

Regular Session, 2009
HOUSE BILL NO. 538
BY REPRESENTATIVE ANDERS

ACT No. 510

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact R.S. 3:263, 264(B)(introductory paragraph), 265(B), and 266(13) and
3 (19), and 274 and to enact R.S. 3:262(D), 266(22), and 283.1 and R.S. 35:410,
4 relative to the Louisiana Agricultural Finance Authority; to revise legislative
5 findings; to expand definitions; to revise the powers of authority; to provide for
6 certain loans and guarantees for agricultural plants; to provide for the approval of the
7 issuance of bonds; to provide for restrictions; to provide for reports; to provide for
8 a special fund; to provide for positions; to provide for administration and
9 implementation; to provide for ex officio notaries public; and to provide for related
10 matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 3:263, 264(B)(introductory paragraph), 265(B), and 266(13) and
13 (19), and 274 are hereby amended and reenacted and R.S. 3:262(D), 266(22), and 283.1 are
14 hereby enacted to read as follows:

15 §262. Legislative findings

16 * * *

17 D. The legislature hereby finds that in order to convert Louisiana from an
18 exporter of raw agricultural products into an exporter of processed products of high
19 added value and to expand the state's economic base, it is necessary that the state
20 encourage and support the development of agricultural plants to process products in
21 this state. It is necessary for the state to develop and enhance its capacity to process
22 agricultural products in Louisiana including providing financial assistance to any
23 person who owns, leases, or operates, or is seeking to own, lease, or operate an
24 agricultural plant in this state.

1 §263. Definitions

2 As used in this Chapter, the following terms shall have the following
 3 meanings:

4 (1) "Agribusiness" means a person, other than an agricultural producer, who
 5 engages in agriculture or provides support activities, products, or services to an
 6 agricultural producer and such products or services that are directly related to the
 7 planting, growing, production, or harvesting of crops and livestock.

8 ~~(1)~~(2) "Agricultural loan" means a loan made ~~by a lending institution~~ to any
 9 person for the purpose of financing: land acquisition or improvement for agricultural
 10 or agribusiness purposes; or for financing conversion to aquacultural production; soil
 11 conservation; construction of levees and ponds; irrigation; water well drilling;
 12 construction, renovation, or expansion of buildings and facilities for agricultural or
 13 agribusiness purposes; purchase of farm fixtures, livestock, poultry, fish of any kind;
 14 crustaceans and mollusks; seeds; fertilizers; pesticides; feeds; agricultural or
 15 agribusiness machinery; equipment; containers or supplies employed in the
 16 production, cultivation, harvesting, storage, marketing, distribution, or export of
 17 agricultural ~~or aquacultural~~ products, or for the purpose of financing ~~mariculture~~
 18 agricultural products.

19 (3) "Agricultural plant" means any facility which receives raw agricultural
 20 products for the purpose of rendering them suitable for wholesale or retail marketing.

21 (4) "Agricultural producer" means a person engaged in agriculture for the
 22 planting, growing, harvesting, or production of an agricultural product in its natural
 23 state and who primarily assumes the production and market risks associated with
 24 such activities.

25 (5) "Agricultural product" means any agronomic, aquacultural, floricultural,
 26 horticultural, maricultural, silvicultural, or viticultural crop, livestock, or product.

27 ~~(2)~~(6) "Agriculture" means the commercial planting, growing, harvesting,
 28 production, storage, processing, marketing, distribution, or export of any ~~agronomic,~~
 29 ~~floricultural, horticultural, vitacultural, silvicultural, or aquacultural crop~~ agricultural
 30 product, including but not limited to farm products, livestock and livestock products,

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

1 poultry and poultry products, milk and dairy products, fruit and other horticultural
 2 products, and seafood and aquacultural products.

3 ~~(3)~~(7) "Aquaculture" means the commercial production, storage, processing,
 4 marketing, distribution, or export of any seafood including but not limited to catfish,
 5 trout, crustaceans, and mollusks.

6 ~~(4)~~(8) "Authority" means the Louisiana Agricultural Finance Authority
 7 created by this Chapter.

