

STUDY REPORT

NOVEMBER 2023

South Carolina
Jobs-Economic Development
Authority: JEDA

House
Legislative
Oversight
Committee





South Carolina
House of Representatives
Legislative Oversight Committee

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COMMITTEE OVERVIEW

Economic Development, Transportation, and Natural Resources Subcommittee

Chairman Travis A. Moore

The Honorable Gary S. Brewer, Jr.

The Honorable Russell L. Ott

The Honorable William M. "Bill" Hixon

The Honorable Marvin R. Pendarvis

Oversight Purpose and Methods

Purpose

To determine if agency laws and programs:

- are being implemented and carried out in accordance with the intent of the General Assembly; and
- should be continued, curtailed, or eliminated.

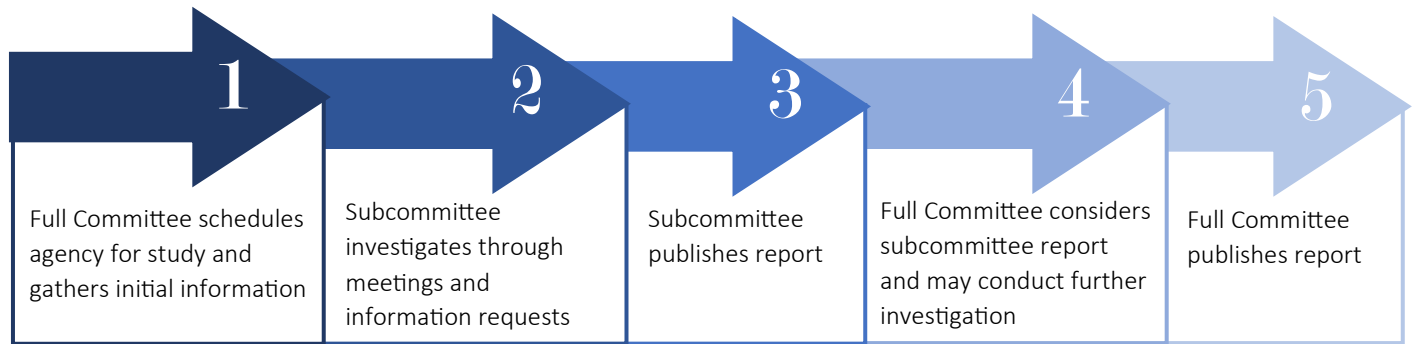
Methods

The Committee and Subcommittee evaluate:

- the application, administration, execution, and effectiveness of the agency's laws and programs;
- the organization and operation of the agency; and
- any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation pertaining to the agency.

S.C. Code Ann. § 2-2-20(B) and (C)

Study Process



Public Input



5

Responses to an online public survey



3

Constituents testified

Study Milestones

Meetings

Subcommittee

9/20/2022 5/23/2023
12/7/2022 8/29/2023
3/28/2023 9/26/2023

Full Committee

12/9/19
04/08/21

Agency Reports

2015 Seven-Year Plan Report
2020 Program Evaluation Report
FY 2021-22 Accountability Report
Agency Strategic Planning Report (2021-2025)

AGENCY OVERVIEW

Agency Mission

“

To advance the economic welfare of the State with focus on job creation and retention.

”

History and Resources

History

- **1983** - The General Assembly created the South Carolina Jobs-Economic Development Authority (JEDA)
- **1985** - Joint Resolution approved JEDA regulations relating to loan eligibility requirements, terms of loan agreements, application costs, and bond issue
- **2011** - Joint Resolution designated JEDA as the authorized agency to implement State Small Business Credit Initiative

Organizational Unit

Administration

- Executive leadership and operation of agency
- Management and administration of entire bond issuance process
- Collaboration with all bond finance professionals and state agencies involved in approval processes
- Compliance & due diligence
- Training and seminar planning

Employees



3

authorized FTEs

Funding



\$0

Pursuant to Section 41-43-280 of the South Carolina Code of Laws, no money flows directly between the state and the agency.

Successes and Challenges

Identified by the agency

Successes

- Job creation and increased volume of bond issues
- State Small Business Credit Initiative Program
- Qualified Energy Conservation Bonds and Recovery Zone Economic Development Bonds programs
- Accelerator Program for startup companies

Challenges

- Transaction loss to national issuers of conduit debt
- Obsolete process for volume cap allocation
- Threat of private activity bond elimination by federal government
- Obsolete federal rules regarding industrial revenue bonds

FINDINGS

During the study of JEDA, the Economic Development, Transportation, and Natural Resources Subcommittee adopted **fourteen findings** pertaining to purpose, function, programs, milestones, bond issuance, public funds, budget, transparency, legal status, board composition, duality of roles, nonprofit corporations, and venture capital investments.

Findings note information a member of the public or the General Assembly may seek to know or upon which they may desire to act.

FINDING #1

Despite being in existence for four decades, JEDA's function and purpose is not well known by the public at large.

In response to the economic recession that plagued the nation in the early 1980s, South Carolina Governor Richard Riley appointed a special state task force in November 1982 charged with creating an agency with broad authority to meet the growing needs of businesses across the state.¹ In 1983, the South Carolina General Assembly enacted the South Carolina Jobs-Economic Development Fund Act.² The Act created the Jobs-Economic Development Authority (JEDA), "a public body corporate and politic and agency of the State" to "effect[] the purposes of this act[.]"³ JEDA's purpose is to "promote and develop the business and economic welfare" of the state "so as to provide maximum opportunities for the creation and retention of jobs and improvement of the standard of living of the citizens of the State."⁴ In carrying out its purpose, JEDA acts primarily as a conduit issuer of private activity bonds to assist the financing of public and private projects throughout the state as illustrated in Figure 4.⁵ Four decades after its creation, JEDA's purpose and function remains the same, but the agency is not well known to the general public.

FINDING #2

JEDA is the state's "constituted authority" authorized to issue private activity bonds on behalf of borrowing entities at favorable tax-exempt interest rates.

A constituted authority is an entity formed under state law that is authorized by state law to issue bonds on behalf of a state or political subdivision to further public purposes if certain conditions are met.⁷ JEDA meets the requirements for designation as a constituted authority

to issue tax-exempt bonds.⁸ The General Assembly created JEDA in 1983.⁹ The Governor appoints members of JEDA's Board of Directors upon advice and consent of the Senate.¹⁰ JEDA has the power to issue tax-exempt obligations to carry out its corporate powers.¹¹ No part of JEDA's funds may inure to the benefit of any private person,¹² and upon JEDA's dissolution, "title to all property, real and personal, owned by it, including net earnings, must vest in the State."¹³ Therefore, JEDA is a constituted authority empowered to carry out its primary role—i.e., issuing private activity bonds on behalf of borrowing entities at favorable tax-exempt interest rates.¹⁴

FINDING #3

JEDA administers three main programs: (a) the Industrial Revenue Bond Program; (b) the Taxable Bond Program; and (3) the State Small Business Credit Initiative.

JEDA's Industrial Revenue Bond Program is a tax-exempt bond program that allows manufacturing facilities, 501(c)(3) organizations, and solid waste disposal facilities access to capital markets to finance their economic development related projects.¹⁵ These bonds are most efficient for companies with capital expenditures in excess of \$2 million.¹⁶ The upper limit of a bond issue for a manufacturing enterprise is under \$10 million.¹⁷ During the last five fiscal years, JEDA has averaged twenty-one tax-exempt bond closings.¹⁸

JEDA's Taxable Bond Program affords JEDA the opportunity to finance new types of enterprises in South Carolina.¹⁹ Middle and small private enterprises have traditionally had limited access to the public debt market due to such factors as security registration requirements, high transaction costs, and required public disclosure of confidential information. The Taxable Bond Program addresses these issues.²⁰ During the last five fiscal years,

JEDA has averaged less than one taxable bond closing per year.²¹

In 2011, the legislature designated JEDA as the state agency to implement the State Small Business Credit Initiative (SSBCI) and authorized JEDA to “contract with the Business Development Corporation of South Carolina to administer such programs.”²² Eighteen million dollars allocated by the U.S. Treasury and matched with private funds were used in the SSBCI 1.0 loan participation program in 2011. JEDA partnered with BDC, which lead to over \$300 million in new bank lending and created 1,183 new jobs. The U.S. Treasury hailed South Carolina’s SSBCI 1.0 program as the most effective loan participation program in the country.²³ In 2022, the U.S. Treasury approved \$101 million for participation in loan funding and venture capital investment.²⁴

While JEDA administers a wide variety of private activity bond programs, JEDA’s designation as a constituted authority to issue private activity bonds to qualified borrowers is not unique. For example, the National Association of Health and Educational Facilities Finance Authorities (NAHEFFA) is an Association created in 2008 from the merger of the National Council of Health Facilities Finance Authorities and the National Association of Higher Educational Facilities Authorities that “promotes the common interests of organizations which have the authority to provide capital financing for not-for-profit healthcare and higher education institutions and facilitates national advocacy, support, networking and education on behalf of its members.”²⁵ NAHEFFA, which currently has 42 members and one affiliate member representing 35 states, “focuses its efforts on issues which directly influence the availability of, or access to, tax-exempt financing for healthcare and higher educational institutions.”²⁶

