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**S. 92**

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Summary: Federal Defense Facilities Development Law

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[12/10/2008](file:///p:\pprever\2009-10\92_20081210.docx)

**A** **BILL**

TO AMEND SECTION 31‑12‑30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN CONNECTION WITH THE FEDERAL DEFENSE FACILITIES REDEVELOPMENT LAW, SO AS TO PROVIDE FOR A MUNICIPALITY AS A PART OF THE “AREA OF OPERATION” ENTITLED TO REPRESENTATION ON A REDEVELOPMENT AUTHORITY; TO AMEND SECTION 31‑12‑40, RELATING TO THE CREATION OF A REDEVELOPMENT AUTHORITY, SO AS TO PROVIDE FOR THE MEMBERSHIP COMPOSITION OF A REDEVELOPMENT AUTHORITY CONTROLLING PROPERTY WITHIN A FEDERALLY DEFINED METROPOLITAN STATISTICAL AREA (MSA) LYING WITHIN THE BOUNDARIES OF A MUNICIPALITY, TO REQUIRE RESTRUCTURING OF A NONCOMPLYING AUTHORITY, TO PROVIDE THAT A NEWLY CREATED OR RESTRUCTURED AUTHORITY IS A CREATION OF THE MUNICIPALITY AND NOT THE STATE, TO CONFER UPON THE NEW OR RESTRUCTURED AUTHORITY ALL THE SEPARATE AND DISTINCT POWERS OF OTHER REDEVELOPMENT AUTHORITIES, TO PROVIDE THAT THE NEW OR RESTRUCTURED ENTITY IS NOT A STATE AGENCY FOR, AMONG OTHER THINGS, PURPOSES OF LEASING OF, ACQUISITION OF TITLE TO, AND OTHER TRANSACTIONS INVOLVING REAL PROPERTY AND COMPLIANCE WITH THE CONSOLIDATED PROCUREMENT CODE, AND TO REQUIRE THE NEW OR RESTRUCTURED AUTHORITY TO INDEMNIFY THE STATE AGAINST LOSSES ARISING OUT OF ITS TRANSACTIONS OR ITS LIABILITIES; TO AMEND SECTIONS 31‑12‑50 AND 31‑12‑100, RELATING TO MEMBERSHIP TERMS AND DISSOLUTION OF A REDEVELOPMENT AUTHORITY, RESPECTIVELY, BOTH SO AS TO CONFORM THEM TO CHANGES IN SECTION 31‑12‑40; TO AMEND SECTION 31‑12‑210, RELATING TO ISSUANCE OF OBLIGATIONS AND DISPOSITION OF FUNDS BY A MUNICIPALITY, SO AS TO INCLUDE IN THE TIME LIMIT FIFTEEN YEARS FROM THE DATE THE AUTHORITY IS RESTRUCTURED AND CEASES TO BE A CREATION OF THE STATE; TO AMEND SECTION 31‑12‑300, RELATING TO CERTIFICATION OF THE ASSESSED VALUE OF THE TAXABLE PROPERTY IN A PROJECT AREA AND DETERMINATION OF PERCENTAGES REPRESENTING EACH TAXING DISTRICT, SO AS TO PROVIDE THAT THE VALUE BE DETERMINED AS OF THE AUTHORITY’S ORIGINAL CREATION OR THE DATE THE PROPERTIES WERE SCHEDULED FOR DISPOSAL, WITHOUT REGARD TO RESTRUCTURING; TO AMEND SECTION 61‑4‑510, AS AMENDED, RELATING TO DISTRIBUTION OF FEES FROM BEER AND WINE PERMITS, SO AS TO PROVIDE FOR A SPECIAL FUND TO SUPPORT A FEDERAL DEFENSE FACILITIES REDEVELOPMENT AUTHORITY; AND TO PROVIDE FOR TRANSITIONAL OPERATION OF AN EXISTING FEDERAL DEFENSE FACILITIES REDEVELOPMENT AUTHORITY.

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

SECTION 1. Section 31‑12‑30(1) of the 1976 Code is amended to read:

“(1) ‘Area of operation’ means the area within the territorial boundaries of the counties and municipalities entitled to representation on an authority, ~~which consists~~ consisting of both the real property to be disposed of by an authority as well as ~~any~~ other properties disposed of directly by the federal government to public or private persons or entities, other than disposal to the federal government for other defense uses, in connection with military installation closure and realignment or other federal defense site closure, realignment, or drastic downsizing, together with ~~such~~ those areas of the surrounding community as may need planning for infrastructure improvements to support the redevelopment project area.”

