

**REQUEST FOR LEGISLATIVE  
REGULATORY RELIEF**

**REPORT**

**to the**

**SOUTH CAROLINA COUNCIL OF PRESIDENTS**

**from the**

**TASK FORCE FOR REGULATORY RELIEF**

**December 4, 2001**

## THE REGULATORY RELIEF TASK FORCE

### INTRODUCTION

The South Carolina Council of Presidents, working cooperatively with the South Carolina Commission on Higher Education, appointed the Task Force to identify issues and practices which add to the burden of higher education institutions. At a time when significant budget reductions have already impacted the effectiveness of higher education, and with a bleak outlook for financial support from state appropriations for the next year, the Task Force's charge was to identify issues and develop specific recommendations for change which would not necessarily be costly to the state, but could result in improved effectiveness of the use of the institutions' resources. The emphasis of this report is on this improved effectiveness for mission-focused activities rather than on cost savings to the institution.

The members of the Task Force, and others throughout the higher education institutions, have worked and contributed to gathering information regarding needs for regulatory relief. Our committee discussed a number of issues which we identified, and which were suggested to us. There are 15 issues on the attached list for which we have developed specific recommendations for change. After discussion, the Task Force elected not to pursue further a few of the initial suggestions. Also, it became evident that more than one-half of the issues will actually only require changes with agency policies and procedures, rather than changes in legislation. The master list categorizes the issues by "A" for agency or "L" for legislative issues.

We are pleased to submit this report for your consideration and use.

#### ***Regulatory Relief Task Force***

***Sally M. Horner, Chairman, Executive Vice President, Coastal Carolina University***

***Robert Connelly, Vice Chancellor for Business Affairs, USC Spartanburg***

***Gary Hanson, Vice President for Administration, Francis Marion University***

***Richard W. Kelly, Vice President & Chief Financial Officer, University of South Carolina***

***Scott A. Ludlow, Chief Business Officer, Clemson University***

***Don Peterson, Associate Executive Director of Finance/Information Resource***

***Management, S.C. State Board for Technical and Comprehensive Education***

***Ronald Rhames, Vice President for Business Affairs, Midlands Technical College***

***John C. Sutusky, Vice President for Finance and Administration, Medical University of South Carolina***

***Dan L. Terhune, President, Spartanburg Technical College***

## Master List of Issues Identified for Request for Regulatory Relief

*Some of the issues would require changes in policies and procedures by one or more state agencies. These are identified with the letter "A". Others will require changes in legislation, and are identified by the letter "L". Agency issues are further identified, where applicable, by the initials of the appropriate agency. If issues cannot be resolved through agency policies and procedures, the Council of Presidents may choose to also propose these issues to the legislation for action.*

	<u>Issue</u>	<u>Page</u>
<i>A</i> <i>OIR</i>	1. <b>Telecommunications Lines and Services:</b> Allow institutions to negotiate directly with vendors for telecommunication services, allowing purchases from a competitive vendor who offers a price at least ten percent lower than a state contract price, consistent with other state procurement regulations.	4
<i>A</i> <i>B&amp;C B</i>	2. <b>Telecommunications Towers:</b> Change the current arrangement of Budget and Control Board coordination of tower and antenna operations so that the institution housing the tower receives revenue as incentive.	6
<i>A</i> <i>B&amp;C B</i>	3. <b>Annual Information Technology (IT) Budget Plan:</b> Exclude higher education from the annual reporting and limit higher education reporting to administrative applications through an ad hoc process.	7
<i>L</i>	4. <b>Procurement Cap Increases:</b> For procurement, leases and lease purchases, raise current caps of \$1,500, \$5,000, \$10,000, and \$25,000 to \$5,000, \$10,000, \$25,000, and \$50,000, respectively.	9
<i>L</i>	5. <b>Procurement Definitions:</b> Change the definitions for the terms of certain on-campus permanent improvement projects.	11
<i>A</i> <i>B&amp;C B</i> <i>JBRC</i> <i>CHE</i>	6. <b>Procurement Cap Increases:</b> Raise the approval limits for certain on-campus permanent improvement projects by the South Carolina Commission on Higher Education, the Joint Bond Review Committee, and the Budget and Control Board; from \$250,000 to \$500,000.	23

## MASTER LIST OF ISSUES (continued)

	<u>Issue</u>	<u>Page</u>
<i>L</i> <i>A</i> <i>B&amp;C B</i>	7. <b>Private Development of Facilities on State Land:</b> Allow private development of facilities on land owned by institutions of higher education to offer long-term leases to meet space needs which are directly related to the mission of the institution.	25
<i>A</i> <i>MMO</i>	8. <b>Federal Government Contracts:</b> Allow institutions to purchase from federal government approved contract lists, in the same manner that they are now allowed to purchase from the state government approved contract list.	26
<i>A</i> <i>State Auditor's Office</i>	9. <b>Annual Audits:</b> Allow individual institutions of higher education to negotiate for annual audits to be performed by a firm selected from a list of reputable auditing firms, pre-approved by the state auditor's office. This would place the peer review process with the selected auditor rather than State Auditor's Office, improving the use of time and resources for both the State Auditor's Office and the contracting auditing firm.	28
<i>A</i> <i>CHE</i>	10. <b>Single Audit Program for State Aid Funds:</b> Adopt a statewide single audit program rather than conducting audits of individual institutions by CHE for state aid programs.	30
<i>A</i> <i>B&amp;C B</i>	11. <b>Disposal of Surplus Property:</b> Allow disposal at the local level rather than require that surplus be transported to Columbia.	31
<i>L</i>	12. <b>Election Day Closing:</b> Exempt higher education institutions from the required closing on general election day.	34
<i>L</i> <i>A</i> <i>B&amp;C B</i> <i>HR</i>	13. <b>Personnel FTE Slot Authorizations:</b> Relieve constraints on Budget and Control Board management that limit the number of personnel positions, delegate to Higher Education Agencies authority to balance state-funded and other-funded positions within the total FTE authorized by the Budget & Control Board, and allow the Higher Education Agencies, as lump sum agencies, to manage other-funded FTE slots within the constraints of their operating budgets.	35
<i>L</i>	14. <b>Repeal a number of items in Act 255 and 629 for which reporting requirements are duplicated under Act 359, Performance-Based Funding.</b>	37
<i>L</i>	15. <b>Discontinue the requirement of Attorney General approval for retaining Associate Counsel.</b>	44

**TELECOMMUNICATIONS LINES AND SERVICES:  
Individual Institutions Allowed to Negotiate Directly with Vendors**

**ACTION:** Seek the assistance of OIR in modifying policies and procedures to allow state agencies to negotiate telecommunication services directly with vendors in the same manner of other provisions of the procurement code, allowing purchases from a competitive vendor who offers a price at least ten percent lower than a state contract price.

**REFERENCE:** Current policies/procedures.

Currently, all contracts for telecommunications services and equipment must go through, or have approval from, the Office of Information Resources (OIR). Many services, such as telephone long distance and wide area data networks, are mandated to be procured through OIR.

**RATIONALE:**

Telecommunications services have greatly evolved since divestiture of the industry in the early 1980s, and continue to rapidly change with emerging and converging technologies, creating a highly competitive market with high service and quality expectations. Larger state agencies, in particular, state universities that have competently staffed information (IT) departments, are often best positioned to negotiate contracts that best serve their institutional requirements.

In general, the contracts and services procured through OIR work well for the State, particularly for the agencies too small to have an IT department and the agencies that are clustered in Columbia or near main fiber arteries such as Greenville, Spartanburg, and Charleston. The close proximity to central equipment and the combined usage volume allows the state to negotiate competitive rates, although often, better rates are available. The geographic location of many of the State's higher education institutions often causes higher costs to attach back to existing state facilities, such as OIR's ATM network. In some cases, universities could contract with local telecommunications service providers, significantly increase their bandwidth and decrease costs by 40-50 percent, but they are required to procure services through the state contracts arranged by OIR.

In addition, larger institutions are in a better position, because of their existing staff in telecommunications and networking support, to support certain functions of telecommunications services provided by OIR. However, some fees for services provided by OIR are included in the port rates whether or not the university deems that the service is valuable and necessary (such as digital set maintenance), or whether it is something they can do or already do themselves (such as managing adds, moves, and changes).

Item 1 (continued)**RECOMMENDATIONS:**

Amend the procurement code to allow state agencies to negotiate telecommunication services directly with vendors. Specifically, allow state agencies to purchase telecommunications goods and services, currently only available through OIR or OIR's contracted vendor, in much the same manner as the State's General Provisions of the procurement code section 11-35-310, which allows a governmental body that is offered goods or services at a price that is at least ten percent less than the term contract price for the same goods or service to purchase from the vendor offering the lower price. In all cases, OIR should have the ability to respond as a competitive vendor.

Restructure OIR's existing service offerings to provide larger institutions that have the ability to support themselves, more flexibility in determining which services they need and want to purchase through OIR. Contractual commitments and maintenance agreements could then be developed with OIR for annual budgeting purposes, but institutions could benefit from greater control over their expenses and fitting those expenses to their institutional needs.

**BENEFITS/OUTCOMES:**

- Lower telecommunication costs to the institution
- Custom tailored services and contracts to the institution based on their specific needs, desires, and geographic location
- Increased savings to the State as new services and methodologies are discovered by individual institutions and then opted for use across the state by OIR.

**TELECOMMUNICATIONS TOWERS:  
Change the Current Arrangement of Budget and Control Board  
Coordination of Tower and Antenna Operations**

**ACTION:** Change the current arrangement of Budget and Control Board coordination of tower and antenna operations so that the institution housing the tower receives revenue as incentive, as proposed in the reworded proviso below.

**REFERENCE:** Proviso directing the Budget and Control Board to coordinate tower and antenna.

**RECOMMENDATION:** Reword Proviso as follows:

63B.9. (BCB/DO: OIR – Wireless Communications Tower) The Budget and Control Board (“The Board”) is directed to coordinate tower and antenna operations within South Carolina state government to maximize the use of the State’s wireless communications infrastructure and to support a statewide public safety communication system. The Board is authorized to (1) review and approve all new or renewed leases and contractual agreements regarding antenna placement on state-owned communications towers and state-owned buildings, (2) coordinate all new communications tower construction on state-owned property, (3) enter into agreements with private entities to promote and market to government and non-government users excess capacity on the State’s wireless communications infrastructure, (4) generate revenue by leasing, licensing, or selling to the public and private sectors, in compliance with State and federal law, excess capacity on the State’s wireless communications infrastructure, and (5) construct new communications assets on any appropriate state-owned property for the purpose of generating revenue pursuant to this proviso. All revenue from antenna and tower space contracts or leases, existing prior to the effective date of this proviso, or renewals for this same space, must be reported to the Board, but such revenue shall be retained by the owning agency. For new tower and antenna leases and contracts entered into after the effective date of this proviso, the owning agency will retain fifty percent of revenues. All revenue from new tower and antenna leases and contracts entered into after the effective date of this proviso must be remitted to a separate fund established by the Board. The owning agency’s share of the revenues will serve as compensation for its predominant role in planning, negotiating, and coordinating with the vendor and thereby generating the revenues from the project. The remaining fifty percent of the revenues must be remitted to a separate fund established by the Board. This fund shall be retained and carried over from year to year and shall be used to create and support a statewide public safety communications system. The Board will establish a process to ensure that state and local government needs are considered in implementing this proviso. The Board shall create an annual report detailing all revenue collected and disbursed pursuant to this proviso. This report shall also include a summary of each state agency’s overall antenna and tower revenues, whether such revenue is retained by the individual agency or remitted to the fund established by this proviso. This report shall be compiled on a fiscal-year basis and made available to the South Carolina General Assembly on October 1 of each year.

