

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 767

2015 Regular Session

St. Germain

TRANSPORTATION: Creates the Louisiana State Transportation Infrastructure Bank

Synopsis of Senate Amendments

1. Besides municipalities and parishes, limit the governmental units eligible for financial assistance from the Bank to publicly operated port, harbor, or terminal districts, publicly operated airports, publicly operated ferries, and publicly operated transit systems.
2. Delete the authority of the Bank to acquire and sell, convey, pledge, lease, exchange, transfer, and dispose of all or any part of its properties and assets or any interest in them.
3. Delete the authority of the Bank to procure insurance against losses in connection with its property, assets, or activities including insurance against liability for its acts or the acts of its employees or agents or to establish cash reserves to enable it to act as a self-insurer against any and all such losses.
4. Limit the board to determining which projects are eligible transportation projects from all applications submitted only after approval of a project by the Dept. of Transportation and Development.
5. Authorize the House and Senate Committees on Transportation, Highways and Public Works to exercise "approval" as well as oversight of any rules or regulations of the Bank.
6. Remove the authority of the governor to appoint to the board of directors of the Bank a member of the board of directors of the Louisiana Good Roads and Transportation Association and authorizes the board of the association to make an appointment.
7. Limit the authority of the board to sue by requiring it to obtain the written approval of the attorney general.
8. Remove the requirement that revenues used to capitalize the Louisiana State Transportation Infrastructure Fund can only be deposited in the fund after satisfaction of requirements of certain present law [R.S. 47:820.2].
9. Require the board to be staffed by the Department of the Treasury.
10. Remove the authority of the board to appoint an executive director to administer the affairs of the bank.
11. Remove the necessity of a resolution of the governing body of a "governmental unit" to contain the "redemption features" of the loan or financial assistance being sought.
12. Require that in the case of conflict between the provisions of R.S. 48:77 as amended in proposed law and the provisions in SB No. 221 of the 2015 Regular Session of the Legislature that the Act which originated as SB No. 221 shall supercede and control regardless of the order of enactment.
13. Require all loans or other financial assistance provided pursuant to proposed law shall be made pursuant to a cooperative endeavor agreement between the Bank and a qualified borrower. Provides requirements for agreement.

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| 14. | Clarify that the repayment schedule for any loan or other financial assistance from the Bank must be determined by the board. |
| 15. | Make technical changes. |

Digest of Bill as Finally Passed by Senate

Proposed law establishes the Louisiana State Transportation Infrastructure Bank (Bank) within the Dept. of the Treasury.

Proposed law provides that the purpose of the Bank is to select and assist in financing eligible transportation projects by providing loans and other financial assistance to municipalities, parishes, publicly operated ports, harbors, or terminal districts, publicly operated airports, publicly operated ferries, or publicly operated transit systems in the state for planning, constructing, and improving transportation facilities necessary for public purposes.

Proposed law provides that any loan or other financial assistance provided pursuant to proposed law shall be made pursuant to a cooperative endeavor agreement between the Bank and a qualified borrower. Requires that any such cooperative endeavor agreement meet the following requirements:

- (1) The loan or other financial assistance be for a public purpose that comports with the governmental purpose that the Bank and the qualified borrower have the legal authority to pursue and the loan or other financial assistance comport with the requirements of proposed law.
- (2) The loan or other financial assistance not be gratuitous.
- (3) The Bank have a demonstrable, objective, and reasonable expectation of receiving at minimum the equivalent value in exchange for the loan or other financial assistance.

Proposed law defines a number of terms as used in proposed law. Pertinent terms and definitions are as follows:

- (1) "Governmental unit" means a parish, municipality, publicly operated port, harbor, or terminal district, publicly operated airport, publicly operated ferry, or publicly operated transit system.
- (2) "Eligible transportation project" means any transportation facility which has been approved by the Dept. of Transportation and Development and selected by the Bank to receive a loan or other financial assistance from the Bank to defray an eligible cost.
- (3) "Transportation facility" means any public road, highway, bridge, airport, port, ferry, or transit facility or system that provides access or benefits to the state highway system and benefits the public by either enhancing mobility or safety, promoting economic development, or increasing the quality of life and general welfare of the public. "Transportation facility" also includes mass transit including, but not limited to, monorail and monobeam mass transit systems.
- (4) "Eligible costs" include, dependent on which account the eligible transportation project is to be financed from, costs that are permitted under applicable federal laws, requirements, procedures, and guidelines in regard to establishing, operating, and providing assistance from the Bank, costs of preliminary engineering, traffic and revenue studies, environmental studies, right-of-way acquisition, legal and financial services associated with the development of the eligible transportation project, construction, construction management, facilities, nonoperating costs, and other costs

necessary for the eligible transportation project.

- (5) "Qualified borrower" means any "governmental unit" authorized by the board of directors of the Bank to construct, operate, or own an eligible transportation project.

