

## CAROLINA BAYS PRESERVATION

### Staff Proposals

On October 30th, Task Force staff met with representatives of DHEC (and OCRM) and DNR to discuss possible techniques that may be implemented to incentivize the preservation of Carolina Bays. The meeting was conducted with the following parameters in mind: (1) Carolina Bays are a unique ecological and cultural feature that should be preserved; and (2) preservation efforts must respect private property rights. Staff is also very mindful that the likelihood of legislative success in implementing any or all of the suggestions must also be considered.

1. **Tax Incentives.** Pursuant to Section 12-6-3515 of the South Carolina Code private landowners may receive a tax credit for making a "gift of land for conservation" to a "qualified conservation organization. Carolina Bays are eligible for this credit. The tax credit "may not exceed two hundred fifty dollars per acre" and no more than two hundred fifty thousand dollars may be claimed in any single tax year. Excess credits may be carried forward to succeeding tax years.

This tax credit has been in place since 2000. It has been amended twice since its enactment, however, the credit amounts have been unchanged. The credit also relates the transfer of real property as it exists. There is no allowance or incentive to restore or rehabilitate the property.

I have attached a copy of the Section 12-6-3515 (and the referenced IRS code) for your review.

- Increase the tax credit allowed per acre and in total. Increase the per acre taxable amount to three hundred fifty dollars and the total amount that may be claimed in a year to three hundred thirty five thousand dollars. These increases roughly account for inflation during the twelve years since the tax credit was first enacted.
  - Amend the tax credit, or enact a separate tax credit, that allows for credit to be given to a landowner who restores or rehabilitates a Carolina Bay. The credit should equal the amount provided for the gift of land for conservation.
2. **DNR Heritage Program.** The Department of Natural Resources already maintains the Heritage Trust Program that is designed to place certain property in trust for current and future generations so that they may enjoy the natural and cultural resources of our State. Landowner's property rights are protected - the trust may not acquire property by eminent domain. For private property to be included in the trust, a landowner has to offer to sell or donate the property, the property must fit within the statutory parameters, and, if the offer is for sale, the landowner and DNR must reach a mutually agreed upon price.

The property dedicated to the Trust is available for public use and enjoyment subject to reasonable restrictions. Property that is dedicated is property that is included as a trust preserve - which means that it is protected from future development or conversion to other uses.

The statutes establishing the trust and the advisory board are attached for your review.

More information related to the trust may be found on DNR's website:

<http://www.dnr.sc.gov/mlands/hpprogram.html> (general description of the program)

<https://www.dnr.sc.gov/mlands/heritage> (inventory of existing trust properties)

- Amend Section 51-17-140 to exempt Carolina Bays from the cap imposed on the amount of land the trust can acquire if the Carolina Bay acquired is ultimately dedicated.
  - Amend Chapter 15, Title 51 to clarify that Carolina Bays always fit within the parameters of the program.
3. **Mitigation.** The appropriate amount and location of mitigation for impacts resulting from development or other activities that impact the environment, including Carolina Bays and other wetlands, is driven by federal law. Certainly Carolina Bays are currently allowed to be included when environmental mitigation is required. However, staff discussed with the regulatory agencies the possibilities of incentivizing the preservation of Carolina Bays through mitigation. It was clear from our discussions that this is a very nuanced area that relies heavily on guidance from the federal government, particularly the Corps of Engineers, but that our regulatory agency, DHEC, may have some flexibility with how that guidance is applied.

We discussed the use of mitigation banks and permittee responsible mitigation (PRM) strategies but could come to no specific recommendations at this time. The regulatory agencies would like to further deliberate on this matter. PRM is utilized in cases where proposed projects have large, unavoidable wetland/stream impacts and there are no available established mitigation bank(s) or available mitigation credits within the watershed (or adjacent watersheds) of impact, or where mitigation credit need would outstrip the availability of credits from established mitigation banks. Where large projects occur, the agencies can recommend PRM strategies be employed.

- Consider legislation that incentivizes, by use of tax credits, permit applicants to acquire impacted Carolina Bays and restore the wetland functions and values having occurred previously through an approved PRM process as part of individual permit applications. PRM projects require a permanent protection mechanism, therefore the tax incentives as mentioned in #1 above could apply where restored Carolina Bays are protected by a qualified and approved land trust and remain in the private sector. Another methodology for protection would be via the DNR Heritage Program as described in # 2 above. The advantage of this strategy is that tax credits may help to or completely offset the higher cost of a permit applicant's "out-of-kind" and/or "out-of-watershed" mitigation needs.
- In concert with the above recommendation, consider authorization of tax incentives to landowners of impacted Carolina Bays who would be willing sellers of such properties for the express use of PRM projects.
- Ask the regulatory agency to consider what avenues are available (and appropriate) within their regulatory framework to incentivize the preservation, restoration, and rehabilitation of Carolina Bays. Request that the agencies report back to the Task Force by March 1, 2013.

## ATTACHMENT 1

**SECTION 12-6-3515.** Credit for conservation or qualified conservation contribution of real property; lands eligible; transfer of credits; definitions.

(A) A taxpayer who has qualified for and claimed on the taxpayer's federal income tax return a charitable deduction for a gift of land for conservation or for a qualified conservation contribution donated after May 31, 2001, on a qualified real property interest located in this State may elect to claim a credit against a tax imposed by this chapter for the applicable tax year in an amount equal to twenty-five percent of the total amount of the deduction attributable to the gift of land for conservation or to the qualified real property interest located in this State; provided, however, that the credit is subject to the caps provided in subsection (C). If the amount of the credit exceeds the taxpayer's tax liability under this chapter for the taxable year, or if it exceeds the maximum credit that may be used in any particular taxable year as provided in subsection (C)(2), the excess credit may be carried forward to succeeding taxable years until all the credit is claimed. In addition to the carry forward of unused credit, unused credit may be transferred, devised, or distributed, with or without consideration, by an individual, partnership, limited liability company, corporation, trust, or estate. To be effectual, such a transfer, devise, or distribution requires written notification to and approval by the department with the unused credit maintaining all its original attributes in the hands of the recipient. With regard to the sale or exchange of a credit allowed under this section, general income tax principles apply for purposes of the state income tax. In the hands of the original donor of a qualified conservation contribution of a qualified real property interest, or of a gift of land for conservation, and of any subsequent transferee, devisee, or distributee, the credit allowed by this section that may be used to offset state income tax liability in any one taxable year is limited to an amount that, when combined with all other state income tax credits of the taxpayer, does not exceed the taxpayer's total state income tax liability for the taxable year. The fair market value of qualified donations made pursuant to this section must be substantiated by a "qualified appraisal" prepared by a "qualified appraiser" as those terms are defined under applicable federal law and regulations applicable to charitable contributions.

(B)(1) For purposes of this section:

(a) "Qualified conservation contribution" and a "qualified real property interest" are defined as provided in Internal Revenue Code Section 170(h);

(b) "Gift of land for conservation" means a charitable contribution of fee simple title to real property conveyed for conservation purposes as defined in Internal Revenue Code Section 170(h)(4)(A) to a qualified conservation organization as described in Internal Revenue Code Section 170(h)(3); and

(c) No credit is allowed pursuant to this section unless the contribution meets the requirements of Section 170 of the Internal Revenue Code, this section, and Section 12-6-5590. Property used for or associated with the playing of golf, or is planned to be so used or associated, is not eligible for the credits allowed by this section.

(2) Notwithstanding the provisions of Internal Revenue Code Section 170(h) and applicable regulations pertaining to forestry and silviculture practices, a taxpayer is not disqualified for the tax credit allowed in this section because of silvicultural and forestry practices permitted by or undertaken pursuant to a conservation contribution on a real property interest if:

(a) the forestry and silvicultural practices permitted by or undertaken pursuant to the conservation contribution conform to Best Management Practices established by the South Carolina Forestry Commission existing either at the time the conservation contribution is made, or at the time a particular forestry or silvicultural practice is undertaken;

(b) the conservation contribution on a real property interest in all other respects conforms to the requirements of Internal Revenue Code Section 170(h) and applicable regulations for a "qualified conservation contribution" of a "qualified real property interest"; and

(c) the taxpayer provides the Department of Revenue with the information the department considers necessary to determine that the taxpayer would otherwise be eligible for the deduction allowed under Section 170(h).