FINDING #4

Since its inception in 1983 through FY 2022, JEDA has issued 620 bonds totaling over \$14.5 billion, including 204 bonds for manufacturing projects, 96 bonds to nonprofits, 101 bonds for educational projects, 28 bonds for solid waste

facilities, and 159 bonds for hospital and healthcare projects.²⁹ According to JEDA, this has resulted in the creation and retention of more than 310,331 jobs in South Carolina.³⁰ Most bonds have been issued in the state’s highest population centers.³¹

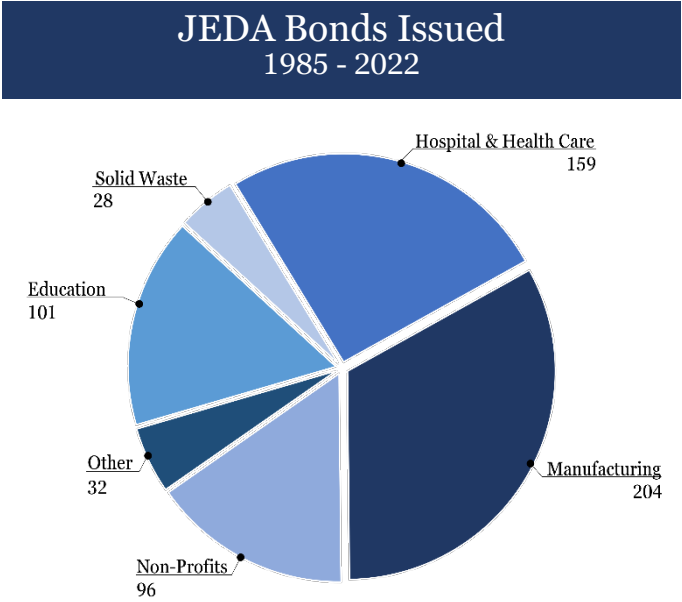


Figure 1. Breakdown of type of bonds issued from 1985 – 2022.

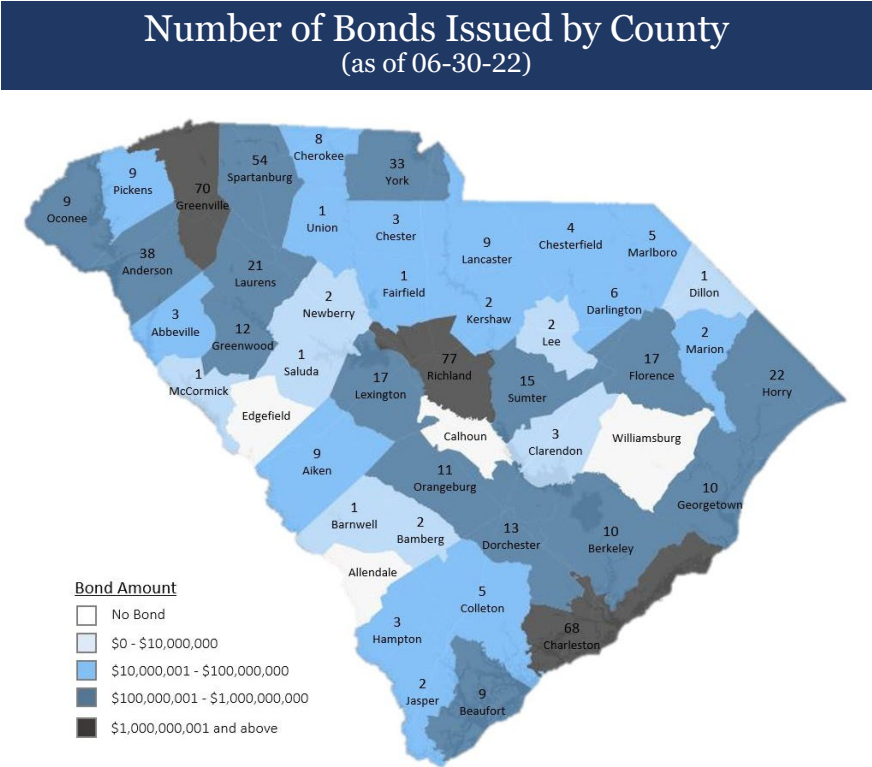


Figure 2. Number of bonds per county and range of amount of bonds issued.

FINDING #5

During the last three years, JEDA has issued bonds for twenty-seven affordable housing complexes for over \$741 million.

JEDA has become an active issuer of tax-exempt bonds for affordable housing in the state. Affordable housing may be financed with tax-exempt bonds issued under either Section 142(d) of the Internal Revenue Code or under Section 145 of the Internal Revenue Code.³² Tax-exempt bonds issued under Section 142(d) are conduit bonds issued by conduit issuers like JEDA, the South Carolina Housing Finance and Development Authority (SC Housing), or local housing authorities. These bonds, which are tied to the state's volume cap allocation and require an amount equal to the tax-exempt bonds, are paid solely from the revenues generated by the affordable housing development.³³ Bonds issued under Section 145 of the Internal Revenue Code are commonly known as "qualified 501(c)(3) bonds."³⁴ These bonds may only be issued for projects 100% owned by charitable organizations that are exempt from federal income tax

under Section 501(c)(3).³⁵ JEDA may issue qualified 501(c)(3) bonds for affordable housing projects owned by charitable organizations that have the exempt purpose of providing affordable housing.³⁶

Because of the timing and difficulty of accessing low-income housing tax credits in South Carolina, many developers are partnering with nonprofit housing entities to purchase and rehabilitate existing apartments and construct new apartments to provide quality affordable housing. Bonds issued under Section 142(d) by JEDA are typically used to finance affordable senior and assisted living facilities that do not also use low-income housing tax credits as a source of financing.³⁸ During the last three years, JEDA has issued bonds for 27 affordable housing complexes totaling over \$741 million. JEDA has not historically issued tax-exempt bonds under Section 142(d) for affordable housing apartment facilities because these projects are more traditionally financed by SC Housing and utilize low-income housing tax credits, which falls within the jurisdiction of SC Housing.³⁹

Multi-Family Housing Flowchart

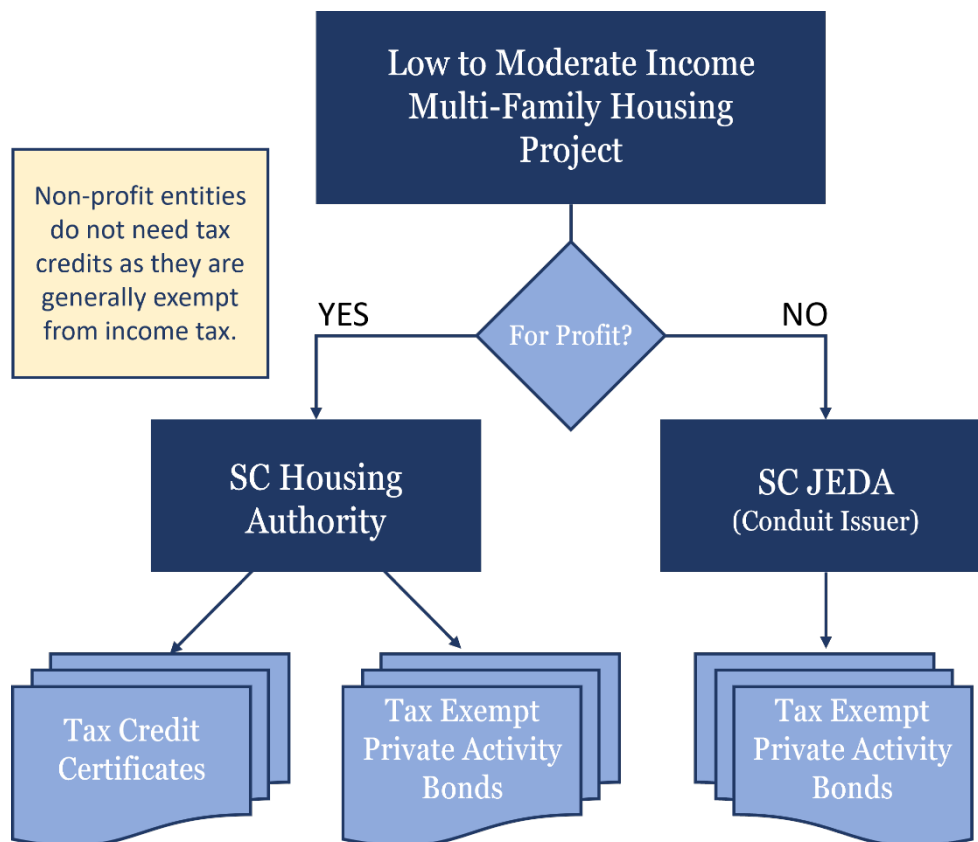


Figure 3. Flowchart for bond issuance for multi-family housing projects.

FINDING #6

JEDA's streamlined bond issuing process is cheaper and faster than other bond issuers.

