

HOUSE COMMITTEE AMENDMENTS

2018 Regular Session

Substitute for Original House Bill No. 884 by Representative Abramson as proposed by the House Committee on Ways and Means

This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.

To enact Chapter 3-C of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:462.1 through 462.6, and 1367(E)(2)(b)(vii), relative to capital outlay finance; to provide a funding source for certain capital outlay expenditures by local government and other political subdivisions; to establish the Louisiana Capital Outlay Revolving Loan Bank; to provide for a board of directors to govern the bank; to provide for membership, duties, and authority of the board; to provide for the adoption of bylaws, rules, and regulations by the board; to provide for the capitalization, administration, investment, and disposition of monies received by the bank; to authorize the bank to incur debt and issue bonds, notes, or other evidences of indebtedness and to guarantee the debt of other certain entities; to authorize loans from the bank to non-state public entities for certain capital outlay projects; to provide procedures for local governments and political subdivisions to enter into such indebtedness and provide for repayment; to exempt interest on such indebtedness from taxation; to provide with respect to loan forgiveness; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 3-C of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:462.1 through 462.6, and 1367(E)(2)(b)(vii) are hereby enacted to read as follows:

CHAPTER 3-C. LOUISIANA CAPITAL OUTLAY REVOLVING LOAN BANK

§462.1 Louisiana Capital Outlay Revolving Loan Bank; purposes; establishment; capitalization; disposition of monies; administration

A. The legislature finds that:

(1) State government has assisted in funding many of the local capital outlay projects that are necessary to provide local facilities, but the result of this state funding has been to either reduce the amount of funding available for state programs and services or ignore the need for assistance to local governments.

(2) Even with established state and federal government programs to assist local government with funding needed and necessary for capital projects, including those for clean water and sewerage projects, local governments encounter financial challenges in meeting match funding requirements and other required local contributions required by the existing state capital outlay program and other infrastructure programs.

(3) The most effective way of accomplishing the goal of providing for local capital project financing and for preservation of the state fisc over the long term is to establish a low interest rate revolving loan fund to be available for local capital projects to assist participating borrowers in meeting required match requirements and other required local contributions, and provide an alternative means to fund appropriate local projects that would otherwise compete with scarce state funding for state projects.

B. In order to continue to provide match funds and other required local contributions to local governments for the planning, design, construction, and maintenance connected with needed infrastructure projects, it is the purpose of this Chapter to do the following:

(1) Provide for the establishment and administration of a bank to make loans from a revolving loan fund and to provide other assistance to local governments for use in meeting match funding requirements or other required local contributions in carrying out or proposing to carry out eligible local infrastructure projects, and enter into such cooperative agreements and interstate compacts as may be necessary and proper to fulfill the purposes of this Chapter.

(2) Provide for receipt, administration, and use by the bank of federal funds contributed to it pursuant to federal law, rule, or regulation, funds appropriated or

otherwise provided by the state or any local governing authority, and funds derived or contributed from, or otherwise provided by, any other source.

(3) Authorize the infrastructure bank to establish and administer a revolving loan fund for eligible infrastructure projects and to use the sums on deposit in, credited to, or otherwise received by the infrastructure bank for the purposes provided herein.

§462.2. Louisiana Capital Outlay Revolving Loan Bank; definitions

The following terms as used in this Chapter shall have the following meanings:

(1) "Approved infrastructure program" means the following:

(a) State Capital Outlay Budget as provided in R.S. 39:101 et seq.

(b) Clean Water State Revolving Fund established pursuant to R.S. 30:2301 et seq.

(c) Drinking Water Revolving Loan Fund established pursuant to R.S. 40:2821 et seq.

(2) "Bank" means the Louisiana Capital Outlay Revolving Loan Bank established under this Chapter.

(3) "Bank loan" means any bond, note, or other evidence of indebtedness, or a commitment, pledge, loan, letter of credit, guarantee, subsidy, or other obligation of a local government for an eligible infrastructure project, made for the purpose of satisfying match requirements or other required local contributions, or other eligible project costs to participate in an approved infrastructure program.

(4) "Board" means the board of directors of the Louisiana Capital Outlay Revolving Loan Bank.

(5) "Certifying department" means the state department or agency with authority to administer and approve an eligible infrastructure project in accordance with laws and regulations governing the respective approved infrastructure program.

(6) "Eligible infrastructure project" or "project" means a plan or proposal approved by the respective certifying department with legal authority to administer an approved infrastructure program, which would require or use a local match or

other required local contribution, or require additional funding for eligible project costs that can be provided by the infrastructure bank, whether using a bank loan or other assistance in accordance with applicable federal provisions.

(7) "Local" or "local government" means a public entity as defined in R.S. 39:1431, excluding state departments, agencies, boards and commissions. "Local" and "local government" shall also mean any non-state public entity eligible to apply for and receive funding under the laws and regulations of an approved infrastructure program.

