**South Carolina General Assembly**

119th Session, 2011-2012

**H. 4822**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. J.H. Neal, Cobb‑Hunter and Howard

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Introduced in the House on February 22, 2012

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

Summary: Bank of South Carolina established

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/22/2012 House Introduced and read first time ([House Journal‑page 172](file:///h:\hj%20archive\2012\02-22-12.docx))

2/22/2012 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 172](file:///h:\hj%20archive\2012\02-22-12.docx))

3/6/2012 House Recalled from Committee on **Labor, Commerce and Industry** ([House Journal‑page 21](file:///h:\hj%20archive\2012\03-06-12.docx))

3/6/2012 House Referred to Committee on **Ways and Means** ([House Journal‑page 21](file:///h:\hj%20archive\2012\03-06-12.docx))

**VERSIONS OF THIS BILL**

[2/22/2012](file:///p:\pprever\2011-12\4822_20120222.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 2 TO TITLE 34 SO AS TO ESTABLISH THE BANK OF SOUTH CAROLINA, AMONG OTHER THINGS, TO PROVIDE FOR THE GOVERNANCE OF THE BANK, THE PURPOSES OF THE BANK, AND THE AUTHORITY OF THE BANK.

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

SECTION 1. Title 34 of the 1976 Code is amended by adding:

“CHAPTER 2

The Bank of South Carolina

Section 34‑2‑10. For the purpose of encouraging and promoting commerce, economic development, industry, and agriculture this State shall engage in the business of banking, and for that purpose shall maintain a system of banking owned, controlled, and operated by the State, under the name of the Bank of South Carolina.

Section 34‑2‑20. (A) The bank is governed by a board of directors. The board consists of seven voting directors as follows: the Chairman of the Department of Commerce, ex officio; one director appointed by the Governor who shall serve as chairman; one director appointed by the Governor; one director appointed by the Speaker of the House of Representatives; one member of the House of Representatives appointed by the Speaker, ex officio; one director appointed by the President Pro Tempore of the Senate; and one member of the Senate appointed by the President Pro Tempore of the Senate, ex officio. Directors appointed by the Governor, the Speaker, and the President Pro Tempore shall serve terms coterminous with those of their appointing authority. The terms for the legislative members are coterminous with their terms of office. The vice chairman must be elected by the board. Any person appointed to fill a vacancy must be appointed in the same manner as the original appointee for the remainder of the unexpired term.

(B) The board shall operate, manage, and control the Bank of South Carolina, locate and maintain its places of business, of which the principal place must be within the State, and make and enforce orders, rules, regulations, and bylaws for the transaction of its business. The business and financial transactions of the bank, in addition to other matters specified in this chapter, may include anything that any bank or bank holding company lawfully may do, except as it is restricted by the provisions of this chapter. This provision may not be held in any way to limit or qualify either the powers of the board granted or the functions of the bank as defined in this chapter. The powers of the board and the functions of the bank must be implemented through actions taken and policies adopted by the board.

Section 34‑2‑30. (A) To enlist the help of private enterprise and to encourage more active use of the purposes for which the Bank of South Carolina was created, the Governor shall appoint an advisory board of directors to the Bank of South Carolina. The advisory board shall consist of seven members, at least two of which must be officers of banks, the majority of the stock of which is owned by South Carolina residents, and at least one of which must be an officer of a state‑chartered or federally chartered financial institution. The Governor shall appoint a chairman, vice chairman, and secretary from the advisory board of directors. The term of a member is four years. The board of the bank shall define the duties of the advisory board of directors.

(B) The Advisory Board of Directors to the Bank of South Carolina shall:

(1) meet regularly with the management of the Bank of South Carolina to review the bank’s operations to determine whether recommendations should be made by the board to the bank’s board relating to improved management performance, better customer service, and overall improvement in internal methods, procedures, and operating policies of the bank.

(2) make recommendations to the bank’s board relating to the establishment of additional objectives for the operation of the Bank of South Carolina.

(3) make recommendations to the bank’s board concerning the appointment of officers of the Bank of South Carolina.

(4) meet regularly with the bank’s board to present any recommendations concerning the Bank of South Carolina.

Section 34‑2‑40. The board shall appoint a president, and may appoint and employ such subordinate officers, employees, and agents as it may judge expedient and in the interests of the State, and shall define the duties, designate the titles, and fix the compensation of all such individuals. The board may designate the president or other officers or employees as its agent in respect to the functions of the bank, subject to its supervision, limitation, and control. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the bank, shall remain within the appropriation, revenues, or capital lawfully available for such purposes.