Prior to the creation of JEDA, cities and counties were the only entities that issued bonds to finance hospitals and small manufacturers. However, the process proved to be inefficient, time consuming, and lacked transparency.⁴⁰ By removing many of the obstacles a borrower faces at the city and county level, JEDA issues bonds faster and cheaper than other issuers of private activity bonds.⁴¹ Since JEDA is the cheaper and more efficient conduit issuer, other options, such as county governments, are less likely to be sought out for bond financing.⁴²

From the beginning of 2010 through September 20, 2022, JEDA issued 231 bonds totaling \$7,919,136,619. Of those 231 bonds, there have been two defaults.⁴³ The bonds in default totaled \$28.2 million; thus, the default rate is 0.00356.⁴⁴

FINDING #7

JEDA's bond issuance activity does not place public funds at risk.

Every bond issuance must have a public purpose, which can be the promotion of trade, industry, or economic development.⁴⁵ Under the Internal Revenue Code, certain for-profit entities and Section 501(c)(3) organizations can finance their projects with tax-exempt bonds, but these entities cannot do so directly.⁴⁶ They must borrow through a "conduit" issuer of bonds in order to receive the tax-exempt financing.⁴⁷ JEDA is that

conduit.⁴⁸ Borrowers do not borrow from JEDA, but rather *through* JEDA, using JEDA as access to the capital markets at tax-exempt rates.⁴⁹ Bonds are paid *solely* by the underlying borrower from their revenue and assets.⁵⁰

In the simplest terms, loan documents pass through JEDA; JEDA issues bonds to the banks; the bank sends the proceeds to the borrower; the borrower makes payments to the bank.⁵¹ JEDA funds are not at risk in connection with the bond issuance, and no funds of the State of South Carolina or any political subdivision thereof are at risk.⁵²

FINDING #8

Because JEDA is a self-funded, quasi-public agency that operates at no cost to taxpayers, JEDA is not included in the state budget.

Pursuant to section 41-43-90(O) of the Code, JEDA sets its fees to be sufficient to cover payment of all its costs and expenses.⁵³ JEDA offsets its costs mainly through bond issuance fees, annual bond fees, and bond application fees.

According to the state comptroller general, because quasi-public agencies like JEDA "are self-supporting and do not receive general tax revenues, they are not included in the state budget nor are they included in the state's central accounting system."⁵⁴ Indeed, section 41-43-280 of the Code⁵⁵ exempts JEDA from the provisions of section 2-7-65, which requires state agencies to justify to the Governor each year the agency's "recurring expenses, as well as any new or additional expenses."⁵⁶

Conduit Issuer Flowchart



Figure 4. The relationship between borrower and lender and how JEDA fits in as the conduit issuer.

FINDING #9

The state is accountable for JEDA for purposes of financial transparency; therefore, JEDA is statutorily required to prepare and submit an array of annual financial reports.

JEDA is not statutorily required to submit an annual budget request to the Executive Budget Office.⁵⁷ However, because JEDA is a quasi-public agency that receives funding through a continuing appropriation in a set of permanent statutes that authorize it to raise and spend money,⁵⁸ the state is accountable for JEDA for purposes of financial reporting.⁵⁹

Thus, pursuant to S.C. Code Ann. § 1-1-810, JEDA prepares “an annual accountability report to the Governor and the General Assembly covering a period from July first to June thirtieth”⁶⁰ Additionally, pursuant to Proviso 117.79, JEDA provides a Bank Account and Transparency Report to the comptroller general’s office each year.⁶¹ JEDA’s Annual Report is also available on its website.⁶² Moreover, JEDA must report annually all activities undertaken pursuant to S.C. Code Ann. § 41-43-110 to the Joint Bond Review Committee, and must also publish on JEDA’s website “a complete list of bonds authorized by [JEDA]” pursuant to section 41-43-110.⁶³

Finally, pursuant to S.C. Code Ann. § 41-43-260, the state auditor audits JEDA annually.⁶⁴ The audit report must include, among other things, “information regarding the size of businesses that have received assistance based on the number of employees employed and the amount of gross revenues generated during the preceding year.”⁶⁵ JEDA is required to deliver the audit report to the State Fiscal Accountability Authority, the Revenue and Fiscal Affairs Office, the Executive Budget Office, and the General Assembly.⁶⁶ The results of the annual audit are published on the state auditor’s website. Every independent audit

report since 1998 concludes that that JEDA’s financial statements “present fairly, in all material respects, the financial position of” JEDA.⁶⁷

FINDING #10

JEDA is an agency of the state, but its employees are not state employees.

JEDA is an agency of the state.⁶⁸ Unlike most employees of state agencies, however, JEDA’s employees and employees of entities created by JEDA are not considered state employees. Nevertheless, JEDA employees are eligible to participate in the South Carolina Retirement System, participate in the State Health Insurance Group Plans, and they are afforded the protections established by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* (2005 & Supp. 2022).⁶⁹ Moreover, JEDA employees are not part of the South Carolina Enterprise Information System (SCEIS).⁷⁰

FINDING #11

Currently, two vacancies exist on JEDA’s Board of Directors,⁷¹ and of the remaining eight directors on the board, four are serving as holdover directors.⁷²

JEDA’s board members are appointed by the Governor upon the advice and consent of the Senate. JEDA’s board is composed of one director from each congressional

JEDA Board of Directors		
Name	Seat	Term
MICHAEL W. NIX	Chairman	July 27, 2022*
HENRY FISHBURNE	1st Congressional District, Charleston, SC	July 27, 2024*
WILLIAM R. DRAKE	2nd Congressional District, Columbia, SC	July 27, 2018*
RICHARD BLACKWELL	3rd Congressional District, Seneca, SC	July 28, 2023
MICHELLE B. SEAVER	4th Congressional District, Greenville, SC	July 27, 2026
GREGORY A. THOMPSON	5th Congressional District, Sumter, SC	July 12, 2018*
VACANT	6th Congressional District, Orangeburg, SC	
VACANT	7th Congressional District, Effingham, SC	
ASHELY TEASDEL	Secretary of Commerce Designee, Columbia, SC	Co-terminus with Position
FELTON A. LOWREY	Governor Designee, Columbia, SC	Co-terminus with Governor
* Continue to serve until a Successor is appointed and qualified		

Figure 5. JEDA Board of Directors names, seat, and term.

district, and one from the state at large who serves as chairman.⁷³ Additionally, the Governor and the Secretary of Commerce “shall serve ex officio and may designate persons to represent them at meetings of the authority.”⁷⁴ The directors, who serve for terms of three years, “must have experience in the fields of business, commerce, finance, banking, real estate, or foreign trade” and “[a]t least two directors must have direct commercial lending experience.”⁷⁵ Board members are not compensated for their service on the board.⁷⁶

FINDING #12

From 2008 until September 30, 2023, JEDA’s executive director served as the executive director of InvestSC, a non-profit created by JEDA, and received a salary from both JEDA and InvestSC.

Harry Huntley became InvestSC’s executive director on July 1, 2007. Approximately 18 months later, after the death of JEDA’s then-director, JEDA’s board selected Huntley to be JEDA’s new executive director.⁷⁷ From 2008 through September 30, 2023, Huntley was the executive director of both JEDA and InvestSC, and he received a salary from both entities.⁷⁸

FINDING #13

JEDA has created two nonprofit corporations: Jobec Corp. and InvestSC. Neither of these nonprofit entities are corporate subsidiaries of JEDA.

Pursuant to section 41-43-240 of the South Carolina Code, JEDA “is authorized to establish profit or not-for-profit corporations as it considers necessary to carry out the purposes of” the South Carolina Jobs-Economic Development Fund Act.⁷⁹ JEDA “may make grants or loans to, or make guarantees for, the benefit of any not-for-profit corporation which [JEDA] has caused to be formed whose Articles of Incorporation require that its directors be elected by members of [JEDA] and all assets of which, upon dissolution, must be distributed to [JEDA] if it is in existence or, if it is not in existence, then to the State of South Carolina.”⁸⁰

In 1986, JEDA created Jobec Corporation, a for-profit corporation. In 1992, Jobec’s assets were transferred to Carolina Community Investment Corporation (CCIC), a nonprofit corporation. Later that same year, CCIC changed its name to Business Carolina, Inc. (BCI), the

predecessor to Palmetto State Growth Fund (PSGF). JEDA formed BCI to continue JEDA’s functions by acting as a secondary lender to businesses creating jobs in South Carolina.⁸¹

PSGF is a 501(c)(3) nonprofit corporation governed by a five-member board of directors, two of whom are on JEDA’s board of directors.⁸² According to JEDA, PSGF receives no financial support from JEDA, and PSGF is not a corporate subsidiary of JEDA.⁸³

JEDA created InvestSC in 2007 at the specific request of the Venture Capital Authority (Authority), a state entity governed by the South Carolina Department of Commerce.⁸⁴ InvestSC is an independent 501(c)(3) tax-exempt corporation with the ability to engage in venture capital investment on behalf of the state.⁸⁵ InvestSC is governed by a five-member board of directors, one of whom is the JEDA board chairman and one of whom is the executive director of JEDA.⁸⁶

Each year, InvestSC prepares an Annual Report and a Report on Financial Statements.⁸⁷ InvestSC delivers both reports to the Venture Capital Authority, which provides a copy to the Governor and the General Assembly.⁸⁸ The reports are published on the General Assembly’s website.⁸⁹ According to JEDA, InvestSC receives no financial support from JEDA, and InvestSC is not a corporate subsidiary of JEDA.⁹⁰

FINDING #14

The Venture Capital Investment Act authorizes designated investor groups to borrow funds from lenders and invest those funds using state tax credits as collateral.

