

## South Carolina PACE Enabling Laws

S.C. Code Ann. §§ 48-59-10 to 48-59-140  
Current through the 2019 Regular Session

### **Chapter 59 - The South Carolina Conservation Bank Act**

#### **SECTION 48-59-10. Short title.**

This chapter may be cited as the "South Carolina Conservation Bank Act".

*History: 2002 Act No. 200, Section 1.*

#### **SECTION 48-59-20. Purpose.**

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 has also 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, and 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, and 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 an ongoing funding source 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".

*History: 2002 Act No. 200, Section 1.*

#### **SECTION 48-59-30. Definitions.**

As used in this chapter:

- (1) "Bank" means the South Carolina Conservation Bank.
- (2) "Board" means the governing board of the bank.
- (3) "Trust fund" means the South Carolina Conservation Bank Trust Fund established pursuant to Section 48-59-60.
- (4) "Eligible trust fund recipient" means:
  - (a) the following state agencies, which own and manage land for the land's natural resource, historical, and outdoor recreation values:
    - (i) South Carolina Department of Natural Resources,
    - (ii) South Carolina Forestry Commission, and
    - (iii) South Carolina Department of Parks, Recreation and Tourism.
  - (b) a municipality of this State and any agency, commission, or instrumentality of such a municipality;
  - (c) a county of this State and any agency, commission, or instrumentality of such county; or
  - (d) a not-for-profit charitable corporation or trust authorized to do business in this State whose principal activity is the acquisition and management of interests in land for conservation or historic preservation purposes and which has tax-exempt status as a public charity under the Internal Revenue Code of 1986.
- (5) "Farmland" means land used for the production of food, fiber, or other agricultural products.
- (6) "Land" means real property, including highlands and wetlands of any description.
- (7) "Conservation easement" means an interest in real property as defined in Chapter 8 of Title 27, the South Carolina Conservation Easement Act of 1991.
- (8) "Interests in lands" means fee simple titles to lands or conservation easements.

*History: 2002 Act No. 200, Section 1; 2018 Act No. 224 (H.4727), Section 1, eff July 1, 2018.*

#### **SECTION 48-59-40. South Carolina Conservation Bank; board members and meetings; terms, recusal, and personal liability of members.**

(A) There is established the South Carolina Conservation Bank. The bank is governed by a fourteen-member board selected as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*History: 2002 Act No. 200, Section 1; 2012 Act No. 279, Section 20, eff June 26, 2012; 2018 Act No. 224 (H.4727), Section 2, eff July 1, 2018; 2019 Act No. 1 (S.2), Section 59, eff January 31, 2019.*

**SECTION 48-59-50. Bank powers and duties; executive director.**

(A) The bank is established and authorized to:

- (1) award grants to eligible trust fund recipients for the purchase of interests in land, so long as the grants advance the purposes of this chapter and meet criteria contained in Section 48-59-70;
- (2) make loans to eligible trust fund recipients for the purchase of interests in land, at no interest or at an interest rate determined by the board, and under terms determined by the board, so long as the loans advance the purposes of this chapter and meet criteria contained in Section 48-59-70;
- (3) apply for and receive additional funding for the trust fund from federal, private, and other sources, to be used as provided in this chapter;
- (4) receive charitable contributions and donations to the trust fund, to be used as provided in this chapter;
- (5) receive contributions to the trust fund in satisfaction of any public or private obligation for environmental mitigation or habitat conservation, whether such obligation arises out of law, equity, contract, regulation, administrative proceeding, or judicial proceeding. Such contributions must be used as provided for in this chapter;
- (6) exercise its discretion in determining what portion of trust funds shall be expended, awarded, or loaned in any particular year, and what portion of trust funds shall remain in the trust fund from one fiscal year to the next. Funds within the trust fund shall be invested or deposited into interest-bearing instruments or accounts, with the interest accruing and credited to the fund; and
- (7) when requested, collaborate and advise on mitigation efforts between state agencies and other parties to help ensure that mitigation efforts are consistent with the purposes set forth in this chapter.