8 ~~(5)~~(9) "Bonds" means the bonds, notes, renewal notes, refunding bonds,
 9 interim certificates, certificates of indebtedness, debentures, warrants, commercial
 10 paper, or other obligations or evidences of indebtedness authorized to be issued by
 11 the Authority pursuant to the provisions of this Chapter.

12 ~~(6)~~(10) "Commissioner" means the Louisiana Commissioner of Agriculture
 13 and Forestry.

14 ~~(7)~~(11) "Department" means the Louisiana Department of Agriculture and
 15 Forestry.

16 ~~(8)~~(12) "Federal government" means the United States of America and any
 17 agency or instrumentality, corporate or otherwise, of the United States of America.

18 ~~(9)~~(13) "Lending institution" means any bank, bank or trust company, federal
 19 land bank, production credit association, bank for cooperatives, building and loan
 20 association, homestead, insurance company, investment banker, mortgage banker or
 21 company, pension or retirement fund, savings bank or savings and loan association,
 22 small business investment company, credit union, or any other financial institution
 23 authorized to do business in Louisiana or operating under the supervision of any
 24 federal agency or any "Edge Act Corporation" or agreement corporation organized
 25 or operating pursuant to Section 25 of the Federal Reserve Act.

26 (14) "Livestock" means any animal except dogs and cats, bred, kept,
 27 maintained, raised, or used for profit, that is used in agriculture, aquaculture,
 28 agritourism, competition, recreation, or silviculture, or for other related purposes or
 29 used in the production of crops, animals, or plant or animal products for market.
 30 This definition includes but is not limited to cattle, buffalo, bison, oxen, and other

1 rights, to the authority, and shall not be counted for the purpose of constituting a
2 quorum for the transaction of official business. The other eight members shall be
3 appointed by the governor in the following manner:

4 * * *

5 §265. Officers and employees; administration of Chapter

6 * * *

7 B. The Authority, subject to the approval of the commissioner, may
8 appoint a director and an assistant director and a director of the agriculture
9 loan program and an assistant director of the agriculture loan program who
10 shall be in the unclassified service of the state.

11 * * *

12 §266. Powers of authority

13 The authority shall have all the powers necessary to give effect to and carry
14 out the purposes and provisions of this Chapter, including, in addition to all other
15 powers granted by other provisions of this Chapter, the powers to:

16 * * *

17 (13) Make and guarantee agricultural loans ~~to or deposits with lending~~
18 ~~institutions~~ and purchase or sell agricultural loans.

19 * * *

20 (19) With the prior approval of the House and Senate ~~Committees~~
21 ~~committees~~ on ~~Agriculture, Forestry, Aquaculture and Rural Development~~
22 agriculture, forestry, aquaculture and rural development, to create such subsidiary
23 corporations or entities as may be necessary to make agricultural loans, borrow
24 money for agricultural loans, insure or reinsure agricultural loans, or issue bonds in
25 the international financial market.

26 * * *

27 (22) Foster and support the development and enhancement of processing raw
28 agricultural products in this state by participating in cooperative endeavors involving
29 loans and loan guarantees to private business enterprises, nonprofit institutions and
30 organizations, the state and political subdivisions thereof, the federal government,

1 and other organizations or persons concerned with the development or enhancement
2 of agricultural plants in this state. The authority shall participate only in cooperative
3 endeavors which involve the creation of a significant number of new jobs in relation
4 to the amount of participation by the authority.

5 * * *

6 §274. Approval of issuance of bonds by State Bond Commission

7 The approval of the State Bond Commission shall be obtained prior to the
8 issuance of any bonds of the Authority. However, before the Authority shall make
9 application to the State Bond Commission for the issuance of any bonds in the
10 amount of five million dollars or more, it shall first seek the approval of the Joint
11 Legislative Committee on the Budget for such borrowing. No notice to, or consent
12 or approval by any other governmental body or public officer shall be required as a
13 prerequisite to the issuance, sale, or delivery of any bonds of the Authority, or to the
14 making of any loans or deposits by the Authority to lending institutions, or to the
15 purchase or sale of agricultural loans by the Authority, or to the insurance by the
16 Authority of any agricultural loan, or to the exercise of any other public function or
17 corporate power of the Authority, except as is expressly provided in this Chapter.

