

SENATE BILL NO. 752

BY SENATOR LONG AND REPRESENTATIVES AUBERT, AUSTIN BADON, CARMODY, CARTER, CHANDLER, CHANEY, DIXON, EDWARDS, HARDY, HOFFMANN, RICHARDSON, RITCHIE, SCHRODER AND PATRICIA SMITH

1 AN ACT

2 To enact Chapter 17-F of Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950,
3 to be comprised of R.S. 39:1800.21 through 1800.35, relative to the creation of a
4 nonprofit corporation; to provide for the financing and leasing of centers of
5 excellence; to provide for its board of directors; to authorize the lease and sublease
6 of the facilities; to authorize the issuance of bonds and certificates of participation;
7 to empower the nonprofit corporation, the Louisiana Community and Technical
8 College System and the state to take such other actions or enter into such other
9 agreements as may be necessary and appropriate to carry out its responsibilities; and
10 to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Chapter 17-F of Subtitle III of Title 39 of the Louisiana Revised Statutes
13 of 1950, comprised of R.S. 39:1800.21 through 1800.35, is hereby enacted to read as
14 follows:

15 **CHAPTER 17-F. LOUISIANA CENTERS OF**
16 **EXCELLENCE FINANCING CORPORATION ACT**

17 **§1800.21. Title**

18 **This Chapter shall be referred to and may be cited as the "Louisiana**
19 **Centers of Excellence Financing Corporation Act"**.

20 **§1800.22. Definitions**

21 **As used in this Chapter, the following words and terms shall have the**
22 **following meanings, unless the context clearly indicates or requires another or**
23 **different meaning or intent:**

24 **(1) "Annual appropriation dependency clause" shall mean a clause**

1 which shall be included in any lease-purchase financing document which
2 provides that if, after a diligent and good faith effort by the state to appropriate
3 funds for the payment of sums due under a lease-purchase financing agreement,
4 such funds are not appropriated, such lease-purchase agreement shall terminate
5 in accordance with the terms of the lease-purchasing financing agreement, and
6 the state shall not be liable for the payment of further sums due on such
7 agreements past the then current fiscal year, provided possession of the project
8 is returned to the corporation. Such lease-purchase financing document shall
9 further provide that in the event of an inability to appropriate sufficient funds
10 such inability shall not constitute a default under such agreement.

11 (2) "Bonds" means bonds, notes, or any other evidence of indebtedness
12 issued by the corporation.

13 (3) "Center of excellence" means a community college or vocational
14 technical facility which provides customized education and training programs
15 for targeted industries that drive Louisiana's economy.

16 (4) "Certificates" means certificates of participation executed and
17 delivered by a trustee evidencing ownership interests in any lease entered into
18 by the state or the system, as lessee, and the corporation, as lessor.

19 (5) "Corporation" means the public nonprofit corporation authorized
20 to be formed by this Chapter, or any corporation succeeding to the principal
21 functions thereof or to which the powers conferred upon the corporation by this
22 Chapter shall be given by law.

23 (6) "Division of administration" means the division of administration
24 created within the office of the governor by Title 39 of the Louisiana Revised
25 Statutes of 1950.

26 (7) "Lease-purchase financing" means the financing and acquisition of
27 property by a corporation pursuant to an arrangement under which such
28 corporation acquires title to property and enters into a lease-purchase
29 agreement with the state providing for the leasing of the property by such
30 corporation to the state and acquisition by the state at the end of the lease

1 period of title to the property.

2 (8) "Project" means the planning, acquisition, purchase, construction,
3 renovation, improvement, equipping, or expansion of a public facility by the
4 corporation, provided that no more than fifty percent of the total project cost
5 shall be financed with funds provided through bonds issued pursuant to this
6 Chapter. At least fifty percent of the total cost of each project shall be from
7 contributions by private sources through donations of cash, immovable
8 property, or equipment, or a combination thereof, or from contributions by
9 parishes, municipalities, or their agencies or instrumentalities.

10 (9) "Public facilities" means buildings, parking garages, and related
11 facilities used or to be used as a center of excellence for students, faculty and
12 staff of the Louisiana Community and Technical College System, and all land,
13 buildings and movable or immovable equipment incorporated therein and
14 relating thereto.