The amount of the credit allowable under this item is equal to twenty-five percent of the deduction that would otherwise be allowable under Section 170(h) but for the silvacultural and forestry activities performed on the real property interest, subject to the same conditions and limitations as the credit allowed by this section.

(C)(1) The credit provided for in this section may not exceed two hundred fifty dollars per acre of property to which the qualified conservation contribution or gift of land for conservation applies. For the purpose of calculating the per acre tax credit cap of this subsection, all upland and wetland acreage subject to the qualified conservation contribution shall be taken into account, except for property lying within the intertidal zone. All other wetland acreage subject to the qualified conservation contribution including, but not limited to, ponds, wetland impoundments, hardwood bottomlands, and Carolina Bays shall be taken into account when calculating the two hundred fifty dollar per acre tax credit cap.

(2) Regardless of the amount of the credit allowed by this section, the total credit a taxpayer may use under this section for any particular taxable year may not exceed fifty-two thousand five hundred dollars.

(3) For purposes of applying the per acre limitation and per taxpayer limitation on the credit allowed by this section, the attribution rules of Section 267 of the Internal Revenue Code apply.

(D) The South Carolina Department of Revenue shall report to the Governor, the House Ways and Means Committee, and Senate Finance Committee the activity generated on taxable year 2001 and 2002 state income tax returns by the credit allowed by this item.

#### CREDIT(S)

HISTORY: 2000 Act No. 283, Section 1(C), eff June 1, 2001; 2005 Act No. 145, Section 43.B, eff June 7, 2005; 2006 Act No. 386, Section 43, eff June 14, 2006.

#### EDITOR'S NOTE

2000 Act No. 283, Section 1.A, provides as follows:

"This section may be cited as the 'South Carolina Conservation Incentives Act'."

#### EFFECT OF AMENDMENT

The 2005 amendment, in paragraph (B)(1), added subparagraph (c).

The 2006 amendment, in subparagraph (B)(1)(c), added the second sentence relating to property associated with playing golf.

## ATTACHMENT 2

Internal Revenue Code 170(h)

(h) Qualified conservation contribution.--

(1) In general.--For purposes of subsection (f)(3)(B)(iii), the term "qualified conservation contribution" means a contribution--

- (A) of a qualified real property interest,
- (B) to a qualified organization,
- (C) exclusively for conservation purposes.

(2) Qualified real property interest.--For purposes of this subsection, the term "qualified real property interest" means any of the following interests in real property:

- (A) the entire interest of the donor other than a qualified mineral interest,
- (B) a remainder interest, and
- (C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) Qualified organization.--For purposes of paragraph (1), the term "qualified organization" means an organization which--

- (A) is described in clause (v) or (vi) of subsection (b)(1)(A), or
- (B) is described in section 501(c)(3) and--

- (i) meets the requirements of section 509(a)(2), or
  - (ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) Conservation purpose defined.--

(A) In general.--For purposes of this subsection, the term "conservation purpose" means--

- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation

is--

- (I) for the scenic enjoyment of the general public, or
- (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

- (iv) the preservation of an historically important land area or a certified historic structure.

(B) Special rules with respect to buildings in registered historic districts.--In the case of any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in subparagraph (C)(ii), such contribution shall not be considered to be exclusively for conservation purposes unless--

(i) such interest--

(I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and

(II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,

(ii) the donor and donee enter into a written agreement certifying, under penalty of perjury, that the donee--

(I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and

(II) has the resources to manage and enforce the restriction and a commitment to do so, and

(iii) in the case of any contribution made in a taxable year beginning after the date of the enactment of this subparagraph, the taxpayer includes with the taxpayer's return for the taxable year of the contribution--

(I) a qualified appraisal (within the meaning of subsection (f)(11)(E)) of the qualified property interest,

(II) photographs of the entire exterior of the building, and

(III) a description of all restrictions on the development of the building.

(C) Certified historic structure.--For purposes of subparagraph (A)(iv), the term "certified historic structure" means--

(i) any building, structure, or land area which is listed in the National Register, or

(ii) any building which is located in a registered historic district (as defined in section 47(c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

(5) Exclusively for conservation purposes.--For purposes of this subsection--

(A) Conservation purpose must be protected.--A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) No surface mining permitted.--

(i) In general.--Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) Special rule.--With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

(6) Qualified mineral interest.--For purposes of this subsection, the term "qualified mineral interest" means--

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

## ATTACHMENT 3

### CHAPTER 17.

#### HERITAGE TRUST PROGRAM

#### ARTICLE 1.

#### HERITAGE TRUST PROGRAM

##### EDITOR'S NOTE

Sections 51-17-10 through 51-17-150 were designated as Article 1 by 2006, Act No. 251, Section 1.

##### **SECTION 51-17-10.** Definitions.

The following words or phrases have the definition given unless clearly specified otherwise:

1. "Board of the department" means the governing board of the Department of Natural Resources.
2. "Department" means the Department of Natural Resources.
3. "Advisory board" means the Heritage Trust Advisory Board.
4. "Natural area" means an area of land or water, or a combination thereof, generally, but not necessarily, large in size. Such an area may be in public or private ownership and shall contain relatively undisturbed ecosystems, landforms, threatened, endangered, or unique plant life or animal habitats, or other unusual or outstanding scientific, educational, aesthetic, or recreational characteristics.
5. "Natural feature" means an area of land or water, or a combination thereof, which is generally, but not necessarily, small in size. Such area may be in public or private ownership and shall contain or consist of outstanding remnants or natural elements of surviving undisturbed natural ecosystems such as record size individual species of plant life, nests or rookeries, geological formations, or objects of special scientific, educational, aesthetic, or recreational character.
6. "Cultural area or feature" means an area or feature which provides an outstanding example of our historical or archeological heritage. Such an area or feature shall be a site of special historic interest or contain outstanding remnants or elements of the way of life and significant events of our past so that through their preservation and the restoration of related existing structures, or the development of a historic area, as well as through study, investigation and examination of the material remains in that life, a record may be preserved of the interrelationship and effect between man's activities and his surrounding environment. A cultural area or feature may be one that is either publicly or privately owned.
7. "Heritage Preserve" means a natural or cultural area or feature which is "dedicated" under this chapter.
8. "Heritage Site" means a natural or cultural feature which has been recognized as such through "registration" under this chapter.
9. "Dedicate or dedication" means the process by which any natural or cultural area or feature shall be established as a Heritage Preserve in accordance with the procedures set out in Section 51-17-80. Dedication may result from either of the following methods, but no power of eminent domain is hereby conferred or granted to the board of the department, the advisory board, or the department under this chapter:
  - (a) "Acquisition" means the establishment of a Heritage Preserve whereby the owner of a natural or cultural area or feature transfers the fee simple interest therein to the board of the department for such purpose; or
  - (b) "Acceptance" means the establishment of a Heritage Preserve whereby the owner of a natural or cultural area or feature transfers less than the fee simple interest therein to the board of the department for such purpose. Examples are granting of a "conservation or open space easement" or the transfer of

title subject to a life estate or reverter. Interests in real estate of a term of years shall not qualify for dedication under this chapter.

10. "Register" or "registration" means the process by which the owner of a natural or cultural feature shall enter into a written agreement with the board of the department recognizing the unique and outstanding characteristics thereof in accordance with the procedures set out in Section 51-17-100.

11. "Priority areas and features list" means the list made up of those areas and features recommended by the advisory board, and approved by the board of the department, under this chapter whose preservation is of primary importance to the goals and purposes of this chapter and which are, therefore, eligible to be included as Heritage Preserves and Sites.

12. "The Heritage Trust Program" means the entire system established under this chapter to provide for the inventorying, preservation, use and management of unique and outstanding natural or cultural areas and features in this State. The term 'Heritage Trust' means the legal trust which is created under Section 51-17-90.

