

SENATE COMMITTEE AMENDMENTS

2024 Regular Session

Amendments proposed by Senate Committee on Revenue and Fiscal Affairs to Reengrossed House Bill No. 836 by Representative McFarland

1 AMENDMENT NO. 1

2 On page 1, line 2, after "R.S. 39:1410.60(B)(3) and" delete "(4)" and insert "1410.60.1"

3 AMENDMENT NO. 2

4 On page 1, line 3, after "subdivisions;" delete the remainder of the line and delete lines 4
5 through 7 in their entirety and insert the following:

6 "to provide for exemptions to the requirement of State Bond Commission approval
7 for certain public entity financing transactions for infrastructure services; to provide
8 for public entity authority to enter into concession agreements in certain
9 circumstances; to provide for applicability; to provide for effectiveness; and to
10 provide"

11 AMENDMENT NO. 3

12 On page 1, line 10, after "R.S. 39:1410.60(B)(3) and" delete "(4)" and insert "1410.60.1"

13 AMENDMENT NO. 4

14 On page 1, delete lines 15 through 18 in their entirety and insert the following:

15 "(3) The provisions of this Section shall not apply to concession agreements
16 or any other cooperative endeavor agreement authorized by R.S. 39:1410.60.1.
17 * * *

18 AMENDMENT NO. 5

19 Delete page 2 and insert the following:

20 "§1410.60.1 Concession agreements; alternative project delivery; infrastructure
21 services

22 A. A public entity may enter into a concession agreement, a cooperative
23 endeavor agreement, or any other agreement or obligation with a private entity for
24 infrastructure services that is based on a usage or monthly payment term, provided
25 all of the following conditions are met:

26 (1) The public entity is and has been in compliance with the audit
27 requirements provided for in R.S. 24:513 for the three consecutive fiscal years
28 immediately preceding the fiscal year in which the public entity will seek approval
29 of a concession agreement pursuant to this Section, unless approved by the fiscal
30 administrator.

31 (2) The public entity is not and has not been under fiscal administration as
32 provided for in Chapter 9-B of Title 39 of the Louisiana Revised Statutes of 1950 for
33 the three consecutive fiscal years immediately preceding the fiscal year in which the
34 public entity will seek approval of a concession agreement pursuant to this Section.

35 (3) The auditor of the public entity has reviewed the terms of the agreement
36 and the financial statements of the public entity and certifies in writing that the
37 public entity demonstrates financial stability and has sufficient revenues to pay the
38 monthly usage payment for the term of the agreement.

39 (4) The attorney general has reviewed the terms and conditions of the
40 agreement and the certification of the auditor as required by Paragraph (3) of this
41 Subsection and certifies in writing to the public entity that the terms of the agreement
42 conform with the terms required by this Section and that the substance of the

1 agreement does not constitute a long term liability or incur debt between the public
 2 entity and the private entity. If the attorney general determines that the substance of
 3 the agreement does constitute one or more of the foregoing, the certification shall
 4 specifically enumerate which of the foregoing are applicable to the agreement and
 5 the agreement shall not be considered by the governing authority of the public entity
 6 unless the agreement has been let as required by Public Lease Law or Public Bid
 7 Law and has obtained approval by the State Bond Commission as required by law.
 8 Any modifications or amendments to an agreement shall be reviewed by the attorney
 9 general in the same manner as the original agreement. The attorney general's
 10 certification shall be incontestable only on the grounds that the contracting parties
 11 failed to obtain approval of the State Bond Commission.

12 (5) The terms of the agreement shall comply with all of the following:

13 (a) Contain a nonappropriation clause that provides that if for good faith
 14 reasons and equity, the public entity is unable to appropriate funds to meet its
 15 obligations under the agreement during any fiscal year, the agreement may be
 16 terminated, without penalty.

17 (b) Does not contain an anti-substitution clause that would prohibit the public
 18 entity from replacing the equipment or services provided through the agreement if
 19 the agreement is terminated by nonappropriation.

20 (c) Does not contain a penalty clause or punitive fee for the public entity to
 21 pay if the agreement is terminated.

22 (d) But for concession agreements, the contract does not obligate the public
 23 entity to pledge local revenues, or otherwise exercise its authority to levy a tax, fee,
 24 or charge, to pay the monthly usage fee.

25 (e) Does not require the public entity to assume liability for damages arising
 26 out of injuries or property damage to the private entity, or to third parties caused by
 27 the negligence of anyone other than the public entity, its employees, or agents.

28 (f) Require that any work contracted for by the private entity be let pursuant
 29 to the provisions of Public Bid Law if that work would have been required to be let
 30 by public bid if contracted for by the public entity.

31 (6) Execution of any cooperative endeavor agreement authorized pursuant
 32 to this Section shall require approval of the governing authority of the public entity.
 33 No agreement shall be approved unless all of the following requirements are met:

34 (a) The governing authority has received the written certifications required
 35 by Paragraphs (3) and (4) of this Subsection.

36 (b) If the agreement constitutes a long term liability or incurs debt between
 37 the public entity and the private entity, as certified by the attorney general, then the
 38 agreement shall be referred to the State Bond Commission for review as provided by
 39 law.

40 (c) The governing authority finds that there is a public need for the
 41 infrastructure service provided for in the agreement and that the estimated cost of the
 42 agreement is reasonable in relation to other similar services.

43 (d) The governing authority adopts a resolution or ordinance authorizing the
 44 public entity to enter into the agreement with the private entity.

45 B. If the terms of the cooperative endeavor agreement provide for the
 46 defeasance of debt of the public entity by the private entity, and that debt was subject
 47 to approval of the State Bond Commission or was awarded from the Louisiana
 48 Department of Health Drinking Water Revolving Loan Fund, the Department of
 49 Environmental Quality Clean Water State Revolving Fund, or from the office of
 50 community development programs for Community Development Block Grants,
 51 public entity assistance program, disaster recovery grants, the Community Water
 52 Enrichment and Other Improvements Fund, or similar programs, then the cooperative
 53 endeavor agreement shall also require approval of the State Bond Commission.

54 C. As provided for in this Section, the following terms shall have the
 55 meanings ascribed as follows:

56 (1) "Infrastructure assets" means any immovable or movable asset used to
 57 provide public services or infrastructure services.

58 (2) "Infrastructure services" means any method of providing assets or making
 59 the productive capacity of assets available to a public entity in exchange for a usage
 60 fee.

1 (3) "Private entity" means a natural person, corporation, general partnership,
2 limited liability company, limited partnership, joint venture, business trust, public
3 benefit corporation, private nonprofit corporation, or other business entity.

4 (4) "Public entity" means any public body provided for in R.S. 39:1410.60.

5 (5) "Public services" means services provided to, utilities sold to, or
6 infrastructure assets made available to members of the general public or a public
7 entity for a usage fee."

8 AMENDMENT NO. 6

9 On page 3, delete lines 1 through 18 and insert the following:

10 "Section 2. The provisions of this Act shall have prospective application only."

11 AMENDMENT NO. 7

12 On page 3, at the beginning of line 19, change "Section 2." to "Section 3."