

MINUTES OF STATE BUDGET AND CONTROL BOARD MEETING

March 5, 2014 -- 9:00 A. M.

The Budget and Control Board (Board) met at 9:00 a.m. on Wednesday, March 5, 2014, in Room 252 in the Edgar A. Brown Building, with the following members in attendance:

Governor Nikki R. Haley, Chair;
Mr. Curtis M. Loftis, Jr., State Treasurer;
Mr. Richard Eckstrom, Comptroller General; and
Senator Hugh K. Leatherman, Sr., Chairman, Senate Finance Committee.
Representative W. Brian White, Chairman, Ways and Means Committee
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Also attending were Budget and Control Board Executive Director Marcia Adams; Chief of Staff Paul Koch; Division Directors Les Boles, Dianne Poston, and Nolan Wiggins; General Counsel David Avant; Governor's Chief of Staff Ted Pitts; Treasurer's Chief of Staff Clarissa Adams; Comptroller General's Chief of Staff Eddie Gunn; Senate Finance Committee Budget Director Mike Shealy; Ways and Means Committee Chief of Staff Beverly Smith; Board Secretary Delbert H. Singleton, Jr., and other Budget and Control Board staff.

Adoption of Agenda for Budget and Control Board

Upon a motion by Senator Leatherman seconded by Mr. White, the Board adopted the Budget and Control Board agenda as presented.

South Carolina State University: Update (Regular Session Item #1)

The Board received an update concerning South Carolina State University. Thomas J. Elzey, President of South Carolina State University, appeared before the Board on this matter and made a presentation to the Board. (A copy of Mr. Elzey's presentation is attached and incorporated herein.)

Mr. Elzey provided opening comments to the Board regarding SCSU's recent Founder's Day Program and Gala and his inauguration. He indicated that since becoming president at SCSU he has worked to lift up the image of the school. He noted that SCSU's applications are up over 50% from the previous year and that their fundraising is significantly higher than it was last year. He stated SCSU's alumni are giving back to the school and SCSU is renewing its relationships with corporate entities. He also added that SCSU's students are continuing to excel and that improvements have been made to the campus.

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Mr. Elzey noted that SCSU has an immediate challenge that is an accumulation of several years of deficits and cash deficiencies. He commented that the Board has been provided with information on their enrollment and noted that there has been a significant drop in enrollment over the last several years. He stated that there are a number of factors that have affected the lower enrollment over the last several years to include the economy, availability of funding resources for students, bad publicity SCSU has received, and SCSU's accreditation is under warning from SACS (Southern Association of Colleges and Schools). He said that enrollment is now stabilizing and that they can now begin rebuilding enrollment from 3400 this year to 3700 next year.

Mr. Eckstrom asked what the basis is of the SACS accreditation warning. Mr. Elzey said the SACS warning is based on governance issues regarding SCSU's Board and their financial statements. He said SCSU's rating is at 1 and should be between a rating of 4 to 5.

In further discussion, Mr. Elzey stated that SCSU's cash flow deficiency has manifested itself in SCSU's inability to pay many of its vendors. He said SCSU has talked to the vendors and a number of them have put SCSU on hold. Mr. Elzey stated SCSU is looking for assistance to address the issue. He said provided that SCSU gets assistance their plan is to have a balanced budget.

Governor Haley commented that SCSU is very important to the State. She said that she is concerned because SCSU has been through this before. She said there have been fiscal management problems and a lot of politics on the Board. She noted that Claflin University has the same environment as SCSU, but the difference is that Claflin brings in board members from out of state who bring with them funding and other opportunities. She said that SCSU has never had that opportunity. She expressed concern as to what should be done to keep this situation from happening again. She said one of the first things to be acknowledged is that bad decisions have been made at SCSU. She said the thought cannot be that if the money is received that everything will be fixed. She stated that real reforms need to be made in the school and it will shine once that is done. Mr. Elzey said he agreed with Governor Haley and said his plan is to put a plan in place for SCSU to be financially stable in three years. He noted that in the past a lot of things were masked over and the University was not as transparent as it should have been. He

stated that when he arrived as president he found that there were things that were being kept under the table.

Mr. Elzey introduced SCSU's chief financial officer, Jim Openshaw, to the Board. He said the two of them are working hard to do a thorough review of SCSU's finances and the operation of the University.

