

Regular Session, 2010

HOUSE BILL NO. 913

BY REPRESENTATIVES CHAMPAGNE, BALDONE, BARRAS, BILLIOT, HENRY BURNS, CARMODY, CARTER, CHANDLER, CORTEZ, DOWNS, FANNIN, FOIL, GISCLAIR, GUINN, HARRISON, HAZEL, HOFFMANN, SAM JONES, KATZ, LANDRY, LIGI, MILLS, MONTOUCET, MORRIS, ROBIDEAUX, GARY SMITH, JANE SMITH, ST. GERMAIN, THIBAUT, TUCKER, AND WHITE

1 AN ACT

2 To amend and reenact R.S. 30:2011(A)(3) and (D)(4) and (23), 2074(A)(4), 2397, R.S.
3 33:4548.13, and R.S. 40:2821(B)(2) and 2824(B), to enact Chapter 14 of Subtitle II
4 of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.
5 30:2301 through 2306, and R.S. 39:1022(C), and to repeal R.S. 30:2078 through
6 2088, relative to certain loans for water infrastructure from the revolving loan funds;
7 to provide for the Department of Environmental Quality; to provide for the powers
8 and duties of the secretary of the Department of Environmental Quality; to
9 redesignate the Municipal Facilities Revolving Loan Fund as the Clean Water State
10 Revolving Fund; to provide for notices of intention to issue certain bonds; and to
11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 30:2011(A)(3) and (D)(4) and (23), 2074(A)(4), and 2397 are hereby
14 amended and reenacted and Chapter 14 of Subtitle II of Title 30 of the Louisiana Revised
15 Statutes of 1950, comprised of R.S. 30:2301 through 2306, is hereby enacted to read as
16 follows:

17 §2011. Department of Environmental Quality created; duties; powers; structure

18 A.

19 * * *

20 (3) The department is authorized and empowered to administer, maintain,
21 and operate the ~~Municipal Facilities Revolving Loan~~ Clean Water State Revolving
22 Fund as created and provided in R.S. ~~30:2078~~ 30:2301 et seq. In connection with

1 such administration, maintenance, and operation, the department is authorized to
 2 incur debt and issue bonds, notes, or other evidences of indebtedness, and is
 3 authorized to pledge the sums in, credited to, or payable to the ~~Municipal Facilities~~
 4 ~~Revolving Loan~~ Clean Water State Revolving Fund as security for the debt of other
 5 entities, and is authorized to arrange, provide for, and pay the cost of credit
 6 enhancement devices for its debt and the debt of other entities in order to provide
 7 funds in connection with the ~~Municipal Facilities Revolving Loan~~ Clean Water State
 8 Revolving Fund Program. Any such evidence of indebtedness, guarantee, pledge,
 9 or credit enhancement device shall be authorized, executed, and delivered by the
 10 secretary or his designee in accordance with the provisions and subject to the
 11 limitations provided in R.S. 30:2011(D)(23) and ~~2080 through 2088~~ 2301 et seq. for
 12 the ~~Municipal Facilities Revolving Loan~~ Clean Water State Revolving Fund.

13 * * *

14 D. The secretary shall have the following powers and duties:

15 * * *

16 (4) To apply for and accept grants of money from the United States
 17 Environmental Protection Agency or other federal agencies for the purpose of
 18 making funds available to ~~political subdivisions~~ eligible recipients in this state for
 19 the planning, design, construction, and rehabilitation of wastewater treatment
 20 facilities ~~and or other related~~ eligible activities. The department may contract to
 21 receive such grants, agree to match the grant in whole or in part when required, and
 22 to comply with applicable federal laws and regulations in order to secure the grants.
 23 Money received through these grants and state matching funds shall be deposited
 24 into the ~~Municipal Facilities Revolving Loan~~ Clean Water State Revolving Fund or
 25 used for appropriate administrative purposes.

