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COMMITTEE AMENDMENT ADOPTED

March 9, 2010

**H. 3365**

Introduced by Reps. Cooper, T.R. Young and J.R. Smith

S. Printed 3/9/10--S. [SEC 3/10/10 3:14 PM]

Read the first time April 14, 2009.

**A** **BILL**

TO ENACT THE SOUTH CAROLINA HIGHER EDUCATION EFFICIENCY AND ADMINISTRATIVE POLICIES ACT OF 2009, INCLUDING PROVISIONS TO AMEND CHAPTER 101 OF TITLE 59, RELATING TO HIGHER EDUCATION, BY ADDING ARTICLE 5 SO AS TO FURTHER PROVIDE FOR HUMAN RESOURCES POLICIES, PROCEDURES, AND REQUIREMENTS FOR PUBLIC INSTITUTIONS OF HIGHER LEARNING IN THIS STATE EXCEPT FOR TECHNICAL COLLEGES; TO AMEND SECTION 8‑11‑260, AS AMENDED, RELATING TO STATE PERSONNEL ADMINISTRATIVE REQUIREMENTS, SO AS TO EXEMPT EMPLOYEES OF THESE INSTITUTIONS WITH CERTAIN EXCEPTIONS; BY ADDING SECTION 2‑47‑53 SO AS TO PROVIDE FOR THE ESTABLISHMENT OF PERMANENT IMPROVEMENT PROJECTS FOR THE STATE’S INSTITUTIONS OF HIGHER LEARNING, EXCLUDING TECHNICAL COLLEGES, AND FOR THE APPROVAL OF THESE PROJECTS AND TO REDEFINE ‘PERMANENT IMPROVEMENT PROJECT’ FOR PURPOSES OF PROPOSALS BY INSTITUTIONS OF HIGHER LEARNING IN THIS STATE; TO AMEND SECTION 1‑11‑65, RELATING TO APPROVAL OF REAL PROPERTY TRANSACTIONS BY THE STATE BUDGET AND CONTROL BOARD AND ACCEPTANCE OF THE TRANSFER OF TANGIBLE PERSONAL PROPERTY BY A STATE ENTITY, SO AS TO EXEMPT CERTAIN REAL PROPERTY TRANSACTIONS MADE FOR OR BY THESE INSTITUTIONS OF HIGHER LEARNING; BY ADDING SECTION 2‑47‑54 SO AS TO PROVIDE THAT THE STATE’S INSTITUTIONS OF HIGHER LEARNING, EXCLUDING TECHNICAL COLLEGES, MAY ENTER INTO A GROUND LEASE AGREEMENT WITH A PRIVATE ENTITY FOR THE BUILDING OF ON‑CAMPUS INFRASTRUCTURE AND TO EXEMPT THE TRANSACTION AND ENTITY FROM THE CONSOLIDATED PROCUREMENT CODE; TO AMEND SECTIONS 2‑47‑30, 2‑47‑35, 2‑47‑40, AND 2‑47‑50, RELATING TO THE JOINT BOND REVIEW COMMITTEE, SO AS TO FURTHER PROVIDE FOR THE PROCESSES AND PROCEDURES OF THE COMMITTEE AND THE BUDGET AND CONTROL BOARD IN REGARD TO CERTAIN PROJECTS; BY ADDING SECTIONS 59-147-35 AND 59-147-36 AND TO AMEND SECTION 59‑147‑30, RELATING TO THE PROCEDURES FOR THE ISSUANCE OF REVENUE BONDS UNDER THE HIGHER EDUCATION REVENUE BOND ACT, SO AS TO REVISE THESE PROCEDURES AND THE PURPOSES FOR WHICH THE BONDS MAY BE USED; TO AMEND CHAPTER 101 OF TITLE 59, RELATING TO HIGHER EDUCATION, BY ADDING ARTICLE 7 SO AS TO PROVIDE FOR CERTAIN PROVISIONS APPLICABLE TO BOND ACTS FOR INSTITUTIONS OF HIGHER LEARNING; BY ADDING SECTION 6‑1‑135 SO AS TO PROVIDE THAT WHEN A COUNTY, MUNICIPALITY, OR SCHOOL DISTRICT ACTING THROUGH THE PROCUREMENT PROCESS APPLICABLE TO IT ENTERS INTO A CONTRACT WITH A VENDOR TO ACQUIRE GOODS OR SERVICES FROM THAT VENDOR, A FOUR-YEAR OR GRADUATE LEVEL PUBLIC INSTITUTION OF HIGHER LEARNING LOCATED IN THE COUNTY, MUNICIPALITY, OR SCHOOL DISTRICT, UPON THE