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COMMITTEE AMENDMENT ADOPTED

March 20, 2018

**H. 4727**

Introduced by Reps. White, Hardee, Yow, Huggins, Jefferson, Hosey, Anderson, West, Hewitt, Finlay, Ott, Duckworth, Sandifer, Davis, Clary, B. Newton, J.E. Smith, Rutherford, Bernstein, W. Newton, Herbkersman, McCoy, Lowe, Elliott and S. Rivers

S. Printed 3/20/18--S. [SEC 3/21/18 1:21 PM]

Read the first time February 15, 2018.

**A** **BILL**

TO AMEND SECTION 48‑59‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE BOARD OF THE SOUTH CAROLINA CONSERVATION BANK, SO AS TO EXTEND VOTING PRIVILEGES TO CERTAIN MEMBERS AND TO PROHIBIT CERTAIN MEMBERS FROM SERVING AS CHAIRMAN; TO AMEND SECTION 48‑59‑50, RELATING TO THE POWERS AND DUTIES OF THE SOUTH CAROLINA CONSERVATION BANK, SO AS TO REQUIRE THE BANK TO DEVELOP CRITERIA AND A CONSERVATION PRIORITIZATION MAP, AND TO PROHIBIT THE AWARD OF A GRANT OR LOAN UNLESS THE FUNDS ARE PRESENTLY AVAILABLE IN THE TRUST FUND; TO AMEND SECTION 48‑59‑70, RELATING TO GRANTS OR LOANS FOR LAND INTERESTS, SO AS TO EXPAND THE CONSERVATION CRITERIA TO INCLUDE THE VALUE OF THE PROPOSAL FOR ACCESS TO THE PUBLIC, TO REQUIRE CERTAIN ACCESS DISCLOSURES ON A GRANT OR LOAN APPLICATION, AND TO PROHIBIT THE PURCHASE OF A CONSERVATION EASEMENT FOR MORE THAN FIVE HUNDRED THOUSAND DOLLARS; TO REPEAL SECTION 12‑24‑95 RELATING TO THE PORTION OF THE DEED RECORDING FEE CREDITED TO THE SOUTH CAROLINA CONSERVATION BANK TRUST FUND; AND TO REPEAL SECTION 7 OF ACT 200 OF 2002 RELATING TO THE REQUIREMENT TO PERIODICALLY REAUTHORIZE THE SOUTH CAROLINA CONSERVATION BANK TRUST FUND.

Amend Title To Conform

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

SECTION 1. Section 48‑59‑30(4) of the 1976 Code is amended to read:

“(4) ‘Eligible trust fund recipient’ means:

(a) the following state agencies, which own and manage land for the land’s natural resource, historical, and outdoor recreation values:

(i) South Carolina Department of Natural Resources,

(ii) South Carolina Forestry Commission, and

(iii) South Carolina Department of Parks, Recreation and Tourism.

(b) a municipality of this State and any agency, commission, or instrumentality of such a municipality; ~~or~~

(c) a county of this State and any agency, commission, or instrumentality of such county; or

(d) a not‑for‑profit charitable corporation or trust authorized to do business in this State whose principal activity is the acquisition and management of interests in land for conservation or historic preservation purposes and which has tax‑exempt status as a public charity under the Internal Revenue Code of 1986.”

SECTION 2. Section 48‑59‑40 of the 1976 Code is amended to read:

“Section 48‑59‑40. (A) There is established the South Carolina Conservation Bank. The bank is governed by a fourteen‑member board selected as follows:

(1) the Chairman of the Board for the Department of Natural Resources, the Chairman of the South Carolina Forestry Commission, and the Director of the South Carolina Department of Parks, Recreation and Tourism, all of whom shall serve ex officio and without voting privileges;

(2) three members appointed by the Governor from the State at large;

(3) four members appointed by the Speaker of the House of Representatives, one each from the Third, Fourth, and Sixth Congressional Districts and one member from the State at large; and

(4) four members appointed by the President Pro Tempore of the Senate, one each from the First, Second, Fifth, and Seventh Congressional Districts.

(B)(1) In making their respective appointments to the board, the Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate shall take all reasonable steps to ensure that the members of the board reflect the state’s racial and gender diversity.

(2) Each member of the board must possess experience in the areas of natural resources, land development, forestry, finance, land conservation, real estate, or law.

(C) Terms of board members are for four years and until their successors are appointed and qualify, except that the initial terms of each appointing official’s appointees must be staggered with the initial term noted on the appointment. Regardless of the date of appointment, all terms expire on July first of the applicable year. Vacancies must be filled in the manner of original appointments for the unexpired portion of the term. Members shall serve without compensation, but may receive the mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions. The board shall elect a chairman and other officers as necessary from its membership.

