

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

CONE/MELTON
MAY 8, 2014

CLERK OF THE HOUSE

REP. PROPOSES THE FOLLOWING AMENDMENT
No. TO S. 535 (COUNCIL\BBM\535C002.BBM.HTC14):

REFERENCE IS TO PRINTER'S DATE 5/9/13-S.

**AMEND THE BILL, AS AND IF AMENDED, BY
STRIKING ALL AFTER THE ENACTING WORDS AND
INSERTING:**

**/ SECTION 1. CHAPTER 101, TITLE 59 OF THE
1976 CODE IS AMENDED BY ADDING:**

“ARTICLE 5

PERMANENT IMPROVEMENT PROJECT REVIEW

SECTION 59-101-1310. THE PURPOSE OF THIS ARTICLE IS TO SPECIFY THE MANNER AND TIME IN WHICH JOINT BOND REVIEW COMMITTEE APPROVAL IS NECESSARY FOR A PERMANENT IMPROVEMENT PROJECT OF A PUBLIC INSTITUTION OF HIGHER LEARNING. TO THE EXTENT THAT THE PROVISIONS OF THIS ARTICLE CONFLICT WITH ANY OTHER PROVISIONS OF LAW, THE PROVISIONS OF THIS ARTICLE SHALL GOVERN.

SECTION 59-101-1320. AS USED IN THIS ARTICLE:

(1) COMMITTEE MEANS THE JOINT BOND REVIEW COMMITTEE.

(2) AUTHORITY MEANS THE STATE BUDGET AND CONTROL BOARD OR ITS SUCCESSOR ENTITY THE STATE FISCAL ACCOUNTABILITY AUTHORITY.

(3) PUBLIC INSTITUTION OF HIGHER LEARNING HAS THE MEANING PROVIDED IN SECTION 59-103-5.

(4) PHASE ONE CONSTRUCTION SUBMITTAL OR POCS MEANS A REQUEST TO ACQUIRE PROFESSIONAL SERVICES FOR PREDESIGN OR DESIGN WORK, OR BOTH, THROUGH DEVELOPMENT OF CONCEPT DESIGN AND PREPARATION OF A PROJECT BUDGET FOR COMPLETE PROJECT DESIGN AND CONSTRUCTION. THE PRODUCT OF THESE SERVICES MUST BE A STATEMENT OF PROJECT SCOPE AND BUDGET. PREDESIGN AND DESIGN SERVICES MUST INCLUDE, BUT NOT BE LIMITED TO, DESIGN OBJECTIVES, SITE REQUIREMENTS, PROJECT SCHEDULE, HUMAN, VEHICULAR, AND MATERIAL FLOW PATTERNS, GENERAL SPACE ALLOCATIONS, SITE MEASUREMENTS, ENVIRONMENTAL CONSIDERATIONS/IMPACTS, UTILITY SYSTEMS, DEED AND ZONING ANALYSES, AND PRELIMINARY BUILDING PLANS AND ELEVATIONS.

(5) PHASE TWO CONSTRUCTION SUBMITTAL OR PTCS MEANS A REQUEST TO ACQUIRE AND COMPLETE FINAL DESIGN AND CONSTRUCTION DOCUMENTS AND TO EXECUTE CONSTRUCTION DOCUMENTS TO BEGIN AND COMPLETE CONSTRUCTION.

(6) 'LIMITED REVIEW', WITH RESPECT TO NEW CONSTRUCTION, RENOVATIONS, OR ACQUISITIONS, MEANS THAT A PERMANENT IMPROVEMENT PROJECT IS EXEMPT FROM RECEIVING APPROVAL FOR A POCS FROM BOTH THE COMMITTEE AND THE AUTHORITY. HOWEVER, PROJECTS ARE STILL REQUIRED TO RECEIVE PTCS APPROVAL FROM BOTH THE COMMITTEE AND THE AUTHORITY.