26 * * *

27 (23) To authorize by executive order, the issuance, sale, execution, and
 28 delivery of bonds, notes, or other evidences of indebtedness of the department,
 29 obligations representing guarantees by the department of the debt of other entities,
 30 and the granting of pledges of the sums deposited in, credited to, or payable to the

1 United States Code, and any amendments thereto relating to water pollution control
 2 revolving loan funds established by the respective states, including the CWSRF.

3 (5) "Federal regulations" means Part 35, Title 40 of the Code of Federal
 4 Regulations (40 CFR 35.3100, et seq.) relating to water pollution control revolving
 5 loan funds established by the respective states, including the CWSRF.

6 §2302. Clean Water State Revolving Fund; established

7 A. The Clean Water State Revolving Fund is hereby established and shall be
 8 maintained and operated by the department. Grants from the federal government
 9 allotted to the state for the capitalization of the CWSRF, and state funds when
 10 required, or otherwise made available, shall be deposited directly in or credited to the
 11 account of the CWSRF in compliance with the terms of the federal or state grant.
 12 The CWSRF shall provide assistance to eligible recipients for any activities of the
 13 CWSRF as may be permitted by the federal act or federal regulations and by this
 14 Chapter.

15 B. The department is authorized to enter into contracts and other agreements
 16 in connection with the operation of the CWSRF including but not limited to credit
 17 enhancement devices, guarantees, pledges, interest rate swap agreements, contracts
 18 and agreements with federal agencies, political subdivisions, public trusts, agencies
 19 or commissions of the state, and other parties to the extent necessary or convenient
 20 for the implementation of the CWSRF. The department shall maintain full authority
 21 for the operation of the CWSRF in accordance with applicable federal and state law.

22 §2303. Clean Water State Revolving Fund; authorized activities

23 A. Money in or credited to the account of or to be received by the CWSRF,
 24 including sums to be received pursuant to letters of credit or from any other source,
 25 shall be expended, committed, or pledged, in a manner consistent with terms and
 26 conditions of the grants and other sources of such deposits, credits, and letters of
 27 credit, and of all applicable federal and state law and may be used:

28 (1) To make loans to eligible recipients, or to purchase debt obligations using
 29 federal funds or funds on deposit in, credited to, or to be received by the CWSRF,
 30 including from the proceeds of letters of credit, at or below market interest rates for

1 a period not to exceed thirty years from the completion of the construction of a
 2 project approved by the department.

3 (2) To offer and to make or enter into loan guarantees for eligible recipients.

4 (3) To provide payments to reduce interest on loans and loan guarantees to
 5 eligible recipients.

6 (4) To provide additional subsidization to eligible recipients in the form of
 7 bond interest subsidies, forgiveness of principal, negative interest loans or grants, or
 8 any combination of these.

9 (5) To provide bond guarantees to eligible recipients.

10 (6) To provide assistance to eligible recipients with respect to the nonfederal
 11 share of the costs of a project.

12 (7) To finance the cost of facility planning and the preparation of plans,
 13 specifications, and estimates for construction of projects for eligible recipients as
 14 may be approved by the department.

15 (8) To provide financial assistance to eligible recipients for the construction
 16 and rehabilitation of a project on the state priority list.

17 (9) To secure principal, interest, and premium if any, on bonds or other
 18 evidence of indebtedness issued by the department, or any agency, commission,
 19 authority, or public corporation of the state, by any public trust or by any other entity
 20 having the authority to issue debt for or on behalf of the state, or any political
 21 subdivision of the state if the proceeds of such bonds are deposited in the CWSRF,
 22 if the proceeds of such bonds are used to pay for a project approved by the
 23 department, or if the proceeds of such bonds are used to refund any obligation the
 24 proceeds of which are used to pay for an approved project to the extent provided and
 25 allowed by the terms of the federal grant.

26 (10) To make, enter into, or provide for loan guarantees for similar revolving
 27 funds established by instrumentalities, public trusts or agencies of the state, political
 28 subdivisions, or intermunicipal or interstate agencies.