**RATIONALE:**

This is a relatively complex arrangement which gives very little incentive to the institution to incur the management details and the continued security and access to the site without some long-term return.

**BENEFITS/OUTCOMES:**

Better cooperation and support for a statewide communication system.

**ANNUAL INFORMATION TECHNOLOGY (IT) BUDGET PLAN:  
Discontinue the Requirement for Annual Submission**

**ACTION:** Seek the assistance of Information Technology Management to change legislation to exclude the higher education from the annual reporting and limit higher education reporting to administrative applications through an ad hoc process.

**RECOMMENDATIONS:**

Amend the procedures produced by the Information Technology Management Office.  
Recommended changes in **bold type**.

The Information Technology Management Office (ITM) derives its legal authority from Section 11-35-1580 of the South Carolina Code of Laws which assigns the responsibility for assessing the need for and use of information technology (IT), evaluating the use and Management of IT, developing policies and standards for the management of IT in state government, initiating a state plan for the management and use of IT, and providing management and technical assistance to state agencies in the use of IT. To carry out these responsibilities, in part, ITM requires each state agency to submit in the fall of each year **insert "excluding higher education"** a comprehensive IT plan setting forth the agency's proposed IT acquisitions for the next three (3) years along with the agency's then-current IT base budget, and to submit at other times as needed ad hoc requests **insert: "including higher education administrative IT"** for items of IT not included in the agency's annual plan, where such items of IT cost \$25,000 or more.

**RATIONALE:**

Exclude Base Budget:

- For the effort expended, the relative value of the base budget data being reported is unknown.

The actual technology planned for acquisition from the base budget is more accurate the closer to time of acquisition.

Item 3 (continued)

## Exclude Annual Update to Three-Year Plan:

- The three-year plans are of little value because they assume a static economy, technology and need, yet they are subject to accelerated changes that negate the plan.
- Dynamic educational needs and timetables directly influence administrative IT decisions.
- Planning cycles geared to feed annual reports lack institutional grass roots support.
- The budget process is not influenced by what is reported in the plan.

## Utilize the ad hoc request process for higher education administrative applications:

- Ad hoc requests however, are of value because they are based on current information and justification prior to implementation is a desirable administrative process.

**BENEFITS/OUTCOMES:**

Indirect, though not readily measured, cost savings. The change improves an institution's or agency's ability to concentrate on mission focused issues and accountability measures. The work applied to an immediate and more imminent plan of action allows greater coordination of the actual application with the Information Technology Management Office.

**PROCUREMENT CAP INCREASES:  
For Procurement, Leases and Lease Purchases**

**ACTION:** Seek changes in the S. C. Consolidated Procurement Code section 11-35-1550 defining the method and limits for small purchases for state agencies.

**REFERENCE:** S. C. Consolidated Procurement Code Section 11-35-1550

**RECOMMENDATION:**

Change the limits placed on each section under (2) Completion and Price Reasonableness, so that they are increased as shown in bold type.

S. C. Consolidated Procurement Code Section 11-35-1550

- (1) Authority. The following small purchase procedures may be utilized in conducting procurements for governmental bodies that are less than \$25,000.00 in actual or potential value. Any agency may conduct its own procurement under \$5,000.00 in actual or potential value, and any agency 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 the procedures prescribed herein; provided, however, that procurement requirements shall not be artificially divided by governmental bodies so as to constitute a small purchase under this section.
- (2) Completion and Price Reasonableness.
- (a) Purchases Not in Excess of \$1,500.00 (**change to \$5,000.00**). Small purchases not exceeding \$1,500.00 (**change to \$5,000.00**) may be accomplished without securing competitive quotations if the prices are considered to be reasonable. The purchasing office shall annotate the purchase requisition: 'Price is fair and reasonable' and sign. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administrative cost of verifying the prior to 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. Therefore, 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, e.g., comparison to previous price paid, personal knowledge of the item involved.
- (b) Purchases from \$1,500.01 to \$5,000.00 (**change to \$5,000.01 to \$10,000.00**). Solicitations of verbal or written quotes from a minimum of three qualified sources of supply shall be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source.

Item 4 (continued)

- (c) Purchases from \$5,000.01 to \$10,000.00 (**change to \$10,000.01 to \$25,000.00**). Solicitation of written quotes from a minimum of three qualified sources of supply shall be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible sources.
- (d) Purchases from \$10,000.01 to \$25,000.00 (**change to \$25,000.01 to \$50,000.00**). Written solicitation of written quotes, bids, or proposals shall be made. The procurement shall be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the Office of General Services. A copy of the written solicitation and written quotes shall be attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.
- (3) Protest Rights. The provisions of Section 11-35-4210 shall not apply to contracts awarded under procedures set forth in this section.
- (4) Requirement to Advertise. All competitive procurements above \$25,000.00 (**change to \$50,000.00**) 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 Office of General Services. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement advertised in the "South Carolina Business Opportunities" publication.

**BENEFITS/OUTCOMES:**

Employee processing time, and elimination of two-thirds of the paper usage and file storage space would be realized. The solicitation of verbal or written quotations from three sources requires considerable manpower both in the purchasing and end user departments. Vendors are often reluctant to participate in the quotation process for purchases on the lower amounts.

In addition, for those agencies using the State purchasing card, approximately 25 percent of the processing of purchase orders over \$1,500 would be eliminated if the single transaction limit were increased from \$1,500 to \$5,000.

**PROCUREMENT DEFINITIONS:  
Change Definitions for Certain On-Campus Permanent Improvement Projects**

**ACTION:** Seek to amend the S. C. Consolidated Procurement Code section 11-35-310 giving definition to "Permanent Improvement Project; modify the policies of the Budget and Control Board, Joint Bond Review Committee, and the Commission on Higher Education that address this issue.

**REFERENCES:**

- (1) **S. C. Consolidated Procurement Code section 11-35-310**

**SUBARTICLE 5**

**Definitions of Terms Used in this Code**

**SECTION**

**11-35-310. Definitions**

The following words, unless the context clearly indicates otherwise, shall mean:

(1) **"Information Technology (IT)"** means data processing, telecommunications and office systems technologies and....services:

....(a) **"data processing"** means the automated collection, storage, manipulation and retrieval of data including:

....central processing units for micro, mini and mainframe computers; related peripheral equipment such as terminals,

....document scanners, word processors, intelligent copiers, off-line memory storage and printing systems, data

....transmission equipment; and related software such as operating systems, library and maintenance routines and

.... applications programs.

.... (b) **"telecommunications"** means voice, data, message and video transmissions, and includes the transmission

....and switching facilities of public telecommunications systems, as well as operating and network software.

....(c) **"office systems technology"** means office equipment such as typewriters, duplicating and photocopy

.... Machines, paper forms and records; microfilm and microfiche equipment and printing equipment and services.

Item 5 (continued)

.... (d) "**services**" means the providing of consultant assistance for any aspect of information technology, systems, and

.... Networks.

(2) "**Board**" means State Budget and Control Board.

(3) "**Business**" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other legal entity.

(4) "**Change order**" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

(5) "**Chief procurement officer**" means (a) the management officer for information technology, (b) the state engineer for areas of construction, architectural and engineering, construction management, and land surveying services, and (c) the materials management officer for all other procurements.

(6) "**Information Technology Management Officer**" means the person holding the position as the head of the Information Technology Office of the State.

(7) "**Construction**" means the process of building, altering, repairing, remodeling, improving or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structure, buildings or real property.

(8) "**Contract**" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.

(9) "**Contract modification**" means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

(10) "**Contractor**" means any person having a contract with a governmental body.

(11) "**Cost effectiveness**" means the ability of a particular product or service to efficiently provide goods or services to the State. In determining the cost effectiveness of a particular product or service, the appropriate chief procurement officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.

(12) "**Data**" means recorded information, regardless of form or characteristics.

(13) "**Days**" means calendar days. In computing any period of time prescribed by this code or the ensuing regulations, or by any order of the Procurement Review Panel, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.

(14) "**Debarment**" means the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the State, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.

(15) "**Designee**" means a duly authorized representative of a person with formal responsibilities under the code.

(16) "**Employee**" means an individual drawing a salary from a governmental body, whether elected or not, and any non-salaried individual performing personal services for any governmental body.

Item 5 (continued)

- (17) "**General Services**" means the Office of the Budget and Control Board.
- (18) "**Governmental body**" means the a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branches of this State. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Office of Legislative Printing and Information Technology Resources, and all local political subdivision such as counties, municipalities, school districts, or public purpose of erecting monuments or memorials or commissioning art that is being procured exclusively by private funds.
- (19) "**Grant**" means the furnishing by the State or the United States government of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award the primary purpose of which is to procure specified end products, whether in the form of supplies, services or construction. A contract resulting from such an award shall not be deemed a grant but a procurement contract.
- (20) "**Invitation for Bids**" means a written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.
- (21) "**Materials Management Officer**" means the person holding the position as the head of the materials management office of the State.
- (22) "**Office**" means a non-mobile place for the regular transaction of business or performance of a particular service and staffed by at least one employee on a routine basis.
- (23) "**Political Subdivision**" means all counties, municipalities, school districts, public service or special purpose districts.
- (24) "**Purchasing agency**" means any governmental body other than the chief procurement officers authorized by this code or by way of delegation from the chief procurement officers to enter into contracts.
- (25) "**Procurement officer**" means any person duly authorized by the governmental body, in accordance with procedures prescribed by regulation, to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes any authorized representative of the governmental body within the scope of his authority.
- (26) "**Purchasing agency**" means any governmental body other than the chief procurement officers authorized by this code or by way of delegation from the chief procurement officers to enter into contracts.
- (27) "**Real Property**" means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.
- (28) "**Request for Proposals (RFP)**" means a written or published solicitation issued by an authorized procurement officer for proposals to provide supplies or services, which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the State. The award of the contract must be made on the basis of evaluation factors which must be stated in the RFP.

