

2020 Second Extraordinary Session

SENATE BILL NO. 32

BY SENATOR FIELDS

COLLEGES/UNIVERSITIES. Grants certain operational autonomies to certain public postsecondary education institutions (gov sig) (Item #42)

1 AN ACT

2 To enact R.S. 17:3393, relative to colleges and universities; to provide relative to the
3 exceptions and exemptions that a public postsecondary education institution may
4 receive from state regulations of their operations under certain conditions; and to
5 provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 17:3393 is hereby enacted to read as follows:

8 **§3393. Operational autonomy contingent on audit findings**

9 **A.(1)(a) Notwithstanding any provision of law to the contrary, any**
10 **institution that meets the requirements of this Paragraph may exercise the**
11 **autonomies provided by this Subsection subject to the limitations provided in**
12 **this Paragraph.**

13 **(b) Subsequent to a postsecondary management board granting approval**
14 **to an institution in its system to exercise operational autonomies or a system**
15 **exercising the provided authorities, the division of administration shall approve**
16 **the exercise of such autonomies to all institutions in the system governed by the**
17 **management board, provided the system received for its most recent audit, a**

1 financial audit with an unmodified opinion, where the financial statements were
2 free of material misstatements and material weaknesses, and the financial
3 position, results of operations, and cash flows were represented fairly in
4 accordance with Generally Accepted Accounting Principles. If the system did
5 not receive for the most recent audit, a financial audit with an unmodified
6 opinion, where the financial statements were free of material misstatements and
7 material weaknesses, and the financial position, results of operations, and cash
8 flows were represented fairly in accordance with Generally Accepted
9 Accounting Principles, then the division of administration shall approve the
10 exercise of such autonomies to all institutions in the system, except for any
11 institution which was responsible for the finding of noncompliance at the system
12 level.

13 (c) If an institution granted the right to exercise operational autonomies
14 pursuant to Subparagraph (b) of this Paragraph subsequently receives an audit
15 with a material weakness through a financial audit, the institution shall be
16 required to develop and implement a corrective action plan for approval by the
17 management board. The institution shall be required to demonstrate to the
18 management board that the necessary corrective actions were taken within six
19 months from the date the audit finding was reported, or the institution will lose
20 the authority to exercise the autonomies granted for the remainder of the period
21 that this authority is in effect. The corrective action plan and
22 post-implementation report shall be submitted to the division of administration
23 and the Board of Regents.

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

26 (a) Authority to retain any funds which remain unexpended and
27 unobligated at the end of the fiscal year for use at the institution's discretion.

28 (b) Authority to identify and dispose of obsolete equipment, excluding
29 vehicles and items deemed by federal law to be of a dangerous nature. Prior to

1 exercising this autonomy with respect to electronic devices, the postsecondary
2 management board shall provide certification to the division of administration
3 that all such devices are sanitized of any personally identifiable information.

4 (c) Authority to be excluded by the division of administration from any
5 table of organization.

6 (d)(i) Authority to participate in the higher education procurement code
7 as established by Louisiana State University and Agricultural and Mechanical
8 College and approved by the division of administration. Institutions within the
9 same system may cooperatively operate procurement operations under the
10 higher education procurement code. Each postsecondary education
11 management board may adopt the higher education procurement code, with
12 amendments necessary to insert the name of each management board into the
13 procurement code and to implement the code but excluding any substantive
14 changes, pursuant to rules and regulations adopted in accordance with the
15 Administrative Procedure Act. Any entity whose budget is appropriated
16 through Schedule 19-Higher Education or 19E-LSU Health Sciences
17 Center-health care services division may use the higher education procurement
18 code in lieu of the Louisiana Procurement Code as provided in R.S. 39:15.3, 196
19 through 200, and 1551 through 1755, subject to the prior review and approval
20 of the Joint Legislative Committee on the Budget. Any changes to the higher
21 education procurement code after an initial five-year period shall be submitted
22 to the Joint Legislative Committee on the Budget for approval. However, there
23 shall be only one higher education procurement code except for nonsubstantive
24 changes required to implement the code.

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

28 (e)(i) Exemption from participation in the state's risk management
29 program established by R.S. 39:1527 et seq. and administered by the office of

1 risk management, pursuant to a determination by the division of administration
2 that the institution or management board, as applicable, has the capacity to
3 manage its own risk and a phased-in plan of implementation as determined by
4 the institution in collaboration with the attorney general and the division of
5 administration, subject to the prior review and approval of the Joint Legislative
6 Committee on the Budget. This exemption shall not include the coverage
7 provided by the state's risk management program pursuant to R.S. 40:1237.1.

8 (ii) Nothing in this exemption shall abrogate, amend, or alter the
9 authority of the attorney general or the Department of Justice under Article IV,
10 Sections 1 and 8 of the Constitution of Louisiana or any other provision of law
11 to represent the state and all departments and agencies of state government in
12 all litigation arising out of or involving tort or contract. Any institution that is
13 granted an exemption under this Subparagraph shall enter into an interagency
14 agreement with the attorney general and pay the attorney general reasonable
15 attorney fees and expenses incurred in representing the institution.

