

# SENATE FINANCE COMMITTEE BILL SUMMARY

Bill No. **S. 535**

Subject: **The Clemson University Enterprise Act**

Primary Sponsor: Sen.'s Peeler, Alexander, L. Martin, McGill et. al

Date Introduced: March 19, 2013

SFC Analyst: Parks

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## BILL TITLE

S. 535 -- Senators Peeler, Alexander, L. Martin, McGill, Coleman, Jackson, Campbell, Setzler, Cromer, O'Dell, Sheheen, Turner, Fair, Ford, Nicholson, Hayes and Pinckney: 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.

CODE SECTION      §59-119; 8-11; 8-17; 11-35

## SUMMARY

This bill would permit the Clemson University Board of Trustee's (BOT) to create, by resolution, the "Clemson University Enterprise Division" as an operational unit of Clemson University.

In doing so, this bill would grant the Clemson University BOT additional authorities (as described in greater detail below) over and above its currently held authority regarding the University as compared to current law and practice, and specifically gives unilateral authority to the BOT to transfer the:

1) Duties, 2) Responsibilities, 3) Assets (physical and fiscal), 4) Personnel, and 5) Resources of various programs or functions of the University including:

A) Research, B) Economic Development, C) Athletics, D) Auxiliary (including Housing, Dining, Parking, etc.), E) Support, and F) PSA, to a newly renamed "Enterprise Division" of the University, provided that those programs or functions, at minimum, support either a:

1) "professional school" (graduate level program of instruction, professional training, and/or professional development) or one or more of certain 2) "activities" (non-degree granting instructional programs, continuing education (including online education), training and/or certificate programs).

Regarding personnel, in order to be allocated to the Enterprise by the BOT, the bill requires that personnel "...devote a significant portion of their efforts for Clemson..." in support of a professional school or "activity" as described above. The bill does not quantify or define what entails "significant".

The bill permits the BOT discretion to transfer none, some, or all of the eligible programs or functions (and none, some, or all of associated personnel and/or assets as described above) to the Enterprise all at once, or in stages (over time), at the discretion of the BOT.

Generally, the bill would exempt Clemson's Enterprise from the following State laws and approval processes (specifically in the areas of: A) capital planning and construction (including real property transactions, B) procurement, and C) human resources, as follows:

#### A) Capital Planning and Construction:

##### A) Real Property Transactions - Purchase/Lease/Acquisition

###### Exempts Clemson Enterprise from:

- 1-11-55 through 1-11-65: Exempts the Enterprise from the required JBRC and BCB approval process (which, per statute, is a process designed to "ensure that funds authorized and appropriated for rent are used in the most efficient manner"), placing the final approval of all purchases, leases and acquisitions of real property at the BOT level instead, and based on "terms and conditions" entered into by the BOT alone.
- 1-11-65 Specifically: Exempts the Enterprise from the following requirement of all state agencies and institutions: "(A) All transactions involving real property, made for or by any governmental bodies, excluding political subdivisions of the State, must be approved by and recorded with the State Budget and Control Board. Upon approval of the transaction by the Budget and Control Board, there must be recorded simultaneously with the deed, a certificate of acceptance, which acknowledges the board's approval of the transaction. The county recording authority cannot accept for recording any deed not accompanied by a certificate of acceptance."
- Note: Current law requires agencies to submit for review by BCB staff (with copies sent to W&Ms and SFC) a "multiyear financial plan" before any new lease is entered into.
- Note: Current law requires BCB approval for all leases but only requires JBRC review of leases when valued at more than \$1M over a 5 year period.
- 59-103-110: Exempts the Enterprise from obtaining CHE approval for new construction:

Note: As introduced, the bill does not contain a specific reporting requirement to the Governor or General Assembly regarding these transactions to be exempted.