(7) 'MODIFIED REVIEW', WITH RESPECT TO NEW CONSTRUCTION, RENOVATIONS OR ACQUISITIONS, MEANS THAT A PERMANENT IMPROVEMENT PROJECT'S POCS IS CONSIDERED APPROVED BY THE COMMITTEE UNLESS A MEMBER OF THE COMMITTEE OBJECTS WITHIN FIFTEEN DAYS OF BEING PROVIDED A COPY OF THE POCS BY COMMITTEE STAFF. IF NO OBJECTION IS NOTED AND THE POCS STANDS APPROVED, APPROVAL FROM THE AUTHORITY IS NOT REQUIRED. HOWEVER, PROJECTS ARE STILL REQUIRED TO RECEIVE PTCS APPROVAL FROM BOTH THE COMMITTEE AND THE AUTHORITY. WITH RESPECT TO LEASES, 'MODIFIED REVIEW' MEANS THE LEASE REQUEST IS CONSIDERED APPROVED BY THE COMMITTEE UNLESS A MEMBER OF THAT COMMITTEE OBJECTS WITHIN FIFTEEN DAYS OF SUBMISSION OF THE REQUEST. IF NO OBJECTION IS NOTED AND THE APPROVAL STANDS, APPROVAL FROM THE AUTHORITY IS NOT REQUIRED AND THE LEASE REQUEST IS CONSIDERED TO HAVE RECEIVED FINAL APPROVAL.

(8) 'FULL REVIEW', WITH RESPECT TO NEW CONSTRUCTION, RENOVATIONS OR ACQUISITIONS, MEANS THE PERMANENT IMPROVEMENT PROJECT MUST RECEIVE BOTH POCS AND PTCS APPROVAL FROM BOTH THE COMMITTEE AND THE AUTHORITY.

(9) 'HIGHLY RATED' MEANS A PUBLIC INSTITUTION OF HIGHER LEARNING RECEIVING AAA CREDIT RATINGS FROM EITHER STANDARD AND POOR'S RATING SERVICES OR FITCH RATINGS OR AAA RATINGS FROM MOODY'S.

(10) 'WELL RATED' MEANS A PUBLIC INSTITUTION OF HIGHER LEARNING RECEIVING AA+, AA, OR AA- CREDIT RATINGS FROM

EITHER STANDARD AND POOR'S RATING SERVICES OR FITCH RATINGS OR AA1, AA2, OR AA3 RATINGS FROM MOODY'S.

(11) 'MEDIUM RATED' MEANS A PUBLIC INSTITUTION OF HIGHER LEARNING RECEIVING A+, A, OR A- CREDIT RATINGS FROM EITHER STANDARD AND POOR'S RATING SERVICES OR FITCH RATINGS OR A1, A2, OR A3 RATINGS FROM MOODY'S.

(12) 'LOW OR UNRATED' MEANS A PUBLIC INSTITUTION OF HIGHER LEARNING RECEIVING BBB+ OR LOWER CREDIT RATINGS FROM EITHER STANDARD AND POOR'S RATING SERVICES OR FITCH RATINGS OR BAA1 OR LOWER RATING FROM MOODY'S OR A PUBLIC INSTITUTION OF HIGHER LEARNING THAT HAS NOT RECEIVED A CREDIT RATING FROM STANDARD AND POOR'S RATING SERVICES, FITCH RATINGS OR MOODY'S IN THE PAST TWO YEARS.

SECTION 59-101-1330. FOR A PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT FUNDED IN WHOLE OR IN PART WITH THE USE OF INSTITUTIONAL BONDS OF A PUBLIC INSTITUTION OF HIGHER LEARNING REQUIRES A FULL REVIEW BY THE COMMITTEE AND AUTHORITY.

SECTION 59-101-1340. (A) FOR A HIGHLY RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT FUNDED IN WHOLE OR IN PART BY REVENUE BONDS OF THE INSTITUTION REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS LESS THAN FORTY MILLION DOLLARS; AND

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN FORTY MILLION DOLLARS.

(B) FOR A WELL RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT FUNDED IN WHOLE OR IN PART BY REVENUE BONDS OF THE INSTITUTION REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS LESS THAN FORTY MILLION DOLLARS; AND

(2) FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN FORTY MILLION DOLLARS.

(C) FOR A MEDIUM RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT FUNDED IN WHOLE OR IN PART BY REVENUE BONDS OF THE INSTITUTION REQUIRES A:

(1) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS LESS THAN FORTY MILLION DOLLARS;

(2) FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN FORTY MILLION DOLLARS.

(D) FOR A LOW OR UNRATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT FUNDED IN WHOLE OR IN PART BY REVENUE BONDS OF THE INSTITUTION REQUIRES FULL REVIEW REGARDLESS OF TOTAL COST.