SECTION 2. Section 31‑12‑40 of the 1976 Code is amended to read:

“Section 31‑12‑40. (A) The Governor may create separate and distinct bodies corporate and politic to be known as redevelopment authorities to oversee the disposition of real and personal federal property that has been or ~~will~~ is to be turned over to the State or to the redevelopment authority as referred to in the Defense Base Closure and Realignment Act, 10 U.S.C. 2901, et seq., as it may be amended from time to time, by the federal government or real and personal federal property that has been designated as surplus property by the federal government and is to be disposed of by the State or the redevelopment authority as a result of the closure, realignment, or drastic downsizing of federal defense facilities in the State. ~~No more than~~ Only one authority may be created with jurisdiction over a single federal military installation or other federal defense site. Only one authority may be designated within a county~~,~~. ~~and the~~ The Governor shall exercise his authority ~~under~~ pursuant to this chapter so as to ensure that the composition of ~~any~~ an authority created ~~under~~ pursuant to this section is structured or restructured in accordance with the requirements contained in this section as additional properties ~~may be~~ are added ~~through other closures, realignments, and drastic downsizings~~, as properties are disposed of, and as federally defined Metropolitan Statistical Areas (MSA’s) are redefined, from time to time. If an authority is designated, it is the sole representative of the State for negotiations with the appropriate federal authority for reuse and disposal of property.

(B) If the federal property subject to disposal is contained wholly within one county, which county does not lie in an MSA extending over more than one South Carolina county and is not included in a multicounty authority ~~under~~ as provided in subsections (C) or (D), the authority ~~must~~ shall ~~include~~ consist of:

(1) two representatives of the State, nominated by a majority of the Senate and a majority of the House, who must be appointed by the Governor;

(2) three representatives of the county, appointed by the county governing body;

(3) three representatives of each municipality ~~in which the municipality’s~~ whose boundaries contain all or a portion of the federal defense properties scheduled for disposal, appointed by the municipal governing body; and

(4) one at‑large appointment by the Governor, who ~~shall~~ must be a resident of the county.

(C) If the federal property subject to disposal is contained within more than one county, with no portion of the counties lying within an MSA ~~which extends~~ extending over more than one South Carolina county, the authority ~~must~~ shall ~~include~~ consist of:

(1) two representatives of the State, nominated by a majority of the Senate and a majority of the House, who must be appointed by the Governor;

(2) two representatives of each county, appointed by the respective county governing body;

(3) two representatives of each municipality ~~in which the municipality’s~~ whose boundaries contain all or a portion of the federal defense properties scheduled for disposal, appointed by the respective municipal governing body; and

(4) one at‑large appointment by the Governor, who ~~shall~~ must be a resident of one of the counties.

(D)(1) If the federal property subject to disposal is contained wholly or partially within a county, all or a portion of which lies in an MSA which extends over more than one South Carolina county and the major portion of improvements on the federal property subject to disposal lie within a municipality’s boundary, the authority ~~must include:~~ shall consist of

~~(a)~~ ~~one representative who is a resident of each South Carolina county which contains all or a portion of the federal property subject to disposal, appointed by the Governor;~~

~~(b)~~ ~~one representative who is a resident of each South Carolina county in the MSA not entitled to a resident representative under subsection (D)(1)(a), appointed by the Governor;~~

~~(c)~~ ~~additional~~ seven representatives ~~who are residents of the respective municipalities as may be necessary to provide any~~ appointed by the municipal governing body of the municipality within whose boundaries the major portion of improvements on the federal property subject to disposal lie. To the extent that the composition of the existing governing board of a redevelopment authority whose board composition is provided for in this subsection does not reflect these provisions, it may be restructured pursuant to the provisions of this subsection. ~~lies with one less than the collective number of representatives provided for in subsections (D)(1)(a), (D)(1)(b), and (D)(1)(e) appointed by the Governor from a slate of candidates submitted by the municipal governing body;~~

~~(d)~~ ~~if the major portion of properties scheduled for disposal lies within a single county but not within the boundaries of any single municipality, such additional representatives as may be necessary to provide that county with one less than the collective number of representatives provided for in subsections (D)(1)(a), (D)(1)(b), and (D)(1)(e) appointed by the county governing body;~~

~~(e)~~ ~~one at‑large appointment by the Governor, who shall be a resident of one of the counties which lie, wholly or partially, in the MSA which is entitled to representation under subsections (D)(1)(a), (D)(1)(b),or (D)(1)(d);~~