Section 34‑2‑50. The board may remove and discharge any and all persons appointed in the exercise of the powers granted by this chapter, whether by the commission or by the president of the bank. All appointments and removals contemplated by this chapter must be made as the board deems fit to promote the efficiency of the public service.

Section 34‑2‑60. All state funds and funds of all state penal, educational, and industrial institutions must be deposited in the Bank of South Carolina by the persons having control of such funds or must be deposited in accordance with constitutional and statutory provisions. All income earned by the bank for its own account on state monies that are deposited in or invested with the bank to the credit of the State must be credited to and become a part of the revenues and income of the bank.

Section 34‑2‑70. Whenever any of the public funds are deposited in the Bank of South Carolina pursuant to Section 34‑2‑60, the official having control thereof and the sureties on the bond of every such official shall be exempt from all liability by reason of loss of any such funds while so deposited.

Section 34‑2‑80. All deposits in the Bank of South Carolina are guaranteed by the State. Such deposits are exempt from state, county, and municipal taxes of any and all kinds.

Section 34‑2‑90. For banks that make the Bank of South Carolina a reserve depository, it may perform the functions and render the services of a clearinghouse, including all facilities for providing domestic and foreign exchange, and may rediscount paper, on such terms as the board shall provide.

Section 34‑2‑100. The Bank of South Carolina may:

(1) make, purchase, guarantee, or hold loans:

(a) to state‑chartered or federally chartered lending agencies or institutions or any other financial institutions;

(b) to holders of Bank of South Carolina certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security;

(c) to actual farmers who are residents of this State, if the loans are secured by recorded mortgages giving the Bank of South Carolina a first lien on real estate in South Carolina in amounts not to exceed eighty percent of the value of the security;

(d) that are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities;

(e) to individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the State;

(f) to nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code, the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the Department of Parks, Recreation and Tourism;

(g) to nonprofit corporations for the purpose of relending loan funds to rural businesses;

(h) to finance businesses and community development projects in rural areas;

(i) obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the bank;

(j) to instrumentalities of this State;

(k) as otherwise provided by law;

(l) if the bank is participating in the loan and the bank deems it is in the best interests of the bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action or from the receiver of the participating lender’s assets; and

(m) to an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in this State;

(2) make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act;

(3) purchase participation interests in loans made or held by banks, bank holding companies, state‑chartered or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies; and

(4) invest its funds:

(a) in conformity with policies of the board;

(b) in a public venture capital corporation organized and doing business in this State through the purchase of shares of stock;

(c) in South Carolina alternative and venture capital investments and early‑stage capital funds, not to exceed ten million dollars, for the purpose of providing funds for investment in South Carolina alternative and venture capital investments, early‑stage capital funds, and entrepreneurship awards. The bank may invest a maximum of two hundred thousand dollars per biennium in South Carolina‑based venture capital entities that make investments in companies located outside South Carolina;

(5) buy and sell federal funds;

(6) lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner;

(7) receive deposits from any source and deposit its funds in any bank or other financial institution;

(8) perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this chapter through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation; and

(9) purchase mortgage loans on residential real property originated by financial institutions.

Section 34‑2‑110. The State Treasurer and the State Budget and Control Board, or its successor agency, may, when the balance in the general fund is insufficient to meet legislative appropriations, execute and issue on behalf of the state evidences of indebtedness on the state general fund which at no time exceed the total principal amount of ten million dollars with principal maturity of not more than twelve months. As a condition precedent to the issuance and sale of the evidences of indebtedness, the state treasurer must request and obtain a statement from the State Budget and Control Board, or its successor agency, certifying that anticipated general fund revenues for the balance of the fiscal year in which the evidences of indebtedness are to be issued will exceed the principal amount and interest on the evidences of indebtedness to be issued. The board, or its successor agency, may in turn direct the Bank of South Carolina to make loans to the state general fund by the purchase of the evidences of indebtedness at such rates of interest as the board, or its successor agency, may prescribe. After evidences of indebtedness have been issued and sold pursuant to this section, the State Treasurer shall establish a fund for the repayment of the principal upon maturity and the interest when due. The State Treasurer shall place all available general fund revenues into this fund until the fund contains a sufficient balance for the repayment of the principal at maturity and interest when due.

Section 34‑2‑120. (1) A revolving loan fund must be maintained in the Bank of South Carolina for the purpose of making or participating in loans to South Carolina beginning farmers for the purchase of agricultural real estate, equipment, and livestock. All monies transferred into the fund, interest upon monies in the fund, and payments to the fund of principal and interest on loans made from the fund are appropriated for the purpose of providing loans and to supplement the interest rate on loans to beginning farmers made by the Bank of South Carolina.

