~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 24, 2021

**S. 376**

Introduced by Senators Talley, Hembree and Setzler

S. Printed 2/24/21--S. [SEC 2/25/21 11:51 AM]

Read the first time January 12, 2021.

**THE COMMITTEE ON EDUCATION**

To whom was referred a Bill (S. 376) to enact the “State Institution of Higher Education Efficiency Act”; to amend Title 59 of the 1976 Code, relating to education, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. This act must be known and may be cited as the “State Institution of Higher Education Efficiency Act”.

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

“CHAPTER 157

Efficiency of State Institutions of Higher Education

Section 59‑157‑10. As used in this chapter:

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

(2) ‘Capital project’ means the construction, improvement, equipment, renovation, or repair of any buildings, structure, facility, or other permanent improvement project; the acquisition of land to construct or establish a building, structure, or facility; or a permanent improvement project as defined in Section 2‑47‑50.

(3) ‘Institution’ means a research university identified in Section 11‑51‑30(5) or a nonresearch, four‑year college or university described in Section 59‑103‑15(B)(2), (B)(3), and (B)(4).

Section 59‑157‑30. (A) Notwithstanding any other provision of the law, any permanent improvement project, as defined in Section 2‑47‑50, that costs more than five million dollars for research universities as identified in Section 11‑51‑30(5) and more than two and one‑half million dollars for all other institutions as described in Section 59‑103‑15(B)(2), (B)(3), and (B)(4), that requires the use of lease‑purchase agreements, state institution bond funds, capital improvement bond funds, capital reserve funds, state general‑appropriated funds, or state infrastructure bond funds or student tuition and fee funds for its funding must be submitted to the Commission on Higher Education and the Joint Bond Review Committee for review and the State Fiscal Accountability Authority for approval after full architecture and engineering design work is completed but prior to execution of a construction contract, and thereafter to the Executive Budget Office for publication upon approval.

(B) The Chairman of the Joint Bond Review Committee may, on behalf of the committee, request to review and comment on any other permanent improvement project, as defined in Section 2‑47‑50, that costs more than five million dollars for research universities as identified in Section 11‑51‑30(5) and more than two and one‑half million dollars for all other institutions as described in Section 59‑103‑15(B)(2), (B)(3), and (B)(4).

Section 59‑157‑40. Institutions are exempt from the requirements of Section 2‑47‑50 for permanent improvement projects that cost less than five million dollars for research universities as identified in Section 11‑51‑30(5) and less than two and one‑half million dollars for all other institutions as described in Section 59‑103‑15(B)(2), (B)(3), and (B)(4). However, such projects that exceed one million dollars are subject to Joint Bond Review Committee staff review, and may be referred to the committee if staff, after consultation with the chairman, determines necessary. Nothing in this section may be construed to approve such a project without an institution’s governing board having first voted to approve the project in a public session. Institutions shall provide a report of projects approved by their governing boards pursuant to this subsection to the Chairman of the Commission on Higher Education, the Joint Bond Review Committee, and the State Fiscal Accountability Authority by September thirtieth of each year

Section 59‑157‑50. The board of trustees shall provide on an annual basis a fiscal year report of property acquired and any capital projects which cost less than five million dollars for research universities and less than two and one‑half million dollars for all other institutions, commenced under the authority granted in this chapter, to the Governor, the Senate Finance Committee, and the House of Representatives Ways and Means Committee. The report must be submitted annually by September thirtieth.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary, permanent, civil, or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. 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 4. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

GREG HEMBREE for Committee.

**A** **BILL**

TO ENACT THE “STATE INSTITUTION OF HIGHER EDUCATION EFFICIENCY ACT”; TO AMEND TITLE 59 OF THE 1976 CODE, RELATING TO EDUCATION, BY ADDING CHAPTER 157, 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 THE AUXILIARY DIVISION IS EXEMPT FROM VARIOUS STATE LAWS, TO REQUIRE THAT CERTAIN PERMANENT IMPROVEMENT PROJECTS MUST BE SUBMITTED TO THE JOINT BOND REVIEW COMMITTEE AND THE EXECUTIVE BUDGET OFFICE, TO PROVIDE THAT A BOARD OF TRUSTEES MAY ADOPT FOR AN AUXILIARY DIVISION A PROCUREMENT POLICY, AND TO PROVIDE REPORTING REQUIREMENTS; TO AMEND SECTION 8‑11‑260 OF THE 1976 CODE, RELATING TO EXEMPTIONS FROM CERTAIN REQUIREMENTS FOR STATE OFFICERS AND EMPLOYEES, TO PROVIDE THAT EMPLOYEES OF CERTAIN RESEARCH UNIVERSITIES AND NON-RESEARCH, FOUR‑YEAR COLLEGES AND UNIVERSITIES ARE EXEMPT; TO AMEND SECTION 11-35-710(A)(6) OF THE 1976 CODE, RELATING TO EXEMPTIONS FROM THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE, TO PROVIDE THAT THE STATE FISCAL ACCOUNTABILITY AUTHORITY MAY EXEMPT PRIVATE GIFTS, AUXILIARY DIVISIONS, AND OTHER SALES AND SERVICES; AND TO DEFINE NECESSARY TERMS.

