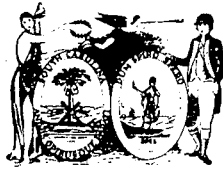


# South Carolina Jobs-Economic Development Authority



Joe E. Taylor, Jr.  
Chairman

Elliott E. Franks, III  
President & CEO

October 3, 2003

Mr. Les Boles  
Office of State Budget  
South Carolina Budget and Control Board  
1122 Lady Street - 12<sup>th</sup> Floor  
Columbia, SC 29201

Dear Mr. Boles:

I am respectfully requesting that the South Carolina Jobs-Economic Development Authority (JEDA) be removed from the South Carolina State Budget.

JEDA has not received any state appropriations since the fiscal year 94-95. Additionally, as an enterprise agency of state government all of its revenues are generated through fees and interest generated as a result of its lending activities. Further, we feel that there is precedence in that we are structured very similar to the State Ports Authority and Santee Cooper. Both of these entities are not a part of state budget. Full fiscal accountability remains through annual audits which are performed at the direction of the State Auditor.

Kindly give me a call should you have any questions. Thank you for your attention.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Elliott E. Franks, III', with a stylized flourish at the end.

Elliott E. Franks, III

EEF:gsb

CC: Robert J. Stein

**RECEIVED**

OCT 06 2003

Budget & Control Board  
OFFICE OF STATE BUDGET

STATE OF SOUTH CAROLINA  
*State Budget and Control Board*  
OFFICE OF STATE BUDGET

MARK SANFORD, CHAIRMAN  
GOVERNOR

GRADY L. PATTERSON, JR.  
STATE TREASURER

RICHARD ECKSTROM  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

ROBERT W. HARRELL, JR.  
CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK W. FUSCO  
EXECUTIVE DIRECTOR

1201 Main Street, Suite 950  
COLUMBIA, SOUTH CAROLINA 29201  
(803) 734-2280

LES BOLES  
DIRECTOR

October 14, 2003

Mr. Elliott E. Franks, III  
South Carolina Jobs-Economic Development Authority  
1441 Main Street, Suite 900  
Columbia, SC

Dear Mr. Franks:

I have received your request that the South Carolina Jobs-Economic Development Authority (JEDA) be removed from the annual state budget based on JEDA being an enterprise agency. I have discussed your request with the Governor's staff responsible for developing the Governor's Executive Budget. At this time it is felt that JEDA should remain in the state's budget as the Governor formulates his Executive Budget recommendations for FY 2004-05.

I am going to forward your request along with JEDA's enabling statutes to the staff of the House Ways and Means Committee and the Senate Finance Committee for their consideration once these committees begin the annual appropriation process.

If you have any questions, just give me a call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Les", followed by a horizontal line.

Les Boles

LB:gs

Cc: Mr. Ben Duncan - Governor's Office  
Mr. Bob Stein - Office of State Budget

STATE OF SOUTH CAROLINA  
*State Budget and Control Board*  
OFFICE OF STATE BUDGET

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(803) 734-2280

LES BOLES  
DIRECTOR

October 14, 2003

Mr. Don Hottel  
House Ways & Means Committee  
525 Blatt Bldg.  
Columbia, SC

Mr. Mike Shealy  
Senate Finance Committee  
111 Gressette Bldg.  
Columbia, SC

Gentlemen:

I am forwarding to you a request from the South Carolina Jobs – Economic Development Authority (JEDA) to be removed from the state's annual budget based on JEDA being an enterprise agency. The Governor's Office has denied this request as they are just beginning to formulate their Executive Budget recommendations.

I have included in this packet an analysis by our budget analyst comparing JEDA to Santee Cooper and the Ports Authority, both enterprise agencies, and a copy of JEDA's enabling statutes.

If you have any questions, just give me a call.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Les Boles'.

Les Boles

Enc.

Cc: Mr. Elliott Franks - JEDA  
Mr. Bob Stein - OSB

# Memo

To: Les Boles  
Director, Office of State Budget

From: Bob Stein

Re: Why Santee-Cooper (SC Public Service Authority) and Ports Authority are not in the annual Appropriations Act

Date: July 15, 2003

I have compared the enabling legislation for both Santee-Cooper and Ports Authority to try to determine why those agencies have never been in the annual Appropriations Act. I looked for similarities and differences. I believe the following legislative declarations provide the reason that these entities are not part of the Appropriations Act:

- They are not "agencies of the State." They are "authorities." Only agencies, departments and institutions are required to be a part of the annual Appropriations Act (see Section 2-7-65 of the Code of Laws of South Carolina, 1976).
- They are considered bodies politic (political subdivisions of the State).
- They may adopt, alter or repeal their own by-laws and regulations governing the manner in which their business is transacted.
- They may sue and be sued.
- They may issue bonds which do not obligate the State treasury.
- They may charge and collect fees, and they may determine the rates to be charged.
- They are both required to publish an annual report.
- Except for Bond funds, these entities do not receive an annual State appropriation.