SECTION 59-101-1350. (A) FOR A HIGHLY RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING NEW CONSTRUCTION UTILIZING ONE-HUNDRED PERCENT PRIVATE FUNDS OR GIFTS REQUIRES A LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN FIVE HUNDRED THOUSAND DOLLARS.

(B) FOR A WELL RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING NEW CONSTRUCTION UTILIZING ONE HUNDRED PERCENT PRIVATE FUNDS OR GIFTS REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN FIVE HUNDRED THOUSAND DOLLARS BUT LESS THAN TEN MILLION DOLLARS; AND

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN TEN MILLION DOLLARS.

(C) FOR A MEDIUM RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING NEW CONSTRUCTION UTILIZING ONE HUNDRED PERCENT PRIVATE FUNDS OR GIFTS REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN FIVE HUNDRED THOUSAND DOLLARS BUT LESS THAN FIVE MILLION DOLLARS;

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN FIVE MILLION DOLLARS BUT LESS THAN TEN MILLION DOLLARS; AND

(3) FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN TEN MILLION DOLLARS.

(D) FOR A LOW OR UNRATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING NEW CONSTRUCTION UTILIZING ONE HUNDRED PERCENT PRIVATE FUNDS OR GIFTS REQUIRES A FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN FIVE HUNDRED THOUSAND DOLLARS.

SECTION 59-101-1360. (A) FOR A HIGHLY RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING RENOVATIONS UTILIZING ONE HUNDRED PERCENT PRIVATE FUNDS OR GIFTS REQUIRES A LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN ONE MILLION DOLLARS.

(B) FOR A WELL RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING RENOVATIONS UTILIZING ONE HUNDRED PERCENT PRIVATE FUNDS OR GIFTS REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN ONE MILLION DOLLARS BUT LESS THAN TEN MILLION DOLLARS; AND

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN TEN MILLION DOLLARS.

(C) FOR A MEDIUM RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING RENOVATIONS UTILIZING ONE HUNDRED PERCENT PRIVATE FUNDS OR GIFTS REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN ONE MILLION DOLLARS BUT LESS THAN FIVE MILLION DOLLARS;

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN FIVE MILLION DOLLARS BUT LESS THAN TEN MILLION DOLLARS; AND

(3) FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN TEN MILLION DOLLARS.

(D) FOR A LOW OR UNRATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING RENOVATIONS UTILIZING ONE HUNDRED PERCENT PRIVATE FUNDS OR GIFTS REQUIRES A FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN ONE MILLION DOLLARS.

SECTION 59-101-1370. (A) FOR A HIGHLY RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING NEW CONSTRUCTION UTILIZING EXISTING ATHLETIC OR INSTITUTIONAL FUNDS REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN FIVE HUNDRED THOUSAND DOLLARS BUT LESS THAN SEVEN MILLION DOLLARS; AND

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN SEVEN MILLION DOLLARS.

(B) FOR A WELL RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING NEW

CONSTRUCTION UTILIZING EXISTING ATHLETIC OR INSTITUTIONAL FUNDS REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN FIVE HUNDRED THOUSAND DOLLARS BUT LESS THAN FIVE MILLION DOLLARS; AND

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN FIVE MILLION DOLLARS.

(C) FOR A MEDIUM RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING NEW CONSTRUCTION UTILIZING EXISTING ATHLETIC OR INSTITUTIONAL FUNDS REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN FIVE HUNDRED THOUSAND DOLLARS BUT LESS THAN FIVE MILLION DOLLARS;

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN FIVE MILLION DOLLARS BUT LESS THAN SEVEN MILLION DOLLARS; AND

(3) FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN SEVEN MILLION DOLLARS.

(D) FOR A LOW OR UNRATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING NEW CONSTRUCTION UTILIZING EXISTING ATHLETIC OR INSTITUTIONAL FUNDS REQUIRES A FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN FIVE HUNDRED THOUSAND DOLLARS.

SECTION 59-101-1380. (A) FOR A HIGHLY RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING RENOVATIONS UTILIZING EXISTING ATHLETIC OR INSTITUTIONAL FUNDS REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN ONE MILLION DOLLARS BUT LESS THAN SEVEN MILLION DOLLARS; AND

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN SEVEN MILLION DOLLARS.

