

## Session 123 - (2019-2020)

### **S\*0530 (Rat #0052, Act #0041 of 2019) General Bill, By Leatherman**

#### **Summary:** Procurement Code

AN ACT TO AMEND SECTION 11-35-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PURPOSE AND POLICIES OF THE CONSOLIDATED PROCUREMENT CODE, SO AS TO PROVIDE THAT THE CODE MUST BE CONSTRUED AND APPLIED TO PROMOTE THE UNDERLYING PURPOSES AND POLICIES; BY ADDING SECTION 11-35-27 SO AS TO PROVIDE THAT NO PART OF THE CHAPTER MAY BE CONSIDERED IMPLIEDLY REPEALED BY SUBSEQUENT LEGISLATION; TO AMEND SECTION 11-35-40, RELATING TO THE APPLICATION OF THE PROCUREMENT CODE, SO AS TO PROVIDE THAT CERTAIN FAILURES TO COMPLY ARE NOT SUBJECT TO REVIEW UNDER ARTICLE 17; TO AMEND SECTION 11-35-70, RELATING TO SCHOOL DISTRICTS SUBJECT TO THE PROCUREMENT CODE, SO AS TO CHANGE THE REFERENCE TO THE OFFICE OF GENERAL SERVICES TO THE DIVISION OF PROCUREMENT SERVICES; TO AMEND SECTION 11-35-210, RELATING TO CERTAIN DETERMINATIONS, SO AS TO PROVIDE THAT ALL FINDINGS, DETERMINATIONS, DECISIONS, POLICIES, AND PROCEDURES ALLOWED BY THIS CHAPTER ARE EXEMPT FROM CERTAIN REQUIREMENTS; TO AMEND SECTION 11-35-310, RELATING TO DEFINITIONS, SO AS TO AMEND CERTAIN DEFINITIONS AND ADD DEFINITIONS OF "BUSINESS DAY", "PERSON", AND "PUBLIC FUNDS"; TO AMEND SECTION 11-35-410, RELATING TO PUBLIC ACCESS TO PROCUREMENT INFORMATION, SO AS TO PROVIDE THAT A GOVERNMENTAL BODY MAY KEEP PORTIONS OF A SOLICITATION CONFIDENTIAL AND PROVIDE FOR CERTAIN WRITTEN DISCLOSURES; TO AMEND SECTION 11-35-510, RELATING TO THE CENTRALIZATION OF MATERIALS MANAGEMENT AUTHORITY, SO AS TO PROVIDE THAT THE VESTING AUTHORITY IS ALSO SUBJECT TO SECTION 11-35-1560; TO AMEND SECTION 11-35-530, RELATING TO ADVISORY COMMITTEES, SO AS TO REMOVE CERTAIN REQUIREMENTS OF THE BOARD WORKING IN ACCORDANCE WITH REGULATIONS OF THE BOARD; TO AMEND SECTION 11-35-540, RELATING TO THE AUTHORITY AND DUTIES OF THE BOARD, SO AS TO REMOVE CERTAIN REQUIREMENTS OF THE CHIEF EXECUTIVE OFFICER IN RELATION TO A DESIGNATED BOARD OFFICE; TO AMEND SECTION 11-35-710, RELATING TO CERTAIN EXEMPTIONS, SO AS TO REQUIRE THE STATE FISCAL ACCOUNTABILITY AUTHORITY TO MAINTAIN AND POST PUBLICLY A RUNNING LIST OF ALL CURRENTLY EFFECTIVE ACTIONS TAKEN BY THE BOARD; TO AMEND SECTION 11-35-810, RELATING TO THE CREATION OF THE MATERIALS MANAGEMENT OFFICE, SO AS TO CHANGE THE OFFICE OF GENERAL SERVICES TO THE DIVISION OF PROCUREMENT SERVICES; TO AMEND SECTION 11-35-820, RELATING TO THE CREATION OF THE INFORMATION TECHNOLOGY MANAGEMENT OFFICE, SO AS TO PROVIDE THAT THE OFFICE IS RESPONSIBLE FOR ADMINISTERING ALL PROCUREMENT AND CONTRACTING