or any property given as security pursuant to a financing agreement, and may be additionally secured by a pledge of the financing agreement with respect to the project.

The trustee under any security agreement or indenture, or any depository specified by the security agreement or indenture, may be any person or corporation as the authority designates, notwithstanding that the trustee may be a nonresident of this State or incorporated under the laws of the United States or the laws of other states.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑180.** Net earnings of authority not to inure to benefit of person other than authority.

The net earnings of the authority, beyond that necessary for retirement of its bonds or other obligations or to implement the purposes of this chapter, may not inure to the benefit of any person other than the authority.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑190.** Carryover of unexpended funds from year to year.

The authority shall retain any unexpended funds at the close of the fiscal year of the State regardless of the source of the funds and expend the funds in subsequent fiscal years.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑200.** Determinations required to be made by authority prior to undertaking projects; determinations to be set forth in record of proceedings.

Before undertaking a project in connection with issuing bonds authorized by Section 13‑12‑40, the board of the authority shall make a determination:

(1) that the project will serve the purposes of this chapter;

(2) that the project is anticipated to benefit the general public welfare of the area by providing services, employment, recreation, or other public benefits;

(3) as to the amount of bonds required to finance the project;

(4) as to the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance the project;

(5) as to the amount necessary to be paid each year into any reserve funds which the board may consider advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project.

The determinations of the board must be set forth in the proceedings as required by Section 11‑15‑10 under which the proposed bonds are to be issued.

HISTORY: 1992 Act No. 515, Section 1, September 1, 1992; 1992 Act No. 518, Section 1, September 2, 1992.

**SECTION 13‑12‑210.** Disposition of proceeds from sale of bonds; what constitutes cost of acquiring project.

The proceeds from the sale of any bonds issued under authority of this chapter may be applied only for the purpose for which the bonds were issued, except any premium and accrued interest received in any sale must be applied to the payment of the principal of or the interest on the bonds sold, and if for any reason any portion of the proceeds are not needed for the purpose for which the bonds were issued, that portion of the proceeds must be applied to the payment of the principal of or the interest on the bonds.

The cost of acquiring any project includes:

(1) the actual cost of the construction of any part of a project, including architects', engineers', and attorneys' fees;

(2) the purchase price of any part of a project that may be acquired by purchase;

(3) all expenses in connection with the authorization, sale, and issuance of the bonds to finance the acquisition;

(4) the interest on the bonds for a reasonable time before construction and for not exceeding one year after completion of the construction.

HISTORY: 1992 Act No. 515, Section 1, eff September 1, 1992; 1992 Act No. 518, Section 1, eff September 2, 1992.

**SECTION 13‑12‑220.** Implementation contingent upon vote of electors in two or more of affected counties.

The provisions of Title 13, Chapter 12 shall take effect upon approval by the Governor, but these provisions may not be implemented until the question of whether to establish such an authority receives a favorable vote of a majority of the qualified electors residing in two or more of the counties of Berkeley, Charleston, and Dorchester as provided in this chapter.

HISTORY: 1992 Act No. 515, Section 2, eff September 1, 1992; 1992 Act No. 518, Section 2, eff September 2, 1992.

**SECTION 13‑12‑230.** Act not to affect generation, transmission, distribution, or provision of electricity at wholesale, retail, or otherwise.

Nothing in this chapter may be construed to provide for the regulation of the generation, transmission, distribution, or provision of electricity at wholesale, retail, or in any other capacity. The provisions of this chapter shall not modify or abridge the rights, duties, and privileges of electric suppliers, electrical utilities, municipal electric utilities, or governmental entities (supplying electricity) under any state statute including, but not limited to, Title 58, Chapter 27 and Section 5‑7‑60.

Nothing in this chapter may be construed to allow the exercise of the right of eminent domain for the condemnation of property used for the generation, transmission, and/or distribution of electricity at wholesale or retail.

Nothing in this chapter may be construed to authorize a joint or cooperative agreement with the federal or state government or any political subdivision of the State affecting or relating to the regulation of the generation, transmission, and/or distribution of electricity at wholesale or retail.

HISTORY: 1992 Act No. 518, Section 4, eff September 2, 1992.