

ACT No. 359

2015 Regular Session

HOUSE BILL NO. 766

BY REPRESENTATIVE ADAMS

1 AN ACT

2 To amend and reenact R.S. 17:3139.2(introductory paragraph), 3139.5, and 3139.6(1),
3 relative to public colleges and universities; to remove institutional performance
4 criteria as conditions on institutions receiving certain exceptions and exemptions
5 from state regulations of their operations; to provide certain financial solvency
6 criteria on the receipt of such exceptions and exemptions; to provide relative to the
7 exceptions and exemptions that an institution may receive; and to provide for related
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 17:3139.2(introductory paragraph), 3139.5, and 3139.6(1) are hereby
11 amended and reenacted to read as follows:

12 §3139.2. Performance agreements; objectives

13 ~~Effective beginning with the 2011 Fiscal Year, any~~ Any public postsecondary
14 education institution, including professional schools, may enter into an initial
15 performance agreement with the Board of Regents in order to be granted limited
16 ~~operational~~ tuition autonomy and flexibility as provided in R.S. ~~17:3139.5~~
17 17:3139.5(A) in exchange for committing to meet established targets for the
18 following performance objectives as applicable to the institution as determined by
19 the Board of Regents:

20 * * *

21 §3139.5. ~~Autonomies granted~~ Tuition autonomy; operational autonomy contingent
22 on audit findings

23 A. Notwithstanding any other provision of law to the contrary, each
24 institution that enters into a performance agreement shall be granted the authorities
25 ~~and autonomies~~ as provided in this ~~Section~~ Subsection. ~~However, nothing herein~~
26 ~~shall suspend the requirements of R.S. 39:1593.1.~~

1 (1) For the 2010-2011 Fiscal Year, pursuant to policies adopted by the
2 institution's management board and in addition to the authority provided in R.S.
3 17:3351(A)(5)(e), the authority to increase tuition and mandatory fee amounts by up
4 to five percent annually.

5 (2) For the 2011-2012 Fiscal Year, if the Board of Regents has determined
6 that the institution has met the short-term targets established in the performance
7 agreement, in addition to the authority provided in R.S. 17:3351(A)(5)(e), the
8 authority to increase tuition and mandatory fee amounts by up to five percent
9 annually.

10 (3) Beginning with the 2012-2013 Fiscal Year and thereafter, if the Board
11 of Regents has determined that the institution has met the short-term targets
12 established in the performance agreement and demonstrated progress on long-term
13 targets, the institution shall be authorized to:

14 (a) Increase tuition and fee amounts by up to ten percent annually, without
15 legislative approval, until the institution reaches the average tuition and fee amounts
16 of its peer institutions. Tuition and fee amounts for peer institutions shall be
17 weighted based upon the median household income in Southern Regional Education
18 Board states in which respective peer institutions are located. The median household
19 income in such states shall be compared with the median household income in
20 Louisiana, and any differences between the average of the states shall be factored
21 into the allowable tuition and fee amount increase for the respective institution.

22 (b) Upon reaching the average tuition and fee amounts as specified in
23 Subparagraph (a) of this Paragraph, increase tuition and fee amounts as necessary to
24 maintain tuition and fee amounts as close to that average as practical.

25 (4) Each postsecondary education management board shall establish criteria
26 for waiving any tuition or mandatory fee increase as authorized in this Section in
27 cases of financial hardship. Information relative to such waivers and the criteria and
28 procedures for obtaining a waiver shall be made available to all prospective students
29 in a timely manner such that each student is informed of the availability of a waiver

1 prior to the student making a final decision concerning attendance at any public
2 institution of postsecondary education.

3 ~~B. (5) Operational autonomies: (1)(a) Base level:~~ Notwithstanding any
4 provision of law to the contrary, any institution that ~~is determined by the Board of~~
5 ~~Regents to have met the short-term targets established in the performance agreement~~
6 ~~may be granted the autonomies as provided in this Subparagraph; however, no~~
7 ~~institution shall be granted such an autonomy until after the division of~~
8 ~~administration determines that for the following year the institution possesses the~~
9 ~~capacity relevant to the autonomy including, at a minimum, a review of the most~~
10 ~~recent fiscal audit by the legislative auditor~~ meets the requirements of this Paragraph
11 may exercise until July 1, 2020, the autonomies provided by this Subsection subject
12 to the limitations provided in this Paragraph.

