CHAPTER 3

South Carolina State Ports Authority

ARTICLE 1

Creation and Organization

**SECTION 54‑3‑10.** Creation and membership of State Ports Authority.

 (A) There is created the South Carolina State Ports Authority. The governing body of the authority is a board of directors consisting of eleven members, nine voting members appointed by the Governor as provided in Section 54‑3‑20, the Secretary of Transportation, or his designee, and the Secretary of Commerce, or his designee. The voting members shall be responsible for setting policies and direction for the authority so that the authority may achieve its mission. The powers and duties of the authority shall be exercised by the board. The board may delegate to one or more officers, agents, or employees such powers and duties as it determines are necessary and proper for the effective, efficient operation of the port.

 (B) The Secretary of Transportation and the Secretary of Commerce:

 (1) shall serve on the board, ex officio, as nonvoting members;

 (2) are ineligible for election as chairman, vice chairman, secretary, treasurer, or any other office elected by the board; and

 (3) may only attend meetings or portions of meetings open to the public. They are not permitted to attend executive session meetings.

HISTORY: 1962 Code Section 54‑1; 1952 Code Section 54‑1; 1942 (42) 1535; 1957 (50) 30; 1980 Act No. 517 Part II, Section 18; 2009 Act No. 73, Section 1, eff June 16, 2009.

Editor’s Note

2009 Act No. 73, Section 20 provides as follows:

“The provisions of this act related to a time limitation for members of the board of directors serving in a holdover capacity do not apply to board members serving in a holdover capacity as of the effective date of this act but apply to any subsequent term.”

Effect of Amendment

The 2009 amendment rewrote this section.

CROSS REFERENCES

South Carolina Mining Act, application of chapter, see Section 48‑20‑280.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 70, Creation of State Ports Authority.

Attorney General’s Opinions

No provision has been made for an interim power to appoint a member of the Ports Authority. 1975‑76 Op Atty Gen, No 4502, p 360.

NOTES OF DECISIONS

In general 1

1. In general

While the Authority may well be an agency or instrumentality of the state of South Carolina, that is a determination for the National Labor Relations Board to make in the first instance. South Carolina State Ports Authority v. N.L.R.B. (C.A.4 (S.C.) 1990) 914 F.2d 49.

It appears that power to sue and be sued in the statutory language creating the Authority does not constitute a waiver of Eleventh Amendment immunity, and that if such immunity has indeed been waived by the State that waiver arises from the nature of the activity conducted by the Ports Authority. American Hoesch, Inc. v. S.S. Aubade (D.C.S.C. 1970) 316 F.Supp. 1193.

A suit by the Authority is a suit by the State, since the Authority, as an agency of the State, is also in a real sense a part of the State, and shares in its sovereignty, and is completely identified with the State in the performance of its public functions, which are unquestionably of a governmental character, hence, there may be no removal of such suit to a Federal court on the ground of diversity of citizenship. South Carolina State Ports Authority v. Seaboard Air Line R. Co., 1954, 124 F.Supp. 533.

The Ports Authority is not an instrumentality of the state; thus, because the Ports Authority has broad powers to sue and be sued, to pay all expenses, and to incur and pay its own debts without obligating the state treasury, an action against the Authority is not an action against the state. Therefore, the Ports Authority is not immune from suit in the Federal Courts as an instrumentality of the state under the Eleventh Amendment to the United States Constitution. For purposes of the Eleventh Amendment, the Ports Authority would be an instrumentality of the state only if the state is the “real substantial party in interest” in a suit to recover damages to property caused by Authority negligence. Doris Trading Corp. v. S. S. Union Enterprise, 1976, 406 F.Supp. 1093.

**SECTION 54‑3‑20.** Appointment and terms of members; vacancies.

 (A) The members of the board, except for the Secretary of Transportation and the Secretary of Commerce, shall be appointed by the Governor, with the advice and consent of the Senate, for terms of five years each and until their successors shall have been appointed, screened, and qualified. In the event of a vacancy, however caused, a successor shall be appointed in the manner of original appointment for the unexpired term.

 (B) A candidate for appointment to the board may not be confirmed by the Senate or serve on the board, even in an interim capacity, until he is found qualified by possessing the abilities, the experience, and the minimum qualifications contained in Section 54‑3‑60.

HISTORY: 1962 Code Section 54‑2; 1952 Code Section 54‑2; 1942 (42) 1535; 1957 (50) 30; 2009 Act No. 73, Section 1, eff June 16, 2009.

Effect of Amendment

The 2009 amendment designated subsection (A), adding “, except for the Secretary of Transportation and the Secretary of Commerce” and “, screened,” and substituting “five years” for “seven years”; and added subsection (B) relating to candidate qualifications.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 70, Creation of State Ports Authority.

**SECTION 54‑3‑30.** Organization; officers; meetings.

 The board shall elect one of its members to serve as chairman who shall serve for a term of two years in this capacity and may not serve more than three consecutive full two‑year terms as chairman. The board also shall elect one member to serve as vice chairman, and one member to serve as secretary. The board shall meet upon the call of its chairman and a majority of its voting members shall constitute a quorum for the transaction of its business.

HISTORY: 1962 Code Section 54‑3; 1952 Code Section 54‑3; 1942 (42) 1535; 2009 Act No. 73, Section 1, eff June 16, 2009.

Effect of Amendment

The 2009 amendment rewrote this section.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 70, Creation of State Ports Authority.

**SECTION 54‑3‑40.** Treasurer.

 The board shall select one of its members to serve as treasurer. The treasurer shall give a surety bond in an amount fixed by the board and the premium on the bond shall be paid by the authority as a necessary expense.

HISTORY: 1962 Code Section 54‑4; 1952 Code Section 54‑4; 1942 (42) 1535; 2009 Act No. 73, Section 1, eff June 16, 2009.

Effect of Amendment

The 2009 amendment rewrote this section.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 70, Creation of State Ports Authority.

**SECTION 54‑3‑50.** Removal by Governor.

 Members of the board of directors may be removed by the Governor pursuant to Section 1‑3‑240(C)(1), for a breach of duty required by Section 54‑3‑80, or for entering into a conflict of interest transaction prohibited by Section 54‑3‑90.

HISTORY: 2009 Act No. 73, Section 1, eff June 16, 2009.

**SECTION 54‑3‑60.** Board member qualifications.

 (A) Each member of the board, except for the Secretary of Transportation and the Secretary of Commerce, or their designees, must possess a four‑year baccalaureate or more advanced degree from:

 (1) a recognized institution of higher learning requiring face‑to‑face contact between its students and instructors prior to completion of the academic program;

 (2) an institution of higher learning that has been accredited by a regional or national accrediting body; or

 (3) an institution of higher learning in this State chartered prior to 1962.

 (B) In addition to the requirements in subsection (A), each board member must possess a background of at least five years in any one or any combination of the following fields of expertise:

 (a) maritime shipping;

 (b) labor related to maritime shipping;

 (c) overland shipping by truck or rail, or both;

 (d) international commerce;

 (e) finance, economics, or statistics;

 (f) accounting;

 (g) engineering;

 (h) law; or

 (i) business management gained from serving as a chief executive officer, president, or managing director of a business or any upper level management position with a business that is equivalent in duties and responsibilities to the positions listed in this item.

 (C) When making appointments to the board, the Governor shall ensure that the diverse interests represented by the port are represented. To the greatest extent possible, the Governor shall ensure that the membership of the board includes a certified public accountant, a member representing port users such as manufacturers, shippers, and importers, a member representing the state’s economic development interests, and a member who has served as a corporate chief executive officer. Consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.

HISTORY: 2009 Act No. 73, Section 1, eff June 16, 2009.

**SECTION 54‑3‑70.** Performance review of executive director.

 The board shall conduct an annual performance review of the executive director and submit a written report of its findings to the Governor and the General Assembly. A draft of the performance review must be submitted to the executive director, and the executive director must be provided an opportunity to be heard by the board of directors before the board submits the final draft to the Governor and the General Assembly.

HISTORY: 2009 Act No. 73, Section 1, eff June 16, 2009.

**SECTION 54‑3‑80.** Discharge of duties by members of board of directors.

 (A) A member of the board of directors shall discharge his duties as a director, including his duties as a member of a committee:

 (1) in good faith;

 (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

 (3) in a manner he reasonably believes to be in the best interests of the authority. As used in this chapter, best interests means a balancing of the following:

 (a) achieving the purposes of the authority as provided in Section 54‑3‑130;

 (b) preservation of the financial integrity of the State Ports Authority and its ongoing operations;

 (c) economic development and job attraction and retention;

 (d) consideration given to diminish or mitigate any negative effect port operations or expansion may have upon the environment, transportation infrastructure, and quality of life of residents in communities located near existing or proposed port facilities; and

 (e) exercise of the powers of the authority in accordance with good business practices and the requirements of applicable licenses, laws, and regulations.

 (B) In discharging his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

 (1) one or more officers or employees of the State whom the director reasonably believes to be reliable and competent in the matters presented;

 (2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person’s professional or expert competence; or

 (3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

 (C) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (B) unwarranted.

 (D) Nothing in this article gives rise to a cause of action against a member of the board of directors or any decision of the board of directors regarding duties of the individual director or the board of directors concerning port operations or development. Wilful failure of the board or any individual member of the board to discharge his duties as required by this article may be considered by the Governor in determining whether to reappoint a board member or in the confirmation proceedings of that board member.

HISTORY: 2009 Act No. 73, Section 1, eff June 16, 2009.

**SECTION 54‑3‑90.** Conflict of interest transactions; burden of proof as to fairness; indirect interest of director; ratification of conflict of interest transaction.

 (A) A conflict of interest transaction is a transaction with the State Ports Authority in which a director has a direct or indirect interest. A conflict of interest transaction is not voidable by the authority solely because of the director’s interest in the transaction if any one of the following is true:

 (1) the material facts of the transaction and the director’s interest were disclosed or known to the board or a committee of the board, and the board or a committee of the board authorized, approved, or ratified the transaction; or

 (2) the transaction was fair to the authority and its customers.

 If item (1) has been accomplished, the burden of proving unfairness of any transaction covered by this section is on the party claiming unfairness. If item (1) has not been accomplished, the party seeking to uphold the transaction has the burden of proving fairness.

 (B) For purposes of this section, a director has an indirect interest in a transaction if:

 (1) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction;

 (2) another entity of which he is a director, officer, member, or trustee is a party to the transaction and the transaction is or should be considered by the board; or

 (3) another entity of which an immediate family member has a material financial interest or in which an immediate family member is a general partner, director, officer, member, or trustee is a party to the transaction and the transaction is or should be considered by the board.

 (C) For purposes of subsection (A)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (A)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

HISTORY: 2009 Act No. 73, Section 1, eff June 16, 2009.