~~(2)~~ ~~the Governor, in his discretion, may accept or reject the name of any individual submitted for his consideration pursuant to subsection (D)(1)(c). If the name of an individual is rejected or is not submitted to the Senate as provided in subsection (H), the municipality may submit the name of another individual for the Governor’s consideration as provided in subsection (D)(1)(c); and~~

~~(3)~~ ~~notwithstanding any other provision of law, an individual appointed pursuant to subsections (D)(1)(a) through (D)(1)(e) may be removed as provided in Section 1‑3‑240(B).~~

(2) Notwithstanding another provision of law, upon the passage of an ordinance or resolution creating or restructuring an authority to bring it into compliance with the current provisions of subsection (D)(1), a redevelopment authority provided for in subsection (D)(1) is considered to be restructured by the municipality and ceases to be a creation of the State. An authority created or restructured pursuant to this subsection is a distinct body corporate and politic established with the same powers, duties, and responsibilities exercised by other redevelopment authorities established pursuant to this chapter, mutatis mutandi.

(3) Notwithstanding another provision of law, a redevelopment authority provided for in subsection (D)(1) and (D)(2) is not considered to be a state agency subject to the provisions of law that govern the transactions of state agencies including, but not limited to, Sections 1‑11‑55, 1‑11‑56, 1‑11‑57, 1‑11‑65, 31‑12‑120 or Chapter 35, Title 11, South Carolina Consolidated Procurement Code.

(4) To the extent of the value of real and personal federal property that has been or is to be turned over to, acquired, leased, or purchased by a redevelopment authority previously created pursuant to the previously applicable provisions of subsection (D)(1) and later restructured to comply with the current provisions of subsection (D)(1) and to the extent of the value of real and personal federal property designated as surplus property by the federal government and to be disposed of by the redevelopment authority, the redevelopment authority shall provide the defense for and indemnify against and hold the State harmless for all pending and future litigation and claims arising out of or in connection with transactions or events involving real property or personal property or any related activities that occurred before the date it ceases to be a creation of the State as provided in subsection (D)(2).

(5) All assets and liabilities of an authority created pursuant to previous provisions of subsection (D)(1) are retained by the authority upon its being restructured to bring it into compliance with the current provisions of subsection (D)(1). Additionally, all income and revenue designated for the originally created authority are retained by the restructured authority. The redevelopment authority shall provide the defense for and indemnify against and hold harmless the municipality, identified in subsection (D)(1), for all pending and future litigation and claims arising out of or in connection with transactions, events, or activities of the authority in existence on the effective date of this subsection, or in the case of an authority created or restructured pursuant to subsection (D)(2), as of the date of the creation or restructuring.

(E) A member of an authority ~~may~~ must not be an elected official or hold another office of honor or profit of this State or ~~any of~~ its political subdivisions while serving on the authority as prohibited by the South Carolina Constitution. Each member of an authority ~~must~~ shall comply with the provisions of Chapter 13, ~~of~~ Title 8 ~~of the 1976 Code~~ including the requirement to file a statement of economic interests.

(F) All executive orders of the Governor establishing any authority, commission, committee, or other entity relating to or concerned with the effects of the closure of a federal military installation or other federal defense site expire on March 1, 1995. The Governor may issue no executive order relating to the purposes of this chapter except to create or to modify the membership of an authority as provided in Section 31‑12‑40.

(G) Upon the creation of an authority ~~under~~ pursuant to the provisions of this chapter with regard to property scheduled for disposal which was also the subject of an executive order of the Governor issued ~~prior to~~ before the effective date of this act, the authority, by its resolution, may assume all or part of the responsibilities and activities of the entity previously authorized by the executive order.

(H) The appointments made pursuant to subsections (B)(2), (B)(3), and (B)(4), and subsections (C)(2), (C)(3), and (C)(4)~~, and subsections (D)(1)(a), (D)(1)(b), (D)(1)(c), (D)(1)(d), and (D)(1)(e)~~ are subject to the advice and consent of the Senate.

(I) An authority also may be created or its composition restructured to comply with the requirements of this section by ordinances or resolutions of municipalities and of counties eligible to make the majority of the appointments to ~~an~~ the authority pursuant to the current provisions of subsection (B), ~~or~~ (C) or (D), respectively. If the restructuring results in the appointment of all redevelopment authority board members by a municipal governing body pursuant to subsection (D)(1), the existing members of the board may serve out the remainder of their appointed terms, unless removed by the municipal governing body for cause upon the grounds and pursuant to the procedures provided in Section 31‑12‑50(B).