(B) FOR A WELL RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING RENOVATIONS UTILIZING EXISTING ATHLETIC OR INSTITUTIONAL FUNDS REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN ONE MILLION DOLLARS BUT LESS THAN FIVE MILLION DOLLARS; AND

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN FIVE MILLION DOLLARS.

(C) FOR A MEDIUM RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING RENOVATIONS UTILIZING EXISTING ATHLETIC OR INSTITUTIONAL FUNDS REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN ONE MILLION DOLLARS BUT LESS THAN FIVE MILLION DOLLARS;

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN FIVE MILLION DOLLARS BUT LESS THAN SEVEN MILLION DOLLARS; AND

(3) FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS MORE THAN SEVEN MILLION DOLLARS.

(D) FOR A LOW OR UNRATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING RENOVATIONS UTILIZING EXISTING ATHLETIC OR INSTITUTIONAL FUNDS REQUIRES A FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN ONE MILLION DOLLARS.

SECTION 59-101-1390. (A) FOR A HIGHLY RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING AN ACQUISITION AND UTILIZING ANY SOURCE OF FUNDS REQUIRES A:

(1) LIMITED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN TWO HUNDRED FIFTY THOUSAND DOLLARS BUT LESS THAN ONE MILLION DOLLARS; AND

(2) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN ONE MILLION DOLLARS.

(B) FOR A WELL RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING AN ACQUISITION AND UTILIZING ANY SOURCE OF FUNDS REQUIRES A MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN TWO HUNDRED FIFTY THOUSAND DOLLARS.

(C) FOR A MEDIUM RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING AN ACQUISITION AND UTILIZING ANY SOURCE OF FUNDS REQUIRES A:

(1) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN TWO HUNDRED FIFTY THOUSAND DOLLARS BUT LESS THAN ONE MILLION DOLLARS; AND

(2) FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN ONE MILLION DOLLARS.

(D) FOR A LOW OR UNRATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING AN ACQUISITION AND UTILIZING ANY SOURCE OF FUNDS REQUIRES A FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN TWO HUNDRED FIFTY THOUSAND DOLLARS.

SECTION 59-101-1400. (A) FOR A HIGHLY RATED AND A WELL RATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING A LEASE AND UTILIZING ANY SOURCE OF FUNDS REQUIRES A:

(1) MODIFIED REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN ONE MILLION DOLLARS BUT LESS THAN THREE MILLION DOLLARS; AND

(2) FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS EQUAL TO OR GREATER THAN THREE MILLION DOLLARS.

(B) FOR A MEDIUM RATED AND A LOW OR UNRATED PUBLIC INSTITUTION OF HIGHER LEARNING, A PERMANENT IMPROVEMENT PROJECT INVOLVING A LEASE AND UTILIZING ANY SOURCE OF FUNDS REQUIRES A FULL REVIEW FOR A PROJECT FOR WHICH THE TOTAL COST IS GREATER THAN ONE MILLION DOLLARS.

SECTION 59-101-1410. NOTHING IN THIS ARTICLE IS INTENDED TO SUPERCEDE COMMITTEE OR AUTHORITY, OR BOTH COMMITTEE AND AUTHORITY STAFF LEVEL APPROVAL FOR CERTAIN PROJECTS AS PROVIDED IN TITLE 2, CHAPTER 47.

SECTION 59-101-1420. NOTWITHSTANDING A CREDIT RATING TO THE CONTRARY, A PUBLIC INSTITUTION OF HIGHER LEARNING WHICH IS IN DEFICIT POSTURE, HAS NOT COMPLETED ITS ANNUAL COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) ON TIME, RECEIVED MATERIAL FINDINGS IN A PROCUREMENT AUDIT, STATE AUDITOR'S REPORT, OR AN INSPECTOR GENERAL'S REPORT, IS DEEMED LOW OR UNRATED FOR THE PURPOSES OF THIS ARTICLE. UPON COMPLETION OF CORRECTIVE ACTION ON ANY OF THESE ITEMS, THE PUBLIC INSTITUTION OF HIGHER LEARNING SHALL OPERATE SUBJECT TO ITS STATED CREDIT RATING.” /

SECTION 2. THIS ACT TAKES EFFECT JULY 1, 2014. /

**RENUMBER SECTIONS TO CONFORM.
AMEND TITLE TO CONFORM.**

REPORT OF THE K-16 Building Need and Utilization Study Committee

(White, R. Smith, Cobb-Hunter, Limehouse, Bingham, Merrill, Hayes -
Staff Contact: Blythe Littlefield)

SENATE BILL 535

S. 535 -- Senators Peeler, Alexander, L. Martin, McGill, Coleman, Jackson, Campbell, Setzler, Cromer, O'Dell, Sheheen, Turner, Fair, Ford, Nicholson, Hayes and Pinckney: 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.

