

2017 Regular Session

HOUSE BILL NO. 551

BY REPRESENTATIVE PRICE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ECONOMIC DEVELOPMENT: Authorizes political subdivisions to enter into cooperative endeavor agreements for Payment in Lieu of Full Taxes (PILOFT)

1 AN ACT

2 To enact R.S. 17:97.3 and Chapter 27-I of Title 33 of the Louisiana Revised Status of 1950,
3 to be comprised of R.S. 33:9039.126 through 9039.135, relative to cooperative
4 endeavor agreements; to provide for legislative intent; to authorize political
5 subdivisions to enter into cooperative endeavor agreements providing for payments
6 of ad valorem taxes by industrial and other commercial property owners in amounts
7 less than taxable assessment values would otherwise require without transferring title
8 to a public body; to provide for the process for adoption of the agreements, including
9 notice and challenges; to provide for terms and conditions of the agreements; to
10 provide for assessments of properties and collections under such agreement; to
11 prohibit such agreements from negatively impacting a school board minimum
12 foundation payment calculation; to provide for effectiveness; and to provide for
13 related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 17:97.3 is hereby enacted to read as follows:

16 §97.3 Minimum foundation payment calculations

17 Notwithstanding any contrary provision of law, in the calculation of local
18 support in any formula adopted by the Louisiana State Board of Elementary and
19 Secondary Education, or its successor, and approved by the legislature as required
20 by Article VIII, Section 13(B) of the Constitution of Louisiana for the allocation of

1 funds to insure a minimum foundation program of education in all public elementary
2 and secondary schools, the terms of any PILOFT agreement entered into under
3 Chapter 27-I of Title 33 of the Louisiana Revised Statutes of 1950 shall not be used
4 or taken into consideration.

5 Section 2. Chapter 27-I of Title 33 of the Louisiana Revised Status of 1950,
6 comprised of R.S. 33:9039.126 through 9039.135, is hereby enacted to read as follows:

7 CHAPTER 27-I. PAYMENTS IN LIEU OF FULL AD VALOREM TAXES

8 §9039.126. Legislative intent

9 A. Ad valorem tax rates as applied to manufacturing and other industrial and
10 commercial properties can be high enough to impede new and expanded business in
11 the state. One technique to help reduce higher ad valorem taxes requires payments
12 in lieu of taxes by a company but requires a company to transfer title to its property
13 to a public body, typically a port or industrial development board, resulting in the
14 property being off the tax roll with a lease of the property back to the company,
15 which pays rent instead of property taxes on the property. The arrangement often
16 includes the issuance of revenue bonds.

17 B. The transfer of title and issuance of bonds are expensive, complex, time-
18 consuming, difficult, and often impractical undertakings for the public and private
19 enterprise to understand and implement. This structure also makes financing more
20 difficult and more expensive, discouraging new investments in the state.

21 C. This Chapter codifies a voluntary payment in lieu of full taxes by
22 eliminating the requirement for the issuance of industrial revenue bonds or the
23 transfer of title of property to a public body with a lease-back to the private party by
24 directing the sheriff and ex-officio tax collector to bill only for taxes in the amounts
25 agreed to by taxing bodies. This simplification facilitates the benefit for the public
26 body and the company making capital investments. It also operates to facilitate
27 compromise and settlement of disputed or potentially disputed assessments by and
28 between local governments and a company, each preferring the hope of gaining
29 balance against the danger of losing.

1 D. Except as may otherwise be provided herein, this Chapter further does not
2 grant an exemption from taxes but rather makes it clear that a private enterprise may
3 substitute the value of its employees, payroll, and investment for a portion of its tax
4 liability.

