AMENDED

April 10, 2018

**H. 4182**

Introduced by Reps. White, Clary and Johnson

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Read the first time April 25, 2017.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “STATE INSTITUTION OF HIGHER EDUCATION ENTERPRISE ACT”, BY ADDING CHAPTER 157 TO TITLE 59 SO AS TO ALLOW THE BOARD OF TRUSTEES OF AN INSTITUTION OF HIGHER EDUCATION TO ESTABLISH BY RESOLUTION AN ENTERPRISE DIVISION AS PART OF THE COLLEGE OR UNIVERSITY, TO PROVIDE THAT CERTAIN ASSETS, PROGRAMS, AND OPERATIONS OF THE INSTITUTION MAY BE TRANSFERRED TO THE ENTERPRISE DIVISION, TO PROVIDE THAT THE ENTERPRISE DIVISION IS EXEMPT FROM VARIOUS STATE LAWS GOVERNING PROCUREMENT, HUMAN RESOURCES, PERSONNEL, AND THE DISPOSITION OF REAL AND PERSONAL PROPERTY, SUBJECT TO CERTAIN EXEMPTIONS, TO PROVIDE THAT BONDS, NOTES, OR OTHER EVIDENCE OF INDEBTEDNESS MAY BE ISSUED FOR THE ENTERPRISE DIVISION, AND TO PROVIDE AUDIT AND REPORTING REQUIREMENTS; AND TO AMEND SECTION 11‑35‑710, RELATING TO EXEMPTIONS FROM THE SOUTH CAROLINA PROCUREMENT CODE, SO AS TO PROVIDE THAT THE STATE FISCAL ACCOUNTABILITY AUTHORITY MAY EXEMPT AN ENTERPRISE DIVISION IF A DIVISION IS ESTABLISHED PURSUANT TO CHAPTER 157, TITLE 59 IF THE BOARD OF TRUSTEES ADOPTS A PROCUREMENT POLICY FOR THE DIVISION THAT IS APPROVED BY THE AUTHORITY.

Amend Title To Conform

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

SECTION 1. Title 59 of the 1976 Code is amended by adding:

“CHAPTER 157

The State Institution of Higher Education Efficiency Act

Section 59‑157‑110. This chapter may be cited as the ‘State Institution of Higher Education Efficiency Act’.

Section 59‑157‑120. As used in this chapter:

(1) ‘Board of trustees’ means the board of trustees of an institution defined in item (3).

(2) ‘Capital project’ means the constructing, improving, equipping, renovating, or repairing of any buildings, structure, facility, or other permanent improvement project; the acquisition of land to construct or establish a building, structure, facility; or a permanent improvement project as defined in Section 2‑47‑50.

(3) ‘Institution’ means The Citadel, Clemson University, Coastal Carolina University, College of Charleston, Francis Marion University, Lander University, the Medical University of South Carolina, South Carolina State University, Winthrop University, and the University of South Carolina’s main campus in Columbia and its Aiken, Beaufort, and Upstate campuses.

(4) ‘Auxiliary activities’ means programs and functions primarily related to research, housing, food services, stores, and athletics, with each constituting an auxiliary activity.

(5) ‘Auxiliary division’ means an operational unit of an institution established pursuant to this chapter. The auxiliary division will be referred to in this chapter as the ‘division’ or ‘auxiliary division’.

(6) ‘Procurement’ has the same meaning as in Section 11‑35‑310(24).

(7) ‘SCCPC’ means the South Carolina Consolidated Procurement Code, as provided in Chapter 35, Title 11, and regulations promulgated pursuant to it.

(8) ‘Transferable items’ means, collectively, the duties, responsibilities, assets, personnel, and resources of, allocated to, or supporting an auxiliary activity.

Section 59‑157‑130. (A) A board of trustees, by resolution, may establish auxiliary divisions for its institution.

(B) A division created pursuant to this chapter is a constituent part of its institution.

(C) The resolution creating the division must assign auxiliary activities and the transferable items to that division and may amend that assignment from time to time as the board of trustees considers appropriate.

(D) The division and other non‑division activities of the institution may share support resources and allocate cost for shared resources in an appropriate and reasonable manner.

