

2016 Regular Session

# ACT No. 511

HOUSE BILL NO. 1160 (Substitute for House Bill No. 921 by Representative Davis)

BY REPRESENTATIVES DAVIS, FRANKLIN, IVEY, NANCY LANDRY, JAY MORRIS, PIERRE, AND STOKES AND SENATORS THOMPSON AND WALSWORTH

1 AN ACT

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

9 Be it enacted by the Legislature of Louisiana:

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

11 §3394.3. Authority of board to execute agreements related to the finance of capital  
12 improvements and enhancements; nonprofit corporation; administration and  
13 management of projects

14 A.

15 \* \* \*

16 (4) Construction projects contained in this Section shall be managed and  
17 administered by ~~a nonprofit~~ a corporation established for such purposes, regardless  
18 of the source of revenues used to fund such construction projects. Notwithstanding  
19 any provision of this Chapter to the contrary, the corporation shall adhere to the  
20 following requirements with respect to any project it undertakes pursuant to this  
21 Section:

22 (a) The corporation shall disclose on the board's internet homepage and make  
23 available consistent with the Public Records Law its property interest and that of any  
24 party contracting with the corporation in connection with a project.

1           **(b) The corporation shall disclose on the board's internet homepage and**  
2           **make available consistent with the Public Records Law its responsibilities and those**  
3           **of any party contracting with the corporation in the development of a project.**

4           **(c) The corporation shall disclose on the board's internet homepage and make**  
5           **available consistent with the Public Records Law its responsibilities and those of any**  
6           **party contracting with the corporation with respect to the financing of a project.**

7           **(d) The corporation shall disclose the contracts it enters into in connection**  
8           **with a project on the board's internet homepage and make the contracts available**  
9           **consistent with the Public Records Law.**

10           **(e) The president of the Louisiana Community and Technical College**  
11           **System or his designee shall be provided reasonable notice of and all materials**  
12           **relating to and be allowed to attend and participate in all meetings of the**  
13           **corporation's board of directors and of any committee thereof charged with the**  
14           **procurement, management, or oversight of a project.**

15           **(f)(i) Each board member of the corporation and each member of his**  
16           **immediate family who derives any thing of economic value directly, through any**  
17           **transaction involving the corporation or who derives any thing of economic value of**  
18           **which he may be reasonably expected to know through a person which has bid on or**  
19           **entered into or is in any way financially interested in any contract, subcontract, or**  
20           **any transaction under the supervision or jurisdiction of the corporation shall disclose**  
21           **the following substantially in accordance with the Code of Governmental Ethics: the**  
22           **amount of income or value of any thing of economic value derived; the nature of the**  
23           **business activity; the name and address of filer and name of and relationship to the**  
24           **board member, if applicable; and the name and business address of the legal entity,**  
25           **if applicable.**

26           **(ii) The corporation shall adopt and maintain a policy on conflicts of interest,**  
27           **which shall include provisions requiring the corporation's board of directors and**  
28           **committee members to make appropriate disclosures of any actual or potential**  
29           **conflicts of interest and requiring, following disclosure of a conflict, the member**  
30           **who discloses such a conflict to physically leave any meetings for the duration of any**

1 discussion concerning the matter disclosed, to abstain from voting on any issues  
2 relating to the matter disclosed, and to refrain from any discussion designed to  
3 influence or otherwise participating in any decision-making process relating to the  
4 matter disclosed.

5 (g) Prior to beginning construction or management of any project in excess  
6 of fifty thousand dollars of total installed costs, the corporation or the board shall  
7 hold a public meeting in accordance with the Open Meetings Law. The corporation  
8 or the board shall consider any public input provided at such public meeting prior to  
9 beginning construction or selecting any contractor. The minutes of all meetings of  
10 the corporation shall be published on the board's internet homepage and made  
11 available consistent with the Public Records Law.

12 (h) For any project in excess of fifty thousand dollars of total installed costs,  
13 the corporation shall issue a request for qualifications or request for proposals to  
14 select contractors for any project. The procedures for issuing such a request shall be  
15 consistent with procurement through competitive sealed bid or competitive  
16 negotiation and include the following provisions:

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

25 (ii) The corporation shall provide a request for qualifications package or  
26 request for proposals package to any contractor who submits a letter of interest. All  
27 required information shall be identified in the package and in the standard response  
28 forms.