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

28 (c) If an institution granted the right to exercise operational autonomies
29 pursuant to Subparagraph (b) of this Paragraph subsequently receives an audit with
30 a material weakness through a financial audit, the institution shall be required to

1 develop and implement a corrective action plan for approval by the management
 2 board. The institution shall be required to demonstrate to the management board that
 3 the necessary corrective actions were taken within six months from the date the audit
 4 finding was reported, or the institution will lose the authority to exercise the
 5 autonomies granted for the remainder of the period that this authority is in effect.
 6 The corrective action plan and post-implementation report shall be submitted to the
 7 division of administration and the Board of Regents.

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

10 (i) (a) Authority to retain any funds which remain unexpended and
 11 unobligated at the end of the fiscal year for use at the institution's discretion pursuant
 12 to R.S. 17:3386, and subject to the prior review and approval of the Joint Legislative
 13 Committee on the Budget.

14 ~~(ii) Authority to execute contracts up to a value of forty-nine thousand nine~~
 15 ~~hundred ninety-nine dollars within a twelve-month period in accordance with the~~
 16 ~~delegation of authority by the office of state procurement pursuant to R.S. 39:1488.~~

17 ~~(iii) (b) Authority to identify and dispose of obsolete equipment, excluding~~
 18 ~~vehicles and items deemed by federal law to be of a dangerous nature, up to an~~
 19 ~~original acquisition value of five thousand dollars. Prior to exercising this autonomy~~
 20 with respect to electronic devices, the postsecondary management board shall
 21 provide certification to the division of administration that all such devices are
 22 sanitized of any personally identifiable information.

23 ~~(iv) Authority to be excluded from oversight or review by the office of~~
 24 ~~information technology, as provided in R.S. 39:15.3, for purchases with an academic~~
 25 ~~research or classroom instructional purpose.~~

26 ~~(v) (c) Authority to be exclude excluded by the division of administration~~
 27 ~~from its any table of organization any position that is fully funded by~~
 28 ~~nonappropriated funds.~~

29 ~~(b) Intermediate level. Notwithstanding any provision of law to the contrary~~
 30 ~~and in addition to the base level autonomies granted pursuant to Subparagraph (a)~~

1 of this Paragraph, any institution that is determined by the Board of Regents to have
2 met the short-term targets established in the performance agreement may be granted
3 the autonomies as provided in this Subparagraph; however, no institution shall be
4 granted such an autonomy until after the division of administration determines that
5 for the following year the institution possesses the capacity relevant to the autonomy
6 including, at a minimum, a review of the most recent fiscal audit by the legislative
7 auditor, and the institution has met the Board of Regents' requirements for
8 significantly streamlining its academic service delivery to students to meet regional
9 workforce needs as provided in Item (vi) of this Subparagraph. Any autonomy
10 granted pursuant to this Subparagraph shall be subject to the prior review and
11 approval of the Joint Legislative Committee on the Budget.

12 (i) ~~Notwithstanding the provisions of R.S. 39:1702, authority to procure~~
13 ~~materials, supplies, equipment, and services through any purchasing agreements~~
14 ~~established by a not-for-profit cooperative buying organization located in the United~~
15 ~~States, if such purchasing agreements have been established pursuant to a~~
16 ~~competitive bid proposal process. Prior to joining a not-for-profit cooperative~~
17 ~~buying organization, the institution shall publish a notice of intent to join such not-~~
18 ~~for-profit cooperative buying organization in the official journal of the state and of~~
19 ~~the parish in which the institution is located. Prior to entering any purchasing~~
20 ~~agreement with a not-for-profit cooperative buying organization, the institution shall~~
21 ~~publish a notice of intent to enter such purchasing agreement through a centralized,~~
22 ~~electronic, interactive environment administered by the division of administration~~
23 ~~as provided in R.S. 39:1593 and on the institution's website and shall allow fifteen~~
24 ~~days for interested vendors to submit proposals for the materials, supplies,~~
25 ~~equipment, or services. The proposals submitted by interested vendors shall adhere~~
26 ~~to the request for proposal or solicitation issued by the cooperative buying~~
27 ~~organization. The institution shall review the proposals submitted by interested~~
28 ~~vendors and compare the proposals to the cooperative buying organization agreement~~
29 ~~to determine the lowest responsive and responsible vendor. The institution shall~~
30 ~~utilize the lowest responsive and responsible vendor for the procurement. For~~

