~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

April 28, 2009

**H. 3841**

Introduced by Reps. Owens, Cooper, Skelton, Sottile, J.M. Neal, R.L. Brown, Simrill, Battle, Govan, Barfield, Gullick, Stavrinakis, Hutto, Jefferson, Umphlett, Daning, Kirsh, Knight, Williams, Merrill, Weeks, Whipper, Mack, G.M. Smith, Lowe, Clemmons, Gilliard, Sellers, Erickson, Willis, Wylie, Mitchell, Stewart, Gunn, Vick, Harrell and J.R. Smith

S. Printed 4/28/09--H.

Read the first time April 1, 2009.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The State Board for Technical and Comprehensive Education and the State Budget and Control Board each indicate that this bill would have no impact on the General Fund of the State or on federal and/or other funds.

**Joint Bond Review Committee (JBRC)**

Committee staff indicates there would be no impact if the current process whereby the Capital Budget Section of the Budget and Control Board provides the conduit for the project information and serves as liaison for JBRC to the institutions, the State Engineer and other entities as necessary.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ENACTING THE “TECHNICAL COLLEGE ADMINISTRATIVE EFFICIENCIES ACT OF 2009” SO AS TO REQUIRE THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION TO ESTABLISH A TIERED SYSTEM FOR CATEGORIZING TECHNICAL COLLEGES WITH RESPECT TO THEIR FINANCIAL STRENGTH AND ABILITY TO MANAGE DAY‑TO‑DAY OPERATIONS AND A REVIEW SYSTEM FOR CERTAIN HUMAN RESOURCES, FACILITIES AND CAPITAL IMPROVEMENT, PROCUREMENT, AND GRANTS MANAGEMENT REQUESTS BY TECHNICAL COLLEGES; BY ADDING SECTION 2‑47‑70 SO AS TO ALLOW TECHNICAL COLLEGES TO ENTER INTO ONE OR MORE LEASE AGREEMENTS UPON CERTAIN CONDITIONS AND SUBJECT TO APPROVAL BY THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION AND REVIEW BY THE JOINT BOND REVIEW COMMITTEE AND THE STATE BUDGET AND CONTROL BOARD; BY ADDING SECTION 6‑1‑137 SO AS TO ALLOW TECHNICAL COLLEGES TO BE A PART OF CERTAIN CONTRACTS MADE BY COUNTIES, MUNICIPALITIES, OR SCHOOL DISTRICTS; TO AMEND SECTION 1‑11‑65, RELATING TO APPROVAL AND RECORDATION OF REAL PROPERTY TRANSACTIONS INVOLVING GOVERNMENTAL BODIES, SO AS TO EXCLUDE CERTAIN REAL PROPERTY TRANSACTIONS MADE FOR OR BY A TECHNICAL COLLEGE; TO AMEND SECTION 2‑47‑50, AS AMENDED, RELATING TO THE ESTABLISHMENT OF PERMANENT IMPROVEMENT PROJECTS BY THE STATE BUDGET AND CONTROL BOARD, SO AS TO PROVIDE FOR THE ESTABLISHMENT AND AUTHORIZATION OF CERTAIN PERMANENT IMPROVEMENT PROJECTS BY THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION UNDER CERTAIN CONDITIONS, TO PROVIDE THAT A TECHNICAL COLLEGE MAY NOT ADVERTISE AND INTERVIEW FOR PROJECT ARCHITECTURAL AND ENGINEERING SERVICES WITHOUT PRIOR APPROVAL OF THE ARCHITECTURAL AND ENGINEERING PHASE OF A PERMANENT IMPROVEMENT PROJECT BY THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION, AND TO PROVIDE FOR THE APPROVAL OF SCOPE AND BUDGET CHANGES FOR PREVIOUSLY APPROVED PROJECTS UP TO AN INCREASE OF TWENTY PERCENT OR TOTALING UP TO TWO MILLION DOLLARS BY THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION AND FOR THE PUBLICATION OF SUCH APPROVAL TO THE JOINT BOND REVIEW COMMITTEE; TO AMEND SECTION 2‑65‑30, RELATING TO RECEIPT AND EXPENDITURE OF UNANTICIPATED FUNDS, SO AS TO EXCLUDE TECHNICAL COLLEGES FROM STATE BUDGET AND CONTROL BOARD REVIEW OF EXPENDITURE PROPOSALS, AND TO REQUIRE THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION TO MONITOR FEDERAL FUNDS WITHIN THE TECHNICAL COLLEGE SYSTEM; TO AMEND SECTION 8‑11‑35, RELATING TO SALARY PAYMENT SCHEDULES, SO AS TO PROVIDE THAT THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION MAY APPROVE ALTERNATIVE SALARY PAYMENT SCHEDULES FOR TECHNICAL COLLEGE EMPLOYEES; TO AMEND SECTION 8‑11‑230, RELATING TO THE CREATION AND DUTIES OF THE STATE BUDGET AND CONTROL BOARD, SO AS TO REQUIRE THE STATE BUDGET AND CONTROL BOARD TO COORDINATE WITH THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION IN ESTABLISHING A CLASSIFICATION AND COMPENSATION PLAN FOR TECHNICAL COLLEGE CLASSIFIED EMPLOYEES, AND TO PROVIDE WHAT THE PLAN MUST INCLUDE; TO AMEND SECTION 11‑35‑1210, AS AMENDED, RELATING TO CERTIFICATION OF PROCUREMENTS, SO AS TO ALLOW FOR STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION APPROVAL FOR UP TO FIFTY THOUSAND DOLLARS IN ADDITIONAL PROCUREMENT AUTHORITY UPON CERTAIN CONDITIONS, AND TO PROVIDE REPORTING REQUIREMENTS; TO AMEND SECTION 11‑35‑1550, AS AMENDED, RELATING TO BID PROCEDURES ON PROCUREMENTS UP TO FIFTY THOUSAND DOLLARS, SO AS TO REVISE AMOUNTS TO WHICH CERTAIN PROVISIONS OF THE SECTION APPLY FOR TECHNICAL COLLEGES; TO AMEND SECTION 11‑35‑3230, AS AMENDED, RELATING TO AN EXCEPTION FOR SMALL ARCHITECT‑ENGINEER AND LAND SURVEYING SERVICES CONTRACT, SO AS TO REVISE DOLLAR AMOUNTS FOR SUCH CONTRACTS BY TECHNICAL COLLEGES; TO AMEND SECTION 11‑35‑3310, AS AMENDED, RELATING TO INDEFINITE DELIVERY CONTRACTS FOR CONSTRUCTION ITEMS, SO AS TO REVISE DOLLAR LIMITS FOR CERTAIN CONTRACTS FOR TECHNICAL COLLEGES; AND TO AMEND SECTION 11‑35‑3810, AS AMENDED, RELATING TO REGULATIONS FOR THE SALE, LEASE, TRANSFER, AND DISPOSAL OF SURPLUS PROPERTY, SO AS TO REQUIRE THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION TO ESTABLISH POLICIES AND PROCEDURES FOR GOVERNING THE DISPOSAL OF SURPLUS PROPERTY, AND TO PROVIDE FOR ANNUAL REVIEW AND MONITORING OF SUCH DISPOSAL.

