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AMENDED--NOT PRINTED IN THE HOUSE

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April 30, 2009

**S. 351**

Introduced by Senators Grooms, McConnell and Ford

S. Printed 4/30/09--H.

Read the first time February 19, 2009.

**A** **BILL**

TO AMEND ARTICLE 1, CHAPTER 3, TITLE 54 OF THE 1976 CODE, RELATING TO THE CREATION AND ORGANIZATION OF THE SOUTH CAROLINA STATE PORTS AUTHORITY, TO CLARIFY THAT THE POWERS AND DUTIES OF THE AUTHORITY ARE EXERCISED BY A BOARD OF DIRECTORS, TO PROVIDE THAT CANDIDATES FOR APPOINTMENT MUST POSSESS CERTAIN QUALIFICATIONS, TO PROVIDE THAT CANDIDATES MUST BE SCREENED TO DETERMINE WHETHER THEY POSSESS THE REQUIRED QUALIFICATIONS BEFORE THEY MAY SERVE ON THE BOARD, TO PROVIDE THAT MEMBERS OF THE BOARD MAY BE REMOVED FROM OFFICE ONLY FOR CAUSE, TO PROVIDE THAT THE BOARD MUST PERFORM AN ANNUAL PERFORMANCE REVIEW OF THE EXECUTIVE DIRECTOR, TO ESTABLISH THAT DIRECTORS HAVE A DUTY OF GOOD FAITH AND ORDINARY CARE WHEN DISCHARGING THEIR DUTIES AS A DIRECTOR, TO PROHIBIT CONFLICT OF INTEREST TRANSACTIONS, TO ESTABLISH A SOUTH CAROLINA STATE PORTS ADVISORY BOARD, AND SET THE MEMBERSHIP, DUTIES, AND RESPONSIBILITIES OF THE ADVISORY BOARD; TO AMEND CHAPTER 3, TITLE 54, BY ADDING ARTICLE 2, RELATING TO PORTS AUTHORITY MANAGEMENT, TO PROVIDE THAT THE BOARD OF DIRECTORS MUST HIRE AN EXECUTIVE DIRECTOR OF PORT OPERATIONS AND TO ESTABLISH THE DIRECTOR’S DUTY TO OPERATE THE PORTS IN A MANNER CONSISTENT WITH THE MISSION, POLICIES, AND DIRECTION OF THE BOARD; TO AMEND SECTION 54‑3‑140(5), TO PROVIDE THAT THE BOARD OF DIRECTORS MUST ADOPT AN ORGANIZATIONAL STRUCTURE FOR AUTHORITY OPERATIONS; TO AMEND SECTION 54‑3‑140, RELATING TO THE POWERS OF THE PORTS AUTHORITY, BY ADDING TWO NEW ITEMS THAT REQUIRE A LONG‑RANGE PORT DEVELOPMENT AND CAPITAL FINANCING PLAN AND TO PROVIDE THAT THE AUTHORITY MUST CONSIDER PUBLIC‑PRIVATE PARTNERSHIPS FOR CURRENT AND FUTURE OPERATIONS; TO AMEND SECTION 54‑3‑1040, RELATING TO THE ANNUAL FINANCIAL STATEMENT, AND TO PROVIDE THAT COPIES OF THE STATEMENT MUST BE FORWARDED TO THE ADVISORY COMMITTEE AND THE GENERAL ASSEMBLY; TO AMEND ARTICLE 11, CHAPTER 3, TITLE 54, RELATING TO FINANCIAL MATTERS, BY ADDING SECTION 54‑3‑1060, TO PROVIDE THAT THE AUTHORITY MUST MAINTAIN A TRANSACTION REGISTER OF ALL FUNDS EXPENDED OVER ONE HUNDRED DOLLARS AND MUST MAINTAIN ON ITS INTERNET WEBSITE A COPY OF EACH MONTHLY CREDIT CARD STATEMENT FOR ALL CREDIT CARDS MAINTAINED BY THE AUTHORITY; AND TO AMEND CHAPTER 3, TITLE 54, BY ADDING ARTICLE 13, RELATING TO LEGISLATIVE OVERSIGHT, TO REQUIRE REGULAR OVERSIGHT REVIEW OF THE AUTHORITY AND THE EXECUTIVE DIRECTOR.