1 purposes of this Item, lowest responsive and responsible bidder shall be defined as
2 set forth in R.S. 39:1591.

3 ~~(ii) Authority to directly administer minor facility capital outlay projects~~
4 ~~without oversight or control by the office of facility planning and control. For~~
5 ~~purposes of this Item, minor facilities projects shall mean, in addition to the authority~~
6 ~~provided in R.S. 39:128, those that do not require the use of and coordination~~
7 ~~between more than two trades or that do not require the use of the professional~~
8 ~~services of an architect or engineer pursuant to the provisions of R.S. 39:1482 and~~
9 ~~1484.~~

10 ~~(iii) Authority to join an existing cooperative purchasing agreement in~~
11 ~~accordance with R.S. 39:1702 and Item (i) of this Subparagraph. Prior to joining a~~
12 ~~not-for-profit cooperative buying organization, the institution shall publish a notice~~
13 ~~of intent to join such not-for-profit cooperative buying organization in the official~~
14 ~~journal of the state and of the parish in which the institution is located. Prior to~~
15 ~~entering any purchasing agreement with a not-for-profit cooperative buying~~
16 ~~organization, the institution shall publish a notice of intent to enter such purchasing~~
17 ~~agreement through a centralized, electronic, interactive environment administered~~
18 ~~by the division of administration as provided in R.S. 39:1593 and on the institution's~~
19 ~~website and shall allow fifteen days for interested vendors to submit proposals for~~
20 ~~the materials, supplies, equipment, or services. The proposals submitted by~~
21 ~~interested vendors shall adhere to the request for proposal or solicitation issued by~~
22 ~~the cooperative buying organization. The institution shall review the proposals~~
23 ~~submitted by interested vendors and compare the proposals to the cooperative buying~~
24 ~~organization agreement to determine the lowest responsive and responsible vendor.~~
25 ~~The institution shall utilize the lowest responsive and responsible vendor for the~~
26 ~~procurement. For purposes of this Item, lowest responsive and responsible bidder~~
27 ~~shall be defined as set forth in R.S. 39:1591.~~

28 ~~(iv) Authority to use reverse auctions. For purposes of this Item, reverse~~
29 ~~auction means a competitive online solicitation process on the Internet for products,~~

1 supplies, services, and other materials in which vendors compete against each other
2 in real time in an open and interactive environment.

3 (v) Authority for the director of purchasing at a college or university to make
4 a determination to use a competitive request for proposal process as provided in R.S.
5 39:1593(C) without the approval of the commissioner of administration or the
6 director of state purchasing.

7 (vi) For purposes of this Subparagraph, for an institution to meet the
8 requirement of significantly streamlining academic service delivery, the institution
9 shall have acted on at least two items from a list approved by the Board of Regents,
10 which shall include the following:

11 (aa) The review of all of its programs and academic offerings and
12 appropriate action to improve those programs and academic offerings through
13 modification, consolidation, or elimination, including consideration of online
14 delivery of academic offerings to meet workforce needs and maximize resources.

15 (bb) The review and streamlining of all course offerings to align with
16 program requirements and facilitate on-time graduation.

17 (cc) If a two-year institution, the review of nonacademic programs and
18 degrees and appropriate action to improve such programs and degrees through
19 modification, consolidation, or elimination, including consideration of online
20 delivery of academic offerings.

21 (dd) If a four-year institution, raised the minimum composite score on the
22 American College Test required for admission to at least two points higher than the
23 Board of Regents baseline appropriate for its type of institution. This requirement
24 shall be notwithstanding a student's grade point average. Opting not to participate
25 in this requirement shall not preclude an institution from implementing minimum
26 admission standards in accordance with Board of Regents policy.