#### CREDIT(S)

HISTORY: 1976 Act No. 600 Section 2; 1993 Act No. 181, Section 1280, eff July 1, 1993; 1993 Act No. 181, Section 1282, eff July 1, 1994.

#### EFFECT OF AMENDMENT

The first 1993 amendment deleted former paragraph 1 reading "Commission" means the "Wildlife and Marine Resources Commission" and renumbered the remaining paragraphs accordingly; and in paragraph 1 (formerly 2) substituted "Department of Natural Resources" for "Wildlife and Marine Resources Department".

The second 1993 amendment in paragraph 1 substituted "Board of the department" means the governing board of the Department of Natural Resources" for "Commission" means the Wildlife and Marine Resources Commission"; in paragraph 2 substituted "Department of Natural Resources" for "Wildlife and Marine Resources Department"; and in paragraph 3 substituted "Advisory Board" for "Board".

#### CROSS REFERENCES

Department of Natural Resources, generally, see Sections 50-3-10 et seq.

#### RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Logs and Timber Section 45, Conservation Restrictions and Easements Under S. C. Code Ann.Ss 27-9-10 to 27-9-30.

#### **SECTION 51-17-20.** Declaration of legislative findings.

The General Assembly finds that as a part of the continuing growth of the population and the development of the economy of the State it is necessary and desirable that portions of the State's rich natural and cultural diversity be set aside as Heritage Preserves and Sites and protected for the benefit of present and future generations, for once disturbed they cannot be wholly restored. Such areas and features are irreplaceable as laboratories for scientific research; as reservoirs of natural materials for which the value and usefulness thereof is not yet fully known; as habitats for rare and vanishing species; and as living museums where people may observe natural biotic and environmental systems and as areas for study and enjoyment as examples of the lands, structures and related artifacts which represent significant parts of our historical and cultural heritage.

While a number of independent and differing efforts, both private as well as governmental, have been initiated to protect some of these assets, a coordinated and concerted program is needed in order to avoid duplication among these and other valuable activities and to insure the maximum conservation of these

resources through the establishment of a more effective and adequate official legal mechanism for identifying, recognizing and protecting such areas for their outstanding characteristics. While the preservation of all of these assets in their natural state is both impractical and often not necessarily in the total best interest of the State and the public, they exist in limited and decreasing quantities. The time is now for a decision to be made as to which of these areas and sites deserve increased protection and for selecting the most appropriate means for doing so.

It is therefore the public policy of this State to secure for the people, both present and future generations, the benefits of an enduring resource of natural and cultural areas and features by establishing a system of Heritage Preserves and Sites; protecting this system; gathering and disseminating information regarding it; establishing and maintaining a listing of Heritage Preserves and Sites; and otherwise encouraging and assisting in the preservation of natural and cultural areas and features of this State.

#### CREDIT(S)

HISTORY: 1976 Act No. 600 Section 1; 1993 Act No. 181, Section 1282, eff July 1, 1994.

#### EFFECT OF AMENDMENT

The 1993 amendment reprinted this section with no apparent changes.

#### LIBRARY REFERENCES

89 C.J.S., Trusts Section 19.

#### RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Logs and Timber Section 46, Heritage Trust Program Under S. C. Code Ann.Ss 51-17-10 to 51-17-150.

#### **SECTION 51-17-30.** Purpose of Heritage Trust Program.

The Heritage Trust Program is created to achieve the following goals by protecting lands and making them available to state agencies, educational institutions, and public and private groups for the following purposes:

1. For research in such fields as archeology, agriculture, conservation, ecology, forestry, genetics, geology, history, paleontology, pharmacology, soil science, taxonomy, and similar fields by governmental employees, educational and scientific groups as well as by private individuals.
2. For the teaching of archeology, biology, conservation, ecology, geology, history, natural history, and other subjects.
3. As habitats and places for maintaining plant and animal species in communities.
4. As reservoirs of natural and cultural materials.
5. As places of natural and cultural interests and beauty whereby through visitation the public may observe, value, and enjoy natural and cultural processes and events. Unique recreational opportunities of a type not generally available through the existing State Park System may be provided, including outdoor sporting usage such as hunting and fishing as well as aesthetics, where wholly compatible and consistent with the character of the area or feature.
6. As benchmarks against which to measure such processes or events as well as the environmental degradation from natural and unnatural influences.
7. To promote the understanding and appreciation of the aesthetic, cultural, and scientific values of such areas and features by the people of the State.
8. For the preservation and protection of Heritage Preserves and Sites against modification or encroachment resulting from occupation, development, or other uses which would destroy their natural and cultural character.
9. As places for maintaining representative lands and related structures which illustrate periods, events, styles, and uses of the land in our state's historic and cultural heritage.

## CREDIT(S)

HISTORY: 1976 Act No. 600 Section 3; 1993 Act No. 181, Section 1282, eff July 1, 1994.

### EFFECT OF AMENDMENT

The 1993 amendment made grammatical changes.

### LIBRARY REFERENCES

89 C.J.S., Trusts Section 19.

### RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Logs and Timber Section 46, Heritage Trust Program Under S. C. Code Ann.Ss 51-17-10 to 51-17-150.

## **SECTION 51-17-40.** Powers and duties of Wildlife and Marine Resources Commission.

The board of the department shall have the following duties, responsibilities, and powers under this chapter:

1. To serve as trustee of the trust created under this chapter and to carry out the powers, duties, and responsibilities thereunder;
2. To supervise the establishment, updating and maintenance of a statewide inventory of the natural and cultural resources and the maintenance of a list of those areas and features selected or established under this chapter as priority areas and features or as Heritage Preserves and Sites;
3. To select from the recommendations of the advisory board those natural and cultural features, the preservation of which is of primary importance to the goals and purposes of this chapter, and to classify such as priority areas and features;
4. To select from the recommendations of the advisory board those priority areas and features which should be dedicated or recognized as Heritage Preserves or Sites, and thereafter to establish as such through dedication or recognition;
5. To select from the recommendations of the advisory board those Heritage Preserves, interests therein or portions thereof, deserving of protection under the Heritage Trust and thereafter to transfer same into the corpus of the trust.
6. To conduct public hearings on the question of whether any particular natural or cultural area or feature should be established as a Heritage Preserve or Site, or on the uses or nonuses which shall apply to any area dedicated under the Heritage Trust Program;
7. To manage or provide for the management of Heritage Preserves through the promulgation of rules and regulations designed to preserve the primary natural character of such areas or features and to provide the maximum public usage thereof which is compatible and consistent with the character of the area. Management duties and responsibilities may be assigned to any governmental or private group, with its consent, with respect to any particular Heritage Preserve;
8. To cooperate with and to enter into agreement with other state, federal, county, and local units of government as well as private groups for the promotion of the purposes of this chapter including the carrying out of other requirements under federal and state law.
9. To report annually to the Governor and to the General Assembly as to the activities of the Heritage Trust Program and its future plans, and to make any specific recommendations which it feels, if implemented, would assist in achieving the goals and purposes of this chapter.

## CREDIT(S)

HISTORY: 1976 Act No. 600 Section 4; 1993 Act No. 181, Section 1282, eff July 1, 1994.

#### EFFECT OF AMENDMENT

The 1993 amendment substituted "board of the department" for "commission".

#### CROSS REFERENCES

Department of Natural Resources, generally, see Sections 50-3-10 et seq.

Regulations promulgated under authority of this section, see S.C. Code of Regulations R. 123-152.

#### RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Logs and Timber Section 46, Heritage Trust Program Under S. C. Code Ann.Ss 51-17-10 to 51-17-150.