Amend Title To Conform

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

SECTION 1. Article 1, Chapter 3, Title 54 of the 1976 Code is amended to read:

“Article 1

Creation and Organization

Section 54‑3‑10. ~~The~~ There is created the South Carolina State Ports Authority. ~~is hereby created consisting of a~~ The governing body of the authority is a board of directors consisting of nine members~~, hereafter referred to as the Authority~~ who shall be responsible for setting policies and direction for the authority so that the authority may achieve its mission. The powers and duties of the authority shall be exercised by the board. The board may delegate to one or more officers, agents, or employees such powers and duties as it determines are necessary and proper for the effective, efficient operation of the port.

Section 54‑3‑20. (A) The members of the board shall be appointed by the Governor, with the advice and consent of the Senate, for terms of ~~seven~~ six years each and until their successors shall have been appointed, screened, and have qualified. In the event of a vacancy, however caused, a successor shall be appointed in the manner of original appointment for the unexpired term.

(B) Beginning January 15, 2011, the membership of the board shall consist of nine members all of whom must be residents of the State of South Carolina and shall include:

(1) one person appointed by the Governor from each of the six congressional districts;

(2) one person appointed by the Governor from the state at large;

(3) the Secretary of Transportation to serve ex officio;

(4) the Secretary of Commerce to serve ex officio.

(C) The terms of the members of the board serving in office on January 15, 2011, shall expire on this date. Beginning January 15, 2011, new members of the board shall be appointed and shall serve staggered terms. Nothing herein prohibits the reappointment of a former board member. In 2011 the members representing the second and fourth congressional districts must be appointed for terms ending January 15, 2013. Thereafter, members representing the second and fourth congressional districts must be appointed to terms of six years.

In 2011, members representing the first and third congressional districts must be appointed to terms ending January 15, 2015. Thereafter, members representing the first and third congressional districts must be appointed to terms of six years.

In 2011, members representing the fifth and sixth congressional districts as well as the member representing the State at large must be appointed to six‑year terms ending January 15, 2017.

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

Section 54‑3‑25. (A) There is created a Joint Commission on Ports Authority Qualification consisting of five members of the Senate, appointed by the President Pro Tempore of the Senate and five members of the House of Representatives appointed by the Speaker of the House.

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

Section 54‑3‑30. ~~They~~ The board shall elect one of ~~their number~~ its members to serve as chairman and there shall be no term limit for a member selected by the board as chairman, one member to serve as vice chairman, and ~~shall also elect a~~ one member to serve as secretary. The board shall meet upon the call of its chairman and a majority of its members shall constitute a quorum for the transaction of its business.

Section 54‑3‑40. The ~~Authority~~ board shall select one of its members to serve as ~~its~~ treasurer. The ~~Authority~~ treasurer shall ~~require~~ give a surety bond ~~of such appointee~~ in ~~such~~ an amount ~~as the Authority may fix~~ fixed by the board and the premium ~~thereon~~ on the bond shall be paid by the authority as a necessary expense ~~of the Authority~~.

Section 54‑3‑50. Members of the board of directors may be removed by the Governor pursuant to Section 1‑3‑240(A), a breach of duty required by Section 54‑3‑80, or entering into a conflict of interest transaction prohibited by Section 54‑3‑90.

Section 54‑3‑60. (A) Each member of the board except for the Secretary of Transportation and the Secretary of Commerce when they become members of the board must possess abilities and experience that enable them to make valuable contributions to the conduct of the authority’s business. These abilities include substantial business skills and experience but are not limited to:

(1) general knowledge of the history, purpose, and operations of the State Ports Authority;

(2) the ability to interpret legal and financial documents and information so as to further the activities and affairs of the authority;

(3) with the assistance of counsel, the ability to understand and apply federal and state laws, rules, and regulations related to the operation of a port; and

(4) with the assistance of counsel, the ability to understand and apply judicial and administrative decisions as they relate to the activities and affairs of a port.

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

(a) maritime shipping;

(b) labor related to maritime shipping;

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

(d) international commerce;

(e) finance, economics, or statistics;

(f) accounting;

(g) engineering;

(h) law; or

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

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

Section 54‑3‑70. The board must conduct an annual performance review of the executive director and submit a written report of its findings to the Governor and the General Assembly. A draft of the performance review must be submitted to the executive director, and the executive director must be provided an opportunity to be heard by the board of directors before the board submits the final draft to the Governor and the General Assembly.