In short, I believe that these two Authorities have not been part of the budget bill because they are not considered State agencies and they do not receive an appropriation of General Funds.

**SECTION 41-43-90. Corporate and other powers of the authority.**

The authority has the rights and powers of a body politic and corporate 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 it considers advisable, necessary, or convenient in carrying out its powers, including, but not limited to, the following rights and powers:

(A) Adopt bylaws, procedures, and regulations for the directors, officers, and employees and for the implementation and operation of the programs authorized by this act.

(B) Adopt and use a seal.

(C) Sue and be sued in its own name.

(D) Enter into such contracts, agreements, and instruments and make such offers to contract with such persons, partnerships, firms, corporations, agencies, or entities, whether public or private, considered desirable in furtherance of its purposes. With respect to any contract or agreement where the liability of the authority is limited to program funds, the authority may require public notice or bidding.

(E) Notwithstanding any provision of law or regulation to the contrary, and in accordance with its own procurement procedures and regulations as approved by the Budget and Control Board, which must, at a minimum, incorporate the provisions of Sections 11-35-5210 through 11-35-5270, inclusive, acquire, purchase, hold, use, improve, manage, 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, including as security for notes, bonds, evidences of indebtedness, or other obligations of the authority. Except for the provisions of Sections 11-35-5210 through 11-35-5270, inclusive, in exercising the powers authorized in this chapter the authority is exempt from Title 11, Chapter 35. The authority has no power to pledge the credit and the taxing power of the State or any of its political subdivisions.

(F) Accept appropriations, gifts, grants, loans, or other aid from persons, partnerships, firms, corporations, agencies, or entities, whether public or private.

(G) Apply for and hold patents and collect royalties under such terms and conditions as the authority considers appropriate.

(H) Incur debt, including but not limited to the issuance of bonds, for any authorized purpose of the authority under the terms and conditions specified in this act.

(I) Reserved.

(J) Make commitments, guarantees, grants, or loans utilizing any of its program funds to or on behalf of persons, partnerships, firms, corporations, agencies, or entities, whether public or private, in accordance with the provisions of this chapter and under terms as are not inconsistent with any existing obligation, including any obligation imposed as a condition of the receipt of any such program funds.

(K) Create and establish funds, including reserve funds, and accounts as necessary in connection with the issuance of bonds or for any of its authorized purposes.

(L) Use program funds to purchase or provide for insurance as additional security for any bonds issued by the authority.

(M) Initiate counseling and management programs for business enterprises and provide business enterprises with technical assistance, advice, and information respecting

JEDA

development opportunities and programs and, in conjunction therewith, collect, maintain, and disseminate data and information.

(N) Employ and dismiss, at the will and pleasure of the authority, officers, agents, employees, consultants, and other providers of services as the authority considers necessary and appropriate and to fix and to pay their compensation. Employees of the authority or an entity established pursuant to Section 41-43-240 are not considered state employees except for eligibility for participation in the South Carolina Retirement System and the State Health Insurance Group Plans and pursuant to Chapter 78 of Title 15. The provisions of Article 5, Chapter 17 of Title 8, and Chapter 35 of Title 11 do not apply to the authority. The authority is responsible for complying with other state and federal laws covering employers. The authority may contract with the Division of Human Resource Management of the State Budget and Control Board to establish a comprehensive human resource management program.

(O) Fix, alter, charge, and collect reasonable tolls, fees, rents, charges, and assessments for the use of the facilities of, or for the services rendered by, the authority the rates to be at least sufficient to provide for payment of all expenses of the authority.

(P) Participate in and cooperate with any agency or instrumentality of the United States and with any agency or political subdivision of this State in the administration of any of the programs authorized by this act.

In exercising its powers, the authority shall operate in an economical and prudent manner and any powers granted by this act may be exercised by the adoption of a resolution at any regular or special meeting. A copy of any resolution certified by the chairman, vice-chairman, or secretary is conclusive evidence of the exercise of powers in accordance with this act.

## CHAPTER 43.

### SOUTH CAROLINA JOBS - ECONOMIC DEVELOPMENT FUND ACT

#### **SECTION 41-43-10.** Citation of chapter.

This chapter may be cited as the South Carolina Jobs - Economic Development Fund Act.

#### **SECTION 41-43-20.** Definitions.

As used in this chapter unless the context otherwise requires:

(A) "Act" means the South Carolina Jobs - Economic Development Fund Act.

