**South Carolina General Assembly**

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**H. 4453**

**STATUS INFORMATION**

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Summary: State Institution of Higher Education Efficiency Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/11/2019 House Introduced and read first time ([House Journal‑page 75](file:///h:\hj\20190411.docx))

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**VERSIONS OF THIS BILL**

[4/11/2019](file:///p:\pprever\2019-20\4453_20190411.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 157 TO TITLE 59 SO AS TO ENACT THE “STATE INSTITUTION OF HIGHER EDUCATION EFFICIENCY ACT”, TO ALLOW THE BOARD OF TRUSTEES OF AN INSTITUTION OF HIGHER EDUCATION TO ESTABLISH BY RESOLUTION AN AUXILIARY DIVISION AS PART OF THE COLLEGE OR UNIVERSITY, TO PROVIDE THAT CERTAIN ASSETS, PROGRAMS, AND OPERATIONS OF THE COLLEGE OR UNIVERSITY MAY BE TRANSFERRED TO THE AUXILIARY DIVISION, TO PROVIDE THAT THE AUXILIARY DIVISION IS EXEMPT FROM VARIOUS STATE LAWS GOVERNING PROCUREMENT, HUMAN RESOURCES, PERSONNEL, AND THE DISPOSITION OF REAL AND PERSONAL PROPERTY, TO PROVIDE THAT BONDS, NOTES, OR OTHER EVIDENCE OF INDEBTEDNESS MAY BE ISSUED FOR THE AUXILIARY DIVISION, AND TO PROVIDE AUDIT AND REPORTING REQUIREMENTS; TO AMEND SECTION 8‑11‑260, RELATING TO EXEMPTIONS FROM THE PROVISIONS OF STATE PERSONNEL REGULATIONS AND REQUIREMENTS, SO AS TO EXEMPT EMPLOYEES OF INSTITUTIONS TO WHICH THE HIGHER EDUCATION EFFICIENCY ACT APPLIES; TO AMEND SECTION 11‑35‑310, RELATING TO DEFINITIONS UNDER THE CONSOLIDATED PROCUREMENT CODE, SO AS TO ADD DEFINITIONS OF “RESEARCH INSTITUTION” AND “INSTITUTION”; TO AMEND SECTION 11‑35‑1210, RELATING TO CERTIFICATION FOR DIRECT PROCUREMENTS, SO AS TO FURTHER PROVIDE FOR THE MANNER IN WHICH DIRECT PROCUREMENTS MAY BE MADE; TO AMEND SECTION 11‑35‑1230, RELATING TO AUDITING AND FISCAL REPORTING, SO AS TO REVISE THE MANNER IN WHICH INSTITUTIONS OF HIGHER LEARNING ARE AUDITED; AND BY ADDING SUBARTICLE 11 TO ARTICLE 3, CHAPTER 35, TITLE 11 SO AS TO FURTHER PROVIDE FOR THE AUTHORITY OF RESEARCH INSTITUTIONS AND OTHER INSTITUTIONS TO UNDERTAKE CERTAIN ACTIONS, INCLUDING PURCHASING AND THE APPROVAL OF CONTRACTS.

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

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

“CHAPTER 157

State Institution of Higher Education Efficiency Act

Article 1

General Provisions

Section 59‑157‑110. This chapter may be cited as the ‘State Institution of Higher Education Efficiency Act’.

Section 59‑157‑120. As used in this chapter:

(1) ‘Auxiliary activities’ means programs and functions primarily related to economic development projects, research, housing, parking, food services, stores, health services, and athletics, with each constituting an auxiliary activity.

(2) ‘Auxiliary division’ means an operational unit of an institution established pursuant to this chapter to carry out auxiliary activities.

(3) ‘Board of trustees’ means the boards of trustees of the colleges and universities listed in Section 59‑101‑10.

(4) ‘Capital project’ means the constructing, improving, equipping, renovating, or repairing of a building, structure, facility, or other permanent improvement project, the acquisition of land to construct or establish a building, structure, facility, or a permanent improvement project as defined in Section 2‑47‑50.

(5) ‘Economic development projects’ means those projects as defined in Section 11‑51‑30(4).

(6) ‘Institution’ means the research universities identified in Section 11‑51‑30(5) and the nonresearch, four‑year colleges and universities described in Section 59‑103‑15(B)(2).

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

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

(9) ‘Transferable items” means, collectively, the duties, responsibilities, assets, personnel, and resources of, allocated to, or supporting an auxiliary activity.

Article 3

Auxiliary Divisions

Section 59‑157‑130. (A) A board of trustees, by resolution, may establish one or more auxiliary divisions for its institution.

(B) A division created pursuant to this chapter is a constituent part of its institution.

(C) The resolution creating the division must assign auxiliary activities and the transferable items to that division and may amend that assignment from time to time as the board of trustees considers appropriate.

(D) The division and other nondivision activities of the institution may share support resources and allocate cost for shared resources in an appropriate and reasonable manner.

Section 59‑157‑140. (A) The board of trustees has the same powers, duties, and responsibilities to manage and control the division as it does with other nondivision activities of the institution.

(B) Contracts or agreements entered into for division activities, including capital projects for the division, and the financing of those capital projects, are exempt from the provisions of Chapter 11, Title 1; Section 10‑1‑130, Chapter 47, Title 2; and Chapter 103, Title 59, and no approval other than board of trustees approval is required for bonds issued pursuant to Chapter 147, Title 59; Article 9, Chapter 119, Title 59; and Act 518 of 1980.

