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COMMITTEE REPORT

March 14, 2019

**S. 283**

Introduced by Senator Talley

S. Printed 3/14/19--S.

Read the first time January 8, 2019.

**THE COMMITTEE ON EDUCATION**

To whom was referred a Bill (S. 283) to amend Title 59 of the 1976 Code, relating to education, by adding Chapter 157, to enact the “State Institution of Higher Education Enterprise, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ 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) ‘Auxiliary activities’ means programs and functions primarily related to economic development projects, research, housing, food services, stores, health services and athletics, with each constituting an auxiliary activity.

(2) ‘Auxiliary division’ means an operational unit of an institution established pursuant to this chapter to carry out auxiliary activities.

(3) ‘Board of trustees’ means the boards of trustees of the colleges and universities listed in Section 59‑101‑10.

(4) ‘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.

(5) ‘Economic development projects’ means those projects as defined in 11‑51‑30(4).

(6) ‘Institution’ means the research universities identified in Section 11‑51‑30(5) and the nonresearch, four‑year colleges and universities described in Section 59‑103‑15(B)(2).

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

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

(9) ‘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 one or more 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 nondivision 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 nondivision activities of the institution.

(B) Contracts or agreements entered into for division activities including capital projects for the division, and the financing of those capital projects, 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 any other provision of this chapter, any permanent improvement project as defined in Section 2‑47‑50, where the cost is more than five million dollars for research universities as identified in 11‑51‑30(5) and more than two million dollars for all other institutions as described in Section 59‑103‑15(B)(2), and which requires the use of lease‑purchase agreements, state institution bond funds, capital improvement bond funds, capital reserve funds, state general appropriated funds or state infrastructure bond funds for its funding must be submitted to the Joint Bond Review Committee, after full architecture and engineering design work is completed but prior to execution of a construction contract, for review and comment, and thereafter to the Executive Budget Office for publication upon approval.

(D) The chairman of the Joint Bond Review Committee may, on behalf of the committee, request to review and comment on any other permanent improvement project as defined in Section 2‑47‑50, where the cost is more than five million dollars for research universities as identified in Section 11‑51‑30(5), and more than two million dollars for all other institutions as described in Section 59‑103‑15(B)(2).

(E) The board of trustees shall provide on an annual basis a fiscal year report of property acquired or disposed of and any capital project of the auxiliary division commenced under the authority granted in this act to the Governor, the Senate Finance Committee, and the House Ways and Means Committee. This report must be provided by September thirtieth of each fiscal year.

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

(G) The board may adopt for the auxiliary division a procurement policy and amend the policy as it considers appropriate. Upon adoption, the procurement policy must be submitted to the State Fiscal Accountability Authority for approval. Upon approval of the procurement policy by the State Fiscal Accountability Authority, every procurement of the auxiliary division is exempt from Section 1‑11‑430 and the SCCPC and each such procurement instead is subject to the procurement policy adopted by the board.

(H) 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:

(1) may create comprehensive personnel systems; define the duties, and fix the compensation and terms of employment of its employees; are exempt from general state government personnel policies and applicable laws and state laws that generally regulate the state employee workforce except as specifically provided in this article; and the personnel are exempt from the provisions of Article 5, Chapter 17, Title 8, the State Employee Grievance Procedure, but only if the governing board has adopted a grievance procedure and that grievance procedure has been submitted to the Department of Administration. Personnel are state employees for purposes of eligibility for participation in retirement and health insurance and other insurance plans and programs administered by the South Carolina Public Employee Benefit Authority and for purposes of the South Carolina Tort Claims Act;

(2) are exempt from the requirements of Section 2‑47‑40(B); and

(3) for permanent improvement projects where the cost is less than five million dollars for research universities as identified in Section 11‑51‑30(5) and less than two million dollars for all other institutions as described in Section 59‑103‑15(B)(2) are exempt from the requirements of Section 2‑47‑50.