(B) "Authority" means the South Carolina Jobs - Economic Development Authority, which is a state-owned enterprise.

(C) "Administrative funds" means all monies, received by the authority from the general fund of the State or from the exercise of the power of taxation by the State or any of its political subdivisions which are designated specifically to be used for the payment of administrative expenses, and the earnings on the funds.

(D) "Bonds" means any evidence of indebtedness of the authority in any form including, but not limited to, notes, warrants, bonds, or any similar obligation evidenced in written, printed, or electronic means.

(E) "Program funds" means any monies, including, but not limited to, the proceeds from bond sales, the sale or disposition of any assets, or any other source available to the authority, other than administrative funds and the earnings on the funds.

(F) "Banks" means financial organizations organized, chartered, or holding an authorization certificate and subject to supervision by an agency or official of South Carolina or of the United States and authorized to make loans and receive deposits. It includes but is not limited to savings and loan associations and savings banks.

#### **SECTION 41-43-30.** South Carolina Jobs - Economic Development Authority created; status; governance by Board of Directors; composition of board.

There is created the South Carolina Jobs - Economic Development Authority, a public body corporate and politic and an agency of the State, with the responsibility of effecting the public purposes of this act. The authority is governed by a Board of Directors (board) which consists of nine members.

#### **SECTION 41-43-40.** Appointment and qualifications of directors; ex officio members; terms.

The Governor shall appoint, upon the advice and consent of the Senate, one director from each congressional district and one from the State at large, who serves as chairman. Directors must have experience in the fields of business, commerce, finance, banking, real estate, or foreign trade. At least two directors must have direct commercial lending experience. The Governor and the Chairman of the State Development Board shall serve ex officio and may designate persons to represent them at meetings of the authority.

Directors serve for terms of three years; however, directors initially appointed from the first and sixth congressional districts and the State at large serve for three years; directors initially appointed from the second and fifth congressional districts serve for two years; and directors initially appointed from the third and fourth congressional districts serve for one year. Thereafter, all directors serve for a term of three years and until their successors are appointed and qualify. All vacancies must be filled for the unexpired term in the manner of the original appointment. Directors are not personally liable for losses unless the losses are occasioned by the wilful misconduct of the directors. Directors may be removed by the Governor for cause or at will. A certificate of the appointment or reappointment of any director must

be filed in the offices of the Secretary of State and the authority. The certificate is conclusive evidence of the due and proper appointment of a director.

**SECTION 41-43-50.** Organization of board; disposition of net earnings; state to retain residual interest; retention of unexpended funds for subsequent years.

As soon as practicable after appointment, the board shall organize by choosing a vice-chairman, secretary, and such other officers as considered necessary.

The net earnings of the authority, beyond that necessary for retirement of its bonds or other obligations or to implement the purposes of this act, shall not inure to the benefit of any person other than the authority. Upon termination of the existence of the authority, title to all property, real and personal, owned by it, including net earnings, must vest in the State.

The authority shall retain unexpended funds at the close of the state fiscal year regardless of the source of the funds and expend the funds in subsequent fiscal years. Nothing contained in this chapter may be construed to imply that the authority may not receive state general appropriation funds or state general obligation bond proceeds.

**SECTION 41-43-60.** Meetings of the board; telephonic meetings; quorum; majority vote required for action.

Meetings of the board shall be held at times and in places as the board determines. The board must meet at least one time in each calendar quarter. Meetings of the board may be held by means of conference telephone or any means of communication by which all persons participating in the meeting can hear each other at the same time and participation by such means constitutes presence in person at the meetings. A majority of the board then in office constitutes a quorum at any meeting. Approval of a majority of the board then in office is required to take action.

**SECTION 41-43-70.** Functions and duties of the authority generally.

The authority shall promote and develop the business and economic welfare of this State, encourage and assist through loans, investments, research, technical and managerial advice, studies, data compilation and dissemination, and similar means, in the location of new business enterprises in this State and in rehabilitation and assistance of existing business enterprises and in the promotion of the export of goods, services, commodities, and capital equipment produced within the State, so as to provide maximum opportunities for creation and retention of jobs and improvement of the standard of living of the citizens of the State, and act in conjunction with other persons and organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational development in this State. In the promotion, development, and advancement of these programs, the authority must give consideration to the development of and assistance to small businesses in this State as may be defined by regulation of the authority.

**SECTION 41-43-80.** Implementation of programs; delegation of authority; responsibility for programs.

The authority must implement the programs of this act as soon as practicable. The authority must exercise care in the performance of its duties and the selection of specific programs and business enterprises to receive its assistance. The authority may delegate its authority to implement the programs authorized to any governmental agency or financial institution. The authority must retain ultimate responsibility and provide proper oversight for the implementation.