~~(C)~~(D) Board members must recuse themselves from any vote in which they have a conflict of interest including, but not limited to, any vote affecting or providing funding for the acquisition of interests in land:

(1) on land owned or controlled by the board member, the board member’s immediate family, or an entity the board member represents, works for, or in which the member has a voting or ownership interest;

(2) on land contiguous to land described in item (1) of this subsection; and

(3) by an eligible trust fund recipient that the board member represents, works for, or in which the member has a voting or ownership interest.

The provisions of this subsection are cumulative to and not in lieu of provisions of law or applicable rule relating to the ethics of public officers.

~~(D)~~(E) The board shall meet at least ~~twice annually~~ quarterly in regularly scheduled meetings and in special meetings as the chairman may call. The bank is a public body and its records and meetings are public records and public meetings for purposes of Chapter 4 of Title 30, the Freedom of Information Act. All meetings shall be open to the public and allow for public input.

~~(E)~~(F) Board members shall have no personal liability for any actions or refusals to act in their official capacity as long as such actions or refusals to act do not involve wilful or intentional malfeasance or recklessness.”

SECTION 3. Section 48‑59‑50 of the 1976 Code is amended to read:

“Section 48‑59‑50. (A) The bank is established and authorized to:

(1) award grants to eligible trust fund recipients for the purchase of interests in land, so long as the grants advance the purposes of this chapter and meet criteria contained in Section ~~48‑59‑60~~ 48‑59‑70;

(2) make loans to eligible trust fund recipients for the purchase of interests in land, at no interest or at an interest rate determined by the board, and under terms determined by the board, so long as the loans advance the purposes of this chapter and meet criteria contained in Section ~~48‑59‑60~~ 48‑59‑70;

(3) apply for and receive additional funding for the trust fund from federal, private, and other sources, to be used as provided in this chapter;

(4) receive charitable contributions and donations to the trust fund, to be used as provided in this chapter;

(5) receive contributions to the trust fund in satisfaction of any public or private obligation for environmental mitigation or habitat conservation, whether such obligation arises out of law, equity, contract, regulation, administrative proceeding, or judicial proceeding. Such contributions must be used as provided for in this chapter;

(6) exercise its discretion in determining what portion of trust funds shall be expended, awarded, or loaned in any particular year, and what portion of trust funds shall remain in the trust fund from one fiscal year to the next. Funds within the trust fund shall be invested or deposited into interest‑bearing instruments or accounts, with the interest accruing and credited to the fund; and

(7) when requested, collaborate and advise on mitigation efforts between state agencies and other parties to help ensure that mitigation efforts are consistent with the purposes set forth in this chapter.

(B) To carry out its functions, the bank shall:

(1) operate a program in order to implement the purposes of this chapter;

(2) develop additional guidelines and prescribe procedures, consistent with the criteria and purposes of this chapter, as necessary to implement this chapter;

(3) submit an annual report to the Governor, Lieutenant Governor, and General Assembly that:

(a) accounts for trust fund receipts and dispersals;

(b) briefly describes applications submitted to the bank, and in greater detail describes grants and loans that were approved or funded during the current year, and the public benefits, including public access, resulting from such grants and loans;

(c) describes recipients of trust fund grants and loans; and

(d) sets forth a list and description of all grants and loans approved, and all acquisitions of land or interests in land obtained with trust funds since the bank’s inception. The report shall include a map setting forth the location and size of all such protected lands~~.~~;

(4) have an annual audit of the Conservation Bank and Conservation Bank Trust Fund conducted by outside independent certified public accountants and submitted to the Governor, Lieutenant Governor, and General Assembly. The accounting of trust fund receipts and expenditures required above shall be part of this annual audit; and

(5) develop conservation criteria to be used, in addition to the criteria set forth in Section 48‑59‑70(D), that advance and support federal, state, and local conservation goals, plans, objectives, and initiatives. In order to assist in the development of conservation criteria, the bank must coordinate with the appropriate groups to integrate the goals, plans, objectives, and initiatives, as well as land use patterns, into a statewide conservation map. The map must be created by July 1, 2019, and the criteria and map must be reviewed no less than every ten years thereafter. The criteria list and map must be submitted to the General Assembly annually.

(C)(1) To operate the bank and carry out the purposes of this chapter the board shall hire an executive director with the advice and consent of the Senate, and may hire staff, contract for services, and enter into cooperative agreements with other state agencies. The executive director must possess experience in the areas of natural resources, land development, forestry, finance, land conservation, real estate, or law. However, the bank may not contract for services that include land management or the enforcement of conservation easements, nor may the bank contract for services with an eligible trust fund recipient or nonprofit organization. Enforcement of conservation easements and management of interest in land acquired with trust funds are the sole responsibility of the owner or eligible trust fund recipient.