ACTIVITIES UNDERTAKEN FOR GOVERNMENTAL BODIES INVOLVING INFORMATION TECHNOLOGY; TO AMEND SECTION 11-35-1210, RELATING TO CERTAIN CERTIFICATIONS, SO AS TO PROVIDE THAT UP TO CERTAIN DOLLAR AMOUNTS AN INDIVIDUAL GOVERNMENTAL BODY MAY MAKE DIRECT PROCUREMENTS NOT UNDER TERM CONTRACTS; TO AMEND SECTION 11-35-1230, RELATING TO AUDITING AND FISCAL REPORTING, SO AS TO REMOVE THE REQUIREMENT THAT THE DIVISION OF BUDGET ANALYSIS WITH THE COMPTROLLER GENERAL SHALL ASSUME RESPONSIBILITY FOR CERTAIN FISCAL REPORTING PROCEDURES; TO AMEND SECTION 11-35-1410, RELATING TO DEFINITIONS, SO AS TO ADD DEFINITIONS FOR "COMMERCIAL PRODUCT" AND "COMMERCIALLY AVAILABLE OFF-THE-SHELF PRODUCT"; TO AMEND SECTION 11-35-1510, RELATING TO THE METHODS OF SOURCE SELECTION, SO AS TO ADD SECTION 11-35-1535 TO THE LIST OF EXCEPTIONS; TO AMEND SECTION 11-35-1520, RELATING TO COMPETITIVE SEALED BIDDING, SO AS TO REMOVE CERTAIN REQUIREMENTS FOR DISCUSSION WITH BIDDERS; TO AMEND SECTION 11-35-1525, RELATING TO COMPETITIVE FIXED PRICE BIDDING, SO AS TO REMOVE CERTAIN PROVISIONS FOR DISCUSSION WITH RESPONSIVE BIDDERS AND REMEDIES; TO AMEND SECTION 11-35-1528, RELATING TO COMPETITIVE BEST VALUE BIDDING, SO AS TO REMOVE CERTAIN PROVISIONS FOR DISCUSSION WITH RESPONSIVE BIDDERS; TO AMEND SECTION 11-35-1529, RELATING TO COMPETITIVE ONLINE BIDDING, SO AS TO PROVIDE FOR PUBLIC NOTICE; TO AMEND SECTION 11-35-1530, RELATING TO COMPETITIVE SEALED PROPOSALS, SO AS TO PROVIDE THAT OFFERORS MUST BE ACCORDED FAIR AND EQUAL TREATMENT WITH RESPECT TO ANY OPPORTUNITY FOR DISCUSSIONS; BY ADDING SECTION 11-35-1535 SO AS TO PROVIDE FOR COMPETITIVE NEGOTIATIONS AND TO PROVIDE CERTAIN REQUIREMENTS; TO AMEND SECTION 11-35-1540, RELATING TO NEGOTIATIONS AFTER AN UNSUCCESSFUL COMPETITIVE SEALED BIDDING, SO AS TO PROVIDE THAT THE PROCUREMENT OFFICER, NOT THE PROCURING AGENCY, SHALL CONSIDER IF A BID IS UNREASONABLE; TO AMEND SECTION 11-35-1550, RELATING TO CERTAIN SMALL PURCHASE PROCEDURES, SO AS TO AMEND CERTAIN DOLLAR AMOUNT CAPS; TO AMEND SECTION 11-35-1560, RELATING TO SOLE SOURCE PROCUREMENT, SO AS TO PROVIDE FOR ADEQUATE PUBLIC NOTICE; TO AMEND SECTION 11-35-1570, RELATING

TO EMERGENCY PROCUREMENTS, SO AS TO PROVIDE CERTAIN NOTICE OF THE AWARD; BY ADDING SECTION 11-35-1610 SO AS TO PROVIDE THAT A CHANGE OR MODIFICATION IN A CONTRACT MAY NOT ALTER A CONTRACT IN A MANNER INCONSISTENT WITH THIS CODE; TO AMEND SECTION 11-35-1810, RELATING TO THE RESPONSIBILITY OF BIDDERS AND OFFERORS, SO AS TO PROVIDE THAT CERTAIN COMMUNICATION IS PRIVILEGED; TO AMEND SECTION 11-35-1830, RELATING TO COST OR PRICING DATA, SO AS TO ADD COMPETITIVE NEGOTIATIONS