

2016 Regular Session

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

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

1 of the source of revenues used to fund such construction projects. Notwithstanding
2 any provision of this Chapter to the contrary, the corporation shall adhere to the
3 following requirements with respect to any project it undertakes pursuant to this
4 Section:

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

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

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

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

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

25 (f)(i) Each board member of the corporation and each member of his
26 immediate family who derives any thing of economic value directly, through any
27 transaction involving the corporation or who derives any thing of economic value of
28 which he may be reasonably expected to know through a person which has bid on or
29 entered into or is in any way financially interested in any contract, subcontract, or

1 any transaction under the supervision or jurisdiction of the corporation shall disclose
2 the following substantially in accordance with the Code of Governmental Ethics: the
3 amount of income or value of any thing of economic value derived; the nature of the
4 business activity; the name and address of filer and name of and relationship to the
5 board member, if applicable; and the name and business address of the legal entity,
6 if applicable.

7 (ii) The corporation shall adopt and maintain a policy on conflicts of interest,
8 which shall include provisions requiring the corporation's board of directors and
9 committee members to make appropriate disclosures of any actual or potential
10 conflicts of interest and requiring, following disclosure of a conflict, the member
11 who discloses such a conflict to physically leave any meetings for the duration of any
12 discussion concerning the matter disclosed, to abstain from voting on any issues
13 relating to the matter disclosed, and to refrain from any discussion designed to
14 influence or otherwise participating in any decision-making process relating to the
15 matter disclosed.

16 (g) Prior to beginning construction or management of a project, the
17 corporation or the board shall hold a public meeting in accordance with the Open
18 Meetings Law. The corporation or the board shall consider any public input
19 provided at such public meeting prior to beginning construction or selecting any
20 contractor. The minutes of all meetings of the corporation shall be published on the
21 board's internet homepage and made available for public inspection in response to
22 any public records request made pursuant to the Public Records Law.

23 (h) The corporation shall issue a request for qualifications or request for
24 proposals to select contractors for any project. The procedures for issuing such a
25 request shall be consistent with procurement through competitive sealed bid or
26 competitive negotiation and include the following provisions:

27 (i) The corporation shall establish and use public announcement procedures
28 for solicitation of letters of interest from qualified contractors. Such public
29 announcement procedures shall include a requirement for advertisement on the

1 board's internet home page and in a newspaper of general circulation in the parish
2 or municipality where the project is situated. The corporation shall include a
3 deadline for submission of letters of interest within any such public announcement.
4 All such notices shall be posted no less than twenty days prior to selecting a
5 contractor for a project.

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

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

13 (i) Financial disclosure statements, substantially in accordance with La. R.S.
14 42:1114, by which a contractor or his immediate family who derives anything of
15 economic value, directly, through any transaction involving the board or the
16 corporation or who derives anything of economic value of which he may be
17 reasonably expected to know through a person which has bid on or entered into or
18 is in any way financially interested in any contract, subcontract, or any transaction
19 involving the board or the corporation shall disclose the following: the amount of
20 income or value of anything of economic value derived; the nature of the business
21 activity; the name and address, and relationship to the contractor, if applicable; and
22 the name and business address of the legal entity, if applicable.

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

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

26 (iv) Statements of qualification concerning the experience and resources of
27 the prospective contractor.

28 (j) The corporation shall evaluate and grade all responses. Alternatively, an
29 advisory committee authorized by a cooperative endeavor agreement with the state

1 of Louisiana may evaluate and grade all responses. The corporation shall develop
2 and make public its selection criteria for selecting a contractor on a project. The
3 corporation shall consider the following nonexclusive list of factors as part of its
4 selection process:

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

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

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

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

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

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

25 (l) The corporation shall make at least one copy of each response to its
26 request for qualifications or proposals available in response to any public records
27 request made pursuant to the Public Records Law. All documents submitted to the
28 corporation that are made available to the public shall be provided in a form that

1 protects against the disclosure of any of the following that have been marked
2 "CONFIDENTIAL" by the submitting party:

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

5 (ii) Financial records of a submitting party.

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

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

9 (n) The corporation shall continuously review and monitor the status of and
10 contractor performance for each project that the corporation undertakes. The
11 corporation shall make available on the board's internet homepage and in response
12 to any public records request made pursuant to the Public Records Law annual
13 reports explaining contractor performance for each project that it has undertaken or
14 completed during the previous year, listing those projects that are expected to be
15 solicited for bid within the next year, listing those projects that are in progress,
16 listing those projects removed from consideration during the prior year, identifying
17 all contractors for each project completed or in progress, and accounting for all funds
18 expended on each project. Each annual report shall be completed, made available
19 for public inspection, and submitted to the Joint Legislative Committee on the
20 Budget by April thirtieth in the calendar year following the calendar year that is the
21 subject of the annual report. Each annual report and all books and records of the
22 corporation directly pertaining to the expenditure of project funds, including but not
23 limited to all design and construction contracts, change orders, and pay applications,
24 shall be maintained for a minimum of three years following final completion of the
25 project and shall be subject to audit by internal or external auditors selected by the
26 board.

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

29 * * *

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

4 Section 3. This Act shall become effective upon signature by the governor or, if not
 5 signed by the governor, upon expiration of the time for bills to become law without signature
 6 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If
 7 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 8 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 Reengrossed

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 education, 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 associated with a project.
- (2) Provides that the president of the LCTCS or his designee shall be provided reasonable notice of and all materials relating to and be allowed to attend and participate in all meetings of the corporation's board of directors, and any committee thereof charged with the procurement, management, or oversight for any project.
- (3)(a) Requires disclosure of specified information by corporation board members and his family members to the Bd. of Ethics of any thing of economic value received directly through a transaction or indirectly through a person with an interest in any contract, subcontract, or any transaction under the supervision or jurisdiction of the corporation.
- (b) Requires the corporation to 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 participating 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 or request for proposals to select contractors for any project it undertakes; requires the procedures for issuing such requests be consistent with procurement through competitive sealed bid or competitive negotiation; requires the corporation to provide a request for qualifications or request for proposals 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 shall evaluate and grade all responses to the request for qualifications or proposals. 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.
- (10) Authorizes maintaining records that are public records pursuant to proposed law in an electronic format.

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))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Remove subcontracts from records that must be made public.
2. Add request for proposals as an alternative to request for qualifications in the process of soliciting contractors; add requirement that process for solicitation be consistent with procurement through competitive sealed bid or competitive negotiation.
3. Rather than providing that the president of the LCTCS or his designee serves as a nonvoting member of the board of the corporation, provide that the president or his designee shall have information on and be able to participate in meetings of the board.
4. Remove requirement that the corporation comply with the Code of Government Ethics; require instead disclosure of things of value received by board members and their families pursuant to a contract or from a person involved in a contract.
5. Add provision that records that are public pursuant to proposed law may be maintained in electronic format.