CONSENT OF THE COUNTY, MUNICIPALITY, OR SCHOOL DISTRICT, AND THE VENDOR, ALSO MAY BECOME A PARTY TO THE CONTRACT THEREBY MAKING THE GOODS OR SERVICES AVAILABLE TO THE INSTITUTION OF HIGHER LEARNING UNDER THE SAME TERMS AND CONDITIONS THEY ARE AVAILABLE TO THE COUNTY, MUNICIPALITY, OR SCHOOL DISTRICT WITHOUT THE NECESSITY OF COMPLYING WITH ANY OTHER PROCUREMENT REQUIREMENTS; TO AMEND SECTION 11‑35‑1550, AS AMENDED, RELATING TO SMALL PURCHASES UNDER THE CONSOLIDATED PROCUREMENT CODE AND BID PROCEDURES ON PROCUREMENTS UP TO FIFTY THOUSAND DOLLARS, SO AS TO INCREASE THE AMOUNT OF AUTHORIZED SMALL PURCHASES BY FOUR‑YEAR AND GRADUATE PUBLIC INSTITUTIONS OF HIGHER LEARNING AND TO AUTHORIZE THESE INSTITUTIONS TO USE PURCHASING CARDS FOR THESE PURCHASES IN THE AMOUNT AUTHORIZED; TO AMEND SECTION 11‑35‑3310, AS AMENDED, RELATING TO INDEFINITE DELIVERY CONTRACTS FOR CONSTRUCTION, ARCHITECTURAL‑ENGINEERING AND LAND SURVEYING SERVICES, SO AS TO RAISE THE PERMITTED AMOUNTS OF SUCH CONTRACTS; TO AMEND SECTION 11‑35‑4810, RELATING TO COOPERATIVE PURCHASES OF PUBLIC ENTITIES UNDER THE CONSOLIDATED PROCUREMENT CODE, SO AS TO ESTABLISH CERTAIN EXCEPTIONS FOR FOUR‑YEAR AND GRADUATE PUBLIC INSTITUTIONS OF HIGHER LEARNING IN REGARD TO NOTICE AND ELIGIBLE VENDORS; TO AMEND SECTION 1‑7‑170, RELATING TO THE REQUIRED APPROVAL OF THE ATTORNEY GENERAL BEFORE AN AGENCY OR DEPARTMENT OF THIS STATE MAY ENGAGE AN ATTORNEY AT LAW ON A FEE BASIS AND EXCEPTIONS TO THIS REQUIREMENT, SO AS TO ESTABLISH A SPECIAL APPROVAL PROCEDURE FOR FOUR‑YEAR AND GRADUATE PUBLIC INSTITUTIONS OF HIGHER LEARNING; BY ADDING SECTION 59‑101‑55 SO AS TO PROVIDE THAT STATE APPROPRIATED FUNDS SHALL NOT BE USED TO PROVIDE OUT-OF-STATE SUBSIDIES TO STUDENTS ATTENDING STATE-SUPPORTED INSTITUTIONS OF HIGHER LEARNING; TO AMEND SECTION 59-101-620, RELATING TO LIMITATIONS ON EDUCATIONAL FEE WAIVERS OFFERED BY PUBLIC INSTITUTIONS OF HIGHER LEARNING, SO AS TO REVISE THESE LIMITATIONS FOR CERTAIN INSTITUTIONS AND TO PROVIDE FOR ANNUAL REPORTING REQUIREMENTS TO THE COMMISSION OF HIGHER EDUCATION IN REGARD TO THESE WAIVERS; AND BY ADDING SECTION 59-112-115 SO AS TO PROVIDE THAT Whenever the governing board of a four-year and graduate level public institution of higher learning in this State not including a technical college adopts a change to the tuition or fees imposed on students, the change only may be implemented by the institution after a publically recorded roll call vote, and a majority vote shall be required to implement any change to the tuition or fees; AND TO PROVIDE THAT Within six months after the effective date of this act, each governing board of a four-year and graduate level public institution of higher learning in this State not including technical colleges shall adopt CERTAIN policies promoting financial disclosure.

