POLLED OUT OF COMMITTEE

MAJORITY FAVORABLE

May 19, 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.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (H. 3148) to amend the Code of Laws of South Carolina, 1976, by adding Chapter 50 to Title 11 so as to enact the “South Carolina Rural Infrastructure Act”, to establish , etc., respectfully

**REPORT:**

Has polled the Bill out majority favorable.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 50 TO TITLE 11 SO AS TO ENACT THE “SOUTH CAROLINA RURAL INFRASTRUCTURE ACT”, TO ESTABLISH THE SOUTH CAROLINA RURAL INFRASTRUCTURE AUTHORITY, AND TO PROVIDE FOR ITS GOVERNANCE, POWERS, AND DUTIES; TO AUTHORIZE THE AUTHORITY TO PROVIDE LOANS AND OTHER FINANCIAL ASSISTANCE TO A MUNICIPALITY, COUNTY, SPECIAL PURPOSE OR PUBLIC SERVICE DISTRICT, AND A PUBLIC WORKS COMMISSION TO FINANCE RURAL INFRASTRUCTURE FACILITIES; TO ALLOW STATE APPROPRIATIONS, GRANTS, LOAN REPAYMENTS, AND OTHER AVAILABLE AMOUNTS TO BE CREDITED TO THE FUND OF THE AUTHORITY; TO AUTHORIZE LENDING TO AND BORROWING BY ELIGIBLE ENTITIES THROUGH THE AUTHORITY.

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

SECTION 1. Title 11 of the 1976 Code is amended by adding:

“CHAPTER 50

South Carolina Rural Infrastructure Act

Section 11‑50‑10. This chapter may be referred to as the ‘South Carolina Rural Infrastructure Act’.

Section 11‑50‑20. The General Assembly finds that:

(1) Adequate infrastructure facilities are an essential element in promoting economic growth and development that will provide jobs for the citizens of South Carolina.

(2) Traditional infrastructure financing methods in South Carolina cannot generate the resources necessary to fund the cost of rural infrastructure which are required for economic development.

(3) The State of South Carolina has the ability to provide for alternative methods of financing rural infrastructure which when combined with existing financing sources and methods will allow the State to address its rural infrastructure needs in a more timely and responsive manner.

(4) Loans and other financial assistance to municipalities, counties, special purpose and public service districts, and public works commissions can play an important part in meeting rural infrastructure needs. This assistance is in the public interest for the public benefit and good as a matter of legislative intent.

(5) The chapter provides an instrumentality to assist municipalities, counties, special purpose and public service districts, and public works commissions in constructing and improving rural infrastructure by providing loans and other financial assistance.

Section 11‑50‑30. (A) There is created a body corporate and politic and an instrumentality of the State to be known as the South Carolina Rural Infrastructure Authority.

(B) The authority is governed by a board of directors as provided in this chapter.

(C) The corporate purpose of the authority is to select and assist in financing qualified rural infrastructure by providing loans and other financial assistance to municipalities, counties, special purpose and public service districts, and public works commissions for constructing and improving rural infrastructure facilities. The exercise by the authority of a power conferred in this chapter is an essential public function.

(D) The authority shall establish and maintain the South Carolina Rural Infrastructure Fund into which monies for the purposes of the authority must be deposited.

Section 11‑50‑40. As used in this chapter unless the context clearly indicates otherwise:

(1) ‘Authority’ means the South Carolina Rural Infrastructure Authority.

(2) ‘Board’ means the board of directors of the authority.

(3) ‘Eligible cost’ means as applied to a qualified project to be financed from the Rural Infrastructure Fund, the costs that are permitted under applicable laws, requirements, procedures, and guidelines in regard to establishing, operating, and providing assistance from the authority.

(4) ‘Eligible project’ means rural infrastructure as defined in item (13).

(5) ‘Eligible entity’ means a municipality, county, special purpose or public service district, and public works commission. The term ‘eligible project’ also includes a not-for-profit water company.

