HOUSE AMENDMENTS AMENDED

June 1, 2011

**S. 172**

Introduced by Senators Rose, Fair, Leatherman, Bright, Bryant, Campsen, Knotts, O’Dell, S. Martin, Ford and McGill

S. Printed 6/1/11--S.

Read the first time January 11, 2011.

**A** **BILL**

TO AMEND ARTICLE 2, CHAPTER 101, TITLE 59 OF THE 1976 CODE, RELATING TO PUBLIC INSTITUTIONS OF HIGHER LEARNING, BY ADDING SECTION 59‑101‑670 TO PROVIDE THAT EACH PUBLIC INSTITUTION OF HIGHER LEARNING MUST MAINTAIN A DETAILED TRANSACTION REGISTER OF ALL FUNDS EXPENDED EACH MONTH AND POST THAT REGISTER ONLINE, AND TO PROVIDE THAT EACH PUBLIC INSTITUTION OF HIGHER LEARNING MUST POST ONLINE ALL OF ITS CREDIT CARD STATEMENTS AND THE CREDIT CARD STATEMENTS FOR CREDIT CARDS ISSUED TO PUBLIC OFFICIALS AND EMPLOYEES FOR PUBLIC USE; AND TO AMEND ARTICLE 15, CHAPTER 1, TITLE 1, RELATING TO REPORTING OF EXPENDITURES OF STATE APPROPRIATED FUNDS BY STATE AGENCIES, PERSONAL DATA AND THE LIKE, BY ADDING SECTION 1‑1‑1040 TO PROVIDE THAT ALL STATE AGENCIES MUST HAVE A LINK ON THEIR INTERNET WEBSITE TO THE STATE AGENCY RESPONSIBLE FOR POSTING ON ITS INTERNET WEBSITE THE AGENCY’S, DEPARTMENT’S, OR INSTITUTION’S MONTHLY STATE PROCUREMENT CARD STATEMENTS OR MONTHLY REPORTS CONTAINING ALL OR SUBSTANTIALLY ALL THE SAME INFORMATION CONTAINED IN THE MONTHLY STATE PROCUREMENT CARD STATEMENTS.

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 2011”.

Part II

Transaction Register

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

“Section 59‑101‑670. (A) Each public institution of higher learning shall maintain a transaction register that includes a complete record of all funds expended, from whatever source for whatever purpose. The register must be prominently posted on the institution’s Internet website and made available for public viewing and downloading.

(1)(a) The register must include for each expenditure:

(i) the transaction amount;

(ii) the name of the payee;

(iii) the identification number of the transaction; and

(iv) a description of the expenditure, including the source of funds, a category title, and an object title for the expenditure.

(b) The register must include all reimbursements for expenses, but must not include an entry for salary, wages, or other compensation paid to individual employees.

(c) The register must not include a social security number.

(d) The register must be accompanied by a complete explanation of any codes or acronyms used to identify a payee or an expenditure.

(e) At the option of the public institution, the register may exclude any information that can be used to identify an individual employee or student.

(f) This section does not require the posting of any information that is not required to be disclosed under Chapter 4, Title 30.

(2) The register must be searchable and updated at least once a month. Each monthly register must be maintained on the Internet website for at least three years.

(B) Each public institution of higher learning shall be responsible for providing on its Internet website a link to the Internet website of any agency, other than the individual institution, that posts on its Internet website the institution’s monthly state procurement card statements or monthly reports containing all or substantially all of the same information contained in the monthly state procurement card statements. The link must be to the specific webpage or section on the website of the agency where the state procurement card information for the institution can be found. The information posted may not contain the state procurement card number.

(C) Any information that is expressly prohibited from public disclosure by federal or state law or regulation must be redacted from any posting required by this section.

(D) In the event any public institution of higher learning has a question or issue relating to technical aspects of complying with the requirements of this section or the disclosure of public information under this section, it shall consult with the Comptroller General’s Office, which may provide guidance to the public institution.”

