AS PASSED BY THE SENATE

February 24, 2021

**S. 491**

Introduced by Senator Leatherman

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Read the first time January 27, 2021.

**A** **JOINT RESOLUTION**

AUTHORIZING THE ISSUANCE OF NOT EXCEEDING FIVE HUNDRED FIFTY MILLION DOLLARS ($550,000,000) AGGREGATE PRINCIPAL AMOUNT OF GENERAL OBLIGATION STATE ECONOMIC DEVELOPMENT BONDS AND SUPPLEMENTING THE PROVISIONS OF CHAPTER 41, TITLE 11 FOR THE LIMITED PURPOSE OF DEFRAYING THE COST OF INTERMODAL CONTAINER TRANSFER INFRASTRUCTURE, WATERBORNE CARGO INFRASTRUCTURE, AND RELATED INFRASTRUCTURE IN SUPPORT THEREOF, AT OR IN THE VICINITY OF THE PORT OF CHARLESTON; TO ALLOCATE SUFFICIENT TAX REVENUES TO PROVIDE FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON THE BONDS; TO PRESCRIBE REQUIREMENTS FOR NOTIFICATION, REVIEW, AND APPROVAL OF BOND ISSUANCE; TO PROVIDE FOR A PROCESS TO DEMONSTRATE COMPLIANCE WITH THE CONSTITUTIONAL LIMITATION ON DEBT SERVICE; AND TO MAKE OTHER PROVISIONS RELATED TO THE BONDS.

Amend Title To Conform

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

SECTION 1. The General Assembly finds:

(1) That Section 13(6)(c), Article X of the Constitution of this State provides that general obligation bonds for any public purpose may be issued; provided, that the maximum annual debt service on all general obligation bonds of the State thereafter to be outstanding (excluding highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes) must not exceed five percent of the general revenues of the State for the fiscal year next preceding (excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds).

(2) There exists sufficient debt service capacity within the limitation prescribed by Section 13(6)(c), Article X of the Constitution of this State, to support the issuance of not exceeding five hundred fifty million dollars ($550,000,000) aggregate principal amount of general obligation state economic development bonds for the limited purposes described herein.

(3) A definite and immediate need exists for intermodal container transfer infrastructure, waterborne cargo infrastructure, and related infrastructure in support thereof, at or in the vicinity of the Port of Charleston, and the costs of such infrastructure may be properly defrayed by proceeds of general obligation bonds permitted for issuance by the provisions of Section 13(6)(c), Article X of the Constitution of this State, and this joint resolution.

(4) Intermodal container transfer infrastructure, waterborne cargo infrastructure, and related infrastructure in support thereof, will support the state economy, will provide a foundation for economic growth with statewide impacts, and will serve a public purpose.

(5) It is the intent of the General Assembly to provide this authorization to issue state general obligation economic development bonds in order to provide concurrent and supplemental authorization in addition to that of Chapter 41, Title 11 of the 1976 Code for the limited purposes described herein. It is the further intent of the General Assembly that this authorization is not subject to the job creation and capital investment requirements imposed on projects as defined in Section 11‑41‑30(2) of the 1976 Code.

SECTION 2. For purposes of this joint resolution:

(1) “Infrastructure” means assets, improvements, and expenditures that relate specifically to, whether or not located at, the project including, without limitation, the acquisition and disposition of real property and improvements thereon, and the acquisition, construction, reconstruction, renovation, relocation, disposition, and demolition of structures, facilities, equipment, information technology, utilities, and any other improvements, services, mitigation impacts, and expenditures related to the project.

(2) “Project” means intermodal container transfer infrastructure, waterborne cargo infrastructure, and related infrastructure in support thereof, at or in the vicinity of the Port of Charleston.

SECTION 3. (1) The issuance of general obligation economic development bonds is hereby authorized pursuant to the provisions of Section 13(6)(c), Article X of the Constitution of this State to defray the costs of the project.

(2) The bonds may be issued from time to time in one or more series, provided that the aggregate principal amount of bonds issued pursuant to this joint resolution must not exceed five hundred fifty million dollars ($550,000,000), and the maximum annual debt service on all general obligation bonds of the State following issuance of bonds issued pursuant to this joint resolution (excluding highway bonds, state institution bonds, tax anticipation notes, bond anticipation notes, research university infrastructure bonds issued pursuant to Chapter 51, Title 11, and economic development bonds issued pursuant to Chapter 41, Title 11, but not excluding economic development bonds issued pursuant to Section 11‑41‑50(C)) must not exceed five percent of the general revenues of the State for the fiscal year next preceding (excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds).

(3) For the payment of the principal and interest on bonds issued and outstanding pursuant to this joint resolution there is pledged the full faith, credit, and taxing power of this State, and in accordance with the provisions of Section 13(4), Article X of the Constitution of this State, the General Assembly allocates on an annual basis sufficient tax revenues to provide for the punctual payment of the principal and interest on the debt authorized by this joint resolution.

(4) The authorization contained herein must be limited to the amount required to defray the costs of infrastructure as certified by the Secretary of Commerce, in coordination with the South Carolina State Ports Authority, as supplemented by details sufficient to establish the costs of the infrastructure, and the costs of issuance of the bonds, as reviewed by the Joint Bond Review Committee and approved by the State Fiscal Accountability Authority.

SECTION 4. Prior to the issuance of bonds, the Secretary of the South Carolina Department of Commerce, in coordination with the South Carolina State Ports Authority, must notify the Joint Bond Review Committee and the State Fiscal Accountability Authority of the following:

(1) the amount required to defray the costs of the infrastructure;

(2) a description of the infrastructure for which the bonds are to be issued;

(3) a tentative time schedule setting forth the period of time during which the amount requested is to be expended; and

(4) a form of the authorizing resolution prescribed in SECTION 5 of this joint resolution.

