

2016 Regular Session

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

BY REPRESENTATIVES DAVIS AND JAY MORRIS

HIGHER EDUCATION: Provides relative to construction projects undertaken by nonprofit corporations that support the Louisiana Community and Technical College System

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~~ the 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

1 following requirements with respect to any project it undertakes pursuant to this

2 Section:

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

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

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

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

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

23 (f) The corporation shall comply with the Code of Governmental Ethics and
24 adopt and maintain a policy on conflicts of interest, which shall include provisions
25 requiring the corporation's board of directors and committee members to make
26 appropriate disclosures of any actual or potential conflicts of interest and requiring,
27 following disclosure of a conflict, the member who discloses such a conflict to
28 physically leave any meetings for the duration of any discussion concerning the
29 matter disclosed, to abstain from voting on any issues relating to the matter

1 disclosed, and to refrain from any discussion designed to influence or otherwise
2 participating in any decision-making process relating to the matter disclosed.

3 (g) Prior to beginning construction or management of a project, the
4 corporation or the board shall hold a public meeting in accordance with the Open
5 Meetings Law. The corporation and the board shall consider any public input
6 provided at such public meeting prior to beginning construction, selecting any
7 contractors, or utilizing any funds on the project. The minutes of all meetings of the
8 corporation shall be published on the board's internet homepage and made available
9 for public inspection in response to any public records request made pursuant to the
10 Public Records Law.

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

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

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

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

1 (i) Financial disclosure statements, substantially in accordance with La. R.S.
2 42:1114, by which a contractor or his immediate family who derives anything of
3 economic value, directly, through any transaction involving the board or the
4 corporation or who derives anything of economic value of which he may be
5 reasonably expected to know through a person which has bid on or entered into or
6 is in any way financially interested in any contract, subcontract, or any transaction
7 involving the board or the corporation shall disclose the following: the amount of
8 income or value of anything of economic value derived; the nature of the business
9 activity; the name and address, and relationship to the contractor, if applicable; and
10 the name and business address of the legal entity, if applicable.

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

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

14 (j) The corporation shall evaluate and grade all responses to the request for
15 qualifications. Alternatively, an advisory committee authorized by a cooperative
16 endeavor agreement with the state of Louisiana may evaluate and grade statements
17 of qualifications. The corporation shall develop and make public its selection criteria
18 for selecting a contractor on a project. The corporation shall consider the following
19 nonexclusive list of factors as part of its selection process:

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

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

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

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

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

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

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

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

20 (ii) Financial records of a submitting party.

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

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

25 (n) The corporation shall continuously review and monitor the status of and
26 contractor performance for each project that the corporation undertakes. The
27 corporation shall make available on the board's internet homepage and in response
28 to any public records request made pursuant to the Public Records Law annual
29 reports explaining contractor performance for each project that it has undertaken or

1 completed during the previous year, listing those projects that are expected to be
2 solicited for bid within the next year, listing those projects that are in progress,
3 listing those projects removed from consideration during the prior year, identifying
4 all contractors and subcontractors for each project completed or in progress, and
5 accounting for all funds expended on each project. Each annual report shall be
6 completed, made available for public inspection, and submitted to the Joint
7 Legislative Committee on the Budget by April 30 in the calendar year following the
8 calendar year that is the subject of the annual report. Each annual report and all
9 books and records of the corporation directly pertaining to the expenditure of project
10 funds, including but not limited to all design and construction contracts and
11 subcontracts, change orders, and pay applications, shall be maintained for a
12 minimum of three years following final completion of the project and shall be
13 subject to audit by internal or external auditors selected by the board.

* * *

15 Section 2. The provisions of R.S. 17:3394.3(A)(4) as amended and reenacted by this
16 Act shall apply to any projects specified in R.S. 17:3394.3 and administered by the nonprofit
17 corporation whose principal purpose is to support the Louisiana Community and Technical
18 College System, if 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.

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 1160 Original

2016 Regular Session

Davis

Abstract: Provides relative to specified capital projects for the Board of Supervisors of Community and Technical Colleges undertaken by a 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 contracting parties in a project, its responsibilities and those of all other contracting parties in the development of a project, its responsibilities and those of all other contracting parties 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 the corporation to 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 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: financial disclosure statements 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.
- (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 contractors, requires the corporation to develop and make public its selection criteria. 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 to successful and unsuccessful bidders. Requires the corporation to make available for inspection by any proposing party any scoring sheets or other materials utilized in selecting the contractor. 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. Requires annual reports on status of projects and contractor performance.

Proposed law is applicable to projects that are administered by the nonprofit corporation and that commence on or after July 1, 2016.

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

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