5 §9039.127. Payment in lieu of full taxes authorized

6 Notwithstanding the provisions of any law in conflict herewith, including but
7 not limited to the provisions of Subtitle III of Title 47 of the Louisiana Revised
8 Statutes of 1950, as amended, in order to promote the location or retention of private
9 enterprise in its parish and without transferring title to the public, a political
10 subdivision as defined in Article VI, Section 44 of the Constitution of Louisiana, any
11 entity so designated as a political subdivision by the legislature or any other agency,
12 board, or instrumentality levying ad valorem taxes (a "taxing authority") may
13 contract with such private enterprise subject to the provisions of this Chapter, to
14 induce, facilitate, or encourage retention of manufacturing, industrial, or commercial
15 enterprise for economic development by the modification of tax liability resulting in
16 reduction of ad valorem tax liability which would otherwise be owed based on the
17 assessed value of property owned by the private enterprise or to grant future credits
18 against ad valorem tax liability or payments previously made. Further, contracts that
19 settle upon the amount of taxes to be paid may also be treated as a compromise and
20 settlement of the determination of the amount of an assessment giving rise to the
21 agreed payments in the PILOFT agreement over the period of time provided in the
22 agreement. The contracts shall take the form of Cooperative Endeavor and Payment
23 in Lieu of Full Taxes Agreements ("PILOFT agreements") and shall be entered into
24 pursuant to Article VII, Section 14(C) of the Constitution of Louisiana and the other
25 provisions of this Chapter and Chapter 27 of this Title.

26 §9039.128. Resolution and hearing

27 Participation by a taxing authority in a PILOFT agreement shall be evidenced
28 by resolution adopted by the parish governing authority, the parish school board, or
29 the governing authority of the municipality, if applicable, for themselves and all

1 districts and subunits created by them respectively, any stand-alone taxing
2 authorities, or the sheriff for the law enforcement district approving the form and
3 terms thereof. The PILOFT agreement shall only apply to the taxing authorities who
4 are parties thereto and any nonparticipating taxing authorities shall not be bound
5 thereby and their ad valorem taxes shall continue to be billed and collected without
6 regard to the provisions of this Chapter. A public hearing shall be conducted by any
7 taxing authority prior to adoption of any PILOFT agreement resolution with notice
8 of such hearing and the proposed resolution to be published in the official journal of
9 the applicable taxing authority at least once no later than fourteen days prior to the
10 hearing or, if there is no official journal, in a newspaper having general circulation
11 therein. The notice shall inform the public where a copy of the draft PILOFT
12 agreement may be obtained and the time and place of the hearing. For thirty days
13 after the public hearing, any person in interest may contest the legality of the
14 PILOFT agreement. After that time, no one shall have any cause of action to test the
15 regularity, formality, legality, or effectiveness of the PILOFT agreement and
16 provisions thereof, for any cause whatever. Thereafter, it shall be conclusively
17 presumed that the PILOFT agreement shall be valid and enforceable and no court
18 shall have authority to inquire into any of these matters after the thirty days.

19 §9039.129. Terms and conditions

20 The term of a PILOFT agreement shall not be less than ten years and shall
21 not exceed forty years and shall provide that payments shall be due no later than
22 December 31 of each year. A PILOFT agreement may contain such provisions as
23 may be negotiated by the parties regarding required capital expenditures,
24 employment, payroll, duration, and any deductions or administrative costs, provided
25 that any taxing authority desiring to enter into such agreement has found by
26 resolution that (a) the agreement fulfills a public purpose such as economic
27 development; (b) the obligations of the private entity in the PILOFT agreement are
28 substantive and substantial in return for the reduced tax obligation owed; and (c) the
29 public body has a reasonable and demonstrable expectation of receiving equivalent

1 or greater value in exchange for the reduction of tax revenue over the life of the
2 PILOFT agreement.