(C) Auxiliary division capital projects which are funded in whole or in part by state institution bond funds, state infrastructure bond funds, or lease-purchase funds, where the cost is more than five million dollars for research universities as identified in Section 11‑51‑30(5) and more than two million dollars for all other institutions as described in Section 59‑103‑15(B)(2), must be submitted to the Joint Bond Review Committee, after full architecture and engineering design work is completed, but prior to execution of a construction contract, for review and comment, and after that to the Executive Budget Office for publication upon approval.

(D) The board of trustees shall provide on an annual basis a fiscal year report of property acquired or disposed of and any capital project of the auxiliary division commenced under the authority granted in this act to the Governor, the Senate Finance Committee, and the House Ways and Means Committee. This report must be provided by September thirtieth of each fiscal year.

(E) The board may retain for the support of the division the services of advisors, consultants, attorneys, accountants, and financial experts, setting their duties and compensation without the necessity of additional approval.

Article 5

Institution Provisions and Projects

Section 59‑157‑150. Institutions:

(1) may create comprehensive personnel systems, define the duties, and fix the compensation and terms of employment of its employees and 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 personnel are exempt from the provisions of Article 5, Chapter 17, Title 8, the State Employee Grievance Procedure, but only if the governing board has adopted a grievance procedure and that grievance procedure has been submitted to the Department of Administration. Personnel are state employees for purposes of eligibility for participation in retirement, 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;

(2) are exempt from the requirements of Section 2‑47‑40(B); and

(3) for permanent improvement projects where the cost is less than five million dollars for research universities as identified in Section 11‑51‑30(5), and less than two million dollars for all other institutions as described in Section 59‑103‑15(B)(2), are exempt from the requirements of Section 2‑47‑50.

Section 59‑157‑160. The board of trustees shall provide on an annual basis a fiscal year report of property acquired or disposed of and any capital project where the cost is less than five million dollars for the research universities and less than two million dollars for all other institutions commenced under the authority granted in this chapter to the Governor, the Senate Finance Committee, and the House Ways and Means Committee. The report must be submitted annually by September thirtieth.

Section 59‑157‑170. This act may not be construed as a waiver of sovereign immunity with respect to the institution including its auxiliary division. The tort liability for the institution including its auxiliary division is governed by the South Carolina Tort Claims Act.”

SECTION 2. Section 8‑11‑260 of the 1976 Code is amended by adding an appropriately lettered item at the end to read:

“( ) employees of institutions as defined in Section 59‑157‑120(6).”

SECTION 3. Section 11‑35‑310 of the 1976 Code is amended by adding appropriately numbered a subsections to read:

“( ) ‘Institution’ means The Citadel, Coastal Carolina University, College of Charleston, Francis Marion University, Lander University, South Carolina State University, Winthrop University, or comprehensive and regional institutions of the University of South Carolina system, except Columbia.

( ) ‘Research university’ means Clemson University, The Medical University of South Carolina, or the University of South Carolina Columbia.”

SECTION 4. Section 11‑35‑1210 of the 1976 Code is amended to read:

“Section 11‑35‑1210. (1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. In an amount up to two‑hundred fifty thousand dollars in actual or potential value, an institution may make direct procurements not under term contracts. In any amount in actual or potential value, a research university may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The ~~designated board office~~ Division of Procurement Services shall review the respective governmental body’s internal procurement operation, ~~shall~~ certify in writing that it is consistent with the provisions of this code and the ensuing regulations, and recommend to the board those dollar limits for the respective governmental body’s procurement not under term contract; and

(b) the Director of the Division of Procurement Services may authorize an individual institution to make direct procurements not under term contracts in an amount up to seven hundred fifty thousand dollars; provided, however, that the director may not increase an institution’s authority more than two hundred thousand dollars in a fiscal year, and may not grant an increase until after the division has conducted a procurement audit of the institution’s entire internal procurement operation and concluded that the system’s internal controls are adequate to ensure compliance with the requirements of this code and the ensuing regulations. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all of these authorizations at its next regularly scheduled public meeting.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs; and

(c) obtaining of the best prices for value received.

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.

(4) 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~~ Division of Procurement Services 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~~ Division of Procurement Services.”

SECTION 5. Section 11‑35‑1230 of the 1976 Code is amended by adding appropriately numbered subsections to read:

“( ) Consistent with subsection (1), the auditors from the Division of Procurement Services shall audit each institution at least every twenty‑four months.

( ) In all audits by the Division of Procurement Services, the auditors shall have access to the records and facilities of every governmental body during that governmental body’s operating hours.”

SECTION 6. Article 3, Chapter 35, Title 11 of the 1976 Code is amended to read:

“Subarticle 11

Institutions

Section 11‑35‑1300. (A) Research universities are authorized:

(1) notwithstanding Section 11‑35‑3010(3), to determine the applicable project delivery method;

(2) notwithstanding Section 11‑35‑3023, to approve and use prequalification without supervision;

(3) notwithstanding Section 11‑35‑2030(4), to approve contracts with a maximum potential duration of up to seven years; and

(4) to purchase commercially available off‑the‑shelf products not in excess of five hundred thousand dollars using the procedures in Section 11‑35‑1550(2)(b).

(B) Section 11‑35‑3024(4) does not apply to research universities.

(C) Section 11‑35‑450 does not apply to institutions.”

SECTION 7. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded on that provision of law, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision expressly provides. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 8. This act takes effect upon approval by the Governor.

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