Item 5 (continued)

- (29) **"Services"** means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required surveying, construction management, and related services. This term does not include employment agreements or services as defined in Section 11-35-310(1)(d).
- (30) **"Subcontractor"** means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with a governmental body.
- (31) **"Supplies"** means all personal property including but not limited to equipment, materials, printing, and insurance.
- (32) **"State"** means state government.
- (33) **"State Engineer"** means the person holding the position as head of the State Engineer's Office.
- (34) **"Suspension"** means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the State, for a temporary period pending the completion of any investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.
- (35) **"Term Contract"** means a contract established by the chief procurement officer for a specific product or service for a specified time and for which it is mandatory that all governmental bodies procure their requirements for the goods and services during its term. If a governmental body is offered goods and services at a price that is at least ten percent less than the term contract price for the same goods or services, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. If the vendor holding the term contract meets the lower price, then the governmental body must purchase from the contract vendor. A term contract may be a multi-term contract as provided in Section 11-35-2030.
- (36) **"Using Agency"** means any governmental body of the State which utilizes any supplies, services, or construction purchased under this code.

(2) **Manual for Planning and Execution of State Permanent Improvements**, published by S. C. Budget and Control Board Office of General Services

## CHAPTER 2

### **PERMANENT IMPROVEMENT PROJECT DEFINITION**

Under Section 2-47-50 of the South Carolina Code of Laws, the Budget and Control Board shall formally establish each permanent improvement project before any actions which implement the project can be undertaken. The project must also be established before any expenditures can be made toward the project purpose.

Item 5 (continued)

Section 10-1-180 of the South Carolina Code of Laws gives the Joint Bond Review Committee and the Budget and Control Board the authority to determine the cost amount which requires a permanent improvement project to be established. Minor construction projects that do not exceed that cost amount do not require approval of the Budget and Control Board and, therefore, are not established as permanent improvement projects.

In September 1991, the Budget and Control Board approved the following definition of a permanent improvement project, after review by the Joint Bond Review Committee. The definition addresses the cost amount of projects which define them as permanent improvement projects, as well as other qualifying factors.

**Definition**

Permanent improvement projects are defined as:

- (1) any acquisition of land, regardless of cost;
- (2) any acquisition (as opposed to the construction) of buildings or other structures, regardless of cost;
- (3) construction of additional facilities and any work on existing facilities including their renovation, repair, maintenance, alteration or demolition in those instances in which the total cost of all work involved is \$100,000 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 therefore not to be included;
- (5) capital lease purchase of any facility acquisition or construction; and
- (6) equipment that either becomes a permanent fixture of a facility or does not become permanent but is included in the construction contract should be included as a part of a project.

All permanent improvements that meet the above definition must become a project, regardless of the source of funds. However, any agency that has been authorized/appropriated Capital Improvement Bond, Capital Reserve Fund or specific state appropriated funds by the General Assembly for capital improvements must process a permanent improvement project, regardless of the amount. In addition, any agency proposing to transfer appropriated operating funds to a permanent improvement project must also process a permanent improvement project, regardless of the amount.

Item 5 (continued)

Expenditures for projects costing less than \$100,000 under current policies are not subject to Board approval or Bond Committee review. As a part of the Annual Permanent Improvement Program process, however, each agency may be required to report on expenditures in the under-\$100,000 category in an annual report to the Board and the Committee due each year in September. In addition, this information will be required to be provided as the Committee or Board requests it.

The \$100,000 cost cut-off level in the definition of a permanent improvement is subject to adjustment by joint action of the Bond Committee and the Budget and Control Board.

Adopted by Joint Bond Review Committee 8/20/91

Adopted by Budget and Control Board 9/10/91

**Exceptions to \$100,000 Cut-Off Level**

The permanent improvement project definition includes exceptions to the \$100,000 cut-off level for projects funded with Capital Improvement Bond Funds, Capital Reserve funds and state appropriated funds. According to the definition, projects funded with these sources must be established as permanent improvement projects regardless of the project amount.

The Capital Improvements Unit received clarification from the Joint Bond Review Committee on the exception to the \$100,000 cut-off for state appropriated funds after the new definition was adopted. Under the clarified definition, state-funded projects which must be established as permanent improvement projects regardless of the amount include the following:

- (1) Projects which receive specific line item authorizations in specific amounts in legislation such as the Appropriations Act.
- (2) Projects using state appropriated operating funds for permanent improvements.
- (3) Projects using the state appropriated fund sources above when the funds are transferred to establish or review another project.

However, projects using formula funds for the colleges and universities and funds earmarked specifically for maintenance for the agencies need only be established as permanent improvement projects if the amount exceeds \$100,000.

Projects under \$100,000 on the SPIRS system prior to the adoption of this PIP definition will continue to be maintained on the system until completion. This means that any increases, decreases, scope or other revisions to these projects should continue to be requested through the Capital Improvements Unit on the A-1 form. These requests will be processed administratively without any approvals except for the Budget and Control Board's authorized representative.

Item 5 (continued)**Projects Using Excess Debt Service**

Projects using excess debt service as a fund source have not specifically been addressed by the permanent improvement project definition. However, because of statutory requirements governing the use of these funds by certain agencies, all projects using excess debt service funds must be established as permanent improvement projects regardless of the project amount.

**Projects Exceeding the \$100,000 Cut-Off After Project Start**

If an agency starts a project which does not meet the permanent improvement project definition, but later exceeds the \$100,000 cut-off or requires the use of state appropriated or capital improvement bond funds, the agency must establish the project as a permanent improvement project. The project is established by submitting an A-1 form to the Capital Improvements Unit as soon as the agency determines the project cost will exceed the \$100,000 cut-off or the project will require the use of state appropriated or capital improvement bond funds. The approval process is the same as that followed for any project of its type and budget.

A project may exceed the \$100,000 cut-off when A&E work is completed, bids are received or a change order is processed. Because a project of this type may already be under review by the State Engineer's Office, the Capital Improvements unit will coordinate and work with that office to ensure as smooth as approval of the project establishment as possible without any project delays.

**Equipment Permanent Improvement Projects**

By definition, equipment that either becomes a permanent fixture of a facility, or does not become permanent but is included in the construction contract, must be established as a permanent improvement project. Equipment relating to building construction or additions which must be established in a permanent improvement project includes all equipment included in the construction contract, from HVAC equipment to major building furnishings.

Once a building or addition is completed, the replacement of any equipment which is intrinsic to the operation of the building or without which a building cannot function properly, such as HVAC, water and sewer, should be established in a permanent improvement project. This also includes the addition of any equipment which requires altering the facility to accommodate it, such as major refrigeration equipment, to be established as a project as well.

The equipment projects which should be established as permanent improvements are guided also by the \$100,000 cut-off level and the source of funds exceptions. If questions arise on the need to establish a specific equipment project, please contact your analyst in the Capital Improvements Unit.

Item 5 (continued)**Building Acquisition Projects**

Under the permanent improvement project definition, a project involving the acquisition (as opposed to the construction) of a building or other structure is a permanent improvement regardless of the cost. This includes any building or structure which is acquired as part of a land/building acquisition. It also includes the acquisition of any building or structure, such as a pre-fabricated or manufactured housing-type structure, regardless of the cost if the structure will be listed on the agency's real property inventory. The budget of any project established for the acquisition of this type of building should include the cost of acquiring the structure as well as any additional costs, such as water and sewer hook-ups and foundation construction.

**RECOMMENDATION:**

Proposed definition to be incorporated into the **S. C. Consolidated Procurement Code section 11-35-310** as follows to be inserted after number 22, with renumbering thereafter:

(23) "**Permanent Improvement Project**" means

- 1) any acquisition of real property
- 2) improvements to real property in those instances in which the total cost of all work involved is \$250,000 or more;
- 3) architectural and engineering and other types of planning and design work, regardless of cost, which is intended to result in a permanent improvement project;
- 4) capital lease purchase of any facility acquisition or construction.

Improvements to real property are based on the general accounting definition of a value-added improvement. Improvements included in this definition are items that add value to real property. Not to be included are

- 1) maintenance items such as carpeting, hazardous material abatement, painting, and landscaping.
- 2) Master Plans and feasibility studies.

In the **Manual for Planning and Execution of State Permanent Improvements**, changes as indicated below:

**CHAPTER 2****PERMANENT IMPROVEMENT PROJECT DEFINITION**

Under Section 2-47-50 of the South Carolina Code of Laws, the Budget and Control Board shall formally establish each permanent improvement project before any actions which implement the project can be undertaken. The project must also be established before any expenditures can be made toward the project purpose.

Item 5 (continued)

Section 10-1-180 of the South Carolina Code of Laws gives the Joint Bond Review Committee and the Budget and Control Board the authority to determine the cost amount which requires a permanent improvement project to be established. Minor construction projects that do not exceed that cost amount do not require approval of the Budget and Control Board and, therefore, are not established as permanent improvement projects.

In September 1991, the Budget and Control Board approved the following definition of a permanent improvement project, after review by the Joint Bond Review Committee. The definition addresses the cost amount of projects which define them as permanent improvement projects, as well as other qualifying factors.

**Definition**

Permanent improvement projects are defined as:

- (1) any acquisition of land, regardless of cost;
- (2) any acquisition (as opposed to the construction) of buildings or other structures, regardless of cost;
- (3) construction of additional facilities and any work on existing facilities including their renovation, repair, maintenance, alteration or demolition in those instances in which the total cost of all work involved is ~~\$100,000~~ **\$250,000** 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 therefore not to be included;
- (5) capital lease purchase of any facility acquisition or construction; and
- (6) equipment that either becomes a permanent fixture of a facility or does not become permanent but is included in the construction contract should be included as a part of a project.

All permanent improvements that meet the above definition must become a project, regardless of the source of funds. However, any agency that has been authorized/appropriated Capital Improvement Bond, Capital Reserve Fund or specific state appropriated funds by the General Assembly for capital improvements must process a permanent improvement project, regardless of the amount. In addition, any agency proposing to transfer appropriated operating funds to a permanent improvement project must also process a permanent improvement project, regardless of the amount.

Item 5 (continued)

Expenditures for projects costing less than ~~\$100,000~~ **\$250,000** under current policies are not subject to Board approval or Bond Committee review. As a part of the Annual Permanent Improvement Program process, however, each agency may be required to report on expenditures in the under-~~\$100,000~~ **\$250,000** category in an annual report to the Board and the Committee due each year in September. In addition, this information will be required to be provided as the Committee or Board requests it.

The ~~\$100,000~~ **\$250,000** cost cut-off level in the definition of a permanent improvement is subject to adjustment by joint action of the Bond Committee and the Budget and Control Board.

