**South Carolina General Assembly**

122nd Session, 2017-2018

**H. 4014**

**STATUS INFORMATION**

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Introduced in the House on March 21, 2017

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

Summary: Conservation Bank

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/21/2017 House Introduced and read first time ([House Journal‑page 121](file:///h:\hj\20170321.docx))

3/21/2017 House Referred to Committee on **Ways and Means** ([House Journal‑page 121](file:///h:\hj\20170321.docx))

3/22/2017 Scrivener's error corrected

1/9/2018 House Member(s) request name added as sponsor: Davis

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**VERSIONS OF THIS BILL**

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[3/22/2017](file:///p:\pprever\2017-18\4014_20170322.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 4, TITLE 48 SO AS TO PLACE THE SOUTH CAROLINA CONSERVATION BANK UNDER THE DEPARTMENT OF NATURAL RESOURCES, TO PROVIDE THAT THE BOARD OF THE DEPARTMENT OF NATURAL RESOURCES WILL SERVE AS THE BOARD FOR THE CONSERVATION BANK, TO CREATE THE SOUTH CAROLINA CONSERVATION BANK ADVISORY BOARD AND TO ESTABLISH CERTAIN POWERS AND DUTIES FOR THE ADVISORY BOARD, TO AUTHORIZE THE CONSERVATION BANK TO UNDERTAKE CERTAIN ACTIONS TO PRESERVE AND PROTECT NATURAL RESOURCES, TO ESTABLISH CERTAIN CONSERVATION CRITERIA, TO PROHIBIT THE USE OF CONSERVATION BANK FUNDS TO ACQUIRE INTERESTS THROUGH EMINENT DOMAIN OR CONDEMNATION, AND TO ESTABLISH THAT THE CONSERVATION BANK MAY NOT BE USED TO ELIMINATE OR UNREASONABLY RESTRICT HUNTING, FISHING, FARMING, FORESTRY, TIMBER MANAGEMENT, OR WILDLIFE HABITAT MANAGEMENT; TO REPEAL SECTION 12‑24‑95, RELATING TO DEED RECORDING FEES; TO REPEAL CHAPTER 59, TITLE 48 RELATING TO THE SOUTH CAROLINA CONSERVATION BANK; AND TO DESIGNATE SECTIONS 48‑4‑10 THROUGH 48‑4‑80 AS ARTICLE 1, ENTITLED “GENERAL PROVISIONS”.

Whereas, the Isolated Wetlands and Carolina Bays Task Force (task force) was established pursuant to Act 198 of 2012 with the goal of reviewing, studying, and making recommendations concerning issues related to isolated wetlands and Carolina Bays in South Carolina; and

Whereas, the thirteen member task force reported that South Carolina has approximately four hundred thousand acres of existing isolated wetlands, one quarter of which are located outside of coastal counties, and lost an estimated twenty‑eight percent of its original isolated wetlands; and

Whereas, in Rapanos v. United States, the Supreme Court of the United States held that a Clean Water Act (CWA) permit was required to make discharges into wetlands only if such wetlands have a relatively permanent surface water connection or other “significant nexus” to “navigable waters” under the CWA; and

Whereas, the task force reported that, for regulatory purposes, “isolated wetlands” are a subset of wetlands that have no chemical, physical, or biological connection to waters of the United States. It is critical for South Carolina to take measures to conserve isolated wetlands, including Carolina Bays, in a prudent and cost efficient manner that is respectful of individual property rights; and

Whereas, the task force recommended a voluntary, incentive‑based approach using the South Carolina Conservation Bank as the best way to preserve those bodies of water by including the presence of isolated wetlands and Carolina Bays in the conservation criteria used to award Conservation Bank grants. Now, therefore,

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

SECTION 1. Chapter 4, Title 48 of the 1976 Code is amended by adding:

“Article 3

South Carolina Conservation Bank Act

Section 48‑4‑300. This article may be cited as the ‘South Carolina Conservation Bank Act’.

Section 48‑4‑310. The General Assembly finds that:

(1) South Carolina is experiencing rapid land development and economic growth which has benefited the state’s people and economy, but has also led to the loss of forestlands, farmlands, wildlife habitats, outstanding natural areas, beaches and public areas for outdoor recreation; and has impacted the health of the state’s streams, rivers, wetlands, estuaries, and bays, all of which impacts the quality of life of the state’s current and future citizens and may jeopardize the well‑being of the state’s environment and economy if not addressed appropriately.

(2) This same rapid land development also has led to the loss of historical and archaeological sites that embody the heritage of human habitation in the State.