B. Article 15, Chapter 1, Title 1 of the 1976 Code is amended by adding:

“Section 1‑1‑1040. All agencies, departments, and institutions of state government shall be responsible for providing on its Internet website a link to the Internet website of any agency, other than the individual agency, department, or institution, that posts on its Internet website that agency’s, department’s, or institution’s monthly state procurement card statements or monthly reports containing all or substantially all the same information contained in the monthly state procurement card statements. The link must be to the specific webpage or section on the website of the agency where the state procurement card information for the state agency, department, or institution can be found. The information posted may not contain the state procurement card number. Any information that is expressly prohibited from public disclosure by federal or state law or regulation must be redacted from any posting required by this section.”

C. This SECTION takes effect upon approval by the Governor, and public institutions of higher learning to which this SECTION applies shall have one year from the effective date of this act to comply with its requirements.

Part III

Human Resources

SECTION 3. 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 and technical colleges to represent all of the public institutions of higher learning and technical colleges to study, develop, and recommend a separate, comprehensive human resources system for the public institutions of higher learning and technical colleges. 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 and technical colleges. 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, 2012, and shall not be implemented until approved by the Budget and Control Board pursuant to Section 8‑11‑230.

Part IV

Facilities and Capital Expenditure Revisions

SECTION 4. 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 any four‑year public institution of higher learning, graduate level public institution of higher learning, or two‑year branch campus of a graduate level public institution of higher learning in this State, 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 of the committee and the Budget and Control Board, Capital Budget Office. With regard to technical colleges, the State Board for Technical and Comprehensive Education shall approve 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, and the proposal is not required to be reviewed by the committee, except that the proposal is subject to staff level review of the committee and the Budget and Control Board, Capital Budget Office.

For purposes of this chapter, with regard to all institutions of higher learning, permanent improvement project is defined as:

(1) acquisition of land, regardless of cost, with staff level review of the committee and the Budget and Control Board, Capital Budget Office, up to two hundred fifty thousand dollars;

(2) acquisition, as opposed to the construction, of buildings or other structures, regardless of cost, with staff level review of the committee and the Budget and Control Board, Capital Budget Office, up to two hundred fifty thousand dollars;

(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~~ 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; ~~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 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 by the General Assembly for capital improvements shall process a permanent improvement project, regardless of the amount.

For purposes of establishing permanent improvement projects, Clemson University Public Service Activities (Clemson‑PSA) and South Carolina State University Public Service Activities (SC State‑PSA) are subject to the provisions of this chapter.”

SECTION 5. Section 1‑11‑65 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) With approval of the Budget and Control Board, any four‑year public institution of higher learning, graduate level public institution of higher learning, two‑year branch campus of a graduate level public institution of higher learning in this State, and any technical college, upon initial approval by the State Board for Technical and Comprehensive Education, 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 the 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 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 V

Procurement Code Revisions

SECTION 6. 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:

“( ) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate Chief Procurement Officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the designated board office makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the designated board office.”

SECTION 7. Section 11‑35‑1550 of the 1976 Code, as last amended by Act 376 of 2006, is further amended to read:

“Section 11‑35‑1550. (1) Authority. The following small purchase procedures may be utilized only in conducting procurements for governmental bodies that are up to fifty thousand dollars in actual or potential value. A governmental body may conduct its own procurement up to fifty thousand dollars in actual or potential value, and a governmental body that has received procurement certification pursuant to Section 11‑35‑1210 to handle the type and estimated value of the procurement may conduct the procurement under its own authority in accordance with this code. Procurement requirements must not be artificially divided by governmental bodies so as to constitute a small purchase pursuant to this section.

(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 public institutions of higher learning, 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.

(3) All competitive procurements above ten thousand dollars 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. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.

(4) The Division of Aeronautics of the Department of Commerce may act as its own purchasing agency for all procurements of maintenance services for aircraft and these procurements may be conducted pursuant to Section 11‑35‑1550(2)(b).

(5) For a technical college 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 up to an amount not to exceed ten thousand dollars. If authority is approved, a technical college may use purchasing cards for these purchases up to the amount approved by the State Board for Technical and Comprehensive Education.”

