

SENATE BILL NO. 32

BY SENATORS FIELDS, ABRAHAM, BARROW, BERNARD, BOUDREAUX, BOUIE, CARTER, CATHEY, CLOUD, CORTEZ, FESI, FOIL, HARRIS, JOHNS, LUNEAU, MCMATH, MILLIGAN, ROBERT MILLS, POPE, PRICE, REESE, SMITH, TALBOT, TARVER AND WARD

1 AN ACT

2 To enact R.S. 17:3393, relative to colleges and universities; to provide relative to the
3 exceptions and exemptions that a public postsecondary education institution may
4 receive from state regulations of their operations under certain conditions; and to
5 provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 17:3393 is hereby enacted to read as follows:

8 **§3393. Operational autonomy contingent on audit findings**

9 **A.(1)(a) Notwithstanding any provision of law to the contrary, any**
10 **institution that meets the requirements of this Paragraph may exercise the**
11 **autonomies provided by this Subsection subject to the limitations provided in**
12 **this Paragraph.**

13 **(b) Subsequent to a postsecondary management board granting approval**
14 **to an institution in its system to exercise operational autonomies or a system**
15 **exercising the provided authorities, the division of administration shall approve**
16 **the exercise of such autonomies to all institutions in the system governed by the**
17 **management board, provided the system received for its most recent audit, a**
18 **financial audit with an unmodified opinion, where the financial statements were**
19 **free of material misstatements and material weaknesses, and the financial**

1 position, results of operations, and cash flows were represented fairly in
2 accordance with Generally Accepted Accounting Principles. If the system did
3 not receive for the most recent audit, a financial audit with an unmodified
4 opinion, where the financial statements were free of material misstatements and
5 material weaknesses, and the financial position, results of operations, and cash
6 flows were represented fairly in accordance with Generally Accepted
7 Accounting Principles, then the division of administration shall approve the
8 exercise of such autonomies to all institutions in the system, except for any
9 institution which was responsible for the finding of noncompliance at the system
10 level.

11 (c) If an institution granted the right to exercise operational autonomies
12 pursuant to Subparagraph (b) of this Paragraph subsequently receives an audit
13 with a material weakness through a financial audit, the institution shall be
14 required to develop and implement a corrective action plan for approval by the
15 management board. The institution shall be required to demonstrate to the
16 management board that the necessary corrective actions were taken within six
17 months from the date the audit finding was reported, or the institution will lose
18 the authority to exercise the autonomies granted for the remainder of the period
19 that this authority is in effect. The corrective action plan and
20 post-implementation report shall be submitted to the division of administration
21 and the Board of Regents.

22 (2) The operational autonomies that may be granted pursuant to this
23 Subsection are:

24 (a)(i) Authority to retain any funds which remain unexpended and
25 unobligated at the end of the fiscal year for use at the institution's discretion.

26 (ii) No later than October first of each year, each postsecondary
27 management board shall report to the Joint Legislative Committee on the
28 Budget the amount of unexpended and unobligated funds retained by each
29 institution by means of finance from the prior fiscal year.

30 (b) Authority to identify and dispose of obsolete equipment, excluding

1 vehicles and items considered by federal law to be of a dangerous nature. Prior
2 to exercising this autonomy with respect to electronic devices, the postsecondary
3 management board shall provide certification to the division of administration
4 that all such devices are sanitized of any personally identifiable information.

5 (c) Authority to be excluded by the division of administration from any
6 table of organization.

7 (d)(i) Authority to participate in the higher education procurement code
8 as established by Louisiana State University and Agricultural and Mechanical
9 College and approved by the division of administration. Institutions within the
10 same system may cooperatively operate procurement operations under the
11 higher education procurement code. Each postsecondary education
12 management board may adopt the higher education procurement code, with
13 amendments necessary to insert the name of each management board into the
14 procurement code and to implement the code but excluding any substantive
15 changes, pursuant to rules and regulations adopted in accordance with the
16 Administrative Procedure Act. Any entity whose budget is appropriated
17 through Schedule 19-Higher Education or 19E-LSU Health Sciences
18 Center-health care services division may use the higher education procurement
19 code in lieu of the Louisiana Procurement Code as provided in R.S. 39:15.3, 196
20 through 200, and 1551 through 1755, subject to the prior review and approval
21 of the Joint Legislative Committee on the Budget. Any changes to the higher
22 education procurement code after an initial five-year period shall be submitted
23 to the Joint Legislative Committee on the Budget for approval. However, there
24 shall be only one higher education procurement code except for nonsubstantive
25 changes required to implement the code.

26 (ii) The division of administration shall maintain a list of all institutions
27 participating in the higher education procurement code, which shall be
28 published on its website.