Section 54‑3‑80. (A) A member of the board of directors shall discharge his duties as a director, including his duties as a member of a committee:

(1) in good faith;

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

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

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

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

(c) economic development and job attraction and retention;

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

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

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

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

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

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

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

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

Section 54‑3‑90. (A) A conflict of interest transaction is a transaction with the State Ports Authority in which a director has a direct or indirect interest. A conflict of interest transaction is not voidable by the authority solely because of the director’s interest in the transaction if any one of the following is true:

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

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

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

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

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

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

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

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

SECTION 2. Chapter 3, Title 54 of the 1976 Code is amended by adding:

“Article 2

Ports Authority Management

Section 54‑3‑101. The board of directors shall employ an Executive Director of Port Operations who shall serve at the pleasure of the board. A person employed to this position shall possess practical and successful business and executive ability and must be knowledgeable in the field of port operations.

Section 54‑3‑102. (A) The executive director is charged with the affirmative duty to carry out the mission, policies, and direction of the authority as established by the board of directors. He must represent the authority in its dealings with other state agencies, local governments, special districts, and the federal government.

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

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

Section 54‑3‑103. Compensation for the executive director and division directors shall be approved by the board of directors in a public vote. For the purpose of this section, compensation includes, but is not limited to, annual salary, bonuses, severance, and vehicle allowances.

Section 54‑3‑104. The Executive Director of the Port Operations also shall employ a director of port operations for the port of Georgetown. A person employed to this position shall possess practical and successful business and executive ability and must be knowledgeable in the field of port operations.

Section 54‑3‑105. The director of port operations for the port of Georgetown is charged with the affirmative duty to carry out the mission, policies, and direction of the authority for the port of Georgetown as established by the board of directors.”

SECTION 3. Section 54‑3‑140(5) of the 1976 Code is amended to read:

“(5) ~~Shall appoint and employ and dismiss at pleasure such employees as may be selected by the board of the Authority and fix and pay the compensation thereof~~ Shall adopt an organizational structure for authority operations implemented by the executive director;”

SECTION 4. Section 54‑3‑140 of the 1976 Code is amended by adding appropriately numbered new items to read:

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

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

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

SECTION 5. Section 54‑3‑1040 of the 1976 Code is amended to read:

“Section 54‑3‑1040. At least once ~~in~~ each year the authority shall ~~publish once in some newspaper published in Charleston County~~ furnish the Governor and conspicuously post on the authority’s Internet website a complete detailed statement of all ~~moneys~~ monies received and disbursed by the authority during the preceding year. Such statement shall also show the several sources from which such funds were received and the balance on hand at the time of publishing the statement and shall show the complete financial condition of the authority.”

SECTION 6. Article 11, Chapter 3, Title 54 of the 1976 Code is amended by adding:

“Section 54‑3‑1060. (A) For the purposes of this section, ‘detailed description of the expenditure’ means a description of an expenditure that distinguishes that expenditure from other expenditures and is particular enough in its account of the expenditure to discern the purpose of the expenditure.

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

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

(a) the transaction amount;

(b) the name of the payee; and

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

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

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

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

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

SECTION 7. Chapter 3, Title 54 of the 1976 Code is amended by adding:

“Article 13

Legislative Oversight

Section 54‑3‑1300. (A) The Senate Transportation Committee and the House of Representatives Ways and Means Committee must each conduct an oversight review of the authority and its operations at least once every two years. The committees may coordinate their reviews to reduce duplication.

(1) The oversight reviews must consider whether the authority is promoting, developing, constructing, equipping, maintaining, and operating the harbors and seaports of this State in an efficient, effective manner in accordance with all applicable laws and regulations.

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

(B) Each committee may undertake any additional reviews, studies, or evaluations as it considers necessary.

Section 54‑3‑1310. (A) The oversight report required by this article must at least contain:

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

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

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

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

(1) knowledge and application of substantive port issues;

(2) the ability to perceive relevant issues;

(3) absence of influence by political considerations;

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

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

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

(7) any other issue the committee deems appropriate.

Section 54‑3‑1320. A draft of a board member’s and executive director’s performance review and the evaluations of the actions of the board, must be submitted to the appropriate party, and that party must be allowed an opportunity to be heard before the committee conducting the oversight review by the performance review or evaluation, as the case may be, is final. The final performance review of a board member must be made a part of the member’s record for consideration if the member seeks reappointment to the board.”

