

Regular Session, 2010

SENATE BILL NO. 699

BY SENATOR PETERSON

PUBLIC WORKS. Authorizes public entities to create public benefit corporations for financing arrangements regarding public property. (gov sig)

1 AN ACT
2 To enact Part XV of Chapter 4 of Subtitle II of Title 39 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 39:1051, relative to local financing; to authorize
4 public entities to create public benefit corporations and enter into contracts with such
5 public benefit corporations for the planning, renovation, construction, leasing,
6 subleasing, management and improvement of public properties and facilities; to
7 exempt such public entities from limitations on property dispositions relating to
8 surplus property in connection with the alienation or disposition of public properties
9 and facilities to public benefit corporations created by such public entities provided
10 that such property remains dedicated for public purposes; to authorize such public
11 entities to enter into financing arrangements with their public benefit corporations
12 and other private parties providing additional funds to such public benefit
13 corporations to construct new facilities and/or to renovate existing public properties
14 or facilities; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Part XV of Chapter 4 of Subtitle II of Title 39 of the Louisiana Revised
17 Statutes of 1950, comprised of R.S. 39:1051, is hereby enacted to read as follows:

1 **PART XV. PUBLIC ENTITY FACILITIES FINANCING ACT**

2 **§1051. Public Entity Facilities Financing Act**

3 **A. Title. The provisions of this Part shall be known and may be cited as**
4 **the "Public Entity Facilities Financing Act."**

5 **B. Creation of public benefit corporations to finance the construction**
6 **and renovation of public properties and facilities. Public entities are hereby**
7 **authorized to create one or more public benefit corporations pursuant to this**
8 **Part solely for the purpose of entering into agreements and engaging in**
9 **financing arrangements, including new markets tax credit transactions, to plan,**
10 **renovate, construct, lease, sublease, manage and improve public property and**
11 **facilities within the jurisdiction of the public entity, notwithstanding any**
12 **restrictions and prohibitions in R.S. 12:202.1.**

13 **C. Transfers and dispositions of public properties and facilities to public**
14 **benefit corporations. Notwithstanding any other provision of law to the**
15 **contrary and in order to facilitate the construction of new and the renovation**
16 **of existing public properties or facilities, public entities are hereby authorized**
17 **to transfer their properties to public benefit corporations created pursuant to**
18 **this Part through financing arrangements, including without limitation sales,**
19 **sale-leasebacks, leases, and lease-leasebacks, and such transfer shall be**
20 **exempted from the limitations or requirements of R.S. 17:87.6, R.S. 41:891 and**
21 **892. However, no transfer or disposition of public properties or facilities**
22 **authorized by this Part shall result in such properties or facilities being used**
23 **upon such transfer or thereafter for purposes other than public purposes. The**
24 **dedication to public purposes of property transferred by a public entity**
25 **pursuant to this Part shall be specifically stated in any transfer or disposition**
26 **document, and such language shall also specifically provide that the title and**
27 **control of the property shall automatically by operation of law revert to the**
28 **public entity upon the property commencing to be used for a purpose other than**
29 **a public purpose.**

1 **D. Authority of public entities to loan or guarantee loans. Public entities**
2 **are hereby authorized to make and to guarantee loans to a public benefit**
3 **corporation created by such public entity hereunder or to other third parties in**
4 **order to facilitate the construction of new public properties or facilities or the**
5 **renovation of existing public properties or facilities, provided that as a condition**
6 **to any such loan or guaranty the public entity shall demonstrate a public**
7 **purpose for such loan or guaranty pursuant to Article VII, Section 14 of the**
8 **Constitution of Louisiana. Such loans or guarantees shall further be subject to**
9 **the approval of the State Bond Commission.**