§462.3. Louisiana Capital Outlay Revolving Loan Bank; structure; powers; duties

A. There is hereby established within the Department of the Treasury the Louisiana Capital Outlay Revolving Loan Bank, hereinafter referred to as "bank", which shall be allocated to the Department of the Treasury in accordance with the provisions of Article IV, Section 1 and Article XIV, Section 6 of the Constitution of Louisiana.

B.(1) The bank shall be governed by a board of directors composed of the statutory members, or their designees, appointed to the State Bond Commission pursuant R.S. 39:1401.

(2) The state treasurer shall serve as chairman of the board and the board may select such other officers as it may deem necessary.

(3) The board may adopt bylaws for its own internal organization and governance, including the election of officers and conduct of meetings in accordance with the Open Meetings Law.

(4) The board may promulgate rules and regulations, in accordance with the Administrative Procedure Act, for the appointment of committees, for consideration and approval or rejection of applications for bank loans, and for the administration of the bank and fulfillment of any and all responsibilities and duties and exercise of any rights and authority of the bank as provided in this Chapter.

(5) The board shall exercise its duties and responsibilities and grant or deny approval to applicants, separate and apart from the independent duties, responsibilities, and review processes of the State Bond Commission.

C. The board shall have authority and responsibility for review and approval or denial of applications for bank loans or other assistance requested by a local government for an eligible infrastructure project. No application for a bank loan or other assistance shall be made without the prior approval of the proposed project by the respective certifying department. Each respective certifying department shall retain its discretion, authority, and control over all aspects of the review of any and all construction, engineering, and related technical aspect of a project in accordance with the rules and regulations of the respective approved infrastructure program.

D. The bank shall have the powers necessary or convenient to carry out its mission and purpose described in this Chapter, including the following:

(1) To sue and be sued.

(2) To adopt an official seal and alter the same at its pleasure.

(3) To appoint an executive director to administer the affairs of the bank, who shall be appointed and serve at the pleasure of the board.

(4) To make and execute contracts and other agreements, instruments, and documents necessary or convenient for the exercise of its powers and functions under this Chapter, with any federal or state government agency, local government, political subdivision, or other public or private entity, and to act in furtherance of its interests therein, including but not limited to credit enhancement devices, guarantees, pledges, interest rate swap agreements, contracts, and agreements with federal agencies, political subdivisions, public trusts, departments, boards, agencies, commissions of the state, and other parties to the extent necessary or convenient for the implementation of the purpose of the bank as provided for in this Chapter.

(5) To receive and administer grants from the federal government or its agencies allotted to the state for the capitalization of the bank, any fund administered by the bank, state funds when required or otherwise made available, or any other funds or property loaned, granted, donated or otherwise provided for the purposes established in this Chapter, subject to compliance with the terms of a federal or state grant, if any, and other applicable state or federal law, rule, or regulation.

(6) To make loans from a revolving loan fund, federal funds, or funds on deposit in, credited to, or to be received by the bank, and interest on the loans shall be at or below market interest rates for a period not to exceed ten years from the completion of the construction of the project.

(7) To provide the following assistance regarding local government projects:

(a) Offer and make or enter into loan guarantees, letters of credit, grants, or other forms of assistance.

(b) Provide payments to reduce interest on loans.

(c) Make bond interest subsidies for bonds.

(d) Provide bond guarantees.

(e) Assist with respect to the non-federal share of project costs.

(f) Finance the cost of and the preparation of project plans, specifications, and estimates for construction.

(g) Secure the principal, interest, and premium, if any, on bonds or other evidence of indebtedness issued for a project, if the proceeds of the bonds are:

(i) Deposited into the revolving loan fund of the bank.

(ii) Used only to pay for a project or to refund any obligation, the proceeds of which are used to pay for a project to the extent provided and allowed by the terms the obligation of a federal grant, or the terms of any other type of loan, grant, or donation received for the purposes provided for in this Chapter.

(h) Improve credit market access by guaranteeing, arranging, or purchasing bond insurance or other credit enhancement devices for debt obligations issued for an eligible infrastructure project.

(8) To finance any programs which the federal government authorizes by a grant made for purposes of the revolving loan fund or made for purposes for which the revolving loan fund is authorized.

(9) To provide for any other expenditure consistent with a federal grant program and state law.

(10) To establish, by rule, a schedule of reasonable fees and charges to pay the costs of administering the bank.

E. Money needed for the operation of the bank or on deposit in the revolving loan fund shall be invested by the state treasurer as provided by law, except as may be limited by federal law or the terms and conditions of any grant related to money deposited in the revolving loan fund. All interest earned on investments shall be credited to the revolving loan fund.

