**South Carolina General Assembly**

120th Session, 2013-2014

**H. 4039**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Skelton, Bannister, Lucas, Harrell, H.L. Ott, Hiott, Stringer, V.S. Moss, Sandifer, Bedingfield, Hayes, Rutherford, D.C. Moss, J.R. Smith, Brannon, Horne, Anthony, Erickson, Branham, Gambrell, Limehouse, J.E. Smith, Sottile and Wells

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Companion/Similar bill(s): 535

Introduced in the House on April 25, 2013

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

Summary: Clemson University Enterprise Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/25/2013 House Introduced and read first time ([House Journal‑page 18](file:///h:\HJ%20Archive\2013\04-25-13.docx))

4/25/2013 House Referred to Committee on **Ways and Means** ([House Journal‑page 18](file:///h:\HJ%20Archive\2013\04-25-13.docx))

**VERSIONS OF THIS BILL**

[4/25/2013](file:///p:\pprever\2013-14\4039_20130425.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 11 TO CHAPTER 119, TITLE 59, ENACTING “THE CLEMSON UNIVERSITY ENTERPRISE ACT”, SO AS TO ALLOW THE BOARD OF TRUSTEES OF CLEMSON UNIVERSITY BY RESOLUTION TO ESTABLISH AN ENTERPRISE DIVISION AS PART OF CLEMSON UNIVERSITY, TO PROVIDE THAT CERTAIN ASSETS, PROGRAMS, AND OPERATIONS OF CLEMSON UNIVERSITY MAY BE TRANSFERRED TO THE ENTERPRISE DIVISION, TO PROVIDE THAT THE ENTERPRISE DIVISION IS EXEMPT FROM VARIOUS STATE LAWS GOVERNING PROCUREMENT, HUMAN RESOURCES, PERSONNEL, AND DISPOSITION OF REAL AND PERSONAL PROPERTY WITH SOME SUCH EXEMPTIONS APPLYING AUTOMATICALLY AND OTHERS REQUIRING ADDITIONAL ACTIONS BY THE BOARD OF TRUSTEES, TO PROVIDE THAT BONDS, NOTES, OR OTHER EVIDENCE OF INDEBTEDNESS MAY BE ISSUED FOR THE ENTERPRISE DIVISION AND PROVIDE AUDIT AND REPORTING REQUIREMENTS; AND TO AMEND SECTIONS 8‑11‑260, 8‑17‑370, AND 11‑35‑710, ALL AS AMENDED, AND RELATING RESPECTIVELY TO EXEMPTIONS FROM STATE PERSONNEL ADMINISTRATIONS, THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT, AND THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE, SO AS TO ADD EXEMPTIONS CONFORMING TO THE CLEMSON UNIVERSITY ENTERPRISE ACT.

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

SECTION 1. Chapter 119, Title 59 of the 1976 Code is amended by adding:

“Article 11

The Clemson University Enterprise Act

Section 59‑119‑1110. This article may be cited as ‘The Clemson University Enterprise Act’.

Section 59‑119‑1120. As used in this article:

(1) ‘Board’ means the Board of Trustees of Clemson University.

(2) ‘Capital improvement’ means the constructing, improving, equipping, renovating and/or repairing of any buildings, structure, facility, or other permanent improvement, or the cost of the acquisition of land whereon to construct or establish such building, structure, facility or other permanent improvement.

(3) ‘Clemson University’ means Clemson University, an educational institution of higher learning and an agency of the State of South Carolina.

(4) ‘Enterprise activities’ means those programs or functions primarily related to research, economic development, athletics, auxiliary, support, or public service functions with each constituting an enterprise activity.

(5) ‘Enterprise division’ means the Clemson University Enterprise Division, an operational unit of Clemson University created pursuant to this article.

(6) ‘Enterprise division personnel’ means all Clemson University employees or personnel: (a) who are allocated by the board of trustees to one or more professional schools or activities or enterprise activities, and (b) who devote a significant portion of their efforts for Clemson University supporting those professional schools or activities or enterprise activities.

(7) ‘Procurement’ has the same meaning as defined in Section 11‑35‑310(24).

(8) ‘Professional school or activities’ means a graduate level program of instruction, professional training, professional development, nondegree granting instructional programs, continuing education, training, or certification programs.

(9) ‘SCCPC’ means the South Carolina Consolidated Procurement Code, as provided in Chapter 35, Title 11 and regulations promulgated pursuant to it.

(10) ‘Transferable items’ means, collectively, the duties, responsibilities, assets, personnel, and resources of, allocated to, or supporting, a professional school or activities or an enterprise activity.

Section 59‑119‑1130. (A) The board, by resolution, may establish the Clemson University Enterprise Division.

(B) The enterprise division created pursuant to this article is a constituent part of Clemson University.

(C) The resolution creating the enterprise division must provide for the allocation to the enterprise division of the transferable items of one or more professional schools or activities and the transferable items of one or more enterprise activities as the board of trustees may consider appropriate. The board of trustees may amend the resolution from time to time to allocate transferable items to the enterprise division or to reallocate transferable items between Clemson University and the enterprise division as it considers appropriate.

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

Section 59‑119‑1140. (A) The board has the same powers, duties, and responsibilities to manage and control the enterprise division as it does with other duties, responsibilities, assets, personnel, and resources of Clemson University. Without limiting the foregoing, the board has the following additional authority with respect to the enterprise division:

(1) It may purchase, lease as lessee, accept, and otherwise acquire any real and personal property and other assets upon such terms and conditions as it considers appropriate. Contracts or agreements effecting or governing such a purchase, lease, acceptance or other acquisition are exempt from provisions of Sections 1‑11‑55 through 1‑11‑65 and Section 59‑103‑110.