Section 59‑157‑140. (A) The board of trustees has the same powers, duties, and responsibilities to manage and control the division as it does with other non‑division activities of the institution.

(B) Contracts or agreements entered into for division activities including capital projects for the division are exempt from the provisions of Chapter 11, Title 1, Section 10‑1‑130, Chapter 47, Title 2, and Chapter 103, Title 59.

(C) Notwithstanding another provision of this chapter:

(1) a permanent improvement project, as defined in Section 2‑47‑50, must be submitted to the Joint Bond Review Committee for review and comment and to the State Fiscal Accountability Authority for approval if the project:

(a) requires the issuance of debt which involves funds derived from the issuance of private debt, excluding said private debt issued by the South Carolina Jobs Economic Development Authority;

(b) requires revenue bonds authorized pursuant to Title X, Section 13(9) of the South Carolina Constitution;

(c) requires state general obligation bond funds; capital reserve funds; or

(d) uses State‑appropriated funds for its funding; and

(2) private debt issued by the South Carolina Jobs Economic Development Authority must continue to go before the South Carolina Coordinating Council for Economic Development.

(D) Division and non‑division purposes are allowed for a division capital project as long as the primary purpose of that project is to support the division’s activities.

(E)(1) Subject to the provisions of item (2), the board of trustees shall adopt for the auxiliary division a procurement policy and amend the policy as it considers appropriate. Before the implementation of the procurement policy or any amendment, the policy or amendment must be approved by the State Fiscal Accountability Authority. Thereafter, every procurement of the auxiliary division is exempt from the SCCPC, and each procurement instead is subject to the procurement policy adopted by the board.

(2)(a) The procurement policy adopted by the auxiliary division may not include provisions relating to telecommunications, and the auxiliary division is subject to all procurement provisions relating to telecommunications and telecommunications equipment and service as set forth in the SCCPC and Section 1‑11‑430 unless otherwise exempt by Section 11‑35‑710(6).

(b) The auxiliary division may not construct, own, or operate a network that carries commercial traffic, commercial internet traffic, or K‑12 traffic originated in South Carolina.

(F) The board may retain for the support of the division the services of advisors, consultants, attorneys, accountants, and financial experts, setting their duties and compensation without the necessity of additional approval.

Section 59‑157‑150. Institutions are exempt from the requirements of Section 2‑47‑50 for permanent improvement projects which are:

(1) not part of an auxiliary division, where the cost is less than five million dollars for research universities as defined in Section 11‑51‑30(5) and less than two million dollars for all other institutions and for which no debt, capital improvement bond funds, capital reserve funds or state appropriated funds, or state infrastructure bond funds are required to fund the project; and

(2) included in the institution’s comprehensive permanent improvement plan (CPIP).

Section 59‑157‑160. (A) The board of trustees annually before September thirtieth shall provide the Governor, the Senate Finance Committee, and the House Ways and Means Committee with a report of:

(1) property acquired or disposed, contracts or agreements entered, and capital projects commenced by the auxiliary divisions during the preceding fiscal year under the authority granted in this chapter; and

(2) capital projects exempt under the provisions of Section 59-157-150 that were commenced under the authority granted in this chapter during the preceding fiscal year.

(B) The board of trustees also shall establish internal and external audit functions to monitor the activities of the auxiliary division, and annually before September thirtieth report the findings of these internal and external audit functions from the preceding fiscal year to the Governor, the Senate Finance Committee, and the House Ways and Means Committee.

Section 59‑157‑170. This chapter may in no way be construed as a waiver of sovereign immunity with respect to the institution including its auxiliary divisions. The tort liability for the institution including its auxiliary divisions must be governed by the South Carolina Tort Claims Act.

Section 59‑157‑180. Nothing in this chapter may be construed to exempt the auxiliary division from the provisions of Section 59‑103‑35, relating to the approval of new programs by the Commission on Higher Education, and auxiliary division land transactions, including leases, and permanent improvement projects are the only functions and areas removed from the commission.”

SECTION 2. Section 11‑35‑710 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) an auxiliary division, if a division is established pursuant to Chapter 157, Title 59, for which the board of trustees, pursuant to Section 59‑157‑140(E), has adopted a procurement policy for the division and the procurement policy was approved by the State Fiscal Accountability Authority.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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