§462.4. Louisiana Capitol Outlay Revolving Loan Bank Fund; revolving loan fund; loans for infrastructure projects; authorizing and issuing debt; security; interest rates; tax exemption

A. (1) Notwithstanding any provision of law to the contrary, and in addition to the authority to lend or borrow money or incur or guarantee indebtedness provided by any other provisions of law, sums on deposit in and credited to the bank may be loaned from the revolving loan fund to local governments for use in connection with eligible infrastructure projects. However, this Section shall not be deemed to be the exclusive authority under which a local government may otherwise borrow money or incur indebtedness from other sources.

(2)(a) Local governments may enter into bank loans from the revolving loan fund in accordance with this Section, but no such loan shall be made nor debt evidencing the loan shall be issued or incurred without the approval of the board, followed by written approval of the State Bond Commission.

(b) No money in the revolving loan fund may be expended or otherwise used, nor any bonds or other evidences of indebtedness or other obligations issued or insured for any specific infrastructure project or for any payment, expenditure, commitment, pledge, loan, letter of credit, guarantee, subsidy, or other activity related to projects or the financing thereof without the approval of the board, followed by written approval of the State Bond Commission.

B. All bonds, notes, or other evidence of indebtedness of any local government issued to represent a bank loan shall be authorized and issued pursuant to a resolution or ordinance of the governing authority of that entity, hereinafter referred to collectively as "resolution". The resolution shall prescribe the form and details thereof, including the terms, security for, manner of execution, repayment

schedule, and redemption features thereof and the resolution may provide that an officer of that entity may execute in connection with such obligation any related contract, including but not limited to a credit enhancement device, indenture of trust, loan agreement, pledge agreement, or other agreement or contract needed to accomplish the purposes for which the evidence of indebtedness is given, in substantially the form referenced in the resolution, but which final executed credit enhancement device, indenture of trust, loan agreement, pledge, or other contract or agreement may contain such changes, additions and deletions as shall in the sole opinion of the executing officer be appropriate under the circumstances. The resolution shall include a statement as to the maximum principal amount of any such obligation, the maximum interest rate to be incurred or borne by said obligation or guaranteed by said obligation, the maximum redemption premium, if any, and the maximum term in years for such obligation, guarantee, or pledge.

C. Notwithstanding any other provision of law to the contrary, a local government, upon entering into a bank loan as provided in this Chapter, may dedicate and pledge a portion of any revenues it has available to be pledged and dedicated, including, but not limited to revenues from the general revenue fund, sales taxes, sewer user fees, assessments, parcel fees, or ad valorem property taxes, for a sufficient term to repay the obligation from the date of project completion for repayment of the principal of, interest on, and any premium, administrative fee or other fee or cost incurred, in connection with the loan.

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

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

F. A resolution authorizing a bank loan pursuant to this Section shall be published once in the official journal of the parish or municipality in which the local

government incurring the loan is domiciled. It shall not be necessary to publish exhibits to the resolution, but the exhibits shall be made available for public inspection at the offices of the governing authority of the parish, municipality, or other political subdivision at reasonable times and notice of the availability of these documents shall be stated in the publication within the official journal. For a period of thirty days after the date of publication, any person in interest may contest the legality of the resolution authorizing the evidence of indebtedness or other bank loan and any provision thereof made for the security and payment of the debt. After such thirty day period, no one shall have any cause or right of action to contest the regularity, formality, legality, or effectiveness of the resolution and the provisions thereof or of the bonds, notes, or other evidence of indebtedness or other bank loan, or to provide for the payment the debt, or the legality thereof, and all of the provisions of the resolution and such evidence of indebtedness shall be conclusively presumed, and no court shall have authority or jurisdiction to inquire into the matter.

G. Interest on bonds, notes, or other evidence of indebtedness issued or any bank loan entered into under the authority of this Section shall be exempt from all taxation. Such bonds, notes, or other evidence of indebtedness or bank loans may be used for deposit with any officer, board, municipality, or other political subdivision of the state, in any case where, by present or future laws, deposit of security is required for state funds.

§462.5. General power to issue and incur debt; to issue and undertake guarantees of the debt of other entities

A. The bank may issue, incur, and deliver debt evidenced by bonds, notes, or other evidences of indebtedness, payable from or secured by sums deposited in, credited to, or to be received by the bank. The bank is further authorized to undertake and to issue and deliver evidences of its guarantee of the debt of other entities and is authorized to enter into and execute pledges of the sums deposited in, credited to, or to be received by the bank, including payments pursuant to letters of credit, to secure the debt or performance of obligations of a local government for a project.

Bonds, notes, or other evidences of indebtedness, guarantees, and pledges issued and delivered pursuant to this authority shall constitute special and limited obligations of the bank and shall not be secured by the full faith and credit of the state or any source of revenue of the state other than those sums on deposit in or credited to the revolving loan fund, or to be received by the bank, including payments to be made pursuant to letters of credit.