**SECTION 41-43-90.** Corporate and other powers of the authority.



The authority has the rights and powers of a body politic and corporate 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 it considers advisable, necessary, or convenient in carrying out its powers, including, but not limited to, the following rights and powers:

- (A) Adopt bylaws, procedures, and regulations for the directors, officers, and employees and for the implementation and operation of the programs authorized by this act.
- (B) Adopt and use a seal.
- (C) Sue and be sued in its own name.
- (D) Enter into such contracts, agreements, and instruments and make such offers to contract with such persons, partnerships, firms, corporations, agencies, or entities, whether public or private, considered desirable in furtherance of its purposes. With respect to any contract or agreement where the liability of the authority is limited to program funds, the authority may require public notice or bidding.
- (E) Notwithstanding any provision of law or regulation to the contrary, and in accordance with its own procurement procedures and regulations as approved by the Budget and Control Board, which must, at a minimum, incorporate the provisions of Sections 11-35-5210 through 11-35-5270, inclusive, acquire, purchase, hold, use, improve, manage, 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, including as security for notes, bonds, evidences of indebtedness, or other obligations of the authority. Except for the provisions of Sections 11-35-5210 through 11-35-5270, inclusive, in exercising the powers authorized in this chapter the authority is exempt from Title 11, Chapter 35. The authority has no power to pledge the credit and the taxing power of the State or any of its political subdivisions.
- (F) Accept appropriations, gifts, grants, loans, or other aid from persons, partnerships, firms, corporations, agencies, or entities, whether public or private.
- (G) Apply for and hold patents and collect royalties under such terms and conditions as the authority considers appropriate.
- (H) Incur debt, including but not limited to the issuance of bonds, for any authorized purpose of the authority under the terms and conditions specified in this act.
- (I) Reserved.
- (J) Make commitments, guarantees, grants, or loans utilizing any of its program funds to or on behalf of persons, partnerships, firms, corporations, agencies, or entities, whether public or private, in accordance with the provisions of this chapter and under terms as are not inconsistent with any existing obligation, including any obligation imposed as a condition of the receipt of any such program funds.
- (K) Create and establish funds, including reserve funds, and accounts as necessary in connection with the issuance of bonds or for any of its authorized purposes.
- (L) Use program funds to purchase or provide for insurance as additional security for any bonds issued by the authority.
- (M) Initiate counseling and management programs for business enterprises and provide business enterprises with technical assistance, advice, and information respecting development opportunities and programs and, in conjunction therewith, collect, maintain, and disseminate data and information.
- (N) Employ and dismiss, at the will and pleasure of the authority, officers, agents, employees, consultants, and other providers of services as the authority considers necessary and appropriate and to fix and to pay their compensation. Employees of the authority or an entity established pursuant to Section 41-43-240 are not considered state employees except for eligibility for participation in the South Carolina Retirement System and the State Health Insurance Group Plans and pursuant to Chapter 78 of Title 15. The provisions of Article 5, Chapter 17 of Title 8, and Chapter 35 of Title 11 do not apply to the authority. The authority is responsible for complying with other state and federal laws covering employers. The authority may contract with the Division of Human Resource Management of the State Budget and Control Board to establish a comprehensive human resource management program.
- (O) Fix, alter, charge, and collect reasonable tolls, fees, rents, charges, and assessments for the use of the facilities of, or for the services rendered by, the authority the rates to be at least sufficient to provide for payment of all expenses of the authority.

(P) Participate in and cooperate with any agency or instrumentality of the United States and with any agency or political subdivision of this State in the administration of any of the programs authorized by this act.

In exercising its powers, the authority shall operate in an economical and prudent manner and any powers granted by this act may be exercised by the adoption of a resolution at any regular or special meeting. A copy of any resolution certified by the chairman, vice-chairman, or secretary is conclusive evidence of the exercise of powers in accordance with this act.

#### **SECTION 41-43-100. Industrial development projects.**

In addition to other powers vested in the authority by existing laws, the authority has all powers granted the counties and municipalities of this State pursuant to the provisions of Chapter 29 of Title 4, including the issuance of bonds by the authority and the refunding of bonds issued under that chapter. The authority may issue bonds upon receipt of a certified resolution by the county or municipality in which the project, as defined in Chapter 29 of Title 4, is or will be located, containing the findings set forth in Section 4-29-60 and evidence of a public hearing held not less than fifteen days after publication of notice in a newspaper of general circulation in the county in which the project is or will be located. The authority may combine for the purposes of a single offering bonds to finance more than one project. The interest rate of bonds issued pursuant to this section is not subject to approval by the State Budget and Control Board.