(3) Additionally, as urban areas expand and the separation of urban residents from open lands increases, there is a need to preserve greenways, open space, and parks in urban areas in order to promote balanced growth and promote the well‑being and quality of life of our state’s citizens.

(4) There is a critical need to fund the preservation of, and public access to, wildlife habitats, outstanding natural areas, sites of unique ecological significance, historical sites, forestlands, farmlands, watersheds, open space, and urban parklands as an essential element in the orderly development of the State.

(5) The protection of open space by acquisition of interests in real property from willing sellers is essential to ensure that the State continues to enjoy the benefits of wildlife habitats, forestlands, farmlands, parks, historical sites, healthy streams, rivers, bays, and estuaries; for recreational purposes, for scientific study, for aesthetic appreciation, for protection of critical water resources, to maintain the state’s position as an attractive location for visitors and new industry, and to preserve the opportunities of future generations to access and benefit from the existence of the state’s outstanding natural and historical sites.

(6) It is critical to encourage cooperation and innovative partnerships among landowners, state agencies, municipalities, and nonprofit organizations, which must work together in order to meet these objectives.

(7) In order to carry out these purposes, the State must establish a mechanism to acquire interests in land from willing sellers that meets these objectives and to ensure the orderly development of the State. To these ends, the General Assembly enacts the ‘South Carolina Conservation Bank Act’.

Section 48‑4‑320. As used in this article:

(1) ‘Advisory board’ means the South Carolina Conservation Bank Advisory Board.

(2) ‘Bank’ means the South Carolina Conservation Bank.

(3) ‘Board’ means the governing board of the bank.

(4) ‘Conservation Bank funds’ or ‘bank funds’ means funds appropriated to the Conservation Bank by the General Assembly or collected through other means pursuant to the provisions of Section 48-4-350 to carry out the duties and responsibilities of the Conservation Bank under this article.

(5) ‘Eligible recipient’ means:

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

(6) ‘Farmland’ means land used for the production of food, fiber, or other agricultural products.

(7) ‘Land’ means real property, including highlands and wetlands of any description.

(8) ‘Conservation easement’ means an interest in real property as defined in Chapter 8, Title 27, the South Carolina Conservation Easement Act of 1991.

(9) ‘Interests in lands’ means fee simple titles to lands or conservation easements.

Section 48‑4‑330. (A) There is established the South Carolina Conservation Bank. The bank is governed by the Board of Directors of the Department of Natural Resources as provided in section 48‑4‑30.

(B) The board shall have the following duties, responsibilities, and powers under this article:

(1) To supervise the development and implementation of a tiered evaluation system designed to prioritize certain loan or grant proposals based on the number of conservation and financial criteria satisfied.

(2) To select from the recommendations of the advisory board the grant or loan proposals that meet the conservation and financial criteria provided in Section 48-4-360 and to disburse the Conservation Bank funds pursuant to the provisions of this article.

(3) To promulgate any rules, regulations, management criteria, business practices, allowable uses, and such which the board and advisory board feels would be beneficial to carrying out the goals and purposes of this article.

(4) To supervise the establishment, updating, and maintenance of a statewide inventory of projects funded by the Conservation Bank.

(5) To report annually to the Governor, Lieutenant Governor, and General Assembly as to the activities of the Conservation Bank and its future plans, and to make any specific recommendations which it feels, if implemented, would assist in achieving the goals and purposes of this article.

(C) 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; and

(2) on land contiguous to land described in item (1).

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. The Department of Natural Resources is not considered a business with which a board member is associated.

(D) The board shall meet at least twice annually 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, Title 30, the Freedom of Information Act. All meetings shall be open to the public and allow for public input.

(E) 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 48‑4‑340. (A) The South Carolina Conservation Bank Advisory Board is hereby created to assist the board of the department in carrying out its duties and responsibilities under this article. The advisory board shall consist of fourteen members 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) The South Carolina Conservation Bank Advisory Board shall have the following powers and duties:

(1) To develop and implement a tiered evaluation system designed to prioritize certain loan or grant proposals based on the number of conservation and financial criteria satisfied.

(2) To evaluate a grant or loan proposal pursuant to the provisions of Section 48-4-360 and to recommend to the board whether to approve or disapprove of the proposal.

(3) To recommend to the board any rules, regulations, management criteria, business practices, allowable uses and such which the advisory board feels would be beneficial to carrying out the goals and purposes of this article.

(4) To assist in maintaining a statewide inventory of projects funded by the Conservation Bank and to make public information regarding their location, management, regulation, and permissible public uses and the like.