18 * * *

19 §283.1. Loans and guarantees for agricultural plants

20 A. As part of the authority's participation in cooperative endeavors, the
21 authority may:

22 (1) Loan funds to any person to be expended to acquire, construct, furnish,
23 equip, make necessary improvements to, or purchase land for any agricultural plant
24 which will be occupied by that person, under rules and regulations adopted by the
25 authority. The loan shall not exceed seventy-five percent of the value of the property
26 offered as security pursuant to a first mortgage. The minimum execution
27 requirement by the borrower of a note is to be secured by a first mortgage on the
28 property being acquired or constructed and payable to the authority within the time
29 and under the terms and conditions together with additional endorsements as may be
30 required by the authority.

1 (2) Loan to any person funds for operating capital, market development, and
 2 product inventories under rules and regulations adopted by the authority. The loan
 3 shall not exceed seventy-five percent of the value of the property offered as security
 4 pursuant to a first mortgage. The minimum execution requirement by the borrower
 5 of a note or notes is to be secured by a first mortgage on property, including product
 6 inventories and accounts receivable from the sale of inventories, under the terms and
 7 conditions as may be required by the authority.

8 (3) Guarantee funds, on an interim or long-term basis, for an amount to be
 9 expended to acquire, construct, furnish, equip, make necessary improvements to, or
 10 purchase land for, any agricultural plant for any loan made by any lending institution
 11 to any person approved by the authority, provided that whenever the authority
 12 guarantees the payment of the loan, the authority shall make and enter into a
 13 guarantee agreement with the lending institution and the borrower setting forth the
 14 terms and conditions under which the authority is obligated and the extent to which
 15 repayment of the loan is guaranteed and secured. Each loan guaranteed by the
 16 authority shall be secured by a first mortgage on property. Whenever the authority
 17 enters into a loan guarantee agreement, the authority may impose and collect an
 18 origination fee not to exceed one percent of the amount of the loan guaranteed.

19 (4) Guarantee funds, on an interim or long-term basis, to any person for
 20 operating capital, market development, and product inventories, under rules and
 21 regulations adopted by the authority. The minimum execution requirement by the
 22 borrower of a note or notes is to be secured by a first mortgage on property,
 23 including product inventories and accounts receivable from the sale of inventories,
 24 under the terms and conditions as may be required by the authority.

25 (5) Renegotiate, refinance, or foreclose on any mortgage or commence any
 26 action to protect or enforce any right or benefit conferred by any law, mortgage,
 27 contract, or other agreement and bid for and purchase such property at any
 28 foreclosure or at any other sale or otherwise to acquire or take possession of the
 29 property. In such event, the authority may complete, administer, pay the principal
 30 of and interest on any obligation incurred in connection with the property, and

1 dispose of and otherwise deal with such property in such manner as may be desirable
 2 or necessary to protect the interest of the authority.

3 B. The aggregate of loans and loan guarantees made by the authority under
 4 this Section shall not exceed twenty million dollars at any one time.

5 C. The authority shall:

6 (1) Give priority to persons who utilize Louisiana agricultural products to the
 7 maximum extent possible.

8 (2) Fix the rate of interest to be charged on every loan at a rate not less than
 9 the base federal reserve discount rate.

10 (3) Keep records showing from whom any money is received and for what
 11 purpose and to whom any money is paid and for what purpose.

12 (4) Keep vouchers and receipts for all money disbursed.

13 D. The authority shall not loan or guarantee any loan:

14 (1) For any applicant who fails to submit all information required by this
 15 Section or by rules and regulations of the authority.

16 (2) If the amount loaned would result in the property offered as security
 17 being burdened with indebtedness in excess of seventy-five percent of the appraised
 18 value of the property.

