

2016 Regular Session

HOUSE BILL NO. 841

BY REPRESENTATIVE JAY MORRIS

PURCHASING/PUB BID LAW: Requires certain entities to follow the Public Bid Law under certain circumstances

1 AN ACT

2 To amend and reenact R.S. 17:2804(introductory paragraph), 3390(C), 3394.3(A)(4),
3 3397.5(2), R.S. 22:2298(A)(1), and R.S. 33:9024(E)(1) and to enact R.S. 17:2804(B)
4 and 3396.8(D), and R.S. 33:130.755(E), relative to requiring certain entities to
5 adhere to certain contracting and project delivery requirements; to require certain
6 entities created by or pursuant to state law to adhere to the public bid law; to require
7 certain entities with certain primary purposes to adhere to the public bid law; to
8 require certain projects to be subject to the public bid law; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 17:2804(introductory paragraph), 3390(C), 3394.3(A)(4), 3397.5(2)
12 are hereby amended and reenacted and R.S. 17:2804(B) and 3396.8(D) are hereby enacted
13 to read as follows:

14 §2804. Powers of cooperative

15 A. A cooperative may:

16 * * *

17 B. Any contract for a public work, as such term is defined in R.S. 38:2211,
18 between a cooperative created pursuant to this Chapter and a third party shall be
19 subject to the advertisement and bid requirements of R.S. 38:2212.

20 * * *

1 §3390. Private nonprofit corporations which support public higher education
2 institutions; findings; status; private funds

3 * * *

4 C. The receipt, investment, or expenditure of public funds shall not affect the
5 private status of any corporation meeting the criteria set forth in Subsection B of this
6 Section; however, books and records of any such corporation, to the extent that such
7 books and records directly pertain to the receipt, investment, or expenditure of public
8 funds, shall be subject to R.S. 44:1 et seq. No other books and records of any such
9 corporation shall be subject to R.S. 44:1 et seq. In addition, any project to be
10 constructed by a corporation described in Subsection B of this Section shall be a
11 public work as defined in R.S. 38:2211 subject to Chapter 10 of Title 38 of the
12 Louisiana Revised Statutes of 1950 if the public funds for the project meet or exceed
13 the contract limit as described in R.S. 38:2212(C). "Public funds" as used in this
14 Subsection shall mean any legislatively appropriated funds or funds of federal, state,
15 local, parish or municipal governments.

16 * * *

17 §3394.3. Authority of board to execute agreements related to the finance of capital
18 improvements and enhancements

19 A.

20 * * *

21 (4) Construction projects contained in this Section shall be managed and
22 administered by a nonprofit corporation established for such purposes, regardless of
23 the source of revenues used to fund such construction projects. In addition, the
24 construction projects listed in this Section shall be public works, as such term is
25 defined in R.S. 38:2211, subject to the advertisement and bid requirements of R.S.
26 38:2212.

27 * * *

28 §3396.8. Applicability of other laws

29 * * *

1 D. Any contract for a public work, as such term is defined in R.S. 38:2211
2 between the corporation authorized to be established by this Part and a third party
3 shall be subject to the advertisement and bid requirements of R.S. 38:2212.

4 * * *

5 §3397.5. Powers

6 In addition to the powers granted it by the Nonprofit Corporation Law, as
7 provided in Chapter 2 of Title 12 of the Louisiana Revised Statutes of 1950, a
8 corporation under this Subpart shall have the following powers and authorities:

9 * * *

10 (2) To create, develop, construct, operate, manage, and finance regional
11 research and development parks, related facilities, and infrastructure, independently
12 or in cooperation with other private or public entities, including one or more
13 institutions of higher education. Any contract for a public work, as such term is
14 defined in R.S. 38:2211, between a regional research and development park
15 authorized to be established pursuant to this Subpart and a third party shall be subject
16 to the advertisement and bid requirements of R.S. 38:2212.

17 * * *

18 Section 2. R.S. 22:2298(A)(1) is hereby amended and reenacted to read as follows:

19 §2298. Plan of operation of Louisiana Citizens Property Insurance Corporation

20 A.(1) A plan of operation adopted by the governing board of the Louisiana
21 Citizens Property Insurance Corporation shall be filed with and approved by the
22 Louisiana Senate Committee on Insurance and the Louisiana House Committee on
23 Insurance, and filed with the commissioner of insurance. The plan of operation shall
24 include the establishment of necessary facilities and operating procedures;
25 management of the corporation; procedures for assessment of assessable insurers and
26 assessable insureds to defray deficits in one or more of the plans; underwriting
27 standards; procedures for the purchase and cession of reinsurance; procedures for
28 determining the amounts of insurance to be provided to specific risks; procedures for
29 the development of requests for proposals, which shall incorporate an open access

1 plan, and shall be prerequisite to any servicing company contract; procedures for
 2 processing applicants for insurance; provisions for attaining depopulation of the
 3 plans; and such other provisions as may be deemed necessary to carry out the
 4 purposes of this Chapter. Any contract for a public work, as such term is defined in
 5 R.S. 38:2211, between the Louisiana Citizens Property Insurance Corporation and
 6 a third party shall be subject to the advertisement and bid requirements of R.S.
 7 38:2212.