PURSUANT TO SECTION 11-35-1535; BY ADDING SECTION 11-35-1840 SO AS TO PROVIDE THAT THE BOARD MAY PROMULGATE CERTAIN REGULATIONS; BY ADDING SECTION 11-35-2015 SO AS TO PROVIDE THAT A CONTRACT OR AMENDMENT IS NOT EFFECTIVE AGAINST A GOVERNMENTAL BODY UNLESS THE CONTRACT OR AMENDMENT IS IN WRITING AND SIGNED BY A CERTAIN OFFICER; TO AMEND SECTION 11-35-2030, RELATING TO MULTITERM CONTRACTS, SO AS TO PROVIDE THAT EVERY CONTRACT WITH A POTENTIAL DURATION EXCEEDING SEVEN YEARS MUST BE APPROVED BY THE BOARD; BY ADDING SECTION 11-35-2040 SO AS TO PROVIDE THAT CERTAIN LAWS ARE INAPPLICABLE TO CONTRACTS FOR THE PROCUREMENT OF COMMERCIAL PRODUCTS; BY ADDING SECTION 11-35-2050 SO AS TO PROVIDE THAT CERTAIN TERMS OR CONDITIONS IN A CONTRACT ARE VOID; TO AMEND SECTION 11-35-2410, RELATING TO THE FINALITY OF DETERMINATIONS, SO AS TO ADD CERTAIN SECTIONS; TO AMEND SECTION 11-35-2420, RELATING TO THE REPORTING OF ANTICOMPETITIVE PRACTICES, SO AS TO PROVIDE THAT CERTAIN COMMUNICATIONS TO THE OFFICE OF THE ATTORNEY GENERAL ARE PRIVILEGED; TO AMEND SECTION 11-35-3010, RELATING TO THE CHOICE OF PROJECT DELIVERY METHODS, SO AS TO PROVIDE THAT THE USE OF CERTAIN PROJECT DELIVERY METHODS MUST BE APPROVED BY THE BOARD; TO AMEND SECTION 11-35-3015, RELATING TO THE SOURCE SELECTION METHODS ASSIGNED TO PROJECT DELIVERY METHODS, SO AS TO ADD REFERENCES TO SECTION 11-35-1530 AND SECTION 11-35-1535; TO AMEND SECTION 11-35-3020, RELATING TO ADDITIONAL BIDDING PROCEDURES FOR CONSTRUCTION PROCUREMENT, SO AS TO PROVIDE THAT ADEQUATE NOTICE MUST BE GIVEN; TO AMEND SECTION 11-35-3023, RELATING TO PREQUALIFICATION ON STATE CONSTRUCTION, SO AS TO REMOVE CERTAIN REQUIREMENTS FOR A REQUEST FOR QUALIFICATIONS; TO AMEND SECTION 11-35-3024, RELATING TO ADDITIONAL PROCEDURES APPLICABLE TO PROCUREMENT OF CERTAIN PROJECT DELIVERY METHODS, SO AS TO PROVIDE THAT CERTAIN PROVISIONS DO NOT APPLY IF COMPETITIVE NEGOTIATIONS ARE CONDUCTED; TO AMEND SECTION 11-35-3030, RELATING TO BOND AND SECURITY, SO AS TO PROVIDE THAT CERTAIN SOLICITATIONS MAY PROVIDE FOR CERTAIN BOND AND SECURITY REQUIREMENTS; TO AMEND SECTION 11-35-3040, RELATING TO CONTRACT CLAUSES AND THEIR ADMINISTRATION, SO AS TO PROVIDE THAT CERTAIN CONTRACTS MAY INCLUDE CLAUSES PROVIDING FOR THE UNILATERAL RIGHT OF A GOVERNMENTAL BODY TO ORDER IN WRITING CERTAIN CHANGES WITHIN THE GENERAL SCOPE OF THE CONTRACT; TO AMEND SECTION 11-35-3070, RELATING TO THE APPROVAL OF CERTAIN CHANGES WHICH DO NOT ALTER SCOPE OR INTENT OR EXCEED APPROVED BUDGET, SO AS TO PROVIDE THAT A GOVERNMENTAL BODY MAY APPROVE CERTAIN AMENDMENTS CONSISTENT WITH ANY APPLICABLE REGULATION OF