Section 59‑157‑160. The board of trustees shall provide on an annual basis a fiscal year report of property acquired or disposed of and any capital project where the cost is less than five million dollars for the research universities and less than two million dollars for all other institutions commenced under the authority granted in this chapter to the Governor, the Senate Finance Committee, and the House Ways and Means Committee. The report must be submitted annually by September thirtieth.

Section 59‑157‑170. This act may not be construed as a waiver of sovereign immunity with respect to the institution including its auxiliary division. The tort liability for the institution including its auxiliary division is governed by the South Carolina Tort Claims Act.”

SECTION 2. Section 8‑11‑260 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) employees of institutions as defined in Section 59‑157‑120(6).”

SECTION 3. SECTION 3. Section 11‑35‑710(6) of the 1976 Code is amended to read:

“(6) expenditure of funds at state institutions of higher learning derived wholly from athletic or other student contests, from the activities of student organizations, ~~and~~ from the operation of canteens and bookstores, ~~except as the funds are used for the procurement of construction, architect‑engineer, construction‑management, and land surveying services~~ and from private gifts, auxiliary divisions, and other sales and services, but not including any funds derived from activities financed in part or in whole by student tuition or state general funds;”

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

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

Renumber sections to conform.

Amend title to conform.

GREG HEMBREE for Committee.

**A** **BILL**

TO AMEND TITLE 59 OF THE 1976 CODE, RELATING TO EDUCATION, BY ADDING CHAPTER 157, TO ENACT THE “STATE INSTITUTION OF HIGHER EDUCATION ENTERPRISE ACT,” 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 COLLEGE OR UNIVERSITY 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, WITH SOME SUCH EXEMPTIONS APPLYING AUTOMATICALLY AND OTHERS REQUIRING ADDITIONAL ACTIONS BY THE BOARD OF TRUSTEES, 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 CONSOLIDATED PROCUREMENT CODE, TO PROVIDE THAT THE STATE FISCAL ACCOUNTABILITY AUTHORITY MAY EXEMPT AN ENTERPRISE DIVISION, IF A DIVISION IS ESTABLISHED PURSUANT TO CHAPTER 157, TITLE 59 AND THE BOARD OF TRUSTEES HAS ADOPTED A PROCUREMENT POLICY FOR THE DIVISION THAT WAS APPROVED BY THE STATE FISCAL ACCOUNTABILITY AUTHORITY.

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

SECTION 1. This act may be cited as the “State Institution of Higher Education Enterprise Act.”

SECTION 2. Title 59 of the 1976 Code is amended by adding:

“CHAPTER 157

The State Institution of Higher Education Enterprise Act

Section 59-157-110. As used in this chapter:

(1) ‘Board of trustees’ or ‘board’ means the boards of trustees of the colleges and universities listed in Section 59‑101‑10.

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

(3) ‘College or university’ means the colleges and universities listed in Section 59‑101‑10.

(4) ‘Enterprise activities’ means athletic programs and functions, and auxiliary programs or functions, funded solely by funds not received from the general fund of the State or from undergraduate tuition, such as the programs or functions identified in Section 59‑147‑30, including, but not limited to, those primarily related to economic development, research, housing, food services, stores, and athletics, with each constituting an enterprise activity.

(5) ‘Enterprise division’ means an operational unit of a college or university created pursuant to this chapter.

(6) ‘Enterprise division personnel’ means all college or university employees or personnel who are allocated by the board of trustees to one or more enterprise activities and who devote a significant portion of their efforts to supporting enterprise activities.

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

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

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

Section 59-157-120. (A) A board of trustees, by resolution, may establish an enterprise division for its college or university.

(B) An enterprise division created pursuant to this chapter is a constituent part of its college or university.

(C) The resolution creating the enterprise division must provide for allocation to the enterprise division of the transferable items of one or more enterprise activities as the board of trustees may consider appropriate. The board of trustees may amend the resolution from time to time to allocate transferable items to the enterprise division or to reallocate transferable items between the college or university and the enterprise division as it considers appropriate.