Amend Title To Conform

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

SECTION 1. This act may be referred to as the “Technical College Administrative Efficiencies Act of 2009”.

SECTION 2. The State Board for Technical and Comprehensive Education (state board) is granted the authority to employ and administer certain administrative efficiency provisions as provided in this act. The state board shall establish a tiered system for categorizing technical colleges with respect to their financial strength and ability to manage day‑to‑day operations. Technical colleges, by way of application from their area commissions, may request the state board apply certain provisions of this act to their respective institutions. The state board shall review the technical college’s request and determine the proper category for the technical college.

The state board shall establish an advisory board to provide oversight and review of this act. The state board shall submit an annual report on oversight to the Governor, the Chairman of the House Ways and Means Committee, and the Chairman of the Senate Finance Committee by November fifteenth of each year and shall submit a report every two years to include how changes have benefitted the agency to the Governor and the Chairmen of the House Ways and Means Committee, the Senate Finance Committee, the House Education and Public Works Committee, and the Senate Education Committee.

SECTION 3. Section 1‑11‑65(A) of the 1976 Code is amended by adding a new paragraph at the end to read:

“The provisions of this section do not apply to a real property transaction made for or by a technical college of this state which is included in the college’s master land acquisition plan and is approved by the State Board for Technical and Comprehensive Education.”