15 (10) "System" means the Louisiana Community and Technical College
16 System.

17 §1800.23. Construction of Chapter

18 A. This Chapter shall be deemed to provide a complete, additional, and
19 alternative method for doing the things authorized hereby and shall be regarded
20 as supplemental and additional to powers conferred by other laws.

21 B. To the extent that the provisions of this Chapter are inconsistent with
22 the provisions of R.S. 12:202.1, or any other provisions of any general statute
23 or special act or parts thereof, the provisions of this Chapter shall be deemed
24 controlling.

25 §1800.24. Functions of corporation

26 There is hereby authorized the formation and incorporation of a
27 nonprofit corporation, the purpose of which shall be the financing of the design,
28 acquisition, purchase, construction, renovation, improvement, equipping or
29 expansion of centers of excellence to be leased to the Louisiana Community and
30 Technical Colleges System and used as centers of excellence. However, the

1 financing of such centers of excellence shall be in addition to any other funds or
2 appropriations provided to the Louisiana Community and Technical College
3 System, and such financing shall not displace, replace, supplant, or prevent
4 funding for such system or system's projects from the capital outlay act or
5 appropriations acts.

6 §1800.25. Membership of board of directors; vacancies; compensation;
7 expenses

8 A. The corporation shall be governed by a board of seven directors
9 comprised as follows:

10 (1) The governor, or his designee.

11 (2) The commissioner of administration, or his designee.

12 (3) The president of the Senate, or his designee.

13 (4) The speaker of the House of Representatives, or his designee.

14 (5) The secretary of the Louisiana Department of Economic
15 Development, or his designee.

16 (6) The president of the Louisiana Community and Technical College
17 System, or his designee.

18 (7) The executive director of the Workforce Commission, or his designee.

19 B. Members of the board of directors shall serve without compensation,
20 but the corporation may reimburse such members for necessary expenses
21 incurred in the discharge of their duties. Members of the legislature serving on
22 the board shall receive the same per diem and travel reimbursement for
23 attending meetings of the board as is normally provided for members of the
24 legislature.

25 C. Members of the board of directors shall elect a president, a secretary-
26 treasurer and such other officers as shall be deemed necessary and appropriate.

27 §2800.26. Applicable laws to corporation

28 A. The corporation shall be subject to the Public Records Law, the Open
29 Meetings Law, the Bond Validation Procedures Law, and the Code of
30 Governmental Ethics. The corporation shall follow all provisions of R.S.

1 38:2211 et seq., when utilized by the system as a financing vehicle for the
2 construction, renovation, or expansion of public facilities. With the approval
3 of the commissioner of administration, projects shall either be included in the
4 annual capital outlay act or obtain legislative approval as provided in R.S.
5 39:112(G). Projects shall be administered by the office of facility planning and
6 control in accordance with the provisions of R.S. 39:121 through 128.

7 B. In any action for damages for an offense or quasi offense against the
8 corporation, its officers, or employees, the corporation, its officers, or employees
9 shall be entitled to assert any defense or limitation available to the state or an
10 agency thereof, including but not limited to the provisions of Part XV of
11 Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950.

12 C. In any claim or lawsuit against the corporation or its officers or
13 employees for damages arising out of personal injury or death of an official or
14 employee of the state, its agencies, boards or commissions, the exclusive,
15 compulsory and obligatory relief shall be limited to the remedies and relief
16 afforded under Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950,
17 including but not limited to R.S. 23:1034.

18 §1800.27. Powers

19 A. In addition to the powers granted it by the General Nonprofit
20 Corporation Law, Title 12 of the Louisiana Revised Statutes of 1950, the
21 corporation shall have power to undertake any project, to provide for the
22 financing thereof, and in connection therewith:

23 (1) To receive and accept from any agency of the United States or any
24 agency of the state of Louisiana or any municipality, parish, or other political
25 subdivision thereof, or from any individual, association, or corporation gifts,
26 grants, or donations of monies or other property for achieving any other
27 purposes of this Chapter.

28 (2) To finance, own, lease as lessee or lessor a public facility or facilities
29 owned or leased by the corporation and to enter into contracts for any or all
30 such purposes, including contracts for the acquisition, purchase, construction,

1 renovation, improvement, equipping, or expansion of such public facility or
2 facilities owned or leased by the corporation.

