

## REPORT OF THE LEGISLATIVE SUBCOMMITTEE

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### HOUSE BILL 4182

(Cole, Cobb-Hunter, Sottile, Finlay – Staff Contact: AJ Newton)

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H. 4182 -- Rep. White: 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.

***Summary of Bill:***

This bill enacts the "State Institution of Higher Education Enterprise Act" to provide authorization for the Board of Trustees of colleges to establish, by resolution, a Enterprise Division at their respective institution. It will allow for the colleges to have additional authority over their auxiliary programs and activities such as those related to economic development, research, housing, food services, stores, and athletics. (attached: Section by Section Summary)

***Estimated Revenue Impact:***

The bill does not impact General Fund revenues or Federal Funds revenues or expenditures. The Other Funds expenditure and revenue impacts of these provisions are undetermined.

***Subcommittee Recommendation:***

Favorable as Amended

### **H.4182 Section by Section Summary:**

#### **Section 59-157-110:**

- Cites the chapter as the 'State Institution of Higher Education Enterprise Act'

#### **Section 59-157-120:**

- This section defines terms used in the chapter.
- It defines 'capital improvement', 'university or college', 'enterprise activities', 'enterprise division', 'enterprise division personnel', 'procurement', 'SCCPC', and 'transferable items'
- The institutions that are eligible to establish an enterprise division are USC, SC State, Clemson, Winthrop, The Citadel, College of Charleston, Lander, Francis Marion, MUSC, and Coastal Carolina
- 'Enterprise activities' must be funded solely by funds not received from the general fund of the state or from undergraduate tuition.
- 'Procurement' means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, information technology, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

#### **Section 59-157-130:**

- The section allows for a board of trustees, by resolution, to establish an enterprise division for its college.
- The division is considered a constituent part of the college.
- The resolution creating the division must provide an allocation to the division of the transferable items of one or more activities the board of trustees sees appropriate. The board may amend the resolution from time to time to transfer appropriate auxiliary items between the college and the division.
- The board of trustees may assign direct oversight and management responsibilities to an existing committee on the board or create a new committee to oversee it. The final decision-making and governance of the division remains with the board of trustees

#### **Section 59-157-140:**

(A) Lays out the additional authority of the board of trustees in relation to the division:

(1) It 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 are exempt from provisions of Department of Administration, JBRC, and CHE
- The board of trustees must provide an annual report on property acquired, contract, or agreement to the Governor, Chairman of Senate Finance, and Chairman of House Ways and Means

(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.

- Any proceeds from these activities must be remitted to the board and used exclusively for support of the division or the college
- These contracts are exempt from provisions of Department of Administration Sections 1-11-55 through 1-11-65, can grant easement or right of way without permission from DOA, and having to send proceeds to the general fund if it was acquired through state appropriations, state capital improvement bonds, or formula funds(59-101-180)

"THE BELOW CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SOUTH CAROLINA HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFIT OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT".

- The board of trustees must provide an annual report on property acquired, contract, or agreement to the Governor, Chairman of Senate Finance, and Chairman of House Ways and Means

(3) Allows the division to retain experts with any aspect of the division, determine duties, and set compensation without additional approval.

(4) The division shall participate in the comprehensive human resources system for public institutions of higher learning pursuant to SECTION 3 of Act 74 of 2011 once approved and implemented by the State Department of Administration. Division employees are state employees for the purposes of eligibility to participate in retirement, health insurance, other plans and programs administered by PEBA and for purposes of the SC Tort Claims Act.

(5) The board shall establish management controls and staffing personnel including an internal audit function.

(6) The board may enter into relationships with not-for-profit entities that support the mission of the college, but the support entity is not subject to the laws and regulations of the division. However, if the not-for-profit acquires a capital improvement on behalf of or for the division and division or college funds are used for the capital improvement then it is subject to the division's policies.

