



PRESS RELEASE

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Schroder, Waguespack encourage public entities to review CEA debt requirements

BATON ROUGE, LA – Louisiana State Treasurer John M. Schroder and Legislative Auditor Michael J. “Mike” Waguespack are encouraging public entities to consider certain criteria to determine whether debt is incurred when executing Cooperative Endeavor Agreements (CEAs) or other mechanisms for funding capital and operating projects. The two co-signed a letter as a reminder that if so, state law requires State Bond Commission approval.

“I, as Chairman of the State Bond Commission, and Legislative Auditor Waguespack, want to provide public entities with clear direction, so they are not in violation of our State Constitution, which prohibits public entities from incurring debt without approval of the State Bond Commission,” said Schroder. “Otherwise, their agreements may be considered null and void, and penalties could be assessed against officials involved.”

“We want to help make sure they do not run afoul of state law,” added Waguespack.

The letter states that public entities, with the assistance of legal counsel, should review CEA transactions closely to determine whether bond commission approval is required. Letter recipients are urged to consider the following when determining if entering a CEA constitutes incurring of debt:

1. Whether the CEA provides for, either directly or indirectly, an interest rate (either stated or imputed), finance charge or carrying charge, or other similarly designated charges.
2. Whether the CEA has a true non-appropriation clause pursuant to which if the funding for the CEA is impaired the political subdivision may terminate the CEA without penalty or charge.
3. Whether the CEA obligates the political subdivision to exercise authority to raise fees, taxes, charges, or assessments to fund the CEA.
4. Whether the CEA has penalties, fees, charges, or make-whole provisions for early cancellation, returns of products, or other similar provisions upon termination of the CEA.
5. Whether upon termination or expiration, the political subdivision will own the goods and products which are the object of CEA or whether title to those goods and products transfers, reverts or remains vested with the private party to the CEA.
6. Whether there is any condition that requires granting of a security interest.

Analysis of the agreement under these considerations is critical for purposes of avoiding a challenge of the transaction if it is not submitted for prior approval to the State Bond Commission.