#### **SECTION 51-17-50.** Heritage Trust Advisory Board created; composition.

The Heritage Trust Advisory Board is hereby created to assist the board of the department in carrying out its duties and responsibilities under this chapter. The advisory board shall consist of seventeen members who shall be chosen as follows and shall elect from its membership a chairman:

1. From the general public, six persons, one from each congressional district within the State, who shall be appointed by the Governor and serve for a term of six years. Of these six, four persons shall be from the scientific community who are recognized and qualified experts in the ecology of natural areas, and two persons shall be from the cultural community who are recognized and qualified experts in the history and archeology of the State. The term "expert" does not of necessity denote a professional but one learned and interested in the field.

2. From state government, the following persons or their designees:

A. The Chairman of the board of the Department of Natural Resources;

B. The Director of the Department of Natural Resources;

C. The Director of the South Carolina Department of Park, Recreation and Tourism;

D. The Director of the Land Resources Conservation Districts Division of the Department of

Natural Resources;

E. The Director of the South Carolina Department of Archives and History;

F. The State Forester;

G. The State Archeologist;

H. The Director of the State Museum; and

I. The Secretary of Commerce.

Provided, however, of the initial appointees under this section, that of the six persons appointed under Item 1 above, two shall serve for a term of two years, two for a term of four years, and two for a term of six years.

#### CREDIT(S)

**HISTORY:** 1976 Act No. 600 Section 5; 1991 Act No. 248, Section 6; 1993 Act No. 181, Section 1281, eff July 1, 1993; 1993 Act No. 181, Section 1282, eff July 1, 1994; 1994 Act No. 361, Section 8, eff May 3, 1994.

#### EFFECT OF AMENDMENT

The first 1993 amendment substituted "board of the department" for "Commission", "advisory board" for "Board", "Director" for "Executive Director" of the Department of Parks, Recreation and Tourism and the Land Resources Conservation Commission; and "Director of the Department of Commerce" for "Director of the South Carolina State Development Board".

The second 1993 amendment substituted "board of the department" for "Commission", "advisory board" for "Board", "Department of Natural Resources" for "Wildlife and Marine Resources Commission", and "Director" for "Executive Director" in subparagraphs B, C and D.

The 1994 amendment in subparagraph I of paragraph 2, substituted "Secretary of Commerce" for "Director of the Department of Commerce".

#### CROSS REFERENCES

Department of Natural Resources, see Sections 50-3-10 et seq.

Department of Parks, Recreation and Tourism, generally, see Sections 51-1-10 et seq.

Director of South Carolina Department of Archives and History, generally, see Section 60-11-60.

Director of State Museum, generally, see Section 60-13-50.

South Carolina Institute of Archeology and Anthropology, generally, see Section 60-13-210.

South Carolina Land Resources Conservation Commission, generally, see Sections 48-9-220 et seq.

State Forester, generally, see Section 48-23-50.

#### LIBRARY REFERENCES

89 C.J.S., Trusts Section 19.

### **SECTION 51-17-60.** Powers and duties of Board.

The Heritage Trust Advisory Board shall have the following powers and duties:

1. To review the inventories prepared and submitted by the department and other state agencies as well as other appropriate sources of information and to recommend therefrom to the board of the department the selection of those areas and features as priority areas and features that it deems to be of primary importance to the goals and purposes of this chapter.

2. To evaluate, review and examine proposals of the department and other state agencies as well as citizen recommendations for the dedication or recognition of specific areas and features as Heritage Trust Preserves and Sites, and from its expertise to recommend to the board of the department the dedication or recognition of such areas and features which it feels proper.

3. To recommend to the board of the department any rules, regulations, management criteria, allowable uses and such which the advisory board feels would be beneficial to carrying out the goals and purposes of this chapter.

4. To appoint technical committees consisting of experts in specialty areas dealing with the ecology, history, and archeology of our State and any other type committees that the advisory board feels can be of assistance in fulfilling its duties and responsibilities under this chapter.

5. To assist in maintaining a list of areas and sites which through dedication become Heritage Trust Preserves or Sites and to make public information regarding their location, management, regulation, and permissible public uses and the like.

6. To authorize research and investigation for inventory and assessment purposes, including the reasonable right of entry and inspection, and to disseminate information and recommendations pertaining to natural and related cultural areas and features.

#### CREDIT(S)

HISTORY: 1976 Act No. 600 Section 6; 1993 Act No. 181, Section 1282, eff July 1, 1994.

#### EFFECT OF AMENDMENT

The 1993 amendment substituted "board of the department" for "commission".

#### CROSS REFERENCES

Advisory Board's approval or disapproval, after hearing, of proposed conveyance of conservation easement, see Section 27-8-30.

### **SECTION 51-17-70.** Powers and duties of Wildlife and Marine Resources Department.

The department shall act as the basic staff for the board of the department and the advisory board and shall have the following powers and duties:

1. The director shall select a member of his staff who shall be primarily responsible for the administration of the Heritage Trust Program.
2. The department shall supply such other staff and support services as the board of the department and the advisory board require to fulfill their duties and responsibilities under this chapter.
3. The department shall maintain a public record of any inventories or lists established under this chapter.
4. The department shall work with owners, both public and private, in the development of proposals for the dedication and recognition of natural and cultural areas and features as Heritage Preserves and Sites, and it shall keep the advisory board informed of the same in order that therefrom the advisory board may make recommendations to the board of the department as provided under this chapter.
5. The department shall consult with and work in cooperation with the Department of Archives and History, the State Archeologist, the Department of Parks, Recreation and Tourism and any other state, county, or local unit of government, or any private entity, or group which is or should be directly involved in the Heritage Trust Program as well as in any particular efforts to preserve or protect any specific area or feature under the provisions of this chapter. In all cases, the department shall attempt to avoid duplication of effort with other agencies and groups and shall have no mandatory authority hereunder to require action by any such body.

#### CREDIT(S)

HISTORY: 1976 Act No. 600 Section 7; 1993 Act No. 181, Section 1282, eff July 1, 1994.

#### EFFECT OF AMENDMENT

The 1993 amendment substituted "board of the department" for "commission" and, in paragraph 1, "director" for "Executive Director".

#### CROSS REFERENCES

Department of Natural Resources, generally, see Sections 50-3-10 et seq.

#### RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Logs and Timber Section 46, Heritage Trust Program Under S. C. Code Ann.Ss 51-17-10 to 51-17-150.

#### **SECTION 51-17-80.** Establishment of Heritage Preserves.

Upon recommendation of the advisory board and approval by the board of the department, any area or feature on the "Priority Areas and Features List" may be established as a Heritage Preserve through the process of dedication. In addition to the transfer of either the fee simple interest or a lesser interest therein such as an open space easement, the owner of any such area or feature must enter into a written "Dedication Agreement" with the department whereby any restrictions, conditions, permissive and nonpermissive uses of the area or feature involved are clearly stated. Once the necessary deed, easement or the like has been filed along with the "Dedication Agreement" in the real estate records for the county in which the area or feature is located, the process of dedication shall be complete and a Heritage Preserve shall have formally been established.

No area or feature of primarily cultural significance or character shall be dedicated unless the Archives and History Commission approves thereof. The following restrictions shall apply to all Heritage Preserves:

1. The primary dedication as a Heritage Preserve shall be to preserve and protect the natural or cultural character of any area or feature so established. The board of the department and its agents shall

in all cases maintain the essential character of any area or feature dedicated, and as such they are hereby declared to be at their highest, best and most important use for the public benefit. No Heritage Preserve shall be taken for any other public purpose unless the approval of both the board of the department and the Governor has been obtained. In no case shall any Heritage Preserve be taken for any private use.

2. An acquisition by dedication shall be in perpetuity.

3. In any case where an area or feature is dedicated as a Heritage Preserve through acceptance of less than the fee simple interest therein, no management of such property shall be performed by state agencies or their employees and no public funds shall be utilized in the upkeep or general maintenance of such property; provided, in the case where public usage of such area or feature is compatible and consistent with the natural character of the property and the owner is agreeable to allow such as defined under this chapter, reasonable costs of maintenance and management may be borne by the State.

4. No acquisition of any area or feature as a Heritage Preserve shall be allowed whereby the department receives the fee simple interest in the property while the grantor or transferor retains the beneficial use or interests in the land except where total and complete public usage of the area or feature as allowed under this chapter is agreed to in the "Dedication Agreement".