Summary of Bill:

This bill enacts "The Clemson University Enterprise Act", to provide authorization for the Board of Trustees of Clemson University to establish, by resolution, an Enterprise Division as part of Clemson University devoted to enterprise activities primarily related to economic development, graduate level research related to economic development, and athletics.

Introduced:

01/10/2013

Received by Ways and Means:

05/14/2013

Estimated Fiscal Impact:

Pending

Subcommittee Recommendation:

Adopted Favorable with Amendment

Full Committee Recommendation:

Pending

Other Notes/Comments:

This bill as amended alters the current Higher Education Capital Improvement regulatory process in an attempt to make it more efficient. Institutions would receive regulatory relief based upon the type of project they propose and the fiscal health of their institution.

1 AS PASSED BY THE SENATE

2 May 9, 2013

3

4

S. 535

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6 Introduced by Senators Peeler, Alexander, L. Martin, McGill,

7 Coleman, Jackson, Campbell, Setzler, Cromer, O'Dell, Sheheen,

8 Turner, Fair, Ford, Nicholson, Hayes and Pinckney

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10 S. Printed 5/9/13--S.

11 Read the first time March 19, 2013.

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A BILL

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, BY ADDING ARTICLE 11 TO CHAPTER 119, TITLE 59,
13 ENACTING THE "CLEMSON UNIVERSITY ENTERPRISE
14 ACT", SO AS TO ALLOW THE BOARD OF TRUSTEES OF
15 CLEMSON UNIVERSITY BY RESOLUTION TO ESTABLISH
16 AN ENTERPRISE DIVISION AS PART OF CLEMSON
17 UNIVERSITY, TO PROVIDE THAT CERTAIN ASSETS,
18 PROGRAMS, AND OPERATIONS OF CLEMSON
19 UNIVERSITY MAY BE TRANSFERRED TO THE
20 ENTERPRISE DIVISION, TO PROVIDE THAT THE
21 ENTERPRISE DIVISION IS EXEMPT FROM VARIOUS
22 STATE LAWS GOVERNING PROCUREMENT, HUMAN
23 RESOURCES, PERSONNEL, AND DISPOSITION OF REAL
24 AND PERSONAL PROPERTY WITH SOME SUCH
25 EXEMPTIONS APPLYING AUTOMATICALLY AND
26 OTHERS REQUIRING ADDITIONAL ACTIONS BY THE
27 BOARD OF TRUSTEES, TO PROVIDE THAT BONDS,
28 NOTES, OR OTHER EVIDENCE OF INDEBTEDNESS MAY
29 BE ISSUED FOR THE ENTERPRISE DIVISION AND
30 PROVIDE AUDIT AND REPORTING REQUIREMENTS; AND
31 TO AMEND SECTIONS 8-11-260, 8-17-370, AND 11-35-710,
32 ALL AS AMENDED, AND RELATING RESPECTIVELY TO
33 EXEMPTIONS FROM STATE PERSONNEL
34 ADMINISTRATIONS, THE STATE EMPLOYEE GRIEVANCE
35 PROCEDURE ACT, AND THE SOUTH CAROLINA
36 CONSOLIDATED PROCUREMENT CODE, SO AS TO ADD
37 EXEMPTIONS CONFORMING TO THE CLEMSON
38 UNIVERSITY ENTERPRISE ACT.

39 Amend Title To Conform
40

41 Be it enacted by the General Assembly of the State of South
42 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
11 Section 59-119-1120. As used in this article:

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

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

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

22 (4) 'Enterprise activities' means those programs or functions
23 primarily related to economic development, graduate level
24 research related to economic development, and athletics, with each
25 constituting an enterprise activity.

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

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

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

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

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

42

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

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

5 (C) The resolution creating the enterprise division must provide
6 for the allocation to the enterprise division of the transferable items
7 of one or more enterprise activities as the board of trustees may
8 consider appropriate. The board of trustees may amend the
9 resolution from time to time to allocate transferable items to the
10 enterprise division or to reallocate transferable items between
11 Clemson University and the enterprise division as it considers
12 appropriate.