Adopted by Joint Bond Review Committee 8/20/91

Adopted by Budget and Control Board 9/10/91

**Exceptions to ~~\$100,000~~ \$250,000 Cut-Off Level**

The permanent improvement project definition includes exceptions to the ~~\$100,000~~ **\$250,000** cut-off level for projects funded with Capital Improvement Bond Funds, Capital Reserve funds and state appropriated funds. According to the definition, projects funded with these sources must be established as permanent improvement projects regardless of the project amount.

The Capital Improvements Unit received clarification from the Joint Bond Review Committee on the exception to the ~~\$100,000~~ **\$250,000** cut-off for state appropriated funds after the new definition was adopted. Under the clarified definition, state-funded projects which must be established as permanent improvement projects regardless of the amount include the following:

- (1) Projects which receive specific line item authorizations in specific amounts in legislation such as the Appropriations Act.
- (2) Projects using state appropriated operating funds for permanent improvements.
- (3) Projects using the state appropriated fund sources above when the funds are transferred to establish or review another project.

However, projects using formula funds for the colleges and universities and funds earmarked specifically for maintenance for the agencies need only be established as permanent improvement projects if the amount exceeds ~~\$100,000~~ **\$250,000**.

Item 5 (continued)

Projects under ~~\$100,000~~ **\$250,000** on the SPIRS system prior to the adoption of this PIP definition will continue to be maintained on the system until completion. This means that any increases, decreases, scope or other revisions to these projects should continue to be requested through the Capital Improvements Unit on the A-1 form. These requests will be processed administratively without any approvals except for the Budget and Control Board's authorized representative.

**Projects Using Excess Debt Service**

Projects using excess debt service as a fund source have not specifically been addressed by the permanent improvement project definition. However, because of statutory requirements governing the use of these funds by certain agencies, all projects using excess debt service funds must be established as permanent improvement projects regardless of the project amount.

**Projects Exceeding the ~~\$100,000~~ \$250,000 Cut-Off After Project Start**

If an agency starts a project which does not meet the permanent improvement project definition, but later exceeds the ~~\$100,000~~ **\$250,000** cut-off or requires the use of state appropriated or capital improvement bond funds, the agency must establish the project as a permanent improvement project. The project is established by submitting an A-1 form to the Capital Improvements Unit as soon as the agency determines the project cost will exceed the ~~\$100,000~~ **\$250,000** cut-off or the project will require the use of state appropriated or capital improvement bond funds. The approval process is the same as that followed for any project of its type and budget.

A project may exceed the ~~\$100,000~~ **\$250,000** cut-off when A&E work is completed, bids are received or a change order is processed. Because a project of this type may already be under review by the State Engineer's Office, the Capital Improvements unit will coordinate and work with that office to ensure as smooth as approval of the project establishment as possible without any project delays.

**Equipment Permanent Improvement Projects**

By definition, equipment that either becomes a permanent fixture of a facility, or does not become permanent but is included in the construction contract, must be established as a permanent improvement project. Equipment relating to building construction or additions which must be established in a permanent improvement project includes all equipment included in the construction contract, from HVAC equipment to major building furnishings.

Once a building or addition is completed, the replacement of any equipment which is intrinsic to the operation of the building or without which a building cannot function properly, such as HVAC, water and sewer, should be established in a permanent improvement project.

Item 5 (continued)

This also includes the addition of any equipment which requires altering the facility to accommodate it, such as major refrigeration equipment, to be established as a project as well.

The equipment projects which should be established as permanent improvements are guided also by the ~~\$100,000~~ **\$250,000** cut-off level and the source of funds exceptions. If questions arise on the need to establish a specific equipment project, please contact your analyst in the Capital Improvements Unit.

**Building Acquisition Projects**

Under the permanent improvement project definition, a project involving the acquisition (as opposed to the construction) of a building or other structure is a permanent improvement regardless of the cost. This includes any building or structure which is acquired as part of a land/building acquisition. It also includes the acquisition of any building or structure, such as a pre-fabricated or manufactured housing-type structure, regardless of the cost if the structure will be listed on the agency's real property inventory. The budget of any project established for the acquisition of this type of building should include the cost of acquiring the structure as well as any additional costs, such as water and sewer hook-ups and foundation construction.

**BENEFIT/OUTCOME:**

The effect of the new definition will reduce the time necessary to execute facilities construction and maintenance projects. It will reduce the number of required approvals for the S. C. Commission on Higher Education, the Joint Bond Review Committee, and the Budget and Control Board. The level of the Annual Permanent Improvement Programs will be raised so that it will highlight the more significant projects for state agencies.

Ten years have passed since the last modification to the definition of a "Permanent Improvement Project", as stated in the "Manual for Planning and Execution of State Permanent Improvements". Inflation alone has reduced the value set for determining project budget minimums.

**PROCUREMENT CAP INCREASES:  
For On-Campus Permanent Improvement Projects**

**ACTION:** Seek to modify the policies of the Budget and Control Board, Joint Bond Review Committee, and the Commission on Higher Education that address this issue.

**REFERENCES:**

**Manual for Planning and Execution of State Permanent Improvements**, Chapter 5 - "Procedures for Approval of Permanent Improvement Projects", published by S. C. Budget and Control Board Office of General Services

**RECOMMENDATION:**

In the **Manual for Planning and Execution of State Permanent Improvements**, Chapter 5 - "Procedures for Approval of Permanent Improvement Projects", section, make the changes as indicated by strikeout and bold type below.

**Project Actions Requiring JBRC Staff Review**

The Director of Research for the Joint Bond Review Committee (JBRC) has been delegated authority by the Committee to review permanent improvement projects with budget actions up to ~~\$250,000~~ **\$500,000** which require JBRC review. This includes projects established with budgets up to ~~\$250,000~~ **\$500,000** and budget increases up to \$250,000 for existing projects which have not been previously authorized by the General Assembly, already approved by JBRC as part of APIP, or delegated to Budget and Control Board staff....

**Project Actions Requiring Joint Bond Review Committee Review**

The Joint Bond Review Committee reviews all permanent improvement project requests with budget actions over ~~\$250,000~~ **\$500,000**. This includes project establishments over ~~\$250,000~~ **\$500,000** and budget increases for existing projects over ~~\$250,000~~ **\$500,000** which have not been previously authorized by the General Assembly, already approved by JBRC as part of APIP, or delegated to Budget and Control Board staff....

**Project Actions Requiring Budget and Control Board Approval**

....Project actions which must be approved by the Board include project establishments over ~~\$250,000~~ **\$500,000**, and budget increases for existing projects over ~~\$250,000~~ **\$500,000**, which have not been previously authorized by the General Assembly, already approved by the Board as part of APIP, or delegated to Budget and Control Board staff....

Item 6 (continued)**BENEFIT/OUTCOME:**

The effect of the higher approval limits will reduce the cost and overall time needed to complete facilities construction and maintenance projects. With fewer number of required approvals for the S. C. Commission on Higher Education, the Joint Bond Review Committee, and the Budget and Control Board, projects can be initiated more quickly. The level of the Annual Permanent Improvement Programs will be raised so that it will highlight the more significant projects for state agencies.

**PRIVATE DEVELOPMENT OF FACILITIES ON STATE LAND:  
Allow Institutions To Offer Long-Term Leases To Meet Space Needs**

**ACTION:** Seek legislative authorization to allow private development of facilities on land owned by an institution of higher education for mission related facility needs.

**RECOMMENDATION:** Add to South Carolina Code Section 11-35-710:

"The construction of any facility on land owned by an institution of higher education where the land is under an initial lease to a third party for a term of at least 15 but not more than 40 years provided that: 1) the third party is not a foundation or eleemosynary organization affiliated with the institution of higher education; 2) the lease of the land from the institution of higher education to the third party complies with the State Leasing Procedures of the South Carolina Budget and Control Board; 3) no public funds are used in the construction of the facility; 4) there is no obligation on the institution of higher education to lease space in the facility; 5) if the institution of higher education decides to lease space in the facility, such lease of space complies with the State Leasing Procedures of the South Carolina Budget and Control Board; 6) at or before the end of the term of the land lease, and at the discretion of the institution with approval of the South Carolina Budget and Control Board, all construction on the land will be turned over to the institution or the land restored to a developable condition."

**RATIONALE:**

Act 557 already provides for the construction of student housing on institutional land by private developers, for certain institutions. This proposed legislation broadens that concept to provide endorsement of practices increasingly used in other states and businesses to tap external development resources. This Legislation retains the authority of the Budget and Control Board to ensure that land leases and any subsequent lease back is in accordance with their existing lease procedures and is fairly conducted.

Growth in enrollment and research have exceeded the State and institutional facility and debt capacities. Resources provided through enrollment, housing, and research funds provide a long term reliable resource, however, since they are collected over time they often are not available for building construction at the time the facility is required. To respond to the unmet facility needs institutions are leasing buildings from private developers for core institutional needs without the advantages this legislation could provide. These buildings are often geographically away from the campus which impacts efficiency and may require costly renovations as often they were not constructed to meet the institution's needs. This legislation would permit institutions to work with private developers to construct facilities when needed to meet institutional mission related needs in a location most conducive to on-going operations. The developer retains all financial risk through the life of the ground lease so this proposal has no impact on the State or institutional debt capacity.

**BENEFITS/OUTCOMES:**

Immediate significant financial benefit as facilities are provided to meet current needs. Delays in acquisition of state funding increases facility construction costs significantly. While this benefit diminishes over time through lease amortization of the developer debt, acquisition of facilities at or prior to the end of the land lease term has significant philanthropic potential.

**FEDERAL GOVERNMENT CONTRACTS:  
Allow Institutions to Purchase from Federal Contract Lists**

**ACTION:** Seek the assistance of the Materials Management Office to change legislation:

**RECOMMENDATION:**

The suggested additional wording is shown in bold type.

**REFERENCE:** SC Procurement Code 11-35-40.

§ 11-35-40. Application of this Code.

- (1) General Application. This code applies only to contracts solicited or entered into after the effective date of this code unless the parties agree to its application to a contract entered into prior to its effective date.
- (2) Application to State Procurement. This code shall apply to every expenditure of funds by this State under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in Section 11-35-40(3) (Compliance with Federal requirements) and except as provided in Article 19 (Intergovernmental Relations). It shall also apply to the disposal of state supplies as provided in Article 15 (Supply Management). The provisions of this code shall apply to all procurements of information technology elements by any governmental body, irrespective of the source funds whether appropriated or not. **All federal government approved contract lists shall be considered to be in conformity with the code for these purposes.**
- (3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance or contract funds, the government body, shall also comply with such federal law and authorized regulations as are mandatory applicable and which are not presently reflected in the code. Notwithstanding, where federal assistance or contract funds are used in a procurement by a governmental body as defined in Section 11-35-310(18), requirements that are more restrictive than federal requirements shall be followed.
- (4) Use of Public Funds. The acquisition of any facility or capital improvement by a foundation or eleemosynary organization on behalf of or for the use of any state agency or institution of higher learning which involves the use of public funds in the acquisition, financing, construction, or current or subsequent leasing of the facility or capital improvement is subject to the provisions of this Code in the same manner as any governmental body. The definition and application of the terms "acquisition", "financing", "construction", and "leasing" are governed by standards and principles established by the State Auditor.