5. Within ninety days from the date of the completion of the dedication process by which an area or feature is established as a Heritage Preserve, or as soon thereafter as possible, the department shall recommend a management plan for the area or feature concerned. Such proposed plan shall include recommendations as to the uses and nonuses to which the property should be put, recommendations as to whether all or a part of the area or feature is deserving of increased protection through inclusion in the Heritage Trust, the projected cost of the management of the property, and recommendations as to whether or not a user fee would be appropriate. All state, federal, county, local, and private groups interested in the area or feature involved shall be allowed to have input into the proposed management plan. The plan shall be considered by the advisory board, and therefrom the advisory board shall propose to the board of the department an overall management plan for the area or feature concerned. Upon approval by the board of the department of a plan, the department or that agency or group authorized by the board of the department shall manage the Heritage Preserve in accordance therewith.

#### CREDIT(S)

HISTORY: 1976 Act No. 600 Section 8; 1993 Act No. 181, Section 1282, eff July 1, 1994.

#### EFFECT OF AMENDMENT

The 1993 amendment substituted "advisory board" for "board" and "board of the department" for "commission".

#### **SECTION 51-17-85.** Disposition of Heritage Trust property; exception.

(A) Notwithstanding another provision of law or subsection (B) of this section, the board may not dispose of any Heritage Trust property if otherwise permitted to do so unless there are restrictions sufficient to protect all of the natural and cultural characteristics of the property.

(B) For the purposes of county, state, or federal infrastructure projects, subsection (A) does not apply.

#### CREDIT(S)

HISTORY: 2006 Act No. 251, Section 3, eff March 28, 2006; 2009 Act No. 12, Section 1, eff May 6, 2009.

#### EFFECT OF AMENDMENT

The 2009 amendment, in subsection (A), substituted "another" for "any other" and added "or subsection (B) of this section"; and added subsection (B) relating to county, state, or federal infrastructure projects.

**SECTION 51-17-90.** South Carolina Heritage Trust created.

There is hereby created the South Carolina Heritage Trust, the trustee of which shall be the Board of the South Carolina Department of Natural Resources. The corpus of the trust shall be made up of those Heritage Preserves which the board of the department considers to be of such outstanding and unique natural or cultural character so as to be significant and essential to the carrying out of the goals and purposes of this chapter and as such, to merit a greater degree of preservation than that provided by dedication. The board of the department shall have authority to place into the corpus of the trust any Heritage Preserve that it feels meets this criteria and which has been recommended for inclusion therein by the advisory board. The beneficiaries of this trust are and shall be the present and future generations of citizens of the State, more particularly those present and future citizens residing within a close proximity to any area or feature which itself, or an interest therein, becomes, constitutes, or comprises a part of the corpus of such trust and who actually enjoy use of such area or feature; and further and more particularly, those present and future students, teachers, and persons residing in the State who are concerned with conservation or with research in any facet of ecology, history, or archeology and who actually utilize any such area or feature for the promotion of such interest.

Wherever the term "area or feature" is used in this section, it shall include "or interests therein". The following, except as otherwise expressly provided, shall constitute substantive terms of the trust and apply to any area or feature which becomes a part of the corpus thereof:

1. Upon approval by the board of the department of the inclusion of a Heritage Preserve in the corpus of the South Carolina Heritage Trust, such transfer shall be recorded in the county in which the property is located and shall establish conclusive proof that such area or feature is suitable for preservation and protection under this chapter and constitutes a part of the corpus of the South Carolina Heritage Trust.

2. In any case wherein the previous owner of a Heritage Preserve has restricted such area or feature from inclusion in the South Carolina Heritage Trust, or where the previous owner has withheld an interest therein such as a life estate or reverter, the Heritage Preserve involved shall not be allowed to become a part of the corpus of the South Carolina Heritage Trust unless at a subsequent time such approval is obtained from such person or his successor in interest.

3. Upon the approval by the board of the department of the inclusion of any Heritage Preserve in the South Carolina Heritage Trust and the transfer of the title or interest held by the board of the department therein to the trust, subject to the provisions of Item 2 of this section, legal title to such area or feature shall be conveyed to the trustee of the South Carolina Heritage Trust and the equitable, or beneficial ownership, shall rest in those beneficiaries previously stated and described, whether such property was owned by a private or public source prior to dedication.

4. Upon approval by the advisory board, the department, the board of the department, and any agency of the State is hereby authorized to enter into agreement in advance with any person, firm, corporation, legal entity of government, or any private group that any particular area or feature shall be conveyed to the trustee in trust under the provisions of this chapter.

5. Upon approval by the board of the department of inclusion of any Heritage Preserve into the corpus of the South Carolina Heritage Trust, the advisory board shall review the management plan therefor as well as the "Dedication Agreement" and any other sources of information which it may consider appropriate. Upon approval thereof by the board of the department, the department, or that agency or group assigned management responsibilities therefor, shall manage the property in accordance therewith. Except to the extent expressly otherwise provided in the "Dedication Agreement", the following substantive terms shall be deemed to be set forth in the conveyance to the Heritage Trust and the trustee shall hold such property in trust subject to such terms:

(a) The essential natural character of the property shall be maintained.

(b) There shall be no erection of any improvements thereon except those minimal improvements necessary for the security, safety, or convenience of the public and those required for maintenance and management.

(c) Cutting or burning of timber, wood or other destruction of flora or fauna shall be permitted only for conservation or regeneration of flora or fauna; or for the control of plant succession by deliberate manipulation for restoration or preservation of a particular vegetation type or of an endangered species of flora, fauna or wildlife; or for the establishment and maintenance of nature and hiking trails, camping areas and the like where compatible and consistent with the character of the area or feature concerned and not seriously damaging or detrimental to the natural quality of the property.

(d) No stream shall be dammed or have its course altered.

(e) No motorized vehicles shall be permitted on the property other than those utilized by the trustee or its agents in management and protection of the property or used by the general public for ingress and egress to the property in compliance with the management plan for the area or feature concerned.

(f) No change shall be made in the general topography of the area or feature except for those minimal alterations which may be necessary to provide on-foot access to the public for visitation, or observation; and this shall be done only where wholly compatible and consistent with the character of the property and where no detrimental effect shall result.

(g) No activity shall be allowed or permitted which might pollute any stream, body of water, or the atmosphere.

(h) No signs, billboards or other advertising of any kind shall be erected; however, informational and directional signs related to the designation of the area or feature as a Heritage Preserve and related to the public's enjoyment thereof shall be allowed when approved by the trustee.

(i) No other acts or uses which are detrimental to the retention of the property in its natural state shall be allowed, including those detrimental to flood control, drainage, water conservation, erosion control or soil conservation, or fish or wildlife habitat preservation.

(j) Where cultural areas or features are involved, reasonable excavation, improvement and the like shall be allowed for research purposes as well as to restore such area or feature.

(k) The trust shall continue in perpetuity.

(l) Nothing in this chapter shall be interpreted as restricting the use of an existing or any future easement, express or implied, in favor of any utility or other holder of an easement for public purposes.

6. Those natural and related cultural areas and features which are acquired as Heritage Preserves in accordance with the trust provisions of this chapter are hereby declared to be as such at their highest, best and most important use for the public benefit. The State, any agencies thereof, local or county entities of government, or public utility which has the power of condemnation by law may acquire by purchase, gift, or eminent domain an easement or other interest in any property comprising a part of the corpus of the Heritage Trust; provided, however, that before any such condemnation shall occur a court of competent jurisdiction shall determine the following:

(1) there is an unavoidable and imperative public necessity that the property or interest therein be taken for another public use;

(2) that there is no feasible and prudent alternative for the proposed use for which the property or interest therein is to be taken; and

(3) that the proposal for taking includes all possible planning to minimize the harm done to such property resulting from such proposed use. Where the court deems appropriate, a public hearing shall be conducted prior to the court's decision to allow comment and input thereto. No city, county, public district, agency of the State, or public utility of the State shall acquire any real property which is a part of the corpus of the Heritage Trust through condemnation for the purpose of utilizing such property for another public use unless the acquiring entity pays or transfers to the Heritage Trust sufficient compensation to enable the operating entity to replace the real property and facilities thereon. The trustee of the trust shall have authority to utilize such proceeds to acquire additional property for the trust and to maintain those properties which form the corpus of the trust.