(6) ‘Financing agreement’ means any agreement entered into between the authority and an eligible entity pertaining to a loan or other financial assistance. This agreement may contain, in addition to financial terms, provisions relating to the regulation and supervision of a qualified project, or other provisions as the board may determine. The term ‘financing agreement’ includes, without limitation, a loan agreement, trust indenture, security agreement, reimbursement agreement, guarantee agreement, bond or note, ordinance or resolution, or similar instrument.

(7) ‘Loan’ means an obligation subject to repayment which is provided by the authority to a qualified borrower for all or a part of the eligible cost of a qualified project. A loan may be disbursed in anticipation of reimbursement for or direct payment of eligible costs of a qualified project.

(8) ‘Loan obligation’ means a bond, note, or other evidence of an obligation issued by a qualified borrower.

(9) ‘Other financial assistance’ means, but is not limited to, grants, contributions, credit enhancement, capital or debt reserves for bonds or debt instrument financing, interest rate subsidies, provision of letters of credit and credit instruments, provision of bond or other debt financing instrument security, and other lawful forms of financing and methods of leveraging funds that are approved by the board.

(10) ‘Qualified borrower’ means any eligible entity which is authorized to construct, operate, or own a qualified project.

(11) ‘Qualified project’ means an eligible project which has been selected by the authority to receive a loan or other financial assistance from the authority to defray an eligible cost.

(12) ‘Revenues’ means, when used with respect to the authority, any receipts, fees, income, or other payments received or to be received by the authority including, without limitation, receipts and other payments deposited in the Rural Infrastructure Fund and investment earnings on the Rural Infrastructure Fund.

(13) ‘Rural infrastructure project’ means the acquisition, construction, installation, modification, renovation, repair, extension, renewal, replacement, or rehabilitation of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, for the essential public purpose of providing environmental facilities and services to meet public health and environmental standards and to aid the development of trade, commerce, industry, agriculture, aquaculture, and employment opportunities, all of which must be primarily located in a county designated as distressed or least developed pursuant to Section 12‑6‑3360 for 2008 or located in a county with a project that otherwise meets the requirements of this item. A rural infrastructure project also includes water supply and aquaculture projects.

Section 11‑50‑50. The board of directors is the governing board of the authority. The board consists of seven voting directors appointed as follows:

(1) six members who reside in counties designated as distressed or least developed pursuant to Section 12‑6‑3360 for 2008; two each appointed by the Speaker of the House, the President Pro Tempore of the Senate, and the Governor; and

(2) the Secretary of Commerce, ex officio, who shall serve as chairman.

Appointed members shall serve for terms of four years and until their successors are appointed and qualify except that of the two members first appointed by the Speaker of the House, President Pro Tempore of the Senate, and the Governor, one shall serve for a term of two years and the term must be noted on the appointment. Vacancies must be filled in the manner of original appointment for the unexpired portion of the term. Members shall serve without compensation but are allowed mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions.

Section 11‑50‑60. (A) In addition to the powers contained elsewhere in this chapter, the authority has all power necessary, useful, or appropriate to fund, operate, and administer the authority, and to perform its other functions including, but not limited to, the power to:

(1) have perpetual succession;

(2) adopt, promulgate, amend, and repeal bylaws, not inconsistent with provisions in this chapter for the administration of the authority’s affairs and the implementation of its functions including the right of the board to select qualifying projects and to provide loans and other financial assistance;

(3) sue and be sued in its own name;

(4) have a seal and alter it at its pleasure, although the failure to affix the seal does not affect the validity of an instrument executed on behalf of the authority;

(5) make loans to qualified borrowers to finance the eligible costs of qualified projects and to acquire, hold, and sell loan obligations at prices and in a manner as the board determines advisable;

(6) provide qualified borrowers with other financial assistance necessary to defray eligible costs of a qualified project;