3 §9039.130. Industrial tax exemption program

4 Any manufacturing concern may qualify for and be granted an industrial tax
5 exemption program exemption from ad valorem taxes and the Louisiana Board of
6 Commerce and Industry may consider, under its rules, PILOFT agreements to reflect
7 terms and conditions that are a component of an industrial property tax exemption
8 as provided in Article VII, Section 21(F) of the Constitution of Louisiana. In such
9 cases, where the resolution of the governing body or official has been passed or
10 promulgated in accordance with the notice provisions of R.S. 33: 9039.128, then the
11 PILOFT agreement shall have full force and effect upon its use in an approved
12 contract for exemption approved by the Louisiana Board of Commerce and Industry
13 and the governor of Louisiana. The provisions of this Section regarding approval of
14 a PILOFT agreement by the Louisiana Board of Commerce and Industry and the
15 governor shall be optional for a company that qualifies for an industrial tax
16 exemption and shall not apply if not.

17 §9039.131. Assessor duties

18 Any PILOFT agreement shall be filed with the parish tax assessor and shall
19 designate the first tax year it shall be effective. The assessor of any parish wherein
20 taxing authorities have entered into a PILOFT agreement shall continue to assess the
21 property which is the subject of the PILOFT agreement at its assessed value as
22 otherwise required by law, or the assessor, in its discretion, may consider the
23 PILOFT agreement to be a compromise and settlement of an assessed valuation for
24 the tax years provided under the agreement. However, the assessor shall indicate on
25 the assessment rolls any property that is the subject of a PILOFT agreement and
26 identify the PILOFT agreement related thereto. For purposes of the assessment
27 versus payment, the assessor shall consider a reduced payment a comprised tax
28 liability.

29 §9039.132. Sheriff and ex-officio tax collector duties

1 The sheriff and ex-officio tax collector of each parish wherein a PILOFT
2 agreement has been executed shall receive a copy of the PILOFT agreement and
3 shall send tax bills for and only collect and distribute the amount agreed to in the
4 PILOFT agreement to participating taxing authorities at the same time as all other
5 ad valorem taxes. It shall be the obligation of the parties to the PILOFT agreement
6 to certify to the sheriff and ex-officio tax collector the amount to be collected each
7 year. This obligation shall be binding on the office of the sheriff and ex-officio tax
8 collector and any successor in office during the term of the PILOFT agreement. The
9 tax bill for nonparticipating taxing authorities shall be rendered by the tax collector
10 without regard to any PILOFT agreement. In the event a sheriff shall render a tax
11 bill in excess of the PILOFT agreement payment due in any year, unless so allowed
12 as an adjustment under the terms of the PILOFT agreement, such overage may be
13 contested by the private party or parties to the PILOFT agreement at the parish board
14 of review or at the district court level or higher if need be, after payment of the
15 noncontested portion of the tax bill without the need to pay the contested portion of
16 the tax bill under protest and no bond or other security shall be necessary to the right
17 of appeal.

18 §9039.133. Default under a PILOFT agreement

19 All PILOFT agreements shall provide for the consequences of failure to
20 comply with required conditions and to timely make PILOFT payments by the
21 private entity. The provisions shall provide for penalties upon failure to meet
22 requirements in the PILOFT agreement or in the event the PILOFT payments are
23 delinquent and remain unpaid in full on the December 31 due date each year.
24 Penalties may include termination of the PILOFT agreement or monetary penalties
25 without termination as negotiated. In the event of termination, the sheriff and ex-
26 officio tax collector shall send a revised tax bill for the year of termination and each
27 year thereafter and the tax bill shall be for full taxes based on the assessed value on
28 the tax rolls unless otherwise agreed to by the parties. However, provisions relative
29 to default shall be negotiable. Should any PILOFT agreement terminate due to

ADOPTION OF PILOFT AGREEMENTS

Proposed law provides that the taxing authority's participation in a PILOFT agreement shall be through a resolution adopted by the taxing authority or on behalf of the taxing authority. The PILOFT agreement shall only apply to participating taxing authorities. Requires a public hearing prior to adoption of the agreement, with public notice at least 14 days prior to the hearing. Requires that the notice inform the public where a copy of the draft PILOFT agreement may be obtained and the time and place of the hearing. Provides a 30-day period after the public hearing during which any person in interest may contest the legality of the PILOFT agreement. After that time, the agreement shall be valid and enforceable, no one shall have any cause of action, and no court shall have authority to inquire into matters pertaining to the legality or effectiveness of the agreement.

