

2020 Regular Session

HOUSE BILL NO. 689

BY REPRESENTATIVES ZERINGUE, ADAMS, AMEDEE, BACALA, BAGLEY, BISHOP, BRASS, BROWN, BRYANT, BUTLER, CARPENTER, CARRIER, GARY CARTER, ROBBY CARTER, WILFORD CARTER, CORMIER, COUSSAN, COX, DAVIS, DESHOTEL, DUBUISSON, FIRMENT, FONTENOT, FREEMAN, FREIBERG, FRIEMAN, GADBERRY, GAROFALO, GREEN, HARRIS, HORTON, HUGHES, ILLG, IVEY, JEFFERSON, JENKINS, JONES, KERNER, LACOMBE, MARINO, MCFARLAND, MCKNIGHT, MCMAHEN, DUSTIN MILLER, GREGORY MILLER, MINCEY, MOORE, NELSON, CHARLES OWEN, PHELPS, PIERRE, SCHAMERHORN, SCHEXNAYDER, SELDERS, ST. BLANC, STAGNI, THOMPSON, TURNER, WHEAT, WHITE, WILLARD, AND WRIGHT

COLLEGES/UNIVERSITIES: Provides relative to the operations of public colleges and universities

1 AN ACT

2 To enact R.S. 17:3351.21, relative to colleges and universities; to provide relative to fees  
3 charged to students at public postsecondary institutions; to authorize the  
4 postsecondary education management boards to establish such fees and adjust fee  
5 amounts; to provide limitations; to provide for applicability; to provide for reporting;  
6 to provide relative to the exceptions and exemptions that an institution may receive  
7 from state regulations of their operations; to provide certain financial solvency  
8 criteria on the receipt of such exceptions and exemptions; and to provide for related  
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 17:3351.21 is hereby enacted to read as follows:

12 §3351.21. Mandatory fees; operational autonomies

13 A.(1)(a) In addition to the authority granted by any other provision of law,

14 including but not limited to R.S. 17:3351.7 and 3351.8, and in accordance with

15 Article VII, Section 2.1 of the Constitution of Louisiana, the Legislature of Louisiana

1 hereby authorizes the Board of Supervisors of Louisiana State University and  
2 Agricultural and Mechanical College, the Board of Supervisors of Southern  
3 University and Agricultural and Mechanical College, the Board of Supervisors for  
4 the University of Louisiana System, and the Board of Supervisors of Community and  
5 Technical Colleges to establish at each institution under their respective management  
6 and supervision mandatory fees to be charged to students enrolled at such institutions  
7 and to adjust the amounts of such fees as they deem necessary. Such authority shall  
8 apply for the 2020-2021 through the 2022-2023 academic years only, and the  
9 authority to increase fees pursuant thereto shall terminate on June 30, 2023.

10 (b) If a board establishes or increases a fee pursuant to Subparagraph (a) of  
11 this Paragraph that would be imposed on all undergraduate students at an institution,  
12 the board shall report any such action to the Joint Legislative Committee on the  
13 Budget within ninety days after taking the action.

14 (2) The revenue per full-time equivalent student from all tuition and fee  
15 amounts charged to a student plus the revenue per full-time equivalent student from  
16 state and local appropriations shall not exceed the national average of total per full-  
17 time equivalent student revenue from state appropriations, local appropriations,  
18 tuition, and fees as reported by the National Center for Education Statistics by  
19 Carnegie classification, which maximum amount may be annually adjusted based on  
20 the most recent full-time equivalent funding statistics as reported by the National  
21 Center for Education Statistics and adjusted to the current fiscal year using the  
22 Higher Education Price Index. This Paragraph shall not apply to the Louisiana State  
23 University Health Sciences Center - New Orleans, the Louisiana State University  
24 Health Sciences Center - Shreveport, the pharmacy program at the University of  
25 Louisiana at Monroe, or the Southern University Law Center.

26 (3) The total of all tuition and fee amounts charged to a student enrolled in  
27 the Louisiana State University Health Sciences Center - New Orleans, the Louisiana  
28 State University Health Sciences Center - Shreveport, the pharmacy program at the  
29 University of Louisiana at Monroe, or the Southern University Law Center shall not

1 exceed the tuition and fees charged, as reported by the National Center for Education  
2 Statistics, of national peers selected by the institution, which maximum amount may  
3 be annually adjusted based on the most recent tuition and fee amounts per full-time  
4 equivalent student as reported by the National Center for Education Statistics and  
5 adjusted to the current fiscal year using the Higher Education Price Index.