1 (11) To purchase or refinance, at or below market rates, debt incurred by
 2 political subdivisions for wastewater treatment projects, where such debt obligations
 3 were incurred after March 7, 1985.

4 (12) To improve credit market access by guaranteeing, arranging, or
 5 purchasing bond insurance or other credit enhancement devices for debt obligations
 6 issued by the department, or any eligible recipient issued for a purpose authorized
 7 by this Section.

8 (13) To provide any other assistance or to fund any other programs which
 9 the federal government authorizes by law, regulation, or the terms of any grants.

10 (14) To fund the administrative expenses of the department related to the
 11 CWSRF.

12 (15) To provide for any other expenditure consistent with the federal grant
 13 program and state law, including grants.

14 B. Money not currently needed for the operation of the Clean Water State
 15 Revolving Fund or otherwise dedicated may be invested in an interest-bearing
 16 account. All such interest earned on investments shall be credited to the Clean Water
 17 State Revolving Fund.

18 §2304. Clean Water State Revolving Fund; political subdivisions and public trusts;
 19 loans

20 A. Notwithstanding any provisions of law to the contrary, and in addition to
 21 the authority to borrow money or incur debt under any other provisions of law, any
 22 political subdivision or public trust is hereby authorized to borrow money from and
 23 incur debt payable to the CWSRF in accordance with the provisions hereof and
 24 subject to the approval of the State Bond Commission. This Section shall not be
 25 deemed to be the exclusive authority under which political subdivisions or public
 26 trusts may borrow money from or incur indebtedness to the CWSRF.

27 B. All bonds, notes, or other evidence of indebtedness of any political
 28 subdivisions and public trusts issued to represent an obligation to repay a CWSRF
 29 loan shall be authorized and issued pursuant to a resolution or ordinance of the
 30 governing authority of such entity, which shall prescribe the form and details thereof,

1 including the terms, security for, manner of execution, repayment schedule, and
2 redemption features thereof and such resolution or ordinance may provide that an
3 officer of such entity may execute in connection with such obligation any related
4 contract including but not limited to a credit enhancement device, indenture of trust,
5 loan agreement, pledge agreement, or other agreement or contract needed to
6 accomplish the purposes for which said indebtedness is given. Any such resolution
7 or ordinance shall set forth the maximum principal amount, the maximum interest
8 rate, the maximum redemption premium, if any, and the maximum term of such
9 indebtedness.

10 C. Notwithstanding any other provision of law to the contrary, any political
11 subdivision, or public trust upon entering into a loan from the CWSRF under this
12 Section may dedicate and pledge a portion of any revenues it has available to it
13 including but not limited to revenues from the general revenue fund, sales taxes, user
14 fees, assessments, parcel fees, or property taxes of the political subdivision for a term
15 not exceeding thirty years for repayment of the principal of, interest on, and any
16 premium, administrative fee, or other fee or cost imposed by the department in
17 connection with such loan; provided that any loan made solely for the purpose of
18 financing the cost of facility planning and the preparation of plans, specifications,
19 and estimates for construction of projects approved by the department shall have a
20 term not to exceed five years from the date thereof.

21 D. Any evidence of indebtedness authorized pursuant to the provisions of
22 this Chapter shall bear a rate or rates of interest that shall not exceed the rate or rates
23 set forth in the resolution or ordinance authorizing and providing for the issuance
24 thereof. Any such rate or rates of interest may be at fixed, variable, or adjustable
25 rates.

26 E. Bonds, notes, or other evidence of indebtedness of a political subdivision
27 shall be sold at a private, negotiated sale to the CWSRF at such price or prices,
28 including premiums and discounts as shall be authorized in the resolution or
29 ordinance of the borrower and agreed to by the department. The general laws of the

1 state governing fully registered securities of public entities shall be applicable to the
2 bonds, notes, or other evidence of indebtedness issued pursuant to this Section.