SECTION 4. Section 2‑47‑50 of the 1976 Code, as last amended by Act 143 of 2005, is further amended by adding a new subsection at the end to read:

“( )(1) Notwithstanding the above provisions of this section, the State Board for Technical and Comprehensive Education, after review by the staffs of the Joint Bond Review Committee and the State Budget and Control Board, shall approve the architectural and engineering phase for permanent improvement projects before a technical college may advertise and interview for project architectural and engineering services. The architectural and engineering contract may be awarded before a state project number has been assigned for the permanent improvement project.

(2) The state board shall approve a proposed revision of the scope or of the budget of an established permanent improvement project with an increase of not more than twenty percent of the initially approved total costs and not exceeding two million dollars with regard to budget changes for previously approved projects. Once approved by Joint Bond Committee staff, this increase in budget does not have to be reviewed by the Joint Bond Review Committee. After the state board approves an increase to a proposal, the state board shall inform the Joint Bond Review Committee of its actions.

(3) For purposes of this chapter, with regard to technical colleges, permanent improvement project means a project whose costs after completion of architectural and engineering and other types of planning and design work total one million dollars or more and may include:

(a) acquisition of land;

(b) acquisition of existing buildings and other structures;

(c) construction of additional facilities and work on existing facilities for a project including renovation, repair, maintenance, alteration, or demolition;

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

(e) equipment that either becomes a permanent fixture of a facility or does not become permanent, but is included in the construction contract.

For purposes of this subsection, a project of technical colleges which involves new construction of a facility that exceeds a total cost of five hundred thousand dollars, after completion of architectural and engineering and other types of planning and design work, must be considered a permanent improvement project.

A permanent improvement project that meets the definition provided in this subsection must become a project, regardless of the source of funds. This provision does not apply to projects that are funded in whole or in part by capital improvement bond funds, capital reserve funds or state‑appropriated funds, state institution bond funds, or state infrastructure bonds funded by the General Assembly for capital improvements, regardless of amount.

Notwithstanding item 3 of this subsection, acquisition of land and of buildings and other structures, regardless of cost, must obtain approval of the Office of State Budget, including a Phase I environmental study and appraisal, and all permanent improvement projects costing one million dollars or more.”

SECTION 5. Section 2‑65‑30 of the 1976 Code is amended to read:

“Section 2‑65‑30. (A) A state agency may receive and spend unanticipated federal funds, and funds from private foundations or industries, which are not included in the appropriations act, but state agencies, excluding technical colleges as approved by the State Board for Technical and Comprehensive Education, must submit expenditure proposals to the board and receive authorization from the board before expenditure of funds. ~~No~~ An authorization may not be made without first securing and considering the board’s recommendation on each expenditure proposal. ~~Any such~~ An authorization is subject to all of the following standards:

(1) The unanticipated nature of the project precluded it from consideration and approval as part of the state appropriations process as described in Section 2‑65‑20.

(2) The project assists the applicant state agency to achieve objectives or goals in keeping with the recognized powers and functions of the state agency.

(3) The applicant state agency is the appropriate entity to conduct project activities and ~~no~~ duplication of services is not created by the authorization.

(4) State matching funds, if required, are available within the existing resources of the applicant state agency.

(5) The project benefits the health or welfare of the people of the State.

(B) Notwithstanding any other provisions of this chapter, ~~no~~ an authorization of unanticipated federal or private foundation or industry funds may not involve a commitment of future legislative enactment to provide additional state funds to support the project.

(C) The board shall provide the House Ways and Means Committee and the Senate Finance Committee with periodic reports ~~which~~ that describe actions taken under the provisions of this section.

(D) Notwithstanding any other provisions of this chapter, a state agency may not implement an unanticipated major federal program without prior approval of the General Assembly, except:

(1) that to the extent that the unanticipated program replaces existing services currently provided by a state agency, other governmental entity, private nonprofit organization, or other service provider, the services may be authorized by the board to continue at an equivalent level, within the constraints of federal law and funding, until the General Assembly acts;

(2) if the unanticipated program creates services not currently provided, and the board agrees that delayed implementation would result in a significant loss of federal funds to the State, the program may be authorized by the board to proceed at a minimal level, until such time as the General Assembly may act.