(7) Bonds, notes, other obligations, or indebtedness in the name of the college and on behalf of the division may be issued. Proceeds of the bonds, notes, or other obligations are not eligible to be used to fund a capital improvement project.

#### **(B) Capital Improvements**

(1) Capital Improvements of the division and financing of them are exempt from Department of Administration, JBRC, and CHE. The board of trustees must provide an annual report on property acquired, contract, or agreement to the Governor, Chairman of Senate Finance, and Chairman of House Ways and Means.

(2) Board of trustees must establish review process for any permanent improvement project and must approve any capital improvement project in a public vote.

(3) A permanent improvement project must be submitted to JBRC for review and comment after full architectural and engineering design but prior to execution of a construction contract.

(4) Exemptions in the subsection do not apply to capital improvements for athletics use state funds, state g.o. bonds, tuition, student fees, or any student charge for non-mandatory ticket charges to athletic events.

(5) Exemptions in the subsection do not apply for the entire capital improvement project if a project serves multiple purposes and one or more of the purposes is not a division activity.

(C) The board should conduct an annual audit by an independent CPA and report the findings to the Governor, Chairman of Senate Finance, and Chairman of House Ways and Means.

#### **(D) Procurement**

(1) The board shall adopt its own procurement policy for the division and must get approval from SFAA for it or any amendments to it. Once adopted by SFAA every procurement is exempt from the South Carolina Consolidated Procurement Code and is subject to the procurement policy of the board.

(2) The procurement policy of the division may have no provision regarding telecommunications and all procurement related to telecommunications is subject to the SCCPC.

#### **Section 59-157-150:**

- 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.

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- **Mandamus:** an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion.

**Section 59-157-160:**

- A college can only include athletics under the division if its Athletics Grand Total Revenues equal to or exceed 40 million dollars.

**Section 59-157-170:**

- Four years after passage of the resolution providing for the allocation to the division of items transferred and every four years thereafter, the provisions of this must be reauthorized by a joint resolution by the General Assembly.

**Section 59-157-180:**

- After the pilot program has been in effect for at least four years the General Assembly may consider whether or not to expand to additional colleges

**Section 59-157-190:**

- These division are not exempt from CHE oversight with regards to new programs.

**SECTION 2. Section 11-35-710**

- Each division established under Chapter 157, Title 59, must adopt a procurement policy and the policy must be approved by SFAA.



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
 (803)734-0640 • RFA.SC.GOV/IMPACTS

**Bill Number:** H. 4182    Introduced on April 25, 2017  
**Author:** White  
**Subject:** State Institutions of Higher Education Enterprise Act  
**Requestor:** House Ways and Means  
**RFA Analyst(s):** Powell  
**Impact Date:** February 16, 2018

**Estimate of Fiscal Impact**

	FY 2018-19	FY 2019-20
<b>State Expenditure</b>		
General Fund	\$0	\$0
Other and Federal	Undetermined	\$0
Full-Time Equivalent Position(s)	Undetermined	0.00
<b>State Revenue</b>		
General Fund	\$0	\$0
Other and Federal	Undetermined	\$0
<b>Local Expenditure</b>	\$0	\$0
<b>Local Revenue</b>	\$0	\$0

**Fiscal Impact Summary**

This bill makes complex changes to the revenue bonding process, the permanent improvement process, the process for selling and leasing state property, and the procurement process for institutions that choose to create enterprise divisions. As it is unknown what enterprise divisions will be created and what projects will be undertaken, the Other Funds expenditure and revenue impacts of these provisions are undetermined. Any increases to General Fund expenditures would be minimal and could be absorbed by the agencies. This bill does not impact General Fund revenues or Federal Funds revenues or expenditures.

**Explanation of Fiscal Impact**

**Introduced on April 25, 2017**

**State Expenditure**

This bill allows the board of trustees of a college or university to create an enterprise division for its institution's enterprise activities. Enterprise activities are defined as athletic and auxiliary programs and 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.