(7) enter into contracts, arrangements, and agreements with qualified borrowers and other persons and execute and deliver all financing agreements and other instruments necessary or convenient to the exercise of the powers granted in this chapter;

(8) enter into agreements with eligible entities of this State for the purpose of planning and providing for the financing of qualified projects;

(9) establish policies and procedures for the making and administering of loans and other financial assistance, and establish fiscal controls and accounting procedures to ensure proper accounting and reporting by the authority and eligible entities;

(10) acquire by purchase, lease, donation, or other lawful means and sell, convey, pledge, lease, exchange, transfer, and dispose of all or any part of its properties and assets of every kind and character or any interest in it to further the public purpose of the authority;

(11) procure insurance, guarantees, letters of credit, and other forms of collateral or security or credit support from any public or private entity, including any department, agency, or instrumentality of this State, for the payment of any bonds issued by it, including the power to pay premiums or fees on any insurance, guarantees, letters of credit, and other forms of collateral or security or credit support;

(12) collect or authorize the trustee under any trust indenture securing any bonds to collect amounts due under any loan obligations owned by it, including taking the action required to obtain payment of any sums in default;

(13) unless restricted under any agreement with holders of bonds, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any loan obligations owned by it;

(14) borrow money through the issuance of bonds and other forms of indebtedness as provided in this chapter;

(15) expend funds to obtain accounting, management, legal, financial consulting, and other professional services necessary to the operations of the authority;

(16) expend funds credited to the authority as the board determines necessary for the costs of administering the operations of the authority;

(17) establish advisory committees as the board determines appropriate, which may include individuals from the private sector with banking and financial expertise;

(18) procure insurance against losses in connection with its property, assets, or activities including insurance against liability for its acts or the acts of its employees or agents or to establish cash reserves to enable it to act as a self‑insurer against any and all such losses;

(19) collect fees and charges in connection with its loans or other financial assistance;

(20) apply for, receive and accept from any source, aid, grants, and contributions of money, property, labor, or other things of value to be used to carry out the purposes of this chapter subject to the conditions upon which the aid, grants, or contributions are made;

(21) enter into contracts or agreements for the servicing and processing of financial agreements; and

(22) do all other things necessary or convenient to exercise powers granted or reasonably implied by this chapter.

(B) The authority is subject to the provisions of Article 1, Chapter 23 of Title 1, the Administrative Procedures Act.

Section 11‑50‑70. The following sources may be used to capitalize the Rural Infrastructure Fund and for the authority to carry out its purposes:

(1) state general fund appropriations made by the General Assembly;

(2) federal funds made available to the State;

(3) federal funds made available to the State for the authority;

(4) contributions and donations from government units, private entities, and any other source as may become available to the authority;

(5) all monies paid or credited to the authority, by contract or otherwise, payments of principal and interest on loans or other financial assistance made from the authority, and interest earnings which may accrue from the investment or reinvestment of the authority’s monies; and

(6) other lawful sources as determined appropriate by the board.

Section 11‑50‑80. Earnings on balances in the Rural Infrastructure Fund must be credited and invested as provided by law. Earnings must be credited to the Rural Infrastructure Fund. The authority may establish accounts and subaccounts within the Rural Infrastructure Fund as considered desirable to effectuate the purposes of this chapter, or to meet the requirements of any state or federal program. All accounts must be held in trust by the State Treasurer.

Section 11‑50‑90. (A) The authority may provide loans and other financial assistance to an eligible entity to pay for all or part of the eligible cost of a qualified project. Before providing a loan or other financial assistance to a qualified borrower, the authority must obtain the review and approval of the Joint Bond Review Committee. The term of the loan or other financial assistance must not exceed the useful life of the project. The authority may require the eligible entity to enter into a financing agreement in connection with its loan obligation or other financial assistance. The authority shall determine the form and content of loan applications, financing agreements, and loan obligations including the term and rate or rates of interest on a financing agreement.

(B) The board shall determine which projects are eligible projects and then select from among the eligible projects those qualified to receive from the authority a loan or other financial assistance.