ARTICLE 2

Ports Authority Management

**SECTION 54‑3‑101.** Executive Director of Port Operations.

 The board of directors shall employ an Executive Director of Port Operations who shall serve at the pleasure of the board. A person employed to this position shall possess practical and successful business and executive ability and must be knowledgeable in the field of port operations.

HISTORY: 2009 Act No. 73, Section 2, eff June 16, 2009.

**SECTION 54‑3‑102.** Duties of executive director; appointment of division directors and staff.

 (A) The executive director is charged with the affirmative duty to carry out the mission, policies, and direction of the authority as established by the board of directors. He must represent the authority in its dealings with other state agencies, local governments, special districts, and the federal government.

 (B) The executive director shall appoint a director for each division contained in the organizational structure established by the board of directors, who shall serve at the pleasure of the executive director.

 (C) For each division established by the organizational structure created by the board, the executive director must employ personnel and prescribe their duties, powers, and functions as he considers necessary and as may be authorized or directed by the board of directors.

HISTORY: 2009 Act No. 73, Section 2, eff June 16, 2009.

**SECTION 54‑3‑103.** Approval of compensation of executive and division directors.

 Compensation for the executive director and division directors shall be approved by the board of directors in a public vote. For the purpose of this section, compensation includes, but is not limited to, annual salary, bonuses, severance, and vehicle allowances.

HISTORY: 2009 Act No. 73, Section 2, eff June 16, 2009.

**SECTION 54‑3‑104.** Director of Port Operations for port of Georgetown.

 The Executive Director of the Port Operations also shall employ a Director of Port Operations for the port of Georgetown. A person employed to this position shall possess practical and successful business and executive ability and must be knowledgeable in the field of port operations.

HISTORY: 2009 Act No. 73, Section 2, eff June 16, 2009.

**SECTION 54‑3‑105.** Affirmative duty of Director of Port Operations for port of Georgetown.

 The Director of Port Operations for the port of Georgetown is charged with the affirmative duty to carry out the mission, policies, and direction of the authority for the port of Georgetown as established by the board of directors.

HISTORY: 2009 Act No. 73, Section 2, eff June 16, 2009.

ARTICLE 3

Purposes and Powers Generally

**SECTION 54‑3‑110.** Improvement of certain harbors or seaports.

 Through the authority the State may engage in promoting, developing, constructing, equipping, maintaining, and operating the harbors or seaports within the State, namely Charleston, Georgetown, and Jasper, and works of internal improvement incident thereto, including the acquisition or construction, maintenance, and operation at such seaports of harbor watercraft and terminal railroads, as well as other kinds of terminal facilities, and belt line roads or highways and bridges thereon and other bridges and causeways necessary or useful in connection therewith.

HISTORY: 1962 Code Section 54‑11; 1952 Code Section 54‑11; 1942 (42) 1535; 1956 (49) 1794; 2009 Act No. 73, Section 9, eff June 16, 2009.

Effect of Amendment

The 2009 amendment substituted “Jasper” for “Port Royal”.

LIBRARY REFERENCES

65 C.J.S., Navigable Waters Section 12.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 76, Operation of Harbors.

NOTES OF DECISIONS

Preemption 1

1. Preemption

South Carolina State Ports Authority’s (SCSPA’s) Enabling Act did not manifest a legislative intent to occupy the field such that county was preempted from developing port or terminal on river; Act enabled SCSPA to condemn property for port development but did not manifest an intent that other public entities are prohibited from condemning property for port or terminal development, Act consistently used the permissive “may” in describing the SCSPA’s powers and did not refer to any other enactments on the subject, and there were non‑SCSPA‑owned terminals in the state. South Carolina State Ports Authority v. Jasper County (S.C. 2006) 368 S.C. 388, 629 S.E.2d 624, rehearing denied. Counties 24; Water Law 2558

General Assembly had not expressly preempted the field of developing harbors, ports, and terminals on river in the South Carolina State Ports Authority’s (SCSPA’s) Enabling Act such that the SCSPA had exclusive authority to develop a port or terminal on the river. South Carolina State Ports Authority v. Jasper County (S.C. 2006) 368 S.C. 388, 629 S.E.2d 624, rehearing denied. Municipal Corporations 592(1); Water Law 2558

**SECTION 54‑3‑115.** Development of port in Jasper County.

 The authority shall take all action necessary to expeditiously develop a port in Jasper County in accordance with the Intergovernmental Agreement for Development of a Jasper Ocean Terminal on the Savannah River within the State of South Carolina that was entered into between the South Carolina State Ports Authority, the Georgia Ports Authority, and the Georgia Department of Transportation dated on January 27, 2008. In determining whether the development of a Jasper Port is proceeding in an expeditious manner, the board must consider whether timelines or benchmarks included in either the Intergovernmental Agreement or amendments to it or other agreement with a partner to develop the port have been or will be met in a timely manner. A determination that a delay in the planning or construction of the port is reasonable must be based on an objective analysis of all available empirical data and expert opinion, as well as a comparison of the construction timelines of ports of similar size and expected capacity. If it is determined that a partner to an agreement to develop the port is not meeting its obligations that will result in the port not being developed in an expeditious manner, then the authority must take all available and necessary action to compel the partner to meet its obligations and, if necessary, terminate the agreement and transfer to Jasper County the assets and right to develop the port. The authority also shall take all action necessary and as may be requested from time to time by the committees in the House of Representatives and the Senate in connection with the State of South Carolina and the State of Georgia to enter into an Interstate Compact to operate a Jasper Port on or before December 31, 2010, as such compact is generally outlined in the Intergovernmental Agreement. In connection with the development of a port in Jasper County, the authority shall make specific inquiries regarding the merits of using private capital to finance the construction of that port to a greater extent than historically has been used by the South Carolina State Ports Authority in connection with their existing port operations.

HISTORY: 2009 Act No. 73, Section 12, eff June 16, 2009.

**SECTION 54‑3‑117.** North Charleston container terminal.

 The authority shall take all action necessary to expeditiously complete construction of a container terminal in North Charleston.

HISTORY: 2009 Act No. 73, Section 13, eff June 16, 2009.

**SECTION 54‑3‑118.** Public‑private partnerships to increase capital investments in port facilities.

 It is the intent of the General Assembly that the State Ports Authority board consider public‑private partnerships with private investors that increase capital investments in port facilities and in the State of South Carolina. However, the board retains all authority associated with entering a public‑private partnership on behalf of the port.

HISTORY: 2009 Act No. 73, Section 14, eff June 16, 2009.

**SECTION 54‑3‑119.** Sale of property on Daniel Island and Thomas (St. Thomas) Island; rights of first refusal granted certain former landowners.

 (A) Except as provided in subsection (B), the State Ports Authority Board is directed to sell under those terms and conditions it considers most advantageous to the authority and the State of South Carolina all real property it owns on Daniel Island and Thomas (St. Thomas) Island except for the dredge disposal cells that are needed in connection with the construction of the North Charleston terminal on the Charleston Naval Complex and for harbor deepening and for channel and berth maintenance. The sale shall be timed and concluded on a schedule that prudently considers all market conditions affecting the sale but in any event must be under contract for sale by December 31, 2012, and the sale completed by December 31, 2013. The property must be transferred to the State Fiscal Accountability Authority for sale if authority is unable to complete the sale by December 31, 2013. To assist in the sale of the property, the board shall have the property appraised by at least two independent qualified commercial appraisers not affiliated with the authority. The real property appraisers must be a State Certified General Real Estate Appraiser, a member of the Appraisal Institute (MAI), and must be knowledgeable in appraisal and in appraising marine terminal facilities. The appraisal of the real property should include its future development opportunities and those of the surrounding properties. The sale price must be equal to or greater than at least one of the independent appraisals. The approval of the State Budget and Control Board is required to effectuate the sale if completed on or before December 31, 2013.

 (B) The board shall give the right of first refusal to those former landowners on Thomas (St. Thomas) Island who sold their land located within the transportation corridor to the authority in anticipation of the authority’s exercise of eminent domain. The right of first refusal must provide that the landowner may repurchase his land at the same price for which the authority purchased it from him. Each contract for the sale of a parcel located in the transportation corridor on Thomas Island must contain a covenant creating an easement over the parcel. The easement must permit the authority, and any successor in interest to the authority, reasonable ingress and egress to the real property on Daniel Island owned by the authority as of the effective date of this section. The easement must contain express language that the easement runs with the land.

 (C)(1) With regard to the sale of real property pursuant to subsection (A), the State Fiscal Accountability Authority is vested with all of the board’s fiduciary duties to the authority and the authority’s bondholders if the property is transferred to the State Fiscal Accountability Authority for sale. The acceptance of any sales price by either the board or the State Fiscal Accountability Authority must be exercised with due regard to the fiduciary duty owed to the authority and for the protection of the interests of the authority’s bondholders as set forth in its bond covenants, and otherwise according to law, including the conversion of a nonperforming asset into revenues in the most expeditious manner.

 (2) The State Fiscal Accountability Authority may deduct from the proceeds of the sale an amount equal to the actual costs incurred in conjunction with the sale of the property. The balance of the proceeds must be transmitted to the authority.

HISTORY: 2009 Act No. 73, Section 18, eff June 16, 2009.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

**SECTION 54‑3‑120.** Jurisdiction of Authority.

 The jurisdiction of the Authority in any of said harbors or seaports within the State shall extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows and shall extend to the outer edge of the outer bar at such harbors or seaports.

HISTORY: 1962 Code Section 54‑12; 1952 Code Section 54‑12; 1942 (42) 1535.

CROSS REFERENCES

Water Resources Planning and Co‑ordinating Act, see Sections 49‑3‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 71, Jurisdiction of State Ports Authority.

**SECTION 54‑3‑130.** Purposes of Authority.

 The Authority is created as an instrumentality of the State for the accomplishment of the following general purposes, all or any of them, which are intended to broaden and not to restrict any other powers given to it in this chapter, namely:

 (1) To develop and improve the harbors or seaports of Charleston, Georgetown, and Jasper for the handling of water‑borne commerce from and to any part of the State and other states and foreign countries;

 (2) To acquire, construct, equip, maintain, develop and improve such harbors or seaports and their port facilities;

 (3) To foster and stimulate the shipment of freight and commerce through such ports, whether originating within or without the State, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;

 (4) To cooperate with the United States of America, and any agency or any department, corporation or instrumentality thereof in the maintenance, development, improvement and use of such harbors and seaports in connection with and in furtherance of the war operations and needs of the United States;

 (5) To accept funds from any of the counties of Beaufort, Charleston or Georgetown, and to use them in such manner, within the purposes of the Authority, as shall be stipulated by the county and to act as agent or instrumentality for any of such counties in any matter coming within the general purposes of the Authority;

 (6) To act as agent for the United States of America or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;

 (7) To cooperate and act as co‑assurer with the city of Augusta, Georgia, and the Georgia State Ports Authority in furtherance of the river development project known as the Savannah River Project Below Augusta;

 (8) To promote, develop, construct, equip, maintain, and operate a harbor or harbors within this State on the Savannah River, and in furtherance thereof have all of the powers, purposes, and authority given by law to the authority in reference to the harbors and seaports of Charleston, Georgetown, and Jasper; and

 (9) In general to do and perform any act or function which may tend to or be useful toward the development and improvement of such harbors and seaports of this State and to the increase of water‑borne commerce, foreign and domestic, through such harbors and seaports.