(2) It may sell, convey, lease as lessor, exchange, and otherwise dispose of any real and personal property and other assets upon the terms and conditions it considers appropriate. The proceeds derived from the sale, conveyance, lease, exchange, or disposition of any real and personal property, net of transaction costs and payment of any debts secured by the sold, conveyed, leased, exchanged, or disposed property, must be remitted to the board to be used exclusively for the support of the enterprise division or Clemson University. Contracts or agreements effecting or governing the sale, conveyance, lease, exchange, or other disposition are exempt from the provisions of Sections 1‑11‑55 through 1‑11‑65, Section 10‑1‑130, and Section 59‑101‑180.

(3) It may retain the services of advisors, consultants, attorneys, accountants, and financial experts as necessary in the board’s judgment in connection with any aspect of the enterprise division and to determine their duties and to fix their compensation.

(4) It may create comprehensive personnel systems, define the duties, and fix the compensation and terms of employment of the enterprise division personnel. Enterprise division personnel are exempt from general state government personnel policies and applicable laws and state laws that generally regulate the state employee workforce except as specifically provided in this article; and the enterprise division personnel are exempt from the provisions of Article 5, Chapter 17, Title 8, the State Employee Grievance Procedure, but the board shall adopt a grievance procedure to govern the enterprise division’s personnel, and that grievance procedure must be submitted to the State Budget and Control Board. Each of the enterprise division’s personnel must be furnished a copy of the grievance procedure; and each of the enterprise division’s personnel are state employees for purposes of eligibility for participation in retirement and health insurance and other insurance plans and programs administered by the South Carolina Public Employee Benefit Authority and for purposes of the South Carolina Tort Claims Act.

(5) It may establish the management controls and staffing of enterprise division’s personnel as the board considers appropriate for the prudent conduct of the enterprise division, including the establishment of an internal audit function to monitor the activities of the enterprise division.

(6) It may enter into relationships or transactions with not‑for‑profit entities established, in whole or in part, to support the mission of Clemson University, it being understood that these support entities are not considered an entity owned or controlled by the enterprise division or Clemson University and are not subject to the laws and regulations applicable to the enterprise division. However, if a not‑for‑profit entity acquires a capital improvement on behalf of or for the use of the enterprise division and funds of the enterprise division or Clemson University are used in the acquisition, financing, construction, or current or subsequent leasing of the capital improvement, that acquisition is subject to the provisions of the enterprise division’s procurement policy that the board adopts pursuant to this article.

(7) It may issue bonds, notes, or other obligations or evidences of indebtedness in the name of Clemson University and on behalf of the enterprise division in the same manner and for the same purposes, including the purposes of the enterprise division, and utilize the provisions of the Higher Education Revenue Bond Act, as provided in Chapter 147, Title 59 and the provisions of the South Carolina Jobs‑Economic Development Fund Act, as provided in Chapter 43, Title 41.

(B) Capital improvements of the enterprise division, and the financing of these capital improvements, are exempt from the provisions of Section 1‑11‑180, Chapter 47, Title 2, and Section 59‑103‑110. The board shall provide on an annual basis a report of capital projects authorized by the board to the Governor, the Chairman of the Senate Finance Committee, and Chairman of the House Ways and Means Committee. This report must be based on the fiscal year of Clemson University and must be provided not more than one hundred eighty days after the end of the fiscal year.

(C) The board shall conduct an annual audit by independent certified public accountants selected by the board, which accountants shall review the accounts of the enterprise division and report the findings of the audit to the Governor, the Chairman of the Senate Finance Committee, and Chairman of the House Ways and Means Committee in accordance with generally accepted auditing standardsand procedures.

(D) The board may adopt for the enterprise division a procurement policy and amend the policy as it considers appropriate. After that the procurement policy is submitted to the State Budget and Control Board, every procurement of the enterprise division is exempt from Section 1‑11‑430 and the SCCPC and each such procurement instead is subject to the procurement policy adopted by the board.

Section 59‑119‑1150. The requirements imposed upon Clemson University, the board, and the enterprise division by the provisions of this article may be enforced by mandamus. However, failure to comply with requirements do not invalidate the powers granted pursuant to this article.”

SECTION 2. Section 8‑11‑260 of the 1976 Code, as last amended by Act 353 of 2008, is further amended by adding an appropriately lettered item at the end to read:

“( ) Employees of the Clemson University Enterprise Division, if such a division is established pursuant to Article 11, Chapter 119, Title 59, the Clemson University Enterprise Act.”

SECTION 3. Section 8‑17‑370 of the 1976 Code, as last amended by Act 146 of 2010, is further amended by adding an appropriately numbered item at the end to read:

“( ) Employees of the Clemson University Enterprise Division, if such a division is established pursuant to Article 11, Chapter 119, Title 59, the Clemson University Enterprise Act.”

SECTION 4. Section 11‑35‑710 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) the Clemson University Enterprise Division, if such a division is established pursuant to Article 11, Chapter 119, Title 59, the Clemson University Enterprise Act, and the board of trustees of Clemson University, pursuant to that act, has adopted a procurement policy for the division and submitted that procurement policy to the State Budget and Control Board pursuant to Section 59‑119‑1140(D).”

SECTION 5. This act takes effect July 1, 2013.

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