#### **SECTION 41-43-110. Issuance of bonds; utilization of proceeds.**

(A) The authority may issue bonds to provide funds for any program authorized by this chapter. The bonds authorized by this chapter are limited obligations of the authority. The principal and interest are payable solely out of the revenues derived by the authority. The bonds issued do not constitute an indebtedness of the State or the authority within the meaning of any state constitutional provision or statutory limitation. They 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 bonds do not constitute nor give rise to a pecuniary liability of the State or the authority or a charge against the general credit of the authority or the State or taxing powers of the State and this fact must be plainly stated on the face of each bond. The 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 coupon or registered form, may be payable in such installments and at such time, may be subject to terms of redemption, may be payable at such place, may bear interest at such rate payable at such place and evidenced in such manner, and may contain such provisions not inconsistent herewith, all of which are provided in the resolution of the authority authorizing the bonds. Subject to Budget and Control Board approval, any bonds issued under this section may be sold at public or private sale as may be determined to be most advantageous. The bonds may be sold at public or private sale and, if by private sale, the authority shall designate the syndicate manager or managers. The authority may pay all expenses, premiums, insurance premiums, and commissions which it considers necessary from proceeds of the bonds or program funds in connection with the sale of bonds. The interest rate of bonds issued pursuant to this section is not subject to approval by the State Budget and Control Board.

(B) The resolution under which the bonds are authorized to be issued or any security agreement, including an indenture or trust indenture to be entered into in connection therewith, may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting, provisions respecting the fixing and collection of obligations, the creation and maintenance of special funds, and the rights and remedies available, in the event of default, to the bondholders or to the trustee under such security agreement as the authority considers advisable. In making such agreements the authority does not have the power to obligate itself except with respect to program funds and cannot incur a pecuniary liability or a charge upon the general credit of the authority or of the State or against the

taxing powers of the State. The resolution of the authority authorizing any bonds and any security agreement securing 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 security agreement, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect any obligations and to apply any revenues pledged in accordance with such proceedings or the provisions of the security agreement. Any security agreement may provide also that, in the event of default in payment or the violation of any agreement contained in the security agreement, it may be foreclosed by proceedings at law or in equity, and may provide that any trustee under the security agreement or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if he is the highest bidder. No breach of any such agreement may impose any pecuniary liability upon the State or the authority or any charge upon the general credit of the authority or of the State or against the taxing power of the State.

Subject to the approval of the State Treasurer, the trustee under any security agreement, or any depository specified by the security agreement, may be such person or corporation as the authority may designate, notwithstanding that he may be a nonresident of South Carolina or incorporated under the laws of the United States or any of the states. Monies in the funds and accounts held by the trustee shall be invested or deposited by the trustee.

(C) Any bonds that are outstanding may at any time be refunded by the authority by the issuance of its refunding bonds in an amount as the authority considers necessary but not to exceed 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. The 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. The holders of any bonds to be refunded cannot be compelled 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 this section are payable in the same manner and under the same terms and conditions as are provided for the issuance of bonds.

(D) The proceeds from the sale of any bonds must be applied only for the purpose for which the bonds were issued. Any premium and accrued interest received in any such sale must be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of the proceeds is not needed for the purpose for which the bonds were issued, the unneeded portion of the proceeds must be applied to the payment of the principal of or the interest on the bonds.

#### **SECTION 41-43-120.** Authority bonds to constitute lawful fiduciary investment.

It is lawful for executors, administrators, guardians, committees, and other fiduciaries to invest any monies in their hands in bonds issued pursuant to this act. Nothing contained in this section is construed as relieving any person from the duty of exercising reasonable care in selecting securities.

#### **SECTION 41-43-130.** Bonds and income exempt from certain taxes; exemption of documents from transfer and stamp taxes.

The bonds and the income therefrom are exempt from all taxation in the State except for inheritance, estate, or transfer taxes. All security agreements and financing agreements made pursuant to this act are exempt from stamp and transfer taxes.

#### **SECTION 41-43-140.** Insurance fund; use as security for holders of bonds.

The authority may create an insurance fund consisting solely of program funds which must be held as security for the holders of bonds issued under this act. Such funds shall be held in the custody of the

State Treasurer, or with his approval may be held in the custody of one or more commercial banks or trust companies having a principal place of business in this State. The authority also may use program funds to purchase insurance to be pledged for the security of the holders of any bonds issued under this act.

In any case in which insurance is pledged as security, whether obtained through the insurance funds authorized to be created under this section or purchased with program funds, it must expressly state the limitation of the liability of the authority and further that neither the credit nor taxing power of the State or any political subdivision thereof is available to satisfy any obligations with respect thereto.