##### B) Real Property Transactions - Disposition and Easements

###### Exempts Clemson Enterprise from:

- 1-11-55 through 1-11-65: Exempts the Enterprise from obtaining BCB approval for the sale/disposition of property; including surplus property, leaving the final disposition of property at the discretion of the BOT.
- 59-101-180: Related to determination of and/or "surplusing" of property, exempts the Enterprise from the requirement that if property was acquired by state appropriations, formula and/or capital bond funds, that the proceeds of the sale revert to the general fund of the State, thereby allowing the University to retain the proceeds of the sale.
- 10-1-130: Exempts the Enterprise from the requirement of current law regarding easements; specifically that a university may only grant an easement after ok by the BCB, and only then when the BCB determines that "...such easements will not materially impair the utility of the property or damage it and, when a consideration is paid therefore, any such amounts shall be placed in the State Treasury to the credit of the institution or agency having control of the property involved."

Note: As introduced, the bill does not contain a specific reporting requirement to the Governor or General Assembly regarding these transactions to be exempted.

### C) Capital Planning and Construction (PIP process):

#### Exempts Clemson Enterprise from:

- 1-11-180: Exempts the Enterprise from being subject to BCB review and approval of new construction and improvements to existing facilities as it relates to the (as listed in 1-11-180): "(1) survey, appraisal, examination, and inspection of the condition of state property to determine what is necessary to protect state property against fire or deterioration and to conserve the use of the property for state purposes; (2) approval of the destruction or disposal of state agency records; (3) submission and approval of plans and specifications for permanent improvements by a state department, agency, or institution before a contract is awarded for the permanent improvement; (4) approval of blanket bonds for a state department, agency, or institution including bonds for state officials or personnel. However, the form and execution of blanket bonds must be approved by the Attorney General; (5) contract to develop an energy utilization management system for state facilities under its control and to assist other agencies and departments in establishing similar programs. However, this does not authorize capital expenditures."
- Title 2, Chapter 47: Exempts the Enterprise from JBRC oversight and approval of all phases of the PIP process including A&E (Phase 1), cost overruns, acquisitions of land and buildings, work on existing facilities, lease purchases, and equipment purchases.

Note: As introduced, the bill requires Clemson to report otherwise exempted PIP activity to W&Ms and SFC no later than 180 days after the close of the fiscal year in which the activity has already occurred.

### C1) - Bonding\*

\*Not an exemption, but an allowance: The bill allows the Enterprise to issue bonds in the same manner and for the same purposes as Clemson, by utilizing the provisions of the Higher Education Revenue Bond Act, primarily related to acquisition, construction and/or renovation of facilities of auxiliary or revenue producing activities where the revenue of the auxiliary or activity "backs" (pays for) the bonds. The BCB would still have to approve issuing the bonds.

### B) Procurement:

#### This bill exempts the Clemson Enterprise from:

- 11-35 ("The SC Consolidated Procurement Code"). Exempts Enterprise.
- The State Procurement Code covers three major areas 1) construction and related services, 2) Information Technology and 3) supplies and services. This bill exempts the Clemson Enterprise from the Procurement Code (and therefore from BCB oversight, resting final procurement authority with Clemson's Chief Procurement Officer) in each of these areas and from the specific BCB oversight components, including regarding in-state and/or other vendor, small business, minority preferences:
  - 1) State Engineer (who acts as chief procurement officer for construction). The SE oversees state agency construction and related professional services when over certain "certification levels".
  - 2) Information Technology Management (who acts as the chief procurement officer for IT). The IT office oversees procurements for data processing, telecommunications, office systems, hardware, etc.
  - 3) State Procurement Office (headed by the State Procurement Officer). Oversees all procurement except construction and IT.
  - 4) Audit: This office conducts period audits of each agencies procurement operations to ensure compliance with law and regulation.
- 1-11-430: Exempts the Clemson Enterprise from the following current prohibition regarding acquisition and utilization of telecommunications services: "The State Budget and Control Board shall secure all telecommunications equipment and services for the state government enterprise under terms it considers

suitable and coordinate the supply of the equipment and services for state government use. No entity of state government may enter into an agreement or renew an existing agreement for telecommunications services unless approved by the board."

Note: See Tab \_ for a more detailed summary of the functions of the BCB's procurement division.