(2) The revolving loan fund and loans made from the fund must be administered and supervised by the Bank of South Carolina. The bank may deduct a service fee for administering the fund from interest payments received on loans. An application for a loan from the fund must be made to the bank and, upon approval, a loan must be made from the fund in accordance with this section.

(3) A loan made from the fund may not exceed eighty percent of the appraised value of the agricultural collateral, with the actual percentage to be determined by the bank. The bank may do all things and acts and may establish additional terms and conditions necessary to make a loan under this section. A loan made from the fund must have a first security interest.

(4) A loan made from the fund must have the interest rate fixed at one percent below the bank’s then current base rate for the first five years with a maximum rate of six percent per year and variable at one percent below the bank’s then current base rate for the second five years. During the second five years, the variable rate must be adjusted annually on the anniversary date. The rate during the remaining term of the loan floats at the bank’s base rate as in effect from time to time.

(5) The maximum term of a real estate loan is thirty years. The maximum term of a farm equipment or livestock loan is seven years.

(6) The State Budget and Control Board, or its successor agency, shall contract with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the bank on behalf of the fund, must be paid for by the fund.

(7) The bank shall adopt policies to implement this section.

(8) Notwithstanding any other provision of law, the bank may transfer any unobligated funds between funds that have been appropriated by the General Assembly for interest buydown in the beginning farmers loan fund and the agriculture partnership in assisting community expansion fund.

(9) Notwithstanding any other provision of law, the bank may transfer any unobligated funds to the value‑added agriculture equity loan program for the purpose of interest buydown on a loan made for investment in a feedlot or dairy operation. Fund transfers under this subsection may not exceed one million dollars during a biennium.

Section 34‑2‑130. Notwithstanding any other provision of law, the Bank of South Carolina may not make any loan or otherwise give its credit to a member of the board during the member’s term on the board. Before taking office, a member of the board shall file a statement with the Bank of South Carolina indicating any personal interest that that member has in any loan or loan application in existence or pending at any time during the member’s term on the board.

Section 34‑2‑140. All business of the bank must be conducted under the name of ‘The Bank of South Carolina’. Title to property pertaining to the operation of the bank must be obtained and conveyed in the name of ‘The State of South Carolina, doing business as The Bank of South Carolina’. Instruments must be executed in the name of the State of South Carolina. Within the scope of authority granted by the board, the president may execute instruments on behalf of the bank, including any instrument granting, conveying, or otherwise affecting any interest in or lien upon real or personal property. Other officers or employees of, and legal counsel to, the bank may execute instruments on behalf of the bank when authorized by the board.

Section 34‑2‑150. (1) Civil actions may be brought against the State of South Carolina on account of claims for relief claimed to have arisen out of transactions connected with the operation of the Bank of South Carolina upon condition that the provisions of this section are complied with. In such actions, the State must be designated as ‘The State of South Carolina, doing business as The Bank of South Carolina’. The actions may be brought in the same manner and are subject to the same provisions of law as other civil actions.

(2) If the bank seeks to participate in a loan that involves multiple banks and if the loan documents require the bank to agree that civil actions will be commenced in a state outside of South Carolina, the bank may agree to venue outside of South Carolina if approved by the Attorney General.

Section 34‑2‑160. Provisions of law requiring that a surety or sureties be given on undertakings in actions on appeal, attachment, claim and delivery, and other cases in which an undertaking is required, are not applicable to the State of South Carolina, doing business as the Bank of South Carolina, as the party seeking such relief. It is required to give its own undertaking without surety and to reimburse the adverse party when required by law.

Section 34‑2‑170. The State Auditor shall contract with an independent certified public accounting firm for an annual audit of the Bank of South Carolina in accordance with generally accepted government auditing standards. The State Auditor shall audit annually or contract for an annual audit of the separate programs and funds administered by the Bank of South Carolina. On request of the State Auditor, the board shall assist the State Auditor in the auditing firm selection process, but the selection of the auditing firm is the State Auditor’s responsibility. The auditor selected shall prepare an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American institute of certified public accountants. The auditor also shall prepare audited financial statements for inclusion in the comprehensive annual financial report for the State. The State Auditor may conduct performance audits of the Bank of South Carolina, including the separate programs and funds administered by the bank. The State Auditor shall report the results of the audit to the board and to the General Assembly. The Bank of South Carolina or its separate programs and funds shall pay the costs of the audit.