(J) A vacancy occurring during the recess of the Senate may be filled by an interim appointment by the appointing body or officer. The Senate must be notified of the interim appointment, which must be submitted no later than the end of the third week of its next regular session. The Senate may give or withhold its advice and consent to an appointment at any time after submission of the appointment, provided~~,~~ that, if the Senate does not advise and consent to an appointment before sine die adjournment of that session, the office remains vacant and the interim appointment does not serve in holdover status notwithstanding ~~any other~~ another provision of law to the contrary. ~~In no event may the~~ The same individual must not be reappointed by the appointing body or officer until the term for which the interim appointee would have served expires. This subsection does not apply to vacancies occurring in a redevelopment authority provided for in subsection (D)(1), which vacancies must be filled by the municipal governing body.

(K) A vacancy occurring while the Senate is in session, including a vacancy occurring due to the failure of the Senate to give advice and consent to an appointment, may be filled while the Senate is in session by an appointment of an individual other than the one that failed to receive advice and consent. The appointment must be transmitted to the Senate for its consideration within one week after the appointment is made. If the vacancy occurs ~~prior to~~ before May ~~1~~ first and the Senate does not advise and consent to the appointment before sine die adjournment of that session, the office remains vacant and the appointee does not serve in holdover status notwithstanding ~~any other~~ another provision of law to the contrary. ~~In no event may the~~ The same individual must not be reappointed until the term for which the appointee would have served expires. If the vacancy occurs on or after May ~~1~~ first, the appointee is an interim appointee and is subject to the provisions of subsection (J). This subsection does not apply to vacancies occurring in a redevelopment authority provided for in subsection (D)(1), which vacancies must be filled by the municipal governing body.

(L) [Reserved]”

SECTION 3. Section 31‑12‑50 of the 1976 Code is amended to read:

“Section 31‑12‑50. (A) The term of office for members appointed pursuant to Sections 31‑12‑40(B) and 31‑12‑40(C) is as follows: one of the state representatives, one of the county representatives, and one of the municipality representatives shall serve a four‑year term as designated by the respective delegation or governing body. The other members shall serve an initial two‑year term, including the at‑large appointment by the Governor. The term of office for members appointed pursuant to Section 31‑12‑40(D) ~~shall be split equally between two or~~ is four years~~, as determined by lot at their first organizational meeting, other than the appointment by the Governor pursuant to Section 31‑12‑40(D)(1)(e), who shall serve an initial two‑year term~~. ~~After the initial terms, all members shall serve four‑year terms~~. Each member shall hold office until his successor is appointed and qualified.

(B) Vacancies for the unexpired terms of a member who resigns, ceases to be qualified, or is removed must be filled promptly ~~filled~~ in the manner of the original appointment. A member who is guilty of malfeasance, misfeasance, incompetency, persistent absenteeism, ~~conflicts~~ conflict of interest, misconduct, persistent neglect of duty in office, or incapacity is subject to removal by majority vote of the appointing body upon ~~any of the foregoing causes~~ the cause being made to appear satisfactory to the appointing body. A member is subject to removal by an appointing body, with or without cause, upon a two‑thirds vote of an appointing body. An appointing officer may remove a member of an authority with or without cause. A member shall receive, as the authority determines, reimbursement for reasonable travel expenses and other out‑of‑pocket expenses incurred in the discharge of the member’s duties.”

SECTION 4. Section 31‑12‑100(C) of the 1976 Code is amended to read:

“(C) Upon a determination to dissolve, the authority may dispose of any tangible or intangible property remaining after transfer of any remaining redevelopment properties as provided by law or in the following manner:

(1) tangible personal property and cash or similar instruments held by the authority must be distributed to the local governmental entities ~~which~~ that ~~nominated~~ nominate or appoint members to the authority; and

(2) disbursement of assets must be based on the cash value of all assets and must be distributed in reimbursement to local government entities ~~which~~ that have contributed cash funds or capital assets in proportion to the dollar value of contributions made by the government entities that have not been otherwise recovered by the contributing governmental entity through direct revenues.”

SECTION 5. Section 31‑12‑210(F) of the 1976 Code is amended to read:

“(F) The obligations must be issued not later than fifteen years after the adoption of an ordinance by the municipality pursuant to Section 31‑12‑280 concurring in an authority’s redevelopment plan or, in the case of a redevelopment authority restructured so as to be brought into compliance with the current provisions of Section 31‑12‑40(D), within fifteen years of the date it ceases to be a creation of the State pursuant to Section 31‑12‑40(D)(2).”