THE BOARD; TO AMEND SECTION 11-35-3220, RELATING TO QUALIFICATIONS-BASED SELECTION PROCEDURES, SO AS TO PROVIDE THAT ADEQUATE NOTICE OF THE INVITATION MUST BE GIVEN; TO AMEND SECTION 11-35-3230, RELATING TO THE EXCEPTION FOR SMALL ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES CONTRACTS, SO AS TO PROVIDE THAT A GOVERNMENTAL BODY MAY NOT NEGOTIATE WITH A FIRM UNLESS ANY UNSUCCESSFUL NEGOTIATIONS WITH A DIFFERENT FIRM HAVE BEEN CONCLUDED IN WRITING; BY ADDING SECTION 11-35-3305 SO AS TO PROVIDE THAT A PROCUREMENT OFFICER MAY ESTABLISH CONTRACTS PROVIDING FOR AN INDEFINITE QUANTITY OF CERTAIN SUPPLIES, SERVICES, OR INFORMATION TECHNOLOGY; TO AMEND SECTION 11-35-3310, RELATING TO INDEFINITE DELIVERY CONTRACTS, SO AS TO REMOVE PROVISIONS RELATING TO CONSTRUCTION SERVICES; BY ADDING SECTION 11-35-3320 SO AS TO DEFINE "TASK ORDER CONTRACT" AND TO PROVIDE WHEN A GOVERNMENTAL BODY MAY ENTER INTO A TASK ORDER CONTRACT; TO AMEND SECTION 11-35-3410, RELATING TO CONTRACT CLAUSES AND THEIR ADMINISTRATION, SO AS TO PROVIDE THAT CERTAIN CONTRACTS MAY INCLUDE CLAUSES PROVIDING FOR THE UNILATERAL RIGHT OF A GOVERNMENTAL BODY TO ORDER IN WRITING CERTAIN CHANGES WITHIN THE GENERAL SCOPE OF THE CONTRACT; TO AMEND SECTION 11-35-3820, RELATING TO THE ALLOCATION OF PROCEEDS FOR SALE OR DISPOSAL OF SURPLUS SUPPLIES, SO AS TO CHANGE REFERENCES TO THE DIVISION OF GENERAL SERVICES TO THE DEPARTMENT OF ADMINISTRATION; TO AMEND SECTION 11-35-3830, RELATING TO TRADE-IN SALES, SO AS TO CHANGE REFERENCES TO THE BOARD TO THE DEPARTMENT OF ADMINISTRATION; TO AMEND SECTION 11-35-3840, RELATING TO LICENSING FOR PUBLIC SALE OF CERTAIN PUBLICATIONS AND MATERIALS, SO AS TO CHANGE A REFERENCE TO THE DIVISION OF GENERAL SERVICES TO THE DIVISION OF PROCUREMENT SERVICES; TO

AMEND SECTION 11-35-3850, RELATING TO THE SALE OF UNSERVICEABLE SUPPLIES, SO AS TO CHANGE REFERENCES TO THE BOARD TO THE DEPARTMENT OF ADMINISTRATION; TO AMEND SECTION 11-35-4210, RELATING TO CERTAIN PROTESTS AND PROCEDURES, SO AS TO PROVIDE THAT AN ACTUAL BIDDER, OFFEROR, CONTRACTOR, OR SUBCONTRACTOR WHO IS AGGRIEVED SHALL NOTIFY THE APPROPRIATE OFFICER IN WRITING; TO AMEND SECTION 11-35-4215, RELATING TO THE POSTING OF BOND OR IRREVOCABLE LETTER OF CREDIT, SO AS TO PROVIDE THAT THE AMOUNT RECOVERED MAY NOT EXCEED FIFTEEN THOUSAND DOLLARS; TO AMEND SECTION 11-35-4220, RELATING TO THE AUTHORITY TO DEBAR OR SUSPEND, SO AS TO PROVIDE THAT A VIOLATION OF THE ETHICS, GOVERNMENT ACCOUNTABILITY, AND CAMPAIGN REFORM ACT OF 1991 IS A CAUSE FOR DEBARMENT; TO AMEND SECTION 11-35-4230, RELATING TO THE AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES, SO