29 (e)(i) Exemption from participation in the state's risk management
30 program established by R.S. 39:1527 et seq. and administered by the office of

1 risk management, pursuant to a determination by the division of administration
2 that the institution or management board, as applicable, has the capacity to
3 manage its own risk and a phased-in plan of implementation as determined by
4 the institution in collaboration with the attorney general and the division of
5 administration, subject to the prior review and approval of the Joint Legislative
6 Committee on the Budget. This exemption shall not include the coverage
7 provided by the state's risk management program pursuant to R.S. 40:1237.1.

8 (ii) Nothing in this exemption shall abrogate, amend, or alter the
9 authority of the attorney general or the Department of Justice under Article IV,
10 Sections 1 and 8 of the Constitution of Louisiana or any other provision of law
11 to represent the state and all departments and agencies of state government in
12 all litigation arising out of or involving tort or contract. Any institution that is
13 granted an exemption under this Subparagraph shall enter into an interagency
14 agreement with the attorney general and pay the attorney general reasonable
15 attorney fees and expenses incurred in representing the institution.

16 (iii) Nothing in this Subparagraph shall be construed as creating any
17 independent or separate cause of action against the state. The state shall
18 continue to be sued only through the exempt institution's management board
19 and cannot be sued in addition to or separately from the exempt institution's
20 management board in any cause of action asserted against the exempt
21 institution. The office of risk management shall not be responsible for payment
22 of any judgment against the exempt institution's management board rendered
23 subsequent to the transfer of the applicable line of coverage. The state's
24 obligation to indemnify a covered individual as provided in R.S. 13:5108.1 shall
25 not be performed by the office of risk management.

26 (iv) Any contract between the exempt institution's management board
27 and its insurer shall name the state as an additional insured. Any provision in
28 any contract between the exempt institution's management board and its
29 insurer that conflicts with the provisions of this Subparagraph shall be
30 considered null and void.

1 (v) Nothing in this Subparagraph shall be construed to adversely affect
2 any of the substantive and procedural provisions and limitations applicable to
3 actions against the state, including but not limited to the provisions of R.S.
4 13:5106, 5107, 5108.1, and 5112, and R.S. 9:2800 which would continue to apply
5 equally to any exempted institution. Those provisions that will not apply are
6 those that are specifically excluded in this Section. Upon transfer of each line of
7 coverage to the exempted institution under this Section, the provisions of R.S.
8 39:1527 et seq., as well as the provisions of R.S. 13:5106(B)(3)(c), shall not apply
9 to the line of coverage so transferred, nor to any claims asserted against the
10 exempted institution within the transferred line of coverage.

11 (f) Notwithstanding the provisions of R.S. 39:113, authority to administer
12 all facilities projects funded with self-generated revenue, federal funds,
13 donations, grants, or revenue bonds, including all projects falling under R.S.
14 39:128; however, excluding those projects falling under R.S. 39:128, these
15 projects shall not be exempted from the capital outlay budget or any
16 requirements as pertains thereto.

17 (g) Authority to invest funds as defined by R.S. 49:327(C) in municipal
18 bonds issued by any state or political subdivision and those instruments laid out
19 in R.S. 49:327(B)(1), in tax exempt bonds and other taxable governmental bonds
20 issued by any state or a political subdivision or public corporation of any state,
21 provided that such bonds are rated by a nationally recognized rating agency as
22 investment grade. The investment policy governing such investment as defined
23 by R.S. 49:327(C)(1)(b) shall define the allocation of funds among instruments
24 and the term of maturity of the instruments, subject to the prior review and
25 approval of the investment advisory committee. If an institution is determined
26 by the division of administration to no longer possess the capacity relevant to
27 this autonomy, or both, authority to invest additional funds shall be limited to
28 those instruments defined by R.S. 49:327(B)(1) and (C), and shall exclude
29 further investments in tax exempt bonds and other taxable government bonds
30 issued by any state or a political subdivision or public corporation of any state.

1 **B. Nothing in this Section abrogates, amends, or alters the authority of**
 2 **the attorney general or the Department of Justice under Article IV, Sections 1**
 3 **and 8 of the Constitution of Louisiana or any other provision of law to represent**
 4 **the state and all departments and agencies of state government in all litigation**
 5 **arising out of or involving tort or contract. Any exempt institution under this**
 6 **Section shall enter into an interagency agreement with the attorney general and**
 7 **pay the attorney general reasonable attorney fees and expenses incurred in**
 8 **representing the institution.**

9 **C. Nothing in this Section shall be construed as creating any independent**
 10 **or separate cause of action against the state. The state shall continue to be sued**
 11 **only through the exempt institution's management board and cannot be sued**
 12 **in addition to or separately from the exempt institution's management board**
 13 **in any cause of action asserted against the exempt institution.**

14 Section 2. This Act shall become effective upon signature by the governor or, if not
 15 signed by the governor, upon expiration of the time for bills to become law without signature
 16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 18 effective on the day following such approval.

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____