3 (3) To receive and accept from any source loans, contributions, or grants
4 for or in aid of a project, or the financing thereof in either money, property,
5 labor, or other things of value.

6 (4) To mortgage all or any portion of its interest in a public facility or
7 facilities and the property on which any such public facility or facilities are
8 located, whether owned or thereafter acquired, including the granting of a
9 security interest in any property, corporeal or incorporeal, and to assign or
10 pledge all or any portion of its interest in property, corporeal or incorporeal,
11 and the revenues therefrom.

12 (5) To lease for a term not to exceed forty years to the system or to the
13 state of Louisiana, through the division of administration, the project being
14 financed or public facilities conveyed to the corporation in connection with such
15 financing, upon such terms and conditions as are mutually agreeable and both
16 parties deem proper, however, any and all such agreements shall contain an
17 annual appropriation dependency clause, and to charge and collect rents
18 therefor and to terminate any such lease upon the failure of the lessee to comply
19 with any of the obligations thereof; to include in any such lease, if it shall so
20 desire, provisions that the lessee thereof shall have options to renew the term of
21 the lease for such period or periods and at such rent as shall be determined by
22 the corporation or to purchase any or all of the public facilities, or that upon
23 payment of all of the indebtedness incurred by the corporation for the financing
24 of such project, then the corporation shall convey any or all of the public
25 facilities to the state of Louisiana on behalf of the system with or without
26 consideration. The system or the state of Louisiana, through the division of
27 administration, may enter into a lease for immovable or movable property with
28 the corporation, whether as lessee or lessor, pursuant to this Chapter.

29 (6) To obtain, or aid in obtaining, from any department or agency of the
30 United States or the state of Louisiana, including the office of risk management

1 or any private company, any insurance or guarantee as to, or of, or for the
2 payment or repayment of, interest or principal, or both, or any part thereof, on
3 any lease or obligation or any instrument evidencing or securing the same, made
4 or entered into pursuant to the provisions of this Chapter and to assign any
5 such insurance or guarantee as security for the corporation's bonds.

6 (7) To enter into any trust agreement or agreements providing, among
7 other matters, for the execution and delivery of certificates in any lease between
8 the state or a third party and the corporation.

9 (8) To participate in any capacity with new market tax credit financing
10 and other tax credits.

11 (9) To enter into any and all agreements or contracts, execute any and
12 all instruments, and do and perform any and all acts or things necessary,
13 convenient, or desirable for the purposes of the corporation or to carry out any
14 power expressly given in this Chapter.

15 B. In addition to the powers granted it by law, the system or the state of
16 Louisiana, through the division of administration, shall have the power:

17 (1) To enter into a negotiated lease or leases with the corporation of any
18 public facility for a term not to exceed forty years upon such terms and
19 conditions as it shall deem proper, however, such agreements shall contain an
20 annual appropriation dependency clause.

21 (2) To sublease any such leased public facilities to any political
22 subdivision or public body of the state of Louisiana or to any commission,
23 entity, or regional authority created under or by intergovernmental cooperation
24 under the laws of the state of Louisiana; provided that no such sublease shall
25 relieve the sublessor of its obligations under its lease from the corporation
26 relating to the subleased public facilities.

27 (3) Notwithstanding the provisions of R.S. 41:1211 et seq., to negotiate
28 a lease or leases to the corporation of land owned by the system or by the state
29 for a period not to exceed forty years upon such terms and conditions as it shall
30 deem proper.

1 C. Any political subdivision or public body of the state of Louisiana or
2 any public commission, entity, or regional authority created under the law of
3 the state of Louisiana may, with the prior approval of the division of
4 administration, enter into a sublease of public facilities from the system or the
5 state of Louisiana.

6 §1800.28. Bonds

7 A. The corporation is authorized, from time to time, to issue its bonds
8 in order to provide for achieving any of its purposes under this Chapter.

9 B. Except as may otherwise be expressly provided by this corporation,
10 each of its bonds shall be payable from lawfully available funds, including but
11 not limited to any revenues or monies of the corporation available therefor and
12 not otherwise pledged, subject only to any agreements with the holders of
13 particular bonds pledging any particular revenues or monies. Such bonds shall
14 be and are deemed to be for all purposes negotiable instruments, subject only
15 to the provisions of such bonds for registration.