Proposed law provides that the Bank shall be governed, administered, and operated by a board of directors (board) composed of the following members:

- (1) The secretary of the Dept. of Transportation and Development, or his designee.
- (2) The state treasurer, or his designee.
- (3) The chairman of the Senate Committee on Transportation, Highways and Public Works, or his designee.
- (4) The chairman of the House Committee on Transportation, Highways and Public Works, or his designee.
- (5) One member appointed by a majority of the other members of the board from among three persons who shall be nominated by the Louisiana Bankers Association and who shall possess no less than five years' experience in commercial lending or investment banking practices.
- (6) One member appointed by the board members of the State Board of Certified Public Accountants of Louisiana and who shall possess no less than five years' experience in professional accounting and auditing standards for financial accounting, management, and reporting.
- (7) One member appointed by the board of directors of the Louisiana Good Roads and Transportation Association and who shall possess no less than five years' experience in transportation program planning.

Proposed law provides that the members appointed from the Louisiana Bankers Association, the State Board of Certified Public Accountants, and the Louisiana Good Roads and Transportation Association shall serve three-year terms. A vacancy in such a position shall be filled in the manner provided for by the original appointment for the remainder of the three-year term. Provides that if the entity responsible for the appointment of a member fails to fill a vacancy within 70 days, or appoint a member within 30 days of the expiration of a three-year term, then the remaining members of the board shall appoint an interim successor.

Proposed law provides that the state treasurer or his designee shall serve as chairman of the board and the board may select such other officers as may be required by the board's bylaws.

Proposed law provides for the powers and duties of the board. Such powers and duties include but are not limited to the following:

- (1) Pursuant to a cooperative endeavor agreement, make loans to qualified borrowers to finance the eligible costs of eligible transportation projects and to acquire, hold, and sell loan obligations at prices and in a manner as the board determines advisable.
- (2) Pursuant to a cooperative endeavor agreement, provide qualified borrowers with other financial assistance necessary to defray eligible costs of an eligible transportation project.
- (3) Establish rules and regulations, in accordance with the Administrative Procedure Act, R.S. 49:950 et. seq. regarding review, consideration, and approval or rejection of bank loans or financial assistance. The House Committee on Transportation, Highways and Public Works and the Senate Committee on Transportation, Highways and Public Works shall exercise oversight and approval of any rules or regulations

rather than the House Committee on Appropriations and Senate Committee on Finance.

- (4) Establish fiscal controls and accounting procedures to ensure proper accounting and reporting by the Bank and qualified borrowers.
- (5) Borrow money through the issuance of bonds and other forms of indebtedness as provided by proposed law.
- (6) Expend funds to obtain accounting, management, legal, financial consulting, and other professional services necessary for the operation of the Bank.
- (7) Expend funds credited to the Bank as the board determines necessary for the costs of administering the operations of the Bank.
- (8) Establish advisory committees as the board determines appropriate, which may include individuals from the private sector with banking and financial expertise.
- (9) Collect fees and charges in connection with its loans or other financial assistance.
- (10) The authority of the board to sue is limited to suing only after obtaining the written approval of the attorney general.

Proposed law requires the board to be staffed by the Department of the Treasury.

Proposed law requires that the board submit an annual report of its activities to the governor and the legislature no later than September first of each year. Proposed law further requires that the Bank submit an annual report to any appropriate federal agency in accordance with requirements of any federal program.

Proposed law creates the Louisiana State Transportation Infrastructure Fund as a special fund in the state treasury (fund). Monies in the fund are to be used exclusively by the Bank to provide assistance to qualified borrowers for eligible transportation projects as may be permitted by federal law or regulations and by proposed law.

Proposed law provides that money needed for the operation of Bank or otherwise dedicated shall be invested by the state treasurer as provided by law for the investment of other state funds, except as may be limited by federal law or the terms and conditions of any grant, related to money deposited in the revolving loan fund.

Proposed law provides that revenues used to capitalize the Louisiana State Infrastructure Bank Fund shall include but are not limited to the following: investments by the state treasurer as provided by law for the investment of other state funds, monies deposited in the fund pursuant to present law, grants, gifts, and donations received by the state for the purposes of proposed law, any other revenues, whether local, state, or federal, as may be provided by law, and any monies which may be appropriated by the legislature to the fund.

Proposed law provides that the Bank shall establish and maintain at least the four following accounts in the fund: state and local roadway account, state and local nonroadway account, federal roadway account, and the federal nonroadway account.

Proposed law provides that all unexpended and unencumbered monies in the fund and its accounts shall remain in the fund and its accounts at the end of each fiscal year as authorized by proposed law, except as may be limited or required by federal law or the terms and conditions of any grant, related to money deposited in the fund.

Proposed law provides that no monies in the fund may be expended or otherwise used, nor any bonds or other evidences of indebtedness or other obligations issued or insured for any eligible transportation project or for any payment, expenditure, commitment, pledge, loan,

letter of credit, guarantee, subsidy, or other activity related to eligible transportation projects or the financing thereof without the prior written approval of the State Bond Commission.

Proposed law provides that the Bank may provide loans and other financial assistance from sums on deposit in and credited to the fund to a qualified borrower for all or part of the eligible costs of an eligible transportation project.

