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S. 535

STATUS INFORMATION

General Bill

Sponsors: Senators Peeler, Alexander, L. Martin, McGill, Coleman, Jackson, Campbell, Setzler, Cromer, O'Dell, Sheheen, Turner, Fair, Ford, Nicholson, Hayes and Pinckney
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Introduced in the Senate on March 19, 2013
Currently residing in the Senate Committee on **Finance**

Summary: Clemson University Enterprise Act

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
3/19/2013	Senate	Introduced and read first time (<u>Senate Journal-page 5</u>)
3/19/2013	Senate	Referred to Committee on Finance (<u>Senate Journal-page 5</u>)

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VERSIONS OF THIS BILL

3/19/2013

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A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 11 TO CHAPTER 119, TITLE 59, ENACTING "THE CLEMSON UNIVERSITY ENTERPRISE ACT", SO AS TO ALLOW THE BOARD OF TRUSTEES OF CLEMSON UNIVERSITY BY RESOLUTION TO ESTABLISH AN ENTERPRISE DIVISION AS PART OF CLEMSON UNIVERSITY, TO PROVIDE THAT CERTAIN ASSETS, PROGRAMS, AND OPERATIONS OF CLEMSON 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 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 PROVIDE AUDIT AND REPORTING REQUIREMENTS; AND TO AMEND SECTIONS 8-11-260, 8-17-370, AND 11-35-710, ALL AS AMENDED, AND RELATING RESPECTIVELY TO EXEMPTIONS FROM STATE PERSONNEL ADMINISTRATIONS, THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT, AND THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE, SO AS TO ADD EXEMPTIONS CONFORMING TO THE CLEMSON UNIVERSITY ENTERPRISE ACT.

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

1 SECTION 1. Chapter 119, Title 59 of the 1976 Code is amended
2 by adding:

3
4 "Article 11

5
6 The Clemson University Enterprise Act

7
8 Section 59-119-1110. This article may be cited as 'The Clemson
9 University Enterprise Act'.

10 Section 59-119-1120. As used in this article:

11 (1) 'Board' means the Board of Trustees of Clemson
12 University.

13 (2) 'Capital improvement' means the constructing, improving,
14 equipping, renovating and/or repairing of any buildings, structure,
15 facility, or other permanent improvement, or the cost of the
16 acquisition of land whereon to construct or establish such building,
17 structure, facility or other permanent improvement.

18 (3) 'Clemson University' means Clemson University, an
19 educational institution of higher learning and an agency of the
20 State of South Carolina.

21 (4) 'Enterprise activities' means those programs or functions
22 primarily related to research, economic development, athletics,
23 auxiliary, support, or public service functions with each
24 constituting an enterprise activity.

25 (5) 'Enterprise division' means the Clemson University
26 Enterprise Division, an operational unit of Clemson University
27 created pursuant to this article.

28 (6) 'Enterprise division personnel' means all Clemson
29 University employees or personnel: (a) who are allocated by the
30 board of trustees to one or more professional schools or activities
31 or enterprise activities, and (b) who devote a significant portion of
32 their efforts for Clemson University supporting those professional
33 schools or activities or enterprise activities.

34 (7) 'Procurement' has the same meaning as defined in Section
35 11-35-310(24).

36 (8) 'Professional school or activities' means a graduate level
37 program of instruction, professional training, professional
38 development, nondegree granting instructional programs,
39 continuing education, training, or certification programs.

40 (9) 'SCCPC' means the South Carolina Consolidated
41 Procurement Code, as provided in Chapter 35, Title 11 and
42 regulations promulgated pursuant to it.
43

1 (10) 'Transferable items' means, collectively, the duties,
2 responsibilities, assets, personnel, and resources of, allocated to, or
3 supporting, a professional school or activities or an enterprise
4 activity.

5

6 Section 59-119-1130.(A) The board, by resolution, may
7 establish the Clemson University Enterprise Division.

8 (B) The enterprise division created pursuant to this article is a
9 constituent part of Clemson University.

10 (C) The resolution creating the enterprise division must provide
11 for the allocation to the enterprise division of the transferable items
12 of one or more professional schools or activities and the
13 transferable items of one or more enterprise activities as the board
14 of trustees may consider appropriate. The board of trustees may
15 amend the resolution from time to time to allocate transferable
16 items to the enterprise division or to reallocate transferable items
17 between Clemson University and the enterprise division as it
18 considers appropriate.

19 (D) The board may adopt a resolution assigning direct oversight
20 and management responsibility over the enterprise division to an
21 existing committee of the board of trustees, or to a new committee
22 established by the board of trustees, but final decision-making
23 responsibility with respect to the enterprise division remains with
24 the board.

25

26 Section 59-119-1140.(A) The board has the same powers,
27 duties, and responsibilities to manage and control the enterprise
28 division as it does with other duties, responsibilities, assets,
29 personnel, and resources of Clemson University. Without limiting
30 the foregoing, the board has the following additional authority with
31 respect to the enterprise division:

32 (1) It may purchase, lease as lessee, accept, and otherwise
33 acquire any real and personal property and other assets upon such
34 terms and conditions as it considers appropriate. Contracts or
35 agreements effecting or governing such a purchase, lease,
36 acceptance or other acquisition are exempt from provisions of
37 Sections 1-11-55 through 1-11-65 and Section 59-103-110.