1           (i) The corporation shall require interested contractors to include the  
2           following items in their responses to the request for qualifications package or request  
3           for proposals package:

4           (i) Financial disclosure statements, substantially in accordance with La. R.S.  
5           42:1114, by which a contractor or his immediate family who derives any thing of  
6           economic value, directly, through any transaction involving the board or the  
7           corporation or who derives any thing of economic value of which he may be  
8           reasonably expected to know through a person which has bid on or entered into or  
9           is in any way financially interested in any contract, subcontract, or any transaction  
10          involving the board or the corporation shall disclose the following: the amount of  
11          income or value of any thing of economic value derived; the nature of the business  
12          activity; the name and address, and relationship to the contractor, if applicable; and  
13          the name and business address of the legal entity, if applicable.

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

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

17          (iv) Statements of qualification concerning the experience and resources of  
18          the prospective contractor.

19          (j) The corporation shall evaluate and grade all responses. Alternatively, an  
20          advisory committee authorized by a cooperative endeavor agreement with the state  
21          of Louisiana may evaluate and grade all responses. The corporation shall develop  
22          and make public its selection criteria for selecting a contractor on a project. The  
23          corporation shall consider the following nonexclusive list of factors as part of its  
24          selection process:

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

27          (ii) Capacity for timely completion of the work.

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

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

1           (v) Cost of services. The corporation is not required to select the lowest cost  
2           submission, but it shall consider the cost of services as one of the various factors in  
3           evaluating the responses.

4           (k) After reviewing all submissions made in response to the request for  
5           qualifications or request for proposals, selecting a qualified contractor, and obtaining  
6           approval in writing for the letting of the contract from the board, the corporation  
7           shall submit letters to the selected proposing parties notifying them of their selection  
8           and begin contract negotiations. The corporation shall also submit letters with a  
9           statement identifying the selected proposing party to all parties who submitted  
10           responses but were not selected. The corporation shall make available for  
11           inspection, by any party who submitted a response, scoring sheets or other materials  
12           utilized in selecting the selected proposing parties, which sheets or materials shall  
13           include the criteria outlined in Subparagraph (j) of this Paragraph, subject to  
14           protections of information provided in Subparagraph (l) of this Paragraph.

15           (l) The corporation shall make at least one copy of each response to its  
16           request for qualifications or proposals available consistent with the Public Records  
17           Law. All documents submitted to the corporation that are made available to the  
18           public shall be provided in a form that protects against the disclosure of any of the  
19           following that have been marked "CONFIDENTIAL" by the submitting party:

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

22           (ii) Financial records of a submitting party.

23           (iii) Specific cost estimates produced and submitted by a submitting party.

24           (m) Information protected from disclosure by Subparagraph (l) of this  
25           Paragraph may be disclosed as agreed to by the submitting party and the corporation.

26           (n) The corporation shall continuously review and monitor the status of and  
27           contractor performance for each project that the corporation undertakes. The  
28           corporation shall make available on the board's internet homepage and consistent  
29           with the Public Records Law annual reports explaining contractor performance for  
30           each project that it has undertaken or completed during the previous year, listing

1           those projects that are expected to be solicited for bid within the next year, listing  
 2           those projects that are in progress, listing those projects removed from consideration  
 3           during the prior year, identifying all contractors for each project completed or in  
 4           progress, and accounting for all funds expended on each project. Each annual report  
 5           shall be completed, made available for public inspection, and submitted to the Joint  
 6           Legislative Committee on the Budget by April thirtieth in the calendar year  
 7           following the calendar year that is the subject of the annual report. Each annual  
 8           report and all books and records of the corporation directly pertaining to the  
 9           expenditure of project funds, including but not limited to all design and construction  
 10           contracts, change orders, and pay applications, shall be maintained for a minimum  
 11           of three years following final completion of the project and shall be subject to audit  
 12           by internal or external auditors selected by the board.

13                   (o) All records that are public records pursuant to this Paragraph may be  
 14                   maintained in an electronic format.

15   \*       \*       \*

16           Section 2. The provisions of R.S. 17:3394.3(A)(4) as amended and reenacted by this  
 17           Act shall apply to any project that is specified in R.S. 17:3394.3, that is administered by the  
 18           corporation as defined by R.S. 17:3394.2, and that commences on or after July 1, 2016.

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_