27 (e) High level. Notwithstanding any provision of law to the contrary and in
28 addition to the base level and intermediate level autonomies granted pursuant to
29 Subparagraphs (a) and (b) of this Paragraph, any institution that is determined by the
30 Board of Regents to have met the short-term targets established in the performance

1 ~~agreement may be granted the autonomies as provided in this Subparagraph;~~
 2 ~~however, no institution shall be granted such an autonomy until after the division of~~
 3 ~~administration determines that for the following year the institution possesses the~~
 4 ~~capacity relevant to the autonomy including, at a minimum, a review of the most~~
 5 ~~recent fiscal audit by the legislative auditor and has a one hundred fifty percent of~~
 6 ~~normal-time Integrated Postsecondary Education Data System graduation rate within~~
 7 ~~five percent of the average graduation rate for its classification according to the~~
 8 ~~Southern Regional Education Board.~~

9 (d)(i) Authority to participate in a pilot the higher education procurement
 10 code as established by the initial qualifying institution in each postsecondary
 11 educational system Louisiana State University and Agricultural and Mechanical
 12 College to be and in place for an initial period of three years and approved by the
 13 division of administration. The initial qualifying institution in each Each
 14 postsecondary educational system management board may establish a pilot adopt the
 15 higher education procurement code, with amendments necessary to insert the name
 16 of the each management board into the procurement code and to implement the code
 17 but excluding any substantive changes, pursuant to rules and regulations adopted in
 18 accordance with the Administrative Procedure Act. An institution granted this
 19 autonomy Any entity whose budget is appropriated through Schedule 19-Higher
 20 Education or 19E-LSU Health Sciences Center- Health Care Services Division may
 21 use this pilot the higher education procurement code in lieu of the Louisiana
 22 Procurement Code as provided in R.S. 39:15.3, 196 through 200, 1481 through 1526,
 23 and 1551 through 1755, subject to the prior review and approval of the Joint
 24 Legislative Committee on the Budget. Any extension beyond the initial period of
 25 three years shall be submitted to the Joint Legislative Committee on the Budget for
 26 review and approval for a period not to exceed three years. Any changes to the pilot
 27 procurement plan after the approval for any three-year higher education procurement
 28 code after an initial five-year period shall be submitted to the Joint Legislative
 29 Committee on the Budget for approval. However, there shall be only one higher
 30 education procurement code except for nonsubstantive changes required to

1 implement the code. ~~With the approval of the division of administration and the~~
2 ~~Joint Legislative Committee on the Budget, a pilot procurement code may provide~~
3 ~~that other institutions under the same postsecondary education management board~~
4 ~~as the initial qualifying institution may utilize the pilot procurement code, provided~~
5 ~~the procurement is conducted under the auspices of a shared services model managed~~
6 ~~by the qualifying institution.~~

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

10 ~~(ii)(aa)~~ (e)(i) Exemption from participation in the state's risk management
11 program established by R.S. 39:1527 ~~et. et~~ seq. and administered by the office of risk
12 management, pursuant to a determination by the division of administration that the
13 institution or management board, as applicable, has the capacity to manage its own
14 risk and a phased-in plan of implementation as determined by the institution in
15 collaboration with the attorney general and the division of administration, subject to
16 the prior review and approval of the Joint Legislative Committee on the Budget.
17 This exemption shall not include the coverage provided by the state's risk
18 management program pursuant to R.S. 40:1299.39.

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

27 ~~(cc)~~ (iii) Nothing in this Item shall be construed as creating any independent
28 or separate cause of action against the state. The state shall continue to be sued only
29 through the exempt institution's management board and cannot be sued in addition
30 to or separately from the exempt institution's management board in any cause of

1 action asserted against the exempt institution. ~~Neither the state nor the~~ The office
 2 of risk management shall not be responsible for payment of any judgment against the
 3 exempt institution's management board rendered subsequent to the transfer of the
 4 applicable line of coverage. The state's obligation to indemnify a covered individual
 5 as provided in R.S. 13:5108.1 shall not be performed by the office of risk
 6 management.