Athletics may only be included as an enterprise activity if the college or university's athletics total revenues are equal to or exceed forty million dollars a year. Per the U.S. Department of Education's Equity in Athletics Disclosure Act data for 2016, only Clemson University and the University of South Carolina would qualify to include athletics as an enterprise activity.

Activities and transferrable items associated with the enterprise division will be transferred to that division, which will be managed by the board of trustees. While this will result in additional duties for the board of trustees, the functions being transferred are current university functions that already require oversight in the normal course of agency business. As a result, these activities are not expected to increase expenditures. Should this bill encourage a university to create new enterprise activities, an expenditure impact associated with the oversight of these activities could occur.

The board of trustees will have expanded authority with respect to the enterprise division. It is granted the following additional powers:

- purchase, lease as lessee, accept, and otherwise acquire any real and personal property and other assets;
- sell, convey, lease as lessor, exchange, and otherwise dispose of any real and personal property and other assets, with the proceeds to be used exclusively for the support of the enterprise division or the college or university, subject to certain requirements and limitations;
- review and approve permanent improvement projects and capital improvements, subject to the review and comment of the Joint Bond Review Committee, subject to certain requirements and limitations;
- finance capital improvement projects, subject to certain requirements and limitations;
- enter into relationships or transactions with not-for-profit entities established to support the college or university, subject to certain requirements and limitations;
- issue bonds, notes or other instruments of debt in the name of the university and on behalf of the enterprise division, including debt issued under the Higher Education Revenue Bond Act and the South Carolina Jobs-Economic Development Fund Act, subject to certain requirements and limitations and so long as they are not used to fund a capital improvement; and
- adopt a procurement policy for the enterprise division, subject to approval by the State Fiscal Accountability Authority, subject to certain requirements and limitations.

These types of activities are already considered by the board of trustees in the normal course of agency business. As to permanent improvements, the board of trustees must already review and approve permanent improvement projects as part of the state permanent improvement project process. This bill removes most additional layers of review after that approval. According to the Commission on Higher Education, some institutions have indicated that there may be cost savings associated with these powers; however, they were not able to quantify those savings. These oversight activities are not expected to increase expenditures beyond a level that can be managed within existing appropriations; however, if transactions are entered into as a result of these powers it may result in an increase in expenditures.

The board of trustees is also required to have an annual audit conducted by an independent certified public accountant and to provide various reports relating to its exercise of these powers to the Governor, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee. The reports will be produced in the normal course of agency business and are not expected to result in an increase in expenditures beyond a level that can be

managed within existing appropriations. The audit requirements could result in increased expenditures, but without knowing the exact number and parameters of such divisions, the expenditure impact of this is undetermined. It is likely that, as these divisions are created by the transfer of activities from existing departments within the colleges and universities, such activities are covered under the scope of current audits and additional expenditures resulting from a separate audit of these activities would be minimal.

The board of trustees must establish management controls and staffing of the enterprise division. The enterprise division's employees are eligible to participate in state retirement, health insurance, and other programs administered by the South Carolina Public Benefit Authority. The creation of an enterprise division involves the transfer of existing personnel, which would not result in an increase in expenditures for the college or university housing the enterprise division. However, if this bill results in an expansion of enterprise activities by colleges it may result in an increase in expenditures.

This is considered a pilot program and must be reauthorized by the General Assembly four years after the creation of the first enterprise division and every four years thereafter.

The Commission on Higher Education (CHE) surveyed the institutions and provided a summary of their responses. CHE indicated that responses had not been provided by Clemson University, The Citadel, Coastal Carolina University, or the College of Charleston.

**State Fiscal Accountability Authority.** The State Fiscal Accountability Authority is charged with approving the procurement policies for each enterprise division. Approving procurement policies and limitations is an activity that occurs in the normal course of agency business, and the State Fiscal Accountability Authority has indicated that it can manage a reasonable number of approvals per year within existing resources.