(5) To conduct public hearings on the proposal at which the eligible recipient, contiguous landowners, and other interested parties may be heard before determining whether or not to award a grant or loan pursuant to the proposal.

Section 48‑4‑350. (A) The bank is established and authorized to:

(1) award grants to eligible recipients for the purchase of interests in land, so long as the grants advance the purposes of this article and meet criteria contained in Section 48‑4‑360;

(2) make loans to eligible 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 article and meet the criteria contained in Section 48‑4‑360;

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

(4) receive charitable contributions and donations to be used as provided in this article; and

(5) receive contributions 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 article.

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

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

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

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

(a) accounts for 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 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 since the bank’s inception. The report shall include a map setting forth the location and size of all such protected lands; and

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

(C) To operate the bank and carry out the purposes of this article the board shall hire an executive director, and may hire staff, contract for services, and enter into cooperative agreements with other state agencies. 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 interests in land acquired with bank funds are the sole responsibility of the owner or eligible bank fund recipient.

Section 48‑4‑360. (A) An eligible recipient may submit a proposal for a grant or loan to acquire a specific interest in land identified in its proposal. A proposal may not be submitted to the advisory board without the written consent of the owner of the interest in land identified in the proposal. Contiguous landowners and other interested parties may submit in writing to the advisory board their views in support of or in opposition to the proposal. The advisory board must hold a public hearing on the proposal at which the eligible recipient, contiguous landowners, and other interested parties may be heard. Interested parties include representatives of the municipality, county, and public or private utilities in the area where the property is located. The advisory board shall conduct a public hearing on a proposal before determining whether or not to award a grant or loan pursuant to the proposal.

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

(1) that interests in land purchased with bank funds result in a permanent conveyance of such interests in land from the landowner to the eligible 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 proposal must contain an affirmation that the notice requirement of this subsection has been met.

(C) Grants and loans must be awarded based upon the conservation criteria contained in subsection (D) and the financial criteria contained in subsection (E). In each proposal, 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. The advisory board shall develop a formula to prioritize grant and loan applications that meet a certain level of conservation and financial criteria.

(D) For purposes of this article, conservation criteria include the value of the proposal for the:

(1) conservation of unique or important wildlife habitats;

(2) conservation of any rare or endangered species;

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

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

(5) conservation of outstanding geologic features;

(6) conservation of a site of unique historical or archaeological significance;

(7) conservation of an area of critical forestlands, farmlands, or wetlands;

(8) conservation of an area of forestlands or farmlands which are located on prime soils, in microclimates or have strategic geographical significance;

(9) conservation of an area for public outdoor recreation, greenways, or parklands;

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

(11) amount of land protected;

(12) 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;

(13) acquisition, reclamation, or improvement of wetlands and their associated dikes, canals, water control structures, and water control devices on Wildlife Management Areas owned and managed by the Department of Natural Resources;

(14) potential for development in the imminent future; and

(15) degree to which the public has access to the preserved property if the Conservation Bank acquires fee simple title to the land or purchases a conservation easement.

(E) For purposes of this article, 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 bank funds by including funding or in‑kind assets or services from other governmental sources;

(3) the degree to which the proposal leverages bank 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 bank 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) The advisory 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 advisory board shall recommend awarding grants or loans on the basis of how well proposals meet these three criteria.

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

(1) the purpose of the proposal;

(2) how the proposal 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; and

(8) the extent to which the public is afforded access on the land.

(H) Where an eligible recipient seeks a 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 recipient seeks a 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 advisory 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 recipient seeking a grant or loan 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 recipients, and local governments, boards, and commissions are encouraged to fulfill the requirements of this section and promote the objectives of this article.

(K) No matching funds or other contributions are required to receive grants or loans. However, the advisory 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 appropriated to the bank during the preceding fiscal year to acquire interests in land that solely or primarily meet the criteria of subsection (D)(6). No other monies 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 seventy five percent of the monies appropriated to the bank during the preceding fiscal year for the acquisition of interests in land that provides public access. To the extent the seventy five percent authorization required by this item is not met in any particular year, the balance must be carried forward and used for acquisition of interests in land that provide public access in ensuing years.

(3) The board may authorize no more than twenty five percent of the monies appropriated to the bank for the acquisition of conservation easements. The board may not authorize the purchase of a conservation easement for more than two hundred and fifty thousand dollars.