In 2007, JEDA created InvestSC at the request of the Authority to operate a venture capital investment program.⁹¹ The Authority needed InvestSC to act as a designated investor group to assist the Authority in meeting the goals of the Venture Capital Act, which included expanding the availability of equity and seed capital.⁹²

On June 22, 2007, InvestSC executed a designated investor contract with the Authority to make investments and borrow funds as directed by the Authority.⁹³ InvestSC

and Deutsche Bank signed a Securities Purchase Agreement for \$50 million in notes to make investments in four venture capital funds,⁹⁴ and the Authority issued \$50 million in tax certificates.⁹⁵ InvestSC entered into limited partnership agreements with the four venture capital funds selected by the Authority.⁹⁶ Thus, the notes were secured by the venture capital fund investments

and the tax credit certificates issued by the Authority,⁹⁷ all of which had to be sold beginning in 2010 to meet the interest and principal payments to prevent default.⁹⁸

As of February 16, 2022, all the Deutsche Bank notes have been paid in full.⁹⁹

STUDY RELATED INTERNAL CHANGES

During the study process, there are two internal changes implemented by JEDA relating to participation in the study process.

AGENCY INTERNAL CHANGE #1

In accordance with S.C. Code Ann. § 1-23-120(J), JEDA has reviewed and updated its regulations. JEDA eliminated all outdated regulations and added its current fee schedule to the regulations.¹⁰⁰

AGENCY INTERNAL CHANGE #2

Due to the doubling of conduit bond issuances since 2017 and the increased requirements of the SSBCI program, on November 7, 2022, JEDA hired a fulltime CPA.¹⁰¹

RECOMMENDATIONS

During the study of JEDA, the Economic Development, Transportation, and Natural Resources Subcommittee (“Subcommittee”) of the House Legislative Oversight Committee (“Committee”) adopts **ten** recommendations.

With any study, the Committee recognizes these recommendations (e.g., continue, curtail, improve areas potentially, and/or eliminate agency programs, etc.) will not satisfy everyone nor address every issue or potential area of improvement at the agency. Recommendations are based on the agency’s self-analysis requested by the Committee, discussions with agency personnel during multiple meetings, and analysis of the information obtained by the Committee. This information, including, but not limited to, the Initial Request for Information, Accountability Report, Restructuring Report, and videos of meetings with agency personnel, is available on the Committee’s website.

Modernization of Laws See Appendix A

RECOMMENDATION #1

The Committee recommends the General Assembly consider striking S.C. Code Ann. § 41-43-180 (2021) as proposed by JEDA.

Section 41-43-180 mandates that JEDA maintain a list of the most economically distressed areas of the State. According to JEDA leadership, the South Carolina Department of Commerce now maintains this list.¹⁰²

RECOMMENDATION #2

The Committee recommends the General Assembly consider striking S.C. Code Ann. § 41-43-190 (2021) as proposed by JEDA.

Section 41-43-190 directs JEDA to “develop programs to encourage the export of goods, services, commodities, machinery, equipment, or other personal property to which values is added to the State.” According to JEDA

leadership, this is now the responsibility of South Carolina Department of Commerce to develop these programs.¹⁰³

RECOMMENDATION #3

The Committee recommends the General Assembly consider striking S.C. Code Ann. § 41-43-200 (2021) as proposed by JEDA.

Section 41-43-200 authorizes JEDA to “implement such programs as may be consistent with its purpose for the collection and dissemination of information and data useful to business enterprises in this State.” According to JEDA leadership, this is now the responsibility of South Carolina Department of Commerce to implement these programs.¹⁰⁴

RECOMMENDATION #4

The Committee recommends the General Assembly consider amending S.C. Code Ann. § 41-43-40 (2021) to update the parties who serve ex officio on JEDA’s Board of Directors by adding the Secretary of the South Carolina Department of Commerce and removing the Chairman of the State Development Board.

Section 41-43-40 identifies the Governor and the Chairman of the State Department Board as ex officio members of JEDA’s Board of Directors. According to JEDA leadership, the Chairman of the State Development Board does not serve ex officio. Instead, the Secretary of the South Carolina Department of Commerce and the Governor serve in that role. JEDA seeks to amend the statute to remove reference to the Chairman of the State Development Board and to properly reflect the role of the Secretary of Commerce.

RECOMMENDATION #5

The Committee recommends the General Assembly consider amending S.C. Code Ann. § 41-43-70 (2021) to remove functions and duties JEDA no longer performs.

According to JEDA leadership, Section 41-43-70 enumerates several functions and duties that JEDA no longer performs and are instead performed by the South Carolina Department of Commerce.¹⁰⁵ JEDA leadership identified those duties as follows: encouraging and assisting new businesses through research, studies, data compilation and dissemination, and in the promotion of

the export of goods, services, commodities, and capital equipment produced within the State as function JEDA’s programs and operations to economic development activities occurring in South Carolina.

RECOMMENDATION #6

The Committee recommends the General Assembly consider striking S.C. Code Ann. § 41-43-170 (2021), which authorizes JEDA to create guaranty funds that may be used to guarantee or insure or purchase insurance for loans.

According to JEDA leadership, JEDA does not have a guaranty fund, nor does it intend to create guaranty funds¹⁰⁶

RECOMMENDATION #7

The Committee recommends the General Assembly consider amending S.C. Code Ann. §§ 11-45-10 et seq. (2011 & Supp. 2022), the Venture Capital Investment Act of South Carolina, striking provisions that allow designated investor groups to borrow funds from lenders and invest those funds using state tax credits as collateral.

JEDA and the South Carolina Department of Commerce recommend removing authority provided in statute that allows designated investor groups to borrow funds from lenders and invest those funds using state tax credits as collateral. This investing strategy is not believed to be a sound business practice and may lead to negative financial outcomes.

RECOMMENDATION #8

The Committee recommends the General Assembly consider amending S.C. Code Ann. § 41-43-280 (2021) to strike reference to section 2-57-60, a section that is not part of the current South Carolina Code of Laws.

RECOMMENDATION #9

The Committee recommends the General Assembly consider amending S.C. Code Ann. § 2-7-65 (Supp. 2023) by striking reference to the Budget and Control Board and the Joint Legislative Appropriations Review Committee, since those agencies no longer exist.

Executive Director

RECOMMENDATION #10

The Committee recommends that the General Assembly consider adopting a statute prohibiting the executive director of JEDA from serving in any administrative or paid role on a non-profit created by JEDA.

As discussed in Finding #12, from 2008 until September 30, 2023,¹⁰⁷ JEDA's Executive Director served as the Executive Director of InvestSC, a non-profit created by JEDA, and received a salary from both JEDA and InvestSC.

Section 41-43-240 of the Code provides that JEDA "is authorized to establish profit or not-for-profit corporations as it considers necessary to carry out the purposes of this chapter. Officials or employees of the authority *may act as officials or employees without additional compensation* of a corporation created pursuant to this section."¹⁰⁸

Arguably, section 41-43-240 is ambiguous. Accordingly, at a minimum, the General Assembly may wish to amend section 41-43-240 to expressly and unambiguously prohibit the executive director of JEDA from serving in any administrative or paid role on a non-profit created by JEDA.

APPENDIX A

LAW CHANGE #1			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
S.C. Code Ann. § 41-43-70 (2021).	<p><u>Current Law:</u> Section 41-43-70 sets forth JEDA’s functions and duties.</p> <p><u>Recommendation:</u> Strike those functions no longer performed by JEDA.</p>	<p><u>Basis:</u> JEDA testified that it no longer promotes the economic welfare of the state through research, studies, data compilation and dissemination, or through the promotion of the export of goods, services, commodities, and capital equipment produced un the State. According to JEDA, these functions are now performed by the Department of Commerce.</p>	
Current Law Wording		Proposed Revisions to Law Wording	
<p>SECTION 41-43-70. Functions and duties of the authority generally. The authority shall promote and develop the business and economic welfare of this State, encourage and assist through loans, investments, research, technical and managerial advice, studies, data compilation and dissemination, and similar means, in the location of new business enterprises in this State and in rehabilitation and assistance of existing business enterprises and in the promotion of the export of goods, services, commodities, and capital equipment produced within the State, so as to provide maximum opportunities for creation and retention of jobs and improvement of the standard of living of the citizens of the State, and act in conjunction with other persons and organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational development in this State. In the promotion, development, and advancement of these programs, the authority must give consideration to the development of and assistance to small businesses in this State as may be defined by regulation of the authority.</p>		<p>SECTION 41-43-70. Functions and duties of the authority generally. The authority shall promote and develop the business and economic welfare of this State, encourage and assist through loans, investments, research, technical and managerial advice, studies, data compilation and dissemination, and similar means, in the location of new business enterprises in this State and in rehabilitation and assistance of existing business enterprises and in the promotion of the export of goods, services, commodities, and capital equipment produced within the State, so as to provide maximum opportunities for creation and retention of jobs and improvement of the standard of living of the citizens of the State, and act in conjunction with other persons and organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational development in this State. In the promotion, development, and advancement of these programs, the authority must give consideration to the development of and assistance to small businesses in this State as may be defined by regulation of the authority.</p>	
LAW CHANGE #2			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and

			Others Impacted
S.C. Code Ann. § 41-43-180 (2021).	<p><u>Current Law:</u> Section 41-43-180 obligates JEDA to maintain a list of the most economically distressed areas of the State.</p> <p><u>Recommendation:</u> Strike section 41-43-180.</p>	<u>Basis:</u> JEDA no longer maintains a list of the most economically distressed areas of the State. According to JEDA, that function is now provided by the South Carolina Department of Commerce.	
Current Law Wording		Proposed Revisions to Law Wording	
<p>SECTION 41-43-180. Determination of economically distressed areas; criteria. The authority must maintain a list of the most economically distressed areas of the State. Each area must be within or coexist with the boundaries of one of the forty-six counties. The list must be determined in accordance with the criteria set forth in the regulations of the authority. In forming criteria, the authority must consider, but not be limited to, the following factors: rate of unemployment, per capita income, average wage rate, and chronic nature of economic problems.</p>		.	