Amend Title To Conform

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

Part I

Citation

SECTION 1. This act is known and may be cited as the “South Carolina Higher Education Efficiency and Administrative Policies Act of 2010”.

Part II

Human Resource Reforms

SECTION 2. Chapter 101, Title 59 of the 1976 Code is amended by adding:

“Article 5

Human Resources at a Public Institution

of Higher Learning

Section 59‑101‑1010. As used in this article, ‘public institution of higher learning’, or ‘institution’ means a four‑year public institution of higher learning or graduate level public institution of higher learning, including two-year branch campuses of a graduate level public institution of higher learning in this State, not including technical colleges.

Section 59‑101‑1020. The Budget and Control Board’s State Office of Human Resources shall participate with five representatives selected by the respective presidents of the public institutions of higher learning to represent all of the public institutions of higher learning to study, develop, and recommend a separate, comprehensive human resources system for the public institutions of higher learning. The recommendation shall include, but not be limited to, prescription of a methodology to establish a uniform compensation and classification plan among the public institutions of higher learning. The recommendations must provide for necessary accountability to the Budget and Control Board, including a process for reporting human resources data. The recommendation must be submitted to the State Budget and Control Board for its review no later than July 1, 2011, and shall not be implemented until approved by the Budget and Control Board pursuant to Section 8‑11‑230.”

Part III

Facilities and Capital Expenditure Revisions

SECTION 3. Section 2‑47‑50 of the 1976 Code is amended to read:

“Section 2‑47‑50. The board shall establish formally each permanent improvement project before actions of any sort which implement the project in any way may be undertaken and no expenditure of any funds for any services or for any other project purpose contracted for, delivered, or otherwise provided prior to the date of the formal action of the board to establish the project shall be approved. State agencies and institutions may advertise and interview for project architectural and engineering services for a pending project so long as the architectural and engineering contract is not awarded until after a state project number is assigned. After the committee has reviewed the form to be used to request the establishment of permanent improvement projects and has reviewed the time schedule for considering such requests as proposed by the board, requests to establish permanent improvement projects shall be made in such form and at such times as the board may require.

Any proposal to finance all or any part of any project using any funds not previously authorized specifically for the project by the General Assembly or using any funds not previously approved for the project by the board and reviewed by the committee shall be referred to the committee for review prior to approval by the board.

Any proposed revision of the scope or of the budget of an established permanent improvement project deemed by the board to be substantial shall be referred to the committee for its review prior to any final action by the board. In making their determinations regarding changes in project scope, the board and the committee shall utilize the permanent improvement project proposal and justification statements, together with any supporting documentation, considered at the time the project was authorized or established originally. Any proposal to increase the budget of a previously approved project using any funds not previously approved for the project by the board and reviewed by the committee shall in all cases be deemed to be a substantial revision of a project budget which shall be referred to the committee for review. The committee shall be advised promptly of all actions taken by the board which approve revisions in the scope of or the budget of any previously established permanent improvement project not deemed substantial by the board. However, with regard to institutions of higher learning as defined in Section 59‑101‑1010, a previously approved permanent improvement project, whose total costs increase not more than ten percent of the most recently approved total costs, not to exceed two million dollars in the aggregate for all the revisions made pursuant to this section, is not required to have that proposal reviewed by the committee, except that the proposal is subject to staff level review.

For purposes of this chapter, with regard to all institutions of higher learning, except institutions of higher learning as defined in Section 59‑101‑1010, permanent improvement project is defined as:

(1) acquisition of land, regardless of cost;

(2) acquisition, as opposed to the construction, of buildings or other structures, regardless of cost;

(3) construction of additional facilities and work on existing facilities for any given project including their renovation, repair, maintenance, alteration, or demolition in those instances in which the total cost of all work involved is five hundred thousand dollars or more;

(4) architectural and engineering and other types of planning and design work, regardless of cost, which is intended to result in a permanent improvement project. Master plans and feasibility studies are not permanent improvement projects and are not to be included;

(5) capital lease purchase of a facility acquisition or construction; and

(6) equipment that either becomes a permanent fixture of a facility or does not become permanent but is included in the construction contract shall be included as a part of a project.

For purposes of this chapter, with regard to all institutions of higher learning, as defined in Section 59‑101‑1010, ‘permanent improvement project’ is defined as:

(1) acquisition of land costing more than two hundred fifty thousand dollars. For the acquisition of land costing two hundred fifty thousand dollars or less, the proposal is subject to staff level review;

(2) acquisition, as opposed to the construction, of buildings or other structures costing more than two hundred fifty thousand dollars. For the acquisition, as opposed to construction, of building or other structures costing two hundred fifty thousand dollars or less, the proposal is subject to staff level review;

(3) work on existing facilities for any given project including their renovation, repair, maintenance, alteration, or demolition in those instances in which the total cost of all work involved is one million dollars or more;

(4) architectural and engineering and other types of planning and design work, regardless of cost, which is intended to result in a permanent improvement project. Master plans and feasibility studies are not permanent improvement projects and are not to be included;

(5) capital lease purchase of a facility acquisition or construction in which the total cost is one million dollars or more;

(6) equipment that either becomes a permanent fixture of a facility or does not become permanent but is included in the construction contract shall be included as a part of a project in which the total cost is one million dollars or more; and

(7) new construction of a facility that exceeds a total cost of five hundred thousand dollars.