HISTORY: 1962 Code Section 54‑13; 1952 Code Section 54‑13; 1942 (42) 1535; 1956 (49) 1794; 1958 (50) 1881; 2009 Act No. 73, Sections 10, 11, eff June 16, 2009.

Effect of Amendment

The 2009 amendment, in items (1) and (8), substituted “Jasper” for “Port Royal”.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 72, Purposes of State Ports Authority.

NOTES OF DECISIONS

In general 1

Preemption 2

1. In general

While the South Carolina State Ports Authority may well be an agency or instrumentality of the state of South Carolina, that is a determination for the National Labor Relations Board to make in the first instance. South Carolina State Ports Authority v. N.L.R.B. (C.A.4 (S.C.) 1990) 914 F.2d 49.

Because the Ports Authority has broad powers to sue and be sued, to pay all expenses, and to incur and pay its own debts without obligating the state treasury, an action against the Authority is not an action against the state. Doris Trading Corp. v. S. S. Union Enterprise, 1976, 406 F.Supp. 1093.

For purposes of the Eleventh Amendment, the Ports Authority would be an instrumentality of the state only if the state is the “real substantial party in interest” in a suit to recover damages to property caused by Authority negligence. Doris Trading Corp. v. S. S. Union Enterprise, 1976, 406 F.Supp. 1093.

2. Preemption

County’s efforts to condemn proposed site of South Carolina State Ports Authority’s (SCSPA’s) proposed river terminal did not conflict with specific provisions in SCSPA’s Enabling Act which allowed SCSPA to construct and operate ports such that implied conflict preemption applied to prevent county’s condemnation; Act did not manifest an intent that other public entities were prohibited from developing ports and terminals or from exercising their eminent domain powers for such development, and compliance with the Act was possible. South Carolina State Ports Authority v. Jasper County (S.C. 2006) 368 S.C. 388, 629 S.E.2d 624, rehearing denied. Counties 24; Eminent Domain 8

South Carolina State Ports Authority’s (SCSPA’s) Enabling Act did not manifest a legislative intent to occupy the field such that county was preempted from developing port or terminal on river; Act enabled SCSPA to condemn property for port development but did not manifest an intent that other public entities are prohibited from condemning property for port or terminal development, Act consistently used the permissive “may” in describing the SCSPA’s powers and did not refer to any other enactments on the subject, and there were non‑SCSPA‑owned terminals in the state. South Carolina State Ports Authority v. Jasper County (S.C. 2006) 368 S.C. 388, 629 S.E.2d 624, rehearing denied. Counties 24; Water Law 2558

**SECTION 54‑3‑140.** Powers of Authority.

 In order to enable it to carry out the purposes of this chapter, the Authority:

 (1) Shall have the powers of a body corporate, including the power to sue and be sued, to make contracts and to adopt and use a common seal and alter it as may be deemed expedient;

 (2) May rent, lease, buy, own, acquire, mortgage and dispose of such property, real or personal, as the Authority may deem proper to carry out the purposes and provisions of this chapter, all or any of them;

 (3) May acquire, construct, maintain, equip and operate wharves, docks, ships, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto and the construction of belt line roads and highways and bridges and causeways thereon and other bridges and causeways necessary or useful in connection therewith and shipyards, shipping facilities and transportation facilities incident thereto and useful or convenient for the use thereof, including terminal railroads;

 (4) May acquire, construct, maintain, operate and contract to operate in any of said counties airports, seaplane bases, naval bases and any other facilities necessary or useful in carrying out the purposes of this chapter and of the Authority;

 (5) Shall adopt an organizational structure for authority operations implemented by the executive director;

 (6) Shall establish an office for the transaction of its business in the city of Charleston and such other offices within and without the State as may be deemed by the board to be necessary or useful in carrying out the purposes of this chapter;

 (7) May create and operate such agencies and departments as the board may deem necessary or useful for the furtherance of any of the purposes of this chapter;

 (8) May pay all necessary costs and expenses involved in and incident to the formation and organization of the Authority and incident to the administration and operation thereof and all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this chapter;

 (9) May apply for and accept loans and grants of money from any Federal agency for any and all of the purposes authorized in this chapter and expend such moneys in accordance with the directions and requirements attached thereto or imposed thereon by any such Federal agency and give such evidences of indebtedness as shall be required by any such Federal agency, except that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State, or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State, or any political subdivision thereof;

 (10) May act as agent for the United States of America or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;

 (11) May adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the powers granted to it may be enjoyed and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business;

 (12) May do any and all other acts and things in this chapter authorized or required to be done, whether or not included in the general powers in this section mentioned;

 (13) May do any and all things necessary to accomplish the purposes of this chapter; and

 (14) May promulgate rules and regulations governing the use of or doing business on the Authority’s property or facilities, including the adoption of safety standards and insurance coverage or proof of financial responsibility, and may provide for the licensing of persons, firms or corporations using or doing business on such property or facilities, and for license fees to cover the expense thereof. Licenses may be revoked after notice and hearing by the Authority for wilful breach of or failure to comply with such rules and regulations.

 But the Authority shall not engage in shipbuilding except upon the unanimous vote of its members.

 (15) Shall develop a long‑range port development and capital financing plan, with a minimum twenty‑year forecast period at the time of adoption that provides for the promotion, development, construction, equipping, maintaining, and operation of the state’s harbors and seaports to maximize their economic benefit to the State, including, but not limited to, Charleston and Georgetown. The plan must be revised at least every five years, to reflect and account for changing conditions. The long‑range plan must be submitted to the General Assembly;

 (16) Shall review port operations and proposals for future operations and construction to determine whether utilizing a public‑private partnership to achieve the current or proposed operational goals and development is the most advantageous method to the State and would result in the most timely, economical, efficient, and successful fulfillment of the operational goals or completion of the development project;

 (17) Shall take all necessary steps it finds reasonable to establish rail access to port facilities in Charleston County by any Class I railway operating in Charleston County on the effective date of this item. The authority shall report annually to the General Assembly and the Governor on the status of efforts to establish rail access.

HISTORY: 1962 Code Section 54‑14; 1952 Code Section 54‑14; 1942 (42) 1535; 1957 (50) 30; 2009 Act No. 73, Sections 3, 4, eff June 16, 2009.

Effect of Amendment

The 2009 amendment, rewrote item (5) which formerly dealt with employment, dismissal and fixing the compensation of board employees; and added item (15) relating to development of a long‑range port development and capital financing plan, item (16) relating to review of port operations and proposals for future operations and construction, and item (17) relating to rail access.

CROSS REFERENCES

South Carolina State Ports Authority regulations, see S.C. Code of Regulations R. 104‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 73, General Powers of State Ports Authority.

United States Supreme Court Annotations

Motor carriers, Federal law expressly preempted port concession agreement’s placard and parking requirements for trucking companies, see American Trucking Associations, Inc. v. City of Los Angeles, Cal., 2013, 133 S.Ct. 2096, 186 L.Ed.2d 177. Automobiles 112, 115, 119; Municipal Corporations 53, 719(4)

NOTES OF DECISIONS

In general 1

Preemption 2

1. In general

Subsection (9) solely concerns the power of the Ports Authority to borrow money from agencies of the United States government, and it does prevent the state from being held liable for other Ports Authority activities. Ristow v. South Carolina Ports Authority (C.A.4 (S.C.) 1994) 27 F.3d 84, vacated 115 S.Ct. 567, 513 U.S. 1011, 130 L.Ed.2d 485, on remand 58 F.3d 1051.

While the South Carolina State Ports Authority may well be an agency or instrumentality of the state of South Carolina, that is a determination for the National Labor Relations Board to make in the first instance. South Carolina State Ports Authority v. N.L.R.B. (C.A.4 (S.C.) 1990) 914 F.2d 49.

It appears that power to sue and be sued in the statutory language creating the Authority does not constitute a waiver of Eleventh Amendment immunity, and that if such immunity has indeed been waived by the State that waiver arises from the nature of the activity conducted by the Ports Authority. American Hoesch, Inc. v. S.S. Aubade (D.C.S.C. 1970) 316 F.Supp. 1193.

The South Carolina State Ports Authority, under the section creating it, has the right to hire and fire without giving a reason. Bateman v. South Carolina State Ports Authority (D.C.S.C. 1969) 298 F.Supp. 999. States 84

A suit by the Authority is a suit by the State; hence, there may be no removal of such suit to a Federal court on the ground of diversity of citizenship. South Carolina State Ports Authority v. Seaboard Air Line R. Co., 1954, 124 F.Supp. 533.

Ports Authority is not immune from suit in the Federal Courts as an instrumentality of the state under the Eleventh Amendment to the United States Constitution. Doris Trading Corp. v. S. S. Union Enterprise, 1976, 406 F.Supp. 1093.

For purposes of the Eleventh Amendment, the Ports Authority would be an instrumentality of the state only if the state is the “real substantial party in interest” in a suit to recover damages to property caused by Authority negligence. Doris Trading Corp. v. S. S. Union Enterprise, 1976, 406 F.Supp. 1093.

Because the Ports Authority has broad powers to sue and be sued, to pay all expenses, and to incur and pay its own debts without obligating the state treasury, an action against the Authority is not an action against the state. Doris Trading Corp. v. S. S. Union Enterprise, 1976, 406 F.Supp. 1093.