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

- (1) operate a program in order to implement the purposes of this chapter;
- (2) develop additional guidelines and prescribe procedures, consistent with the criteria and purposes of this chapter, as necessary to implement this chapter;
- (3) submit an annual report to the Governor, Lieutenant Governor, and General Assembly that:
  - (a) accounts for trust fund receipts and dispersals;
  - (b) briefly describes applications submitted to the bank, and in greater detail describes grants and loans that were approved or funded during the current year, and the public benefits, including public access, resulting from such grants and loans;
  - (c) describes recipients of trust fund grants and loans; and
  - (d) sets forth a list and description of all grants and loans approved, and all acquisitions of land or interests in land obtained with trust funds since the bank's inception. The report shall include a map setting forth the location and size of all such protected lands;

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

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

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

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

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

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

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

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

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

*History: 2002 Act No. 200, Section 1; 2018 Act No. 224 (H.4727), Section 3, eff July 1, 2018.*

## **SECTION 48-59-60. South Carolina Conservation Bank Trust Fund.**

To receive and hold revenues of the bank, there is created in the State Treasury separate and distinct from all other funds the South Carolina Conservation Bank Trust Fund. Earnings on the trust fund are retained in the trust fund and unexpended trust fund revenues at the end of a fiscal year are carried forward in the trust fund. The trust fund may receive revenues from any source the General Assembly may provide by law and from governmental grants and private gifts and bequests. Trust fund revenues may be used only as provided in this chapter.

*History: 2002 Act No. 200, Section 1.*

## **SECTION 48-59-70. Trust fund grants or loans for land interests; application; conservation criteria.**

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

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

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

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

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

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

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

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

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

- (3) the value of the proposal for the conservation of a relatively undisturbed or outstanding example of an ecosystem indigenous to South Carolina;
- (4) the value of the proposal for the conservation of riparian habitats, wetlands, water quality, watersheds of significant ecological value, critical aquifer recharge areas, estuaries, bays, or beaches;
- (5) the value of the proposal for the conservation of outstanding geologic features;
- (6) the value of the proposal for the conservation of a site of unique historical or archaeological significance;
- (7) the value of the proposal for the conservation of an area of critical forestlands, farmlands, or wetlands;
- (8) the value of the proposal for the conservation of an area of forestlands or farmlands which are located on prime soils, in microclimates or have strategic geographical significances;
- (9) the value of the proposal for the conservation of an area for public outdoor recreation, greenways, or parkland;
- (10) the value of the proposal for the conservation of a larger area or ecosystem already containing protected lands, or as a connection between natural habitats or open space that are already protected;
- (11) the value of the proposal for the amount of land protected;
- (12) the value of the proposal for the unique opportunity it presents to accomplish one or more of the criteria contained in this subsection, where the same or a similar opportunity is unlikely to present itself in the future; and
- (13) the value of the proposal for access to the public.

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

- (1) the degree to which the proposal presents a unique value opportunity in that it protects land at a reasonable cost;
- (2) the degree to which the proposal leverages trust funds by including funding or in-kind assets or services from other governmental sources;
- (3) the degree to which the proposal leverages trust funds by including funding or in-kind assets or services from private or nonprofit sources, or charitable donations of land or conservation easements;
- (4) the degree to which the proposal leverages trust funds by purchasing conservation easements that preserve land at a cost that is low relative to the fair market value of the fee simple title of the land preserved; and
- (5) the degree to which other conservation incentives and means of conservation, such as donated conservation easements or participation in other governmental programs, have been explored, applied for, secured, or exhausted.

(F) (1) The board shall evaluate each proposal according to the conservation criteria listed in subsection (D), the financial criteria listed in subsection (E), and the extent to which the proposal provides public access for hunting, fishing, outdoor recreational activities, and other forms of public access.