6 (4) The authority granted by Paragraph (1) of this Subsection includes the  
7 authority to impose per-credit fees, to impose differential fees for certain programs  
8 exclusive of others, and to charge proportional amounts for part-time students and  
9 for summer sessions.

10 (5) The authority granted by Paragraph (1) of this Subsection is not subject  
11 to any limitation on the authority to establish fees and set fee amounts provided for  
12 in R.S. 17:3139 et seq.

13 (6) Each management board shall establish a need-based financial assistance  
14 fund at each of its member institutions. Each institution shall allocate to its fund  
15 funds from its operating budget in an amount not less than five percent of revenues  
16 realized by the institution from fees assessed pursuant to this Subsection. Such funds  
17 shall be used to provide need-based financial assistance to students at that institution  
18 who are eligible to receive a Pell Grant.

19 (7) No revenues generated by fees imposed pursuant to this Subsection shall  
20 be used for any other purpose except for support of the university at which the fees  
21 were collected.

22 (8) The authority granted in Paragraph (1) of this Subsection includes the  
23 authority to impose a fee for the administration of any student surveys required or  
24 authorized by law.

25 (9) Each postsecondary education management board shall submit a written  
26 report to the Senate Committee on Education and the House Committee on  
27 Education not later than February fifteenth of 2021, 2022, and 2023 regarding how  
28 the fees authorized by this Subsection are being implemented at each institution  
29 under its supervision and management, including an overview of the distribution of

1 the monies in the need-based financial assistance fund as provided in Paragraph (6)  
2 of this Subsection.

3 B.(1)(a) Notwithstanding any provision of law to the contrary, any institution  
4 that meets the requirements of this Paragraph may exercise the autonomies provided  
5 by this Subsection subject to the limitations provided in this Paragraph.

6 (b) Subsequent to a postsecondary management board granting approval to  
7 an institution in its system to exercise operational autonomies, the division of  
8 administration shall approve the exercise of such autonomies to all institutions in the  
9 system governed by the management board, provided the system received for its  
10 most recent audit, a financial audit with an unmodified opinion, where the financial  
11 statements were free of material misstatements and material weaknesses, and the  
12 financial position, results of operations, and cash flows were represented fairly in  
13 accordance with Generally Accepted Accounting Principles. If the system did not  
14 receive for the most recent audit, a financial audit with an unmodified opinion, where  
15 the financial statements were free of material misstatements and material  
16 weaknesses, and the financial position, results of operations, and cash flows were  
17 represented fairly in accordance with Generally Accepted Accounting Principles,  
18 then the division of administration shall approve the exercise of such autonomies to  
19 all institutions in the system, except for any institution which was responsible for the  
20 finding of non-compliance at the system level.

21 (c) If an institution granted the right to exercise operational autonomies  
22 pursuant to Subparagraph (b) of this Paragraph subsequently receives an audit with  
23 a material weakness through a financial audit, the institution shall be required to  
24 develop and implement a corrective action plan for approval by the management  
25 board. The institution shall be required to demonstrate to the management board that  
26 the necessary corrective actions were taken within six months from the date the audit  
27 finding was reported, or the institution will lose the authority to exercise the  
28 autonomies granted for the remainder of the period that this authority is in effect.

1        The corrective action plan and post-implementation report shall be submitted to the  
2        division of administration and the Board of Regents.

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

5                (a) Authority to retain any funds which remain unexpended and unobligated  
6        at the end of the fiscal year for use at the institution's discretion pursuant to R.S.  
7        17:3386.

8                (b) Authority to identify and dispose of obsolete equipment, excluding  
9        vehicles and items deemed by federal law to be of a dangerous nature. Prior to  
10       exercising this autonomy with respect to electronic devices, the postsecondary  
11       management board shall provide certification to the division of administration that  
12       all such devices are sanitized of any personally identifiable information.

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

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

1 However, there shall be only one higher education procurement code except for  
2 nonsubstantive changes required to implement the code.

