~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

May 1, 2014

**S. 1089**

Introduced by Senators Davis, Campsen and Grooms

S. Printed 5/1/14--S.

Read the first time March 6, 2014.

**A** **BILL**

TO AMEND SECTION 54‑3‑700 OF THE 1976 CODE, RELATING TO THE CESSATION OF MARINE TERMINAL OPERATIONS AND THE SALE OF PROPERTY AT PORT ROYAL, TO RECOGNIZE THAT THE STATE PORTS AUTHORITY HAS CEASED OPERATIONS AT PORT ROYAL, TO DIRECT THE STATE PORTS AUTHORITY TO SELL THE PORT ROYAL PROPERTY AS SOON AS PRACTICABLE ON OR BEFORE JUNE 30, 2015, AND TO PROVIDE FLEXIBILITY IN THE MANNER OF SALE, TO PROVIDE FOR CERTAIN CIRCUMSTANCES WHERE THE SALE MAY BE CLOSED AFTER JUNE 30, 2015, TO PROVIDE THAT IF THE PROPERTY IS NOT SOLD BY JUNE 30, 2015, SUBJECT TO THE IDENTIFIED EXCEPTIONS, THE AUTHORITY MUST IRREVOCABLY TRANSFER THE PROPERTY TO THE GENERAL SERVICES DIVISION TO BE SOLD AT AUCTION, TO PROVIDE THAT IF THE PROPERTY DOES NOT SELL AT AUCTION AS PROVIDED, GENERAL SERVICES SHALL MARKET AND SELL THE PROPERTY IN A COMMERCIALLY REASONABLE MANNER; TO PROVIDE FOR AN APPRAISAL OF THE PROPERTY PRIOR TO SALE, TO PROVIDE THAT THE PROPERTY MAY BE SOLD BY THE STATE PORTS AUTHORITY OR GENERAL SERVICES FOR EIGHTY PERCENT OR MORE OF THE APPRAISED VALUE; TO PROVIDE THAT ALL SALES MUST BE MADE ACCORDING TO STATE PROCEDURES, TO PROVIDE FOR THE DISTRIBUTION OF SALES PROCEEDS, AND TO PROVIDE THAT A SALE OF THE PROPERTY PURSUANT TO THIS ACT SATISFIES THE STATE PORTS AUTHORITY BOARD’S FIDUCIARY DUTIES TO THE AUTHORITY AND TO THE AUTHORITY’S BOND HOLDERS.

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

SECTION 1. The General Assembly finds that:

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

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

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

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

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

(6) The State Ports Authority has been unsuccessful in its attempt to sell its real and personal property at Port Royal.

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

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

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

SECTION 2. Section 54‑3‑700 of the 1976 Code is amended to read:

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

~~(1)~~ ~~the~~ The State Ports Authority has not had ~~no~~ statutory responsibility to operate a marine terminal at Port Royal since September 21, 2004~~;~~ and

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

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

(C)(1)(a) The State Ports Authority, in its discretion, shall determine the manner of the sale.~~, but in~~ In no event shall terms of the sale extend beyond ~~December 31, 2009~~ June 30, 2015, except as provided in subitems (b) and (c) ~~for parcels under long‑term contract, in which case the South Carolina Ports Authority is directed to terminate these leases as soon as possible through "lease purchases", "buy outs", or other lawful means~~. The sale of the property in an amount permitted by item (3) shall satisfy the board’s fiduciary duties to the authority and the authority’s bondholders.

(b) If the State Ports Authority has accepted a bona fide offer to purchase a parcel of the property, or an offer to purchase the property in whole, but the sale has not closed as of June 30, 2015, then the parcel that is the subject of the pending sale, or the property as a whole, shall not be transferred pursuant to item (2) on July 1, 2015. The State Ports Authority shall have until midnight on December 31, 2015, to close the sale. If the sale is not closed by midnight on December 31, 2015, then the parcel, or the property as a whole, shall be transferred pursuant to item (2).

(c) If the State Ports Authority has received a bona fide offer for a parcel of the property, or for the property as a whole, within ninety days prior to June 30, 2015, the transfer of the parcel that is the subject of the offer, or the property as a whole, shall not be transferred pursuant to item (2) on July 1, 2015. The State Ports Authority shall have until midnight on December 31, 2015, to close the sale. If the sale is not closed by midnight on December 31, 2015, then the parcel, or the property as a whole, shall be transferred pursuant to item (2).

(2)(a) ~~The~~ Except as provided in subsection(C)(1)(b) and (c), on July 1, 2015, the property must be irrevocably transferred to the ~~State Budget and Control Board~~ General Services Division in the Department of Administration, as established by Act 121 of 2014, for sale at public auction ~~if the authority is unable to complete the sale by December 31, 2009~~. ~~The State Budget and Control Board~~ Upon the transfer of the property to General Services, the Department of Administration is vested with all of the board’s fiduciary duties to the authority and the authority’s bondholders. (b) Sale of the property pursuant to this section, and in an amount permitted by item (3), shall satisfy the board’s fiduciary duties to the authority and the authority’s bondholders. ~~if the property is transferred to the State Budget and Control Board for sale. The acceptance of any sales price by the State Budget and Control Board must be exercised with due regard to the fiduciary duty owed to the authority and for the protection of the interests of the authority’s bondholders as set forth in its bond covenants, and otherwise according to law, including the conversion of a nonperforming asset into revenues in the most expeditious manner.~~ (3) The State Ports Authority and General Services may accept a sales price on any parcel of the property, or the property as a whole, that is equal to, or greater than, eighty percent of the appraised value of the property to be sold. ~~The State Budget and Control Board~~ General Services may deduct from the proceeds of the sale an amount equal to the actual costs incurred in conjunction with the sale of the property. The balance of the proceeds must be transmitted to the authority. The Town of Port Royal or Beaufort County, or a combination of the two, may purchase the property at a price within the parameters established in this item.

(D) Any real or personal property at Port Royal which is to be sold must be ~~first~~ appraised ~~and then sold at fair market value~~ prior to the sale. The real property appraiser must be a State Certified General Real Estate Appraiser, a member of the Appraisal Institute (MAI), and must be knowledgeable in appraisal and in appraising ~~marine terminal facilities~~ closed industrial sites. The appraisal of the real property should include its future development opportunities and those of the surrounding properties, and give due consideration to the possible existence of adverse environmental conditions and structurally unsound improvements. ~~The State Ports Authority Board of Directors shall exercise its lawful discretion in the acceptance of any sales price with due regard to its fiduciary duties to the authority and for the protection of the interests of the authority’s bondholders as set forth in its bond covenants, and otherwise according to law, including conversion of a nonperforming asset into revenue in the most expeditious manner.~~ The sale of the real property shall comply with all state laws and procedures~~, must be approved by the State Budget and Control Board, and must be on an open‑bid basis, and no bid may be accepted which is less than the property’s fair market value as shown by the appraisal~~. All proceeds from the sale of real and personal property at Port Royal must be retained by the State Ports Authority~~;~~, except as provided in item (C)(3). ~~that the Town of Port Royal may petition the State Budget and Control Board for a portion of the net proceeds from a sale and may be allocated a portion of these net proceeds in an amount not to exceed five percent of the net proceeds upon showing the allocation is necessary to pay for infrastructure needs directly associated with and necessitated by the closing of the port as Port Royal. These funds must be expended at the direction of the Town Council of Port Royal with the approval of the State Budget and Control Board, solely for infrastructure, and shall have priority over all other expenditures except usual and necessary closing costs attributable to a sales contract.~~”

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

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