(D) The board of trustees may adopt a resolution assigning direct oversight and management responsibility for the enterprise division to an existing committee of the board of trustees or to a new committee established by the board of trustees, but final decision‑making responsibility with respect to the governance of the enterprise division remains with the board of trustees.

Section 59-157-130. (A) The board of trustees has the same powers, duties, and responsibilities to manage and control the enterprise division as it does with other duties, responsibilities, assets, personnel, and resources of the college or university. Without limiting the foregoing, the board of trustees has the following additional authority with respect to the enterprise division:

(1) The board of trustees may purchase, lease as lessee, accept, and otherwise acquire any real and personal property and other assets upon the terms and conditions it considers appropriate. Contracts or agreements effecting or governing a purchase, lease, acceptance, or other acquisition are exempt from the provisions of Sections 1‑11‑55 through 1‑11‑65; Chapter 47, Title 2; and Section 59‑103‑110. The board of trustees shall provide on an annual basis a report of property acquired and any contract or agreement to the Governor, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee. This report must be based on the appropriate fiscal year of the college or university and must be provided not more than ninety days after the end of the fiscal year.

(2) The board of trustees may sell, convey, lease as lessor, exchange, and otherwise dispose of any real and personal property and other assets upon the terms and conditions it considers appropriate. The proceeds derived from the sale, conveyance, lease, exchange, or disposition of any real and personal property and net of transaction costs and payment of any debts, secured by the sold, conveyed, leased, exchanged, or disposed property, must be remitted to the board to be used exclusively for the support of the enterprise division or the college or university. Contracts or agreements effecting or governing the sale, conveyance, lease, exchange, or other disposition are exempt from the provisions of Sections 1‑11‑55 through 1‑11‑65, Section 10‑1‑130, and Section 59‑101‑180, as well as state surplus property laws. The board of trustees shall provide on an annual basis a report of property disposed of pursuant to this item and any contract or agreement to the Governor, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee. This report must be based on the appropriate fiscal year of the college or university and must be provided not more than ninety days after the end of the fiscal year.

(3) Without the necessity of additional approval, the board of trustees may retain the services of advisors, consultants, attorneys, accountants, and financial experts as necessary in the board of trustees’ judgment in connection with any aspect of the enterprise division and determine the duties of those retained pursuant to this item and fix their compensation.

(4)(a) Upon approval and implementation by the State Department of Administration of the comprehensive human resources system for public institutions of higher learning and technical colleges pursuant to SECTION 3 of Act 74 of 2011, the board of trustees shall participate in the comprehensive human resources system for public institutions of higher learning and technical colleges, provided, however, that any existing exemptions from general state government personnel policies and applicable laws that generally regulate the state employee workforce are preserved and shall be preserved if personnel are moved into the enterprise division.

(b) The enterprise division’s personnel are state employees for purposes of eligibility for participation in retirement, health insurance, and other insurance plans and programs administered by the South Carolina Public Employee Benefit Authority and for purposes of the South Carolina Tort Claims Act.

(5) The board of trustees shall establish the management controls and staffing of the enterprise division’s personnel as the board considers appropriate for the prudent conduct of the enterprise division, including the establishment of an internal audit function to monitor the activities of the enterprise division.

(6) The board of trustees may enter into relationships or transactions with not‑for‑profit entities established, in whole or in part, to support the mission of the college or university, it being understood that a support entity is not considered an entity owned or controlled by the enterprise division or the college or university and is not subject to the laws and regulations applicable to the enterprise division. However, if a not‑for‑profit entity acquires a capital improvement on behalf of or for the use of the enterprise division and funds of the enterprise division or college or university are used in the acquisition, financing, construction, or current or subsequent leasing of the capital improvement, then the acquisition is subject to the provisions of the enterprise division’s policies that the board adopts pursuant to this chapter.