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

6 (e)(i) Exemption from participation in the state's risk management program  
7 established by R.S. 39:1527 et seq. and administered by the office of risk  
8 management, pursuant to a determination by the division of administration that the  
9 institution or management board, as applicable, has the capacity to manage its own  
10 risk and a phased-in plan of implementation as determined by the institution in  
11 collaboration with the attorney general and the division of administration, subject to  
12 the prior review and approval of the Joint Legislative Committee on the Budget.  
13 This exemption shall not include the coverage provided by the state's risk  
14 management program pursuant to R.S. 40:1237.1.

15 (ii) Nothing in this exemption shall abrogate, amend, or alter the authority  
16 of the attorney general or the Department of Justice under Article IV, Sections 1 and  
17 8 of the Constitution of Louisiana or any other provision of law to represent the state  
18 and all departments and agencies of state government in all litigation arising out of  
19 or involving tort or contract. Any institution that is granted an exemption under this  
20 Item shall enter into an interagency agreement with the attorney general and pay the  
21 attorney general reasonable attorney fees and expenses incurred in representing the  
22 institution.

23 (iii) Nothing in this Subparagraph shall be construed as creating any  
24 independent or separate cause of action against the state. The state shall continue to  
25 be sued only through the exempt institution's management board and cannot be sued  
26 in addition to or separately from the exempt institution's management board in any  
27 cause of action asserted against the exempt institution. The office of risk  
28 management shall not be responsible for payment of any judgment against the  
29 exempt institution's management board rendered subsequent to the transfer of the

1 applicable line of coverage. The state's obligation to indemnify a covered individual  
2 as provided in R.S. 13:5108.1 shall not be performed by the office of risk  
3 management.

4 (iv) Any contract between the exempt institution's management board and  
5 its insurer shall name the state as an additional insured. Any provision in any  
6 contract between the exempt institution's management board and its insurer that  
7 conflicts with the provisions of this Section shall be deemed null and void.

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

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

23 (g) Authority to invest funds as defined by R.S. 49:327(C) in municipal  
24 bonds issued by any state or political subdivision and those instruments laid out in  
25 R.S. 49:327(B)(1), in tax exempt bonds and other taxable governmental bonds issued  
26 by any state or a political subdivision or public corporation of any state, provided  
27 that such bonds are rated by a nationally recognized rating agency as investment  
28 grade. The investment policy governing such investment as defined by R.S.  
29 49:327(C)(1)(b) shall define the allocation of funds among instruments and the term

1 of maturity of the instruments, subject to the prior review and approval of the  
 2 investment advisory committee. If an institution is determined by the division of  
 3 administration to no longer possess the capacity relevant to this autonomy, or both,  
 4 authority to invest additional funds shall be limited to those instruments defined by  
 5 R.S. 49:327(B)(1) and (C), and shall exclude further investments in tax exempt  
 6 bonds and other taxable government bonds issued by any state or a political  
 7 subdivision or public corporation of any state.

8 (3)(a) Nothing in this Subsection abrogates, amends, or alters the authority  
 9 of the attorney general or the Department of Justice under Article IV, Sections 1 and  
 10 8 of the Constitution of Louisiana or any other provision of law to represent the state  
 11 and all departments and agencies of state government in all litigation arising out of  
 12 or involving tort or contract. Any exempt institution under this Section shall enter  
 13 into an interagency agreement with the attorney general and pay the attorney general  
 14 reasonable attorney fees and expenses incurred in representing the institution.

15 (b) Nothing in this Subsection shall be construed as creating any independent  
 16 or separate cause of action against the state. The state shall continue to be sued only  
 17 through the exempt institution's management board and cannot be sued in addition  
 18 to or separately from the exempt institution's management board in any cause of  
 19 action asserted against the exempt institution.

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#### 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)]

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HB 689 Reengrossed

2020 Regular Session

Zeringue

**Abstract:** Provides relative to mandatory fees and operational autonomies at colleges and universities.

Proposed law provides that the legislature authorizes the public postsecondary education management boards to establish fees and adjust fee amounts at institutions under their respective management and supervision. Provides that such authority shall apply for the 2020-2021 through the 2022-2023 academic years only and that the authority to increase fees pursuant thereto shall terminate on June 30, 2023. Requires a management board to report to the Joint Legislative Committee on the Budget within 90 days if it establishes or increases a fee pursuant to proposed law that would be imposed on all undergraduate students at an institution. Provides that such authority specifically includes authority to