LAW CHANGE #3			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
S.C. Code Ann. § 41-43-200 (2021).	<p><u>Current Law:</u> Section 41-43-200 obligates JEDA to collect and disseminate data useful to business enterprises in the State.</p> <p><u>Recommendation:</u> Strike section 41-43-200.</p>	<u>Basis</u> According to JEDA, that function is now provided by the South Carolina Department of Commerce.	
Current Law Wording		Proposed Revisions to Law Wording	
<p>SECTION 41-43-200. Collection and dissemination of information and data. The authority is authorized to implement such programs as may be consistent with its purposes for the collection and dissemination of information and data useful to business enterprises in this State. The authority may collect and maintain information and undertake such studies and research programs as it deems necessary to facilitate the economic development and creation of jobs in this State. In connection with these programs, the authority must consult and coordinate</p>		.	

its programs with those existing federal and state agencies and private economic development organizations.	
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LAW CHANGE #4			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
S.C. Code Ann. § 41-43-170 (2021).	<p><u>Current Law</u>: Section 41-43-170 authorizes JEDA to create a guaranty fund.</p> <p><u>Recommendation</u>: Strike section 41-43-170.</p>	<p><u>Basis</u>: According to JEDA, it does not currently have guaranty funds, nor does it intend to create any guaranty funds.</p>	
Current Law Wording		Proposed Revisions to Law Wording	
<p>SECTION 41-43-170. Guaranty fund authorized; purposes.</p> <p>The authority is authorized to create a guaranty fund, consisting solely of program funds, which may be used to guarantee or insure or purchase insurance for loans of financial institutions to business enterprises which meet the eligibility requirements of Section 41-43-150. Such funds shall be held in the custody of the State Treasurer, or with his approval may be held in the custody of one or more commercial banks or trust companies having a principal place of business in this State.</p> <p>Loans which qualify for a guaranty or insurance under this section must consist of:</p> <p>(1) Loans to eligible business enterprises located in distressed areas as defined in Section 41-43-180 for any purpose for which a loan may be made pursuant to Section 41-43-160, including the provision of working capital;</p> <p>(2) Loans used to finance export sales or production for export by eligible business enterprises as provided in Section 41-43-190.</p>			

LAW CHANGE #5			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted

<p>S.C. Code Ann. §§ 11-45-30 (2021); 11-45-55 (2021 & Supp. 2022); 11-45-95 (2021)</p>	<p><u>Current Law:</u> The South Carolina Venture Capital Investment Act is designed to increase the availability of funding to emerging, expanding, relocating, and restructuring enterprises within South Carolina. Several provisions allow designated investor groups to borrow funds from lenders secured by State tax credits and invest those funds</p> <p><u>Recommendation:</u> AMEND section 11-45-30; STRIKE section 11-45-55; AMEND section 11-45-95.</p>	<p><u>Basis:</u> JEDA, The Treasurer's Office and the Department of Commerce all agree that a designated investor group should not be allowed to borrow and invest funds secured by State tax credits.</p>	
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Current Law Wording	Proposed Revisions to Law Wording
<p>SECTION 11-45-30. Definitions.</p> <p>For purposes of this chapter:</p> <p>(1) "Authority" means the South Carolina Venture Capital Authority created pursuant to this chapter.</p> <p>(2) "Certificate" means a document executed by the authority pursuant to which a tax credit is available to a person pursuant to this chapter.</p> <p>(3) "Equity, near equity, or seed capital" means capital invested in common or preferred stock, debt with equity conversion rights, royalty rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private business.</p> <p>(4) "Investor" means any corporation, limited liability company, community development corporation, or unincorporated business entity, including a general or limited partnership, that is selected by a designated investor group to receive investments from the designated investor group and then make venture capital investments with these funds that meet the requirements of this chapter. An investor, a senior member of its management team, or a qualified investment professional working closely with the investor's senior management team must be a legal resident of this State and have a minimum of five years experience in venture capital investing. In addition, substantially all of an investor's business activity must be venture capital investing.</p> <p>(5) "Innovation fund" means the South Carolina Technology Innovation Fund.</p> <p>(6) "Person" means any individual, corporation, partnership, or other lawfully organized entity.</p> <p>(7) "Research and development" means laboratory, scientific, or experimental testing and development related to new products, new uses for</p>	<p>For purposes of this chapter:</p> <p>(1) "Authority" means the South Carolina Venture Capital Authority created pursuant to this chapter.</p> <p>(2) "Certificate" means a document executed by the authority pursuant to which a tax credit is available to a person pursuant to this chapter.</p> <p>(3) "Equity, near equity, or seed capital" means capital invested in common or preferred stock, debt with equity conversion rights, royalty rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private business.</p> <p>(4) "Investor" means any corporation, limited liability company, community development corporation, or unincorporated business entity, including a general or limited partnership, that is selected by a designated investor group to receive investments from the designated investor group and then make venture capital investments with these funds that meet the requirements of this chapter. An investor, a senior member of its management team, or a qualified investment professional working closely with the investor's senior management team must be a legal resident of this State and have a minimum of five years experience in venture capital investing. In addition, substantially all of an investor's business activity must be venture capital investing.</p> <p>(5) "Innovation fund" means the South Carolina Technology Innovation Fund.</p> <p>(6) "Person" means any individual, corporation, partnership, or other lawfully organized entity.</p> <p>(7) "Research and development" means laboratory, scientific, or experimental testing and development related to new products, new uses for existing products, or improvements to existing products. Research and development also includes intellectual property, information technology, or technology transfer endeavors. The term does not include efficiency surveys,</p>

existing products, or improvements to existing products. Research and development also includes intellectual property, information technology, or technology transfer endeavors. The term does not include efficiency surveys, management studies, consumer surveys, economic surveys, advertising, or promotion, or research in connection with literary, historical, or similar projects.

(8) "Tax credit" means a credit against a person's income tax liability pursuant to Chapter 6, Title 12; bank tax liability pursuant to Chapter 11, Title 12; net income tax liability pursuant to Chapter 13, Title 12; liability for license fees and taxes pursuant to Chapters 20 and 23 of Title 12; or insurance premium tax liability pursuant to Chapter 7, Title 38; or other tax liability under Title 38, as the case may be, or in the case of a repeal or reduction by the State of the tax liability imposed by these sections, any other tax imposed upon the person by this State.

(9) "Venture capital" means equity, near equity, and seed capital financing including, without limitation, early stage research and development capital for startup enterprises, and other equity, near equity, or seed capital for growth and expansion of entrepreneurial enterprises.

(10) "Lender" means a banking institution subject to the income tax on banks under Chapter 11, Title 12, an insurance company subject to a state premium tax liability pursuant to Chapter 7, Title 38, a captive insurance company regulated pursuant to Chapter 90, Title 38, a utility regulated pursuant to Title 58, or a financial institution with proven experience in state based venture capital transactions, pursuant to guidelines established by the authority. Both the guidelines and the lender must be approved by the State Fiscal Accountability Authority.

(11) "Capital commitment" means the amount of money committed by a designated investor group to an investor for a term of up to ten years, which term may be extended to provide for an orderly liquidation of the investor's portfolio investments.

(12) "Community development corporation" is as defined in Section 34 43 20(2).

(13) "Revolving fund" means a bank account:

(a) created by a designated investor group with a financial institution with an office or branch in this State; and

(b) used solely as provided in this chapter or any applicable designated investor contract.

(14) "Designated investor contract" means an agreement entered into between the authority

management studies, consumer surveys, economic surveys, advertising, or promotion, or research in connection with literary, historical, or similar projects.

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(13) "Revolving fund" means a bank account:

(a) created by a designated investor group with a financial institution with an office or branch in this State; and

(b) used solely as provided in this chapter or any applicable designated investor contract.

(14) "Designated investor contract" means an agreement entered into between the authority and any person selected as a designated investor group pursuant to Section 11 45 50.

(15) "Designated investor group" means a person who enters into a designated investor contract with the authority pursuant to Section 11 45 50.

~~(16) "Interest" means interest on the outstanding balance owed or owing to a lender by a designated investor group under such calculations, terms, or conditions as determined by the authority, provided that the method of calculating interest may be included in the tax credit certificates to the extent that the authority considers the information necessary or appropriate.~~

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(15) "Designated investor group" means a person who enters into a designated investor contract with the authority pursuant to Section 11 45 50.