Proposed law provides that proposed law is not to be deemed to be the exclusive authority under which "governmental units" may borrow money or incur indebtedness for eligible transportation projects.

Proposed law provides that the board shall determine the form and content of loan applications, financing agreements, and loan obligations including but not limited to the term and rate or rates of interest on a financing agreement.

Proposed law provides that the board shall determine which projects are eligible transportation projects from all applications submitted after approval of a project by the Dept. of Transportation and Development.

Proposed law provides that in selecting eligible transportation projects, the board shall consider the projected feasibility of the project, the amount and degree of risk to be assumed by the Bank, and the level of local financial support for the eligible transportation project as evidenced by resolutions of the governing bodies in the area the project will be located.

Proposed law provides that in selecting eligible transportation projects, the board may consider, but not be limited to the following criteria in making its determination that a proposed project is an eligible transportation project: in-kind contributions to the project, the maximum economic benefit, enhancement of mobility, enhancement of public safety, acceleration of project completion, and enhancement of transportation services, the ability of the governmental unit to repay a loan according to the terms and conditions established pursuant to proposed law.

Proposed law provides that any loan from the Bank shall bear interest at or below market interest rates, as determined by the board.

Proposed law provides that repayment schedule for any loan or other financial assistance from the Bank shall be determined by the board; however, repayment of any loan from the Bank shall commence not later than five years after the eligible transportation project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later.

Proposed law provides that the term of a loan shall not exceed 30 years after the date of the first payment on the loan.

Proposed law provides that the Bank may require the government unit to enter into a financing agreement in connection with its loan obligation or other financial assistance.

Proposed law provides that prior to executing a loan or financing agreement, the board shall require submission of resolution of the governing body of the qualified borrower authorizing the borrower to enter into such loan or financing agreement.

Proposed law provides for the required contents of such required resolution, including but not limited to the following: the public purpose of the eligible transportation project, the cooperative endeavor agreement, the form and details of the loan or financing agreement, including the terms, security for, and manner of execution, a statement as to the maximum principal amount of any such obligation, the maximum interest rate to be incurred or borne by said obligation or guaranteed by said obligation, the maximum redemption premium, if any, and the maximum term in years for such obligation, guarantee, or pledge.

Proposed law provides that any resolution authorizing an infrastructure bank loan or financing agreement pursuant to proposed law shall be published once in the official journal of the qualified borrower incurring such loan or seeking to accept financial assistance.

Proposed law provides that for a period of 30 days after the date of such publication, any person in interest may contest the legality of the resolution authorizing such evidence of indebtedness or other infrastructure bank loan and any provision thereof made for the security and payment thereof.

Proposed law provides that after the 30-day period, no one shall have any cause or right of action to contest the regularity, formality, legality, or effectiveness of the resolution required pursuant to proposed law and the provisions thereof or of the bonds, notes, or other evidence of indebtedness or other infrastructure bank loan or financing agreement, or the legality thereof, and all of the provisions of the resolutions and such evidence of indebtedness shall be conclusively presumed to be executed in accordance with applicable law or regulation, and no court shall have authority or jurisdiction to inquire into any such matter.

Proposed law provides that bonds, notes, or other evidence of indebtedness issued or any infrastructure bank loan or financing assistance granted pursuant to the authority proposed law shall be exempt from all taxation for state, parish, municipal, or other purposes.

Proposed law provides that bonds, notes, or other evidence of indebtedness, such guarantees, and such pledges issued and delivered pursuant to proposed law shall constitute special and limited obligations of the Bank and shall not be secured by the full faith and credit of the state or any source of revenue of the state other than those sums on deposit in, credited to, or to be received by the Bank, including payments to be made pursuant to letters of credit.

Proposed law provides that in no event shall any bond, note, or other evidence of indebtedness, or guarantee, pledge, or other obligation of any type whatsoever entered into by the Bank be used in the calculation of net state tax supported debt as provided by Article VII, Section 6(F) of the Constitution of Louisiana.

Proposed law provides that funds expended under the provisions of proposed law shall be exclusively used for public purposes to fund eligible transportation projects within the state.

Present law phases in deposits of the tax on the sale, use, lease or rental, the distribution, consumption, and the storage of motor vehicles into the Transportation Trust Fund and the Transportation Mobility Fund beginning July 1, 2008. For Fiscal Year (FY) 2014-2015, 100% of the avails are to be deposited into the Transportation Trust Fund (93%) and Transportation Mobility Fund (7%).

Present law dedicates 7% of deposits to the Transportation Mobility Fund to be used exclusively for final design and construction and not for studies.

Proposed law deletes the 7% dedication to the Transportation Mobility Fund and instead dedicates 7% of deposits to the Louisiana State Infrastructure Bank Fund.

Proposed law requires that in the case of conflict between the provisions of R.S. 48:77 as amended in proposed law and the provisions in SB No. 221 of the 2015 Regular Session of the Legislature that the Act which originated as SB No. 221 shall supercede and control regardless of the order of enactment.

(Amends R.S. 48:77(B)(2); Adds R.S. 36:769(M) and R.S. 48:81-90.1)