#### **State Revenue**

In general, the proceeds from the sale of surplus state property accrue to the General Fund. This bill exempts agencies the provisions of the South Carolina Code of Laws relating to the sale of surplus property and directs that the proceeds be retained by the Enterprise Division. However, Proviso 93.20 of the FY 2017-18 Appropriations Act currently exempts higher education institutions from remitting proceeds from the sale of property to the Department of Administration. Therefore, there will be no impact to the General Fund as a result of this change. The enterprise division may accrue additional revenue if property is sold, but as it is unknown what enterprise divisions will be created and what projects will be undertaken; therefore, the Other Funds revenue impacts of these provisions are undetermined.

The bill also allows enterprise divisions to lease property as a lessor and to issue bonds or other forms of indebtedness. As it is unknown how the institutions will take advantage of these provisions, the Other Funds revenue impacts of these provisions are undetermined.

#### **Local Expenditure**

N/A

**Local Revenue**  
N/A

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Frank A. Rainwater, Executive Director



HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

BEESON/MORGAN  
MARCH 7, 2018

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CLERK OF THE HOUSE

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THE HIGHER EDUCATION LEGISLATIVE SUBCOMMITTEE  
PROPOSES THE FOLLOWING AMENDMENT NO. TO H. 4182  
(COUNCIL\WAB\4182C002.AGM.WAB18):

REFERENCE IS TO THE BILL AS INTRODUCED.

**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) BOARD OF TRUSTEES MEANS THE BOARDS OF TRUSTEES OF THE COLLEGES AND UNIVERSITIES LISTED IN SECTION 59-101-10.**

**(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 COLLEGES AND UNIVERSITIES LISTED IN SECTION 59-101-10.**

**(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, 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 ANOTHER PROVISION OF THIS CHAPTER, ANY PERMANENT IMPROVEMENT PROJECT AS DEFINED IN SECTION 2-47-50 WHICH REQUIRES THE ISSUANCE OF DEBT, CAPITAL IMPROVEMENT BOND FUNDS, STATE INFRASTRUCTURE BOND FUNDS, CAPITAL RESERVE FUNDS OR USES OF STATE APPROPRIATED FUNDS FOR ITS FUNDING MUST BE SUBMITTED TO THE JOINT BOND REVIEW COMMITTEE FOR REVIEW AND COMMENT AND TO THE STATE FISCAL ACCOUNTABILITY AUTHORITY FOR APPROVAL.**

**(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 AS DEFINED IN SECTION 59-101-10, 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 AN INTERNAL AUDIT FUNCTION TO MONITOR THE ACTIVITIES OF THE AUXILIARY DIVISION, AND ANNUALLY BEFORE SEPTEMBER THIRTIETH REPORT THE FINDINGS OF THIS AUDIT FUNCTION 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. /**

**RENUMBER SECTIONS TO CONFORM.**

**AMEND TITLE TO CONFORM.**



**South Carolina General Assembly**  
122nd Session, 2017-2018

**H. 4182**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. White and Clary

Document Path: l:\council\bill\agm\19174wab17.docx

Introduced in the House on April 25, 2017

Currently residing in the House Committee on **Ways and Means**

Summary: State Institution of Higher Education Enterprise Act

**HISTORY OF LEGISLATIVE ACTIONS**

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
4/25/2017	House	Introduced and read first time ( <u>House Journal-page 38</u> )
4/25/2017	House	Referred to Committee on <b>Ways and Means</b> ( <u>House Journal-page 38</u> )
1/30/2018	House	Member(s) request name added as sponsor: Clary