38 (2) It may sell, convey, lease as lessor, exchange, and
39 otherwise dispose of any real and personal property and other
40 assets upon the terms and conditions it considers appropriate. The
41 proceeds derived from the sale, conveyance, lease, exchange, or
42 disposition of any real and personal property, net of transaction
43 costs and payment of any debts secured by the sold, conveyed,

1 leased, exchanged, or disposed property, must be remitted to the
2 board to be used exclusively for the support of the enterprise
3 division or Clemson University. Contracts or agreements effecting
4 or governing the sale, conveyance, lease, exchange, or other
5 disposition are exempt from the provisions of Sections 1-11-55
6 through 1-11-65, Section 10-1-130, and Section 59-101-180.

7 (3) It may retain the services of advisors, consultants,
8 attorneys, accountants, and financial experts as necessary in the
9 board's judgment in connection with any aspect of the enterprise
10 division and to determine their duties and to fix their
11 compensation.

12 (4) It may create comprehensive personnel systems, define
13 the duties, and fix the compensation and terms of employment of
14 the enterprise division personnel. Enterprise division personnel are
15 exempt from general state government personnel policies and
16 applicable laws and state laws that generally regulate the state
17 employee workforce except as specifically provided in this article;
18 and the enterprise division personnel are exempt from the
19 provisions of Article 5, Chapter 17, Title 8, the State Employee
20 Grievance Procedure, but the board shall adopt a grievance
21 procedure to govern the enterprise division's personnel, and that
22 grievance procedure must be submitted to the State Budget and
23 Control Board. Each of the enterprise division's personnel must be
24 furnished a copy of the grievance procedure; and each of the
25 enterprise division's personnel are state employees for purposes of
26 eligibility for participation in retirement and health insurance and
27 other insurance plans and programs administered by the South
28 Carolina Public Employee Benefit Authority and for purposes of
29 the South Carolina Tort Claims Act.

30 (5) It may establish the management controls and staffing of
31 enterprise division's personnel as the board considers appropriate
32 for the prudent conduct of the enterprise division, including the
33 establishment of an internal audit function to monitor the activities
34 of the enterprise division.

35 (6) It may enter into relationships or transactions with
36 not-for-profit entities established, in whole or in part, to support
37 the mission of Clemson University, it being understood that these
38 support entities are not considered an entity owned or controlled
39 by the enterprise division or Clemson University and are not
40 subject to the laws and regulations applicable to the enterprise
41 division. However, if a not-for-profit entity acquires a capital
42 improvement on behalf of or for the use of the enterprise division
43 and funds of the enterprise division or Clemson University are

1 used in the acquisition, financing, construction, or current or
2 subsequent leasing of the capital improvement, that acquisition is
3 subject to the provisions of the enterprise division's procurement
4 policy that the board adopts pursuant to this article.

5 (7) It may issue bonds, notes, or other obligations or
6 evidences of indebtedness in the name of Clemson University and
7 on behalf of the enterprise division in the same manner and for the
8 same purposes, including the purposes of the enterprise division,
9 and utilize the provisions of the Higher Education Revenue Bond
10 Act, as provided in Chapter 147, Title 59 and the provisions of the
11 South Carolina Jobs-Economic Development Fund Act, as
12 provided in Chapter 43, Title 41.

13 (B) Capital improvements of the enterprise division, and the
14 financing of these capital improvements, are exempt from the
15 provisions of Section 1-11-180, Chapter 47, Title 2, and Section
16 59-103-110. The board shall provide on an annual basis a report of
17 capital projects authorized by the board to the Governor, the
18 Chairman of the Senate Finance Committee, and Chairman of the
19 House Ways and Means Committee. This report must be based on
20 the fiscal year of Clemson University and must be provided not
21 more than one hundred eighty days after the end of the fiscal year.

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

29 (D) The board may adopt for the enterprise division a
30 procurement policy and amend the policy as it considers
31 appropriate. After that the procurement policy is submitted to the
32 State Budget and Control Board, every procurement of the
33 enterprise division is exempt from Section 1-11-430 and the
34 SCCPC and each such procurement instead is subject to the
35 procurement policy adopted by the board.

36
37 Section 59-119-1150. The requirements imposed upon Clemson
38 University, the board, and the enterprise division by the provisions
39 of this article may be enforced by mandamus. However, failure to
40 comply with requirements do not invalidate the powers granted
41 pursuant to this article.

42

1 SECTION 2. Section 8-11-260 of the 1976 Code, as last amended
2 by Act 353 of 2008, is further amended by adding an appropriately
3 lettered item at the end to read:

4

5 “() Employees of the Clemson University Enterprise Division,
6 if such a division is established pursuant to Article 11, Chapter
7 119, Title 59, the Clemson University Enterprise Act.”

8

9 SECTION 3. Section 8-17-370 of the 1976 Code, as last amended
10 by Act 146 of 2010, is further amended by adding an appropriately
11 numbered item at the end to read:

12

13 “() Employees of the Clemson University Enterprise Division,
14 if such a division is established pursuant to Article 11, Chapter
15 119, Title 59, the Clemson University Enterprise Act.”

16

17 SECTION 4. Section 11-35-710 of the 1976 Code is amended by
18 adding an appropriately numbered item at the end to read:

19

20 “() the Clemson University Enterprise Division, if such a
21 division is established pursuant to Article 11, Chapter 119, Title
22 59, the Clemson University Enterprise Act, and the board of
23 trustees of Clemson University, pursuant to that act, has adopted a
24 procurement policy for the division and submitted that
25 procurement policy to the State Budget and Control Board
26 pursuant to Section 59-119-1140(D).”

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28 SECTION 5. This act takes effect July 1, 2013.

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