(E) The State Board for Technical and Comprehensive Education shall monitor all federal funds within the technical college system to ensure federal funds do not exceed the established authority.”

SECTION 6. Section 8‑11‑35 of the 1976 Code, as added by Act 356 of 2002, is amended by adding an appropriately lettered subsection at the end to read:

“( ) Notwithstanding the provisions of this section, the State Board for Technical and Comprehensive Education may approve alternative salary payment schedules for technical college employees.”

SECTION 7. Section 8‑11‑230 of the 1976 Code is amended to read:

“Section 8‑11‑230. There is ~~hereby~~ created as a part of the State Budget and Control Board, the State Personnel Division (hereinafter referred to as the division), which ~~shall~~ must be responsive to agency needs for ~~all~~ personnel functions and which shall implement the provisions of this article subject to the policies and direction of the board.

The administrative head of the division ~~shall be~~ is the state personnel director who ~~shall~~ must be appointed by the board. The state personnel director may employ ~~such~~ staff as ~~deemed~~ necessary to efficiently carry out the provisions of this article within authorized funding.

The State Budget and Control Board is authorized and directed to:

1. Establish procedures for the regulation of compensation of ~~all~~ state employees where not otherwise regulated directly by the General Assembly. ~~Such~~ These procedures and regulations ~~shall~~ must distinguish between two categories of positions, classified and unclassified. A uniform Classification and Compensation Plan ~~shall~~ must be provided for ~~such~~ the regulation of all positions in the classified service. ~~Such~~ Additional procedures ~~shall~~ must be provided as in its judgment adequately and equitably regulate unclassified positions.

2. Develop and revise as necessary ~~in coordination with agencies served specifications for each position in the classified service concerning the minimum educational training, experience and other qualifications considered necessary to assure adequate performance of the duties and responsibilities~~ specifications concerning the minimum educational training, experience, and other qualifications considered necessary to ensure adequate performance of duties and responsibilities for each position in the classified service in coordination with agencies served. The board and agency heads ~~will~~ shall require adherence to these specifications. The board may waive training and experience requirements ~~where circumstances warrant~~ upon request and adequate justification by the agency head.

3. After coordinating with agencies served, develop fair employment policies to ~~assure~~ ensure that appointments to position in the state classified service are made on the basis of merit and fitness without regard to race, sex, age, religion, political affiliation, or national origin.

4. Operate a recruitment and applicant referral program as an optional service available to all agencies.

5. Validate selection procedures for the classified service in accordance with sound personnel practices and the requirements of federal law or regulation.

6. After coordination with agencies served, develop policies and programs concerning leave with or without pay, hours of work, fringe benefits (except state retirement benefits), employee/management relations, performance appraisals, grievance procedures, employee awards, dual employment, disciplinary action, separations, reductions in force, and other conditions of employment as ~~may be~~ needed.

7. Provide assistance a~~nd coordinate with the agencies served training~~ and career development programs for state employees in coordination with agencies served.

8. Enter into agreement with ~~any~~ a political subdivision of the State to furnish services and facilities in the administration of its personnel program. ~~Any such~~ The agreement ~~shall~~ must provide for the reimbursement to the State of the reasonable cost of the services and facilities furnished. All political subdivisions of the State are ~~hereby~~ authorized to enter into such agreements.

9. Establish and maintain a central personnel data system on ~~all~~ state employees covered by this article, both classified and unclassified, and in coordination with agencies served, determine ~~that~~ data to be recorded on employees and positions and the procedures and forms to be used by ~~all~~ agencies in reporting data.

10. Develop a position management data system to assure conformity with board policies and state law.

11. Delegate to the heads of ~~the~~ state agencies served ~~such~~ any of the above responsibilities as may be appropriate in ~~such~~ the form as the board may determine.

12. Coordinate with the State Board for Technical and Comprehensive Education to establish a classification and compensation plan for the regulation of the compensation of technical college classified employees. The plan must include delegation authority to the State Board for Technical and Comprehensive Education for all relevant classified positions and must establish hiring ranges for each position. The plan also must provide that classified employees of technical colleges may be hired above band midpoints without the approval of the Office of Human Resources of the board, provided compensation is within established hiring ranges, and also must provide for up to twenty‑five percent exceptional salary increases for classified positions for reclassifications, market equity pay adjustment, and promotions without the approval of the Office of Human Resources of the board.”

