

2020 Regular Session

HOUSE BILL NO. 689

BY REPRESENTATIVE ZERINGUE

COLLEGES/UNIVERSITIES: Provides relative to the operations of public colleges and universities

1 AN ACT

2 To enact R.S. 17:3351.21, relative to colleges and universities; to provide relative to fees
3 charged to students at public postsecondary institutions; to authorize the
4 postsecondary education management boards to establish such fees and adjust fee
5 amounts; to provide limitations; to provide for applicability; to provide for reporting;
6 to provide relative to the exceptions and exemptions that an institution may receive
7 from state regulations of their operations; to provide certain financial solvency
8 criteria on the receipt of such exceptions and exemptions; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 17:3351.21 is hereby enacted to read as follows:

12 §3351.21. Mandatory fees; operational autonomies

13 A.(1) In addition to the authority granted by any other provision of law,
14 including but not limited to R.S. 17:3351.7 and 3351.8, and in accordance with
15 Article VII, Section 2.1 of the Constitution of Louisiana, the Legislature of Louisiana
16 hereby authorizes the Board of Supervisors of Louisiana State University and
17 Agricultural and Mechanical College, the Board of Supervisors of Southern
18 University and Agricultural and Mechanical College, the Board of Supervisors for
19 the University of Louisiana System, and the Board of Supervisors of Louisiana
20 Community and Technical Colleges to establish at each institution under their

1 respective management and supervision mandatory fees to be charged to students
2 enrolled at such institutions and to adjust the amounts of such fees as they deem
3 necessary. Such authority shall apply for the 2020-2021 through the 2022-2023
4 academic years only, and the authority to increase fees pursuant thereto shall
5 terminate on June 30, 2023.

6 (2) The revenue per full-time equivalent student from all tuition and fee
7 amounts charged to a student plus the revenue per full-time equivalent student from
8 state and local appropriations shall not exceed the national average of total per full-
9 time equivalent student revenue from state appropriations, local appropriations,
10 tuition, and fees as reported by the National Center for Education Statistics by
11 Carnegie classification, which maximum amount may be annually adjusted based on
12 the most recent full-time equivalent funding statistics as reported by the National
13 Center for Education Statistics and adjusted to the current fiscal year using the
14 Higher Education Price Index. This Paragraph shall not apply to the Louisiana State
15 University Health Sciences Center - New Orleans, the Louisiana State University
16 Health Sciences Center - Shreveport, the pharmacy program at the University of
17 Louisiana at Monroe, or the Southern University Law Center.

18 (3) The total of all tuition and fee amounts charged to a student enrolled in
19 the Louisiana State University Health Sciences Center - New Orleans, the Louisiana
20 State University Health Sciences Center - Shreveport, the pharmacy program at the
21 University of Louisiana at Monroe, or the Southern University Law Center shall not
22 exceed the tuition and fees charged, as reported by the National Center for Education
23 Statistics, of national peers selected by the institution, which maximum amount may
24 be annually adjusted based on the most recent tuition and fee amounts per full-time
25 equivalent student as reported by the National Center for Education Statistics and
26 adjusted to the current fiscal year using the Higher Education Price Index.

27 (4) The authority granted by Paragraph (1) of this Subsection includes the
28 authority to impose per-credit fees, to impose differential fees for certain programs

1 exclusive of others, and to charge proportional amounts for part-time students and
2 for summer sessions.

3 (5) The authority granted by Paragraph (1) of this Subsection is not subject
4 to any limitation on the authority to establish fees and set fee amounts provided for
5 in R.S. 17:3139 et seq.

6 (6) Each management board shall establish a need-based financial assistance
7 fund at each of its member institutions. Each institution shall allocate to its fund
8 funds from its operating budget in an amount not less than five percent of revenues
9 realized by the institution from fees assessed pursuant to this Subsection. Such funds
10 shall be used to provide need-based financial assistance to students at that institution
11 who are eligible to receive a Pell Grant.