3 F. All resolutions or ordinances authorizing the issuance of bonds, notes, or
4 other evidence of indebtedness of a political subdivision hereunder shall be
5 published once in the official journal of the borrower. It shall not be necessary to
6 publish exhibits to such resolution or ordinance, but such exhibits shall be made
7 available for public inspection at the offices of the governing authority of the
8 borrower at reasonable times and such fact must be stated in the publication. For a
9 period of thirty days after the date of such publication, any persons in interest may
10 contest the legality of the resolution or ordinance authorizing such evidence of
11 indebtedness and any provisions thereof made for the security and payment thereof.
12 After such thirty-day period no one shall have any cause or right of action to contest
13 the regularity, formality, legality, or effectiveness of said resolution or ordinance and
14 the provisions thereof or of the bonds, notes, or other evidence of indebtedness
15 authorized thereby for any cause whatsoever. If no suit, action, or proceeding is
16 begun contesting the validity of the bonds, notes, or other evidence of indebtedness
17 authorized pursuant to such resolution or ordinance within the thirty days prescribed
18 in this Subsection, the authority to issue the bonds, notes, or other evidence of
19 indebtedness, or to provide for the payment thereof, and the legality thereof, and all
20 of the provisions of the resolution or ordinance and such evidence of indebtedness
21 shall be conclusively presumed, and no court shall have authority or jurisdiction to
22 inquire into any such matter.

23 G. Bonds, notes, or other evidence of indebtedness of a political subdivision
24 issued under the authority of this Section shall be exempt from all taxation for state,
25 parish, municipal, or other purposes. Such bonds, notes, or other evidence of
26 indebtedness shall be legal and authorized investments for banks, savings banks,
27 insurance companies, any other financial institution, tutors of minors, curators of
28 interdicts, trustees, and other fiduciaries. Such bonds, notes, or other evidence of
29 indebtedness may be used for deposit with any officer, board, or political subdivision

1 of the state, in any case where, by present or future laws, deposit of security is
2 required for state funds.

3 H. The department may by suit, action, mandamus, or other proceedings,
4 protect and enforce any covenant relating to and the security provided in connection
5 with any indebtedness issued pursuant to this Section, and may by suit, action,
6 mandamus, or other proceedings enforce and compel performance of all of the duties
7 required to be performed by the governing body and officials of any borrower
8 hereunder and in any proceedings authorizing the issuance of such bonds or other
9 evidences of indebtedness.

10 §2305. Authority of the department; incur debt; issue and undertake guarantees of
11 debt of other entities

12 A. The department is hereby authorized to issue, incur, and deliver debt
13 evidenced by bonds, notes, or other evidences of indebtedness, payable from or
14 secured by sums deposited in, credited to, or to be received in, including sums
15 received pursuant to letters of credit, by the department in the CWSRF.

16 B. The department is further authorized to undertake and to issue and deliver
17 evidences of its guarantee of the debt of other entities and is authorized to enter and
18 execute pledges of the sums deposited in, credited to, or to be received in the
19 CWSRF, including payments pursuant to letters of credit, to secure the debt of other
20 entities. Such bonds, notes, or other evidences of indebtedness, such guarantees, and
21 such pledges issued and delivered pursuant to the authority hereof shall constitute
22 special and limited obligations of the department, and shall not be secured by the full
23 faith and credit of the state, any source of revenue of the state other than those sums
24 on deposit in, credited to, or to be received in the CWSRF, including payments to be
25 made pursuant to letters of credit. It is hereby found and determined that such bonds,
26 notes, or other evidences of indebtedness, guarantees, and pledges shall constitute
27 revenue bonds, debts, or obligations within the meaning of Article VII, Section 6(C)
28 of the Constitution of Louisiana and shall not constitute the incurring of state debt
29 thereunder.