(16) "Interest" means interest on the outstanding balance owed or owing to a lender by a designated investor group under such calculations, terms, or conditions as determined by the authority, provided that the method of calculating interest may be included in the tax credit certificates to the extent that the authority considers the information necessary or appropriate.

SECTION 11-45-55. Tax Credit Certificates.

(A) Each designated investor group shall have the power and authority to borrow funds from lenders and invest those funds in accordance with the provisions of this chapter and its designated investor contract.

(B) The authority shall issue tax credit certificates to each lender contemporaneously with each loan made pursuant to this chapter in accordance with any guidelines established by the authority pursuant to Section 11-45-100. The tax credit certificates must describe procedures for the issuance, transfer and redemption of the certificates, and related tax credits. These certificates also must describe the amounts, year, and conditions for redemption of the tax credits reflected on the certificates. Once a loan is made by a lender, the certificate issued to the lender shall be binding on the authority and this State and may not be modified, terminated, or rescinded. The form of the tax credit certificate must be approved by the State Fiscal Accountability Authority.

(C) Tax credits represented by the certificates issued pursuant to this section may be used to offset any of the tax liabilities of a person as set forth in Section 11-45-30(8), subject to compliance with the conditions set forth on the certificates representing the tax credits. The amount of the tax credits issued to any lender shall be limited to an amount equal to the lender's principal loan amount together with required interest. These tax credits may be carried forward without limitation but are not refundable. These tax credits are hereby established and authorized in the amounts required by this section.

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~~(C) Tax credits represented by the certificates issued pursuant to this section may be used to offset any of the tax liabilities of a person as set forth in Section 11 45 30(8), subject to compliance with the conditions set forth on the certificates representing the tax credits. The amount of the tax credits issued to any lender shall be limited to an amount equal to the lender's principal loan amount together with required interest. These tax credits may be carried forward without limitation but are not refundable. These tax credits are hereby established and authorized in the amounts required by this section.~~

~~(D) Use of tax credits by an insurance company shall not affect the application of retaliatory taxes or other fees pursuant to Chapter 7, Title 38 or any payments due under that chapter.~~

~~(E) The tax credits may also be transferred by any lender or transferee of~~

(D) Use of tax credits by an insurance company shall not affect the application of retaliatory taxes or other fees pursuant to Chapter 7, Title 38 or any payments due under that chapter.

(E) The tax credits may also be transferred by any lender or transferee of the tax credits to a person able to utilize the tax credits as set forth in Section 11-45-30(8).

(F) An individual may claim the tax credit of a partnership, limited liability company, "S" corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, "S" corporation, estate, or trust.

(G) The authority shall ensure that the principal amount authorized to be borrowed by all designated investor groups is no more than fifty million dollars at any one time and no more than twenty million dollars in tax credit certificates are redeemable for any one year. Any tax credit certificates issued in one year but carried forward and redeemed in a subsequent year do not count against the twenty million dollar limitation on the total amount of tax credit certificates which may be redeemed in that subsequent year.

(H) No certificate or tax credit issued or transferred pursuant to this chapter shall be considered a security pursuant to Title 35.

(I)(1) The authority, in conjunction with the South Carolina Department of Revenue, shall develop a system for registration of all tax credits claimed under this chapter.

(2) The system shall verify that any:

(a) tax credit claimed upon a tax return is valid and properly taken in the year of claim; and

(b) transfer of the tax credit is made in accordance with the requirements of this chapter and any guidelines or regulations under this chapter.

(3) Notwithstanding Section 12-54-240(A), the authority, the Department of Commerce, the Department of Revenue, and the Department of Insurance may exchange information for the purpose of registering and verifying the existence, possession, transfer, and use of tax credits pursuant to this chapter.

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~~(b) transfer of the tax credit is made in accordance with the requirements of this chapter and any guidelines or regulations under this chapter.~~

~~(3) Notwithstanding Section 12-54-240(A), the authority, the Department of Commerce, the Department of Revenue, and the Department of Insurance may exchange information for the purpose of registering and verifying the existence, possession, transfer, and use of tax credits pursuant to this chapter.~~

~~(J) No part of the fund held by the authority pursuant to Section 11-45-40(C) or the capital in any revolving fund of a designated investor group may inure~~

(J) No part of the fund held by the authority pursuant to Section 11-45-40(C) or the capital in any revolving fund of a designated investor group may inure to the benefit of or be distributed to the authority's employees, officers, or board of directors, or to members of their immediate families as this term is defined in Section 2-17-10(7), except that the authority is authorized to pay reasonable compensation for services provided by employees of the authority or the Department of Commerce, as the case may be, and out-of-pocket expenses incurred by these employees, officers, or board members, as long as the compensation does not create a conflict of interest pursuant to Section 11-45-40. The provisions of this subsection are supplemental to and not in lieu of the provisions of Chapter 17, Title 2 and Chapter 13, Title 8.

SECTION 11-45-95. Reports by authority; contents.

(A) The authority shall provide an annual report to the Governor, the General Assembly, and other appropriate officials and entities containing at a minimum the following information:

(1) monies placed in venture capital investments with approved investors and South Carolina based companies cumulatively and during that fiscal year;

(2) an audit of the activities conducted by the authority during that fiscal year;

(3) the progress of the designated investor groups in implementing their respective investment plans;

(4) the amount and time lines of tax credit certificates issued both cumulatively and during that fiscal year, and any use, redemption, or transfer of tax credits during that fiscal year;

(5) a description of a material interest held by a director, officer, or employee of the authority with respect to the investments or assets of the designated investor groups;

(6) a schedule of the aggregate rate of return, net of total investment expense, on assets of the designated investor groups

~~to the benefit of or be distributed to the authority's employees, officers, or board of directors, or to members of their immediate families as this term is defined in Section 2-17-10(7), except that the authority is authorized to pay reasonable compensation for services provided by employees of the authority or the Department of Commerce, as the case may be, and out of pocket expenses incurred by these employees, officers, or board members, as long as the compensation does not create a conflict of interest pursuant to Section 11-45-40. The provisions of this subsection are supplemental to and not in lieu of the provisions of Chapter 17, Title 2 and Chapter 13, Title 8.~~

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(2) an audit of the activities conducted by the authority during that fiscal year;

(3) the progress of the designated investor groups in implementing their respective investment plans;

~~(4) the amount and time lines of tax credit certificates issued both cumulatively and during that fiscal year, and any use, redemption, or transfer of tax credits during that fiscal year;~~

(5) a description of a material interest held by a director, officer, or employee of the authority with respect to the investments or assets of the designated investor groups;

(6) a schedule of the aggregate rate of return, net of total investment expense, on assets of the designated investor groups held pursuant to this chapter over the most recent one year, three year, five year, and ten year periods, to the extent available; and

<p>held pursuant to this chapter over the most recent one year, three year, five year, and ten year periods, to the extent available; and</p> <p>(7) a schedule of the sum of total investment expense and total general administrative expense for the fiscal year incurred and expressed as a percentage of the fair value of assets of the designated investor groups held pursuant to this chapter on the last day of the fiscal year, and an equivalent percentage for the preceding five fiscal years, if applicable.</p> <p>(B) These disclosure requirements are cumulative to and do not replace other reporting requirements provided by law.</p> <p>(C) Notwithstanding any other provision of law, private investment and other proprietary financial data provided to the authority by a designated investor group or an investor is not subject to public disclosure under Title 30, Chapter 4.</p>	<p>(7) a schedule of the sum of total investment expense and total general administrative expense for the fiscal year incurred and expressed as a percentage of the fair value of assets of the designated investor groups held pursuant to this chapter on the last day of the fiscal year, and an equivalent percentage for the preceding five fiscal years, if applicable.</p> <p>(B) These disclosure requirements are cumulative to and do not replace other reporting requirements provided by law.</p> <p>(C) Notwithstanding any other provision of law, private investment and other proprietary financial data provided to the authority by a designated investor group or an investor is not subject to public disclosure under Title 30, Chapter 4.</p>
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LAW CHANGE #6			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
S.C. Code Ann. § 41-43-40 (2021).	<p><u>Current Law</u>: Section 41-43-40 sets forth the appointment, qualifications, and terms of members of JEDA's Board of Directors.</p> <p><u>Recommendation</u>: Amend section 41-43-40 striking "Chairman of the State Development board" and inserting "Secretary of the South Carolina Department of Commerce."</p>	<u>Basis</u> : The Governor along with the Secretary of the South Carolina Department of Commerce serve ex officio.	
Current Law Wording		Proposed Revisions to Law Wording	
<p>SECTION 41-43-40. Appointment and qualifications of directors; ex officio members; terms.</p> <p>The Governor shall appoint, upon the advice and consent of the Senate, one director from each congressional district and one from the State at large, who serves as chairman. Directors must have experience in the fields of business, commerce, finance, banking, real estate, or foreign trade. At least two directors must have direct commercial lending experience. The</p>		<p>SECTION 41-43-40. Appointment and qualifications of directors; ex officio members; terms.</p> <p>The Governor shall appoint, upon the advice and consent of the Senate, one director from each congressional district and one from the State at large, who serves as chairman. Directors must have experience in the fields of business, commerce, finance, banking, real estate, or foreign trade. At least two directors must have direct commercial lending</p>	