(7) The board of trustees may issue bonds, notes, or other obligations or evidences of indebtedness in the name of the college or university and on behalf of the enterprise division in the same manner and for the same purposes, including the purposes of the enterprise division. Also, the board of trustees may utilize or benefit, as the case may be, from the provisions of the Higher Education Revenue Bond Act, as provided in Chapter 147, Title 59, and the provisions of the South Carolina Jobs‑Economic Development Fund Act, as provided in Chapter 43, Title 41. This item only applies so long as the proceeds of the bonds, notes, or obligations are not utilized to fund a capital improvement project.

(B)(1) Capital improvements of the enterprise division, and the financing of these capital improvements, are exempt from the provisions of Section 1‑11‑180; Chapter 47, Title 2; and Section 59‑103‑110. The board shall provide on an annual basis a report of capital projects authorized by the board of trustees to the Governor, the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Commission on Higher Education. This report must be based on the appropriate fiscal year of the college or university and must be provided not more than ninety days after the end of the fiscal year.

(2) The board of trustees must establish a review process for the consideration of any permanent improvement project proposal by the enterprise division, and the board must approve any capital improvement project as defined in Chapter 47, Title 2 in a public vote.

(3) Notwithstanding any other provision of subsection (B), after full architecture and engineering design work is completed on a permanent improvement project, but prior to execution of a construction contract, the project must be submitted to the Joint Bond Review Committee for review and comment.

(4) The exemptions provided by subsection (B) do not apply to capital improvements for athletics that expend, secure bonding with, or otherwise utilize state appropriated funds, state general obligation capital improvement bonds, student tuition, student fees, or any other student charge except for non‑mandatory ticket charges to athletic events. For purposes of this item, ‘state appropriated funds’ excludes federal funds and other funds that do not otherwise make this subsection inapplicable.

(5) If a capital improvement project serves multiple purposes and one or more of the purposes is not an enterprise activity, thereby causing the exemptions provided by subsection (B) to not apply, then the exemptions provided by subsection (B) do not apply for the entire capital improvement project.

(C) The board of trustees shall conduct an annual audit by independent certified public accountants selected by the board of trustees, who shall review the accounts of the enterprise division and report the findings of the audit to the Governor, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee in accordance with generally accepted auditing standards and procedures.

(D)(1) Subject to the provisions of item (D)(2), the board of trustees shall adopt for the enterprise 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 enterprise 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 enterprise division may not include provisions relating to telecommunications, and the enterprise 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 enterprise division may not construct, own, or operate a network that carries commercial traffic, commercial internet traffic, or K‑12 traffic originated in South Carolina.

Section 59-157-140. The requirements imposed upon the college or university, its board of trustees, and the enterprise division by the provisions of this chapter may be enforced by mandamus. However, failure to comply with these requirements does not invalidate the powers granted pursuant to this chapter.

Section 59-157-150. Notwithstanding any other provision of this chapter, enterprise activities may only include athletics if the college or university’s Athletics Grand Total Revenues, as reported under the Equity in Athletics Disclosure Act as required by The Higher Education Opportunity Act, Public Law 110‑315, are equal to or exceed forty million dollars a year.

Section 59-157-160. Four years after the adoption of a resolution providing for the allocation to the enterprise division of the transferable items of one or more enterprise activities pursuant to this chapter, and every four years thereafter, the provisions of this chapter must be reauthorized by the adoption of a joint resolution by the General Assembly, in separate legislation and solely for that purpose. If this chapter, or any part thereof, is not reauthorized, then those provisions are no longer effective.

Section 59-157-170. It is the intent of the General Assembly to review the provisions of this chapter and to determine the merit of this pilot enterprise program after the program has been in effect for at least four years. After reviewing this chapter and making a determination, the General Assembly may consider the costs and benefits of expanding the provisions of this chapter to additional institutions of higher learning.

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

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

“( ) an enterprise division, if a division is established pursuant to Chapter 157, Title 59, for which the board of trustees, pursuant to Section 59-157-130(D), has adopted a procurement policy for the division that was approved by the State Fiscal Accountability Authority.”

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

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