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

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

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

26 ~~(iv)~~ (g) Authority to invest funds as defined by R.S. 49:327(C), ~~in addition~~
 27 ~~to~~ in municipal bonds issued by any state or political subdivision and those
 28 instruments laid out in R.S. 49:327(B)(1), in tax exempt bonds and other taxable
 29 governmental bonds issued by any state or a political subdivision or public
 30 corporation of any state, provided that such bonds are rated by a nationally

1 recognized rating agency as investment grade. The investment policy governing
2 such investment as defined by R.S. 49:327(C)(1)(b) shall define the allocation of
3 funds among instruments and the term of maturity of the instruments, subject to the
4 prior review and approval of the investment advisory committee. If an institution
5 ~~pursuant to the Board of Regents' annual review is either no longer meeting its~~
6 ~~short-term targets or is determined by the division of administration to no longer~~
7 possess the capacity relevant to this autonomy, or both, authority to invest additional
8 funds shall be limited to those instruments defined by R.S. 49:327(B)(1) and (C), and
9 shall exclude further investments in tax exempt bonds and other taxable government
10 bonds issued by any state or a political subdivision or public corporation of any state.

11 ~~(6)(a) Any operational autonomies granted to an institution pursuant to this~~
12 ~~Section shall terminate immediately upon revocation of the institution's six-year~~
13 ~~performance agreement by the Board of Regents. The Board of Regents shall notify~~
14 ~~the Joint Legislative Committee on the Budget of any such revocation of a~~
15 ~~performance agreement.~~

16 ~~(b) Any operational autonomy granted to an institution pursuant to this~~
17 ~~Section shall terminate immediately upon determination by the division of~~
18 ~~administration that an institution has failed to maintain the operational capacity~~
19 ~~relevant to that autonomy. The division of administration shall notify the Joint~~
20 ~~Legislative Committee on the Budget of any institution's failure to maintain the~~
21 ~~operational capacity relevant to any previously granted operational autonomy.~~

22 (3)(a) Nothing in this Subsection abrogates, amends, or alters the authority
23 of the attorney general or the Department of Justice under Article IV, Sections 1 and
24 8 of the Constitution of Louisiana or any other provision of law to represent the state
25 and all departments and agencies of state government in all litigation arising out of
26 or involving tort or contract. Any exempt institution under this Section shall enter
27 into an interagency agreement with the attorney general and pay the attorney general
28 reasonable attorney fees and expenses incurred in representing the institution.

29 (b) Nothing in this Subsection shall be construed as creating any independent
30 or separate cause of action against the state. The state shall continue to be sued only

1 through the exempt institution's management board and cannot be sued in addition
2 to or separately from the exempt institution's management board in any cause of
3 action asserted against the exempt institution.

4 §3139.6. Monitoring; reporting; renewal

5 (1) The Board of Regents annually shall monitor and report to the legislature
6 and the governor on each participating institution's progress in meeting the
7 established targets for performance objectives as specified in R.S. 17:3139.2. At the
8 end of the first six years and each subsequent six-year period, the Board of Regents
9 shall determine whether to recommend renewal of an institution's performance
10 agreement subject to the approval of the Joint Legislative Committee on the Budget.
11 Such determination shall be based on the recommendations of a review panel
12 established by the Board of Regents to conduct a comprehensive review and
13 evaluation of the institution's progress in meeting the performance objectives. The
14 composition of the review panel shall be ~~the same as~~ similar to that is provided in
15 R.S. 17:3138(C) as repealed by Act No. 251 of the 2012 Regular Session of the
16 Legislature with the addition of two representatives from the business community,
17 who each possess a postsecondary degree, one recommended by the speaker of the
18 House of Representatives and one recommended by the president of the Senate.

19 * * *

20 Section 2. This Act shall become effective upon signature by the governor or, if not
21 signed by the governor, upon expiration of the time for bills to become law without signature
22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
23 vetoed by the governor and subsequently approved by the legislature, this Act shall become
24 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____