Section 11‑50‑100. (A) Eligible entities are authorized to obtain loans or other financial assistance from the authority through financing agreements. Qualified borrowers entering into financing agreements and issuing loan obligations to the authority may perform any acts, take any action, adopt any proceedings, and make and carry out any contracts or agreements with the authority as may be agreed to by the authority and any qualified borrower for the carrying out of the purposes contemplated by this chapter.

(B) In addition to the authorizations contained in this chapter, all other statutes or provisions permitting eligible entities to borrow money may be utilized by any eligible entity in obtaining a loan or other financial assistance from the authority to the extent determined necessary or useful by the eligible entity in connection with any financing agreement and the issuance, securing, or sale of loan obligations to the authority. Notwithstanding the foregoing, obligations secured by ad valorem taxes may be issued by an eligible entity and purchased by the authority without regard to any public bidding requirement.

(C) An eligible entity may receive, apply, pledge, assign, and grant a security interest in revenues or ad valorem taxes, to secure its obligations as provided in this chapter, to meet its obligations under a financing agreement, or to provide for the construction and improving of a qualified project.

Section 11‑50‑110. The authority is performing an essential governmental function in the exercise of the powers conferred upon it and is not required to pay taxes or assessments upon property or upon its operations or the income from them, or taxes or assessments upon property or loan obligations acquired or used by the authority or upon the income from them.

Section 11‑50‑120. (A) If an eligible entity fails to collect and remit in full all amounts due to the authority on the date these amounts are due under the terms of any note or other obligation of an eligible entity, the authority shall notify the State Treasurer who, subject to the withholding of amounts under Article X, Section 14 of the Constitution, shall withhold all or a portion of the funds of the State and all funds administered by the State allotted or appropriated to the eligible entity and apply an amount necessary to the payment of the amount due.

(B) Nothing contained in this section mandates the withholding of funds allocated to an eligible entity which would violate contracts to which the State is a party or judgments of a court binding on the State.

Section 11‑50‑130. Neither the authority nor any officer, employee, or committee of the authority acting on behalf of it, while acting within the scope of this authority, is subject to any liability resulting from carrying out any of the powers given in this chapter.

Section 11‑50‑140. Notice, proceeding, or publication, except those required in this chapter, are not necessary to the performance of any act authorized in this chapter nor is any act of the authority subject to any referendum.

Section 11‑50‑150. All money of the authority and in the Rural Infrastructure Fund, except as authorized by law or provided in this chapter, must be deposited with and invested by the State Treasurer. Funds of the authority not needed for immediate use or disbursement may be invested by the State Treasurer in obligations or securities which are declared to be legal obligations by the provisions of Section 11‑9‑660.

Section 11‑50‑160. Following the close of each state fiscal year, the authority shall submit an annual report of its activities for the preceding year to the Governor and to the General Assembly. An independent certified public accountant shall perform an audit of the books and accounts of the authority at least once in each state fiscal year.

Section 11‑50‑170. (A) This chapter, being for the welfare of this State and its inhabitants, must be liberally construed to effect the purposes specified in this chapter. However, nothing in this chapter must be construed as affecting any proceeding, notice, or approval required by law for the issuance by an eligible entity of the loan obligations, instruments, or security for loan obligations.

(B) Where the governing body of an eligible entity does not have unlimited fiscal autonomy granting them the right to impose ad valorem property taxes for general operating purposes without limitation, the public entity, if applicable, which has the authority to approve ad valorem property taxes for general operating purposes without limitation must also approve a loan or security obligation provided by this chapter.

Section 11‑50‑180. If any provision of this chapter is held or determined to be unconstitutional, invalid, or otherwise unenforceable by a court of competent jurisdiction, it is the intention of the General Assembly that the provision is severable from the remaining provisions of the chapter and that the holding does not invalidate or render unenforceable another provision of the chapter.”

SECTION 2. This act takes effect upon approval by the Governor.

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