SECTION 5. Following the receipt of the notification prescribed in Section 4 of this joint resolution and after review and comment by the Joint Bond Review Committee, the State Fiscal Accountability Authority, by resolution duly adopted, shall effect the issue of bonds, such authorizing resolution including, among other things:

(1) a schedule reflecting the aggregate principal and interest of all general obligation bonds then outstanding subject to the limitation on maximum annual debt service prescribed by Section 13(6)(c), Article X of the Constitution of this State;

(2) a schedule reflecting the estimated principal and interest requirements on the bonds proposed to be issued;

(3) a schedule reflecting the estimated aggregate principal and interest of all general obligation bonds to be outstanding following issuance of the bonds proposed to be issued, demonstrating compliance with the limitation on maximum annual debt service prescribed by Section 13(6)(c), Article X of the Constitution of this State; and

(4) the approval contemplated by SECTION 3, Item (4).

SECTION 6. (1) The bonds must bear the date and mature at the times, or in the manner that the authorizing resolution provides, except that a bond may not mature more than thirty years from its date of issue. The bonds may be in the denominations, be payable in the medium of payment, be payable at the place and at the time, and be subject to redemption or repurchase and contain other provisions determined by, or determined in the manner prescribed by, the State Fiscal Accountability Authority before their issue. The bonds may bear interest payable at the times and at the rates determined by, or determined in the manner prescribed by, the State Fiscal Accountability Authority.

(2) Bonds issued under this joint resolution are exempt from taxation as provided in Section 12‑2‑50 of the 1976 Code.

(3) Bonds must be sold by the Governor and the State Treasurer, at public sale, after publication of notice of the sale one or more times at least seven days before the sale, in a financial paper published in New York City which regularly publishes notices of sale of state or municipal bonds. The bonds may be awarded upon the terms and in the manner as prescribed in the authorizing resolution. The right must be reserved to reject all bids and to readvertise the bonds for sale. All expenses incident to the sale of the bonds must be paid from the proceeds of the sale of the bonds.

(4) All bonds issued under this joint resolution must be signed by the Governor and the State Treasurer and attested by the Secretary of State. The Governor, State Treasurer, and Secretary of State may sign these obligations by a facsimile of their signatures. The Great Seal of the State must be affixed to, impressed on, or reproduced upon each bond. The delivery of the bonds executed and authenticated, as provided in the resolution, is valid notwithstanding changes in officers or seal occurring after the execution or authentication.

(5) The proceeds of the sale of bonds must be received by the State Treasurer and applied by the State Treasurer to the purposes for which issued, except that the accrued interest, if any, may be used to discharge in part the first interest to become due on the bonds. Purchasers of the bonds must in no way be liable for the proper application of the proceeds to the purposes for which they are intended. The proceeds received from the issuance of bonds, after deducting the costs of issuance, must be expended only for the purpose of providing infrastructure.

(6) Executors, administrators, guardians, and other fiduciaries legally may invest in bonds issued pursuant to this joint resolution.

SECTION 7. (A) As a further condition before the issuance of the bonds, the state entities responsible for implementation, operation, and management of each facility or component of the project to be financed must establish, by a detailed, signed written agreement, the ownership of the Intermodal Container Facility, the entity responsible for the bidding and the construction of each facility, and the entity responsible for the operations and management of each facility or component of the project. This written agreement must include without limitation the source of revenues sufficient to support the expenses of each facility or component, as may be determined from time to time, and the proposed use of any net revenue from each component of the project. It is the intent of the General Assembly that revenues generated by the project will be sufficient to cover the project’s costs of operations, future capital investments, and all other expenses and contingencies without necessity for state appropriation beyond the initial capital investment funded by proceeds of the bonds.

(B) Beginning with the close of the calendar month following issuance of the bonds and continuing through the date of substantial completion of each facility or component of the project, there must be provided, no less frequently than monthly, progress reports for the implementation of each facility or component of the project. The Joint Bond Review Committee may request additional information be provided. These reports must also be made publicly available or accessible on the South Carolina State Ports Authority’s website.

(C) For each year during which bonds are outstanding, there must be provided financial results, operating plans, budgets, capital plans, and performance objectives and results for the project, and each facility or component thereof.

(D) The written agreements and reporting requirements provided for in this SECTION must be made available to the Joint Bond Review Committee, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Finance Committee of the Senate, and the Chairman of the Ways and Means Committee of the House of Representatives. The Joint Bond Review Committee must review and provide comment, and may prescribe the reporting format and such other informational requirements and reports as it deems useful and necessary, to ensure the financial integrity, accountability, and stewardship of the proceeds of the bonds and the ongoing operations of the project.

(E) Within thirty days of availability, each state entity with responsibility for implementation, operation, and management of any facility or component of the project must provide in each year during which bonds are outstanding their respective independently audited financial statements to the Joint Bond Review Committee, the members of the General Assembly, and the Governor. The independently audited financial statements must also be made publicly available or accessible on the state entity’s website.

SECTION 8. Three years after the first issuance of the bonds, the South Carolina State Ports Authority must make a one dollar per container unit reimbursement to the general fund of the State, paid annually, to offset the debt service required by such bonds. The reimbursement must be provided until the one hundred fifty million dollar ($150,000,000) principal of the bonds pursuant to this joint resolution has been retired.

SECTION 9. In the event that any provision of this joint resolution conflicts with any provision of existing law, the conflict shall resolve in favor of the provisions of this joint resolution.

SECTION 10. This joint resolution takes effect upon approval by the Governor.

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