impose per credit fees and differential fees for certain programs and to charge proportional amounts for part-time students and summer sessions. Provides that except for the LSU Health Sciences Centers, the pharmacy program at the University of La. at Monroe, and the Southern University Law Center, the revenue per full time equivalent student from all tuition and fee amounts charged to a student plus the revenue per full time equivalent student from state and local appropriations shall not exceed the national average of total per full time equivalent student revenue from state appropriations, local appropriations, tuition, and fees as reported by the National Center for Education Statistics (NCES) by Carnegie classification, which maximum amount may be annually adjusted based on the most recent full time equivalent funding statistics as reported by the NCES and adjusted to the current fiscal year using the Higher Education Price Index (HEPI). Provides that the total of all tuition and fee amounts charged to a student enrolled in the LSU Health Sciences Centers, the pharmacy program at the University of La. at Monroe, and the Southern University Law Center shall not exceed the tuition and fees charged, as reported by the NCES, of national peers selected by the institution, which maximum amount may be annually adjusted based on the most recent tuition and fee amounts per full time equivalent student as reported by the NCES and adjusted to the current fiscal year using the HEPI.

Proposed law also:

- (1) Requires each institution to allocate not less than 5% of revenues realized pursuant to proposed law to provide need-based financial assistance to students eligible to receive a Pell Grant.
- (2) Prohibits revenues generated by fees imposed pursuant to proposed law from being used for any other purpose except for support of the university at which the fees are collected.
- (3) Requires each management board to submit a report to the House and Senate education committees by Feb. 15th of 2021, 2022, and 2023 regarding how fees authorized by proposed law have been implemented at each institution under its supervision and management, including an overview of the distribution of the monies in the need-based financial assistance fund as provided in proposed law.
- (4) Provides that the fee authority granted by proposed law includes the authority to impose a fee for the administration of certain student surveys.

Proposed law authorizes public postsecondary institutions that meet certain conditions to be granted various exemptions and exceptions from state regulations of their operations (operational autonomies).

Proposed law provides that the division of administration shall approve the exercise of operational autonomies by an institution, if the institution's management board approves the exercise of autonomies by an institution in the system and one of the following conditions is met:

- (1) The institution is in a system that received, for its most recent audit, a financial audit with an unmodified opinion, where the financial statements were free of material misstatements and material weaknesses, and the financial position, results of operations, and cash flows were represented fairly in accordance with Generally Accepted Accounting Principles.
- (2) The institution is in a system that did not meet (1) above, but the institution was not responsible for the finding of noncompliance at the system level.

Proposed law provides that if an institution with the authority to exercise operational autonomies subsequently receives a financial audit with a material weakness, it shall lose such authority unless it develops and implements a corrective action plan and demonstrates

to the management board that the necessary corrective actions have been taken within six months after the audit finding was reported.

Proposed law provides for operational autonomies as follows:

- (1) Proposed law authorizes an institution to retain funds which are unexpended and unobligated at the end of the fiscal year for use at the institution's discretion.
- (2) Proposed law authorizes an institution to dispose of obsolete equipment, excluding vehicles and items deemed by federal law to be of a dangerous nature. Further requires that the postsecondary management board provide certification to the division of administration that electronic devices are sanitized of any personally identifiable information.
- (3) Proposed law authorizes the division of administration to exclude the institution as a whole from any table of organization.
- (4) Proposed law authorizes exemption from participation in the state's management program. Further requires that the division of administration determine that the institution or management board has the capacity to manage its own risk as a condition for this exemption.
- (5) Proposed law generally authorizes an institution to administer facilities projects funded with self-generated revenue, federal funds, donations, grants, or revenue bonds.
- (6) Proposed law authorizes adoption of a higher education procurement code which has been developed by LSU.
- (7) Proposed law authorizes investment of certain funds in governmental or public corporation bonds. Further authorizes investment of funds in municipal bonds.

Proposed law provides that the exemption from participation in the state's risk management program does not alter the authority of the attorney general and the Dept. of Justice to represent state agencies in litigation arising out of tort or contract.

(Adds R.S. 17:3351.21)

#### Summary of Amendments Adopted by House

##### The House Floor Amendments to the engrossed bill:

1. Add requirement that a management board report certain new fees and fee increases to the Joint Legislative Committee on the Budget.