16 (iii) Nothing in this Subparagraph shall be construed as creating any
17 independent or separate cause of action against the state. The state shall
18 continue to be sued only through the exempt institution's management board
19 and cannot be sued in addition to or separately from the exempt institution's
20 management board in any cause of action asserted against the exempt
21 institution. The office of risk management shall not be responsible for payment
22 of any judgment against the exempt institution's management board rendered
23 subsequent to the transfer of the applicable line of coverage. The state's
24 obligation to indemnify a covered individual as provided in R.S. 13:5108.1 shall
25 not be performed by the office of risk management.

26 (iv) Any contract between the exempt institution's management board
27 and its insurer shall name the state as an additional insured. Any provision in
28 any contract between the exempt institution's management board and its
29 insurer that conflicts with the provisions of this Subparagraph shall be deemed

1 **null and void.**

2 **(v) Nothing in this Subparagraph shall be construed to adversely affect**
3 **any of the substantive and procedural provisions and limitations applicable to**
4 **actions against the state, including but not limited to the provisions of R.S.**
5 **13:5106, 5107, 5108.1, and 5112, and R.S. 9:2800 which would continue to apply**
6 **equally to any exempted institution. Those provisions that will not apply are**
7 **those that are specifically excluded in this Section. Upon transfer of each line of**
8 **coverage to the exempted institution under this Section, the provisions of R.S.**
9 **39:1527 et seq., as well as the provisions of R.S. 13:5106(B)(3)(c), shall not apply**
10 **to the line of coverage so transferred, nor to any claims asserted against the**
11 **exempted institution within the transferred line of coverage.**

12 **(f) Notwithstanding the provisions of R.S. 39:113, authority to administer**
13 **all facilities projects funded with self-generated revenue, federal funds,**
14 **donations, grants, or revenue bonds, including all projects falling under R.S.**
15 **39:128; however, excluding those projects falling under R.S. 39:128, these**
16 **projects shall not be exempted from the capital outlay budget or any**
17 **requirements as pertains thereto.**

18 **(g) Authority to invest funds as defined by R.S. 49:327(C) in municipal**
19 **bonds issued by any state or political subdivision and those instruments laid out**
20 **in R.S. 49:327(B)(1), in tax exempt bonds and other taxable governmental bonds**
21 **issued by any state or a political subdivision or public corporation of any state,**
22 **provided that such bonds are rated by a nationally recognized rating agency as**
23 **investment grade. The investment policy governing such investment as defined**
24 **by R.S. 49:327(C)(1)(b) shall define the allocation of funds among instruments**
25 **and the term of maturity of the instruments, subject to the prior review and**
26 **approval of the investment advisory committee. If an institution is determined**
27 **by the division of administration to no longer possess the capacity relevant to**
28 **this autonomy, or both, authority to invest additional funds shall be limited to**
29 **those instruments defined by R.S. 49:327(B)(1) and (C), and shall exclude**

1 further investments in tax exempt bonds and other taxable government bonds
2 issued by any state or a political subdivision or public corporation of any state.

3 B. Nothing in this Section abrogates, amends, or alters the authority of
4 the attorney general or the Department of Justice under Article IV, Sections 1
5 and 8 of the Constitution of Louisiana or any other provision of law to represent
6 the state and all departments and agencies of state government in all litigation
7 arising out of or involving tort or contract. Any exempt institution under this
8 Section shall enter into an interagency agreement with the attorney general and
9 pay the attorney general reasonable attorney fees and expenses incurred in
10 representing the institution.

11 C. Nothing in this Section shall be construed as creating any independent
12 or separate cause of action against the state. The state shall continue to be sued
13 only through the exempt institution's management board and cannot be sued
14 in addition to or separately from the exempt institution's management board
15 in any cause of action asserted against the exempt institution.

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

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Cheryl Serrett.

DIGEST

SB 32 Original

2020 Second Extraordinary Session

Fields

Present law provides for the Louisiana Granting Resources and Autonomy for Diplomas Act (GRAD Act). The GRAD Act provides public postsecondary institutions that achieve specific, measurable performance objectives aimed at improving college completion and at meeting the state's current and future workforce and economic development needs be granted limited tuition and operational autonomy for achieving such objectives. Present law further provides that a public postsecondary education institution with clean financial audit findings may exercise certain operational autonomies until July 1, 2020, if the institution's management board approves the exercise of autonomies by any institution in the system.

Present law provides for the following operational autonomies:

- (1) Authority to retain funds unexpended and unobligated at the end of the fiscal year for use at the institution's discretion.
- (2) Authority to identify and dispose of obsolete equipment.
- (3) Authority to be excluded by the division of administration from any table of organization.
- (4) Authority to participate in the higher education procurement code as established by Louisiana State University and approved by the division of administration.
- (5) Exemption from participation in the state's risk management program pursuant to certain conditions.
- (6) Authority to administer facilities projects funded with self-generated revenue, federal funds, donations, grants, or revenue bonds.
- (7) Authority to invest certain funds in certain bonds.

Proposed law recodifies the authority for operational autonomies and removes the "sunset" date for such authority.

Proposed law expands the autonomy to use unexpended and unobligated funds.

Proposed law authorizes cooperative procurement under the higher education procurement code for institutions within a system.

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

(Adds R.S. 17:3393)