1 C. Withdrawals from the CWSRF to pay debt service on any bond, note, or
2 other evidence of indebtedness, obligation of guarantee of any debt, or pledge to
3 secure any debt does not constitute and shall not be subject to annual appropriation
4 by the legislature as provided by Article III, Section 16 of the Constitution of
5 Louisiana.

6 D. The department is hereby authorized to issue, execute, and deliver
7 refunding bonds, notes, or other evidences of indebtedness for the purpose of
8 refunding, readjusting, restructuring, refinancing, extending, or unifying in whole or
9 any part of its outstanding obligations, and the department is also authorized to issue
10 short-term revenue notes for the purposes of anticipating any revenues to be received
11 by the department in connection with the CWSRF.

12 §2306. Manner of authorizing, issuing, executing, and delivering debt or guarantees
13 of debt of other entities

14 A. All bonds, notes, or other evidences of indebtedness, guarantees of the
15 debt of other entities or pledges of assets to the payment of debts of other entities
16 shall be authorized and issued pursuant to an executive order issued by the secretary
17 of the department, and such executive order shall include a statement as to the
18 maximum principal amount of any such obligation, guarantee, or pledge, the
19 maximum interest rate to be incurred or borne by such obligation or guaranteed by
20 such obligation, the maximum redemption premium, if any, and the maximum term
21 in years for such evidence of indebtedness, obligation, guarantee, or pledge, and such
22 executive order shall prescribe the form, anticipated terms, security, manner of
23 execution, redemption features, and method of fixing the final details thereof. Such
24 executive order may provide that the secretary or his designee shall execute in
25 connection with any such obligation any other related contract including but not
26 limited to credit enhancement devices, indentures of trust, pledge agreements, loan
27 agreements, or any other ancillary agreements or contracts needed to accomplish the
28 purposes for which said evidence of indebtedness, guarantee, or pledge is given in
29 substantially the form attached to said executive order but which final indenture,
30 guarantee, pledge, or other contract or agreement may contain such changes,

1 additions, and deletions as shall, in the sole opinion of the designated officer of the
2 department executing any such contract, be determined to be appropriate under the
3 circumstances. The bonds, notes, other evidences of indebtedness, and obligations
4 issued under the provisions of this Section shall be subject to the general laws of the
5 state regarding defeasance and fully registered securities of public entities.

6 B. Bonds, notes, or other evidences of indebtedness of the department may
7 bear, and the department may guarantee or pledge the assets of the CWSRF to the
8 payment of debt of other entities that bear, a rate or rates of interest at fixed, variable,
9 or adjustable rates. Any such obligation may be noninterest bearing in the form of
10 capital appreciation obligations.

11 C. Bonds, notes, or other evidences of indebtedness of the department shall
12 be sold by the State Bond Commission at either public or private sale and may be
13 sold at such price or prices, including premiums and discounts, as may be determined
14 to be in the best interest of the department by the secretary, with the approval of the
15 State Bond Commission. If any such evidences of indebtedness are to be sold at a
16 public sale, a notice of the sale shall be published in accordance with the provisions
17 of R.S. 39:1426 and shall be awarded to the best bidder therefor by the State Bond
18 Commission, but the State Bond Commission may reject any and all bids received.

19 D. The department may, in connection with the sale of any bonds, notes, or
20 other evidences of indebtedness, use municipal bond insurance, bank guarantees,
21 surety bonds, letters of credit, interest rate swap agreements, and other devices to
22 enhance the credit quality of any such obligations, the cost of which may be paid
23 from the proceeds of the bonds, notes, or other evidences of indebtedness or other
24 lawfully available funds. Such credit enhancement devices may be entered into prior
25 to, at the time of, or subsequent to, the issuance of any such obligations.

26 E. All executive orders of the secretary authorizing the issuance of bonds,
27 notes, or other evidences of indebtedness of the department shall be published once
28 in the official journal of the state. It shall not be necessary to publish exhibits to any
29 such executive order, but such exhibits shall be made available for public inspection
30 at the offices of the secretary of the department at reasonable times and such fact

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____