13 (D) The board of trustees may adopt a resolution assigning
14 direct oversight and management responsibility over the enterprise
15 division to an existing committee of the board of trustees, or to a
16 new committee established by the board of trustees, but final
17 decision-making responsibility with respect to the enterprise
18 division remains with the board of trustees.

19
20 Section 59-119-1140.(A) The board of trustees has the same
21 powers, duties, and responsibilities to manage and control the
22 enterprise division as it does with other duties, responsibilities,
23 assets, personnel, and resources of Clemson University. Without
24 limiting the foregoing, the board of trustees has the following
25 additional authority with respect to the enterprise division:

26 (1) It may purchase, lease as lessee, accept, and otherwise
27 acquire any real and personal property and other assets upon such
28 terms and conditions as it considers appropriate. Contracts or
29 agreements effecting or governing such a purchase, lease,
30 acceptance, or other acquisition are exempt from provisions of
31 Sections 1-11-55 through 1-11-65 and Section 59-103-110. The
32 board of trustees shall provide on an annual basis a report of
33 property acquired, and any contract or agreement thereto, to the
34 Governor, the Chairman of the Senate Finance Committee, and the
35 Chairman of the House Ways and Means Committee. This report
36 must be based on the fiscal year of Clemson University and must
37 be provided not more than ninety days after the end of the fiscal
38 year.

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

1 costs and payment of any debts secured by the sold, conveyed,
2 leased, exchanged, or disposed property, must be remitted to the
3 board to be used exclusively for the support of the enterprise
4 division or Clemson University. Contracts or agreements effecting
5 or governing the sale, conveyance, lease, exchange, or other
6 disposition are exempt from the provisions of Sections 1-11-55
7 through 1-11-65, Section 10-1-130, and Section 59-101-180. The
8 board of trustees shall provide on an annual basis a report of
9 property disposed of pursuant to this item, and any contract or
10 agreement thereto, to the Governor, the Chairman of the Senate
11 Finance Committee, and the Chairman of the House Ways and
12 Means Committee. This report must be based on the fiscal year of
13 Clemson University and must be provided not more than ninety
14 days after the end of the fiscal year.

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

20 (4)(a) Upon the approval and implementation by the State
21 Budget and Control Board, it shall participate in the
22 comprehensive human resources system for the public institutions
23 of higher learning and technical colleges pursuant to SECTION 3
24 of Act 74 of 2011; provided however, that any existing exemptions
25 from general state government personnel policies and applicable
26 laws that generally regulate state employee workforce are
27 preserved and shall be preserved if such personnel are moved into
28 the enterprise division.

29 (b) Each of the enterprise division's personnel are state
30 employees for purposes of eligibility for participation in retirement
31 and health insurance and other insurance plans and programs
32 administered by the South Carolina Public Employee Benefit
33 Authority and for purposes of the South Carolina Tort Claims Act.

34 (5) It shall establish the management controls and staffing of
35 enterprise division's personnel as the board considers appropriate
36 for the prudent conduct of the enterprise division, including the
37 establishment of an internal audit function to monitor the activities
38 of the enterprise division.

39 (6) It may enter into relationships or transactions with
40 not-for-profit entities established, in whole or in part, to support
41 the mission of Clemson University, it being understood that these
42 support entities are not considered an entity owned or controlled
43 by the enterprise division or Clemson University and are not

1 subject to the laws and regulations applicable to the enterprise
2 division. However, if a not-for-profit entity acquires a capital
3 improvement on behalf of or for the use of the enterprise division
4 and funds of the enterprise division or Clemson University are
5 used in the acquisition, financing, construction, or current or
6 subsequent leasing of the capital improvement, that acquisition is
7 subject to the provisions of the enterprise division's procurement
8 policy that the board adopts pursuant to this article.

9 (7) It may issue bonds, notes, or other obligations or
10 evidences of indebtedness in the name of Clemson University and
11 on behalf of the enterprise division in the same manner and for the
12 same purposes, including the purposes of the enterprise division.
13 Also, it may utilize or benefit, as the case may be, from the
14 provisions of the Higher Education Revenue Bond Act, as
15 provided in Chapter 147, Title 59 and the provisions of the South
16 Carolina Jobs-Economic Development Fund Act, as provided in
17 Chapter 43, Title 41. This item only applies so long as the
18 proceeds of the bonds, notes, or obligations are not utilized to fund
19 a capital improvement project.