Note: As introduced, the bill does not require the Enterprise to adopt its own procurement policy, nor does it require BCB approval before such a policy were to take effect.\* The bill does permit ("may adopt") the Enterprise to adopt its own procurement policy and submit it to the BCB as information only. \*However, the exemption from State procurement does not take effect until after an alternate policy has been submitted to the BCB.

Note: As introduced, the bill does not require a periodic "audit" of procurements of the Enterprise. The bill does require an annual financial audit by a CPA firm of the finances of the Enterprise.

### C) Human Resources:

This bill exempts the Clemson Enterprise from:

- 8-11 and 8-17: The Enterprise is exempt from State Human Resource and Employee Grievance laws and regulations. Per the bill, Enterprise personnel would remain eligible for state health and retirement benefits, and would be covered by the SC Tort Claims Act.

Note: As introduced, the bill requires the Enterprise to create a separate grievance procedure for Enterprise personnel. The procedure must be submitted to (but does not have to be approved by) the BCB.

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## Notes on the "2011 SC Higher Education Efficiency and Administrative Policies Act"

### A) Capital Planning and Construction:

The 2011 "SC Higher Education Efficiency and Administrative Policies Act" (HEEAP) exempted colleges and universities from BCB approval for all leases valued at less than \$100,000. See Tabs \_ and \_ for copies of the HEEAP Act and summary.

Note: Recent Law Change/Relief - The 2011 "SC Higher Education Efficiency and Administrative Policies Act" (HEEAP) provides the following relief relative to JBRC and the CPIP process:

- 1) With BCB/JBRC staff level review, allows colleges to acquire land and buildings valued at \$250,000 or less without triggering CHE/JBRC/BCB process,
- 2) Increased the PIP threshold for colleges for work on existing buildings from \$500,000 to \$1M
- 3) Increased the PIP threshold for colleges for lease purchases from \$500,000 to \$1M
- 4) Increased the PIP threshold for colleges for equipment purchases from \$500,000 to \$1M

See Tabs \_ and \_ for copies of the HEEAP Act and summary

Note that S. 172 also provided the relief to Clemson's (and SC State's) "PSA" operations as well.

### B) Procurement:

The 2011 "SC Higher Education Efficiency and Administrative Policies Act" (HEEAP) provides the following relief relative to procurement processes for colleges and universities:

- 1) Raised the "small purchase" and "p-card" limit from \$2,500 to \$10,000

- 2) Indefinite Delivery Contracts - Construction: Increased the thresholds for construction services from a per project limit of \$150,000 (cap of \$750,000 over 2 years) to \$250,000 per project/\$1,000,000 over 2 years.
- 3) Indefinite Delivery Contracts - A&E/Land Surveying: Increased the thresholds from a per project limit of \$100,000 (cap of \$300,000 over 2 years) to \$200,000 per project/\$500,000 over 2 years.
- 4) Indefinite Delivery Contracts - Small A&E: Increased the thresholds from a per project limit of \$25,000 (cap of \$75,000 over 2 years) to \$50,000 per project/\$150,000 over 2 years.
- 5) Multi-state Cooperative Contracts: Exempts colleges from posting a 30 day notice through central advertising of pending multi-state solicitation, provided a cost savings is demonstrated to the Office of State Procurement and provided that products will ultimately be distributed to the college through SC vendors.

See Tabs \_ and \_ for copies of the HEEAP Act and summary

#### C) Human Resources:

The 2011 "SC Higher Education Efficiency and Administrative Policies Act" (HEEAP) provided for a separate and distinct HR system to be created to govern colleges and universities and their personnel, pending approval by the BCB. The current draft recommendations for the alternate system were submitted to the BCB on January 15, 2013 and will be considered for approval on a future BCB agenda.

See Tab \_ and for a summary of the alternate HR policies and procedures recommended for colleges and universities pending before the BCB.

#### FISCAL/REVENUE IMPACT

General Funds:	PENDING
Federal/Other Funds:	PENDING

#### SUBCOMMITTEE RECOMMENDATION

N/A

#### ADDITIONAL NOTES

3/19/13 - SENATE, Introduced, Referred to Finance Committee