Senator Leatherman commented that over the past decade three or four presidents from SCSU have given assurance that things would be straightened out, but that has not happened. He asked Mr. Elzey what assurances he can give that things will be straightened out. Mr. Elzey said that he has put together a team that will help put SCSU on track to where they need to be. Senator Leatherman further asked Mr. Elzey what happens if things do not turn around as he plans. Mr. Elzey replied that if SCSU does not meet its enrollment targets and does not receive the assistance asked for to meet its current and future situations, a resizing of SCSU and an examination of other alternatives will be required. He said he was not prepared to discuss those alternatives and that it is not time to do those things. Senator Leatherman asked what will happen if SCSU does not get the money. Mr. Elzey said that he will have to have conversations with their vendors to talk to them about methods to work with them to get necessary services without the money that is needed.

Senator Leatherman asked Mr. Elzey what SCSU needed. Mr. Elzey stated that SCSU needed \$13.6 million. Senator Leatherman asked Mr. Elzey if he was asking for a direct appropriation. Mr. Elzey said it would be in the best interest of the University if it were a direct appropriation. Senator Leatherman asked what other alternatives should be considered. Mr. Elzey said the possibility of a loan should be considered. Senator Leatherman asked if Mr. Elzey could give assurance that a loan would be repaid. Mr. Elzey said that he would assure that a loan would be repaid and that they would expect to negotiate reasonable and favorable terms and conditions for a loan.

Mr. White asked Mr. Elzey to discuss the different scenarios in his presentation should SCSU receive assistance and if it does not. Mr. Elzey said the best case scenario is that SCSU receives \$13.6 million and the projected deficit deficiency would be eliminated. He said if the assistance is a loan it would be recorded as additional debt for the University, but that a loan would help with their cash flow problem. He said that will help them to adjust the ratios that

SACS reviews. He said if the University receives nothing it leaves them in a very precarious situation.

Mr. Elzey commented that he met with Mr. Eckstrom and Mr. Loftis in June 2013 to discuss SCSU's cash flow situation. He said he found out the University was borrowing money last year from its restrictive funds and he knew the bill would carry forward to this year. He said he advised Mr. Eckstrom and Mr. Loftis that he knew SCSU was going to have a liquidity problem, he just did not know how much. He stated that he initially lacked the financial staff to generate that information.

Mr. White commented that he worries about giving SCSU a direct appropriation considering its recent history with the hope that vendors are paid. He said that he is also worried about the juniors and the seniors at SCSU who are worried if they are going to graduate. He stated that those students need a commitment that they will get a quality education.

Senator Leatherman asked if \$13.6 million would cover all of the outstanding invoices. Mr. Elzey said that it would. Senator Leatherman further asked how ongoing expenses would be covered. Mr. Elzey stated that ongoing expenses would be covered by spending only what the University takes in as revenue.

Mr. Loftis indicated that he has had discussions with Mr. Elzey. He said that he is enthused by those discussions.

Mr. Eckstrom commented that Mr. Elzey met with them eight months ago. He asked if the \$13.6 million deficit would have been smaller had Mr. Elzey raised the issue earlier. Mr. Elzey commented that part of the problem has been in getting their arms around the financial operation of the University.

In further discussion, Governor Haley asked Mr. Elzey about his relationship with SCSU's board of trustees. Mr. Elzey stated that he has a good relationship with the University's board of trustees. Governor Haley asked if any of the board members or legislative delegation were in attendance at the meeting. Mr. Elzey indicated none were present. Governor Haley said that she is concerned that none of the board members or legislative delegation was present. She said that Mr. Elzey needs the support of his board and legislative delegation. She said that if Mr. Elzey does not have their support it is hard for the Budget and Control Board to go forward on this issue without knowing that Mr. Elzey has the support of SCSU's board and the legislative

delegation. Governor Haley stated that she has a real concern that none of the supporters of SCSU are present.

Upon a motion by Mr. Loftis, seconded by Mr. White, the Board received as information an update concerning South Carolina State University.

Information relating to this matter has been retained in these files and is identified as Exhibit 1.