20 (B)(1) Capital improvements of the enterprise division, and the
21 financing of these capital improvements, are exempt from the
22 provisions of Section 1-11-180, Chapter 47, Title 2 and Section
23 59-103-110. The board shall provide on an annual basis a report of
24 capital projects authorized by the board of trustees to the
25 Governor, the Chairman of the Senate Finance Committee, the
26 Chairman of the House Ways and Means Committee, and the
27 Commission on Higher Education. This report must be based on
28 the fiscal year of Clemson University and must be provided not
29 more than ninety days after the end of the fiscal year.

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

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

39 (4) The exemptions provided by this subsection do not apply
40 to capital improvements for athletics that expends, secures bonding
41 with, or otherwise utilizes state appropriated funds, state general
42 obligation capital improvement bonds, student tuition, student fees,
43 or any other student charge except for non-mandatory ticket

1 charges to athletic events. For purposes of this item, 'state
2 appropriated funds' excludes federal funds and other funds that do
3 not otherwise make this subsection inapplicable.

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

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

16 (D)(1) Subject to the provisions of item (2), the board of
17 trustees shall adopt for the enterprise division a procurement policy
18 and amend the policy as it considers appropriate. Before the
19 implementation of the procurement policy, or any amendment
20 thereto, the policy or amendment must be approved by the State
21 Budget and Control Board. Thereafter, every procurement of the
22 enterprise division is exempt from the SCCPC and each such
23 procurement instead is subject to the procurement policy adopted
24 by the board.

25 (2)(a) The procurement policy adopted by the enterprise
26 division may not include provisions relating to
27 telecommunications, and the enterprise division is subject to all
28 procurement provisions relating to telecommunications and
29 telecommunications equipment and service as set forth in the
30 SCCPC and Section 1-11-430 unless otherwise exempt by Section
31 11-35-710(6).

32 (b) The enterprise division may not construct, own, or
33 operate a network that carries commercial traffic, commercial
34 internet traffic, or K-12 traffic originated in South Carolina.

35
36 Section 59-119-1150. The requirements imposed upon Clemson
37 University, the board of trustees, and the enterprise division by the
38 provisions of this article may be enforced by mandamus.
39 However, failure to comply with requirements do not invalidate
40 the powers granted pursuant to this article.

41
42 Section 59-119-1160. Notwithstanding any other provision of
43 this article, enterprise activities only include athletics if Clemson

1 University's Athletics Grand Total Revenues as reported under the
2 Equity in Athletics Disclosure Act as required by The Higher
3 Education Opportunity Act (Public Law 110-315) are equal to or
4 exceed forty million dollars a year.

5
6 Section 59-119-1170. Four years after the adoption of a
7 resolution providing for the allocation to the enterprise division of
8 the transferable items of one or more enterprise activities pursuant
9 to Section 59-119-1130(C), and every four years thereafter, the
10 provisions of this act must be reauthorized by the adoption of a
11 joint resolution by the General Assembly, in separate legislation
12 and solely for that purpose. If this act, or any part thereof, is not
13 reauthorized, those provisions are no longer effective.

14
15 Section 59-119-1180. It is the intent of the General Assembly to
16 review the provisions of this article, and to determine the merit of
17 this pilot enterprise program after the program has been in effect
18 for at least four years. After reviewing this article and making a
19 determination, the General Assembly may consider the costs and
20 benefits of expanding the provisions of this article to additional
21 institutions of higher learning.

22
23 Section 59-119-1190. Nothing in this article may be construed
24 so as to exempt the enterprise division from the provisions of
25 Section 59-103-35 relating to the approval of new programs by the
26 Commission on Higher Education.”

27
28 SECTION 2. Section 11-35-710 of the 1976 Code is amended by
29 adding an appropriately numbered item at the end to read:

30
31 “() the Clemson University Enterprise Division, if such a
32 division is established pursuant to Article 11, Chapter 119, Title
33 59, the Clemson University Enterprise Act, and the Board of
34 Trustees of Clemson University, pursuant to that act, has adopted a
35 procurement policy for the division and that procurement policy
36 was approved by the State Budget and Control Board pursuant to
37 Section 59-119-1140(D).”

38
39 SECTION 3. This act takes effect July 1, 2013.

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