The board shall award grants or loans on the basis of how well proposals meet these three criteria.

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

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

- (1) the purpose of the application;
- (2) how the application satisfies criteria listed in subsections (D), (E), and (F);
- (3) the uses to which the land will be put;
- (4) the extent to which hunting, fishing, or other forms of outdoor recreation will be conducted upon the land;
- (5) the extent to which farming, forestry, timber management, or wildlife habitat management will be conducted upon the land;
- (6) the party responsible for managing and maintaining the land;
- (7) the parties responsible for enforcing any conservation easements or other restrictions upon the land;
- (8) the extent to which the public is afforded access on the land, including documentation that clearly specifies:
  - (i) the level of public access on the land;
  - (ii) limitations on public access to the land and the reason for the limit; and
  - (iii) the manner in which the public access will be maintained and monitored.

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

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

- (1) demonstrate that it is able to complete the project and acquire the interests in land proposed;
- (2) indicate the total number of acres of land it has preserved in the State; and
- (3) briefly describe the lands it has preserved in the State, including their size, location, and method of preservation. The reporting requirement of this subsection need not be complied with for specific preserved lands when in the grant or loan applicant's discretion, or in the discretion of the owners of such preserved lands, the privacy or proprietary interests of the owners of such preserved lands would be violated.



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

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

(L) The board may not authorize the purchase of a conservation easement for more than one million dollars unless the transaction is reviewed by the Joint Bond Review Committee and the committee provides its recommendation to the board.

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

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

- (1) how the application satisfies the purposes of this chapter, and the criteria and other considerations set forth in this section;
- (2) the purpose of the award and the use to which the land will be put;
- (3) the extent to which public access, hunting, fishing, or other forms of outdoor recreation will be conducted upon the land;
- (4) the extent to which farming, forestry, timber management, or wildlife habitat management will be conducted upon the land;
- (5) the party responsible for managing and maintaining the land;
- (6) the party responsible for enforcing any easements or other restrictions upon the land;
- (7) the parties designated in items (5) and (6) possess the expertise and financial resources to fulfill their obligations; and
- (8) any other findings or information relevant to the award.

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

accept a lesser amount.

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

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

*History: 2002 Act No. 200, Section 1; 2018 Act No. 224 (H.4727), Section 4, eff July 1, 2018.*

#### **SECTION 48-59-75. Repealed.**

*History: Former Section, titled Restriction on transfer of deed recording fees to trust fund, had the following history: 2002 Act No. 200, Section 5. Repealed by 2018 Act No. 224, Section 6.A, eff July 1, 2018.*

#### **SECTION 48-59-80. Interests in lands to be held by eligible trust fund recipients; mortgages; insurance; rights of fee simple title owners.**

(A) The interests in lands acquired with funds from the trust fund must be held by an eligible trust fund recipient.

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

(C) The bank and eligible trust fund recipients receiving monies from the trust fund shall retain all records of acquisition of interests in land with trust funds 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 trust fund recipients. The bank must be indemnified as to title in the amount of any grants it makes to eligible trust fund 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 chapter and the criteria of Section 48-59-70, and the cost of the interest in land

acquired reflects the lack of insurable title.

(E) (1) After an environmental hazard assessment is completed, if the land in question is found to contain an environmental hazard, no disbursement of trust funds for acquisition shall be granted until the land meets all state and federal environmental law or regulation.

(2) In order to identify potential liability pursuant to applicable state or federal environmental law or regulation, an environmental hazard assessment must be conducted on lands before the disbursement of trust funds for the acquisition of an interest in such lands.

