

Regular Session, 2010

ACT No. 955

HOUSE BILL NO. 1486 (Substitute for House Bill No. 926 by Representative Little)

BY REPRESENTATIVES MORRIS, ARMES, BOBBY BADON, BILLIOT, BURFORD, HENRY BURNS, BURRELL, CARMODY, CHAMPAGNE, EDWARDS, GISCLAIR, HARDY, HARRISON, HENDERSON, HENRY, GIROD JACKSON, LITTLE, LORUSSO, NOWLIN, GARY SMITH, JANE SMITH, ST. GERMAIN, TALBOT, TUCKER, WADDELL, WILLIAMS, AND WOOTON AND SENATOR ADLEY

1 AN ACT

2 To enact Chapter 9-B of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 30:961 through 963, relative to the use of surface water; to provide for
4 definitions; to provide for cooperative endeavor agreements to withdraw running
5 surface water; to provide for findings and purpose; to provide for requirements for
6 cooperative endeavor agreements to withdraw running surface water; to provide for
7 the authority of the secretary of the Department of Natural Resources; to provide for
8 legislative intent; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 9-B of Title 30 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 30:961 through 963, is hereby enacted to read as follows:

12 CHAPTER 9-B. SURFACE WATER MANAGEMENT

13 §961. Cooperative endeavor agreements; withdrawal of surface water; intent

14 A. As provided by this Chapter and except as otherwise provided by law, a
15 person or entity may enter into a cooperative endeavor agreement to withdraw
16 running surface water as described in this Chapter. The cooperative endeavor
17 agreement shall prohibit the resale of withdrawn running surface water for a price
18 greater than provided for in the agreement; however, a person or entity may receive
19 compensation for the transportation, manufacturing, or processing of withdrawn
20 running surface water. Unless otherwise provided by law, all cooperative endeavor
21 agreements to withdraw running surface water, and any assignment of such
22 agreement, shall be approved by the secretary as provided in this Chapter. No
23 provision contained in this Chapter should be construed as a requirement for any

1 person or entity to enter into any cooperative endeavor agreement to withdraw
2 running surface water. This Chapter shall have no effect on the rights provided for
3 in Civil Code Articles 657 and 658 or any rights held by riparian owners in
4 accordance with the laws of this state. It is also the intent of the legislature that
5 should any portion of this Chapter be found to be unconstitutional that the remaining
6 parts shall continue in force and effect.

7 B. No agency or subdivision of the state otherwise authorized to enter into
8 a cooperative endeavor agreement to withdraw running surface water, or assignment
9 of such shall do so unless the said agreement is in writing, provides for fair market
10 value to the state, is in the public interest, and is contained on an uniform form
11 developed and prescribed by the State Mineral and Energy Board and approved by
12 the attorney general. Fair market value to the state shall include, but not be limited
13 to, the economic development, employment, and increased tax revenues created by
14 the activities associated with the withdrawal of running surface water. No such
15 cooperative endeavor agreement to withdraw running surface water shall be valid
16 unless and until such agreement is approved by the secretary following the
17 submission of an application for approval, which the secretary shall develop and
18 prescribe. The secretary shall conduct the evaluation provided for in Subsection D
19 of this Section and take action on the application within sixty days of the application
20 being deemed complete. If the secretary denies the application, the secretary shall
21 provide written reasons for the denial at the time of the denial.

22 C. Unless otherwise provided by law, the secretary is authorized to enter into
23 any cooperative endeavor agreement to withdraw running surface water, provided
24 that any such agreement complies with the prohibition against gratuitous donation
25 of state property by ensuring that the state receives fair market value for any water
26 removed, and the substance of the agreement is contained within a written
27 cooperative endeavor agreement as provided for in Article VII, Section 14 of the
28 Constitution of Louisiana.

29 D. The secretary shall evaluate each application for a cooperative endeavor
30 agreement to withdraw running surface water and each such cooperative endeavor

1 that he may enter to ensure that each is in the public interest. The secretary shall
2 ensure the proposed agreement is based on best management practices and sound
3 science, and is consistent with the required balancing of environmental and
4 ecological impacts with the economic and social benefits found in Article IX,
5 Section 1 of the Constitution of Louisiana. In his evaluation, the secretary shall also
6 ensure that all cooperative endeavor agreements to withdraw running surface water,
7 or assignments of such, adequately consider the potential and real effects of such
8 contracted activity on the sustainability of the water body and on navigation. Any
9 assignment of any such cooperative endeavor agreement to withdraw running surface
10 water may be approved by the secretary in the same manner as an agreement as
11 provided in this Section, unless otherwise provided for by law.

12 E. No cooperative endeavor agreement to withdraw running surface water,
13 or an assignment of such, entered into pursuant to the provisions of this Chapter shall
14 have a term which exceeds two years, however, such two-year terms may be renewed
15 until December 31, 2020. A person or entity who has entered into a cooperative
16 endeavor agreement to withdraw running surface waters or has obtained an
17 assignment of such, may terminate such agreement effective December 31, 2012.
18 In order to be effective, the person or entity seeking to terminate shall provide
19 written notice by certified mail to the secretary at least thirty days prior to
20 termination.