SECTION 8. Section 11‑35‑1210 of the 1976 Code, as last amended by Act 376 of 2006, is further amended by adding an appropriately numbered subsection at the end to read:

“( ) The State Board for Technical and Comprehensive Education, in coordination with the Chief Procurement Officer, may approve up to fifty thousand dollars in additional procurement authority for technical colleges, provided no material audit findings concerning procurement exist. The state board must report to the Chief Procurement Officer the new certification levels as approved.”

SECTION 9. Section 11‑35‑1550 of the 1976 Code, as last amended by Act 376 of 2006, is further amended by adding an appropriately numbered subsection at the end to read:

“( ) For technical colleges as authorized by the State Board for Technical and Comprehensive Education, small purchase amounts to which the provisions of subitem (2)(a) apply are those purchases that do not exceed seven thousand five hundred dollars. The State Board for Technical and Comprehensive Education shall approve this authority for technical colleges. In addition, if authority is approved, technical colleges shall use purchasing cards for these purchases.”

SECTION 10. Section 11‑35‑3230(1) of the 1976 Code, as last amended by Act 376 of 2006, is further amended to read:

“(1) Procurement Procedures for Certain Contracts. A technical college that secures an architect‑engineer or land surveying service which is estimated not to exceed fifty thousand dollars may award contracts by direct negotiation and selection, and any other governmental body securing architect‑engineer or land surveying service which is estimated not to exceed twenty‑five thousand dollars may award contracts by direct negotiation and selection, taking into account:

(a) the nature of the project;

(b) the proximity of the architect‑engineer or land surveying services to the project;

(c) the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;

(d) past performance; and

(e) ability to meet project budget requirements.”

SECTION 11. 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~~ must 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. For technical college services contracts authorized by the State Board for Technical and Comprehensive Education, the limits must be one million dollars for total expenditures and two hundred fifty thousand dollars for individual expenditures within the specified time periods.

(b) Architectural‑Engineering and Land Surveying Services. When architectural‑engineering and land surveying services contracts are awarded, each contract ~~shall~~ must 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. For technical college architectural‑engineering and land surveying services contracts authorized by the State Board for Technical and Comprehensive Education, the limits must be four hundred thousand dollars for total expenditures and two hundred thousand dollars for individual expenditures within the specified time periods.

(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~~ must be subject to and included in the limitations for individual and total contract amounts provided in Section 11‑35‑3230, and any regulations promulgated ~~thereunder~~. For small indefinite delivery contracts for architectural‑engineering and land surveying services authorized by the State Board for Technical and Comprehensive Education, the limits must be one hundred thousand dollars for total expenditures and fifty thousand dollars for individual expenditures within the specified time periods.”

SECTION 12. Section 11‑35‑3810 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11‑35‑3810. (A) Subject to existing provisions of law, the board shall promulgate regulations governing:

(1) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate methods designated by such regulations;

(2) the transfer of excess supplies between agencies and departments.

(B) The State Board for Technical and Comprehensive Education shall establish policies and procedures for governing the disposal of surplus property of technical colleges. Technical colleges that dispose of such property according to the established regulations shall retain any proceeds from the disposal. The State Board for Technical and Comprehensive Education shall ensure technical college compliance with disposal regulations through annual reviews and monitoring.”

SECTION 13. 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 14. 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.

(B) Notwithstanding the provisions of subsection (A), a technical college may offer educational fee waivers to not more than six percent of its student body. Fee waivers above four percent of the student body must be used for in‑state students. For purposes of this subsection, ‘in‑state student’ is defined by Section 59‑112‑20(A).

(C) State‑supported institutions of higher learning, including technical colleges, shall report annually to the Commission on Higher Education the number of waivers granted during the fiscal year and other information the commission may require.”

SECTION 15. Chapter 11, Title 1 of the 1976 Code is amended by adding:

“Section 1‑11‑57. Notwithstanding Sections 1‑11‑55 and 1‑11‑56, a technical college may enter into one or more lease agreements that total up to seventy‑five thousand dollars annually for each property or facility, subject to the approval of the State Board for Technical and Comprehensive Education. The state board must ensure compliance with applicable state law and regulation. Lease agreements are subject to the review of the Joint Bond Review Committee and the State Budget and Control Board.

SECTION 16. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