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

SECTION 1. This act must be known and may be cited as the “State Institution of Higher Education Efficiency Act”.

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

“CHAPTER 157

Efficiency of State Institutions of Higher Education

Section 59‑157‑10. As used in this chapter:

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

(2) ‘Auxiliary division’ or ‘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 construction, improvement, equipment, renovation, or repair of any buildings, structure, facility, or other permanent improvement project; the acquisition of land to construct or establish a building, structure, or facility; or a permanent improvement project as defined in Section 2‑47‑50.

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

(6) ‘Institution’ means a research university identified in Section 11‑51‑30(5) or a non-research, four‑year college or university described in Section 59‑103‑15(B)(2).

(7) ‘Procurement’ has the same meaning as in Section 11‑35‑310(25).

(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.

Section 59‑157‑20. (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) A resolution creating a division must assign auxiliary activities and transferable items to that division and may amend that assignment from time to time as the board of trustees considers appropriate.

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

Section 59‑157‑30. (A) A board of trustees has the same powers, duties, and responsibilities to manage and control a division as it does with other non-division 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.

(C) Notwithstanding any other provision of this chapter, any permanent improvement project, as defined in Section 2‑47‑50, that costs 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) and that requires the use of lease‑purchase agreements, state institution bond funds, capital improvement bond funds, capital reserve funds, state general-appropriated funds, or state infrastructure bond funds for its funding 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 thereafter to the Executive Budget Office for publication upon approval.

(D) The Chairman of the Joint Bond Review Committee may, on behalf of the committee, request to review and comment on any other permanent improvement project, as defined in Section 2‑47‑50, that costs 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).

(E) A 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 of Representatives Ways and Means Committee. This report must be provided by September thirtieth of each fiscal year.

(F) Division and non-division purposes are allowed for a division capital project as long as the primary purpose of that project is to support the division’s activities.

(G) A board of trustees may adopt for an auxiliary division a procurement policy and amend the policy as it considers appropriate. Upon adoption, the procurement policy must be submitted to the State Fiscal Accountability Authority for approval. Upon approval of the procurement policy by the State Fiscal Accountability Authority, every procurement of the auxiliary division is exempt from Section 1‑11‑430 and the SCCPC and each such procurement is instead subject to the procurement policy adopted by the board of trustees.

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

Section 59‑157‑40. Institutions:

(1) may create comprehensive personnel systems, define the duties, and fix the compensation and terms of employment of their 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. Personnel are exempt from the provisions of Article 5, Chapter 17, Title 8, the State Employee Grievance Procedure, but only if the board of trustees 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 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;

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

(3) for permanent improvement projects that cost 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 59‑157‑50. The board of trustees shall provide on an annual basis a fiscal year report of property acquired or disposed of and any capital project that cost less than five million dollars for 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 of Representatives Ways and Means Committee. The report must be submitted annually by September thirtieth.

Section 59‑157‑60. This chapter may not be construed as a waiver of sovereign immunity with respect to an institution including its auxiliary division. The tort liability for an institution including its auxiliary division is governed by the South Carolina Tort Claims Act.”

SECTION 3. Section 8‑11‑260 of the 1976 Code is amended by adding an appropriately lettered new item at the end to read:

“( ) employees of institutions as defined in Section 59‑157‑10(6).”

SECTION 4. Section 11‑35‑710(A)(6) of the 1976 Code is amended to read:

“(6) expenditure of funds at state institutions of higher learning derived wholly from athletic or other student contests~~,~~; from the activities of student organizations~~,~~; ~~and~~ from the operation of canteens and bookstores~~,~~; ~~except as the funds are used for the procurement of construction, architect‑engineer, construction‑management, and land surveying services~~ and from private gifts, auxiliary divisions, and other sales and services, not including any funds derived from activities financed in part or in whole by student tuition or state general funds;”

SECTION 5. The repeal or amendment by this act of any law, whether temporary, permanent, civil, or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. 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 6. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