Item 8 (continued)

Additional background obtained from the Materials Management Officer:

- In 1994 the federal government attempted to offer its contracts for use to all states. It floundered around for two years and was rescinded in 1996 without implementation
- In 1997 MMO proposed using federal contracts as part of a general update to the Procurement Code This part failed in the General Assembly due to sentiment that it could negatively impact SC vendors
- MMO is scheduled for a code review and update for the 2003 legislative session and this same proposal is included

**BENEFITS/OUTCOMES:**

Indirect, though not readily measured, cost savings. The opportunity to capitalize on contract prices that have already been competed eliminates time and resources that would otherwise be required to solicit competition.

**ANNUAL AUDITS:**

**Individual Institutions to Negotiate for Annual Audits To Be Performed by a Firm Selected from a List of Reputable Auditing Firms, Pre-Approved by the State Auditor's Office.**

**This would place the peer review process with the selected auditor rather than State Auditor's Office.**

**ACTION:** Seek the assistance of the State Auditor to amend process for procurement of approved audit contracts and to amend audit review procedures, so that public higher education institutions be allowed to negotiate for their annual audits with reputable CPA firms selected from a list pre-approved by the State Auditor's Office.

**REFERENCE:**

Section 11-35-1250 of the 1976 South Carolina Code of Laws, as amended, states: "No contract for auditing or accounting services shall be awarded without the approval of the State Auditor except where specific statutory authority is otherwise provided."

Independent audits of the public higher education institutions of South Carolina must be completed annually with adequate time remaining for the Comptroller General's Office to incorporate the information into the State's Comprehensive Annual Financial Report. Through the fiscal year ended June 30, 2001, the State Auditor's Office has either conducted the annual audits or hired and paid independent certified public accountants to audit the senior colleges and the research universities, except for the Medical University of South Carolina. Since 1987 the Medical University of South Carolina has paid for its independent audits by CPA firms selected by the State Auditor's Office based on responses to requests for proposals. Draft audit reports of the senior colleges and research universities (and most other State entities audited by CPA firms) are subjected to an intensive quality review process within the State Auditor's Office. The audit reports cannot be issued until all questions are cleared to the satisfaction of the quality reviewer.

Item 15 of Section 59-53-52 of the South Carolina Code of Laws states, in part, that the technical college area commissions shall:

...within ninety days following the close of the fiscal year cause a complete audit of institutional affairs to be made by an independent certified public accountant with copies of the audit report and related documents to be delivered concurrently to the area commission and the Board.

With guidance from the State Board for Technical and Comprehensive Education, the technical colleges solicit bids and select CPA firms. The selected firms must be approved by the State Board for Technical and Comprehensive Education and the State Auditor's Office. The 16 technical colleges pay for their own audits, and the draft reports are not subject to a quality control review by the State Auditor's Office.

Item 9 (continued)

South Carolina's public colleges and universities have elected to report as business-type activities under Governmental Accounting Standards Board Statements No. 34 and 35, effective July 1, 2001. For this reason the State Auditor proposed that all State institutions must pay for their own audits beginning with the fiscal year ended June 30, 2002, and the senior colleges and research universities are willing to incur this expense. However, the public higher education institutions propose that they be allowed to negotiate for their annual audits with reputable CPA firms selected from a list, pre-approved by the State Auditor's Office. Further, the colleges and universities assert that the quality review process is the responsibility of the contract audit firm rather than the State Auditor's Office.

**RECOMMENDATION:**

Seek the assistance of the State Auditor to amend process for procurement of approved audit contracts and to amend audit review procedures, so that public higher education institutions be allowed to negotiate for their annual audits with reputable CPA firms selected from a list pre-approved by the State Auditor's Office. This includes assigning responsibility for the quality review process to the contract audit firm rather than the State Auditor's Office.

**RATIONALE:**

As the standard audit opinion emphasizes, the financial statements are the responsibility of the auditee's management, and the auditor's responsibility is to express an opinion on the financial statements based on the audit.

Professional standards for auditors require the exercise of due professional care. Also, the fourth standard of Government Auditing Standards states: "Each audit organization conducting audits in accordance with these standards should have an appropriate internal quality control system in place and undergo an external quality control review."

The public higher education institutions have been working together to develop an implementation guide for GASB 34 and 35, and the Comptroller General's Office will be issuing certain accounting policies that will assist the public higher education institutions in preparing financial statements that are in accordance with generally accepted accounting principles. Professional standards require the auditors to ensure that the financial statements are in accordance with GAAP.

**BENEFITS/OUTCOMES:**

The practice of the State Auditor's Office is to solicit written bids whenever practicable. On occasion they have negotiated with an individual firm or solicited oral bids from several firms.

Selection of a firm from a list pre-approved by the State Auditor's Office will satisfy the State law. Firms interested in conducting audits of the higher education institutions could be required to apply to the State Auditor's Office to be placed on the list.

**SINGLE AUDIT PROGRAM FOR STATE AID FUNDS:  
Adopt a Single Audit Program Rather than the  
Conduction of Periodic Audits By CHC for State Aid Programs**

**ACTION:** Seek the assistance of the Commission on Higher Education to amend their regulations to permit the use of the scope of the Single Audit and CHE guidelines to satisfy the audit of State Aid programs.

**REFERENCE:**

Various Code sections and regulations state that the Commission on Higher Education may audit the institutions.

**RECOMMENDATION:**

Amend *regulations 62-375, 62-380, 62-461*

**RATIONALE:**

Currently, the Commission on Higher Education conducts annual audits at the public higher education institutions of South Carolina for compliance with State aid programs, such as Palmetto Fellows Scholarships, Life Scholarships, and Need-Based grants. Soon the lottery tuition assistance program will be another major source of State aid. The compliance audits are in addition to the independent audits conducted annually by the State Auditor's Office or an independent certified Public Accounting (CPA) firm. The audit of federal funds at the senior colleges and universities are included in the State's Single Audit of Expenditure of Federal Awards. The 16 technical colleges' individual audits are conducted by CPA firms in accordance with the Single Audit Act Amendments of 1996, so they are not included in the State's Single Audit of Expenditure of Federal Awards.

The public higher education institutions propose that the compliance audits for state aid programs be included with the audits of the financial statements conducted by CPA firms. This follows the concept of the Single Audit enacted by the Federal government. Single audits of all federal programs are deemed to be more efficient for the auditees and the Federal government. This frees the grantees from being occupied for weeks with many sets of auditors. In accordance with the single audit concept, the independent auditor integrates the various compliance auditing requirements into the financial audit. Further, many auditees have a single internal control structure and the Single audit concept eliminates the duplication of several sets of auditors reviewing the same internal controls. The CHE can adapt its role to that of issuing audit guidelines and performing quality control reviews.

**BENEFIT/OUTCOME:**

Adoption of the Single Audit concept for State aid programs will conserve state resources.

**DISPOSAL OF SURPLUS PROPERTY****Allow Disposal at the Local Level Rather than Require that Surplus be Transported to Columbia**

**ACTION:** Seek the assistance of the Budget and Control Board Surplus Property Management Office to amend their regulations and applicable statute as needed to permit more local disposition of surplus property.

**REFERENCES:** Reg - 19-445.2150 and Procurement Code - 11-35-4020

The applicable code references attached are supplemented by a letter from Surplus Property Management dated January 5, 1998. It states procedures that can be used by agencies in disposing of surplus equipment as follows: The agency may give it away; it may contract with an outside vendor that purchases scrap materials; or it may auction off equipment after advertising for fifteen days.

Due to staffing limitations, additional procedures are also offered to expedite the entire surplus process according to the Program Manager at Surplus properties. Some of these are: 1. An agency may now submit clear and viewable digital photographs without a visit from Surplus Properties to screen equipment as junk. 2. An agency may bring in property to have it screened instead of waiting up to 21 days. 3. Auctions and sealed bids may be offered on site by the agencies if managed by Surplus Properties.

The following attachments (code references) are the primary authority. The statements in bold were referenced in the January 5, 1998 letter. Any additional proposed changes to the existing procedures need to first be specifically determined and then the wording in the code can be modified or supplemented. The words "excluding higher education institutions" should be integrated in the appropriate places in the code.

19-445.2150. Surplus Property Management

A. Definition, Authority and Mission.

(1) Definition.

Surplus property is all State-owned supplies and equipment, not in actual public use, with remaining useful life and available for disposal. This definition and the ensuing regulations exclude

the disposal of solid and hazardous wastes as defined by any federal, state or local statutes and regulations. Property so defined as solid or hazardous waste shall not be relocated, nor title assumed under the authority of these regulations.

Item 11 (continued)**(2) Authority.**

The disposition of all surplus property shall be conducted by the Division of General Service's Surplus Property Management Office (SPMO) at such places and in such manner determined most advantageous to the State, except as defined in Section 11-35-1580 of the Procurement Code. All governmental bodies must identify surplus items and declare them as such, and report them in writing to the Materials Management Officer or the Information Technology Management Officer (ITMO), or the designee of either, within one hundred and eighty (180) days from the date they become surplus. The SPMO shall deposit the proceeds from such disposition, less expense of the disposition, in the State's General Fund unless a governmental body makes a written request to retain such proceeds, less cost of disposition, for the purchase of like kind property and the Materials Management Officer or ITMO, or the designee of either, approves such request.

**(3) Mission**

**The primary mission of the Surplus Property Management Program shall be to receive, warehouse and dispose of the State's surplus property in the best interest of the State. The central warehousing of State surplus property will allow all State governmental bodies and other political subdivisions one location to acquire needed property which otherwise might escape the system and be sold to the public.**

The purpose of this program is to provide the following:

- (1) elimination of costs related to the warehousing, insurance and accounting systems necessary to fulfill an agency's surplus property responsibility,
- (2) maximization of proceeds by disposing of property as soon as possible after it becomes excess to an agency's needs,
- (3) establishment of priorities in the disposal process that encourage keeping assets in public use as long as possible,
- (4) conversion of unneeded fixed assets into available funds on a timely basis for offsetting the cost of new like equipment .

**B. Reporting and Relocation of Surplus Property.****(1) Reporting.**

Within ninety (90) days from the date property becomes surplus, it must be reported to the SPMO on a turn-in document (TID) designed by the SPMO. The description, model or serial number, acquisition cost, date of purchase and agency ID number shall be listed for each item. Upon receipt of the TID, the SPMO will screen the property to determine whether it is surplus or junk as defined in these regulations.