2. Preemption

Parking and placard provisions of municipal port concession agreement that trucking companies had to sign before they could transport cargo at city’s port, which required, respectively, that such companies develop off‑street parking plans and display designated placards on their vehicles, were expressly preempted by the Federal Aviation Administration Authorization Act of 1994 (FAAAA) as “provision[s] having the force and effect of law,”; even if port, in promulgating the provisions, was motivated by desire to enhance community goodwill and improve the odds of achieving its business plan, and even though provisions were contained in contracts, port exercised classic regulatory authority in imposing the requirements, complete with use of criminal penalties for terminal operators that permitted access to trucks that were not registered under a concession agreement. American Trucking Associations, Inc. v. City of Los Angeles, Cal., 2013, 133 S.Ct. 2096, 186 L.Ed.2d 177. Automobiles 112; Automobiles 115; Automobiles 119; Municipal Corporations 53; Municipal Corporations 719(4)

County’s efforts to condemn proposed site of South Carolina State Ports Authority’s (SCSPA’s) proposed river terminal did not conflict with specific provisions in SCSPA’s Enabling Act which allowed SCSPA to construct and operate ports such that implied conflict preemption applied to prevent county’s condemnation; Act did not manifest an intent that other public entities were prohibited from developing ports and terminals or from exercising their eminent domain powers for such development, and compliance with the Act was possible. South Carolina State Ports Authority v. Jasper County (S.C. 2006) 368 S.C. 388, 629 S.E.2d 624, rehearing denied. Counties 24; Eminent Domain 8

**SECTION 54‑3‑150.** Acquisition of property.

 For the acquiring of rights‑of‑way and property necessary for the construction of terminal railroads and structures, including railroad crossings, airports, seaplane bases, naval bases, wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses, and other riparian and littoral terminals and structures and approaches to them and transportation facilities needful for their convenient use and belt line roads and highways, causeways, and bridges and other bridges and causeways, and for the acquiring of property necessary for the river development project known as the Savannah River Project Below Augusta, and for the acquiring of property necessary for the development of a harbor or harbors within this State on the Savannah River, the Authority may purchase them by negotiation or may condemn them. The power of eminent domain shall apply not only to all property of private persons or corporations but also as to property already devoted to public use.

HISTORY: 1962 Code Section 54‑15; 1952 Code Section 54‑15; 1942 (42) 1535; 1958 (50) 1881; 1987 Act No. 173 Section 34.

CROSS REFERENCES

Procedures for the condemnation of property, see Eminent Domain Procedure Act, see Sections 28‑2‑10 et seq.

State Authorities Eminent Domain Act, see Sections 28‑3‑20, 28‑3‑30, 28‑3‑140.

LIBRARY REFERENCES

29A C.J.S., Eminent Domain Section 23.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 78, Acquisition of Property.

NOTES OF DECISIONS

In general 1

Preemption 2

1. In general

The South Carolina State Ports Authority is given broad power of eminent domain. South Carolina State Ports Authority v. Seaboard Air Line R. Co., 1954, 124 F.Supp. 533.

South Carolina State Ports Authority’s (SCSPA’s) right to condemn proposed river terminal site was superior to county’s condemnation right, as SCSPA was a state agency. South Carolina State Ports Authority v. Jasper County (S.C. 2006) 368 S.C. 388, 629 S.E.2d 624, rehearing denied. Counties 21.5; Eminent Domain 4

County’s resolution and ordinance to condemn land on river for public marine terminal were not inconsistent with South Carolina State Ports Authority’s (SCSPA’s) statutory eminent domain power with regard to developing a port or terminal, as statute was silent on the issue of whether the SCSPA could prevent other entities from port or terminal development. South Carolina State Ports Authority v. Jasper County (S.C. 2006) 368 S.C. 388, 629 S.E.2d 624, rehearing denied. Counties 24

Since a Drum Island facility could clearly be classified as a riparian structure, the trial court correctly determined that the Ports Authority could properly condemn the facility under Section 53‑3‑150. South Carolina State Ports Authority v. Holston Land Co., Inc. (S.C. 1984) 282 S.C. 175, 318 S.E.2d 265.

The rule in this State is that the decision of the question of necessity lies with the one to whom the State has delegated the authority to take property for a public use and is not subject to review by the Supreme Court in the absence of fraud, bad faith, or clear abuse of discretion. And where there is an immediate need and necessity for the condemned property, the mere fact that plans for contemplated future uses of the property were not yet firm or definite would be insufficient to show either bad faith or abuse of discretion in condemnation of property. South Carolina State Ports Authority v. Kaiser (S.C. 1970) 254 S.C. 600, 176 S.E.2d 532.

A jury trial to determine the amount of compensation may only be obtained “in and by a return” to the notice provided for in Code 1962 Section 25‑111, and by one who has an interest in or lien upon property at the time. South Carolina State Ports Authority v. Kaiser (S.C. 1970) 254 S.C. 600, 176 S.E.2d 532.

This section confers the power of eminent domain upon the Port Authority, however, it does not specify the procedure for the reception of evidence in a condemnation hearing. South Carolina State Ports Authority v. Kaiser (S.C. 1970) 254 S.C. 600, 176 S.E.2d 532.

2. Preemption

South Carolina State Ports Authority’s (SCSPA’s) Enabling Act did not manifest a legislative intent to occupy the field such that county was preempted from developing port or terminal on river; Act enabled SCSPA to condemn property for port development but did not manifest an intent that other public entities are prohibited from condemning property for port or terminal development, Act consistently used the permissive “may” in describing the SCSPA’s powers and did not refer to any other enactments on the subject, and there were non‑SCSPA‑owned terminals in the state. South Carolina State Ports Authority v. Jasper County (S.C. 2006) 368 S.C. 388, 629 S.E.2d 624, rehearing denied. Counties 24; Water Law 2558

**SECTION 54‑3‑155.** Sale of real property, building, terminals, or other permanent structures.

 Without prior approval from the State Fiscal Accountability Authority or the Department of Administration, as applicable, the authority may not sell any real property or any buildings, terminals, or other permanent structures, excluding equipment, appurtenant to real property that are or may be used to carry out the purposes of the authority as provided in Section 54‑3‑130.

HISTORY: 2009 Act No. 73, Section 8, eff June 16, 2009.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

**SECTION 54‑3‑160.** Powers with respect to certain property.

 The Authority may exercise in reference to any property, assets, holdings, leases, contracts, rights, franchises or licenses conveyed to it under Section 1 of Act No. 216 of 1945 (Acts 1945, p 365) all of the rights, privileges, powers, immunities, duties and functions conferred by Sections 54‑5‑10, 54‑5‑60, 54‑5‑80, 54‑5‑90 and Sections 5‑35‑10 to 5‑35‑40 upon cities of this State having a population of fifty thousand inhabitants or more and upon port utilities commissions of such cities.

HISTORY: 1962 Code Section 54‑16; 1952 Code Section 54‑16; 1945 (44) 365.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 75, Powers of State Ports Authority Over Utilities.

**SECTION 54‑3‑170.** Use of certain State property.

 The Authority may take, exclusively occupy, use and possess, in so far as may be necessary for carrying out the provisions of this chapter, any areas of land owned by the State and within the counties of Beaufort, Charleston and Georgetown, not in use for State purposes, including swamps and overflowed lands, bottoms of streams, lakes, rivers, bays, the sea and arms thereof and other waters of the State and the riparian rights thereto pertaining. When so taken and occupied, due notice of such taking and occupancy having been filed with the Secretary of State, such areas of land are hereby granted to and shall be the property of the Authority. For the purposes of this section, the meaning of the term “use” shall include the removal of material from and the placing of material on any such land. In case it shall be held by any court of competent jurisdiction that there are any lands owned by the State which may not be so granted, then the provisions of this section shall continue in full force and effect as to all other lands owned by the State. The provisions of this section are subject to all laws and regulations of the United States with respect to navigable waters.

HISTORY: 1962 Code Section 54‑17; 1952 Code Section 54‑17; 1942 (42) 1535.

CROSS REFERENCES

Public buildings, lands and property, generally, see Section 10‑1‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 78, Acquisition of Property.

NOTES OF DECISIONS

In general 1

1. In general

Since Section 54‑3‑170 deals specifically with the taking of State‑owned property by the Ports Authority, it did not apply to the condemnation of Drum Island for the purpose of utilizing the facility as a depository for spoil material dredged from adjacent shipping channels. South Carolina State Ports Authority v. Holston Land Co., Inc. (S.C. 1984) 282 S.C. 175, 318 S.E.2d 265. Eminent Domain 24

**SECTION 54‑3‑180.** Exchange of property; removal of structures.

 The Authority may exchange any property acquired under the authority of this chapter for other property usable in carrying out the powers hereby conferred and also may remove from lands needed for its purposes and reconstruction on other locations, buildings, terminals, railroads or other structures upon the payment of just compensation, if, in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for port development, under the authorization of this chapter.

HISTORY: 1962 Code Section 54‑18; 1952 Code Section 54‑18; 1942 (42) 1535.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 78, Acquisition of Property.

**SECTION 54‑3‑190.** Lease or grant of property to United States; reimbursing United States for certain acquisition costs.

 The board of the Authority may assign, transfer, lease, convey, grant or donate to the United States of America, or to the appropriate agency or department thereof, any or all of the property of the Authority for any use by such grantee for any purpose included within the general purposes of this chapter, as stated in Section 54‑3‑130, such assignment, transfer, lease, conveyance, grant or donation to be upon such terms as the board of the Authority may deem advisable. In the event the United States of America should decide to undertake the acquisition, construction, equipment, maintenance or operation of the airports, seaplane bases, naval bases, wharves, piers, ships, refrigerator storage plants, warehouses, elevators, compresses, docks, shipyards, shipping and transportation facilities before referred to, including terminal railroads, roads, highways, causeways or bridges, and should itself decide to acquire the lands and properties necessarily needed in connection therewith by condemnation or otherwise, the board of the Authority may transfer and pay over to the United States of America, or to the appropriate agency or department thereof, such of the moneys belonging to the Authority as may be found needed or reasonably required by the United States of America to meet and pay the amount of judgments or condemnation, including costs, if any be taxed thereon, as may from time to time be rendered against the United States of America, or its appropriate agency, or as may be reasonably necessary to permit and allow the United States of America, or its appropriate agency, to acquire and become possessed of such lands and properties as are reasonably required for the construction and use of the facilities before referred to.

HISTORY: 1962 Code Section 54‑19; 1952 Code Section 54‑19; 1942 (42) 1535.

CROSS REFERENCES

Agreements and relations with the United States, generally, see Sections 3‑1‑10 et seq.

Grants of perpetual rights and easements to United States for development of waterways, see Sections 3‑5‑10 et seq., 3‑5‑310 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 78, Acquisition of Property.

**SECTION 54‑3‑200.** Acquisition and operation of terminal railroads.

 The Authority may acquire, own, lease, locate, install, construct, equip, hold, maintain, control and operate at harbors and seaports a line of terminal railroads with necessary sidings, turnouts, spurs, branches, switches, yard tracks, bridges, trestles and causeways and in connection therewith or appurtenant thereto may further lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive power and conveyance or appliance necessary or proper to carry passengers, goods, wares and merchandise over, along or upon the tracks of such railroads or other conveyances.

HISTORY: 1962 Code Section 54‑20; 1952 Code Section 54‑20; 1942 (42) 1535.

CROSS REFERENCES

Railroad, street railway, steamboat and canal companies, see Sections 58‑15‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 79, Operation of Terminal Railroads.