Governor and the Chairman of the State Development Board shall serve ex officio and may designate persons to represent them at meetings of the authority.	experience. The Governor and the Chairman of the State Development Board Secretary of the South Carolina Department of Commerce shall serve ex officio and may designate persons to represent them at meetings of the authority.
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LAW CHANGE #7			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
S.C. Code Ann. § 41-43-280 (2021).	<p><u>Current Law</u>: Section 41-43-280 provides that JEDA is not a state agency for purposes of justifying budget requests.</p> <p><u>Recommendation</u>: Amend section 41-43-280 striking reference to section 2-57-60, which has been repealed.</p>	<u>Basis</u> : Section 2-57-60 has been repealed.	
Current Law Wording		Proposed Revisions to Law Wording	
<p>SECTION 41-43-280. Chapter not to affect other provisions as to authority; when authority considered "agency," "state agency", or other form of state institution.</p> <p>Neither this chapter nor anything contained in this chapter is construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this State, but is construed as cumulative.</p> <p>Notwithstanding any provision of law or regulation to the contrary, the authority shall continue to be an "agency" for purposes of Chapter 78 of Title 15, but the authority is not considered an "agency" or "state agency" or any other form of state institution for purposes of Sections 2-7-65 and 2-57-60.</p>		<p>SECTION 41-43-280. Chapter not to affect other provisions as to authority; when authority considered "agency," "state agency", or other form of state institution.</p> <p>Neither this chapter nor anything contained in this chapter is construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this State, but is construed as cumulative.</p> <p>Notwithstanding any provision of law or regulation to the contrary, the authority shall continue to be an "agency" for purposes of Chapter 78 of Title 15, but the authority is not considered an "agency" or "state agency" or any other form of state institution for purposes of Sections 2-7-65 and 2-57-60.</p>	

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LAW CHANGE #8			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
S.C. Code Ann. § 2-7-65 (2021).	<p><u>Current Law</u>: Section 2-7-65 provides that state agencies justify budget requests and further provides that the Budget and Control Board must require each state agency to submit the purposes and objectives for services provided.</p> <p><u>Recommendation</u>: Amend section 2-7-65 striking reference to the Joint Legislative Appropriations Review Committee and the Budget and Control Board, which no longer exists, and inserting reference to the Executive Budget Office.</p>	<u>Basis</u> : The Budget and Control Board and the Joint Legislative Appropriations Review Committee no longer exist.	
Current Law Wording		Proposed Revisions to Law Wording	
<p>SECTION 2-7-65. Agencies, departments and institutions to justify amount of requested appropriations.</p> <p>The Governor shall, prior to making annual recommendations to the General Assembly of the amounts to be appropriated to the various state agencies, departments and institutions, as required by Section 2-7-60 of the 1976 Code, require them to justify the entire amount of money they are requesting. It is the intent of this section that each state agency, department or institution shall be required to justify its recurring expenses, as well as any new or additional expenses.</p> <p>For the purpose of justification as set forth in this provision, the Budget and Control Board shall require each state agency, department and institution to submit for each program the purposes, objectives and</p>		<p>SECTION 2-7-65. Agencies, departments and institutions to justify amount of requested appropriations.</p> <p>The Governor shall, prior to making annual recommendations to the General Assembly of the amounts to be appropriated to the various state agencies, departments and institutions, as required by Section 2-7-60 of the 1976 Code, require them to justify the entire amount of money they are requesting. It is the intent of this section that each state agency, department or institution shall be required to justify its recurring expenses, as well as any new or additional expenses.</p> <p>For the purpose of justification as set forth in this provision, the Budget and Control Board <u>Executive Budget Office</u> shall require each state agency, department and institution to submit for each program the purposes, objectives and such quantitative measurements regarding services</p>	

such quantitative measurements regarding services provided as the Budget and Control Board in consultation with the Joint Legislative Appropriations Review Committee might deem as it considers necessary for program evaluation.	provided as the Budget and Control Board in consultation with the Joint Legislative Appropriations Review Committee might deem as it considers necessary for program evaluation.
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ENDNOTES

¹ See Mar. 28, 2023 PowerPoint presentation.

² S.C. Code Ann. § 41-43-10 *et seq.* (2021).

³ S.C. Code Ann. § 41-43-30 (2021).

⁴ S.C. Code Ann. § 41-43-70 (2021).

⁵ May 23, 2023 video presentation at 01:03:33–01:04:27.

⁷ See IRS Revenue Ruling 57-187, 1957-1 C.B.65; <https://www.irs.gov/pub/irs-wd/0022028.pdf> (last visited Sept. 7, 2023).

⁸ See *id.*

⁹ S.C. Code Ann. § 41-43-30.

¹⁰ S.C. Code Ann. § 41-43-40 (2021).

¹¹ See S.C. Code Ann. § 41-43-90 (2021); S.C. Code Ann. § 41-43-110 (2021). While JEDA is statutorily empowered to “acquire, purchase, hold, use, improve, manage, lease, mortgage, pledge, sell transfer and dispose of any property, real personal, or mixed, or any interest in any property, or revenues of the authority,” S.C. Code Ann. § 41-43-90, JEDA maintains that it does not own any equity in any property or business. See May 23, 2023 video presentation at 01:11:23–01:11:45, 01:11:46–01:11:50.

¹² S.C. Code Ann. § 41-43-50 (2021).

¹³ *Id.* See also May 23, 2023 video presentation at 00:08:56–00:10:04.

¹⁴ Mar. 28, 2023 PowerPoint presentation. JEDA was initially tasked with servicing Community Development Block Grant (“CDBG”) loans for the state and relending the payments received, along with appropriations by the legislature, to businesses that were struggling to receive financing. See *id.*

¹⁵ See <https://jeda.tminuszero.com/programs/industrial-revenue-bond-program/> (last visited Sept. 6, 2023).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Letter from JEDA responding to subcommittee’s request for further information (Aug. 24, 2023).

¹⁹ See <https://jeda.tminuszero.com/programs/taxable-bond-program/> (last visited Sept. 6, 2023).

²⁰ *Id.*

²¹ Letter from JEDA responding to subcommittee’s request for further information (Aug. 24, 2023).

²² 2011 Act No. 30 §§ 2, 3; S.C. Code Ann. § 41-43-300(A) (2021).

²³ Mar. 28, 2023 video presentation at 00:30:26–00:32:08.

²⁴ *Id.* at 00:27:27–00:28:40.

²⁵ See <https://www.naheffa.com/about.html> (last visited Sept. 21, 2023).

²⁶ *Id.* For a listing of current members, see <https://www.naheffa.com/current-members.html> (last visited Sept. 21, 2023).

²⁹ Mar. 28, 2023 video presentation at 0:39.16–0:40.16.

³⁰ *Id.*

³¹ May 23, 2023 video presentation at 01:08:05–01:08:26 (“It’s where you would think it’d be in the population centers where most of our bonds are issued. Greenville, the darker ones, Greenville, Richland, Charleston counties, obviously the most. The coastal counties do a lot.”)

³² 26 U.S.C. §§ 142(d), 145. IRS safe harbor rules must be met to qualify for the tax-exempt financing. These rules require a certain mix of tenants having a median family income that is less than the area median income and is monitored annually. See May 23, 2023 video presentation at 02:19:43–02:20:27; 02:27:21–02:27:44.

³³ Mar. 28, 2023 video presentation at 01:04:18–01:05:05.

³⁴ 26 U.S.C. § 145.

³⁵ 26 U.S.C. § 145(a)(1), (2).

³⁶ May 23, 2023 video presentation at 02:19:43–02:20:27.

³⁸ May 23, 2023 video presentation at 02:30:08–02:30:30.

³⁹ *Id.*

⁴⁰ Mar. 28, 2023 PowerPoint presentation.

⁴¹ May 23, 2023 video presentation at 0:12.02–0:12.55; 0:13.19–0:14.14; 0:14.32–0:14.47; 0:15.17–0:16.01; 0:37.47–0:39.44; 0:53.18–0:53.30; 0:1.02.12–0:1.02.35; Aug. 29, 2023 video presentation at 02:01:22–02:02:13. In South Carolina, a borrower has the option to choose JEDA, a county, a city, or a national issuer to issue bonds. See May 23, 2023 video presentation at 0:10.57–0:11.21.

⁴² Mar. 28, 2023 video presentation at 01:08:30–01:29:25.

⁴³ Sept. 20, 2022 video presentation at 03:07:56–03:09:06.

⁴⁴ *Id.* JEDA does not sell bonds to individual investors. Instead, most of its bonds are brought by sophisticated bond firms—e.g., Nuveen, Vanguard, Fidelity Investments, BlackRock. In the event of a default, the loss is spread among several investment firms. Mar.

28, 2023 video presentation at 01:07:09—01:08:15. Individual investors are not at risk of default because individuals do not buy bonds from JEDA. *Id.* See also May 23, 2023 video presentation at 01:20:52—01:32:03.

⁴⁵ Mar. 28, 2023 video presentation at 0.49.45-0.49.50; May 23, 2023 video presentation at 0.08.56-0.10.04.

⁴⁶ *Id.*

⁴⁷ May 23, 2023 video presentation at 0.08.25--0.08.55.