Item 11 (continued)**(2) Property Relocation.**

Surplus property reported shall be scheduled for relocation to the SPMO, Boston Avenue, West Columbia; or, upon consultation and agreement with the generating governmental body, remain at the governmental body's site if deemed by the SPMO to be a more cost-effective method for disposal. All costs associated with relocation of property will be borne by the SPMO, except property as defined in these regulations under Subsection C, Item 2, A and B. At such time as property is officially received by the SPMO, title will pass to the Division of General Services and shall be accounted for as described herein. Governmental bodies shall delete insurance coverage on such property. The SPMO shall carry sufficient insurance to ensure these assets are safeguarded against loss. Governmental bodies shall delete such property from their fixed asset records at this point of transfer. Upon disposal of the property, the proceeds, less cost of disposition, will be returned to the authorized revenue center if so requested and authorized in accordance with these regulations.

**If determined to be junk, disposal will be the responsibility of the generating governmental body in accordance with Section 11-35-4020 of the Procurement Code.**

**RECOMMENDATION:**

Integrate the words "excluding higher education institutions" into appropriate places in the code.

**RATIONALE:**

Storage of surplus property pending evaluation and arrangement for transportation to the West Columbia site places a burden on space at the institutions. Additional cost is incurred by institutions that elect to transport vehicles and other surplus materials to a central site. Both storage and costs to transport could be relieved if the Surplus Property Management Office were to authorize the disposition or manage the disposition at the institution site.

**COST BENEFIT:**

There is a potential cost avoidance for SPMO and an institution if property does not have to be transported, or at least not transported as far to achieve final disposition. Less space would have to be allocated to the collection of surplus if there was a more timely method disposal achieved through local processes.

**ELECTION DAY CLOSING:  
Exempt Higher Education Institutions**

**ACTION:** Seek change in legislation, by the changes recommended below.

**REFERENCE:**  
Section 59-1-370

**RECOMMENDATION:**  
Amend Section 59-1-370 by striking "... State-supported colleges and universities, technical education centers and..." so that the amended section will read:

**All public schools shall be closed general election day in November of each even -numbered year. This day shall not be considered as one of the regular school days for the year for public schools.**

**RATIONALE:**

The purpose of the amendment is to relieve the publicly supported colleges and universities from closing on Election Day. The requirement is a burden on the academic calendar and does not serve a useful purpose. If a public institution is currently used as a polling place, it would be appropriate for the individual institution to close or make other arrangements in their locale. The interest presented here represents only the higher education institutions, which should be required to demonstrate flexibility in work schedules so that appropriate time for voting is provided for all employees.

**BENEFIT/OUTCOME:**

The change improves an institution's ability to manage class schedules and workdays of faculty and staff.

**PERSONNEL FTE SLOT AUTHORIZATION:  
Relieve Constraints on Budget and Control Board Management**

**ACTION:** Seek assistance of Budget & Control Board (Budget Division and Human Resources Division) to seek legislation delegating authority for the Budget & Control Board to manage the authorization of total FTE to include authorization to grant changes (increases and decreases) in individual agency authorized totals within the limits prescribed by the SC Constitution and the SC Statutes that limit the number of personnel positions. Also seek legislation to delegate to the Higher Education Agencies the authority to balance their state-funded and other-funded positions within the total FTE authorized by the B & C Board. Allow the Higher Education Agencies, as lump sum agencies, to manage other-funded FTE slots within the constraints of their operating budgets. In addition, to delete provisos and statutes that require frequent individual agency reporting and reconciliation of personnel FTE slot authorizations with the Human Resources Division.

**REFERENCES:**

South Carolina Code of Laws and the General Appropriations Act

**RECOMMENDATIONS:**

Delete or modify the following as appropriate to relieve the constraints on management of the FTE authorizations by placing authority to ensure compliance with Article X and Code Section 11-11-420 with the B & C Board and eliminate individual agency reporting and reconciliation of the FTE authorized, and also permit the Higher Education Agencies, as lump sum agencies, to manage other-funded FTE slots within the constraints of their operating budgets.

General and Permanent Law Provisos of the General Appropriations Act

63.C.8 (BCB/DBA: OHR – Vacant Positions)

72.28 (GP: Personnel Service Reconciliation, FTEs)

S. C. Code of Laws

Section 1-1-970 Personnel data required to be furnished quarterly

Section 8-11-186 Reporting interim new full-time employment positions

Section 8-11-187 Reporting full-time employment positions transferred to or received from another state agency

Item 13 (continued)**RATIONALE:**

The limitations in the number of permanent state positions are described in the Constitution of SC in Article X, Section 7, Subsection (d), and in Section 11-11-420 of the Code of Laws of SC, as Amended. The limitations are macro in nature, which would allow great latitude for the B & C Board to promulgate regulations and monitor the actual numbers without the specific direction set in provisos and other sections of the Code. The statutory limit for FY 2002 has been calculated to be 16% above the current authorization (48,769 Statutory Limit versus 42,000 authorized), which would appear to afford a manageable range of authorizations for the Budget Division to ensure compliance. Since higher education institutions are lump sum agencies, the funds available for state-funded and other-funded positions effectively limit the number of personnel. From time to time the B & C Board could institute restraints as needed if there were any conditions that might threaten a breach of the limitations.

Given the personnel management requirements set forth by the Human Resources Management Division of the B & C Board, it would appear that the central data resource to monitor and report as required by Section 11-11-420 exists without separate data reporting from individual institutions as currently required, for example in Section 1-1-970.

**BENEFITS/OUTCOMES:**

Indirect, though not readily measured, cost savings. The change improves an institution's or agency's ability to concentrate on mission focused issues and accountability measures.

**REPEAL A NUMBER OF ITEMS IN ACT 255 AND 629 FOR WHICH REPORTING REQUIREMENTS ARE DUPLICATED UNDER ACT 359, PERFORMANCE-BASED FUNDING**

**ACTION:** Seek the concurrence and assistance of the Commission on Higher Education to attain legislative support to repeal the referenced legislation.

**REFERENCE:**

South Carolina Code Section 59-101-350

**RECOMMENDATION:**

Delete the Code Sections as follows:

~~SECTION 59-101-350. Commission on Higher Education annual report; submission of information by educational institutions for inclusion in report; alumni surveys.~~

~~(A) The Commission on Higher Education shall submit an annual report to the Governor and to the General Assembly. The annual report must be published prior to January fifteenth of each year and presented in a readable format so as to easily compare with peer institutions in South Carolina and other Southern Regional Education Board states the state's public, post-secondary institutions. Prior to publication, the Commission on Higher Education shall distribute a draft of the report to all public, post-secondary institutions and shall allow comment upon the draft report. The Commission on Higher Education shall develop and adopt a format for the report and shall ensure consistent reporting and collecting of the data in the report by the institutions.~~

~~(B) Each four-year, post-secondary institution shall submit to the commission the following information for inclusion in the report, with the South Carolina Department of Corrections' students identified and reported separately:~~

~~(1) the number and percentage of accredited programs and the number and percentage of programs eligible for accreditation;~~

~~(2) the number and percentage of undergraduate and graduate students who completed their degree program;~~

~~(3) the percent of lower division instructional courses taught by full-time faculty, part-time faculty, and graduate assistants;~~

~~(4) the percent and number of students enrolled in remedial courses and the number of students exiting remedial courses and successfully completing entry-level curriculum courses;~~

Item 14 (continued)

~~(5) the percent of graduate and upper division undergraduate students participating in sponsored research programs;~~

~~(6) placement data on graduates;~~

~~(7) the percent change in the enrollment rate of students from minority groups and the change in the total number of minority students enrolled over the past five years;~~

~~(8) the percent of graduate students who received undergraduate degrees at the institution, within the State, within the United States, and from other nations;~~

~~(9) the number of full-time students who have transferred from a two-year, post-secondary institution and the number of full-time students who have transferred to two-year, post-secondary institutions;~~

~~(10) student scores on professional examinations with detailed information on state and national means, passing scores, and pass rates, as available, and with information on such scores over time, and the number of students taking each exam;~~

~~(11) appropriate information relating to each institution's role and mission;~~

~~(12) any information required by the commission in order for it to measure and determine the institution's standard of achievement in regard to the performance indicators for quality academic success enumerated in Section 59-103-30.~~

~~(C) Each two-year, post-secondary institution shall submit to the commission the following information for inclusion in the report:~~

~~(1) the number and percentage of accredited programs and the number and percentage of programs eligible for accreditation;~~

~~(2) the number and percentage of undergraduate students who completed their degree program;~~

~~(3) the percent of courses taught by full-time faculty members, part-time faculty, and graduate assistants;~~

~~(4) placement rate on graduates;~~

~~(5) the percent change in the enrollment rate of students from minority groups, the number of minority students enrolled and the change in the total number of minority students enrolled over the past five years;~~

Item 14 (continued)

- ~~(6) the number of students who have transferred into a four-year, post-secondary institution and the number of students who have transferred from four-year, post-secondary institutions;~~
- ~~(7) appropriate information relating to the institution's role and mission;~~
- ~~(8) any information required by the commission in order for it to measure and determine the institution's standard of achievement in regard to the performance indicators for quality academic success enumerated in Section 59-103-30.~~
- ~~(D) The commission also shall develop with the cooperation of the public, post-secondary institutions, a uniform set of questions to be included in surveys to be used by each public, post-secondary institution in determining alumni satisfaction. The survey instruments must address the issues of overall satisfaction, satisfaction with major instruction, impact of general education, and current societal participation of alumni. Every two years the graduating class of three years prior must be surveyed by each institution using appropriate statistical techniques. Information from these surveys must be included every two years in the annual report as required herein.~~
- ~~(E) The commission shall make no funding decision, capital outlay decision, distribution or certification on behalf of any public, post-secondary institution that has not submitted the information required pursuant to this section.~~
- ~~(F) After discussions with the institutions, the Commission on Higher Education in consultation with the House Education and Public Works Committee and the Senate Education Committee shall develop the format for the higher education report as required herein.~~
- ~~(G) The Commission on Higher Education also is required in the annual report to report on the progress of institutions of higher education in implementing assessment programs, in their achievement of effectiveness goals, and on each institution's standard of achievement in regard to the performance indicators for academic success established in Section 59-103-30.~~
- ~~(H) The report required by this section must be filed in magnetic media form if the information is available in that form.~~

~~SECTION 59-104-650. Institutional effectiveness program.~~

- ~~(A) The goals for maintaining an effective system of quality assessment by institutions of higher learning in South Carolina are to:~~
- ~~(1) assure that a system for measuring institutional achievement in regard to the performance indicators for quality academic success as contained in Section 59-103-30 is in effect on every public college and university campus in this State;~~

