
HOUSE COMMITTEE AMENDMENTS

2016 Regular Session

Substitute for Original House Bill No. 921 by Representative Davis as proposed by the House Committee on House and Governmental Affairs

This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.

To amend and reenact R.S. 17:3394.3(A)(4), relative to corporations that support public postsecondary education; to provide relative to capital projects undertaken by nonprofit corporations on behalf of the Board of Supervisors of Community and Technical Colleges; to provide procedures for soliciting and evaluating proposals from contractors; to provide that certain records of the corporation be made available to the public; to require monitoring and status reports on projects; to provide relative to the board of directors of such a corporation; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 17:3394.3(A)(4) is hereby amended and reenacted to read as follows:

§3394.3. Authority of board to execute agreements related to the finance of capital improvements and enhancements

A.

* * *

(4) Construction projects contained in this Section shall be managed and administered by a ~~nonprofit~~ corporation established for such purposes, regardless of the source of revenues used to fund such construction projects: in accordance with the following:

(a) Notwithstanding any provision of this Chapter to the contrary, the corporation as defined in this Part shall adhere to the following requirements with respect to any project it undertakes pursuant to this Section:

(i) The corporation shall disclose on the board's internet homepage and make available in response to any public records request made pursuant to the Public Records Law its property interest and that of any party contracting with the corporation in connection with a project.

(ii) The corporation shall disclose on the board's internet homepage and make available in response to any public records request made pursuant to the Public Records Law its responsibilities and those of any party contracting with the corporation in the development of a project.

(iii) The corporation shall disclose on the board's internet homepage and make available in response to any public records request made pursuant to the Public Records Law its responsibilities and those of any party contracting with the corporation with respect to the financing of a project.

(iv) The corporation shall disclose the contracts it enters into in connection with a project and any related subcontracts on the board's internet homepage and make the contracts and subcontracts available in response to any public records request made pursuant to the Public Records Law.

(v) The president of the Louisiana Community and Technical College System or his designee shall serve as a nonvoting member of the corporation's board of directors and of any committee thereof charged with the procurement, management or oversight for a project.

(vi) The corporation shall comply with the Code of Governmental Ethics and adopt and maintain a policy on conflicts of interest that shall include provisions requiring the corporation's board of directors and committee members to make appropriate disclosures of any actual or potential conflicts of interest and, following disclosure of a conflict, requiring a member who discloses such a conflict to physically leave any meetings for the duration of any discussion concerning the matter disclosed, abstain from voting on any issues relating to the matter disclosed, and refrain from any discussion designed to influence or otherwise participate in any decision-making process relating to the matter disclosed.

(b) Prior to beginning construction or management of a project, the corporation or the board shall hold a public meeting in accordance with the Open Meetings Law. The corporation and the board shall consider any public input provided at such public meeting prior to beginning construction, selecting any contractors, or utilizing any funds on the project. The minutes of all meetings of the

corporation shall be published on the board's internet homepage and made available for public inspection in response to any public records request made pursuant to the Public Records Law.

(c) The corporation shall issue a request for qualifications to select contractors for any project. The procedures for issuing the request for qualifications shall include the following provisions:

(i) The corporation shall establish and use public announcement procedures for solicitation of letters of interest from qualified contractors. Such public announcement procedures shall include a requirement for advertisement on the board's internet home page and in a newspaper of general circulation in the parish or municipality where the project is situated. The corporation shall include a deadline for submission of letters of interest within any such public announcement. All such notices shall be posted no less than thirty days prior to selecting a contractor for a project.

(ii) The corporation shall provide a request for qualifications package to any contractor who submits a letter of interest. All required information shall be identified in the request for qualifications package and in the standard response forms. The responses to a request for qualifications package shall include statements of qualification concerning the experience and resources of the prospective contractor.