**SECTION 41-43-150.** Antidiscrimination in administration of programs; persons and projects eligible for assistance.

(A) The programs established by this act are administered so as to ensure that each application for assistance is evaluated without regard to race, creed, sex, or national origin and that no person, firm, association, partnership, corporation, agency, or entity, or group thereof, receives disproportionate benefits from the programs.

(B) To qualify for assistance under the programs established pursuant to Sections 41-43-160, 41-43-170 and 41-43-190 the following conditions must be met:

(1) The recipient must be a person, firm, association, partnership, corporation, or other entity engaged in business.

(2) The assistance must be requested for use by a business enterprise located within the State.

(3) The recipient must be able to demonstrate to the authority that the assistance will result in creation or maintenance of employment within the State.

(4) The recipient and the project must meet any further requirements for eligibility as are set forth in this act with respect to the specific program under which assistance is requested.

(5) The recipient and the project must satisfy any applicable requirements set forth by the authority in its regulations.

(C) The authority may authorize assistance to an eligible recipient under the programs established pursuant to Sections 41-43-160, 41-43-170 and 41-43-190 only after it has made the following findings:

(1) The recipient is a responsible party.

(2) The number of jobs resulting from the assistance bears a reasonable relationship to the amount of program funds committed, taking into account factors such as the amount of dollars invested per employee at comparable facilities.

(3) The amount of program funds committed bears a reasonable relationship to the amount of private funds committed.

(4) The size and scope of the business being assisted is such that a definite benefit to the economy of the State may reasonably be expected to result from the project being financed.

(5) The terms of the agreements to be entered into in connection with the transaction are reasonable and proper, taking into account such factors as the type of program involved, the amount of program funds involved, and the number and type of jobs involved.

(6) The public interest is adequately protected by the terms of the agreements to be entered into in connection with the transaction.

In making its findings, the authority is entitled to rely upon its own investigation or upon such information and evidence furnished to it by recipient businesses or by lending institutions participating in programs established pursuant to the provisions of this act as the authority considers appropriate. Compliance by a recipient or any lending institution participating in any of the authority's programs under the provisions of this act with the terms of any agreement may be enforced by decree of a circuit court of this State. The authority may require as a condition of any loan to, or purchase of loans from, any national banking association or federally chartered savings and loan association or any nonresident seller, consent to the jurisdiction of the circuit courts of this State over any enforcement proceeding.

**SECTION 41-43-160.** Loan programs; authorized purposes; authority's powers as to loans.

The authority may utilize any of its program funds to establish loan programs pursuant to this section for the purpose of reducing the cost of capital to business enterprises which meet the eligibility requirements of Section 41-43-150. Proceeds of loans under this section are utilized: (i) to acquire, by construction or purchase, land and buildings or other improvements thereon, machinery, equipment, office furnishings or other depreciable assets, or for research and design costs, legal and accounting fees, or other expenses in connection with the acquisition or construction thereof; or (ii) for the research, testing, and developing of new products, machinery, equipment, and industrial or commercial processes, and the initial marketing thereof. Loan proceeds also may be used to finance working capital. The authority shall require as a condition of each loan made pursuant to this section that the loan must be serviced by a loan administrator which meets criteria established by the authority.

The authority may make direct loans to any eligible business enterprises upon terms which require the proceeds of the loan to be used for qualified purposes and upon such other terms and conditions as the authority may require.

The authority may make loans to lending institutions upon terms and conditions which require each lending institution to disburse the loan proceeds for new loans to eligible businesses for qualified purposes in an aggregate principal amount of not less than the amount of the loan. The authority must require of each lender to which it has made a loan evidence satisfactory to it of the making of new loans which satisfy the requirements of this item and of the regulations of the authority. In this connection, the authority, through its agents, may inspect the books and records of such lender to verify that the requirements are being met.

The authority must require that each lender receiving a loan pursuant to this section issue and deliver to the authority evidence of its indebtedness to the authority which constitutes a general obligation of the lender. The evidence of indebtedness must bear a date, time of maturity, be subject to prepayment, and contain any other provisions consistent with this section and related to protecting the security of the authority's investment and the bonds issued by the authority in connection with such loan.

The authority may purchase, and make advance commitments to purchase, from lending institutions loans to eligible business enterprises. The purchase price for each loan which the authority purchases pursuant to this paragraph is not to exceed the total of the unpaid principal balance of the loan purchased plus accrued interest. The authority must require each lender from which the authority purchases, or commits to purchase, a loan to submit evidence satisfactory to the authority that the loan satisfies the conditions of this section and of the regulations of the authority. In this connection, the authority, through its agents, may inspect the books and records of a lender to verify that the conditions have been met.