Division of General Services: University of South Carolina Lease – West Campus Development Leases (Regular Session Item #2)

The University of South Carolina requested approval to execute a Master Lease for its West Campus Development project with separate Supplemental Leases for Student Housing and Office Building sites. Common provisions are provided in the Master Lease, while specific provisions pertaining to each project type are included in each of the Supplemental Leases. The Master Lease provides for ground leases for three specified sites to be used for the construction of two student housing facilities with a total of approximately 878 beds and required parking of 719 spaces, and one commercial office building of approximately 130,000 sq. ft. with parking provided by the University within the existing Horizon garage (427 spaces allocated) at the current University rate of \$85 per month per space, subject to future increases. The terms of the ground leases are 40 years each, with two 10-year renewal terms available upon the agreement of both parties. The forty-year base term for each lease begins upon Substantial Completion of each of the facilities and terminates at the end of the 40-year period, or if renewed, at the end of the renewal period(s). The Master Lease agreement begins upon final approval and signature of the parties, which triggers the beginning of a License Term to allow for the construction of the improvements prior to the 40-year Lease Term beginning.

USC will charge a license fee for the Student Housing of \$16,000 per month (\$192,000 annually) for the Phase I site, and \$10,500 per month (\$126,000 annually) for the Phase IA site to compensate for the loss of parking revenue during this period. There is no charge for the license for the Office Building Site because USC does not derive any revenue currently for that site. Each of the three sites has a Base Rent component that is based upon the appraised value of the site, with increases of 2.5% every 5 years, as well as a Percentage Rent component. Payment

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of the Base Rent for the ground leases is required regardless of the financial performance of the facilities as detailed below:

- a. *Student Housing Lease:*
 - (1) Beginning annual Base Rents:
 - (a) Phase I site (Blossom, Lincoln, Devine, and Park) - \$277,860;
 - (b) Phase IA site (Greene, Lincoln, Devine and Park) - \$175,560.
 - (2) Percentage Rent - In addition to the Base Rent, USC will receive 15% of Positive Cash Flow in years 1-30 and 50% in years 31-40.
- b. *Office Building Lease (550 Assembly):*
 - (1) Beginning annual Base Rent is \$72,600 for the Office Building site.
 - (2) Percentage Rent - In addition to the base rent, USC will receive 15% of Positive Cash Flow for the Office Building.

The total revenue to the University from the Ground Leases and the Percentage Rents over the 40 year term is estimated at \$168,531,925.

Additionally, USC will lease back approximately 40,000 SF of rentable space within the new Office building to be constructed at 550 Assembly Street in Columbia, South Carolina. The building will be constructed on a .79 acre parcel at the southeast corner of Assembly and Blossom Streets on the same block as the University's existing Horizon I Research Building and the Horizon Parking Facility. The space leased by the University will be used for faculty offices and academic support space. The balance of the space in the building will be leased by the Developer for private use.

The building is being designed, built, financed, operated and maintained by a private developer as a component of a West Campus Development Public-Private Partnership between Holder Properties, Inc. and the University of South Carolina. Pursuant to SC Code Ann. 11-35-3010, the Office of the State Engineer approved the University of South Carolina's determination to use the design-build-finance-operate-maintain project delivery method and allowed the University to proceed in accordance with the Procurement Code. Design-build-finance-operate-maintain means a project delivery method in which the governmental body enters into a single contract for design, construction, finance, maintenance and operation of an infrastructure facility over a contractually defined period.

The Office building is projected to be five stories and contain approximately 130,000 gross square feet. The building will be constructed of similar quality and appearance to adjacent

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University facilities. The Developer is contractually obligated to complete the building enabling occupancy on or before July 31, 2017. The University seeks to lease approximately 40,000 SF of rentable area on two floors. The University will utilize the space for faculty offices and academic support space to augment the College of Engineering and Computing. This college, currently accommodated in the Swearingen building and the 300 Main Street building, seeks to relocate faculty offices and support space to enable existing space in those buildings to be reassigned to instructional, lab and research space. Leasing space in the new office building will afford USC this opportunity.

The lease term will be ten (10) years commencing on or before July 31, 2017. USC will have the right to extend the term of this lease for up to two (2) consecutive terms of five (5) years each upon the same terms and conditions of the original lease except for Basic Rent, which will increase at 2.5% per annum. The landlord shall provide \$25 per SF for upfitting costs. Base rent will be \$16.60 per square foot for the first year of the lease. Thereafter, base rent increases annually as shown in the chart below:

Year	Base Rent Rate/SF	Annual Rent
1	\$16.60	\$664,000.00
2	\$17.02	\$680,800.00
3	\$17.45	\$698,000.00
4	\$17.89	\$715,600.00
5	\$18.34	\$733,600.00
6	\$18.80	\$752,000.00
7	\$19.27	\$770,800.00
8	\$19.75	\$790,000.00
9	\$20.24	\$809,600.00
10	\$20.75	\$830,000.00
Average	\$18.61	
Total		\$7,444,400.00

The University will be responsible for all operating costs as defined in the lease agreement and associated with the leased area. There are adequate funds for the lease according to a Budget Approval Form submitted by the University. The University has indicated that no student fee increase will be associated with this lease.