(2) A board member or member of the General Assembly or member of his immediate family may not be hired to serve as executive director while the member is serving on the board or in the General Assembly or for a period of one year after the member either:

(a) ceases to be a member of the board or the General Assembly; or

(b) is not reappointed in accordance with Section 48‑59‑40 or fails to file for election to the General Assembly in accordance with Section 7‑11‑15.

Also, a lobbyist or member of his immediate family may not be hired to serve as the executive director for a period of one year after the person ceases to be a lobbyist. For purposes of this paragraph, the definitions provided in Chapter 17, Title 2 apply.

(D) Operating expenses of the bank must be paid out of the trust fund.

(E) The bank may not award a grant or make a loan unless the funds for the grant or loan are in the trust fund at the time of the award. However, the bank may make an award for an extraordinary conservation opportunity in excess of the funds in the trust fund. Such awards must be approved by a two‑thirds vote of the board members and go before the Joint Bond Review Committee to review the application for an extraordinary conservation opportunity and make a recommendation for approval or denial before the funds may be used. These awards may cross fiscal years and, in certain situations, may rely on anticipated funds.”

SECTION 4. Section 48‑59‑70 of the 1976 Code is amended to read:

“Section 48‑59‑70. (A) An eligible trust fund recipient may apply for a grant or loan from the trust fund to acquire a specific interest in land identified in its application. An application must not be submitted to the board without the written consent of the owner of the interest in land identified in the application and a detailed statement of applicable fees and costs of the acquisition of the interest in the land including, but not limited to, finders fees, real estate commissions, and closing fees. Contiguous landowners and other interested parties may submit in writing to the board their views in support of or in opposition to the application. The board must hold a public hearing on the application at which the eligible trust fund recipient, contiguous landowners, and other interested parties shall be heard. Interested parties include representatives of the municipality, county, and public or private utilities in the area wherein the property is located. The board shall conduct a public hearing on an application before awarding a grant or loan pursuant to the application.

(B) Before applying for trust funds for the purchase of an interest in land, the eligible trust fund recipient receiving the funds must notify the owner of the land that is the subject of the trust fund grant or loan of the following in writing:

(1) that interests in land purchased with trust funds result in a permanent conveyance of such interests in land from the landowner to the eligible trust fund recipient or its assigns; and

(2) that it may be in the landowner’s interest to retain independent legal counsel, appraisals, and other professional advice.

The application must contain an affirmation that the notice requirement of this subsection has been met.

(C) Grants and loans from the trust fund must be awarded based upon the conservation criteria contained in subsection (D) and the financial criteria contained in subsection (E). In each application the qualifying entity must provide information regarding how the proposal meets one or more of the following criteria and advances the purposes of the bank.

(D) For purposes of this chapter, conservation criteria include:

(1) the value of the proposal for the conservation of unique or important wildlife habitat;

(2) the value of the proposal for the conservation of any rare or endangered species;

(3) the value of the proposal for the conservation of a relatively undisturbed or outstanding example of an ecosystem indigenous to South Carolina;

(4) the value of the proposal for the conservation of riparian habitats, wetlands, water quality, watersheds of significant ecological value, critical aquifer recharge areas, estuaries, bays, or beaches;

(5) the value of the proposal for the conservation of outstanding geologic features;

(6) the value of the proposal for the conservation of a site of unique historical or archaeological significance;

(7) the value of the proposal for the conservation of an area of critical~~,~~ forestlands, farmlands, or wetlands;

(8) the value of the proposal for the conservation of an area of forestlands or farmlands which are located on prime soils, in microclimates or have strategic geographical significances;

(9) the value of the proposal for the conservation of an area for public outdoor recreation, greenways, or parkland;

(10) the value of the proposal for the conservation of a larger area or ecosystem already containing protected lands, or as a connection between natural habitats or open space that are already protected;

(11) the value of the proposal for the amount of land protected;

(12) the value of the proposal for the unique opportunity it presents to accomplish one or more of the criteria contained in this subsection, where the same or a similar opportunity is unlikely to present itself in the future; and

(13) the value of the proposal for access to the public.