**SECTION 54‑3‑210.** Contracts with railroad employees.

 The Authority may make agreements as to the scale of wages, seniority and working conditions with locomotive engineers, locomotive firemen, switchmen and switch engine foremen and hostlers engaged in the operation of the terminal railroads provided for in Section 54‑3‑200 and the service and equipment pertinent thereto. And should the Authority exercise the power herein given then the Authority shall make such agreements with such employees in accordance with the act of Congress known as the Railway Labor Act (USC Title 45, Sections 151‑163) as amended or as hereafter amended to the end that such agreements as to seniority and working conditions will obtain as to such employees and the standard rate of pay be provided as is in force relative to like employees of interstate railroads operating in the same territory with the terminal railroads authorized hereby.

HISTORY: 1962 Code Section 54‑21; 1952 Code Section 54‑21; 1942 (42) 1535.

CROSS REFERENCES

General railroad law, see Sections 58‑17‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 79, Operation of Terminal Railroads.

**SECTION 54‑3‑220.** Connecting with or crossing other railroads.

 The Authority may with its terminal railroads connect with or cross any other railroad upon the payment of just compensation and receive, deliver to and transport the freight, passengers and cars of common carrier railroads as though it were an ordinary common carrier.

HISTORY: 1962 Code Section 54‑22; 1952 Code Section 54‑22; 1942 (42) 1535.

CROSS REFERENCES

General railroad law, see Sections 58‑17‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 79, Operation of Terminal Railroads.

**SECTION 54‑3‑230.** Foreign‑trade zones.

 The South Carolina State Ports Authority is authorized to make application to the Foreign‑Trade Zones Board for the purpose of establishing, operating, and maintaining foreign‑trade zones in the State, under the act of Congress known as the Foreign‑Trade Zones Act which provides for the establishment, operation and maintenance of foreign‑trade zones in the United States.

 The South Carolina State Ports Authority shall select and describe the location of the zones for which application may be made and shall make such rules and regulations concerning the operation, maintenance and policing of them as may be necessary to insure compliance with the Foreign‑Trade Zones Act and for other appropriate purposes.

 The South Carolina State Ports Authority shall have full power and authority to erect, maintain and operate or lease any structures or buildings or enclosures as may be necessary or proper for the establishing, operating, and maintaining of any such foreign‑trade zones in the State of South Carolina.

 The authority granted to the South Carolina State Ports Authority confers the right and duty and power to do all things necessary and proper to achieve compliance with the Foreign‑Trade Zone Act and to carry into effect the establishing, operating and maintaining of foreign‑trade zones within the State.

HISTORY: 1962 Code Section 54‑23; 1970 (56) 1972.

CROSS REFERENCES

Carriers, generally, see Sections 58‑13‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 83, Foreign‑Trade Zones.

**SECTION 54‑3‑240.** Inland ports.

 The South Carolina State Ports Authority is authorized to establish inland ports to provide services for the handling of general merchandise cargo; provided, however, that no such inland port shall be established unless it is designated as a United States Port of Entry by the United States Custom Service. The State Ports Authority shall select and describe the location of any such inland port and may erect, maintain and operate or lease any structure, building or enclosure as may be necessary for the establishment, operation and maintenance of any such port. The Authority shall make such rules and regulations and do such other things as may be necessary to carry out the purposes of this section.

HISTORY: 1962 Code Section 54‑24; 1972 (57) 2178.

CROSS REFERENCES

Carriers, generally, see Sections 58‑13‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 84, Inland Ports.

**SECTION 54‑3‑245.** Seafood industrial port in Beaufort County.

 In addition to the powers granted previously to the State Ports Authority, the Authority may construct, equip and operate a seafood industrial port in Beaufort County or it may contract with any agency or political subdivision of the State of South Carolina for any or all of these purposes.

HISTORY: 1978 Act No. 646 Section 2(23).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 85, Seafood Industrial Port.

**SECTION 54‑3‑250.** Inspection of motor vehicles prior to exportation.

 No motor vehicle shall be exported to another country through the State Ports Authority unless the Authority has inspected the vehicle and determines that it is the same vehicle described on the documents required to be filed concerning the exportation of such vehicle.

HISTORY: 1962 Code Section 54‑25; 1972 (57) 2122.

CROSS REFERENCES

Carriers, generally, see Sections 58‑13‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 86, Export Vehicle Inspection.

**SECTION 54‑3‑260.** Construction of terminal or railroad on Daniel Island.

 The authority must obtain the approval of the General Assembly prior to constructing a terminal or railroad on Daniel Island.

HISTORY: 2000 Act No. 387, Part II, Section 76, eff June 30, 2000.

**SECTION 54‑3‑270.** Cooper River terminal facility environmental study and permitting; indemnification of Port Authority members for Cooper River Bridge funding.

 (A) The State Ports Authority is required to begin environmental impact studies and other required actions in regard to the permitting process to locate new terminal facilities on the west bank of the Cooper River at locations it determines appropriate and with a capacity in conformance with available land at the proposed location or locations. If the locations identified are on real property not owned by the State Ports Authority, the authority is also authorized to begin the process of acquiring such property. Upon completion of the permitting process, the State Ports Authority shall render a report to the General Assembly concerning the new terminal facilities which shall include a request for any state funding necessary to complete the projects and the form such funding is requested to take. The State Ports Authority must provide the General Assembly with a summary of criteria developed for use in delineating the needs, requirements, and specifications of port expansion. The permit application must be drawn in a manner that is comprehensive, fair, and open to all sites available on the west bank of the Cooper River, based on their particular attributes, and may not exclude or prejudice artificially or unreasonably the acceptance of any site. This subsection does not authorize or allow State Ports Authority activity on the east bank of the Cooper River or the Wando side of Daniel Island except for use as dredge spoil disposal sites. This joint resolution does not constitute approval for the State Ports Authority required by Section 54‑3‑260 of the 1976 Code.

 (B) The South Carolina Department of Transportation, the Public Railways Division of the Department of Commerce, and the State Infrastructure Bank are directed to explore all potential opportunities for federal funding of the infrastructure enhancements for port expansion on the western side of the Cooper River.

 (C) The State shall take appropriate steps to provide indemnification to the State Ports Authority board members from any personal liability related to their service on the board in regard to funding provided to the South Carolina Transportation Infrastructure Bank for the Cooper River Bridge.

HISTORY: 2002 Act No. 256, Section 2, eff May 20, 2002; 2002 Act No. 356, Section 16, eff July 1, 2002.

Code Commissioner’s Note

Codified as Section 54‑3‑270 at the instruction of the Code Commissioner.

Effect of Amendment

The 2002 amendment, in subsection (C), deleted “Budget and Control Board” following “State”.

ARTICLE 5

Supervision of Wharves, Warehouses and Other Facilities

**SECTION 54‑3‑410.** Authority shall have general supervision of wharves, warehouses and terminal facilities.

 The Authority shall have general supervision in the port of Charleston of all wharves, warehouses and terminal facilities of all transmitting and transporting corporations and of all wharves, warehouses and terminal facilities of persons engaged in business as public warehousemen or wharfingers and shall examine them and keep itself informed as to their condition and the manner in which they are operated, with reference to the security and accommodation of the public and the compliance with all provisions of law applicable thereto.

HISTORY: 1962 Code Section 54‑31; 1952 Code Section 54‑31; 1942 Code Section 6727; 1932 Code Section 6727; Civ. C. ‘22 Section 3628; 1912 (27) 661; 1923 (33) 63; 1945 (44) 365.

LIBRARY REFERENCES

94 C.J.S., Wharves Section 7.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 90, Supervision of Wharves, Warehouses and Terminals.

Forms

Am. Jur. Pl. & Pr. Forms Warehouses Section 1 , Introductory Comments.

**SECTION 54‑3‑420.** Examination of facilities.

 The Authority may examine into all wharves, warehouses and terminal facilities, and the approaches thereto in Charleston County.

HISTORY: 1962 Code Section 54‑32; 1952 Code Section 54‑32; 1942 Code Section 6730; 1932 Code Section 6730; Civ. C. ‘22 Section 3631; 1912 (27) 661; 1923 (33) 63; 1945 (44) 365.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 90, Supervision of Wharves, Warehouses and Terminals.

**SECTION 54‑3‑430.** Requiring repair or improvement of facilities.

 Whenever in the judgment of the Authority it shall appear that repairs are necessary upon any such wharves, warehouses or terminal facilities or that any additions, improvements or enlargements in such wharves, warehouses or terminal facilities or any change in the mode of operating and constructing such business is reasonable and expedient in order to promote the security, convenience and accommodation of the public or to provide facilities required by the business offering at the port of Charleston, the Authority shall give information in writing to the owners or operators of such wharves, warehouses and terminal facilities of the improvements, changes, enlargements and betterments which it judges to be proper and if the owners or operators of such wharves, warehouses and terminal facilities shall fail within sixty days to adopt the suggestion of the Authority, the Authority shall take such legal proceedings as it may deem expedient.

HISTORY: 1962 Code Section 54‑33; 1952 Code Section 54‑33; 1942 Code Section 6728; 1932 Code Section 6728; Civ. C. ‘22 Section 3629; 1912 (27) 661; 1923 (33) 63; 1945 (44) 365.

**SECTION 54‑3‑440.** Authority may order improvements to facilities on petition.

 Upon the written petition of the city council of Charleston or of any of the patrons of any person owning or operating a wharf, warehouse or terminal facility for public uses or for hire, alleging that the plant or equipment in Charleston County of such person is inadequate or unsuited to the public need, the Authority shall fix a time and place for a hearing upon such petition and shall mail notice thereof to the parties in interest and give due public notice thereof at least one week prior to such hearing. Upon such hearing the Authority may, if it finds the wharf, warehouse or terminal facility to be inadequate or unsuited to the public need, order and prescribe such wharf, warehouse or terminal facility as shall be adequate and suitable and fix a time within which such person owning or operating the same shall construct such additions or improvements. Such person shall thereupon construct such additions or improvements to its plant or equipment within the time so fixed.

HISTORY: 1962 Code Section 54‑34; 1952 Code Section 54‑34; 1942 Code Section 6729; 1932 Code Section 6729; Civ. C. ‘22 Section 3630; 1912 (27) 661; 1945 (44) 365.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 90, Supervision of Wharves, Warehouses and Terminals.

**SECTION 54‑3‑450.** Unsafe or unsuitable facilities.

 The owners or occupiers of any wharf, warehouse or terminal facility within Charleston County shall at all times, as long as such property is used for public purposes, keep it and the sheds thereon and the approaches thereto in proper condition and repair. If such wharf, warehouse, terminal facility, superstructures or the approaches thereto are dangerous to life or limb or unsafe or unsuitable for the persons using them, the Authority shall notify in writing the owner or occupier of such wharf, warehouse or terminal facility to put it in proper repair or condition. If the owner or occupier shall neglect or refuse to put such wharf, warehouse, terminal facility, superstructures or approaches in proper condition within thirty days after notice, such owner or occupier so offending shall be subject to a penalty of one hundred dollars and the further sum of ten dollars for each day such neglect shall continue and shall moreover pay all expense incurred by reason of such neglect or refusal. And if such wharf, warehouse or terminal facility be at such time used for public purposes, the Authority may repair and put it in safe and suitable condition at the expense of the owner or occupier. But the owner or occupier of any such property shall, within ten days after notice is served upon him to repair the same, have the right to apply to the Authority for a hearing.