Item 14 (continued)

~~(2) provide a vehicle for disseminating the results of these measurements to the constituents within the State;~~

~~(3) provide data relative to the effectiveness of each institution that can be used to initiate curriculum, programmatic, or policy changes within the institution necessary to meet the standards for these performance indicators.~~

~~(B) The process by which these goals must be attained is as follows:~~

~~(1) Each institution of higher learning is responsible for maintaining a system to measure institutional achievement in regard to the performance indicators for quality academic success in accord with provisions, procedures, and requirements developed by the Commission on Higher Education. The system for measuring such institutional achievement must include, but is not limited to, a description of criteria by which such institutional achievement is being assessed.~~

~~(2) As a part of South Carolina's statewide planning process, each institution shall provide the commission with an annual report on the results of its institutional achievement program.~~

~~(3) The commission shall prepare a report that must include results of institutional achievement, including student assessment programs. Information from private colleges and universities must be included for those institutions that voluntarily provide the information to the commission.~~

~~SECTION 59-104-660. State-supported institutions to establish procedures and programs to measure student achievement.~~

~~(A) All state-supported institutions of higher learning shall establish their own procedures and programs to measure student achievement which must include, but are not limited to, the performance indicators contained in Section 59-103-30(B)(6) and (7). The procedures and programs must be submitted to the Commission on Higher Education as part of the plan for measuring institutional achievement and must:~~

~~(1) derive from institutional initiatives, recognizing the diversity of South Carolina public colleges and universities, the tradition of institutional autonomy, and the capacity of faculty and administrators to identify their own problems and solve them creatively;~~

~~(2) be consistent with each institution's mission and educational objectives;~~

~~(3) involve faculty in setting the standards of achievement, selecting the measurement instruments, and analyzing the results;~~

~~(4) follow student progress through the curriculum, as appropriate;~~

~~(5) include follow-up of graduates.~~

Item 14 (continued)

~~(B) As part of their annual report on institutional achievement, all state-supported colleges and universities shall describe their progress in developing assessment programs and submit information on student achievement to the commission.~~

**RATIONALE:**

Every opportunity should be taken to refine data collection and reporting processes to ensure that the public resources applied to data management and reporting are aligned with meaningful information without duplication or even marginal duplication of data. All data should be mission focused, which suggests that all data collected may not necessarily be the same for each sector of institutions.

The Task Force does not recommend that Act 359 be changed, however. We received input from institutional representatives who had been directly involved in performance-based funding, and we discussed at some length the ramifications of changing any of the three Acts involved which are perceived as focusing on institutional accountability, and determined that Act 359 is the most useful in the way of information and accountability. After several years of adjustments, a new set of reporting requirements would be more onerous than the current system, which has been thoughtfully created with broad-based input at this point. Therefore, no recommendation to alter Act 359 is made in this report.

Only two items in Act 255 that are not included in Act 359: (5) the percent of graduate and upper division undergraduate students participating in sponsored research programs and, (8) the percent of graduate students who received undergraduate degrees at the institution, within the State, within the United States, and from other nations. Both of these reports are very time-consuming and the information does not appear to be utilized for any purpose.

The following are the only two elements required by Act 255 are not reported under Act 359 for Senior Colleges and Universities:

Item(5) the percent of graduate and upper division undergraduate students participating in sponsored research programs, and

Item (8) the percent of graduate students who received undergraduate degrees at the institution, within the State, within the United States, and from other sources.

There has yet to be any demonstrated use of the information other information in a report.

There are only three indicators for the Technical Colleges in Act 255 that are not captured electronically by CHE. The three indicators are Licensure Results, Alumni Survey Results and the Number of Sections Taught by Full and Part-time Faculty. The following rationale applies to the Technical College reporting requirements:

Item 14 (continued)**Repeal of Act 255 -**

- 1) Licensure Results – This data is required in both Act 255 and 359. Since the inception of Act 359, we have used the reporting methodology developed in Act 255 to report and score the indicator in Act 359. The data is reported under Act 255, is used in the annual CHE performance funding report, but is only scored in Act 359. Given this duplication, we should move licensure reporting to Act 359 and eliminate Act 255.

Alumni Survey Results – These data do not appear to be used in a meaningful way by CHE staff or the colleges. They are not scored in Act 255, and in the past two years, results from all of the questions asked have not been included in the annual performance funding report document. The Alumni Survey requirement of SC Legislative Act 255 should either be eliminated or extensively revised so that the information collected could be used to meet other reporting and/or information needs of the technical colleges. The current research methodology stipulated by the Commission on Higher Education forces colleges to survey its graduates on a biennial basis, asks questions that may not be relevant or useful to the individual college, surveys alumni three years after graduation and requires a 20 percent response rate for the data to be considered valid.

- 2) The length of time after graduation that is stipulated by this requirement is unrealistic based on the movement patterns of typical 2-year college graduates. And because graduates move within this time frame, the 20% response rate requirement may force some institutions to use more resources than would be required if the timeline were shortened. A shorter timeline for contacting graduates (within 12 months from graduation for example) would ensure a better response rate, would possibly reduce the amount of resources used to respond to this requirement, would better fit the migration pattern of 2-year college graduates, and would encourage colleges to include additional questions that would assist with other internal reporting needs such as academic program evaluations. Currently, some institutions conduct the CHE survey along with an internal alumni survey to support program involved in the academic program review process. Collection of these data using the current methodology wastes valuable resources at the institution and serves no useful function for either CHE Staff or the legislature. Each technical college has developed a methodology for collecting alumni data that supports their internal institutional effectiveness programs.
- 3) Number of Sections Taught by Full -and Part-time Faculty – While this is not a specific Act 359 data element, a series of data is collected in Act 359 under Indicator 3 – Classroom Quality that attempt to get at the same issue. These include: (1) average lower division class size, (2) % of undergraduate courses  $\geq 50$ , (3) % of undergraduate courses  $\geq 100$ , (4) FTE students to FTE faculty and (5) Ratio of Full-time faculty to other full time employees.

Item 14 (continued)

**Repeal of Act 629** In the early years of the assessment and institutional effectiveness movement Act 629 provided an opportunity for Institutional Effectiveness Coordinators at the 33 public institutions to share assessment methodologies and strategies and to compare their findings. Oversight of the legislation by CHE staff resulted in: (1) an annual assessment plan for each indicator being prepared/updated and submitted to the Commission staff, (2) a summary report being submitted by the college and (3) CHE staff providing a response to each institution regarding the quality of the assessment program and report they had implemented. This is no longer the case. Additional points in this regard are:

- At a conference held by the SC Higher Education Assessment Network, in the mid – 1990's, several members of the SC General Assembly indicated that they often did not have the opportunity to read these reports prior to casting their votes on education related issues.
- It has been at least three years since any feedback was provided to the colleges with regard to the content and quality of the assessment programs now taking place on each campus. The annual assessment plan is no longer submitted to CHE. And finally, college summary reports are posted on their web site and the URL is submitted to CHE so that anyone interested in reading the report can have access to the it.
- If these reports are not used to meet the informational needs of either CHE staff or the SC Legislature, then continuing to produce them is not an effective use of state resources. Each college is aware of the SACS Criteria and realizes that compliance with the institutional effectiveness component is critical to their obtaining reaffirmation. The Commission on Colleges should be charged with reviewing compliance with institutional effectiveness criteria.

The original intent of the Act 629 report was to document institutional improvement. Act 359 has taken the role of measuring institutional improvement, for all practical purposes.

**BENEFIT/OUTCOME:**

Indirect, though not readily measured, cost savings. The change improves the ability of an institution or agency to concentrate on mission-focused issues and the most relevant accountability measures.

**DISCONTINUE THE REQUIREMENT OF ATTORNEY GENERAL APPROVAL  
FOR RETAINING ASSOCIATE COUNSEL**

**ACTION:** Make changes in the annual Appropriations Act to discontinue the requirement that public institutions of higher education must seek Attorney General approval for retaining Associate Counsel for individual institutions.

**REFERENCE:**

The state's universities and colleges infrequently require local legal representation in matters of concern to them. Currently, they are required by statute to seek approval of specific attorneys and of fees, before they can retain associate counsel. This requirement is stated in the annual Appropriations Act, paragraph 32.3 as follows:

**32.3. (AG: Engage Attorney on Fee Basis)** No department or agency of the State Government shall engage on a fee basis any attorney at law except upon the written approval of the Attorney General and upon such fee as shall be approved by him. This shall not apply to the employment of attorneys in special cases in inferior courts where the fee to be paid does not exceed two hundred fifty (\$250.00) dollars or exceptions approved by the Budget and Control Board.

The added time and effort required both of the institutions and of the Attorney General's office adds expense to the state's operations.

**RECOMMENDATION:**

Eliminate paragraph 323 from the 2003 and subsequent annual Appropriation Acts.

**RATIONALE:**

Although Task Force discussions indicate that the Attorney General's office has generally shown itself to be helpful and cooperative with individual institutions, this requirement still represents an expenditure of institutional time and effort. Since higher education institutions are in the best position to judge the need for associate counsel, and are regularly audited with respect to contracts, increased efficiency will accrue to the institutions by the elimination of this statutory requirement.

**BENEFITS/OUTCOMES:**

Savings of time and effort by institutions of higher education and the Attorney General's office.

**LIST OF PROPOSALS NOT RECOMMENDED  
FOR ACTION AT THIS TIME**

A number of other proposals were received from administrators at various institutions. The three listed below were discussed at some length by the Task Force before the group elected not to recommend action on these at this time. The attached information gives the background information on the issues.

<u>Issue</u>	<u>Page</u>
1. Eliminate certain reports, which are already subject to annual audits and/or federal audits. These include the out-of-state travel report, quarterly procurement reports, annual dual employment report, and the state vehicle report.	46
2. Sales Tax Exemption: Seek exemption for higher education institutions from sales and use tax liability on all purchases.	49
3. Electronic submission of retirement forms	52

Item 1

**Eliminate Certain Reports, Which Are Already Subject to Annual Audits and/or Federal Audits. These Include the Out-Of-State Travel Report, Quarterly Procurement Reports, Annual Dual Employment Report, and the State Vehicle Report**

**GENERAL OBSERVATION** - The audits that are performed are for accuracy and financial compliance as opposed to management or subjective evaluation which is done by the recipient of the report.

A. Dual Employment Report - Re: Section 72.23 of 2001/02 Appropriations Act 72.23.  
(GP: Dual Employment) Any employee who is approved for dual employment must be paid in a timely manner. The secondary agency is required to make payment of funds approved for and earned under dual employment within forty-five days of the beginning of the employment.

**COMMENT:** It appears that it would be difficult to do this any easier even if audit criteria could be developed. The same amount of agency effort would be necessary.