(E) For purposes of this chapter, financial criteria include:

(1) the degree to which the proposal presents a unique value opportunity in that it protects land at a reasonable cost;

(2) the degree to which the proposal leverages trust funds by including funding or in‑kind assets or services from other governmental sources;

(3) the degree to which the proposal leverages trust funds by including funding or in‑kind assets or services from private or nonprofit sources, or charitable donations of land or conservation easements;

(4) the degree to which the proposal leverages trust funds by purchasing conservation easements that preserve land at a cost that is low relative to the fair market value of the fee simple title of the land preserved; and

(5) the degree to which other conservation incentives and means of conservation, such as donated conservation easements or participation in other governmental programs, have been explored, applied for, secured, or exhausted.

(F)(1) The board shall evaluate each proposal according to the conservation criteria listed in subsection (D), the financial criteria listed in subsection (E), and the extent to which the proposal provides public access for hunting, fishing, outdoor recreational activities, and other forms of public access. The board shall award grants or loans on the basis of how well proposals meet these three criteria.

(2) The chairman shall establish a grant review committee to review, comment, and make recommendations on proposals received by the bank. The chairman shall appoint five members of the board to serve on the committee for a term of no more than one year, and no member may serve consecutive terms.

(G) For each grant or loan application the applicant shall specify:

(1) the purpose of the application;

(2) how the application satisfies criteria listed in subsections (D), (E), and (F);

(3) the uses to which the land will be put;

(4) the extent to which hunting, fishing, or other forms of outdoor recreation will be conducted upon the land;

(5) the extent to which farming, forestry, timber management, or wildlife habitat management will be conducted upon the land;

(6) the party responsible for managing and maintaining the land;

(7) the parties responsible for enforcing any conservation easements or other restrictions upon the land;

(8) the extent to which the public is afforded access on the land, including documentation that clearly specifies:

(i) the level of public access on the land;

(ii) limitations on public access to the land and the reason for the limit; and

(iii) the manner in which the public access will be maintained and monitored.

(H) Where an eligible trust fund recipient seeks a trust fund grant or loan to acquire fee simple title to land, it must demonstrate both the expertise and financial resources to manage the land for the purposes set forth in its application. Where an eligible trust fund recipient seeks a trust fund grant or loan to acquire a conservation easement, it must demonstrate both the expertise and financial resources to manage and enforce the restrictions placed upon the land for the purposes set forth in its application. The board shall evaluate each proposal to determine the qualifications of the proposed managing party and to determine whether the proposed management is consistent with the purposes of the bank and the purposes set forth in the application.

(I) An eligible trust fund recipient seeking a grant or loan from the trust fund must:

(1) demonstrate that it is able to complete the project and acquire the interests in land proposed;

(2) indicate the total number of acres of land it has preserved in the State; and

(3) briefly describe the lands it has preserved in the State, including their size, location, and method of preservation. The reporting requirement of this subsection need not be complied with for specific preserved lands when in the grant or loan applicant’s discretion, or in the discretion of the owners of such preserved lands, the privacy or proprietary interests of the owners of such preserved lands would be violated.

(J) Partnerships, matching contributions, management agreements, management leases, and similar collaborations among state agencies, the federal government, eligible trust fund recipients, and local governments, boards, and commissions may be encouraged to fulfill the requirements of this section and promote the objectives of this chapter.

(K) No matching funds or other contributions are required to receive grants or loans from the trust fund. However, the board shall encourage matching funds and other contributions by weighing the degree to which applications meet the criteria of subsection (E)(2) and (3) when determining which proposals to fund.

(L)~~(1)~~ ~~The board may authorize up to ten percent of the monies credited to the trust fund during the preceding fiscal year to acquire interests in land that solely or primarily meet the criteria of subsection (D)(6) of this section. No other monies in the trust fund may be awarded to applicants for the acquisition of interests in land that meet the criteria of subsection (D)(6) unless the application also satisfies other criteria contained in subsection (D) in a substantial way.~~

~~(2)~~ ~~The board shall authorize at least ten percent of the monies credited to the trust fund during the preceding fiscal year for the acquisition of interests in land that provides public access. To the extent the ten percent authorization required by this item is not met in any particular year, the balance must be carried over and used for acquisition of interests in land that provide public access in ensuing years.~~ The board may not authorize the purchase of a conservation easement for more than one million dollars unless the transaction is reviewed by the Joint Bond Review Committee and the committee provides its recommendation to the board.

