AMENDED

May 20, 2009

**H. 3148**

Introduced by Reps. Clyburn, G.M. Smith, H.B. Brown, Branham, Ott, Agnew, R.L. Brown, Hayes, Battle, Miller, Weeks, J.R. Smith, D.C. Smith, Parks, Rice, Littlejohn, Hosey, Jefferson, Cobb‑Hunter, Howard, Cooper, Gunn, McLeod, T.R. Young, Kennedy, Vick, Edge, J.E. Smith, Harrell, A.D. Young, Alexander, Neilson, Lucas, Merrill, Barfield, Bales, Allen, Hodges, Knight and Funderburk

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Read the first time April 14, 2009.

**A** **BILL**

TO ENACT THE “FEDERAL EDUCATIONAL INFRASTRUCTURE TAX‑CREDIT BOND IMPLEMENTATION ACT”, INCLUDING PROVISIONS; TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 11-15-110 SO AS TO PROVIDE FOR THE MANNER IN WHICH AND CONDITIONS UNDER WHICH THE STATE OF SOUTH CAROLINA SHALL ALLOCATE QUALIFIED SCHOOL CONSTRUCTION BONDS AUTHORIZED BY THE PROVISIONS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 AMONG THE SCHOOL DISTRICTS OF THIS STATE SEEKING CAPITAL FOR SCHOOL CONSTRUCTION PROJECTS, AND TO PROVIDE FOR OTHER RELATED MATTERS IN REGARD TO QUALIFIED SCHOOL CONSTRUCTION BONDS AND QUALIFIED ZONE ACADEMY BONDS AUTHORIZED BY THE FEDERAL ACT; TO AMEND SECTION 11‑15‑460, AS AMENDED, RELATING TO THE INTEREST RATE ON REFUNDING BOND OBLIGATIONS OF POLITICAL SUBDIVISIONS, SO AS TO EXEMPT QUALIFIED SCHOOL CONSTRUCTION BONDS AND QUALIFIED ZONE ACADEMY BONDS FROM THIS PROVISION; AND TO AMEND SECTION 11‑27‑50, AS AMENDED, RELATING TO THE EFFECT OF THE PROVISIONS OF ARTICLE X OF THE CONSTITUTION OF THIS STATE ON BONDS OF SCHOOL DISTRICTS, SO AS TO PROVIDE THAT QUALIFIED SCHOOL CONSTRUCTION BONDS AND QUALIFIED ZONE ACADEMY BONDS MAY BE SOLD AT PUBLIC OR PRIVATE SALE AT SUCH PRICE AS DETERMINED BY THE GOVERNING BODY OF THE ISSUER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act is known and may be cited as the “Federal Educational Infrastructure Tax‑Credit Bond Implementation Act”.

SECTION 2. The General Assembly finds that:

(1) Owing to a devastating upheaval in world financial markets, the United States is experiencing restricted access to credit, closures of numerous business concerns, and high levels of unemployment across the nation. In response, the United States Congress has made provision for a variety of strategies intended to stimulate economic activity in The American Recovery and Reinvestment Act of 2009 (ARRA). Among the strategies implemented by ARRA are various innovative financing programs for local governments to build educational infrastructure.

(2) Traditionally, financing undertaken by local governments is exempt from federal income tax. In order to stimulate local building activity and, further, to ameliorate the impact of a significant present weakness in the market for tax‑exempt securities, ARRA, through a change in federal tax law, provides for the issuance by local school districts of a new type of obligation, the Qualified School Construction Bond (QSCB). It is the intent of Congress that QSCB obligations will be issued with an interest rate at or near to zero. In exchange for forgoing interest, the holder of a QSCB obligation will receive a credit against federal income tax intended to provide tax benefits equivalent to the forgone interest payments. The proceeds of QSCB obligations only may be used to defray the cost of educational infrastructure, including the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which a facility is to be constructed.

(3) ARRA authorizes the issuance of eleven billion dollars of QSCB obligations in each of calendar years 2009 and 2010. Forty percent of the amount will be allocated to one hundred large school districts and up to twenty‑five additional school districts selected by the Secretary of the United States Department of Education. The remaining sixty percent will be allocated among the States in proportion to the respective numbers of children in each state who have attained age five but not age eighteen for the most recent fiscal year ending before the calendar year.

(4) ARRA does not specify any method or criteria by which a State must allocate its share of QSCB issuance authority to its school districts. Accordingly, it is necessary for the General Assembly to direct the allocation of this issuance authority. The General Assembly has determined in this act to direct the State Superintendent of Education to allocate the state’s QSCB issuance authority and to give priority to those school districts having the lowest capital financing resources, measured in terms of assessed value per pupil. By allocating QSCB issuance authority to such school districts, a portion of the critical facilities needs of these districts may be addressed, subject to Article X, Section 15 of the South Carolina Constitution, 1895. Because the capital financing resources of a given school district may be substantially the same as one or more other school districts, the General Assembly has determined to authorize the State Superintendent of Education to consider certain other factors in making allocation decisions.