* * *

9 Section 3. R.S. 33:9024(E) is hereby amended and reenacted and R.S. 33:130.755(E)
 10 is hereby enacted to read as follows:

11 §130.755. Grants and loans to community development corporations and
 12 community development financial institutions

* * *

14 E. Any contract for a public work, as such term is defined in R.S. 38:2211
 15 between a community development corporation and a third party shall be subject to
 16 the advertisement and bid requirements of R.S. 38:2212.

* * *

18 §9024. Incorporation as a private nonprofit corporation

* * *

20 E.(1) Economic development corporations are not agencies of the state, nor
 21 of any subdivision of the state, and are prohibited from exercising governmental
 22 powers or carrying out functions which are purely and solely of a public nature. Such
 23 corporations are not subject to the laws which govern the operation of public bodies.
 24 However, any contract for a public work, as such term is defined in R.S. 38:2211
 25 between a corporation created pursuant to the authority granted in this Chapter and
 26 a third party shall be subject to the advertisement and bid requirements of R.S.
 27 38:2212.

* * *

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 841 Original

2016 Regular Session

Jay Morris

Abstract: Requires certain entities to follow the Public Bid Law.

PUBLIC BID LAW

Present law provides that all public work exceeding the contract limit as defined in present law, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest responsible and responsive bidder who had bid according to the bidding documents as advertised.

Present law (R.S. 38:2211) defines "public work" as "the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity."

Present law provides that a "public entity" means and includes a public corporation of the state, created by the constitution or statute or pursuant thereto.

Present law (R.S. 38:2212) provides that the "contract limit" is equal to the sum of \$150,000 per project, including labor, materials, and equipment as per the rates in the latest edition of the Associated Equipment Dealers Rental Rate Book and administrative overhead not to exceed fifteen percent, provided that beginning Feb. 1, 2015.

Present law (R.S. 38:2212) provides that annually on Feb. first of each subsequent year, the office of facility planning and control within the division of administration is to adjust the "contract limit" by an amount not to exceed the annual percentage increase in the Consumer Price Index in the preceding year. The office of facility planning and control within the division of administration is required to publish the new contract limit for public works contracts in the Louisiana Register in Jan. of each year.

The office of facility planning and control within the division of administration published the new contract limit for public works contracts in the Jan. 2016 edition of the Louisiana Register. Such limit is now \$152,400.

Proposed law retains present law.

EDUCATIONAL COOPERATIVE LAW

Present law permits the creation of cooperative, nonprofit membership corporations for the purpose of conducting private elementary or secondary schools or education facilities.

Proposed law retains present law.

Present law authorizes a cooperative to construct, maintain and operate educational facilities.

Proposed law retains present law.

Proposed law requires any contract for a public work, as such term is defined in present law (R.S. 38:2211), between a cooperative created pursuant to present law and a third party to be subject to the advertisement and bid requirements of R.S. 38:2212.

**PRIVATE NONPROFIT CORPORATIONS SUPPORTING PUBLIC HIGHER
EDUCATION INSTITUTIONS**

Present law provides that a nonprofit corporation, whose principal purpose is to support one or more programs, facilities, or research or educational opportunities offered by public institutions of higher education, including but not limited to any nonprofit corporation whose primary purpose is to finance the design, construction, renovation, or equipping of facilities to be leased to such public institutions of higher learning, is a private entity that is not deemed to be a public or quasi public corporation or an administrative unit, public servant, employee, or agent of any institution of higher education for any purpose whatsoever if it meets all of the following criteria:

- (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, either directly or through in-kind services, the cost of housing, personnel, which personnel shall remain public servants for all purposes, and other support furnished to the corporation by any institution of higher education, if any such support is furnished.

Proposed law retains present law.

Present law provides that the receipt, investment, or expenditure of public funds does not affect the private status of any corporation meeting the criteria set forth in present law; however, books and records of any such corporation, to the extent that such books and records directly pertain to the receipt, investment, or expenditure of public funds, are subject to R.S. 44:1 et seq. No other books and records of any such corporation are subject to R.S. 44:1 et seq.

Proposed law retains present law.

Proposed law provides that any project to be constructed by a corporation described in present law shall be a public work as defined in present law (R.S. 38:2211) subject to Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950 if the public funds for the project meet or exceed the contract limit as described in present law (R.S. 38:2212(C)). "Public funds" as used in proposed law mean any legislatively appropriated funds or funds of federal, state, local, parish or municipal governments.