Any permanent improvement project that meets the above definition must become a project, regardless of the source of funds. However, an institution of higher learning that has been authorized or appropriated capital improvement bond funds, capital reserve fund or state appropriated funds, or state infrastructure bond funds, or state institution bond funds by the General Assembly for capital improvements shall process a permanent improvement project, regardless of the amount.

For purposes of this chapter, Clemson University Public Service Activities (Clemson‑‑PSA) and South Carolina State University Public Service Activities (SC State‑PSA) shall be considered an institution of higher learning as defined in Section 59‑101‑1010.”

SECTION 4. Section 1‑11‑65 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) Any public institution of higher learning as defined in Section 59‑101‑1010 with approval of the Budget and Control Board may enter into one or more ground lease agreements with a private entity whereby the private entity will provide all services necessary for the creation and operation of on‑campus infrastructure including, but not limited to, financing which is subject to review and approval of state treasurer, designing, constructing, managing, operating, maintaining, and related services. Upon expiration of the ground lease agreement term, the private entity shall surrender to the institution such premises with the existing buildings, other structures, and improvements constructed and located thereon and therein, in the same condition as when the construction of the buildings, other structures, and improvements were completed, only natural and normal wear and tear excepted. The Budget and Control Board shall approve all ground lease agreement terms and conditions including the consideration involved. The full faith and credit of the State toward the lease obligations must not be pledged, and any statement to the contrary is deemed null and void as a matter of public policy. The private entity may be a nonprofit organization. Budget and Control Board approval required is instead of or a substitute for any other approval required by any other provision of law or regulation in connection with the undertaking of the private entity and the subject institution; however, the private entity and the subject institution shall adhere to fire, life, and safety codes as required by the Office of the State Engineer. This section and the approval required by this section does not exempt any transaction or entity from complying with Chapter 35, Title 11.”

Part IV

Procurement Code Revisions

SECTION 5. Section 11‑35‑1550(2) of the 1976 Code, as last amended by Act 376 of 2006, is further amended to read:

“(2) Competition and Price Reasonableness.

(a) Purchases not in excess of two thousand five hundred dollars. Except as provided in subitem (d) below, small purchases not exceeding two thousand five hundred dollars may be accomplished without securing competitive quotations if the prices are considered reasonable. The purchasing office must annotate the purchase requisition: ‘Price is fair and reasonable’ and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase ‘not in excess of’ may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer of the governmental body suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.

(b) Purchases over two thousand five hundred dollars to ten thousand dollars. Except as provided in subitem (d) below, solicitation of written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition for a small purchase over two thousand five hundred dollars but not in excess of ten thousand dollars. The award must be made to the lowest responsive and responsible sources.

(c) Purchases over ten thousand dollars up to fifty thousand dollars. Written solicitation of written quotes, bids, or proposals must be made for a small purchase over ten thousand dollars but not in excess of fifty thousand dollars. The procurement must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the designated board office. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award must be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.

(d) For institutions of higher learning as defined in Section 59‑101‑1010, small purchase amounts to which the provisions of subitem (a) above shall apply are those purchases not exceeding ten thousand dollars, and for these purchases subitem (b) above shall not apply. In addition, purchasing cards of the institution for these purchases also may be used by officials or employees of the institution as the governing board thereof approves.”

SECTION 6. Section 11‑35‑3310 of the 1976 Code, as last amended by Act 174 of 2008, is further amended to read:

“Section 11‑35‑3310. (1) General Applicability. Indefinite delivery contracts may be awarded on an as‑needed basis for construction services pursuant to the procedures in Section 11‑35‑3015(2)(b) and for architectural‑engineering and land surveying services pursuant to Section 11‑35‑3220.

(a) Construction Services. When construction services contracts are awarded, each contract shall be limited to a total expenditure of seven hundred fifty thousand dollars for a two‑year period with individual project expenditures not to exceed one hundred fifty thousand dollars; provided, that these limits for institutions of higher learning as defined in Section 59‑101‑1010 in this item shall be one million dollars for total expenditures and two hundred fifty thousand dollars for individual expenditures within the time periods specified.