(5) In addition to the QSCB program, Congress has pursuant to ARRA substantially increased the availability of a second type of tax‑credit obligation for use solely by school districts, the Qualified Zone Academy Bond (QZAB). QZAB obligations are similar to QSCB obligations, but the proceeds of QZAB obligations may only be used to renovate existing school facilities, and may not be used for new school construction.

(6) Because the public market for tax‑credit obligations is presently underdeveloped and may require several years or more to become a robust substitute for the tax‑exempt market of prior years, it is also necessary to make appropriate provision for the marketing of QSCB and QZAB obligations.

SECTION 3. Chapter 15, Title 11 of the 1976 Code is amended by adding:

“Section 11‑15‑110. (A)(1) Issuance authority for Qualified School Construction Bonds (QSCB) obligations allotted to the State pursuant to the provisions of 26 U.S.C.§54F(d)(1) and any issuance authority allocated pursuant to 26 U.S.C.§54F(d)(2) to school districts of the State and not used by them shall be allocated by the State Superintendent of Education to one or more of the school districts, or county boards of education on behalf of one or more school districts of the State. In that regard, the State Superintendent of Education must give priority to the school districts having the least financial resources, based upon assessed value per pupil, and also may consider demonstrated facilities needs, innovations in building plans, and proposals for cost sharing with other school districts and other public and private entities.

When two or more school districts are proposing a joint construction rehabilitation of a qualified project, the priority level for the project must be based on the priority level of the joint partner having the lowest assessed value per pupil.

(2) Only a school district may issue a QSCB obligation. For purposes of Section 15, Article X of the South Carolina Constitution, a QSCB obligation shall be considered general obligation debt. A school district may not use the proceeds of a QSCB obligation for the purposes stated in Section 14003(b) of the American Recovery and Reinvestment Act of 2009.

(B) The State Superintendent of Education is authorized to establish for each allocation of issuance authority the amount of issuance authority allocated and a schedule for issuance of QSCB obligations, giving due regard for the time required to initiate and hold bond referendums, and may reallocate issuance authority or any portion of issuance authority to another school district or county board of education if the schedule is not kept. The State Superintendent of Education is further authorized to establish scope and quality criteria for these school facilities and to condition allocation of issuance authority upon compliance with this criteria.

(C) Issuance authority allocated pursuant to this section but not utilized may be reallocated by the State Superintendent of Education in accordance with this section.

(D) In order to promote efficiencies and the development of school facilities to be constructed with QSCB obligations, the State Superintendent may implement a centralized process for the acquisition and management of professional and trustee services in connection with school facilities financed with QSCB obligations, with all costs of the State Superintendent of Education associated with this subsection to be paid from proceeds of QSCB obligations. This subsection also shall apply to improvements to real property financed with Qualified Zone Academy Bonds (QZAB) obligations pursuant to the provisions of 26 U.S.C.§1397E.

(E) Upon the concurrence of the State Superintendent of Education, design‑build contracts may be utilized for construction of facilities financed with QSCB or QZAB obligations.

(F) Assessed value for purposes of this section means the assessed value of all taxable property, excluding property subject to a fee in lieu of tax. Each per pupil measurement is based upon the one hundred thirty‑five day count for the most recently completed fiscal year.”

SECTION 4. Section 11‑15‑460 of the 1976 Code, as last amended by Act 34 of 1989, is further amended to read:

“Section 11‑15‑460. These refunding bonds must bear interest at those rates as may be determined by the governing body of the issuer. However, ~~prior to~~ before the issuance of any refunding bonds, except in the case of the refunding of Qualified School Construction Bonds issued pursuant to the provisions of 26 U.S.C.§54F or Qualified Zone Academy Bonds issued pursuant to the provisions of 26 U.S.C.§1397E, the governing body shall determine that a savings can be effected through the issuance of these refunding bonds.”

SECTION 5. Section 11‑27‑50 of the 1976 Code, as last amended by Act 113 of 1999, is further amended by adding an appropriately numbered item at the end to read:

“\_. Notwithstanding any other provision of law, bonds issued as Qualified School Construction Bonds pursuant to the provisions of 26 U.S.C.§54F or Qualified Zone Academy Bonds pursuant to the provisions of 26 U.S.C.§1397E may be sold at public or private sale at the price determined by the governing body of the issuer.”

SECTION 6. 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.

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. This act takes effect upon approval by the Governor.

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