7. The common law of South Carolina pertaining to trusts shall be applicable to the Heritage Trust and to all areas or features, or interests therein, which become a part of this corpus. Without in any way limiting the generality of the foregoing, such trusts shall not fail for want of a trustee, and the trust shall

be terminated as to any particular area or feature, or interest therein, only upon total failure of the intended purpose. Any substitution of the trustee or termination of the trust as to any particular area or feature, or interests therein, shall occur only after appropriate judicial action wherein the beneficiaries are adequately represented, and such total failure shall not in any way affect the remainder of the property within the corpus of the trust.

8. The trustee shall hold, manage, preserve and enforce the various areas and features, or interests therein, which become a part of the corpus of the trust in accordance with the terms of this chapter and in any respective conveyances and transfers thereto. To that end the trustees may adopt and modify rules and regulations for the use and enjoyment of such trust properties by the public, and may employ or appoint agents to act on their behalf in the management of such properties.

#### CREDIT(S)

HISTORY: 1976 Act No. 600 Section 9; 1993 Act No. 181, Section 1282, eff July 1, 1994.

#### EFFECT OF AMENDMENT

The 1993 amendment substituted "board of the department" for "commission" and "Board of the South Carolina Department of Natural Resources" for "South Carolina Wildlife and Marine Resources Commission".

#### LIBRARY REFERENCES

89 C.J.S., Trusts Section 19.

#### **SECTION 51-17-100.** Registering of Heritage Sites.

In any case wherein a priority feature is either unsuited or unavailable for acquisition as a Heritage Preserve, the board of the department in agreement with the owner thereof may recognize such for its importance by registering it as a Heritage Site through the following registration procedures:

1. The department through its research and consultation with the owners of properties selected as priority features shall notify the advisory board of those which are unsuited or unavailable for dedication but for which the owners have made application for recognition as Heritage Sites through registration.

2. The advisory board shall review such applications and shall recommend to the board of the department the approval of those which it deems worthy of preservation through registration as Heritage Sites.

3. From the advisory board's recommendations, the board of the department shall approve those applications for recognition as Heritage Sites which it deems deserving and appropriate for carrying out the purposes of this chapter.

4. Upon approval of an application by the board of the department, the department may enter into a written agreement of registration with the owner of the feature concerned whereby the State shall give public recognition of the importance of the area or feature as a Heritage Site and the owner shall express his intent to preserve it.

5. The department shall erect and maintain an appropriate sign on the Heritage Site indicating its recognition and the owner thereof shall be given a certificate acknowledging its registration.

6. The registration agreement may be terminated by the owner or the board of the department at any time upon thirty days' notification to the other party. Such termination shall remove the feature from the Heritage Site Program, and any certificate previously issued therefor or sign erected shall be returned to the department by the property owner.

7. Unless the registration agreement is terminated, the owner of a Heritage Site shall maintain its essential natural character.

#### CREDIT(S)

HISTORY: 1976 Act No. 600 Section 10; 1993 Act No. 181, Section 1282, eff July 1, 1994.

**EFFECT OF AMENDMENT**

The 1993 amendment substituted "board of the department" for "commission" and "advisory board" for "board".

**SECTION 51-17-110.** Funding; appropriations; user fees; income.

The department shall include those costs and operating expenses necessary for the activities of the board of the department and the advisory board as well as staff support to carry out the provisions of this act in the annual State Appropriation Act. Funding for management of areas and features which become Heritage Preserves must be specifically requested by the department or that entity of government responsible for management thereof.

The board of the department shall select those Heritage Preserves for which it is appropriate to charge an individual user fee. The department may sell such user permits for a cost not to exceed five dollars and to be valid for the fiscal year in which issued at all Heritage Preserves where a permit is required. At the end of the fiscal year, the department shall distribute the funds collected among the entities of government assigned responsibility for management in direct proportion to the acreage which they manage. The proceeds of the sale of the user permits must be used to defray the management expenses.

**CREDIT(S)**

HISTORY: 1976 Act No. 600 Section 11; 1985 Act No. 36, Section 1; 1993 Act No. 181, Section 1282, eff July 1, 1994.

**EFFECT OF AMENDMENT**

The 1993 amendment substituted "board of the department" for "commission".

**LIBRARY REFERENCES**

89 C.J.S., Trusts Sections 263 et seq.

**SECTION 51-17-115.** Establishment and administration of Heritage Land Trust Fund.

There is created the Heritage Land Trust Fund, which must be kept separate from other funds of the State. The fund must be administered by the board of the department for the purpose of acquiring fee simple or lesser interest in priority areas, legal fees, appraisals, surveys, or other costs involved in the acquisition of interest in priority areas, and for the development of minimal facilities and management necessary for the protection of the essential character of priority areas.

Unexpended balances, including interest derived from the fund, must be carried forward each year and used only for the purposes provided in this chapter.

No fund money may be expended to acquire interest in property by eminent domain nor may the funds be expended to acquire interest in property without a recommendation of the Heritage Trust Advisory Board and the approval of the State Budget and Control Board.

The board of the department shall report by letter to the presiding officers of the General Assembly not later than January fifteenth each year all funds expended pursuant to this chapter for the previous year, including the amount of funds expended and the uses to which the expenditures were applied.

The fund is eligible to receive appropriations of state general funds, federal funds, donations, gifts, bond issue receipts, securities, and other monetary instruments of value. Reimbursement for monies expended from this fund must be deposited in this fund. Funds received through sale, exchange, or otherwise of any Heritage Preserve acquired under this section, or products of the Preserve such as timber, utility easement rights, and the like, accrue to the fund.

## CREDIT(S)

**HISTORY:** 1985 Act No. 36, Section 2; 1993 Act No. 164, Part II, Section 44, eff June 21, 1993; 1993 Act No. 181, Section 1282, eff July 1, 1994; 1999 Act No. 100, Part II, Section 16, eff July 1, 1999.

### EDITOR'S NOTE

1992 Act No. 501, Part II, Section 56, eff June 16, 1992, provides as follows:

"Notwithstanding the provisions of Section 12-21-380, for fiscal year 1987-88, fiscal year 1988-89, fiscal year 1989-90, and fiscal year 1990-91, 10/55 of the amount collected by the commission pursuant to that section must be paid to the Heritage Land Trust Fund."

This section was amended by 1993 Act No. 164 and Act No. 181.

1993 Act No. 181, Section 1614, provides as follows:

"Section 1614. Notwithstanding any permanent or temporary provision of law, any enactment, or portion thereof, of the General Assembly in 1993 in conflict with any provision of this act shall be suspended as to its force and effect until March 1, 1994. Where there is no conflict the provisions of any other enactments shall supersede the provisions of this act. For the purposes of this section, 'conflict' shall not include:

"(1) where provisions of the Code of Laws of 1976, as amended, are repeated herein so as to incorporate only changes in the names of agencies, divisions or departments, except so far as such change in name conflicts with another enactment or a portion of another enactment, or

"(2) where provisions of the Code of Laws of 1976, as amended, are repeated herein so as to incorporate only changes in the governance or structure of an agency, division or department except so far as such governance or structure is in conflict with another enactment or some portion of another enactment."

### EFFECT OF AMENDMENT

The first 1993 amendment, in the first paragraph, added "and management" following "minimal facilities" and added the last sentence providing that expenditures for management may not exceed ten percent of revenues for any year; and made grammatical changes throughout.

The second 1993 amendment substituted "board of the department" for "Wildlife and Marine Resources Commission".

The 1999 amendment deleted the last sentence of the first undesignated paragraph relating to limitations on the amount of management expenditures from the fund in any fiscal year.