The authority must require the recording of an assignment of each mortgage or secured loan purchased by it from a lender and need not notify the borrower of its purchase of the mortgage or secured loan. The authority is not required to inspect or take possession of the loan documents if the lender from which the loan document is purchased enters into a contract to service the loan and account for it to the authority.

The authority may: (i) renegotiate a loan in default, waive a default, or consent to the modification of the terms of a loan; (ii) forgive or forbear all or part of a loan; (iii) prosecute and enforce a judgment in any action, including but not limited to a foreclosure action; (iv) protect or enforce any right conferred upon it by law, or by any loan, contract, or other agreement. In connection with any action, the authority may bid for and purchase collateral or take possession of it, administer it, or pay the principal of and interest on any obligation incurred in connection with the collateral and dispose of and otherwise deal with the property securing the loan in default.

#### **SECTION 41-43-170. Guaranty fund authorized; purposes.**

The authority is authorized to create a guaranty fund, consisting solely of program funds, which may be used to guarantee or insure or purchase insurance for loans of financial institutions to business enterprises which meet the eligibility requirements of Section 41-43-150. Such funds shall be held in the custody of

the State Treasurer, or with his approval may be held in the custody of one or more commercial banks or trust companies having a principal place of business in this State.

Loans which qualify for a guaranty or insurance under this section must consist of:

- (1) Loans to eligible business enterprises located in distressed areas as defined in Section 41-43-180 for any purpose for which a loan may be made pursuant to Section 41-43-160, including the provision of working capital;
- (2) Loans used to finance export sales or production for export by eligible business enterprises as provided in Section 41-43-190.

**SECTION 41-43-180.** Determination of economically distressed areas; criteria.

The authority must maintain a list of the most economically distressed areas of the State. Each area must be within or coexistent with the boundaries of one of the forty-six counties. The list must be determined in accordance with criteria set forth in the regulations of the authority. In formulating criteria, the authority must consider, but not be limited to, the following factors: rate of unemployment, per capita income, average wage rate, and chronic nature of economic problems.

**SECTION 41-43-190.** Export programs; purposes; criteria for assistance.

(A) Upon securing sufficient funds, the authority is directed to develop programs to encourage the export of goods, services, commodities, machinery, equipment, or other personal property to which value is added within the State. So as to assist the exporters in competing for international sales, the authority may use any of its program funds to provide low interest loans, including fixed rate loans, guarantees, insurance, including insurance against political and commercial risks, or other commitments for the benefit of eligible exporters. In furtherance of this direction, the authority may:

- (1) Issue (a) direct loans, to eligible exporters and (b) loans to lending institutions in accordance with the provisions of Sections 41-43-160 and 41-43-170.
- (2) Provide guarantees or insurance of up to ninety percent for:
  - (a) Line of credit extended by lending institutions to eligible exporters with specific unfilled orders from foreign buyers.
  - (b) Political and commercial risk on loans extended by lending institutions to foreign buyers for the purchase of property or services supplied by eligible exporters from this State.
  - (c) Loans extended by lending institutions to eligible exporters with specific unfilled orders from foreign buyers.
- (3) Obtain guarantees and direct loans as the Export-Import Bank of the United States may make available for the purpose of facilitating programs authorized under this section.
- (4) Allocate funds to administer the programs authorized under this section.
- (5) Develop and implement other programs as it determines are necessary to improve the export potential for business enterprises located in the State.

In developing and implementing the programs described in this section, the authority may consider the advice and counsel of the Governor's Export Advisory Committee, created by executive order as an adjunct to the State Development Board, or any successor thereto, and allocate available resources in a manner as will ensure that priority consideration is given to the needs of small and medium size businesses.

(B) In addition to the findings and considerations required under Section 41-43-150, the following conditions must be met before an export transaction qualifies for assistance under this section:

- (1) The goods, services, commodities, machinery, equipment, or other personal property must have value added to it in South Carolina.
- (2) The exporter must be able to demonstrate to the satisfaction of the authority that the transaction complies with the applicable laws of this State, the United States, and the country of destination.

(3) The exporter and the foreign purchaser must not be related persons as determined pursuant to the provisions of Sections 267(b) and (c) and 707(b) of the Internal Revenue Code, as amended, nor members of the same controlled group of corporations, as defined in Section 1563(a) of the Internal Revenue Code, as amended, (except that "more than 50 percent" may be substituted for "at least 80 percent" each place it appears therein), nor may either the exporter or the foreign purchaser otherwise indirectly or constructively own or control the other.