TERMS AND CONDITIONS OF PILOFT AGREEMENTS

Proposed law sets the term of the PILOFT agreement as not less than 10 years and not more than 40 years, with annual payments due by Dec. 31 of each year. A PILOFT agreement may contain such provisions as may be negotiated by the parties regarding specified costs, provided that any taxing authority desiring to enter into such agreement has found by resolution that the agreement fulfills a public purpose such as economic development; the obligations of the private entity in the PILOFT agreement are substantive and substantial in return for the reduced tax obligation owed; and the public body has a reasonable and demonstrable expectation of receiving equivalent or greater value in exchange for the reduction of tax revenue over the life of the PILOFT agreement.

INDUSTRIAL TAX EXEMPTION PROGRAM

Proposed law authorizes the La. Board of Commerce and Industry to consider PILOFT agreements to reflect terms and conditions that are a component of an industrial property tax exemption. In such cases, where the resolution of the governing body or official has been passed as required in proposed law, the PILOFT agreement shall have full force and effect upon its use in an approved contract for exemption approved by the La. Board of Commerce and Industry and the governor. Provides that approval of a PILOFT agreement by the Board of Commerce and Industry and the governor shall be optional for a company that qualifies for an industrial tax exemption.

DUTIES OF ASSESSORS

Proposed law provides for the responsibilities of the parish tax assessor regarding a PILOFT agreement. The agreement shall be filed with the parish tax assessor and shall designate the first tax year it shall be effective. The assessor shall continue to assess the property at its assessed value, or, at the assessor's discretion, may consider the PILOFT agreement to be a compromise and settlement of an assessed valuation for the tax years provided under the agreement. Requires the assessor to indicate on the assessment rolls any property that is the subject of a PILOFT agreement. For purposes of the assessment versus payment, the assessor shall consider a reduced payment a comprised tax liability.

DUTIES OF SHERIFFS AND TAX COLLECTORS

Proposed law provides for the duties of the sheriff and ex-officio tax collector of the parish. Requires that tax bills are sent and collected in the amount agreed to in the PILOFT agreement and sent to participating taxing authorities at the same time as all other ad valorem taxes. Requires the parties to the PILOFT agreement to certify to the sheriff and ex-officio tax collector the amount to be collected each year. Requires the tax bill for nonparticipating taxing authorities to be rendered by the tax collector without regard to any PILOFT agreement.

Proposed law authorizes taxpayers to contest payments in excess of the agreed upon PILOFT amounts at the parish board of review, and at the district court level or higher if need. Requires payment of the noncontested portion of the tax bill, but does not require the contested portion of the tax bill to be paid while under review or appeal.

FAILURE TO COMPLY WITH AGREEMENT

Proposed law requires that all PILOFT agreements provide for consequences of failure of the private entity to comply with required conditions and to timely make PILOFT payments. Authorizes that penalties may include termination of the PILOFT agreement or monetary penalties. Requires the sheriff and ex-officio tax collector to send a revised tax bill for the year of termination and each year thereafter for full taxes unless otherwise agreed to by the parties. Permits the property to be subject to the mortgage and lien provisions of present law unless otherwise specified in the PILOFT agreement.

TAX COMMISSION

Proposed law requires the La. Tax Commission to certify the rolls submitted with a PILOFT agreement payment noted without regard to the reduced payment notation by the assessor.

PARISH BOARD OF REVIEW

Proposed law requires the board of review for any parish to take into account the provisions of proposed law and honor the terms of any PILOFT agreement.

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

(Adds R.S. 17:97.3 and R.S. 33:9039.126-9039.135)