HISTORY: 1962 Code Section 54‑35; 1952 Code Section 54‑35; 1942 Code Section 6731; 1932 Code Section 6731; Civ. C. ‘22 Section 3632; 1912 (27) 661; 1923 (33) 63; 1945 (44) 365.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 90, Supervision of Wharves, Warehouses and Terminals.

**SECTION 54‑3‑460.** Penalties for violations of rules and regulations.

 If any person having a wharf, warehouse or terminal facility used for public purposes in Charleston County shall be guilty of a violation of the rules and regulations provided and prescribed by the Authority, such person owning or operating such wharf, warehouse or terminal facility shall incur a penalty for each offense of not less than one hundred dollars nor more than three hundred dollars, to be fixed by the presiding judge. An action for the recovery of such penalty shall be in any court of competent jurisdiction in the State where such violation has occurred or wrong has been perpetrated.

HISTORY: 1962 Code Section 54‑36; 1952 Code Section 54‑36; 1942 Code Section 6732; 1932 Code Section 6732; Civ. C. ‘22 Section 3633; 1912 (27) 661; 1945 (44) 365.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 90, Supervision of Wharves, Warehouses and Terminals.

**SECTION 54‑3‑470.** Appeals.

 A person may appeal from an order, ruling, or requirement of the authority pursuant to this article to the Administrative Law Court as provided in Sections 1‑23‑380(B) and 1‑23‑600(D). The appeal shall stay the execution of an order, ruling, or requirement. No fines or penalties imposed by the authority are operative or commence to run until the final determination of the appeal.

HISTORY: 1962 Code Section 54‑37; 1952 Code Section 54‑37; 1942 Code Section 6733; 1932 Code Section 6733; Civ. C. ‘22 Section 3634; 1912 (27) 661; 1945 (44) 365; 2006 Act No. 387, Section 32, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 2006 amendment rewrote this section to provide for appeals to the Administrative Law Court.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 90, Supervision of Wharves, Warehouses and Terminals.

**SECTION 54‑3‑480.** Article inapplicable to portions of Charleston County.

 The provisions of this article shall not apply to any portion of Charleston County not included in the city of Charleston or in the portion of the county lying to the north of said city and between the Ashley and Cooper Rivers.

HISTORY: 1962 Code Section 54‑38; 1952 Code Section 54‑38; 1942 Code Section 6733; 1932 Code Section 6733; Civ. C. ‘22 Section 3634; 1912 (27) 661; 1945 (44) 365.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 90, Supervision of Wharves, Warehouses and Terminals.

ARTICLE 7

Erection, Repairs and Removal of Wharves, Docks and Other Structures

**SECTION 54‑3‑610.** Powers of Authority as to erection or removal of wharves, docks and other structures.

 The Authority may fix the lines along the bay and harbor of Charleston and the rivers and creeks flowing therein within which riparian owners may erect wharves, docks and other proper erections and fixtures for commercial, manufacturing or any other purposes. The Authority may cause the removal of any wharf, dock, wreck or other structure that may obstruct navigation or that may, in its opinion, be injurious to said bay, harbor, rivers or creeks, at the expense of the owner or the person causing the obstructions. But the rights of any owner of a wharf whose lines have heretofore been fixed by grant or by authority of State legislation are in no wise to be disturbed.

HISTORY: 1962 Code Section 54‑51; 1952 Code Section 54‑51; 1942 Code Section 6719; 1932 Code Section 6719; Civ. C. ‘22 Section 3617; Civ. C. ‘12 Section 2507; Civ. C. ‘02 Section 1651; 1945 (44) 365.

LIBRARY REFERENCES

94 C.J.S., Wharves Section 7.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 91, Powers to Erect or Remove Wharfage Facilities.

**SECTION 54‑3‑620.** Permit for construction of wharf or other obstruction.

 No person shall build or extend any wharf or other obstruction in or upon the waters of the bay or harbor of Charleston or the rivers or creeks flowing therein without first obtaining, in writing, from the Authority a permit for so doing, except when the lines of such wharf have been fixed by any grant or by authority of State legislation, under a penalty of twenty dollars for every day such wharf or obstruction shall remain.

HISTORY: 1962 Code Section 54‑52; 1952 Code Section 54‑52; 1942 Code Section 6720; 1932 Code Section 6720; Civ. C. ‘22 Section 3618; Civ. C. ‘12 Section 2508; Civ. C. ‘02 Section 1652; 1945 (44) 365.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 91, Powers to Erect or Remove Wharfage Facilities.

NOTES OF DECISIONS

In general 1

1. In general

Riparian owner upon navigable river has, in absence of controlling local law to contrary, property right, incident to ownership of bank, of access from front of his land to navigable part of stream, and, when not forbidden by public law, has right to construct landings, wharves, and piers for this purpose. U.S. v. River Rouge Improvement Co., U.S.Mich.1926, 46 S.Ct. 144, 269 U.S. 411, 70 L.Ed. 339. Water Law 1235; Water Law 1248

**SECTION 54‑3‑630.** Penalty for building wharves or other obstructions beyond limits without authority.

 No person shall build any wharf or other obstruction beyond the lines so fixed by the Authority except when the lines of such wharf have heretofore been fixed by grant or by authority of State legislation. Any person so doing shall pay the sum of twenty dollars for every such offense and shall moreover be fined in the sum of twenty dollars for every day such wharf or other obstruction shall remain.

HISTORY: 1962 Code Section 54‑53; 1952 Code Section 54‑53; 1942 Code Section 6720; 1932 Code Section 6720; Civ. C. ‘22 Section 3618; Civ. C. ‘12 Section 2508; Civ. C. ‘02 Section 1652; 1945 (44) 365.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 91, Powers to Erect or Remove Wharfage Facilities.

**SECTION 54‑3‑640.** Duties of Authority as to repair of docks; owners liable for neglect.

 The Authority shall examine, or cause to be examined, all the docks, public or private, upon the waters of Charleston bay and harbor and the rivers and creeks flowing therein. When it is the opinion of the Authority that any such dock is not in a proper condition for the purposes for which it was designed and used, it shall cause a notice to be served upon the owner or occupier of such dock and he shall deepen such dock and if such owner or occupier shall neglect or refuse to attend to such dock after thirty days’ notice, such person so offending shall forfeit and pay twenty dollars and the further sum of five dollars for every day he shall so neglect or refuse and shall, moreover, pay all expenses incurred by reason of such neglect or refusal.

HISTORY: 1962 Code Section 54‑54; 1952 Code Section 54‑54; 1942 Code Section 6721; 1932 Code Section 6721; Civ. C. ‘22 Section 3619; Civ. C. ‘12 Section 2509; Civ. C. ‘02 Section 1653; 1945 (44) 365.

**SECTION 54‑3‑650.** Authority shall prosecute for fines and penalties.

 The Authority shall prosecute for fines and penalties under Sections 54‑3‑610 to 54‑3‑640.

HISTORY: 1962 Code Section 54‑55; 1952 Code Section 54‑55; 1942 Code Section 6720; 1932 Code Section 6720; Civ. C. ‘22 Section 3618; Civ. C. ‘12 Section 2508; Civ. C. ‘02 Section 1652; 1945 (44) 365.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 91, Powers to Erect or Remove Wharfage Facilities.

ARTICLE 8

Cessation of Marine Terminal Operations at Port Royal

Code Commissioner’s Note

ARTICLE 8 was added at the instruction of the Code Commissioner.

**SECTION 54‑3‑700.** Sale of property; conditions and requirements of sale.

 (A) The State Ports Authority has not had statutory responsibility to operate a marine terminal at Port Royal since September 21, 2004, and has ceased all marine operations at Port Royal.

 (B) The State Ports Authority is hereby directed to sell all its real and personal property at Port Royal as soon as practicable. The property must be marketed for sale in whole, or in parcels, at the discretion of the State Ports Authority.

 (C)(1)(a) The State Ports Authority, in its discretion, shall determine the manner of the sale. In no event shall terms of the sale extend beyond June 30, 2015, except as provided in subitems (b) and (c). The sale of the property in an amount permitted by item (3) shall satisfy the board’s fiduciary duties to the authority and the authority’s bondholders.

 (b) If the State Ports Authority has accepted a bona fide offer to purchase a parcel of the property, or an offer to purchase the property in whole, but the sale has not closed as of June 30, 2015, then the parcel that is the subject of the pending sale, or the property as a whole, shall not be transferred pursuant to item (2) on July 1, 2015. The State Ports Authority shall have until midnight on December 31, 2015, to close the sale. If the sale is not closed by midnight on December 31, 2015, then the parcel, or the property as a whole, shall be transferred pursuant to item (2).

 (c) If the State Ports Authority has received a bona fide offer for a parcel of the property, or for the property as a whole, within ninety days prior to June 30, 2015, the transfer of the parcel that is the subject of the offer, or the property as a whole, shall not be transferred pursuant to item (2) on July 1, 2015. The State Ports Authority shall have until midnight on December 31, 2015, to close the sale. If the sale is not closed by midnight on December 31, 2015, then the parcel, or the property as a whole, shall be transferred pursuant to item (2).

 (2)(a) Except as provided in subsection(C)(1)(b) and (c), on July 1, 2015, the property must be irrevocably transferred to the Division of General Services in the Department of Administration, as established by Act 121 of 2014, for sale at public auction. Upon the transfer of the property to General Services, the Department of Administration is vested with all of the board’s fiduciary duties to the authority and the authority’s bondholders.

 (b) Sale of the property pursuant to this section, and in an amount permitted by item (3), shall satisfy the board’s fiduciary duties to the authority and the authority’s bondholders.

 (3) The State Ports Authority and General Services may accept a sales price on any parcel of the property, or the property as a whole, that is equal to, or greater than, eighty percent of the appraised value of the property to be sold. General Services may deduct from the proceeds of the sale an amount equal to the actual costs incurred in conjunction with the sale of the property. The balance of the proceeds must be transmitted to the authority. The Town of Port Royal or Beaufort County, or a combination of the two, may purchase the property at a price within the parameters established in this item.

