

A m s-s 4/23/13/cyf

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

“Article 11

The Clemson University Enterprise Act

Section 59-119-1110. This article may be cited as ‘The Clemson University Enterprise Act’.

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

- (1) ‘Board’ means the Board of Trustees of Clemson University.
- (2) ‘Capital improvement’ means the constructing, improving, equipping, renovating and/or repairing of any buildings, structure, facility, or other permanent improvement, or the cost of the acquisition of land whereon to construct or establish such building, structure, facility or other permanent improvement.
- (3) ‘Clemson University’ means Clemson University, an educational institution of higher learning and an agency of the State of South Carolina.
- (4) ‘Enterprise activities’ means those programs or functions primarily related to economic development, graduate level research related to economic development, and athletics, ~~auxiliary, support, or public service functions~~ with each constituting an enterprise activity.
- (5) ‘Enterprise division’ means the Clemson University Enterprise Division, an operational unit of Clemson University created pursuant to this article.
- (6) ‘Enterprise division personnel’ means all Clemson University employees or personnel: (a) who are allocated by the board of trustees to one or more ~~professional schools or activities or~~ enterprise activities, and (b) who devote a significant portion of their efforts for Clemson University supporting those ~~professional schools or activities or~~ enterprise activities.
- (7) ‘Procurement’ has the same meaning as defined in Section 11-35-310(24).
- (8) ~~‘Professional school or activities’ means a graduate level program of instruction, professional training, professional development, nondegree granting instructional programs, continuing education, training, or certification programs.~~
- (9) ‘SCCPC’ means the South Carolina Consolidated Procurement Code, as provided in Chapter 35, Title 11 and regulations promulgated pursuant to it.
- (10) ‘Transferable items’ means, collectively, the duties, responsibilities, assets, personnel, and resources of, allocated to, or supporting, a ~~professional school or activities or~~ an enterprise activity.

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

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

(C) The resolution creating the enterprise division must provide for the allocation to the enterprise division of the transferable items of one or more ~~professional schools or activities and 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 Clemson University and the enterprise division as it considers appropriate.

(D) The board may adopt a resolution assigning direct oversight and management responsibility over 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 enterprise division remains with the board.

Section 59-119-1140. (A) The board 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 Clemson University. Without limiting the foregoing, the board has the following additional authority with respect to the enterprise division:

(1) It may purchase, lease as lessee, accept, and otherwise acquire any real and personal property and other assets upon such terms and conditions as it considers appropriate. Contracts or agreements effecting or governing such a purchase, lease, acceptance or other acquisition are exempt from provisions of Sections 1-11-55 through 1-11-65 and Section 59-103-110. The board shall provide on an annual basis a report of property acquired, and any contract or agreement thereto, 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 fiscal year of Clemson University and must be provided not more than one hundred eighty days after the end of the fiscal year.

(2) It 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, 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 Clemson 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. The board shall provide on an annual basis a report of property disposed of pursuant to this item, and any contract or agreement thereto, 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 fiscal year of Clemson University and must be provided not more than one hundred eighty days after the end of the fiscal year.

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

(4)(a) ~~It may create comprehensive personnel systems, define the duties, and fix the compensation and terms of employment of the enterprise division personnel. Enterprise division personnel 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 enterprise division personnel are exempt from the provisions of Article 5, Chapter 17, Title 8, the State Employee Grievance Procedure, but the board shall adopt a grievance procedure to govern the enterprise division's personnel, and that grievance procedure must be submitted to the State Budget and Control Board. Each of the enterprise division's personnel must be furnished a copy of the grievance procedure; and Upon the approval and implementation by the State Budget and Control Board, it shall participate in the comprehensive human resources system for the public institutions of higher learning and technical colleges pursuant to SECTION 3 of Act 74 of 2011. Upon approval and implementation by the State Budget and Control Board of the comprehensive human resources system, the enterprise division and enterprise division personnel are subject to the implemented comprehensive human resources system provided however that any existing exemptions from general state government personnel policies and applicable laws that generally regulate state employee workforce are preserved and shall be preserved if such personnel are moved into the enterprise division.~~

(b) Each of the enterprise division's 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.

(5) It shall establish the management controls and staffing of 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) It may enter into relationships or transactions with not-for-profit entities established, in whole or in part, to support the mission of Clemson University, it being understood that these support entities are not considered an entity owned or controlled by the enterprise division or Clemson University and are 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 Clemson University are used in the acquisition, financing, construction, or current or subsequent leasing of the capital improvement, that acquisition is subject to the provisions of the enterprise division's procurement policy that the board adopts pursuant to this article.

(7) It may issue bonds, notes, or other obligations or evidences of indebtedness in the name of Clemson 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, it 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 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 fiscal year of Clemson University and must be provided not more than one hundred eighty days after the end of the fiscal year.

(2) The board must establish a review process for the consideration of any permanent improvement project proposal by the enterprise division similar to that set forth in Chapter 47, Title 2.

(3) Notwithstanding any other provision of this subsection, 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 this subsection do not apply to capital improvements for athletics that expends, secures bonding with, or otherwise utilizes 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 this subsection to not apply, then the exemptions provided by this subsection do not apply for the entire capital improvement project.

(C) The board shall conduct an annual audit by independent certified public accountants selected by the board, which accountants 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 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 (2), the board 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 thereto, the policy or amendment must be approved by the State Budget and Control Board. Thereafter, every procurement of the enterprise 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.

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

—Section 59-119-1160. Notwithstanding any other provision of this article, enterprise activities only include athletics if Clemson 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 per year.

Section 59-11-170. Five 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 Section 59-119-1130(C), and every three years thereafter, the provisions of this act must be reauthorized by the adoption of a joint resolution by the General Assembly, in separate legislation and solely for that purpose. If this act, or any part thereof, is not reauthorized, those provisions are no longer effective.

Section 59-119-1180. It is the intent of the General Assembly to review the provisions of this article, and to determine the merit of this pilot enterprise program after the program has been in effect for at least five years. After reviewing this article and making a determination, the General Assembly may consider the costs and benefits of expanding the provisions of this article to additional institutions of higher learning.

Section 59-119-1190. Nothing in this article may be construed so as 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.

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

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

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

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

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

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

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