(4) The board may authorize up to eight and thirty‑three one hundredths percent of the monies appropriated to the bank after June 30, 2018, to applications that solely or primarily meet the criteria of subsection (D)(13). To implement this item, grants or loans may be awarded to the Department of Natural Resources and to other eligible recipients with the approval of the Department of Natural Resources.

(M) The board may authorize grants or loans only to purchase interests in land at fair market value. In no case may bank funds be used to acquire interests in land at a price that exceeds the fair market value of the interest being acquired. However, bank funds may be used to acquire interests in land at below fair market value, but only if the owner of the interest consents in writing to sell at below fair market value. The advisory board must establish reasonable procedures to document the fair market value of interests in land and to ensure that the purchase price does not exceed the fair market value. The board shall promulgate regulations pursuant to Chapter 23, 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 interests in land. The advisory board also must 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 recommending the award of a grant or loan, the advisory board shall set forth findings that indicate:

(1) how the application satisfies the purposes of this article, 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) Conservation bank funds may not be used to acquire an interest in land downzoned within three years of the date of the submission of the proposal 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 proves to the satisfaction of the advisory 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 or advisory board with respect to this item may appeal to the Administrative Law Court, where the matter must be heard as a contested case.

Section 48‑4‑370. (A) The interest in land acquired must be held by an eligible recipient.

(B) The bank may not hold or possess any interest in land or other interests in real property, except for mortgage interests as security for loans made by the bank as provided for in subsection (J), and leasehold interests in office space secured for bank operations and staff.

(C) The bank and eligible recipients receiving monies from the bank must retain all records of acquisition of interests in land with funds provided by the bank including, but not limited to, surveys, inventories, appraisals, title and title insurance policies, environmental assessments, closing documents, and contracts.

(D) The bank must be named as an insured on a title insurance policy acceptable to the board and obtained by the loan recipient for loans it makes to eligible recipients. The bank must be indemnified as to title in the amount of any grants it makes to eligible recipients, and this indemnification must be secured by a title insurance policy acceptable to the board and obtained by the grant recipient. These requirements for title insurance and indemnification as to title may be waived by the board in extraordinary cases where insurable title is unobtainable, the risk of adverse claims to title are small, the land in question presents a particularly valuable conservation opportunity according to the purposes of this article and the criteria of Section 48‑4‑360, and the cost of the interest in land acquired reflects the lack of insurable title.

(E)(1) In order to identify potential liability pursuant to applicable state or federal environmental laws or regulations, an environmental hazard assessment must be conducted on the lands before the disbursement of bank funds for the acquisition of an interest in such lands.

(2) After an environmental hazard assessment is completed, if the land in question is found to contain an environmental hazard, no disbursement of bank funds for acquisition may be granted until the land meets all state and federal environmental laws or regulations.

(F) All interests in land acquired with bank funds must be held by the eligible recipient that was approved by the board to acquire the interest in land, except that interests in land obtained with bank fund monies may be assigned from one eligible recipient to another upon approval of the board by majority vote.

(G)(1) The owner of the fee simple title to property upon which a conservation easement was purchased with bank funds, whether the original owner that conveyed the conservation easement or a successor‑in‑interest, may reacquire and thereby extinguish the conservation easement if that owner or successor‑in‑interest determines that the conservation easement no longer exhibits the characteristics that qualified it for acquisition with bank funds and the board, by a majority vote, makes a finding of fact agreeing with that contention. For purposes of this reacquisition, the value of the conservation easement is its fair market value, as determined by current appraisal. The owner of the fee simple title to the subject property or an eligible recipient aggrieved by the decision of the board under this item may appeal to the Administrative Law Court where the matter must be heard as a contested case.

(2) If an eligible recipient acquires fee simple title to land for conservation purposes with bank funds, that land may not be sold, transferred, assigned, alienated, or converted to a use other than the use set forth in the grant or loan award. However, if the eligible recipient:

(a) determines that the land no longer exhibits the characteristics that qualified it for acquisition with bank funds; and (b) the board approves, by a majority vote, a finding of fact by the advisory board agreeing with that contention, then the land may be sold, transferred, assigned, alienated, or converted to another use at its fair market value as determined by current appraisal.

An eligible recipient aggrieved by the decision of the board under this item may appeal to the Administrative Law Court where the matter must be heard as a contested case.