10 **E. Partnerships and agreements with private entities for the construction**
11 **and renovation of properties by public benefit corporations. Public benefit**
12 **corporations may act alone or in partnership with private entities in order to**
13 **leverage additional funds not otherwise available to public entities for the**
14 **construction and renovation of properties transferred to or loaned or subleased**
15 **by such public benefit corporations. However, the use of any funds loaned or**
16 **made available to a public benefit corporation in partnership or other**
17 **arrangement with private entities shall be dedicated solely for the construction**
18 **of new public properties or facilities and the renovation of existing public**
19 **properties or facilities after the payment of all fees and costs related to any**
20 **financings and partnerships and the setting aside of any reserves required in**
21 **connection therewith. Such fees and the size of any reserves shall be subject to**
22 **the approval of the State Bond Commission. Such partnerships or other**
23 **arrangements shall include language specifically providing that title and control**
24 **of property transferred to the public benefit corporation by the public entity**
25 **shall automatically by operation of law revert to the public entity upon the**
26 **property's ceasing, other than temporarily, to be used for public purposes.**

27 **F. Organization and government of public benefit corporation. A public**
28 **benefit corporation created pursuant to this Part shall not be a political**
29 **subdivision of the state but shall be a nonprofit corporation organized and**

1 governed under the applicable provisions of Chapter 2 of Title 12 of the
2 Louisiana Revised Statutes of 1950, as modified by this Part, and shall
3 additionally have all of the powers defined in R.S. 41:1215(B) and R.S.
4 12:202.1(D), except that any transaction between the public benefit corporation
5 and a third party shall be subject to the advertisement and bid requirements of
6 R.S. 38:2212. Notwithstanding the limitations in R.S. 12:202.1(D) with respect
7 to the right to issue negotiable revenue bonds, the public benefit corporations
8 authorized to be created pursuant to this Part may issue negotiable revenue
9 bonds in connection with a new markets tax credit transaction in any amount
10 deemed necessary to accomplish the purposes set forth herein; provided further,
11 however, that any and all obligations issued by, as well as any related financing
12 arrangements entered into by such public benefit corporations created pursuant
13 to this Part, shall be subject to the approval of the State Bond Commission. Any
14 security interest granted by a public benefit corporation created by a public
15 entity shall be subject to the terms and provisions of R.S. 39:1430.1.

16 G. Definitions. For purposes of this Part, the following words and
17 phrases shall have the meanings set forth below:

18 (1) "Public entities" shall have the meaning given in R.S. 39:1421(2),
19 except that "public entities" as used in this Part shall not include school boards
20 that are subject to the terms of R.S. 17:100.10.

21 (2) "Public properties or facilities" means properties or facilities owned
22 or leased by a public entity or public benefit corporation.

23 (3) "Public purposes" means the public purpose or purposes for which
24 a particular piece of public property or a public facility is being used or is
25 intended to be used by a public entity.

26 H. Intent. Nothing in this Part shall be construed as a restriction or a
27 limitation upon any powers which any public entity might otherwise have under
28 any laws of this state. This Part shall be regarded as supplemental and
29 additional to other powers conferred by other laws.

1 Section 2. This Act shall become effective upon signature by the governor or, if not
 2 signed by the governor, upon expiration of the time for bills to become law without signature
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 5 effective on the day following such approval.

The original instrument was prepared by Thomas F. Wade. The following digest, which does not constitute a part of the legislative instrument, was prepared by Sherry Breaux.

DIGEST

Peterson (SB 699)

Proposed law authorizes public entities to create one or more public benefit corporations pursuant to this Part solely for the purpose of entering into agreements and engaging in financing arrangements, including new markets tax credit transactions, to plan, renovate, construct, lease, sublease, manage and improve public property and facilities within the jurisdiction of the public entity, notwithstanding any restrictions and prohibitions in R.S. 12:202.1. [This provision prohibits any state board, commission or department from incorporating or causing to be incorporated any nonprofit corporation which has for its purpose any public or quasi-public function or any function for the benefit of or in connection with any public agency, purpose or function, if in the exercise of any part of the functions of the corporation any bonds or other evidences of indebtedness of the corporation are or may be issued, unless certain information is first submitted to and approved by the legislature.]