(d) The corporation shall require interested contractors to include the following items in their responses to the request for qualifications package:

(i) Financial disclosure statements, substantially in accordance with La. R.S. 42:1114, by which a contractor or his immediate family who derives anything of economic value, directly, through any transaction involving the board or the corporation or who derives anything of economic value of which he may be reasonably expected to know through a person which has bid on or entered into or is in any way financially interested in any contract, subcontract, or any transaction involving the board or the corporation shall disclose the following: the amount of income or value of anything of economic value derived, the nature of the business

activity, the name and address, and relationship to the contractor, if applicable, and the name and business address of the legal entity, if applicable.

(ii) Proposed responsibilities of interested contractors in the development of the project.

(iii) Proposed responsibilities with respect to the financing of the project.

(e) The corporation shall evaluate and grade all responses to the request for qualifications. Alternatively, an advisory committee authorized by a cooperative endeavor agreement with the state of Louisiana, may evaluate and grade requests for qualifications. In selecting contractors, the corporation shall develop and make public its selection criteria for selecting a contractor or subcontractor on a project. The corporation shall consider the following nonexclusive list of factors as part of its selection process:

(i) Professional training and experience of key personnel in general and as related to the project described in the request for qualifications.

(ii) Capacity for timely completion of the work.

(iii) Past performance on projects of a similar nature to the project described in the request for qualifications.

(iv) Any criteria that apply to project-specific needs.

(v) Cost of services. The corporation is not required to select the lowest cost submission, but it shall consider the cost of services as one of the various factors in evaluating the proposals received in response to the request for qualifications.

(f) After reviewing all submissions made in response to the request for qualifications and obtaining approval in writing for the letting of the contract from the board, the corporation shall submit letters to the successful proposing parties notifying them of their selection and begin contract negotiations. The corporation shall also submit letters with a statement identifying the selected proposing party to all parties who submitted statements of qualifications but were not selected. The corporation shall make available for inspection by any unsuccessful proposing party any scoring sheets or other materials utilized in selecting the selected proposing parties, which sheets or materials shall include the criteria outlined in

Subparagraph (e) of this Paragraph, subject to protections of information provided in Subparagraph (g) of this Paragraph.

(g) The corporation shall make at least one copy of all statement of qualifications submitted in response to its request for qualifications available for public inspection. In addition, the corporation shall make at least one copy of all contracts it enters into in connection with a project and any related subcontracts available for public inspection. All documents submitted to the corporation that are made available to the public shall be provided to the public in a form that protects against the disclosure of any of the following that have been marked "CONFIDENTIAL" by the submitting party:

(i) Proprietary or trade secret information of a submitting party pertaining to any code, pattern, formula, design, device, method, or process.

(ii) Financial records of a submitting party.

(iii) Specific cost estimates produced by a submitting party in response to the request for qualifications.

(h) Information protected from disclosure by Subparagraph (g) of this Paragraph may be disclosed as agreed to by the submitting party and the corporation.

(i) The corporation shall continuously review and monitor the status of and contractor performance for each project that the corporation undertakes. The corporation shall make available on the internet homepage of the board and in response to any public records request made pursuant to the Public Records Law annual reports explaining contractor performance for each project that it has undertaken and completed during the previous year, listing those projects that are expected to be solicited for bid within the next year, listing those projects that are in progress, listing those projects removed from consideration during the prior year, identifying all contractors and subcontractors for each project completed or in progress, and accounting for all funds expended on each project. Each annual report shall be completed, made available for public inspection, and submitted to the Joint Legislative Committee on the Budget by April 30 in the calendar year following the calendar year that is the subject of the annual report. Each annual report and all

books and records of the corporation directly pertaining to the expenditure of project funds, including but not limited to all design and construction contracts and subcontracts, change orders, and pay applications, shall be maintained for a minimum of three years following final completion of the project and shall be subject to audit by internal or external auditors selected by the board.