(b) Architectural‑Engineering and Land Surveying Services. When architectural‑engineering and land surveying services contracts are awarded, each contract shall be limited to a total expenditure of three hundred thousand dollars for a two‑year period with individual project expenditures not to exceed one hundred thousand dollars; provided, that these limits for institutions of higher learning as defined in Section 59‑101‑1010 in this item shall be five hundred thousand dollars for total expenditures and two hundred thousand dollars for individual expenditures within the time periods specified.

(2) Small Indefinite Delivery Contracts. Small indefinite delivery contracts for architectural‑engineering and land surveying services may be procured as provided in Section 11‑35‑3230. A contract established under this section shall be subject to Section 11‑35‑3230, and any regulations promulgated thereunder except that the individual and total contract limits shall be fifty and one hundred fifty thousand dollars, respectively, for institutions of higher learning as defined in Section 59‑101‑1010.”

SECTION 7. Section 11‑35‑4810 of the 1976 Code is amended to read:

“Section 11‑35‑4810. Any public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi‑party contracts between public procurement units and open‑ended state public procurement unit contracts which shall be made available to local public procurement units, except as provided in Section 11‑35‑4820 or except as may otherwise be limited by the board through regulations.

However, thirty days’ notice of a proposed multi‑state solicitation shall be provided through central advertising and such contracts may be only awarded to manufacturers who will be distributing the products to South Carolina governmental bodies through South Carolina vendors; provided, however, that the provisions of this paragraph do not apply to institutions of higher learning as defined in Section 59‑101‑1010, if the institution demonstrates a cost savings to the Office of State Procurement in regard to the multi‑state solicitation and procurement.”

Part V

Miscellaneous Provisions

SECTION 8. Section 1‑7‑170 of the 1976 Code, as added by Act 353 of 2008, is amended to read:

“Section 1‑7‑170. (A) A department or agency of state government may not engage on a fee basis an attorney at law except upon the written approval of the Attorney General and upon a fee as must be approved by him. This section does not apply to the employment of attorneys in special cases in inferior courts when the fee to be paid does not exceed two hundred fifty dollars or exceptions approved by the State Budget and Control Board. This section does not apply to an attorney hired by the General Assembly or the judicial department.

(B) Notwithstanding the provisions of subsection (A), when a public institution of higher learning, as defined in Section 59‑101‑1010, decides to employ outside counsel on a particular matter, except in matters involving public financing or related financing issues, for a series of similar matters, or on a retainer basis shall submit the names of three qualified law firms consisting of a single practitioner or a group of practitioners from which the Attorney General shall approve one or more which the institution is then authorized to employ or retain. Subject to approval by the Attorney General, the institution may pay legal fees to that firm at its usual and customary rates for engaging in that type of work. Attorneys employed in matters involving public financing or related financing issues must be assigned and approved by the Budget and Control Board according to policies and procedures adopted by the board.”

SECTION 9. Article 1, Chapter 101, Title 59 of the 1976 Code is amended by adding:

“Section 59‑101‑55. State appropriated funds shall not be used to provide out‑of‑state subsidies to students attending state‑supported institutions of higher learning.”

SECTION 10. Section 59‑101‑620 of the 1976 Code is amended to read:

“Section 59‑101‑620. (A) A public institution of higher learning may offer educational fee waivers to no more than four percent of the undergraduate student body; however, an institution of higher learning, as defined in Section 59‑101‑1010, may offer educational fee waivers to not more than eight percent of the undergraduate student body. Any fee waivers above four percent must be used for in‑state students. For the purposes of fee waivers, an in‑state student shall be defined by Section 59‑112‑20(A).

(B) State‑supported institutions of higher learning to which subsection (A) applies shall annually report to the Commission on Higher Education the amount of such waivers provided during that fiscal year and such other information as the commission may require in regard to these waivers.”

SECTION 11. Chapter 112, Title 59 of the 1976 Code is amended by adding:

“Section 59‑112‑115. Whenever the governing board of an institution of higher learning as defined in Section 59‑101‑1010, adopts a change to the tuition or fees imposed on students, the change may be implemented by the institution only after a public vote with the number of trustees voting for and against the change being counted. A majority vote shall be required to implement any change to the tuition or fees.”

Part VI

Severability and Time Effective

SECTION 12. If any section, subsection, item, subitem, 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, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 13. Unless otherwise provided, this act takes effect upon approval by the Governor.

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