

GREEN SHEET REDIGEST

HB 836

2024 Regular Session

McFarland

LOCAL FINANCE: Provides that certain non-debt-forming concession agreements and other obligations are not deemed as debt requiring approval of the State Bond Commission.

DIGEST

Present law prohibits political subdivisions, taxing districts, and political or public corporations from borrowing money or incurring debt and from levying taxes or pledging uncollected taxes or revenues for the payment of debt, without the consent and approval of the State Bond Commission (commission).

Present law provides that the term "debt" shall not include a lease of a movable or an installment purchase agreement financing the purchase of a movable if the lease or installment purchase agreement contains a nonappropriation clause and does not contain an anti-substitution or penalty clause. Stipulates, however, that if the lease or installment purchase agreement is entered into in conjunction with the issuance of bonds or other obligations which would otherwise be required to be approved by the commission, then commission approval of the transaction shall continue to be required.

Proposed law retains present law.

Present law exempts purchases made in the ordinary course of administration on terms of credit not to exceed 90 days from the provisions of present law.

Proposed law retains present law but adds an exemption from the requirement of commission approval for concession agreements, cooperative endeavor agreements or any other agreements or obligations with a private entity for infrastructure services that is based on a usage or monthly payment term.

Proposed law requires the following for the exemption to apply:

- (1) The public entity is and has been in compliance with the audit requirements provided for in present law for the three consecutive fiscal years immediately preceding the fiscal year in which the public entity will seek approval of a concession agreement.
- (2) The public entity is not and has not been under fiscal administration as provided for in present law for the three consecutive fiscal years immediately preceding the fiscal year in which the public entity will seek approval of a concession agreement.
- (3) The auditor of the public entity has reviewed the terms of the agreement and the financial statements of the public entity and certifies in writing that the public entity demonstrates financial stability and has sufficient revenues to pay the monthly usage payment for the life of the agreement.
- (4) The attorney general has reviewed the terms and conditions of the agreement and the certification of the auditor and certifies in writing to the public entity that the terms of the agreement conform with the terms required by this Section and that the substance of the agreement does not constitute a long term liability or incur debt between the public entity and private entity.
- (5) Requires the terms of the agreement to address certain situations including nonappropriation clauses, anti-substitution clauses, penalty clauses in certain situations, obligation of public entity to pledge local revenues, assumption of liability, and other terms.

- (6) Requires approval of execution of a cooperative endeavor agreement and contains certain requirements for approval of the agreement.

Proposed law defines the terms "infrastructure assets", "infrastructure services", "private entity", "public entity", and "public services".

Proposed law provides for prospective application only.

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

(Enacts R.S. 39:1410.60(B)(3) and 1410.61)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Remove provisions of proposed law that changed the definition of "debt".
2. Exempt certain leases or concession agreements from the requirement of commission approval if the auditor certifies that the contracting entity has sufficient funds to cover monthly obligations and the attorney general certifies that the state is not an obligor and the full faith and credit of the state is not pledged to secure the obligation.
3. Require the attorney general to issue a written certification if he finds that the agreement complies with the requirements of proposed law or, if the attorney general finds that the agreement fails to meet these requirements, to submit the agreement to the commission for approval.
4. Require the attorney general to review and certify or reject the agreement in writing within 30 days of submission of an agreement to his office.
5. Add requirement for the secretary of the Dept. of Economic Development to be notified of agreements for infrastructure services and upgrades that don't require commission approval.
6. Delete provision of proposed law relative to prospective and retroactive application.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the reengrossed bill

1. Removes provisions that proposed law does not apply to agreements unless the agreement is entered into with the issuance of state guaranteed bonds, notes, or certificates for which approval by the State Bond Commission is otherwise required.
2. Provides that current law related to approval of local government financing does not apply to concession agreements or other cooperative endeavor agreements authorized by proposed law.
3. Provides that a public entity may enter into a concession agreement, cooperative endeavor agreement, or other agreement or obligation with a private entity for infrastructure projects based on usage or monthly payment terms if certain conditions are met.
4. Requires State Bond Commission approval if the terms of the agreement provide for the defeasance of debt by the public entity by a private entity and the debt was subject to State Bond Commission approval or was awarded from certain fund.

5. Provides definitions of the terms "infrastructure assets", "infrastructure services", "private entity", "public entity", and "public services".
6. Provides for prospective application only.
7. Makes technical changes.