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Section 2. The provisions of R.S. 17:3394.3(A)(4) as amended and reenacted by this Act shall apply to all projects specified in R.S. 17:3394.3 and administered by a nonprofit corporation whose principal purpose is to support the Louisiana Community and Technical College System, where such nonprofit corporation has agreed to manage and administer any such project that commences on or after July 1, 2016.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB Draft

2016 Regular Session

Abstract: Provides relative to specified capital projects for the Board of Supervisors of Community and Technical Colleges undertaken by nonprofit corporation.

Present law provides that a nonprofit corporation that has as its principal purpose the support of public institutions of higher education, including a corporation to finance, design, construct, renovate, or equip facilities to be leased to such public institutions of higher learning, and that meets the following criteria is a private entity and not a public or quasi public corporation or an administrative unit, public servant, employee, or agent of any institution of higher education:

- (1) The majority of the voting members of the corporation's board of directors are not members or employees of a higher education management board.
- (2) The corporation is under the management and control of a board of directors elected by the members or shareholders of the corporation.
- (3) The corporation reimburses the cost of any housing, personnel, and other support furnished to the corporation by any institution of higher education.

Present law authorizes the Bd. of Supervisors of Community and Technical Colleges (LCTCS bd.), operating through a nonprofit corporation established for the purpose, to incur debt to finance specific capital projects at specified amounts. Provides that such financing may be excluded from the state's comprehensive capital outlay budget. Provides relative to the financing of such projects through direct state appropriation.

Present law requires that the construction projects provided for in present law be managed and administered by a nonprofit corporation established for such purposes, regardless of the source of revenues used to fund the projects. Proposed law retains present law and provides as follows with respect to projects managed and administered by the nonprofit corporation:

- (1) Requires that the corporation disclose the following information on the LCTCS bd.'s website and in response to any public records request: its property interest and that of all other participants in a project, its responsibilities and those of all other participants in the development of a project, its responsibilities and those of all other participants with respect to financing of a project, and the contracts and subcontracts associated with a project.
- (2) Provides that the president of the LCTCS or his designee shall serve as a nonvoting member of the corporation's board of directors, and any committee thereof charged with the procurement, management or oversight for any project.
- (3) Requires that the corporation comply with the Code of Governmental Ethics and adopt and maintain a policy on conflicts of interest that shall include provisions requiring the corporation's board of directors and committee members make appropriate disclosures of any actual or potential conflicts of interest, and following disclosure of a conflict require that the disclosing member, physically leave any meetings for the duration of any discussions concerning the matter disclosed, abstain from voting on any issues relating to the matter disclosed and refrain from any discussion with any person designed to influence or otherwise participation in any decision-making process relating to the matter disclosed.
- (4) Requires a public meeting in accordance with present law relative to open meetings prior to beginning any project and requires the corporation to consider public input
- (5) Requires the corporation to issue a request for qualifications to select contractors for any project it undertakes; requires the corporation to provide a request for qualifications package to any contractor who submits a letter of interest.
- (6) Requires interested contractors to include the following in their responses to the request for qualifications package: relationship disclosure statements substantially in accordance with present law, proposed responsibilities of interested contractors in the development of the project, proposed responsibilities with respect to the financing of the project.
- (7) Provides that the corporation or an advisory committee authorized by a cooperative endeavor agreement with the state of La. shall evaluate and grade all responses to the request for qualifications. In selecting all contractors and subcontractors, the corporation shall develop and make public its selection criteria for selecting a contractor or subcontractor on any project. Provides relative to factors used as part of the selection. Provides that cost may be a factor, but the corporation is not required to select the lowest cost submission.
- (8) Provides for notification of to successful and unsuccessful bidders. Requires the corporation to make available for inspection by any unsuccessful proposing party any scoring sheets or other materials utilized in selecting the selected proposing parties. Provides further for the availability of proposals and contracts for public inspection but allows for protection of specified information from disclosure.

- (9) Requires the corporation to review and monitor the ongoing status and contractor performance of any project that the corporation undertakes. Provides for annual reports on contractor performance.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 17:3394.3(A)(4))