 (D) Any real or personal property at Port Royal which is to be sold must be appraised prior to the sale. The real property appraiser must be a State Certified General Real Estate Appraiser, a member of the Appraisal Institute (MAI), and must be knowledgeable in appraisal and in appraising closed industrial sites. The appraisal of the real property should include its future development opportunities and those of the surrounding properties, and give due consideration to the possible existence of adverse environmental conditions and structurally unsound improvements. The sale of the real property shall comply with all state laws and procedures. All proceeds from the sale of real and personal property at Port Royal must be retained by the State Ports Authority, except as provided in subsection (C)(3), and except that the Town of Port Royal may petition the State Fiscal Accountability Authority, or its successor entity, for a portion of the net proceeds from a sale and may be allocated a portion of these net proceeds in an amount not to exceed five percent of the net proceeds upon showing the allocation is necessary to pay for infrastructure needs directly associated with and necessitated by the closing of the port as Port Royal. These funds must be expended at the direction of the Town Council of Port Royal with the approval of the State Fiscal Accountability Authority, or its successor entity, solely for infrastructure, and shall have priority over all other expenditures except usual and necessary closing costs attributable to a sales contract.

HISTORY: 2004 Act No. 313, Section 1, eff September 21, 2004; 2009 Act No. 73, Section 17, eff June 16, 2009; 2014 Act No. 230 (S.1089), Section 2, eff June 2, 2014.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Editor’s Note

2009 Act No. 73, Section 19, provides as follows:

“The General Assembly encourages discussions between interested parties and the Town of Port Royal concerning the building of a boat landing north of the Broad River in Beaufort County. Funds negotiated between the Town of Port Royal and the South Carolina State Ports Authority pursuant to Section 54‑3‑700 should be used to build the boat landing.”

2014 Act No. 230, Section 1, provides as follows:

“SECTION 1. The General Assembly finds that:

“(1) Pursuant to Act 313 of 2004, the State Ports Authority was absolved of the statutory responsibility to operate a marine terminal at Port Royal.

“(2) Subsequent to the enactment of Act 313 of 2004, the State Ports Authority ceased marine operations at Port Royal.

“(3) Act 313 of 2004 further directed the State Ports Authority to sell its real and personal property at Port Royal and set forth the parameters of the potential sale.

“(4) Pursuant to Section 54‑3‑700, the State Ports Authority’s real and personal property at Port Royal was to be transferred to the State Budget and Control Board because its real and personal property had not been sold by December 31, 2009.

“(5) The State Budget and Control Board subsequently delegated the responsibility for selling the real and personal property at Port Royal back to the State Ports Authority.

“(6) The State Ports Authority has been unsuccessful in its attempt to sell its real and personal property at Port Royal.

“(7) The restrictions placed upon the State Ports Authority concerning the sale of its real and personal property at Port Royal, as well as challenging market conditions, have hindered its attempts at selling the property.

“(8) It is in the best interest of the residents of the Town of Port Royal, the State of South Carolina, and the State Ports Authority, to sell the real and personal property at Port Royal so that a nonperforming asset may be placed into its highest and best use in the private sector.

“(9) The conversion of a nonperforming asset into revenues in the most expeditious manner protects the interests of the authority’s bondholders as set forth in its bond covenants, and otherwise according to law.”

Effect of Amendment

The 2009 amendment, in subsection (C), designated subparagraph (1), substituting “2009” for “2006” and making nonsubstantive changes, and added paragraph (2) relating to transfer of the property to the State Budget and Control Board; and, in subsection (D), added the fourth sentence relating to acceptance of a sale price, added “State” preceding “Budget and Control Board” in the sixth sentence, and made nonsubstantive changes throughout.

2014 Act No. 230, Section 1, rewrote the section.

ARTICLE 9

Particular Powers as to Harbor and Bay of Charleston

**SECTION 54‑3‑810.** Jurisdiction and powers of Authority over harbor and bay of Charleston.

 The South Carolina State Ports Authority shall have jurisdiction over the harbor and bay of Charleston and the rivers and creeks flowing therein, may preserve peace and good order in said bay and harbor and shall make such regulations as it may see fit, not repugnant to the laws of the land, for the regulation and government of vessels entering said port and waters so as to provide for their safe and convenient use thereof and for the protection and preservation of said bay, harbor, rivers and creeks from injury by means of deposit of ballast and other materials, the creation of obstructions or for any other cause whatsoever, with authority to prescribe such penalties for the violation of such regulations as it may deem adequate; provided, that such penalty shall not exceed the sum of five hundred dollars for each offense, together with the expense of removing such obstructions or interferences with navigation. The solicitor of the circuit shall enforce such penalties upon the information and at the request of the Authority.

HISTORY: 1962 Code Section 54‑123; 1952 Code Section 54‑123; 1942 Code Section 6717; 1932 Code Section 6717; Civ. C. ‘22 Section 3615; Civ. C. ‘12 Section 2505; Civ. C. ‘02 Section 1649; 1881 (17) 604; 1885 (19) 354; 1957 (50) 32.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 77, Powers Over Charleston Harbor.

**SECTION 54‑3‑820.** Deposit of excavated material.

 When any dredging or excavation shall be done in said bay and harbor or rivers and creeks or the docks thereon, the material excavated shall be deposited only at such place or places as may be designated by the Authority, under such penalty not exceeding the amount prescribed in Section 54‑3‑810, as the Authority shall prescribe. The Authority shall prosecute for fines and penalties under this section.

HISTORY: 1962 Code Section 54‑124; 1952 Code Section 54‑124; 1942 Code Sections 6720, 6722; 1932 Code Sections 6720, 6722; Civ. C. ‘22 Sections 3618, 3620; Civ. C. ‘12 Sections 2508, 2510; Civ. C. ‘02 Sections 1652, 1654; 1945 (44) 365; 1957 (50) 32.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 77, Powers Over Charleston Harbor.

**SECTION 54‑3‑830.** Harbor master and port wardens.

 The Authority may elect or appoint annually a harbor master and such number of port wardens as in its discretion is necessary for the bay and harbor of Charleston and the rivers and creeks flowing therein and may define and assign the duties of such harbor master and port wardens under the rules and regulations for the government of vessels within or entering into said harbor and waters, or any of them, and for their safe and convenient use of said waters and may regulate their compensation, with power to remove them, or any of them, at its discretion.

HISTORY: 1962 Code Section 54‑125; 1952 Code Section 54‑125; 1942 Code Section 6723; 1932 Code Section 6723; Civ. C. ‘22 Section 3621; Civ. C. ‘12 Section 2511; Civ. C. ‘02 Section 1655; 1957 (50) 32.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 88, Harbor Master.

**SECTION 54‑3‑840.** Fees and harbor or port charges.

 The Authority may levy and collect from all vessels entering into and using the port of Charleston such fees and harbor or port charges, not inconsistent with the law, as, in its discretion, may be necessary to pay the harbor master and port wardens for the services required of them and to defray the necessary expenses attendant upon the execution of the duties devolved upon it under this article in relation to the regulations for the safety and convenience of vessels entering said port and waters, or any of them.

HISTORY: 1962 Code Section 54‑126; 1952 Code Section 54‑126; 1942 Code Section 6724; 1932 Code Section 6724; Civ. C. ‘22 Section 3622; Civ. C. ‘12 Section 2512; Civ. C. ‘02 Section 1656; 1885 (19) 354; 1957 (50) 32.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 81, Harbor and Port Charges.

**SECTION 54‑3‑850.** Payment and disbursement of fees, harbor or port charges, fines and penalties.

 All fees, harbor or port charges, fines and penalties collected under the provisions of this article shall be paid over to the Authority and be disbursed by it in paying the salaries of the harbor master and port wardens and such other officers as it may see fit to appoint to facilitate the discharge of the duties imposed by this article and such other expenses as may be incident to such duties. At the end of each fiscal year it shall keep on hand the sum of five thousand dollars as an operating fund, and shall turn over all funds in excess of five thousand dollars to the State port construction fund.

HISTORY: 1962 Code Section 54‑127; 1952 Code Section 54‑127; 1942 Code Section 6725; 1932 Code Section 6725; Civ. C. ‘22 Section 3623; Civ. C. ‘12 Section 2513; Civ. C. ‘02 Section 1657; 1881 (17) 606; 1956 (49) 1813; 1957 (50) 32.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 81, Harbor and Port Charges.

**SECTION 54‑3‑860.** Authority shall report annually to General Assembly.

 The Authority shall annually report to the General Assembly the amounts received for fees, harbor or port charges, fines and penalties and the disbursement thereof and also generally its acts and doings under this article.

HISTORY: 1962 Code Section 54‑128; 1952 Code Section 54‑128; 1942 Code Section 6726; 1932 Code Section 6726; Civ. C. ‘22 Section 3624; Civ. C. ‘12 Section 2514; Civ. C. ‘02 Section 1658; 1881 (17) 606; 1957 (50) 32.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 81, Harbor and Port Charges.

ARTICLE 11

Financial Matters

**SECTION 54‑3‑1010.** Issuance of bonds.

 As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building structure, terminal railroad or any other matter or thing which the Authority is herein authorized to acquire, construct, equip, maintain or operate, all or any of them, the Authority may issue bonds, payable both as to principal and interest from the revenues to be derived from the operation of all or any part of its properties and facilities, and the powers and authority granted to counties, cities, school districts and other political subdivisions of the State are hereby extended to and made available to the Authority. All revenue bonds issued by the Authority to obtain funds for the acquisition, construction, equipment, maintenance and operation of its properties and facilities shall be issued in accordance with the provisions of Sections 6‑21‑10 to 6‑21‑570 and all conditions, restrictions and limitations imposed by said Sections 6‑21‑10 to 6‑21‑570 as amended, shall be observed by the Authority in the issuance of such bonds, except as follows:

 (1) A pledge of the net revenues derived from the operation of its properties and facilities, all or any of them, rather than its gross revenues, may be made; and

 (2) Free service may, in the discretion of the Authority, be afforded to the United States of America, or any agency, department, corporation or instrumentality thereof, by any property or facility of the Authority to acquire, construct, equip, maintain and operate which funds were obtained from the revenue bonds purchased and held by a Federal agency, provided such free service is with the consent and at the request of the Federal agency then holding the whole of such revenue bonds.

HISTORY: 1962 Code Section 54‑61; 1952 Code Section 54‑61; 1942 (42) 1535.

CROSS REFERENCES

Revenue Bond Act for utilities, see Sections 6‑21‑10 et seq.

LIBRARY REFERENCES

81A C.J.S., States Section 215.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 80, State Ports Authority Financial Matters.

**SECTION 54‑3‑1020.** Disbursement of funds; surplus.

 All funds of the Authority shall be deposited in a bank or banks to be designated by the Authority. Funds of the Authority shall be paid out only upon warrants signed by the treasurer of the Authority and countersigned by the chairman or the acting chairman. No warrants shall be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this chapter and only when the account or expenditure for which they are to be given in payment has been audited and approved by the Authority. Any and all net revenues or earnings not necessary or desirable for the operation of its business shall be held subject to the further action of the General Assembly.