AS TO PROVIDE THAT THE DIVISION OF PROCUREMENT SERVICES MAY INITIATE AND PURSUE RESOLUTION OF CERTAIN CONTRACT CONTROVERSIES; TO AMEND SECTION 11-35-4310, RELATING TO SOLICITATIONS OR AWARDS IN VIOLATION OF THE LAW, SO AS TO PROVIDE THAT CERTAIN REMEDIES MAY BE GRANTED ONLY AFTER REVIEW; BY ADDING SECTION 11-35-4315 SO AS TO PROVIDE THAT THE BOARD MAY PROVIDE BY REGULATION APPROPRIATE ACTION WHERE A CONTRACT AWARD OR MODIFICATION IS IN VIOLATION OF THE PROCUREMENT CODE; BY ADDING SECTION 11-35-4340 SO AS TO PROVIDE THAT THERE IS NO REMEDY AGAINST THE STATE OTHER THAN THOSE PROVIDED IN THIS CHAPTER; TO AMEND SECTION 11-35-4410, RELATING TO THE PROCUREMENT REVIEW PANEL, SO AS TO PROVIDE THAT AN APPEAL ONLY MAY BE MADE TO THE COURT OF APPEALS; BY ADDING SECTION 11-35-4425 SO AS TO PROVIDE THAT IF A FINAL ORDER IS NOT APPEALED THE CHIEF PROCUREMENT OFFICER MAY FILE A CERTIFIED COPY OF THE FINAL RULING; BY ADDING SECTION 11-35-4430 SO AS TO PROVIDE THAT PANEL MEMBERS MAY NOT COMMUNICATE IN CONNECTION WITH ANY ISSUE OF FACT OR ISSUE OF LAW; TO AMEND SECTION 11-35-4610, RELATING TO DEFINITIONS, SO AS TO EXPAND ON THE DEFINITION OF "PUBLIC PROCUREMENT UNIT"; TO AMEND SECTION 11-35-4810, RELATING TO COOPERATIVE PURCHASING AUTHORIZED, SO AS TO PROVIDE THAT CERTAIN COOPERATIVE PURCHASING WITH OTHER STATES MUST BE THROUGH CONTRACTS AWARDED THROUGH FULL AND OPEN COMPETITION; TO AMEND SECTION 11-35-4830, RELATING TO THE SALE, ACQUISITION, OR USE OF SUPPLIES BY A PUBLIC PROCUREMENT UNIT, SO AS TO PROVIDE THAT A PUBLIC PROCUREMENT UNIT MAY SELL TO, ACQUIRE FROM, OR USE ANY SUPPLIES BELONGING TO ANOTHER PUBLIC PROCUREMENT UNIT INDEPENDENT OF CERTAIN REQUIREMENTS; TO AMEND SECTION 11-35-4840, RELATING TO THE COOPERATIVE USE OF SUPPLIES OR SERVICES, SO AS TO PROVIDE THAT ANY PUBLIC PROCUREMENT UNIT MAY ENTER INTO AN AGREEMENT INDEPENDENT OF CERTAIN REQUIREMENTS; TO AMEND SECTION 11-35-4860, RELATING TO THE SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL SERVICES, SO AS TO PROVIDE THAT THE PROCEEDS FROM CERTAIN SALES MUST BE PLACED IN A REVENUE ACCOUNT; TO AMEND SECTION 11-35-4870, RELATING TO THE USE OF PAYMENTS RECEIVED BY A SUPPLYING PUBLIC PROCUREMENT UNIT, SO AS TO PROVIDE THAT CERTAIN PAYMENTS MUST BE DEPOSITED IN A SPECIAL REVENUE ACCOUNT; TO AMEND SECTION 11-35-4880, RELATING TO PUBLIC PROCUREMENT UNITS IN COMPLIANCE WITH CODE REQUIREMENTS, SO AS TO REMOVE A REFERENCE TO EXTERNAL PROCUREMENT ACTIVITY; BY ADDING SECTION 11-35-4900 SO AS TO PROVIDE FOR APPROVAL OF CERTAIN INTERGOVERNMENTAL ACQUISITIONS; TO AMEND SECTION 1-23-600, AS AMENDED, RELATING TO THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT HEARINGS AND PROCEEDINGS, SO AS TO PROVIDE THAT AN APPEAL FROM THE PROCUREMENT REVIEW PANEL IS TO THE COURT OF APPEALS; TO AMEND SECTION 57-1-490, RELATING TO THE DEPARTMENT OF TRANSPORTATION'S ANNUAL AUDITS, SO AS TO REMOVE THE REQUIREMENT THAT THE DEPARTMENT'S INTERNAL PROCUREMENT OPERATION MUST BE AUDITED ANNUALLY; BY ADDING SECTION 1-11-190 SO AS TO PROVIDE RESPONSIBILITIES FOR THE DEPARTMENT OF ADMINISTRATION; TO PROVIDE THAT THE STATE FISCAL ACCOUNTABILITY AUTHORITY SHALL PUBLISH INTERIM REGULATIONS IT WILL FOLLOW TO IMPLEMENT CERTAIN CHANGES; TO REPEAL SECTION 11-35-1580 RELATING TO INFORMATION TECHNOLOGY PROCUREMENTS; TO REDESIGNATE ARTICLE 10, CHAPTER 35, TITLE 11 AS "INDEFINITE QUANTITY CONTRACTS"; AND TO RECODIFY SECTIONS 11-35-35, RELATING TO SURETY BONDS, 11-35-55, RELATING TO THE PURCHASE OF GOODS OR SERVICES FROM AN ENTITY EMPLOYING PRISON INMATES, AND 11-35-70, RELATING TO SCHOOL DISTRICTS SUBJECT TO THE PROCUREMENT CODE. - ratified title

**02/19/19 Senate Introduced and read first time (Senate Journal-page 5)**  
**02/19/19 Senate Referred to Committee on Finance (Senate Journal-page 5)**  
**03/21/19 Senate Committee report: Favorable with amendment Finance (Senate Journal-page 11)**  
**03/27/19 Senate Committee Amendment Adopted (Senate Journal-page 58)**  
**03/27/19 Senate Read second time (Senate Journal-page 58)**

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| 03/27/19 | Senate | Roll call Ayes-38 Nays-0 (Senate Journal-page 58)                 |
| 03/28/19 | Senate | Amended (Senate Journal-page 13)                                  |
| 04/02/19 | Senate | Read third time and sent to House (Senate Journal-page 22)        |
| 04/02/19 | Senate | Roll call Ayes-44 Nays-0 (Senate Journal-page 22)                 |
| 04/03/19 | House  | Introduced and read first time (House Journal-page 7)             |
| 04/03/19 | House  | Referred to Committee on Ways and Means (House Journal-page 7)    |
| 05/02/19 | House  | Committee report: Favorable Ways and Means (House Journal-page 1) |
| 05/08/19 | House  | Requests for debate-Rep(s). Hill (House Journal-page 55)          |
| 05/08/19 | House  | Read second time (House Journal-page 55)                          |
| 05/08/19 | House  | Roll call Yeas-93 Nays-7 (House Journal-page 63)                  |
| 05/09/19 | House  | Read third time and enrolled                                      |
| 05/09/19 |        | Ratified R 52   |
| 05/13/19 |        | Signed By Governor  |
| 05/31/19 |        | Effective date 05/13/19   |
| 06/05/19 |        | Act No. 41  |