⁴⁸ May 23, 2023 video presentation at 0.08.56--0.10.04. Prior to JEDA's creation, counties were the only issuers of bonds to finance hospitals and small manufacturers. *Id.* at 0.23.59—00.24.35. Counties may still act as conduit bond issuers, but they are subject to the small issuer rule, which allows counties to issue bonds at low interest rates if the issues are less than \$10 million each year. If a county issues bonds totaling more than \$10 million in a given year, those bonds no longer qualify for the lower interest rates. *Id.* at 00:14:32—00:14:47; 00:14:47—00:15:15; 01:16:14—01:16:34; 01:16:58—01:17:48.

⁴⁹ Mar. 28, 2023 video presentation at 0.55.33--0.56.32; May 23, 2023 video presentation at 00:08--25-00:08:55; see also 26 U.S.C. § 103 ("Except as provided in subsection (b), gross income does not include interest on any State or local bond.").

⁵⁰ Mar. 28, 2023 video presentation at 01.04.18-01.05.05; May 23, 2023 video presentation at 0.03.53--0.04.34; 0.04.43--0.05.19.

⁵¹ May 23, 2023 video presentation at 00:03:53--00:04:34.

⁵² Mar. 28, 2023 PowerPoint presentation.

⁵³ S.C. Code Ann. § 41-43-90(O)(2021) Mar. 28, 2023 video presentation at 01:52:48--01:53:11.

⁵⁴ See <https://cg.sc.gov/fiscal-transparency/quasi-public-state-agencies-south-carolina> (last visited Sept. 5, 2023).

⁵⁵ S.C. Code Ann. § 41-43-280 (2021) ("Notwithstanding any provision of law or regulation to the contrary, the authority shall continue to be an 'agency' for purposes of Chapter 78 of Title 15, but the authority is not considered an 'agency' or 'state agency' or any other form of state institution for purposes of Section[] 2-7-65 . . .").

⁵⁶ S.C. Code Ann. § 2-7-65 (Supp. 2022). According to JEDA, the last time it received an appropriation from the General Assembly for administrative expenses or programs was in 1995 to fund the Community Development Block Grant program. See Mar. 28, 2023 PowerPoint presentation. Notwithstanding the fact that JEDA has not received a state appropriation since 1995, JEDA still participates in the budget process. Mar. 28, 2023 video presentation at 01:54:35—01:54:49.

⁵⁷ Letter from the S.C. Dep't of Admin. (June 9, 2023).

⁵⁸ *Id.*

⁵⁹ See <https://cg.sc.gov/fiscal-transparency/quasi-public-state-agencies-south-carolina> (last visited Sept. 5, 2023). ("Like other states, South Carolina has several entities that fall into a gray area between the public and private sectors. Known as quasi-public agencies, these entities are not full-fledged arms of state government, and they are not fully independent private operations either. They are legally separate organizations over which the state has no direct control but for which the state is accountable for purposes of financial reporting.").

⁶⁰ S.C. Code Ann. § 1-1-810 (2005).

⁶¹ Mar. 28, 2023 video presentation at 01:56:29--01:56:49.

⁶² Letter from JEDA responding to subcommittee's request for further information (Aug. 24, 2023).

⁶³ S.C. Code Ann. § 41-43-110 (2021).

⁶⁴ S.C. Code Ann. § 41-43-260 (2021).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See <https://osa.sc.gov/reports/> (last visited Sept. 5, 2023).

⁶⁸ See S.C. Code Ann. § 41-43-30. See also *Carll v. S.C. Jobs-Econ. Dev. Auth.*, 284 S.C. 438, 442, 327 S.E.2d 331, 334 (1985) (observing that the purpose of the Jobs-Economic Development Fund Act "is to promote economic development in the State through programs administered by a state agency"); S.C. Attorney Gen. Op. (Apr. 6, 2023) ("Section 41-43-30 clearly expresses the Legislature's intent to treat the Authority as a state agency.").

⁶⁹ S.C. Code Ann. § 41-43-90(N) (2021).

⁷⁰ See Mar. 28, 2023 video presentation 01.44.55-01.45.24; Ltr. from the S.C. Dep't of Admin. (June 9, 2023).

⁷¹ Those vacancies are in the 6th and 7th congressional districts. The vacancy in the 4th Congressional District was filled by the Governor in May of 2023. May 23, 2023 video presentation at 00:03:07-00:03:43.

⁷² May 23, 2023 video presentation at 01:21:48—01:44:32.

⁷³ S.C. Code Ann. § 41-43-40 (2021).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Mar. 28, 2023 video presentation at 01:22:39—01:23:06.

⁷⁷ Mar. 28, 2023 video presentation at 01:45:42—01:45:58; Aug. 29, 2023 video presentation at 01:09:35—01:09:55, 01:09:56–01:10:35. Harry Huntley retired as executive director of JEDA on September 30, 2023 but “will probably continue in some capacity with InvestSC going forward.” See Aug. 29, 2023 video presentation at 01:10:38—01:11:20.

⁷⁸ Section 41-43-240 provides that “[o]fficials or employees of [JEDA] may act as officials or employees without additional compensation of a corporation created pursuant to this section.” S.C. Code Ann. § 41-43-240.

⁷⁹ S.C. Code Ann. § 41-43-240 (2021).

⁸⁰ *Id.*

⁸¹ Letter from JEDA responding to subcommittee’s request for further information (Aug. 24, 2023).

⁸² See Aug. 29, 2023 PowerPoint presentation.

⁸³ Aug. 29, 2023 PowerPoint presentation; Letter from JEDA responding to subcommittee’s request for further information (Aug. 24, 2023).

⁸⁴ Aug. 29, 2023 video presentation at 01:04:31—01:06:53.

⁸⁵ Letter from JEDA responding to subcommittee’s request for further information (Aug. 24, 2023); Aug. 29, 2023 video presentation at 01:04:31—01:06:53. Article 10, section 11 of the South Carolina Constitution provides that “[n]either the State nor any of its political subdivisions shall become a joint owner of or stockholder in any company, association, or corporation.” As a state agency, JEDA cannot and does not invest in equity securities. See Letter from JEDA responding to subcommittee’s request for further information (Aug. 24, 2023).

⁸⁶ Aug. 29, 2023 video presentation at 01:07:36—01:09:40.

⁸⁷ See S.C. Code Ann. § 11-45-90 (2011) (requiring each designated investor group to provide an annual report to the Authority).

⁸⁸ S.C. Code Ann. § 11-45-95 (2011).

⁸⁹ See <https://www.scstatehouse.gov/reports/reports.php> (last visited Sept. 18, 2023).

⁹⁰ *Id.*; Letter from JEDA responding to subcommittee’s request for further information (Aug. 24, 2023).

⁹¹ See <https://www.causeiq.com/organizations/investsc,208626982/> (last visited Sept. 14, 2023).

⁹² Aug. 29, 2023 video presentation at 00:27:18–00:27:32; 00:08:20—00:09:56.

⁹³ August 29, 2023 PowerPoint presentation.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* Invest SC did not make the investment decisions. See Sept. 20, 2022 video presentation at 05:22:00—05:22:05. InvestSC was a limited partner in the venture capital fund. The venture capital fund made the investment decisions. Aug. 29, 2023 video presentation part 2 at 04:00—04:41.

⁹⁷ *Id.*

⁹⁸ Aug. 29, 2023 video presentation at 00:10:24–00:12:23. Interest and fees paid to Deutsche Bank totaled \$45 million, and origination costs were another \$1.2 million. The interest totaled \$45 million dollars over a 15 year period, see Aug. 29, 2023 video presentation, part 2 at 00:15:22–00:16:55, with no prepayment capability until the end of the program. *Id.* at 00:18:56—00:20:00.

⁹⁹ Aug. 29, 2023 video presentation part 1 at 01:20:20—01:24:56.

¹⁰⁰ Aug. 29, 2023 video presentation at 02:00:46—02:02:13.

¹⁰¹ *Id.*

¹⁰² Mar. 28, 2023 video presentation at 0.38.34–0.38.36. Under the Economic Development Fund Act, JEDA “must implement the programs of this act . . .” S.C. Code Ann. § 41-43-80 (2021). However, JEDA “may delegate its authority to implement the programs authorized to any governmental agency . . .” *Id.*

¹⁰³ May 23, 2023 video presentation at 00:23:38—00:24:44.

¹⁰⁴ Mar. 28, 2023 video presentation at 00:25:50—00:26:59.

¹⁰⁵ Pursuant to the Economic Development Fund Act, JEDA “must implement the programs of this act . . .” S.C. Code Ann. § 41-43-80 (2021). However, JEDA “may delegate its authority to implement the programs authorized to any governmental agency or financial institution” but “must retain ultimate responsibility and provide proper oversight for the implementation.” *Id.*

¹⁰⁶ Letter from JEDA responding to subcommittee’s request for further information (Aug. 24, 2023).

¹⁰⁷ On September 30, 2023, Harry Huntley retired from his position as JEDA’s executive director. On October 1, 2023, Jesse A. Smith succeeded Huntley as JEDA’s executive director. Smith became JEDA’s third executive director in its forty year history.

¹⁰⁸ S.C. Code § 41-43-240 (2021) (emphasis added).