B. In no event shall any bond, note, or other evidence of indebtedness, or guarantee, pledge, or other obligation of any type whatsoever entered into by the Bank constitute net state tax supported debt within the meaning of Article VII, Section 6(C) of the Constitution of Louisiana.

C. Any withdrawal of monies from the revolving loan fund to pay debt service on any bond, note, or other evidence of indebtedness, obligation of guarantee of any debt, or pledge to secure any debt shall not constitute and shall not be subject to appropriation by the legislature as provided by Article III, Section 16 of the Constitution of Louisiana.

§462.6. Public purpose only; forgiveness of loans prohibited without notice and two-thirds vote

Monies expended under the provisions of this Chapter shall be used exclusively for public purposes and the use of such funds is expressly subject to the limitations established in Article 7, Section 14 of the Louisiana Constitution. No forgiveness or waiver of repayment due on any loan made under the authority of this Chapter shall be effective without the enactment of a legislative instrument receiving two-thirds vote of both houses of the legislature, which instrument shall provide specific reference to the local government receiving loan forgiveness or waiver of repayment, including the approximate amount being forgiven or waived.

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§1367. State debt; limitations

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E. As used in this Section, the following terms shall have the following meanings ascribed to them unless the context clearly indicates otherwise:

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Proposed law provides that the board shall exercise its duties and responsibilities under proposed law separate and apart from the independent duties, responsibilities and review processes of the State Bond Commission.

Proposed law provides for the powers of the board and the bank, which include the following:

- (1) To execute contracts and other instruments necessary or convenient for the exercise of its powers and functions, including but not limited to credit enhancement devices, guarantees, pledges, interest rate swap agreements, other agreements to the extent necessary or convenient for the implementation of the purpose of bank as provided in proposed law.
- (2) To receive and administer all monies and any other property available for purposes of the bank.
- (3) To make low interest loans from a revolving loan fund or from any other monies on deposit with the bank.
- (4) To provide the following assistance regarding local government capital infrastructure projects:
 - (a) Offer and make or enter into loan guarantees, letters of credit, grants, or other forms of assistance, payments to reduce interest on loans, bond interest subsidies for bonds, provide bond guarantees, and assistance with respect to the non-federal share of project costs.
 - (b) Finance the cost of and the preparation of project plans, specifications, and estimates for projects
 - (c) Secure the principal, interest, and premium, if any, on bonds or other evidence of indebtedness issued for a project if the proceeds of the bonds are deposited into the revolving loan fund of the bank and are used only for the expenses of the project.
 - (d) Improve credit market access by guaranteeing, arranging, or purchasing bond insurance or other credit enhancement devices for debt obligations issued for the project.
 - (e) Finance programs authorized under a federal grant.
 - (f) Establish by rule a schedule of reasonable fees and charges to pay the costs of administering the bank.

Proposed law requires that before a loan or other assistance may be requested from the bank, the project shall first have been approved by the "certifying department" of state government that has authority to administer and approve the project in accordance with present law governing the respective approved infrastructure program.

Proposed law, with respect to a bond, note, or other evidence of indebtedness of a local government issued through a bank loan, requires the same requirements concerning interest rates and public notice as provided in present law concerning the adoption of a resolution or ordinance authorizing the issuance of indebtedness.

Proposed law authorizes a local government to pledge as security for a bank loan and any ancillary fees or other costs, any revenues from its general revenue fund, sales taxes, sewer user fees, assessments, parcel fees, or ad valorem property taxes.

Proposed law exempts from taxation any interest on bonds, notes, or other evidence of indebtedness issued through a bank loan.

Proposed law for purposes of security of debt or performance obligations of debt for projects, authorizes the bank to issue and deliver evidences of its guarantee of the debt of other entities, and to execute pledges of the monies on deposit in the bank, including payments pursuant to letters of credit. All evidences of indebtedness, guarantees, and pledges delivered pursuant to this authority shall constitute limited obligations of the bank and shall not be secured by the full faith and credit of the state.

Proposed law provides that the withdrawal of monies from the revolving loan fund to pay debt service on any bond, note, or other evidence of indebtedness, obligation of guarantee of any debt, or pledge to secure any debt shall not constitute or be subject to appropriation by the legislature.

Present law provides for the definition of "net state tax supported debt" and includes those issuances excluded from the definition.

Proposed law retains present law and adds as an exclusion any bond, note, certificate, warrant, reimbursement obligation, or other evidence of indebtedness issued pursuant to proposed law.

Proposed law prohibits the forgiveness or waiver of payments due on any loan made by the bank, unless the forgiveness is authorized by the enactment of a specific legislative instrument receiving 2/3rds vote of both houses of the legislature.

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

(Adds R.S. 39:462.1 through 462.6 and 1367(E)(2)(b)(vii))