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**VERSIONS OF THIS BILL**

4/25/2017

4/27/2017

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**A BILL**

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,  
12 1976, TO ENACT THE "STATE INSTITUTION OF HIGHER  
13 EDUCATION ENTERPRISE ACT", BY ADDING CHAPTER  
14 157 TO TITLE 59 SO AS TO ALLOW THE BOARD OF  
15 TRUSTEES OF AN INSTITUTION OF HIGHER EDUCATION  
16 TO ESTABLISH BY RESOLUTION AN ENTERPRISE  
17 DIVISION AS PART OF THE COLLEGE OR UNIVERSITY, TO  
18 PROVIDE THAT CERTAIN ASSETS, PROGRAMS, AND  
19 OPERATIONS OF THE INSTITUTION MAY BE  
20 TRANSFERRED TO THE ENTERPRISE DIVISION, TO  
21 PROVIDE THAT THE ENTERPRISE DIVISION IS EXEMPT  
22 FROM VARIOUS STATE LAWS GOVERNING  
23 PROCUREMENT, HUMAN RESOURCES, PERSONNEL, AND  
24 THE DISPOSITION OF REAL AND PERSONAL PROPERTY,  
25 SUBJECT TO CERTAIN EXEMPTIONS, TO PROVIDE THAT  
26 BONDS, NOTES, OR OTHER EVIDENCE OF INDEBTEDNESS  
27 MAY BE ISSUED FOR THE ENTERPRISE DIVISION, AND TO  
28 PROVIDE AUDIT AND REPORTING REQUIREMENTS; AND  
29 TO AMEND SECTION 11-35-710, RELATING TO  
30 EXEMPTIONS FROM THE SOUTH CAROLINA  
31 PROCUREMENT CODE, SO AS TO PROVIDE THAT THE  
32 STATE FISCAL ACCOUNTABILITY AUTHORITY MAY  
33 EXEMPT AN ENTERPRISE DIVISION IF A DIVISION IS  
34 ESTABLISHED PURSUANT TO CHAPTER 157, TITLE 59 IF  
35 THE BOARD OF TRUSTEES ADOPTS A PROCUREMENT  
36 POLICY FOR THE DIVISION THAT IS APPROVED BY THE  
37 AUTHORITY.

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

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

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“CHAPTER 157

The State Institution of Higher Education Enterprise Act

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

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

(1) ‘Board of trustees’ 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) ‘University or college’ 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 59-157-130. (A) A board of trustees, by resolution, may establish an enterprise division for its college or university.

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

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

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

17  
18 Section 59-157-140. (A) The board of trustees has the same  
19 powers, duties, and responsibilities to manage and control the  
20 enterprise division as it does with other duties, responsibilities,  
21 assets, personnel, and resources of the college or university. Without  
22 limiting the foregoing, the board of trustees has the following  
23 additional authority with respect to the enterprise division:

24 (1) It may purchase, lease as lessee, accept, and otherwise  
25 acquire any real and personal property and other assets upon the  
26 terms and conditions it considers appropriate. Contracts or  
27 agreements effecting or governing a purchase, lease, acceptance, or  
28 other acquisition are exempt from the provisions of Sections  
29 1-11-55 through 1-11-65; Chapter 47, Title 2; and Section  
30 59-103-110. The board of trustees shall provide on an annual basis  
31 a report of property acquired and any contract or agreement to the  
32 Governor, the Chairman of the Senate Finance Committee, and the  
33 Chairman of the House Ways and Means Committee. This report  
34 must be based on the appropriate fiscal year of the college or  
35 university and must be provided not more than ninety days after the  
36 end of the fiscal year.

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

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

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

20 (4)(a) Upon the approval and implementation by the State  
21 Department of Administration, it shall participate in the  
22 comprehensive human resources system for public institutions of  
23 higher learning and technical colleges pursuant to SECTION 3 of  
24 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 preserved  
27 and must be preserved if personnel are moved into the enterprise  
28 division.