16 C.(1) The corporation's bonds may be issued as serial bonds or as term
17 bonds, or the corporation, in its discretion, may issue bonds of both types. The
18 issuance of all bonds shall be authorized by resolution of the board of directors
19 and shall bear such date or dates, mature at such time or times, not exceeding
20 forty years from their respective dates, bear interest at such rate or rates, be
21 payable at such time or times, be in such denominations, be in such form, carry
22 such registration privileges, be executed in such manner, be payable in lawful
23 money of the United States of America at such place or places, and be subject
24 to such terms of redemption, as the indenture, trust agreement, or resolution
25 relating to such bonds may provide. The corporation's bonds may be sold by
26 the corporation at public or private sale, for such price or prices and upon such
27 terms and conditions as the corporation shall determine. The corporation may
28 sell any bonds at a price below the par value thereof; provided, however, that
29 the discount shall not exceed six percent of the par value thereof. Pending
30 preparation of the definitive bonds, the corporation may issue interim receipts

1 or certificates or temporary bonds which shall be exchanged for such definitive
2 bonds.

3 (2) Bonds of the corporation shall not be invalid because of any
4 irregularity or defect in the proceedings or in the issuance and sale thereof and
5 shall be incontestable in the hands of a bona fide purchaser or holder. The
6 corporation, after authorizing the issuance of bonds by resolution, shall publish
7 once in a newspaper of general circulation in the parish in which the
8 corporation is domiciled, a notice of intention to issue the bonds. The notice
9 shall include a description of the bonds and the security therefor. Within thirty
10 days after the publication, any person in interest may contest the legality of the
11 resolution, any provision of the bonds to be issued pursuant to it, the provisions
12 securing the bonds, and the validity of all other provisions and proceedings
13 relating to the authorization and issuance of the bonds. If no action or
14 proceeding is instituted within the thirty days, no person may contest the
15 validity of the bonds, the provisions of the resolution pursuant to which the
16 bonds were issued, the security of the bonds, or the validity of any other
17 provisions or proceedings relating to their authorization and issuance, and the
18 bonds shall be presumed conclusively to be legal. Thereafter, no court shall
19 have authority to inquire into such matters.

20 D. Any resolution or resolutions authorizing the issuance of any bonds
21 or any issue of bonds may contain provisions, which shall be part of the contract
22 with the holders of the bonds so authorized, as to pledging or assigning all or
23 any part of the revenues of a project or any revenue-producing contract or
24 contracts made by the corporation with any agency, department, corporation,
25 or other person, public or private, to secure the payment of the bonds or of any
26 particular issue of bonds.

27 E. Neither the members of the board of directors of the corporation or
28 any person executing the bonds shall be liable personally on the bonds or be
29 subject to any personal liability or accountability by reason of the issuance
30 thereof.

1 §1800.29. Bonds; security; trust agreement; indenture; ancillary contracts;
2 interest rate swap agreements

3 A. In the discretion of the corporation, any bonds issued by it may be
4 secured by a trust agreement or indenture by and between the corporation and
5 a corporate trustee, which may be any trust company or bank having the
6 powers of a trust company within or without the state. Such trust agreement
7 or indenture or the resolution providing for the issuance of such bonds may
8 pledge or assign the revenues to be received from any lease of the public
9 facilities. A Form UCC-1 need not be filed. Such trust agreement, indenture,
10 or resolution providing for the issuance of such bonds may contain such
11 provisions for protecting and enforcing the rights and remedies of the
12 bondholders as may be reasonable and proper and not in violation of law. Any
13 such trust agreement, indenture, or resolution may set forth the rights and
14 remedies of the bondholders and of the trustee or trustees and may restrict the
15 individual right of action of bondholders. In addition to the foregoing, any such
16 trust agreement, indenture, or resolution may contain such other provisions as
17 the corporation may deem reasonable and proper for the security of
18 bondholders.

19 B. (1) The corporation may enter into, amend, or terminate, as it
20 determines to be necessary or appropriate, any ancillary contracts:

21 (a) To facilitate the issuance, sale, resale, purchase, repurchase or
22 payments of bonds, including without limitation bond insurance, letters of
23 credit, guaranty agreements, surety bonds, and liquidity facilities.