(F) All interests in lands acquired with trust funds must be held by the eligible trust fund recipient that was approved by the board to acquire the interest in land, except that an interest in land obtained with trust fund money may be assigned from one eligible trust fund 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 trust 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 trust 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 trust fund 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 trust fund recipient acquires fee simple title to land for conservation purposes with trust 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 trust fund recipient: (a) determines that the land no longer exhibits the characteristics that qualified it for acquisition with trust funds; and (b) the board by a majority vote, makes a finding of fact 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 trust fund 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 lands that have been acquired by an eligible trust fund recipient with trust funds are extinguished, sold, transferred, assigned, alienated, or converted pursuant to subsection (G) of this section, the eligible trust fund recipient extinguishing, selling, transferring, assigning, alienating, or converting the interests in land shall replace them with interests in land of substantially equal current fair market value, with any deficit being made up by contribution to the trust fund. The replacement land must also exhibit characteristics that meet the criteria of this chapter. The board must verify that suitable replacement interests in lands have been identified and will be obtained before authorizing that any interest in land purchased with monies from the trust fund 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 trust fund. Where funding for an original acquisition was from multiple sources, funds realized must be credited to the trust fund

under this subsection in proportion to the contribution that trust funds made to the original acquisition.

(I) Interests in land acquired with trust 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 trust funds are not permitted without securing a:

- (1) two-thirds vote of the board, following a finding of fact 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 trust fund must be secured by mortgages upon the subject properties. Any funds received from foreclosure proceedings upon these mortgages must be deposited in the trust fund for subsequent distribution as grants or loans according to the provisions of this chapter.

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 chapter. However, upon receiving such a deed the bank must as soon as practicable either transfer the property to an appropriate eligible trust fund recipient, or sell the land and deposit the proceeds in the trust fund for subsequent distribution as grants or loans according to the provisions of this chapter. If the bank sells the land, it may first donate a conservation easement upon the land to an eligible trust fund recipient before the sale.

(K) Where a trust fund 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 chapter, including requirements for board approval for disposing of interests in land acquired with trust funds, an interest in land acquired with trust funds may be condemned under Chapter 2 of Title 28, the South Carolina Eminent Domain Procedures Act. The proceeds from any such condemnation proceeding must be credited to the trust fund in proportion to the contribution that trust funds made to the original acquisition.

*History: 2002 Act No. 200, Section 1.*

*Code Commissioner's Note: At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.*

#### **SECTION 48-59-90. Eminent domain or condemnation proceedings.**

Funds from the trust fund may not be used to acquire interests in lands or other interests in real property through the exercise of any power of eminent domain or condemnation proceeding.

*History: 2002 Act No. 200, Section 1.*

**SECTION 48-59-100. Public access requirement.**

Notwithstanding any other provision of this chapter, an easement acquired in whole or in part with trust funds must provide for public access consistent with the uses permitted by the terms of the easement.

*History: 2002 Act No. 200, Section 1.*

**SECTION 48-59-110. Trust fund use restriction.**

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

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

*History: 2002 Act No. 200, Section 1; 2018 Act No. 224 (H.4727), Section 5, eff July 1, 2018.*

**SECTION 48-59-120. Repeal or amendment requirements applicable to Section 48-59-90.**

Neither this section nor Section 48-59-90 may 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.

*History: 2002 Act No. 200, Section 1.*

**SECTION 48-59-130. Recreational and economic use.**

The provisions of this chapter 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 lands are obtained pursuant to this chapter. These and other traditional and compatible activities may be conducted, where appropriate, upon lands preserved with trust funds.

*History: 2002 Act No. 200, Section 1.*

**SECTION 48-59-140. Conservation easements.**

When trust 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 trust fund recipient or its assigns which hold the conservation easement. If any inconsistencies or ambiguities arise between the provisions of this chapter and the terms and conditions of a conservation easement purchased with trust funds, the terms and conditions of the conservation easement must prevail. The board must exercise due diligence to assure the terms and conditions of conservation easements are consistent with the purposes of this chapter before disbursing trust funds for the purchase of such conservation easements.

*History: 2002 Act No. 200, Section 1.*

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