

2024 Regular Session

HOUSE BILL NO. 836

BY REPRESENTATIVE 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

1 AN ACT

2 To enact R.S. 39:1410.60(B)(3) and (4), relative to local government finance; to provide
3 relative to incurring of indebtedness by political subdivisions; to provide relative to
4 the meaning of the terms "debt" and "evidence of debt" for purposes of such
5 indebtedness; to exclude certain agreements and obligations from the meaning of
6 such terms; to specify circumstances in which State Bond Commission approval of
7 certain financing transactions is required; to provide for effectiveness; and to provide
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 39:1410.60(B)(3) and (4) are hereby enacted to read as follows:

11 §1410.60. Approval of application; incurring indebtedness

12 * * *

13 B.

14 * * *

15 (3)(a) The provisions of this Section shall not apply to any of the following
16 agreements unless the agreement is entered into in conjunction with the issuance of
17 state guaranteed bonds, notes, or certificates for which approval by the State Bond
18 Commission would otherwise be required by the constitution of Louisiana:

1 (i) A lease or an installment purchase agreement that contains a
2 nonappropriation clause and does not contain an anti-substitution clause.

3 (ii) A concession agreement, a cooperative endeavor agreement, or any other
4 agreement or obligation that is based on a usage payment and monthly term or is not
5 required to be categorized as long-term debt as defined by the Governmental
6 Accounting Standards Board.

7 (b) The agreements provided for in Subparagraph (a) of this Paragraph shall
8 meet the following requirements:

9 (i) The auditor for the political subdivision shall certify to the political
10 subdivision that the annual appropriation is sufficient to cover the monthly payment
11 obligations for the agreement for the remainder of the fiscal year in which the
12 agreement is entered and that the auditor is not aware of any obligations that are
13 reasonably anticipated to impair the political subdivision's ability to cover the
14 monthly payment obligations for the agreement through its appropriation for the
15 subsequent fiscal year.

16 (ii) The attorney general shall review the terms and conditions of the
17 agreement and its addenda and shall certify, in writing, that the state is not an obligor
18 under the political subdivision's agreement, that the full faith and credit of the state
19 is not pledged to secure the obligations under the agreement, that there is a
20 non-appropriation clause in the agreement, and that there is not an anti-substitution
21 clause in the agreement. If the attorney general finds that the agreement complies
22 with these requirements, he shall certify that the agreement is in compliance with the
23 provisions of this Paragraph. This certification shall be incontestable on the grounds
24 that the contracting parties failed to obtain approval of the State Bond Commission.
25 If the attorney general finds that the agreement fails to meet these requirements, the
26 attorney general shall direct the political subdivision to submit the agreement to the
27 State Bond Commission for approval pursuant to the rules and regulations of the
28 commission. Contracting parties shall not be required to obtain recertification of the
29 same terms and conditions in future agreements. Modifications to the terms and

the state is not an obligor and the full faith and credit of the state is not pledged to secure the obligation.

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 the following agreements entered into in conjunction with the issuance of state-guaranteed bonds or notes for which approval by the commission would otherwise be required:

- (1) A lease or an installment purchase agreement that contains a nonappropriation clause and does not contain an anti-substitution clause.
- (2) A concession agreement or any other agreement that is based on a usage payment and monthly term or is not required to be categorized as long-term debt as defined by the Governmental Accounting Standards Board.

Proposed law requires the following for the exemption to apply:

- (1) The political subdivision's auditor must certify that the annual appropriation is sufficient to cover the monthly payment obligations for the agreement for the remainder of the fiscal year in which the agreement is entered and that the auditor is not aware of any obligations reasonably anticipated to impair the political subdivision's ability to cover the monthly payment obligations for the agreement through its appropriation for the subsequent fiscal year.
- (2) The attorney general must review the terms and conditions of the agreement and certify, in writing, that the state is not an obligor under the political subdivision's agreement, that the full faith and credit of the state is not pledged to secure the obligations under the agreement, that there is a non-appropriation clause in the agreement, and that there is not an anti-substitution clause in the agreement.

Proposed law requires the attorney general to issue a written certification if he finds that the agreement complies with the requirements of proposed law. Further provides that the certification shall be incontestable on the grounds that the contracting parties failed to obtain approval of the commission. However, if the attorney general finds that the agreement fails to meet these requirements, the attorney general shall direct the political subdivision to submit the agreement to the commission.

Proposed law provides that contracting parties shall not be required to obtain recertification of the same terms and conditions in future agreements but modifications to the terms and conditions of any agreement shall be submitted to the attorney general for review and

approval. Further requires the attorney general to review and certify or reject the agreement in writing within 30 days of submission of an agreement to his office. If the attorney general fails to certify or reject an agreement in writing within 30 days of submission to his office, the agreement shall be deemed to be certified.

Proposed law requires a political subdivision entering into an agreement for infrastructure services and upgrades without commission approval to submit a notice to the secretary of the Dept. of Economic Development that includes a description of the public benefit and local impact to the political subdivision and the anticipated completion date of any infrastructure upgrades, within 14 days of entering into the agreement.

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

(Amends R.S. 39:1410.60(B)(3) and (4))

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.