12 (7) No revenues generated by fees imposed pursuant to this Subsection shall
13 be used for any other purpose except for support of the university at which the fees
14 were collected.

15 (8) The authority granted in Paragraph (1) of this Subsection includes the
16 authority to impose a fee for the administration of any student surveys required or
17 authorized by law.

18 (9) Each postsecondary education management board shall submit a written
19 report to the Senate Committee on Education and the House Committee on
20 Education not later than February fifteenth of 2021, 2022, and 2023 regarding how
21 the fees authorized by this Subsection are being implemented at each institution
22 under its supervision and management, including an overview of the distribution of
23 the monies in the need-based financial assistance fund as provided in Paragraph (7)
24 of this Subsection.

25 B.(1)(a) Notwithstanding any provision of law to the contrary, any institution
26 that meets the requirements of this Paragraph may exercise the autonomies provided
27 by this Subsection subject to the limitations provided in this Paragraph.

28 (b) Subsequent to a postsecondary management board granting approval to
29 an institution in its system to exercise operational autonomies, the division of

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

14 (c) If an institution granted the right to exercise operational autonomies
15 pursuant to Subparagraph (b) of this Paragraph subsequently receives an audit with
16 a material weakness through a financial audit, the institution shall be required to
17 develop and implement a corrective action plan for approval by the management
18 board. The institution shall be required to demonstrate to the management board that
19 the necessary corrective actions were taken within six months from the date the audit
20 finding was reported, or the institution will lose the authority to exercise the
21 autonomies granted for the remainder of the period that this authority is in effect.
22 The corrective action plan and post-implementation report shall be submitted to the
23 division of administration 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 unobligated
27 at the end of the fiscal year for use at the institution's discretion pursuant to R.S.
28 17:3386.

1 (b) Authority to identify and dispose of obsolete equipment, excluding
2 vehicles and items deemed by federal law to be of a dangerous nature. Prior to
3 exercising this autonomy with respect to electronic devices, the postsecondary
4 management board shall provide certification to the division of administration that
5 all such devices are sanitized of any personally identifiable information.

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

8 (d)(i) Authority to participate in the higher education procurement code as
9 established by Louisiana State University and Agricultural and Mechanical College
10 and approved by the division of administration. 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 changes,
14 pursuant to rules and regulations adopted in accordance with the Administrative
15 Procedure Act. Any entity whose budget is appropriated through Schedule 19-Higher
16 Education or 19E-LSU Health Sciences Center-health care services division may use
17 the higher education procurement code in lieu of the Louisiana Procurement Code
18 as provided in R.S. 39:15.3, 196 through 200, and 1551 through 1755, subject to the
19 prior review and approval of the Joint Legislative Committee on the Budget. Any
20 changes to the higher education procurement code after an initial five-year period
21 shall be submitted to the Joint Legislative Committee on the Budget for approval.
22 However, there shall be only one higher education procurement code except for
23 nonsubstantive changes required to implement the code.

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

27 (e)(i) Exemption from participation in the state's risk management program
28 established by R.S. 39:1527 et seq. and administered by the office of risk
29 management, pursuant to a determination by the division of administration that the

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

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

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

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

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

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

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

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

8 (b) Nothing in this Subsection shall be construed as creating any independent
9 or separate cause of action against the state. The state shall continue to be sued only
10 through the exempt institution's management board and cannot be sued in addition
11 to or separately from the exempt institution's management board in any cause of
12 action asserted against the exempt institution.

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 689 Original

2020 Regular Session

Zeringue

Abstract: Provides relative to mandatory fees and operational autonomies at colleges and universities.