### CROSS REFERENCES

Department of Natural Resources, generally, see Sections 50-3-10 et seq.

Duties, responsibilities, and powers of the Wildlife and Marine Resources Commission under this chapter, generally, see Section 51-17-40.

### LIBRARY REFERENCES

89 C.J.S., Trusts Section 19.

**SECTION 51-17-117.** Heritage Trust Program; donations of real and personal property; disposition of donations.

(A) Donations of real and personal property including, but not limited to, land, houses, stocks, and bonds may be made to the Heritage Trust Program.

(B) The board of the department, on its own or by its agent, may:

(1) sell donated property. Proceeds from the sales must be deposited in the Heritage Land Trust Fund and used for the purposes established in this chapter;

(2) establish minimum acceptable prices for disposition of donated property;

(3) trade donated property for property of equal value;

- (4) promote donations to the program through advertising;
- (5) decline donations for any reason.

CREDIT(S)

HISTORY: 1994 Act No. 346, Section 1, eff July 1, 1994.

EDITOR'S NOTE

The preamble to 1994 Act No. 346, provides as follows:

"Whereas, the Heritage Trust Program is dedicated to protecting and preserving unique and outstanding natural and cultural lands in this State; and

"Whereas, the citizens of South Carolina frequently wish to donate assets to the Heritage Trust Program; and

"Whereas, this legislation will enable the Heritage Trust Program to better protect South Carolina's natural heritage for future generations; and

"Whereas, there will be no economic impact upon the state's annual state budget when the legislation is enacted. Now, therefore,"

**SECTION 51-17-120.** Effect on certain other lands.

Nothing contained in this chapter shall be construed as interfering with the purposes stated in the establishment of or pertaining to any state or local park, preserve, wildlife refuge, forest or other area or the proper management and development thereof, except that any agency managing an area or feature acquired as a Heritage Preserve or a Heritage Site under the provisions of this chapter shall preserve it in accordance with the applicable conveyance, registration agreement and the rules and regulations of the board of the department applicable thereto.

Neither the acquisition of any Heritage Preserve nor the registration of any Heritage Site nor any action taken by the board of the department under any of the provisions of this chapter shall void or replace any protective status under law which an area would have were it not a Heritage Preserve or Heritage Site, the protective provisions of this chapter being supplemental thereto.

CREDIT(S)

HISTORY: 1976 Act No. 600 Section 12; 1993 Act No. 181, Section 1282, eff July 1, 1994.

EFFECT OF AMENDMENT

The 1993 amendment substituted "board of the department" for "commission".

**SECTION 51-17-130.** Enforcement; penalties.

1. Enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources, park rangers, and forestry rangers, as well as all other state and local law enforcement officials, shall have authority to enforce the provisions of this chapter.

2. The Attorney General shall enforce the rules and regulations of the board of the department both as they apply to those areas dedicated as well as those that are subsequently made a part of the corpus of the South Carolina Heritage Trust. In exercise of this authority, the Attorney General may, among other things and at the request of the board of the department, bring an action for injunctive or declaratory relief in any court of competent jurisdiction.

3. (a) Any person violating the provisions of this chapter where the damage to the property does not exceed five hundred dollars is guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars or be imprisoned not more than thirty days for each offense.

(b) Any person violating the provisions of this chapter where the damage to the property exceeds five hundred dollars is guilty of a misdemeanor and, upon conviction, shall be fined not less than five hundred dollars nor more than five thousand dollars or be imprisoned not more than six months, or both, for each offense.

CREDIT(S)

HISTORY: 1976 Act No. 600 Section 13; 1993 Act No. 181, Section 1282, eff July 1, 1994.

EFFECT OF AMENDMENT

The 1993 amendment substituted "Enforcement officer of the Natural Resources Enforcement Division of the Department of Natural Resources" for "Conservation officers".

LIBRARY REFERENCES

26 C.J.S., Declaratory Judgments Section 101.

**SECTION 51-17-140.** Maximum acreage to be acquired; prior approval by county delegation.

Not more than one hundred fifty thousand acres total of real property shall be acquired in fee under the provisions of this chapter. No acquisition may be made under this chapter in any county without written approval of a majority of the county delegation in the county where Heritage Trust properties are to be acquired.

CREDIT(S)

HISTORY: 1976 Act No. 600 Section 14; 1993 Act No. 181, Section 1282, eff July 1, 1994; 2000 Act No. 387, Part II, Section 87, eff June 30, 2000.

EFFECT OF AMENDMENT

The 1993 amendment changed "such property" to "the property".

The 2000 amendment increased the maximum acreage to be acquired from one hundred thousand acres to one hundred fifty thousand acres and made other nonsubstantive changes.

**SECTION 51-17-150.** Annual report detailing acquisitions in previous year and planned acquisitions for next five years.

The South Carolina Department of Natural Resources, as trustee for the Heritage Land Trust Fund, shall report annually to the Committee on Ways and Means of the House of Representatives and the Senate Finance Committee detailing acquisitions in the previous year by the Heritage Land Trust Fund and planned acquisitions for the next five years.

CREDIT(S)

HISTORY: 1986 Act No. 540, Part II, Section 10B; 1993 Act No. 181, Section 1282, eff July 1, 1994.

EFFECT OF AMENDMENT

The 1993 amendment substituted "Department of Natural Resources" for "Wildlife and Marine Resources".

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Logs and Timber Section 45, Conservation Restrictions and Easements Under S. C. Code Ann.Ss 27-9-10 to 27-9-30.

## ARTICLE 3.

### HERITAGE TRUST REVENUE BONDS

#### EDITOR'S NOTE

2006 Act No. 251, Section 2.A , provides as follows:

"(A) The General Assembly finds that it is desirable to provide continuing and general statutory authority for the South Carolina Department of Natural Resources to incur debt for the purpose of acquiring, restoring, improving, and managing certain Heritage Preserves as a part of The Heritage Trust Program, which debt is secured by a pledge of the revenues derived from a portion of the state deed recording fee dedicated to the Heritage Land Trust Fund pursuant to Article 24 of Title 12 of the 1976 Code. As trustee of the South Carolina Heritage Trust and administrators of the Heritage Land Trust Fund, the Board of the South Carolina Department of Natural Resources has demonstrated a need for additional funds to provide for acquisition, restoration, improvement, and management of properties that qualify for inclusion in the Heritage Trust Program and preservation for the benefit of present and future residents of the State of South Carolina.

"(B) The General Assembly further finds that it is in the best interests of the people of this State to authorize the board of the Department of Natural Resources, in its role as the trustee of the South Carolina Heritage Trust, acting through and in accordance with the terms of the Heritage Trust Program, to acquire, restore, improve, and manage additional properties suitable for inclusion in the Heritage Trust Program and to incur indebtedness for these purposes which is payable from the revenues derived from that portion of the state deed recording fee dedicated to the Heritage Land Trust Fund pursuant to Article 24 of Title 12 of the 1976 Code as provided in Article 3."

#### **SECTION 51-17-310.** Definitions

As used in this article:

- (1) "Board" means the governing board of the Department of Natural Resources which serves as the trustees of the South Carolina Heritage Trust.
- (2) "Bond" or "bonds" means a note, bond, installment contract, or other evidence of indebtedness issued pursuant to this article.
- (3) "Bond Reserve Fund" means the special fund that may be established by the board pursuant to this article, which must be in the custody of the State Treasurer or a corporate trust department of a financial institution selected by the State Treasurer and which is established primarily for the purpose of providing a reserve with which to meet the payment of the principal of and interest on bonds if payments otherwise required from the debt service fund are insufficient to meet the payment of the principal and interest as and when they are due and payable.
- (4) "Department" means the South Carolina Department of Natural Resources.
- (5) "Heritage Land Trust Fund" means the fund established and administered pursuant to Section 51-17-115 of the 1976 Code.
- (6) "Heritage Land Trust portion of the state deed recording fee" means that portion of the state deed recording fee credited to the Heritage Land Trust Fund pursuant to Section 12-24-90(B)(1) of the 1976 Code.
- (7) "Heritage Preserve" has the meaning provided in Section 51-17-10(7) of the 1976 Code.
- (8) "The Heritage Trust Program" has the meaning provided in Section 51-17-10(12) of the 1976 Code.
- (9) "State" or "this State" means the State of South Carolina.
- (10) "State deed recording fee" means that portion of the deed recording fee imposed by Chapter 24 of Title 12 of the 1976 Code designated as the "state fee" in Section 12-24-90 of the 1976 Code.
- (11) "State Treasurer" means the State Treasurer of South Carolina.