Further authorizes public entities to transfer their properties to public benefit corporations created pursuant to proposed law through financing arrangements, including without limitation sales, sale-leasebacks, leases, and lease-leasebacks, and such transfer shall be exempted from the limitations or requirements of R.S. 17:87.6 [alienation of school property,] R.S. 41:891 and 892 [sale of unused school lands.] Provides, however, no transfer shall result in such properties or facilities being used upon such transfer or thereafter for purposes other than public purposes. Requires that the dedication to public purposes be specifically stated in any transfer or disposition document, and such language shall also specifically provide that the title and control of the property shall automatically by operation of law revert to the public entity upon the property commencing to be used for a purpose other than a public purpose.

Further authorizes public entities to make and to guarantee loans to a public benefit corporation created by such public entity in order to facilitate the construction of new public properties or facilities or the renovation of existing public properties or facilities, provided that as a condition to any such loan or guaranty the public entity shall demonstrate a public purpose for such loan or guaranty pursuant to Article VII, Section 14 of the Constitution of Louisiana. Such loans or guarantees shall further be subject to the approval of the State Bond Commission.

Further authorizes public benefit corporations to act alone or in partnership with private entities in order to leverage additional funds not otherwise available to public entities for the construction and renovation of properties transferred to or loaned or subleased by such public benefit corporations. However, provides that the use of any funds loaned or made available shall be dedicated solely for the construction of new public properties or facilities and the renovation of existing public properties or facilities after the payment of all fees and costs related to any financings and partnerships and the setting aside of any reserves required

in connection therewith. Such fees and the size of any reserves will be subject to the approval of the State Bond Commission. Requires that such partnerships or other arrangements shall include language specifically providing that title and control of property transferred to the public benefit corporation by the public entity shall automatically by operation of law revert to the public entity upon the property's ceasing, other than temporarily, to be used for public purposes.

Provides that a public benefit corporation created pursuant to proposed law shall not be a political subdivision of the state but shall be a nonprofit corporation organized and governed under the applicable provisions of Chapter 2 of Title 12 of the Revised Statutes of La., as modified by proposed law, and shall additionally have all of the powers defined in R.S. 41:1215(B) [leases of public lands] and R.S. 12:202.1(D), except that any transaction between the public benefit corporation and a third party shall be subject to the advertisement and bid requirements of RS. 38:2212. Further provides that, notwithstanding the limitations in present law (R.S. 12:202.1(D)) with respect to the right to issue negotiable revenue bonds, the public benefit corporations authorized to be created pursuant to proposed law may issue negotiable revenue bonds in connection with a new markets tax credit transaction in any amount deemed necessary to accomplish the purposes set forth herein; provided further, however, that any and all obligations issued by as well as any related financing arrangements entered into by such public benefit corporations created pursuant to proposed law shall be subject to the approval of the State Bond Commission.

Proposed law defines the following terms:

- (1) "Public entities" shall have the meaning given in R.S. 39:1421(2), except that "public entities" as used in proposed law shall not include school boards that are subject to the terms of R.S. 17: 100.10.
- (2) "Public properties or facilities" means properties or facilities owned or leased by a public entity or public benefit corporation.
- (3) "Public purposes" means the public purpose or purposes for which a particular piece of public property or a public facility is being used or is intended to be used by a public entity.

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

(Adds R.S. 39:1051)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the original bill.

1. Provides that the use of any funds loaned or made available to a public benefit corporation authorized in the proposed law will be dedicated solely for the construction of new public properties or facilities and/or the renovation of existing public properties or facilities after the payment of all fees and costs related to any financings and/or partnerships and the setting aside of any reserves required in connection therewith. Such fees and the size of any reserves will be subject to the approval of the State Bond Commission.

Senate Floor Amendments to engrossed bill.

1. Makes technical corrections.