SECTION 6. Section 31‑12‑300(A) of the 1976 Code is amended to read:

“(A) If a municipality authorizes by ordinance the issuance of obligations pursuant to Section 31‑12‑210, the auditor of the county in which the municipality is situated, immediately after adoption of the ordinance pursuant to Section 31‑12‑210 and upon request of the municipality, shall determine and certify:

(1) the most recently ascertained equalized assessed value of all taxable real property within the redevelopment project area, as of the date of creation of the authority pursuant to Section 31‑12‑200 or the date the properties were scheduled for disposal by final action of the federal government in the case of properties added after the date of creation of the authority, which value is the ‘initial equalized assessed value’ of the property; and

(2) the total equalized assessed value of all taxable real property within the redevelopment project area, as of the date of creation of the authority pursuant to Section 31‑12‑200 or the date the properties were scheduled for disposal by final action of the federal government in the case of properties added after the date of creation of the authority, determined without regard to restructuring of the authority pursuant to Section 31‑12‑40(D)(1) and (2), and certifying the amount as the ‘total initial equalized assessed value’ of the taxable real property within the redevelopment project area. Another official required by law to ascertain the amount of the equalized assessed value of all taxable property within the district shall cooperate and assist the county auditor in making the determination.”

SECTION 7. Section 61‑4‑510(B) and (C) of the 1976 Code, as amended by Act 462 of 1996, is further amended to read:

“(B) Revenue generated by the fees must be credited to the general fund of the State, except that revenue generated by the fees within a county where a federal military base or installation has been closed, or is designated to be closed and where the federal facility has reduced its permanent civilian employment by seven hundred fifty or more jobs after December 31, 1990, ~~for a period of ten years after the effective date of Chapter 12 of Title 31,~~ must be credited to a special separate and distinct account with the Budget and Control Board for support of a redevelopment authority ~~created therein pursuant to Chapter 12 of Title 31~~ created or restructured as provided in Section 31‑12‑40(D)(1) and (D)(2). All other requirements for retail permits provided in Sections 61‑2‑120 and 61‑4‑500 apply to the special permits authorized by this section.

(C)(1) Upon the creation or restructuring of an authority pursuant to Section 31‑12‑40(D)(1) and (D)(2) composed of municipal appointees, the fee credited to the special account pursuant to subsection (B) must be distributed to the redevelopment authority. Immediately following the dissolution of a redevelopment authority pursuant to Section 31‑12‑100(A), the fees distributed to the dissolved redevelopment authority pursuant to subsection (B) must be distributed to the municipality ~~or county in which the retailer who paid the fee is located~~ within whose borders the major portion of the federal defense property that was subject to disposal is located. The revenue may ~~only~~ be used by the municipality ~~or county~~ only for the following purposes:

(a) capital improvements to tourism‑related buildings including, but not limited to, civic centers, convention centers, coliseums, aquariums, stadiums, marinas, parks, and recreational facilities;

(b) purchase or renovation of buildings ~~which~~ that are historic properties as defined in Section 60‑12‑10(4) and (5);

(c) festivals ~~which~~ that have a demonstrable and significant impact on tourism;

(d) acquiring fee and less than fee interest in land while it is still available to be held in perpetuity as wildlife preserves or believed to be needed by the public in the future for active and passive recreation uses and scenic easements~~, to include the following types of land~~ including: ocean, harbor, and pond frontage in the form of beaches, dunes, and adjoining backlands; barrier beaches; fresh and saltwater marshes and adjoining uplands; land for bicycle paths; land protecting existing and future~~;~~ public water supply, well fields, highway buffering, and aquifer recharge areas; ~~and~~ land for wildlife preserves; and land for future public recreational facilities;

(e) nourishment, renourishment (resanding), and maintenance of beaches;

(f) dune restoration, including the planting of grass, sea oats, or other vegetation useful in preserving the dune system;

(g) maintenance of public beach access;

(h) capital improvements to the beaches and beach related facilities, such as public parking areas for beach access; dune walkovers and rest room facilities, with or without changing rooms, at public beach parks; and

(i) construction and maintenance of drainage systems.

(2) The revenue may not be used for operating expenses of tourism‑related buildings.”

SECTION 8. Notwithstanding another provision of this act, a redevelopment authority previously established pursuant to Section 31‑12‑40(D) may continue to operate until a new redevelopment authority is established pursuant to Section 31‑12‑40(D)(2) and appointed as provided in Section 31‑12‑40(D)(1).

SECTION 9. This act takes effect upon approval by the Governor.

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