24 (b) To attempt to hedge risk or achieve a desirable effective interest rate
25 or cash flow, subject to the approval of the State Bond Commission.

26 (2) The determination of the board, so approved, that an ancillary
27 contract or the amendment or termination thereof is necessary or appropriate
28 as aforesaid shall be conclusive. Such contracts shall be made upon the terms
29 and conditions established by the board and approved by the State Bond
30 Commission, including without limitation provisions as to security, default,

1 termination, payment, remedy and consent to service of process.

2 C. The corporation may enter into, amend or terminate, any swap
3 contract that it determines to be necessary or appropriate to place the
4 obligations or investments of the corporation, as represented by the bonds or
5 the investment of their proceeds, in whole or in part, on the interest rate, cash
6 flow or other basis desired by the board, which contract may include without
7 limitation contracts commonly known as interest rate swap agreements, futures
8 or contracts providing for payments based on levels of, or changes in, interest
9 rates, and any other derivative product, subject to approval of the State Bond
10 Commission, including specific approval of the necessity, amount, and the
11 recipient of fees or other charges associated with any of the contracts,
12 agreements, or products. The determination of the board, so approved, that a
13 swap contract or the amendment or termination thereof is necessary or
14 appropriate as aforesaid shall be conclusive. These contracts and arrangements
15 may contain such payment, security, default, remedy, and other terms and
16 conditions as determined by the board and approved by the State Bond
17 Commission, after giving due consideration to the creditworthiness of the
18 counterparty or other obligated party, including any rating by any nationally
19 recognized rating agency, and any other criteria as may be appropriate.

20 §1800.30. Bonds and certificates; payment; no liability of state or political
21 subdivision

22 Neither bonds nor certificates shall be deemed to constitute a debt or
23 liability of the state of Louisiana or of any agency, board, or political
24 subdivision thereof or a pledge of the full faith and credit of the state of
25 Louisiana or of any such agency, board, or political subdivision.

26 §1800.31. Refunding bonds

27 The corporation may provide for the issuance of its bonds for the
28 purpose of refunding any bonds or any series of bonds then outstanding,
29 including the payment of any redemption premium thereon and any interest
30 accrued or to accrue to the date of redemption and purchase or maturity of

1 such bonds. All such refunding bonds shall be subject to the provisions of this
2 Chapter in the same manner and to the same extent as other bonds issued
3 pursuant to this Chapter.

4 §1800.32. Bonds and certificates as legal investments

5 Bonds and certificates are hereby made securities in which all banks,
6 bankers, savings banks, trust companies, and other persons carrying on a
7 banking business, all insurance companies, insurance associations, and other
8 persons carrying on an insurance business, and all administrators, executors,
9 guardians, trustees, and other fiduciaries, and all other persons whatsoever who
10 now are or may hereafter be authorized to invest in bonds or other obligations
11 of the state of Louisiana may properly and legally invest any funds, including
12 capital belonging to them or within their control, and such bonds and
13 certificates are hereby made securities which may properly and legally be
14 deposited with and received by any state or municipal officers or agency of the
15 state of Louisiana for any purpose for which the deposit of bonds or other
16 obligations of the state of Louisiana is now or may hereafter be authorized by
17 law.

18 §1800.33. Bonds and certificates; freedom from taxation

19 Any bonds and certificates, their transfer, and the income therefrom
20 shall at all times be free from taxation of every kind by the state of Louisiana
21 and by all political subdivisions in the state of Louisiana.

22 §1800.34. Excess earnings

23 Any net earnings of the corporation beyond that necessary for
24 retirement of any bonds issued by the corporation or to implement the purposes
25 of this Chapter shall inure to the benefit only of the state of Louisiana.

26 §1800.35. Dissolution of corporation; title to the property to vest in successor

27 Upon dissolution of the corporation, title to all property owned by the
28 corporation shall vest in the successor corporation created by the legislature, if
29 any, if such successor corporation qualifies under Section 103 of the Federal
30 Internal Revenue Code of 1986, as amended, to issue obligations the interest on

1 which is exempt from federal income taxation. If no such successor corporation
2 is so created, title to such property shall vest in the state of Louisiana.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____