**South Carolina General Assembly**

120th Session, 2013-2014

**H. 4829**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Erickson, Newton, Patrick and Herbkersman

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Companion/Similar bill(s): 1089

Introduced in the House on March 4, 2014

Currently residing in the House Committee on **Ways and Means**

Summary: Port Royal

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/4/2014 House Introduced and read first time ([House Journal‑page 30](file:///H:\HJ%20Archive\2014\03-04-14.docx))

3/4/2014 House Referred to Committee on **Ways and Means** ([House Journal‑page 30](file:///H:\HJ%20Archive\2014\03-04-14.docx))

**VERSIONS OF THIS BILL**

[3/4/2014](file:///p:\pprever\2013-14\4829_20140304.docx)

**A** **BILL**

TO AMEND SECTION 54‑3‑700, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CESSATION OF MARINE TERMINAL OPERATIONS AND THE SALE OF PROPERTY AT PORT ROYAL, SO AS TO RECOGNIZE THAT THE STATE PORTS AUTHORITY HAS CEASED OPERATIONS AT PORT ROYAL, TO DIRECT THE STATE PORTS AUTHORITY TO SELL THE PORT ROYAL PROPERTY AS SOON AS PRACTICABLE ON OR BEFORE JUNE 30, 2015, TO PROVIDE THAT IF THE PROPERTY IS NOT SOLD BY JUNE 30, 2015, THE AUTHORITY MUST TRANSFER THE PROPERTY TO THE GENERAL SERVICES DIVISION TO BE SOLD AT AUCTION, TO PROVIDE THAT THE SALES PRICE AT AUCTION IS DEEMED THE FAIR MARKET VALUE OF THE PROPERTY THUS SATISFYING ALL FIDUCIARY DUTIES, TO PROVIDE THAT ALL SALES MUST BE MADE ACCORDING TO STATE PROCEDURES, AND TO PROVIDE THAT A SALE OF THE PROPERTY PURSUANT TO THIS ACT SATISFIES THE STATE PORTS AUTHORITY BOARD’S FIDUCIARY DUTIES TO THE AUTHORITY AND TO THE AUTHORITY’S BOND HOLDERS.

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

SECTION 1. The General Assembly finds that:

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

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

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

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

(5) The State Budget and Control Board subsequently transferred the real and personal property at Port Royal back to the State Ports Authority.

(6) The State Ports Authority has used its best efforts to sell its real and personal property at Port Royal but has been unsuccessful.

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

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

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

SECTION 2. Section 54‑3‑700 of the 1976 Code, as last amended by Act 73 of 2009, is further amended to read:

“Section 54‑3‑700. (A) ~~Upon the effective date of this section:~~

~~(1)~~ ~~the~~ The State Ports Authority has had no statutory responsibility to operate a marine terminal at Port Royal since September 21, 2004~~;~~ and

~~(2)~~ has ceased all marine operations ~~at Port Royal shall cease as soon as practicable~~ there.

(B) The State Ports Authority is hereby directed to sell all its real and personal property at Port Royal ~~upon the effective date of this section, but in a manner that is financially responsible and advantageous to the State Ports Authority~~ as soon as practicable.

(C)(1)(a) The State Ports Authority, in its discretion, shall determine the manner of the sale, but in no event shall terms of the sale extend beyond ~~December 31, 2009, except for parcels under long‑term contract, in which case the South Carolina Ports Authority is directed to terminate these leases as soon as possible through ‘lease purchases’, ‘buy outs’, or other lawful means~~ June 30, 2015.

(b) If the State Ports Authority has accepted a bona fide offer to purchase all, or any portion of the property, but the sale has not closed as of June 30, 2015, then the transfer of the property, or the portion of the property, that is the subject of the pending sale shall not be transferred pursuant to item (2). The State Ports Authority shall have a reasonable time, not to exceed ninety days, to close the sale. If the sale has not been closed by that date, then the property shall transfer pursuant to item (2).

(2) ~~The~~ On July 1, 2015, the property must be transferred to the ~~State Budget and Control Board~~ General Services Division in the Department of Administration, as established by Act 121 of 2014, for sale at public auction if the authority is unable to complete the sale by ~~December 31, 2009~~ June 30, 2015. ~~The State Budget and Control Board~~ Upon the transfer of the property to General Services, the Department of Administration is vested with all of the board’s fiduciary duties to the authority and the authority’s bondholders ~~if the property is transferred to the State Budget and Control Board for sale. The acceptance of any sales price by the State Budget and Control Board must be exercised with due regard to the fiduciary duty owed to the authority and for the protection of the interests of the authority’s bondholders as set forth in its bond covenants, and otherwise according to law, including the conversion of a nonperforming asset into revenues in the most expeditious manner~~. The property may be auctioned in parcels, or in whole, whichever is most commercially reasonable considering the type and location of the property. The sales price at auction is deemed to be the fair market value of the property and thus satisfies the board’s fiduciary duties to the authority and the authority’s bondholders. ~~The State Budget and Control Board~~ General Services may deduct from the proceeds of the sale an amount equal to the actual costs incurred in conjunction with the sale of the property. The balance of the proceeds must be transmitted to the authority.

(D) Any real or personal property at Port Royal which is to be sold must be first appraised ~~and then sold at fair market value~~ prior to the sale. The real property appraiser must be a State Certified General Real Estate Appraiser, a member of the Appraisal Institute (MAI), and must be knowledgeable in appraisal and in appraising ~~marine terminal facilities~~ closed industrial sites. The appraisal of the real property should include its future development opportunities and those of the surrounding properties, and give due consideration to the probable existence of adverse environmental conditions and structurally unsound improvements. ~~The State Ports Authority Board of Directors shall exercise its lawful discretion in the acceptance of any sales price with due regard to its fiduciary duties to the authority and for the protection of the interests of the authority’s bondholders as set forth in its bond covenants, and otherwise according to law, including conversion of a nonperforming asset into revenue in the most expeditious manner.~~ The sale of the real property shall comply with all state procedures~~, must be approved by the State Budget and Control Board, and must be on an open‑bid basis, and no bid may be accepted which is less than the property’s fair market value as shown by the appraisal~~. All proceeds from the sale of real and personal property at Port Royal must be retained by the State Ports Authority; except ~~that the Town of Port Royal may petition the State Budget and Control Board for a portion of the net proceeds from a sale and may be allocated a portion of these net proceeds in an amount not to exceed five percent of the net proceeds upon showing the allocation is necessary to pay for infrastructure needs directly associated with and necessitated by the closing of the port as Port Royal. These funds must be expended at the direction of the Town Council of Port Royal with the approval of the State Budget and Control Board, solely for infrastructure, and shall have priority over all other expenditures except usual and necessary closing costs attributable to a sales contract~~ as provided in subsection (C)(2).”

SECTION 3. This act takes effect upon approval by the Governor.

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