(H) If any interests in land that have been acquired by an eligible recipient with bank funds are extinguished, sold, transferred, assigned, alienated, or converted pursuant to subsection (G), the eligible recipient extinguishing, selling, transferring, assigning, alienating, or converting the interests in land must replace them with interests in land of substantially equal current fair market value, with any deficit being made up by contribution to the Conservation Bank. The replacement land also must exhibit characteristics that meet the criteria of this article. The advisory board must verify that suitable replacement interests in land have been identified and will be obtained before authorizing that any interest in land purchased with monies from the bank be extinguished, sold, transferred, assigned, alienated, or converted. Where replacement in whole or in part is impossible, funds realized which are not used for replacement interests in land must be credited to the Conservation Bank. Where funding for an original acquisition was from multiple sources, funds realized must be credited to the Conservation Bank under this subsection in proportion to the contribution that bank funds made to the original acquisition.

(I) Interests in land acquired with bank funds must be managed and maintained in order to perpetuate the conservation, natural, historical, open space, and recreational uses or values for which they were originally acquired. Uses which are adverse to the original purposes for which the interests in land were acquired with bank funds are not permitted without securing a:

(1) two‑thirds vote of the board, following a finding of fact by the advisory board that the land no longer exhibits the characteristics that qualified it for acquisition with funds from the fund; and

(2) majority vote of the State Fiscal Accountability Authority.

(J) Loans made from the bank must be secured by mortgages upon the subject properties. Any funds received from foreclosure proceedings upon these mortgages must be deposited with the Conservation Bank for subsequent distribution as grants or loans according to the provisions of this article. Notwithstanding the provisions of subsection (B), the bank may accept a deed in lieu of foreclosure or as a result of foreclosure proceedings, for land in which it held a mortgage interest by virtue of awarding a loan as provided for in this article. However, upon receiving such a deed the bank must, as soon as practicable, either transfer the property to an appropriate eligible recipient, or sell the land and deposit the proceeds with the Conservation Bank for subsequent distribution as grants or loans according to the provisions of this article. If the bank sells the land, it may first donate a conservation easement upon the land to an eligible recipient before the sale.

(K) Where a grant is used to acquire fee simple title to land, public access and use of the land must be permitted, with this access and use being subject only to those rules, regulations, permits, or fees as are reasonable and consistent with the conservation purposes for which the land was acquired.

(L) Notwithstanding any other provision of this article, including requirements for board approval for disposing of interests in land acquired with bank funds, an interest in land acquired with bank funds may be condemned pursuant to Chapter 2, Title 28, the South Carolina Eminent Domain Procedures Act. The proceeds from any such condemnation proceeding must be credited to the Conservation Bank in proportion to the contribution that trust funds made to the original acquisition.

Section 48‑4‑380. Conservation Bank funds may not be used to acquire interests in land or other interests in real property through the exercise of any power of eminent domain or condemnation proceeding.

Section 48‑4‑390. Notwithstanding any other provision of this article, an easement acquired, in whole or in part, with bank funds must provide for public access consistent with the uses permitted by the terms of the easement.

Section 48‑4‑400. Conservation Bank funds may be used only by eligible recipients for the acquisition of interests in land, including closing costs. Bank funds may not be used to pay general operating expenses of eligible recipients, nor may bank funds be used for the management or maintenance of acquired interests in land. Bank funds only may be dispersed at the closing of transactions in which an interest in land is acquired.

Section 48‑4‑410. This section or Section 48‑4‑380 may not be repealed, amended, or otherwise modified except by an affirmative two‑thirds vote of the total membership of both the House of Representatives and the Senate.

Section 48‑4‑420. The provisions of this article must not be construed to eliminate or unreasonably restrict hunting, fishing, farming, forestry, timber management, or wildlife habitat management, as regulated by the laws of this State, upon lands for which interests in land are obtained pursuant to this article. These and other traditional and compatible activities may be conducted, where appropriate, upon lands preserved with bank funds.

Section 48‑4‑430. When Conservation Bank funds are used to purchase a conservation easement on land, the conservation easement will be the controlling legal document regarding what is and what is not permitted upon the land, how the land will be preserved, and what rights are vested with the eligible recipient or its assigns which hold the conservation easement. If any inconsistencies or ambiguities arise between the provisions of this article and the terms and conditions of a conservation easement purchased with bank funds, the terms and conditions of the conservation easement must prevail. The advisory board must exercise due diligence to assure the terms and conditions of conservation easements are consistent with the purposes of this article before recommending the disbursement of bank funds for the purchase of such conservation easements.”

SECTION 2. Section 12‑24‑95 of the 1976 Code is repealed.

SECTION 3. Chapter 59, Title 48 of the 1976 Code is repealed.

SECTION 4. Sections 48‑4‑10 through 48‑4‑80 are designated as Article 1, entitled “General Provisions”.

SECTION 5. This act takes effect upon approval by the Governor.

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