19 (3) For any person with any pending or outstanding charge or liability
 20 relating to failure or inability to pay promissory notes or other evidence of
 21 indebtedness.

22 (4) For any person who has presently pending, at the federal, state, or local
 23 level, any proceeding concerning the denial or revocation of a necessary license or
 24 permit.

25 (5) If the proceeds of the loan are to be, or may be, used for consolidation of
 26 existing, previous financial obligations.

27 (6) To a person in excess of fifty percent of the total funds for loans or
 28 guarantees under this Section.

29 E. The authority shall not:

1 (1) Subordinate its interest, if such subordination shall result in any risk to
2 the authority's security position.

3 (2) Enter into any cooperative endeavor, unless the cooperative endeavor
4 involves the creation of a significant number of new jobs in relation to the amount
5 of participation by the authority.

6 F. When requested by the authority, the commissioner may contract with
7 consulting engineers, architects, attorneys, accountants, construction experts,
8 financial experts, and such other persons as may be necessary to carry out the
9 purpose of this Section. Contracts entered into under this Section shall be subject to
10 the provisions of R.S. 38:2310 et seq.

11 G. The authority shall transmit, at the end of each fiscal year, reports to the
12 House and Senate committees on agriculture, forestry, aquaculture and rural
13 development, the House Committee on Appropriations and the Senate Committee
14 on Finance. The reports shall set forth the cooperative endeavors approved and
15 rejected, the terms, conditions, and status of each loan guarantee entered into in the
16 fiscal year covered by the report, and the status of all loans and guarantees entered
17 into in previous fiscal years.

18 H.(1) The Agricultural Products Processing Development Fund is hereby
19 established. Funds received by the authority under this Section or otherwise made
20 available for the purpose of this Section shall be deposited immediately upon receipt
21 into the state treasury.

22 (2) After compliance with the requirements of Article VII, Section 9(B) of
23 the Constitution of Louisiana relative to the Bond Security and Redemption Fund,
24 and prior to monies being placed in the state general fund, an amount equal to that
25 deposited as required in Paragraph (1) of this Subsection, and monies appropriated
26 by the legislature shall be credited to a special fund hereby created in the state
27 treasury to be known as the "Agricultural Products Processing Development Fund".
28 The monies in this fund shall be used solely as provided in this Section and only in
29 the amounts appropriated by the legislature. All unexpended and unencumbered
30 monies in this fund at the end of the fiscal year shall remain in the fund. The monies

1 in this fund shall be invested by the state treasurer in the same manner as monies in
2 the state general fund, and interest earned on the investment of these monies shall be
3 credited to this fund again, following compliance with the requirements of Article
4 VII, Section 9(B) relative to the Bond Security and Redemption Fund.

5 (3) The monies in the Agricultural Products Processing Development Fund
6 shall be used by the authority solely to implement, administer, and make loans and
7 loan guarantees under this Section.

8 Section 2. R.S. 35:410 is hereby enacted to read as follows:

9 §410. Ex officio notaries public for the Louisiana Agricultural Finance Authority
10 or the Department of Agriculture and Forestry

11 A. Notwithstanding any provisions of the law relative to qualifications for
12 and limitations on the number of notaries public, the commissioner of agriculture and
13 forestry may appoint employees of the Louisiana Agricultural Finance Authority or
14 the Department of Agriculture and Forestry as ex officio notaries public for the
15 agriculture loan program.

16 B. Such ex officio notaries public may exercise the functions of a notary
17 public only to administer oaths, receive sworn statements, and execute affidavits,
18 acknowledgments, and other documents, and shall be limited to matters within the
19 official functions for the agriculture loan program.

20 C. All acts performed by each ex officio notary public authorized by this
21 Section shall be performed without charge or other compensation.

22 D. The commissioner of agriculture and forestry may suspend or terminate
23 any appointment made pursuant to this Section at any time. Separation from the
24 employ of the Louisiana Agricultural Finance Authority or the Department of
25 Agriculture and Forestry shall automatically terminate the powers of such an ex
26 officio notary public.

27 Section 3. This Act shall become effective upon the signature of the governor, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If

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: _____