(4) The foreign purchaser and the country in which it is located must otherwise be acceptable to the authority, taking into account factors such as the history of the trade relationship between the firms in this State and the purchaser or country of destination.

**SECTION 41-43-200.** Collection and dissemination of information and data.

The authority is authorized to implement such programs as may be consistent with its purposes for the collection and dissemination of information and data useful to business enterprises in this State. The authority may collect and maintain information and undertake such studies and research programs as it deems necessary to facilitate the economic development and creation of jobs in this State. In connection with these programs, the authority must consult and coordinate its programs with those existing federal and state agencies and private economic development organizations.

**SECTION 41-43-210.** Funds for administrative purposes.

All funds of the authority must be segregated or otherwise accounted for as administrative or program funds and deposited by the authority in a financial institution or institutions to be designated by the State Treasurer in accordance with policies established by the board of the authority. Funds of the authority must be paid out only upon warrants issued in accordance with policies established by the board of the authority. No warrants may be drawn or issued disbursing any of the funds of the authority except for a purpose authorized by this chapter.

**SECTION 41-43-220.** Administrative funds not to be obligated except for administrative expenses.

The authority must not incur any obligations, other than obligations related to administrative expenses, payable out of administrative funds. All other obligations are payable solely from program funds which limitation is clearly stated on the face of any bonds and in the text of any other obligation or contract. However, program funds may be used to pay administrative expenses.

**SECTION 41-43-230.** Disposition of property; authority not required to advertise or take bids.

The authority may dispose of any property acquired by it on terms and conditions considered appropriate. The authority is not required to advertise property or take bids thereon.

**SECTION 41-43-240.** Creation of other corporations.

The authority is authorized to establish profit or not-for-profit corporations as it considers necessary to carry out the purposes of this chapter. Officials or employees of the authority may act as officials or employees without additional compensation of a corporation created pursuant to this section. A corporation established pursuant to this section is considered a "public procurement unit" for purposes of Article 19, Chapter 35 of Title 11.

The authority may make grants or loans to, or make guarantees for, the benefit of any not-for-profit corporation which the authority has caused to be formed whose Articles of Incorporation require that its directors be elected by members of the authority and all assets of which, upon dissolution, must be

distributed to the authority if it is in existence or, if it is not in existence, then to the State of South Carolina.

These grants, loans, or guarantees may be made upon a determination by the authority that the receiving not-for-profit corporation is able to carry out the purposes of this act and on the terms and conditions imposed by the authority.

Any guarantee made by the authority shall not create an obligation of the State or its political subdivisions or be a grant or loan of the credit of the State or any political subdivision. Any guarantee issued by the authority must be a special obligation of it. Neither the State nor any political subdivision is liable on any guarantee nor may they be payable out of any funds other than those of the authority and any guarantee issued by the authority shall contain on its face a statement to that effect.

#### **SECTION 41-43-250.** Protection of confidential information.

Any information submitted to or compiled by the authority in connection with the identity, background, finances, marketing plans, trade secrets, or any other commercially sensitive information of persons, firms, associations, partnerships, agencies, corporations, or other entities, is confidential, except to the extent that the person or entity consents to disclosure.

#### **SECTION 41-43-260.** Annual audit and report.

The authority must be audited annually by the State Auditor or, upon his approval, may execute contracts with an independent certified public accounting firm. The authority must make an annual report to the State Budget and Control Board and the General Assembly on its programs and operations. The report must include information regarding the size of the businesses that have received assistance based on the number of employees employed and the amount of gross revenues generated during the preceding year. The report also must include the names of businesses that have received assistance and a good faith estimate of the number of jobs retained or created as a result of the authority's assistance.

#### **SECTION 41-43-270.** Application of Administrative Procedures Act.

The authority must implement its programs in accordance with regulations promulgated under the provisions of Act 176 of 1977.

**SECTION 41-43-280.** Chapter not to affect other provisions as to authority; when authority considered "agency," "state agency" or other form of state institution.

Neither this chapter nor anything contained in this chapter is construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this State, but is construed as cumulative.

Notwithstanding any provision of law or regulation to the contrary, the authority shall continue to be an "agency" for purposes of Chapter 78 of Title 15, but the authority is not considered an "agency" or "state agency" or any other form of state institution for purposes of Sections 2-7-65 and ~~2-57-60~~ <sup>repealed</sup>

#### **SECTION 41-43-290.** Severability provision.

<sup>↓</sup> relates to appropriate bill to a joint committee

If a term or provision of a section of this chapter is found to be illegal or unenforceable, the remainder of this chapter nonetheless remains in full force and effect and the illegal or unenforceable term or provision is deleted and severed from this chapter.