(12) "Trustees" means the trustee of the South Carolina Heritage Trust which is the board of the Department of Natural Resources.

CREDIT(S)

HISTORY: 2006 Act No. 251, Section 2.B, eff March 28, 2006.

**SECTION 51-17-320.** Power to issue bonds; purpose.

(A) The board may issue bonds in the name of the trustees for the purposes and in the manner provided in this section. The title of the bonds shall be designated by the board acting as the trustees.

(B) All bonds must be secured by and payable from only the Heritage Land Trust portion of the state deed recording fee, or that portion as the board determines to pledge for payment.

(C) The trustees or a person executing the bonds or notes are not liable personally on the bonds or notes and are not subject to personal liability or accountability by reason of the issuance of the bonds.

(D) The board acting as the trustees may not pledge the faith, credit, or taxing power of this State or its political subdivisions in connection with the issuance of the bonds, and each bond must recite on its face that it is a special source bond of the trustees issued pursuant to and in accordance with this article and Article X, Section 13(9) of the Constitution of this State, that it is secured by and payable from only the Heritage Land Trust portion of the state deed recording fee, that it is neither a general, legal, nor moral obligation of the State or its political subdivisions, and that it is not backed by the full faith, credit, or taxing power of this State or any of its political subdivisions. Failure to include this language on the face of a bond does not cause the bond to become a general, legal, or moral obligation of the State or its political subdivisions or a pledge of the full faith, credit, or taxing power of this State or its political subdivisions.

(E) A pledge of the Heritage Land Trust portion of the state deed recording fee made by the board acting as the trustees is valid and binding from the time the pledge is made. The trust portion of the state deed recording fee received by the Heritage Land Trust Fund is immediately subject to the lien of the pledge without physical delivery of the receipt or further act. The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the trustees, whether or not the parties have notice of them. The resolution of the board or other instrument by which a pledge is created must not be recorded or filed to perfect the pledge. In the resolution of the board authorizing the issuance of a bond pursuant to this article, the board shall provide for the priority of payment of the bond from all monies received by the Heritage Land Trust Fund as its portion of the state deed recording fee.

(F) The trustees may not issue a bond with a scheduled maturity later than thirty years after the date of issuance.

(G) When issuing bonds for the purpose described in this article, the trustees may sell bonds either in a negotiated transaction with one or more lead underwriters selected by the board acting as the trustees on the basis of criteria established by the board acting as the trustees, or through a competitive bidding process in accordance with procedures established by the board. The determination of whether to sell bonds through negotiation or through competitive bidding must be made by the board.

(H) The trustees may not issue a bond unless the board has first adopted its resolution authorizing the issuance, finding that the issuance and the proposed use of the bond proceeds is in accordance with this chapter, and setting out the terms and conditions of the bond and the covenants of the trustees with respect to the bond. These terms must include the issuance date or dates, the maturity date or dates, the principal amount, the interest rate or the means of determining it, whether fixed or variable, the time, manner, and currency for paying interest and principal, the negotiability of the bond, and restrictions relating to the registration of the bond. The covenants may include, without limitation, the establishment and maintenance of dedicated reserve funds for the payment of debt service on a bond if the Heritage Land Trust portion of the state deed recording fee is inadequate in any year, restrictions on the later issuance of additional bonds or making the later issuance subject to certain conditions relating to available

debt service coverage or otherwise, or other matter that the board considers appropriate, subject to subsection (I) of this section. A bond of the trustees must be approved also by the State Budget and Control Board, after review by the Joint Bond Review Committee pursuant to Section 2-47-30 of the 1976 Code, before it is delivered.

(I) The board may not authorize or cause the trustees to enter into a covenant that purports to create a general, legal, or moral obligation of this State or its political subdivisions or to pledge the full faith, credit, or taxing power of the State or its political subdivisions. A covenant in violation of this subsection is void and of no effect.

(J) Subject to the requirements of this section, the board acting as the trustees may authorize the issuance of bonds of the trustees for the purpose of:

(1) refunding, on a current or advance-refunding basis, outstanding bonds of the trustees; or  
(2) obtaining funds for delivery to the Heritage Land Trust Fund. Proceeds of bonds issued for this purpose must be delivered promptly to the Heritage Land Trust Fund and used only for the purposes provided in Section 51-17-115 of the 1976 Code, except as needed to defray the costs of issuance of the bonds or to establish a reserve fund for the bonds.

(K) The bonds and the issuance of the bonds pursuant to this article are subject to the provisions of Sections 11-15-20 and 11-15-30 of the 1976 Code and any successor provisions.

CREDIT(S)

HISTORY: 2006 Act No. 251, Section 2.B, eff March 28, 2006.

**SECTION 51-17-330.** Income from bonds exempt from state taxes; investment by fiduciaries.

(A) A bond provided for in this article and the income from a bond is exempt from all taxation in the State except for inheritance, estate, or transfer taxes, regardless of the federal income tax treatment of the interest from the bond.

(B) The exercise of the powers granted by this chapter is in all respects for the benefit of the citizens of the State and for the promotion of their welfare, convenience, and prosperity. Property, whether real or personal, tangible or intangible, of the department or the trustees and the income and operations of the department and the Heritage Trust Program are exempt from taxation or assessment by the State or its political subdivisions.

(C) It is lawful for executors, administrators, guardians, committees, and other fiduciaries to invest monies in their hands in a bond provided for in this article. This section does not relieve a person from the duty of exercising reasonable care in selecting investments.

CREDIT(S)

HISTORY: 2006 Act No. 251, Section 2.B, eff March 28, 2006.

**SECTION 51-17-340.** State pledge relating to alteration of rights of trustees and holders of bonds.

The State pledges and agrees with the trustees, and the holders of the bonds in which the trustees have included the pledge and agreement, that the State may not limit or alter the rights of the trustees to fulfill the terms of its agreements with the holders, and may not impair the rights and remedies of the holders or the security for the bonds until the bonds, together with the interest on them and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully paid and discharged. While bonds issued pursuant to the authorizations contained in this article are outstanding, the State shall impose and maintain the state deed recording fee and the Heritage Land Trust portion of the state deed recording fee at a rate sufficient to produce all revenues to discharge all covenants, agreements, and obligations of the department and the trustees with respect to the bonds.

CREDIT(S)

HISTORY: 2006 Act No. 251, Section 2.B, eff March 28, 2006.

**SECTION 51-17-350.** Annual reports to State Budget and Control Board.

In each year that bonds issued pursuant to this article are outstanding, the trustees, not later than December 1 of such year, shall submit a written report to the State Budget and Control Board as to whether, based on revenues of the Heritage Land Trust portion of the state deed recording fee received by the Heritage Land Trust Fund as of July 1 of that year, the revenues are projected to be sufficient to discharge all covenants, agreements, and obligations of the department and the trustees with respect to all outstanding bonds in the calendar year immediately following.

CREDIT(S)

HISTORY: 2006 Act No. 251, Section 2.B, eff March 28, 2006.

**SECTION 51-17-360.** Expiration of authority to issue Heritage Trust Revenue Bonds.

The authority to issue Heritage Trust Revenue Bonds under this article shall expire two years after the effective date of this article; provided, however, this two-year limitation does not apply to bonds issued to retire bond anticipation notes, bonds issued to refund any bonds issued hereunder, and any bonds issued before this two-year limitation takes effect shall continue in full force and effect as provided in this article.

CREDIT(S)

HISTORY: 2006 Act No. 251, Section 2.B, eff March 28, 2006.