Proposed law provides that the legislature authorizes the public postsecondary education management boards to establish fees and adjust fee amounts at institutions under their respective management and supervision. Provides that such authority shall apply for the 2020-2021 through the 2022-2023 academic years only and that the authority to increase fees pursuant thereto shall terminate on June 30, 2023. Provides that such authority specifically includes authority to impose per credit fees and differential fees for certain programs and to charge proportional amounts for part-time students and summer sessions. Provides that except for the LSU Health Sciences Centers, the pharmacy program at the University of La. at Monroe, and the Southern University Law Center, the revenue per full time equivalent student from all tuition and fee amounts charged to a student plus the revenue per full time equivalent student from state and local appropriations shall not exceed the national average of total per full time equivalent student revenue from state appropriations, local appropriations, tuition, and fees as reported by the National Center for Education Statistics (NCES) by Carnegie classification, which maximum amount may be annually adjusted based on the most recent full time equivalent funding statistics as reported by the NCES and adjusted to the current fiscal year using the Higher Education Price Index (HEPI). Provides that the total of all tuition and fee amounts charged to a student enrolled in the LSU Health Sciences Centers, the pharmacy program at the University of La. at Monroe, and the Southern University Law Center shall not exceed the tuition and fees charged, as reported by the NCES, of national peers selected by the institution, which maximum amount may be annually adjusted based on the most recent tuition and fee

amounts per full time equivalent student as reported by the NCES and adjusted to the current fiscal year using the HEPI.

Proposed law also:

- (1) Requires each institution to allocate not less than 5% of revenues realized pursuant to proposed law to provide need-based financial assistance to students eligible to receive a Pell Grant.
- (2) Prohibits revenues generated by fees imposed pursuant to proposed law from being used for any other purpose except for support of the university at which the fees are collected.
- (3) Requires each management board to submit a report to the House and Senate education committees by Feb. 15th of 2021, 2022, and 2023 regarding how fees authorized by proposed law have been implemented at each institution under its supervision and management, including an overview of the distribution of the monies in the need-based financial assistance fund as provided in proposed law.
- (4) Provides that the fee authority granted by proposed law includes the authority to impose a fee for the administration of certain student surveys.

Proposed law authorizes public postsecondary institutions that meet certain conditions to be granted various exemptions and exceptions from state regulations of their operations (operational autonomies).

Proposed law provides that the division of administration shall approve the exercise of operational autonomies by an institution, if the institution's management board approves the exercise of autonomies by an institution in the system and one of the following conditions is met:

- (1) The institution is in a system that received, for its most recent audit, a financial audit with an unmodified opinion, where the financial statements were free of material misstatements and material weaknesses, and the financial position, results of operations, and cash flows were represented fairly in accordance with Generally Accepted Accounting Principles.
- (2) The institution is in a system that did not meet (1) above, but the institution was not responsible for the finding of noncompliance at the system level.

Proposed law provides that if an institution with the authority to exercise operational autonomies subsequently receives a financial audit with a material weakness, it shall lose such authority unless it develops and implements a corrective action plan and demonstrates to the management board that the necessary corrective actions have been taken within six months after the audit finding was reported.

Proposed law provides for operational autonomies as follows:

- (1) Proposed law authorizes an institution to retain funds with are unexpended and unobligated at the end of the fiscal year for use at the institution's discretion.
- (2) Proposed law authorizes an institution to dispose of obsolete equipment, excluding vehicles and items deemed by federal law to be of a dangerous nature. Further requires that the postsecondary management board provide certification to the division of administration that electronic devices are sanitized of any personally identifiable information.

- (3) Proposed law authorizes the division of administration to exclude the institution as a whole from any table of organization.
- (4) Proposed law authorizes exemption from participation in the state's management program. Further requires that the division of administration determine that the institution or management board has the capacity to manage its own risk as a condition for this exemption.
- (5) Proposed law generally authorizes an institution to administer facilities projects funded with self-generated revenue, federal funds, donations, grants, or revenue bonds.
- (6) Proposed law authorizes adoption of a higher education procurement code which has been developed by LSU.
- (7) Proposed law authorizes investment of certain funds in governmental or public corporation bonds. Further authorizes investment of funds in municipal bonds.

Proposed law provides that the exemption from participation in the state's risk management program does not alter the authority of the attorney general and the Dept. of Justice to represent state agencies in litigation arising out of tort or contract.

(Adds R.S. 17:3351.21)