It is essential that the leased space which accommodates the need described above be near the USC campus for accessibility of the faculty, who will be located in this building, to the

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academic and lab space in the Swearingen and 300 Main Street buildings. USC has surveyed the lease market for 40,000 SF of suitable space near the campus and such space could not be located. However, the following chart represents comparable lease rates of similar business space, currently occupied, in the Columbia central business district:

Location	Base Rent Rate/SF
1320 Main Street (Meridian Bldg.)	\$16.75
1221 Main Street	\$24.00

Rick Kelly, with USC, appeared before the Board on this matter.

Mr. White commented that this item is termed as master lease, but that it is more than a master lease. He said that USC has met with him on the project and they have answered his questions. However, he said that he still does not have a comfort level for the project.

Upon a motion by Mr. Eckstrom, seconded by Senator Leatherman, the Board approved the proposed leases for the University's West Campus Development project, as requested by the University of South Carolina. Governor Haley, Mr. Eckstrom and Senator Leatherman voted for the motion. Mr. Loftis and Mr. White voted against the motion.

Information relating to this matter has been retained in these files and is identified as Exhibit 2.

Division of Procurement Services: University of South Carolina Request for Procurement Exemption Pursuant to Section 11-35-710 (Regular Session Item #3)

The Department of Commerce and the University of South Carolina have been in discussion with a significant Fortune 100 Company for an economic development package that would bring significant business to, and create new jobs in, South Carolina. The Company has identified the proposed Office Building that is planned as part of the West Campus project as the targeted site for the location of this new business venture. As part of the overall package being developed to bring the Company to South Carolina, the University needs to be able to negotiate a services contract with the Company. The Company and the University desire to enter into a contractual arrangement whereby the Company would do research and development work while providing services to the University as part of its overall business strategy for this location. An

exemption from the Procurement Code is needed to allow the University to negotiate directly with the Company as part of the economic development package.

The proposed exemption contains safeguards to ensure that the negotiated price for the contractual services is fair, reasonable, and tied to the economic development efforts associated with this building. This exemption may be used only after both the Department of Commerce submits a written certification to the members of the Budget and Control Board substantiating how the proposed contract will assist the Department with the Project Sunset economic development opportunity, and the University submits a written certification to the members of the Budget and Control Board substantiating the University's determination that it is paying a reasonable price, comparable to that which would be obtained with competition, for the items acquired pursuant to the contract.

Mr. Kelly appeared before the Board on this matter.

Senator Leatherman commented that contrary to everything he has stood for concerning procurement since 1981, this exemption request is unique enough that he is willing to "turn his head" for this project. He said he will continue to evaluate procurement as much as he always has. He said that he does not want anyone to think that because of his support for this item that this is a blank check for the future.

Mr. Eckstrom commented that he decided to support this matter, in part, because of Senator Leatherman's involvement in getting the exemption drawn tightly. He said that he also decided to support the exemption based upon Commerce Secretary Robert Hitt's involvement.

Mr. White stated that this matter is related to the previous matter and that part of his concern is the procurement aspect of the transaction. He stated that he is going to look at changing the procurement code such that matters of this nature come back to the JBRC and the Board for approval.

Governor Haley asked Mr. Kelly to go through the steps of the process for this item. Mr. Kelly noted that the Board has always been cautious about exempting matters from the procurement code. He said the Board has approved exemptions where there has been a need to benefit the State. Mr. Kelly said the exemption will give USC the ability to negotiate only with Project Sunset vendors to enter into a contract not exceeding ten years to provide certain services for USC without competition. He said the reason for doing so is to meet the challenge for

expanding economic development and being more efficient. He said this will allow USC the opportunity to streamline its operations. He said he does not think this could be done another way because vendors are lined up to bring economic development and efficiency to the State. Mr. Kelly further commented that the exemption will allow USC to negotiate with a Fortune 100 company to participate in the organizational structure and operations of USC and attract other businesses to come to Columbia.