29 (b) Each of the enterprise division's personnel are state  
30 employees for purposes of eligibility for participation in retirement,  
31 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 the enterprise division's personnel as the board considers  
36 appropriate for the prudent conduct of the enterprise division,  
37 including the establishment of an internal audit function to monitor  
38 the activities 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 the  
41 mission of the college or university, it being understood that a  
42 support entity is not considered an entity owned or controlled by the  
43 enterprise division or the college or university and is not subject to

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

9 (7) It may issue bonds, notes, or other obligations or  
10 evidences of indebtedness in the name of the college or university  
11 and on behalf of the enterprise division in the same manner and for  
12 the same purposes, including the purposes of the enterprise division.  
13 Also, it may use or benefit, as the case may be, from the provisions  
14 of the Higher Education Revenue Bond Act, as provided in Chapter  
15 147, Title 59, and the provisions of the South Carolina  
16 Jobs-Economic Development Fund Act, as provided in Chapter 43,  
17 Title 41. This item only applies so long as the proceeds of the bonds,  
18 notes, or obligations are not used to fund a capital improvement  
19 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 Governor,  
25 the Chairman of the Senate Finance Committee, the Chairman of the  
26 House Ways and Means Committee, and the Commission on Higher  
27 Education. This report must be based on the appropriate fiscal year  
28 of the college or university and must be provided not more than  
29 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 and the board must approve any capital  
33 improvement project as defined in Chapter 47, Title 2, in a public  
34 vote.

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

40 (4) The exemptions provided by this subsection do not apply  
41 to capital improvements for athletics that expend, secure bonding  
42 with, or otherwise use state appropriated funds, state general  
43 obligation capital improvement bonds, student tuition, student fees,

1 or any other student charge except for non-mandatory ticket charges  
2 to athletic events. For purposes of this item, 'state appropriated  
3 funds' excludes federal funds and other funds that do not otherwise  
4 make this subsection inapplicable.

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

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

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

26 (2)(a) The procurement policy adopted by the enterprise  
27 division may not include provisions relating to telecommunications,  
28 and the enterprise division is subject to all procurement provisions  
29 relating to telecommunications and telecommunications equipment  
30 and service as set forth in the SCCPC and Section 1-11-430 unless  
31 otherwise exempt by Section 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 59-157-150. The requirements imposed upon the  
37 college or university, its board of trustees, and the enterprise  
38 division by the provisions of this chapter may be enforced by  
39 mandamus. However, failure to comply with requirements does not  
40 invalidate the powers granted pursuant to this chapter.

41  
42 Section 59-157-160. Notwithstanding another provision of this  
43 chapter, enterprise activities may only include athletics if the college

1 or university's Athletics Grand Total Revenues, as reported under  
2 the 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 59-157-170. Four years after the adoption of a resolution  
7 providing for the allocation to the enterprise division of the  
8 transferable items of one or more enterprise activities pursuant to  
9 this chapter, and every four years thereafter, the provisions of this  
10 chapter must be reauthorized by the adoption of a joint resolution by  
11 the General Assembly, in separate legislation and solely for that  
12 purpose. If this chapter, or any part thereof, is not reauthorized,  
13 those provisions are no longer effective.

14  
15 Section 59-157-180. It is the intent of the General Assembly to  
16 review the provisions of this chapter and to determine the merit of  
17 this pilot enterprise program after the program has been in effect for  
18 at least four years. After reviewing this chapter and making a  
19 determination, the General Assembly may consider the costs and  
20 benefits of expanding the provisions of this chapter to additional  
21 institutions of higher learning.

22  
23 Section 59-157-190. Nothing in this chapter may be construed to  
24 exempt the enterprise division from the provisions of Section  
25 59-103-35, relating to the approval of new programs by the  
26 Commission on Higher Education, and enterprise division land  
27 transactions, including leases, and permanent improvement projects  
28 are the only functions and areas removed from the commission.”

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

32  
33 “( ) an enterprise division, if a division is established pursuant to  
34 Chapter 157, Title 59, for which the board of trustees, pursuant to  
35 Section 59-157-140(D), has adopted a procurement policy for the  
36 division and the procurement policy was approved by the State  
37 Fiscal Accountability Authority.”

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

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