21 F. The secretary may act to protect the natural resources of the state by
22 reducing any withdrawal of water from the running surface waters of the state
23 otherwise agreed to be withdrawn pursuant to an agreement entered into pursuant to
24 this Chapter, or make other conditions, including the suspension or termination of
25 such withdrawal of water when such an action is required to protect the resource and
26 to maintain sustainability and environmental and ecological balance. If the secretary
27 acts to reduce or suspend the volume of water agreed to be withdrawn, he shall do
28 so in such a manner that the total necessary reductions are proportionally borne by
29 all users of the running surface waters, subject to this Chapter, in the area for which
30 a reduction is required. Prior to approval, the secretary shall ensure that each

1 contract or agreement or assignment thereof that involved the withdrawal of the
 2 running surface waters of the state provides for the secretary's authority, without
 3 liability for damages, in this regard.

4 G.(1) The secretary, in deciding whether to approve or require changes in an
 5 application for a cooperative endeavor agreement to withdraw running surface water,
 6 or assignment of such, shall consider the various existing and potential users of the
 7 resource and shall give appropriate consideration and priority to the following users
 8 or uses in the following order of priority:

9 (a) Human consumption by means of a public water system or a private
 10 water system that provides domestic potable water service.

11 (b) Agricultural uses that provide sustenance to animals or irrigation to
 12 plants.

13 (c) Any commercial purpose or other industrial or mining activity.

14 (2) The secretary shall also consider the impact of any proposed contract,
 15 agreement, assignment, or use on resource planning. By way of illustration but not
 16 limitation, these would include any potential project or use that impacts:

17 (a) Stream or water flow energy.

18 (b) Sediment load and distribution.

19 (c) Navigation.

20 (d) Aquatic life.

21 (e) Other vegetation or wildlife.

22 (3) The management of cooperative endeavor agreements to withdraw
 23 running surface water shall be consistent with the comprehensive master plan for
 24 coastal restoration and protection as approved by the Coastal Protection and
 25 Restoration Authority and the legislature.

26 H. Approval of an application for a cooperative endeavor agreement to
 27 withdraw running surface water or assignment of such pursuant to this Chapter does
 28 not obviate the need for other permits or authorizations required by law for any
 29 proposed activity.

1 §962. Definitions

2 As used in this Chapter, the following words, terms, and phrases have the
 3 meanings ascribed to them in this Section, unless the context clearly indicates a
 4 different meaning:

5 (1) "Running surface waters" means the running waters of the state,
 6 including the waters of navigable water bodies and state owned lakes.

7 (2) "Secretary" means the secretary of the Department of Natural Resources,
 8 and his designees.

9 §963. Management by the Department of Natural Resources

10 A. Except as otherwise provided by law, the Department of Natural
 11 Resources shall be the state agency charged with managing and monitoring the
 12 implementation of all cooperative endeavor agreements to withdraw running surface
 13 water or assignments thereof. The secretary shall have the authority to designate
 14 where within his agency the various functions of this Chapter are to be performed,
 15 to issue contracts or enter into agreements with other public entities when required
 16 in his opinion for the efficient administration of this Chapter, and to establish any
 17 necessary policy or promulgate, in accordance with the provisions of the
 18 Administrative Procedure Act, any regulations that in his opinion are necessary for
 19 the efficient implementation of this Chapter.

20 B. The secretary may negotiate and enter into a cooperative endeavor
 21 agreement to withdraw running surface water under terms which the secretary deems
 22 to be most advantageous to the state and which is consistent with the policies and
 23 regulations implemented pursuant to this Chapter.

24 C. Where there exists a governmental entity to manage, preserve, conserve,
 25 and protect running surface water that lacks the authority to enter into cooperative
 26 endeavor agreements to withdraw running surface water, such entities may provide,
 27 by resolution, their recommendations to the secretary of any requested terms of such
 28 contracts or agreements entered into by the secretary.

29 Section 2. It is the express intention of the Legislature of Louisiana that nothing
 30 contained herein be interpreted as codifying, confirming, or ratifying; or overruling,

1 nullifying, or rejecting the statements of law contained in the Memorandum to All State
 2 Surface Water Managers from the State Of Louisiana, Office of the Attorney General, and
 3 the secretary of the Department of Natural Resources dated February 5, 2010, and also in
 4 Attorney General opinions, 08-0176, 09-0028, 09-0066 and 09-0291. But rather, the intent
 5 of the legislature with this enactment is to provide needed interim stewardship of running
 6 surface water, as detailed in HCR No.1 of the 2010 Regular Session of the Legislature. That
 7 resolution requests from the Ground Water Resources Commission, a report to the
 8 legislature by March 1, 2012, with recommendations for changes necessary for optimal,
 9 comprehensive, integrated surface and ground water management policy, so that a thorough,
 10 deliberate, public, legislative evaluation of the issues and concerns may be had before a
 11 permanent state policy is established. The legislature finds that, pending this legislative
 12 process, it is necessary to immediately provide for an appropriate level of management and
 13 availability of the state's surface water resources in the interim period, and to provide for an
 14 optimal level of protection and use of all the natural resources of the state. In this regard,
 15 the express intention of the legislature is that the provisions of Chapter 9-B of Title 30 of the
 16 Louisiana Revised Statutes of 1950, comprised of R.S. 30:961 through 963, shall be null,
 17 void, and without effect after December 31, 2012.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____