(M) The board only may authorize grants or loans to purchase interests in lands at or below fair market value. In no cases may funds from the trust fund be used to acquire interests in lands at a price that exceeds the fair market value of the interest being acquired. ~~However, trust funds may be used to acquire interests in land at below fair market value, but only if the owner of the interest consents and in writing to sell at below fair market value.~~ The board must establish reasonable procedures and requirements to document the fair market value of interests in lands and to ensure that the purchase price does not exceed the fair market value. The requirements may include the qualifications that appraisers must meet in order to submit appraisals for consideration by the board. The board shall promulgate regulations pursuant to Chapter 23 of Title 1, the Administrative Procedures Act, that provide for the procurement of appraisal services and for the procedure and process in those cases where a discrepancy of ten percent or more arises between the determination of fair market value obtained by the board and that provided by the owner or others interested in the subject land or interest in land. The board must also establish reasonable procedures to ensure the confidentiality of appraisals before the award of a grant or loan, and the subsequent acquisition of interests in lands obtained with such grant or loan.

(N) In awarding a grant or loan from the trust fund the board shall set forth findings that indicate:

(1) how the application satisfies the purposes of this chapter, and the criteria and other considerations set forth in this section;

(2) the purpose of the award and the use to which the land will be put;

(3) the extent to which public access, hunting, fishing, or other forms of outdoor recreation will be conducted upon the land;

(4) the extent to which farming, forestry, timber management, or wildlife habitat management will be conducted upon the land;

(5) the party responsible for managing and maintaining the land;

(6) the party responsible for enforcing any easements or other restrictions upon the land;

(7) the parties designated in items (5) and (6) possess the expertise and financial resources to fulfill their obligations; and

(8) any other findings or information relevant to the award.

(O)(1) Trust funds may not be used to acquire interest in land downzoned within three years of the application unless the interest is sold for the predownzoning value or current value, whichever is greater. However, this requirement is waived if the owner of the downzoned property agrees to accept a lesser amount.

(2) If the owner of an interest in land which is the subject of an application for acquisition with trust funds proves to the satisfaction of the board that intentional and improper acts of planning, zoning, or other regulatory officials resulted in substantial delay or denial of a lawful permit or permission to develop the interest in land and the permit or permission was requested by the owner before the application, then the value of the interest in land is deemed to be its value as if those permits or permissions were granted unless the owner of the interest agrees to a lesser value in writing. An owner aggrieved by the decision of the board with respect to this item may appeal to the Administrative Law Court where the matter must be heard as a contested case.

(P) Upon application from the Department of Natural Resources, the board shall award up to three million dollars annually in trust funds to provide the state match for federally funded grant programs in order to leverage funds to meet the conservation criteria set forth in subsection (D).”

SECTION 5. Section 48‑59‑110 of the 1976 Code is amended to read:

“Section 48‑59‑110. (A) Trust funds may be used only by eligible trust fund recipients for the acquisition of interests in land, including closing costs. Trust funds may not be used to pay general operating expenses of eligible trust fund recipients, nor may trust funds be used for the management or maintenance of acquired interests in land. Trust funds only may be dispersed at the closing of transactions in which an interest in land is acquired.

(B) The board, in its discretion, may award additional grant funds to the South Carolina Department of Natural Resources, the South Carolina Department of Parks, Recreation and Tourism or the South Carolina Forestry Commission for the acquisition of fee simple title to land to which the public will have full access. The additional funds must be used only for the purpose of improving pedestrian public access. The state agency receiving the funds shall include with its grant application a request for the additional funds and a detailed description of how the additional funds, if awarded, would be used. If additional funds are awarded by the board, the state agency receiving the funds shall submit a report to the board every six months after the award has been made describing in detail how the funds have been used and continue to submit a report until the funds are fully utilized. If the additional funds have not been utilized two years after receipt, the remaining balance must be refunded to the trust fund.”

SECTION 6. A. Sections 12‑24‑95, 12‑24‑97, 27‑8‑120, and 48‑59‑75 of the 1976 Code are repealed.

B. SECTIONS 3, 4, 5, and 7 of Act 200 of 2002 are repealed.

SECTION 7. (A) Effective July 1, 2018, the South Carolina Conservation Bank Board must be made up of members elected pursuant to the provisions of Section 48‑59‑40, as amended by this act. The members serving on the board immediately prior to July 1, 2018, may only serve on the commission until their successor has been appointed or the member is reappointed pursuant to Section 48‑59‑40, as amended by this act. The initial appointments to the board must be staggered so that one of the members appointed by the Governor, the member from the Third Congressional District and the member appointed from the State at large appointed by the Speaker of the House of Representatives, and the members from the First and Fifth Congressional Districts appointed by the President Pro Tempore of the Senate must be appointed to an initial term of two years. The Governor must clearly specify which of his appointments are for two‑year terms. The remaining initial appointments and all subsequent appointments must be for four‑year terms pursuant to Section 48‑59‑40.

(B) To ensure an efficient transition, upon approval by the Governor, the appointing officials may begin appointing members whose term will take effect on July 1, 2018.

SECTION 8. This act takes effect July 1, 2018.

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