HISTORY: 1962 Code Section 54‑62; 1952 Code Section 54‑62; 1942 (42) 1535.

CROSS REFERENCES

Revenue Bond Act for utilities, see Sections 6‑21‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 80, State Ports Authority Financial Matters.

**SECTION 54‑3‑1030.** State port construction fund.

 The Authority may accept contributions from all persons for the construction and equipping of port facilities and improvements in the ports of the State, and shall place all such contributions in a separate fund to be known as “the State port construction fund,” and shall use such fund only for the purpose of engineering, constructing and equipping new port facilities and improving and enlarging existing port facilities.

HISTORY: 1962 Code Section 54‑62.1; 1956 (49) 1826, 2199; 1957 (50) 679; 1958 (50) 1899.

CROSS REFERENCES

Revenue Bond Act for utilities, see Sections 6‑21‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 80, State Ports Authority Financial Matters.

**SECTION 54‑3‑1040.** Annual financial statement.

 At least once each year the authority shall furnish the Governor, the Chairmen of the Senate Transportation Committee and the House of Representatives Ways and Means Committee and conspicuously post on the authority’s Internet website, a complete detailed statement of all monies received and disbursed by the authority during the preceding year. Such statement also shall show the several sources from which such funds were received and the balance on hand at the time of publishing the statement and shall show the complete financial condition of the authority.

HISTORY: 1962 Code Section 54‑63; 1952 Code Section 54‑63; 1942 (42) 1535; 2009 Act No. 73, Section 5, eff June 16, 2009.

Effect of Amendment

The 2009 amendment substituted “furnish the Governor, the Chairmen of the Senate Transportation Committee, and the House of Representatives Ways and Means Committee, and conspicuously post on the authority’s Internet website,” for “publish once in some newspaper published in Charleston County” and made nonsubstantive changes throughout.

CROSS REFERENCES

Revenue Bond Act for utilities, see Sections 6‑21‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 80, State Ports Authority Financial Matters.

**SECTION 54‑3‑1050.** Property of Authority exempt from taxation.

 The property of the Authority shall not be subject to any taxes or assessments thereon.

HISTORY: 1962 Code Section 54‑64; 1952 Code Section 54‑64; 1942 (42) 1535.

CROSS REFERENCES

Revenue Bond Act for utilities, see Sections 6‑21‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 80, State Ports Authority Financial Matters.

**SECTION 54‑3‑1060.** Transaction register.

 (A) For the purposes of this section, “detailed description of the expenditure” means a description of an expenditure that distinguishes that expenditure from other expenditures and is particular enough in its account of the expenditure to discern the purpose of the expenditure.

 (B) The authority shall maintain a transaction register that includes a complete record of all appropriated funds expended over one hundred dollars, from whatever source for whatever purpose. The register must be prominently posted on the authority’s Internet website and made available for public viewing and downloading.

 (C)(1) The register must include for each expenditure:

 (a) the transaction amount;

 (b) the name of the payee; and

 (c) a statement providing a detailed description of the expenditure.

 (2) The register must not include an entry for salary, wages, or other compensation paid to individual employees.

 (3) The register must not include any information that can be used to identify an individual employee.

 (4) The register must be accompanied by a complete explanation of any codes or acronyms used to identify a payee or an expenditure.

 (D) The register must be searchable and updated at least once a month. Each monthly register must be maintained on the Internet website for at least five years.

HISTORY: 2009 Act No. 73, Section 6, eff June 16, 2009.

ARTICLE 13

The Review and Oversight Commission on the South Carolina State Ports Authority

**SECTION 54‑3‑1300.** Commission established.; membership; factors to be considered in making appointments; officers and meetings.

 (A) There is hereby established a commission to be known as the Review and Oversight Commission on the South Carolina State Ports Authority, hereinafter referred to as the commission, which must exercise the powers and fulfill the duties described in this article.

 (B) The commission is composed of the following ten members:

 (1) from the Senate:

 (a) the Chairman of the Finance Committee or his designee;

 (b) the Chairman of the Judiciary Committee or his designee;

 (c) the Chairman of the Transportation Committee or his designee; and

 (d) two members appointed by the President Pro Tempore, one member upon the recommendation of the Senate Majority Leader and one member upon the recommendation of the Senate Minority Leader;

 (2) from the House of Representatives:

 (a) the Chairman of the Ways and Means Committee or his designee;

 (b) the Chairman of the Judiciary Committee or his designee;

 (c) the Chairman of the Labor, Commerce and Industry Committee, or his designee; and

 (d) two members of the House of Representatives appointed by the Speaker of the House of Representatives.

 (C) In making appointments to the commission, race, gender, and other demographic factors, such as residence in rural or urban areas, must be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State.

 (D) The commission must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and such other officers as the commission may consider necessary. Thereafter, the commission must meet as necessary to screen candidates for appointment to and at the call of the chairman or by a majority of the members. A quorum consists of six members.

HISTORY: 2009 Act No. 73, Section 7, eff June 16, 2009.

**SECTION 54‑3‑1310.** Powers and duties.

 The commission has the following powers and duties:

 (A) To screen each person appointed to serve on the board:

 (1) in screening candidates and making its findings, the commission must give due consideration to:

 (a) ability, area of expertise, dedication, compassion, common sense, and integrity of each candidate; and

 (b) the impact that each candidate would have on the racial and gender composition of the commission, and each candidate’s impact on other demographic factors represented on the commission, such as residence in rural or urban areas, to assure nondiscrimination to the greatest extent possible of all segments of the population of the State;

 (2) to determine if each candidate is qualified and meets the requirements provided by law to serve as a member of the Board of Directors of the State Ports Authority, make findings concerning whether each candidate is qualified, and deliver its findings to the Clerk of the Senate, the Clerk of the House of Representatives, and the Senate Transportation Committee for confirmation.

 (B) To conduct an oversight review of the authority and its operations at least once every two years:

 (1) the oversight reviews must consider whether the authority is promoting, developing, constructing, equipping, maintaining, and operating the harbors and seaports of this State in an efficient, effective manner in accordance with all applicable laws and regulations. The oversight reviews also must include an analysis of the performance of the executive director. In performing this analysis, the commission must consider the report required pursuant to Section 54‑3‑70 in addition to other information collected concerning the executive director’s performance;

 (a) a draft of a board member’s and executive director’s performance review and the evaluations of the actions of the board, must be submitted to the appropriate party, and that party must be allowed an opportunity to be heard before the commission conducting the oversight review by the performance review or evaluation, as the case may be, is final;

 (b) the final performance review of a board member must be made a part of the member’s record for consideration if the member seeks reappointment to the board;

 (2) a written report of the findings from each oversight review must be published in the journals of both houses and made available on the General Assembly’s Internet website and transmitted to the Governor and the board.

 (C) To review and evaluate the complete list of the properties on Daniel and Thomas (St. Thomas) Islands transmitted to the commission. The commission must recommend to the Department of Administration or State Fiscal Accountability Authority, as appropriate, whether to approve the sale or sell, as appropriate, any or all of the real property the authority owns on Daniel Island and Thomas (St. Thomas) Island pursuant to Section 54‑3‑119.

 (D) Undertake any additional reviews, studies, or evaluations as it considers necessary.

HISTORY: 2009 Act No. 73, Section 7, eff June 16, 2009.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

**SECTION 54‑3‑1320.** Waiver of qualifications for board candidate.

 The commission by a two‑thirds vote of its membership, may waive the requirements of Section 54‑3‑60(A) and (B) for a candidate for the Board of Directors of the State Ports Authority.

HISTORY: 2009 Act No. 73, Section 7, eff June 16, 2009.

**SECTION 54‑3‑1330.** Cooperation by state agencies.

 State agencies must fully cooperate with requests from the commission for assistance in carrying out its responsibilities and duties as established in this article.

HISTORY: 2009 Act No. 73, Section 7, eff June 16, 2009.

**SECTION 54‑3‑1340.** Oversight report; performance review surveys.

 (A) The oversight report required by this article must at least contain:

 (1) a performance review of each member of the board during the previous two years;

 (2) a performance review of the State Ports Authority executive director; and

 (3) an evaluation of the actions of the board, sufficient to allow the members of the General Assembly to better judge whether these actions serve the best interests of the citizens of South Carolina, both individual and corporate.

 (B) To assist the commission in performing the performance reviews and evaluations required by this article, the commission may develop and distribute, as appropriate, an anonymous and confidential survey evaluating the board members and the executive director. At a minimum, the survey must include the following:

 (1) knowledge and application of substantive port issues;

 (2) the ability to perceive relevant issues;

 (3) absence of influence by political considerations;

 (4) absence of influence by identities of labor unions;

 (5) courtesy to all persons appearing before the board;

 (6) temperament and demeanor in general, preparation for hearings, and attentiveness during hearings; and

 (7) any other issue the commission deems appropriate.

HISTORY: 2009 Act No. 73, Section 7, eff June 16, 2009.

**SECTION 54‑3‑1350.** Documents relating to sale of real property owned by commission; confidentiality.

 In order to discharge their oversight responsibilities in regard to State Ports Authority operations and management, the commission may request and shall be provided within fifteen days after the request with any documents related to the sale or disposition or contemplated sale or disposition of any real property owned by the authority. The provisions of this section supersede any conflicting provisions contained in the Freedom of Information Act and these documents may be shared only with members of the commission, staff assigned to the commission, members of the General Assembly with whom the commission chooses to consult concerning the matter, or legal counsel employed by the Senate or the House of Representatives. These documents and the information contained in them must be kept confidential, and are not subject to public disclosure, or any other disclosure not permitted by the provisions of this section.

HISTORY: 2009 Act No. 73, Section 7, eff June 16, 2009.

**SECTION 54‑3‑1360.** Mileage, subsistence, and per diem; reimbursement of certain expenses.

 (A) Commission members are entitled to such mileage, subsistence, and per diem as authorized by law for members of boards, committees, and commissions while in the performance of the duties for which appointed. These expenses shall be paid by the State Ports Authority.

 (B) The State Ports Authority must pay for all reasonable expenses associated with the commission’s duties to screen appointees to the authority’s board and conduct oversight as required by this article.

HISTORY: 2009 Act No. 73, Section 7, eff June 16, 2009.

**SECTION 54‑3‑1370.** Use of and employment of staff.

 The commission must use clerical and professional employees of the General Assembly for its staff, who must be made available to the commission. The commission may employ or retain other professional staff, upon the determination of the necessity for other staff by the commission and as may be funded in the legislative appropriation of the annual general appropriations act. The State Ports Authority must pay for all reasonable staff‑related expenses associated with the commission’s activities.

HISTORY: 2009 Act No. 73, Section 7, eff June 16, 2009.