SECTION 8. Article 3, Chapter 3, Title 54 of the 1976 Code is amended by adding:

“Section 54‑3‑155. Without prior approval from the State Budget and Control Board, the authority may not sell any real property or any buildings, terminals, or other permanent structures, excluding equipment, appurtenant to real property that are or may be used to carry out the purposes of the authority as provided in Section 54‑3‑130.”

SECTION 9. Section 54‑3‑110 of the 1976 Code is amended to read:

“Section 54‑3‑110. Through the authority the State may engage in promoting, developing, constructing, equipping, maintaining, and operating the harbors or seaports within the State, namely Charleston, Georgetown, and ~~Port Royal~~ Jasper, and works of internal improvement incident thereto, including the acquisition or construction, maintenance and operation at such seaports of harbor watercraft and terminal railroads, as well as other kinds of terminal facilities, and belt line roads or highways and bridges thereon and other bridges and causeways necessary or useful in connection therewith.”

SECTION 10. Section 54‑3‑130(1) of the 1976 Code is amended to read:

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

SECTION 11. Section 54‑3‑130(8) of the 1976 Code is amended to read:

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

SECTION 12. Article 3, Chapter 3, Title 54 of the 1976 Code is amended by adding:

“Section 54‑3‑115. The authority shall take all action necessary to expeditiously develop a port in Jasper County in accordance with the Intergovernmental Agreement for Development of a Jasper Ocean Terminal on the Savannah River within the State of South Carolina that was entered into between the South Carolina State Ports Authority, the Georgia Ports Authority, and the Georgia Department of Transportation dated on January 27, 2008. In determining whether the development of a Jasper Port is proceeding in an expeditious manner, the board must consider whether timelines or benchmarks included in either the Intergovernmental Agreement or amendments to it or other agreement with a partner to develop the port have been or will be met in a timely manner. A determination that a delay in the planning or construction of the port is reasonable must be based on an objective analysis of all available empirical data and expert opinion, as well as a comparison of the construction timelines of ports of similar size and expected capacity. If it is determined that a partner to an agreement to develop the port is not meeting its obligations that will result in the port not being developed in an expeditious manner, then the authority must take all available and necessary action to compel the partner to meet its obligations and, if necessary, terminate the agreement and transfer to Jasper County the assets and right to develop the port. The authority also shall take all action necessary and as may be requested from time to time by the committees in the House of Representatives and the Senate in connection with the State of South Carolina and the State of Georgia to enter into an Interstate Compact to operate a Jasper Port on or before December 31, 2010, as such compact is generally outlined in the Intergovernmental Agreement. In connection with the development of a port in Jasper County, the authority shall make specific inquiries regarding the merits of using private capital to finance the construction of that port to a greater extent than historically has been used by the South Carolina State Ports Authority in connection with their existing port operations.”

SECTION 13. Article 3, Chapter 3, Title 54 of the 1976 Code is amended by adding:

“Section 54‑3‑117. The authority shall take all action necessary to expeditiously complete construction of a container terminal in North Charleston.”

SECTION 14. Article 3, Chapter 3, Title 54 of the 1976 Code is amended by adding:

“Section 54‑3‑118. The board may fully explore public-private partnership opportunities at its ports. It shall be the policy of the authority that any such public-private partnership that benefits the State of South Carolina are to be entered into by the board. However, the board retains all authority associated with entering a public-private partnership on behalf of the port. ”

SECTION 15. Chapter 1, Title 13 of the 1976 Code is amended by adding:

“Section 13‑1‑1355. All tracks, spurs, switches, terminal, terminal facilities, road beds, rights‑of‑way, bridges, stations, railroad cars, locomotives, or other vehicles constructed for operation over railroad tracks, crossing signs, lights, signals, storage, and all associated structures and equipment which are necessary for the operation of any railroad located on any ‘applicable federal military installation’ or ‘applicable federal facility’ as defined in Section 12‑6‑3450 upon transfer to the State of South Carolina shall immediately vest, in fee simple absolute, in the Division of Public Railways of the Department of Commerce. The provisions of this section are remedial and shall be deemed to be retroactive.

SECTION 16. This act takes effect January 1, 2010.

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