**COMMUNITY AND TECHNICAL COLLEGES FACILITIES IMPROVEMENT
AND ENHANCEMENT**

Present law authorizes the board of the La. Community and Technical Colleges System (LCTCS) to approve a specific list of construction and improvement projects for facilities and properties in the LCTCS system to be funded through the issuance of bonds. Further provides for requirements and limitations with respect to the issuance of bonds such as the terms of the bonds, the interest rates, requirements for the actual sale of the bonds, and approval by the State Bond Commission.

Proposed law retains present law.

Present law provides that construction projects authorized to be approved by the board of the LCTCS are to be managed and administered by a nonprofit corporation established for such purposes, regardless of the source of revenues used to fund such construction projects.

Proposed law retains present law.

Proposed law requires the construction projects authorized to be approved by the board of the LCTCS to be public works, as such term is defined in present law (R.S. 38:2211) subject to the advertisement and bid requirements of present law (R.S. 38:2212).

RESEARCH PARK CORPORATION

Present law authorizes the establishment of the Research Park Corporation as a public, nonprofit corporation authorized to create, develop, construct, operate, manage, and finance a research and development park in cooperation with the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University and Agricultural and Mechanical College, and the governing authority of the appropriate municipality or parish.

Proposed law retains present law.

Proposed law requires that any contract for a public work, as such term is defined in present law (R.S. 38:2211) between the corporation authorized to be established in present law and a third party shall be subject to the advertisement and bid requirements of R.S. 38:2212.

REGIONAL RESEARCH AND DEVELOPMENT PARKS

Present law authorizes the establishment of regional research and development parks.

Present law authorizes regional research and development parks to create, develop, construct, operate, manage, and finance regional research and development parks, related facilities, and infrastructure, independently or in cooperation with other private or public entities, including one or more institutions of higher education.

Present law provides that in the exercise of the powers, functions, and activities authorized by present law, a regional research and development parks is not an instrumentality of the state, a state agency, board, or commission, or a political subdivision.

Proposed law retains present law.

Proposed law provides that any contract for a public work, as such term is defined in present law (R.S. 38:2211), between a regional research and development park authorized to be established pursuant to present law and a third party shall be subject to the advertisement and bid requirements of R.S. 38:2212.

LOUISIANA CITIZENS PROPERTY INSURANCE CORPORATION

Present law creates a nonprofit corporation to be known as the Louisiana Citizens Property Insurance Corporation to operate residual market insurance programs.

Proposed law retains present law.

Present law provides that the Louisiana Citizens Property Insurance Corporation is to adopt a plan of operation to be filed with and approved by the Louisiana Senate Committee on Insurance and House Committee on insurance, and filed with the commissioner of insurance.

Proposed law retains present law.

Present law requires the plan of operation to include the establishment of necessary facilities and operating procedures.

Proposed law provides that any contract for a public work, as such term is defined in present law (R.S. 38:2211), between a the Louisiana Citizens Property Insurance Corporation and a third party shall be subject to the advertisement and bid requirements of R.S. 38:2212.

LOUISIANA COMMUNITY ECONOMIC DEVELOPMENT ACT

Present law allows for the certification of a community development corporation by the Dept. of Economic Development.

Proposed law retains present law.

Present law defines a "community development corporation" is a nonprofit corporation which satisfies all of the following:

- (1) Is chartered pursuant to Chapter 2 of Title 12 of the Louisiana Revised Statutes of 1950.
- (2) Is tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- (3) Has a primary mission of developing and improving low-income communities and neighborhoods through economic and related development.
- (4) Has activities and decisions initiated, managed, and controlled by the constituents of the community served.
- (5) Has a primary function of developing projects and activities designed to enhance the economic opportunities of the people in the community served, including efforts to enable them to become owners and managers of small businesses, producers of affordable housing, and providers of jobs in the community served.
- (6) Does not provide credit, capital, or other assistance from public funds in an amount greater than twenty-five thousand dollars at one time or in one transaction.
- (7) Is not a nonprofit organization with the sole purpose of providing housing to neighborhoods or technical assistance to other nonprofit organizations.
- (8) Has been certified or recertified as a community development corporation as provided in present law.

Proposed law retains present law.

Proposed law provides that any contract for a public work, as such term is defined in present law (R.S. 38:2211) between a community development corporation and a third party shall be subject to the advertisement and bid requirements of R.S. 38:2212.

NONPROFIT ECONOMIC DEVELOPMENT CORPORATIONS

Present law authorizes in the state and each local governmental subdivision of the state the creation and organization of nonprofit economic development corporations.

Proposed law retains present law.

Proposed law provides that any contract for a public work, as such term is defined in present law (R.S. 38:2211) between a corporation created pursuant to the authority granted in this Chapter and a third party shall be subject to the advertisement and bid requirements of R.S. 38:2212.

(Amends R.S. 17:2804(intro. para.), 3390(C), 3394.3(A)(4), 3397.5(2), R.S. 22:2298(A)(1), and R.S. 33:9024(E)(1); Adds R.S. 17:2804(B) and 3396.8(D), and R.S. 33:130.755(E))