B. Out of State Travel Report - Re: Section 72.51 of 2001/02 Appropriations Act 72.51.  
(GP: Out-of-State Travel Report) For Fiscal Year 2001-02, the Comptroller out-of-state travel.

Annually on October 1, the Comptroller General shall issue a report on out-of-state travel expenditures for the prior fiscal year which shall be distributed to the Senate Finance Committee, the House Ways and Means Committee and the Statehouse Press Room. The Comptroller General may use up to \$500 of general fund appropriations for the purpose of providing copies to the media or the public upon request. The report must contain a listing for every agency receiving an appropriation in the annual General Appropriations Act. The listing must show at a minimum the top ten percent of employees for whom out-of-state travel expenses and registration fees were paid within each agency, not to exceed twenty-five employees per agency. Agencies should include position titles for each of the top twenty-five travelers for each agency. Expenditures must include state, federal and other sources of funds. The list for each agency must be in rank order with the largest expenditure first and the name of the employee must be shown with each amount. Agencies should include a brief summary of the type of out-of-state travel the agency incurs. The Comptroller General may provide additional information as deemed appropriate. The Comptroller General shall provide no exceptions to this report in that the information contained is not considered confidential or restricted for economic development purposes. However, further disclosure of detailed information shall be restricted as provided for by law.

For both of the above reports information is collected by the CG from the Higher Ed institutions and combined with agencies' data from CG files. Reports are then prepared by the Comptroller General and distributed to the offices of the chairs of the Ways and Means Committee and Senate Finance Committee.

Questions typically do come from these committees after review. Source - CG

Item 1 (continued)

## C: Quarterly Procurement Reports: Re: Procurement Code Sections 11-35-2440, 11-35-5240

## § 11-35-2440. Records of Procurement Actions.

(1) Contents of Records. Any governmental body as defined in Section 11-35-310(18) shall submit quarterly a record listing all contracts made under Section 11-35-1560 (Sole Source Procurement) or Section 11-35-1570 (Emergency Procurements) to the chief procurement officers. The record shall contain:

- (a) each contractor's name;
  - (b) the amount and type of each contract;
  - (c) a listing of supplies, services or construction procured under each contract.
- The chief procurement officers shall maintain these records for five years.

(2) Publication of Records. A copy of the record shall be submitted to the board on an annual basis and shall be available for public inspection.

The above reports provide current information to B&C BD annually on unique transactions subject to public scrutiny. The information is sorted by agency and commodity code and records are kept for five years. There is no audit or other report that provides this information. An audit of transactions is done every three years by MMO for each agency.

**COMMENT:** There does not appear to be a way to eliminate the need for this information or a better way to collect it.

## D. Minority Business Enterprise (MBE) Procurement Code Section 11-35-5240

## § 11-35-5240. Minority Business Enterprise (MBE) Utilization Plan.

(1) In order to emphasize the use of minority small businesses, each agency director shall develop a Minority Business Enterprise (MBE) Utilization Plan.

The MBE Utilization Plan shall include but not be limited to:

- (a) The name of the governmental body;
- (b) A policy statement expressing a commitment by the governmental body to use MBE's in all aspects of procurement;
- (c) The name of the coordinator responsible for monitoring the MBE Utilization Plan;
- (d) Goals that include a reasonable percentage of each governmental body's total procurements directed toward minority vendors;
- (e) Solicitation of qualified minority vendors, a current list of which shall be supplied by the Office of General Services, in each commodity category for which such minority vendor is qualified. The current listing of qualified minority vendors shall be made available by the Office of General Services on a timely basis;
- (f) Procedures to be used when it is necessary to divide total project requirements into small tasks which will permit increased MBE participation;
- (g) Procedures to be used when the governmental body subcontracts the scope of service to another governmental body; the responsible governmental body may set goals for the subcontractor in accordance with the MBE goal and the responsible governmental body may allow the subcontractor to present a MBE Utilization Plan detailing its procedure to obtain minority business enterprise participation.

(2) MBE utilization plans shall be submitted to the SMBAO for approval not later than July, thirtieth, annually. Progress reports shall be submitted to the SMBAO not later than ten days after the end of each fiscal quarter.

- (a) Number of minority firms solicited;
- (b) Number of minority bids received;
- (c) Dollar amount of minority bids awarded.

Item 1 (continued)

The above reports provide quarterly and annual information for the Governor's Office which has a Department for Minority Business planning and reporting. There is no other process which collects this data in report form.

**COMMENT:** There does not appear to be a way to eliminate the need for this information or a better way to collect it.

E: State Vehicle Reports, Section 1-11-260

SECTION 1-11-260. Division of Motor Vehicle Management; annual reports; policies, procedures and regulations.

The Fleet Manager and the Council shall report annually to the Budget and Control Board and the General Assembly concerning the performance of each state agency in achieving the objectives enumerated in Sections 1-11-220 through 1-11-330 and include in the report a summary of the Division's efforts in aiding and assisting the various state agencies in developing and maintaining their management practices in accordance with the comprehensive statewide Motor Vehicle Management program. This report shall also contain any recommended changes in the law and regulations necessary to achieve these objectives.

The Board, after consultation with state agency heads, shall promulgate and enforce state policies, procedures, and regulations to achieve the goals of Sections 1-11-220 through 1-11-330 and shall recommend administrative penalties to be used by the agencies for violation of prescribed procedures and regulations relating to the Fleet Management Program.

The reports are submitted to the Legislature, Governor's Office, and the B&C Bd. The use of state-owned vehicles is another issue that receives a lot of public scrutiny. The reporting and review process information and is a monitoring mechanism as well as providing data on vehicles use and cost. There is no known duplication of effort to do this.

**COMMENT:** The reporting seems to be politically sensitive and not duplicated. No specific recommendation for improvement.

**Sales Tax Exemption:  
For Higher Education Institutions**

**ACTION:** Seek change in legislation to exempt state-supported institutions of higher education from sales and use tax liability on all purchases.

**REFERENCE:** SC Sales and Use Tax Regulation 117-174-93 Schools – Purchases.

Schools owned and operated by the state or by the counties and cities of the state, as well as private schools, are not exempted from payment of sales and use taxes on the property purchased by them.

According to SC Sales and Use Tax Code 12-36-2120 (3)(a)(b), certain purchases used in courses of study at institutions of higher education are already exempt.

(3)(a) textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for students' use in the school library of these schools and institutions;

(b) books, magazines, periodicals, newspapers, and access to on-line information systems sold to publicly supported state, county, or regional libraries;  
Items in this category may be in any form, including microfilm, microfiche, and CD ROM; however, transactions subject to tax under Sections 12-36-910(B)(3) and 12-36-1310(B)(3) do not fall within this exemption;

**RECOMMENDATION:**

Make the changes in regulations as shown by strikeout.

Schools owned and operated by the state or by the counties and cities of the state, ~~as well as private schools~~, are ~~not~~ exempted from payment of sales and use taxes on the property purchased by them.

Item 2 (continued)**RATIONALE:**

The South Carolina Commission on Higher Education contracted with MGT of America to conduct a study to generate accurate and comparative data for determining the educational and general (E & G) needs of public institutions in South Carolina, as compared to public institutions in other states. The information gathered in the study was used to evaluate the Mission Resource Requirement (MRR) Model, which determines educational and general resources needs for the South Carolina public colleges and universities. MGT worked with the Funding Advisory Committee to select regional and national peer institutions for each of the 33 South Carolina public colleges and universities; collect data from the peer institutions and from national data sources; and evaluate the Mission Resource Requirement Model. A total of 290 institutions located throughout the nation were surveyed with respect to financial data, state support, and funding levels. The consultants verified the validity of the Mission Resource Requirement, and also identified certain "best practices" in a review of other states' funding models.

In its June, 2000 final report, The MGT consultants identified the elimination of state sales tax payments for higher education institutions as a recommendation for "best practices" followed by other states. Quoting from their report: "Over 90 percent of the peer institutions reported that they do not pay sales tax on goods purchased. Since South Carolina institutions must pay sales taxes, even with the same dollar resources, the peers are able to provide additional services. It is estimated that the South Carolina public colleges and universities paid almost \$35 million in sales taxes during FY 1998-99. This amount would have purchased significantly more services for the citizens of South Carolina, had the funds been available."

Even if the total funds available to the institution are not improved by eliminating sales taxes, the efficiency for both the state and the institution is sure to be improved by avoiding the paperwork and effort of collections and repayment of such taxes. Revenue derived from the tax levied in the SC Sales and Use Tax Act is remitted to the State Treasurer and credited to the State Public School Building Fund, and any sum over and above that required is credited to the General Fund, which is used for school purposes only. Therefore, state supported universities pay the sales and use tax on purchases only to receive much of it back through state appropriations. This places a burden on agencies' Purchasing and Accounts Payable Departments because of time spent trying to determine which purchases are taxable and whether sales or use tax is appropriate. Much time is also spent filing returns, paying the taxes and working with auditors when the agency is audited.

Item 2 (continued)**BENEFITS/OUTCOMES:**

A measurable cost benefit for the state would be in SC Department of Revenue auditors' salaries. Time spent by Accounts Payable staff to determine whether or not certain purchases are taxable, filing returns and working with auditors could be used in other areas of the AP function. This includes telephone calls to:

departments trying to determine if the item(s) purchased are directly related to classroom teaching and exempt under the "textbook exemption;"

out-of-state vendors trying to find out if they are registered with the SC Department of Revenue to determine whether to pay sales or use tax after it has been decided that the item(s) was taxable, and;

the SC Department of Revenue for clarification when the interpretation of the law is not clear to the taxpayer.

This change improves an institution's ability to concentrate on mission focused issues and accountability measures.

**COMMENT:**

Although there is adequate justification based on comparison with other states' practices to eliminate sales tax on goods purchased by public higher education institutions, the committee, in view of the current economic conditions in the state, does not recommend that this issue be brought forward at this time.

Item 3

**Electronic Submission of Retirement Forms**

**ACTION:** Request for electronic submission of forms for the SC Retirement Systems office in Columbia.

**REFERENCE:**

Currently have to rely on a paper copy to be received via ground mail. Then, supply the requested information and return it via fax or mail.

**COMMENT:**

The proposal would create the ability to receive, process, and return these forms via an electronic submission. We have been told from SCRS that they are not currently considering this possibility because of threat of fraudulent forms being submitted. SCRS has a members only website where they provide the password and login information. By processing forms through this restricted site, it would control fraudulent forms and should be able to provide a digital signature to the form when submitted because we are logged in.

**BENEFITS/OUTCOMES:**

Changing this procedure would greatly improve efficiency, mail delays, paper costs, and fees related to faxing.

**TASK FORCE COMMENTARY:**

Although it is clear that institutions and other agencies are moving toward electronic transactions, we believe that this will happen with normal encouragement, and is not an appropriate issue for this task force.