Governor Haley asked Commerce Secretary Hitt to explain Commerce's position concerning and involvement with this project. Mr. Hitt said he and his team have met with USC and members of the Company concerning Project Sunset. He said the Company has not asked for any direct incentives for the project. He stated that the project is a re-shoring project that brings together and consolidates activities. He said the project will create a certain amount of synergy by bringing together elements from the private and public sector within USC. He commented that based on the Company's performance in two other states jobs have been created. He stated that this is a nontraditional project and is not eligible for incentives at this point. He said the project is a good project and it is good for USC and the State. He noted that this is a Fortune 100 company that would bring a cluster of jobs to the area that will have impact on the State. He said in the future it could become eligible for incentives, but since job consolidation is involved the project does not qualify for incentives.

Senator Leatherman asked if approval for future incentives would have to come back before the Board. Mr. Hitt responded that whatever the Board wishes to happen is what will be done. Senator Leather stated to Governor Haley that any future incentives should come to the Board for approval.

Mr. White asked if any new jobs were being created by the project. Mr. Hitt said he sees this as a consolidation of jobs that are elsewhere on the private and public side. He stated that the efficiency USC speaks of is that some of USC's employees will become a part of the project. He said at this point it is hard to discern what jobs are new or transferred. He commented that based on performance in two other states where something similar to this project has gone through universities jobs have been created. Governor Haley said that this is not an active Commerce project and that Mr. Hitt is merely a facilitator for the project. Mr. White said that is part of his concern about the project. He commented that this is unlike the master lease portion

of the project where an RFP was done for a builder. He said in this instance an exemption is sought and the project was not put out for bids.

Mr. Eckstrom asked if the future incentives Mr. Hitt referred to are related to any approval or action taken by the Board at this point. Mr. Hitt said the company is trying to reposition itself in the U.S. and is using the university platform as a model which has met with success in two other states. He said the University and the private company will come together to create a critical mass and that the belief is that once that critical mass is formed other companies will want to participate. He stated that is the point when new jobs are created and that is the point a review would be done to provide incentives in the context of new jobs. Mr. Kelly commented that the critical mass will open up the opportunity for others to come to the area. He said that if this is not done other companies will not come to the area because there is no opportunity for them to come and be a part of this project. He said that an environment for companies to come to the area is being created.

Mr. Eckstrom further asked if the companies that are considering this project are currently located in the Midlands. Mr. Kelly said the companies are located inside and outside the Midlands. Mr. Hitt said some are possibly out of state. Mr. Eckstrom said that is important because the Midlands economy is very public-sector oriented. He said for USC to create this opportunity to rebalance some of those jobs from other parts of the State into the Midlands is a worthwhile goal to support.

Mr. Loftis said that he agrees with Mr. White. He said he has asked questions about this project and the information is thin.

Upon a motion by Mr. Eckstrom, seconded by Senator Leatherman, the Board approved the University of South Carolina's request to approve the following exemption from the Procurement Code:

The University of South Carolina (USC) is exempted from complying with the purchasing procedures of the Consolidated Procurement Code, including Article 5, and from procuring through the respective chief procurement officer's area of responsibility solely for the acquisition of information technology pursuant to a contract with the business named in Project Sunset as designated by the Department of Commerce. The exemption does not extend to any material modifications beyond the general scope of the original contract. This exemption may be

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used only after both the Department of Commerce submits a written certification to the members of the Budget and Control Board substantiating how the proposed contract will assist the Department with the Project Sunset economic development opportunity, and the University submits a written certification to the members of the Budget and Control Board substantiating the University's determination that it is paying a reasonable price, comparable to that which would be obtained with competition, for the items acquired pursuant to the contract. The contracts entered using this exemption shall not exceed a term of ten years. This action does not exempt USC from any other legal requirements that may be applicable. This exemption shall expire in three years. Once the details of Project Sunset are subject to public disclosure, USC shall submit a project summary (including the identity of the business referenced above) to the Board's Secretary for inclusion in the exhibits to the applicable Board minutes.

Governor Haley, Mr. Eckstrom and Senator Leatherman voted for the motion. Mr. Loftis and Mr. White voted against the motion.

Adjournment

The meeting adjourned at 10:30 a.m.

[Secretary's Note: In compliance with Code Section 30-4-80, public notice of and the agenda for this meeting were posted on bulletin boards in the office of the Governor's Press Secretary and in the Press Room, near the Board Secretary's office in the Wade Hampton Building, and in the lobbies of the Wade Hampton Building and the Edgar A. Brown Building at 8:50 a.m. on Tuesday, March 4, 2014.]