Section 34‑2‑180. The Bank of South Carolina may establish, under such rules and regulations as adopted by the board, a system to provide fund transfer services to its customers and to the customers of state‑chartered and federally chartered banks located within the State of South Carolina, and to other financial institutions otherwise authorized to utilize the services of electronic fund transfer systems, to acquire such equipment as is necessary to establish electronic fund transfer systems, and to make such reasonable charges for services rendered to other banks hereunder as may be established by the board.

Section 34‑2‑190. The following records of the Bank of South Carolina are confidential and exempt from the provisions of Chapter 4, Title 30:

(1) Commercial or financial information of a customer, whether obtained directly or indirectly, except for routine credit inquiries or unless required by due legal process. As used in this subsection, ‘customer’ means any person who has transacted or is transacting business with, or has used or is using the services of, the Bank of South Carolina, or for whom the Bank of South Carolina has acted as a fiduciary with respect to trust property.

(2) Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the bank.

(3) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a state or federal agency responsible for the regulation or supervision of any bank activity.

(4) The report by a bank officer or member of the bank’s advisory board of directors concerning personal financial statements.

Section 34‑2‑200. Notwithstanding any other provision of law to the contrary, the Bank of South Carolina shall replace the State Treasurer as the custodian of all securities that are required to be deposited with the state except that the State Treasurer is the custodian of all securities resulting from the investment of funds by the State Treasurer.

Section 34‑2‑210. The Bank of South Carolina shall adopt rules to administer, manage, promote, and market a South Carolina higher education savings plan. The bank shall ensure that the South Carolina higher education savings plan is maintained in compliance with internal revenue service standards for qualified state tuition programs. The bank, as trustee of the South Carolina higher education savings plan, may impose an annual administrative fee to recover expenses incurred in connection with operation of the plan or for other programs deemed to promote attendance at an institution of higher education. Administrative fees received by the bank are appropriated on a continuing basis to be used as provided in this section. Information related to contributions is confidential.

Section 34‑2‑220. (1) The health information technology loan fund is established in the bank for the purpose of providing loans to health care providers to purchase and upgrade electronic health record technology, train personnel in its use, improve security of information exchange, and for other purposes as established by the health information technology office, in collaboration with the health information technology advisory committee. This fund is a revolving loan fund. All monies transferred into the fund, interest upon monies in the fund, and collections of interest and principal on loans made from the fund are appropriated for disbursement according to this section.

(2) The bank shall make loans from this fund to health care providers. A loan made under this fund must be repayable over a period that may not exceed ten years.

(3) The bank shall administer the health information technology loan fund. Funds in the loan fund may be used for loans as provided under this section and the costs of administration of the fund. Annually, the bank may deduct a service fee for administering the revolving loan fund maintained under this section.

(4) The bank may do all acts necessary to negotiate loans and preserve security as deemed necessary, to exercise any right of redemption, and to bring suit in order to collect interest and principal due the revolving loan fund under mortgages, contracts, and notes executed to obtain loans under this section. If the applicant’s plan for financing provides for a loan of funds from sources other than the State of South Carolina, the bank may take a subordinate security interest. The bank may recover from the revolving loan fund amounts actually expended by the bank for legal fees and to effect a redemption.

Section 34‑2‑230. (1) The bank may establish a residential mortgage loan program under which the bank may originate residential mortgages if private sector mortgage loan services are not reasonably available. Under this program a local financial institution may assist the bank in taking a loan application, gathering required documents, ordering required legal documents, and maintaining contact with the borrower.

(2) If the bank establishes a program under this section, at a minimum the program must provide:

(a) the bank originate no more than eight million dollars in conventional rural residential mortgages;

(b) an applicant must be referred to the bank by a local financial institution and the bank may not have received from any other local financial institution an objection to the bank’s program;

(c) the loan application must be for an owner‑occupied primary residence;

(d) all regulatory disclosures, process and underwrite the loan, prepare closing documents, and disburse the loan; and

(e) the terms of the loan originated by the bank must provide:

(i) the amount of the loan may not exceed two hundred thousand dollars;

(ii) the term of the loan may not exceed thirty years;

(iii) the rate of the loan must be equal to the bank’s market rate;

(iv) the maximum loan to value may not exceed eighty percent of appraised value; however, a local financial institution may take a second mortgage that does not exceed a combined loan to value of ninety‑five percent; and

(v) standard credit underwriting and documentation applies.”

SECTION 2. This act takes effect upon approval by the Governor.

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