SECTION 8. 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; however, for public institutions of higher learning, and for technical college service contracts authorized by the State Board for Technical and Comprehensive Education, these limits 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~~ 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; however, for public institutions of higher learning, and for technical college service contracts authorized by the State Board for Technical and Comprehensive Education, these limits 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~~ must be subject to Section 11‑35‑3230, and any regulations promulgated ~~thereunder~~ except that for public institutions of higher learning, and for technical college delivery contracts authorized by the State Board for Technical and Comprehensive Education, the individual and total contract limits shall be fifty thousand and one hundred fifty thousand dollars, respectively.”

SECTION 9. 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 a four‑year public institution of higher learning, a graduate level public institution of higher learning, and a two‑year branch campuse of a graduate level public institution of higher learning in this State, if the institution demonstrates a cost savings to the Office of State Procurement in regard to the multistate solicitation and procurement.”

Part VI

Miscellaneous Provisions

SECTION 10. 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 four‑year public institution of higher learning, a graduate level public institution of higher learning, a two‑year branch campus of a graduate level public institution of higher learning in this State, or technical college, 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 11. 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 12. 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~~ 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 this subsection applies annually shall 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 13. 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 adopts a change to the tuition or fees imposed on students, the change may be implemented only after a public vote with the number of trustees or commissioners voting for and against the change being counted. A majority vote shall be required to implement any change to the tuition or fees.”

SECTION 14. Chapter 11, Title 8 of the 1976 Code is amended by adding:

“Section 8‑11‑162. For purposes of Section 8‑11‑160 and the other provisions related to the authority of the Agency Head Salary Commission, Technical College Presidents are covered by the authority of the commission.”

SECTION 15. Section 1‑11‑55(2) of the 1976 Code is amended to read:

“(2) The Budget and Control Board is hereby designated as the single central broker for the leasing of real property for governmental bodies. No governmental body shall enter into any lease agreement or renew any existing lease except in accordance with the provisions of this section. However, a technical college, with the approval by the State Board for Technical and Comprehensive Education, and a public institution of higher learning, may enter into any lease agreement or renew any lease agreement up to one hundred thousand dollars annually for each property or facility.”

SECTION 16. Article 2, Chapter 53, Title 59 of the 1976 Code is amended by adding:

“Section 59‑53‑168. (A) The State Board for Technical and Comprehensive Education (state board) is granted the authority to employ and administer certain administrative efficiency provisions provided in Sections 11‑35‑1210, 11‑35‑1550(2), 11‑35‑3310, 11‑35‑4810, 1‑7‑170, 59‑101‑620, and 1‑11‑55(2) of the 1976 Code. 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 these administrative efficiency provisions to their respective institutions. The state board shall review the technical college’s request and determine the proper category for the technical college.

(B) The state board shall establish an advisory board to provide oversight and review of the provisions of this chapter. 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 17. Chapter 112, Title 59 of the 1976 Code is amended by adding:

“Section 59‑112‑140. The area commission for the Florence‑Darlington Technical College may waive the requirements of this chapter for student participants in the Caterpillar Dealer Academy operated by Florence‑Darlington Technical College.”

SECTION 18. Section 2‑77‑20(C) of the 1976 Code is amended to read:

“(C) An institution seeking to qualify as an eligible institution must submit an annual application to the commission. The commission must certify the eligibility of institutions seeking contracts pursuant to this section. ~~Of the~~ The funds appropriated for this program~~, one‑half~~ must be allocated equally among the eligible institutions. ~~The remainder of the appropriated funds shall be awarded to eligible institutions based upon merit, through criteria developed by the Commission on Higher Education.~~”

SECTION 19. Section 59‑142‑40 of the 1976 Code is amended to read:

“~~The provisions of this chapter apply to eligible students beginning in the 1996‑97 academic year.~~ Funds must be allocated in a given year to institutions using a methodology that considers state resident Pell Grant recipients so that each public institution shall receive an amount sufficient to provide a similar level of support per state resident Pell recipient when compared to tuition and required fees. However, no institution shall receive a smaller proportion of funding than would be provided under the student enrollment methodology used in years prior to fiscal year 2008‑09 ~~based on the percentage of the state full‑time enrollment enrolled at the institutions in the preceding year~~. Funds must be awarded to eligible students according to the financial need of the student.”

Part VII

Severability and Time Effective

SECTION 20. 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 21. Unless otherwise provided, this act takes effect upon approval by the Governor.

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