

Regular Session, 2011

SENATE BILL NO. 233

BY SENATOR MICHOT

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

FUNDS/FUNDING. Provides for the establishment of the Louisiana Infrastructure Bank for the financing of eligible projects. (8/15/11)

1 AN ACT

2 To enact Chapter 17-G of Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950,

3 to be comprised of R.S. 39:1800.51 through 1800.59, relative to the Louisiana

4 Infrastructure Bank; to create the Louisiana Infrastructure Bank and provide for a

5 board of directors to govern the bank; to provide for the adoption of bylaws, rules,

6 and regulations by the board; to provide for the capitalization, investment, and

7 disposition of the funds of the bank; to authorize the infrastructure bank to incur debt

8 and issue bonds, notes, or other evidences of indebtedness and to guarantee the debt

9 of other entities; to provide for the manner by which evidences of indebtedness,

10 guarantees, and pledges shall be authorized, issued, executed, and delivered; to

11 authorize loans from the bank to governmental units; to exempt evidences of

12 indebtedness issued by the bank from taxation; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Chapter 17-G of Subtitle III of Title 39 of the Louisiana Revised Statutes
15 of 1950, comprised of R.S. 39:1800.51 through 1800.59, is hereby enacted to read as
16 follows:

17 **CHAPTER 17-G. LOUISIANA INFRASTRUCTURE BANK**

1 qualified project, construction, construction management, facilities, and other
2 costs necessary for the qualified project. As applied to any qualified transit
3 project, eligible project costs are limited to capital expenditures for transit
4 equipment and facilities.

5 (6) "Eligible project" means a highway, including bridges, or transit
6 project which provides public benefits by either enhancing mobility and safety,
7 promoting economic development, or increasing the quality of life and general
8 welfare of the public. "Eligible project" also includes mass transit utilizing the
9 latest technologies.

10 (7) "Federal accounts" means collectively, the separate account for
11 federal highway funds and federal transit funds.

12 (8) "Financing agreement" means any agreement entered into between
13 the bank and a qualified borrower pertaining to a loan or other financial
14 assistance. The agreement may contain, in addition to financial terms,
15 provisions relating to the regulation and supervision of a qualified project, or
16 other provisions as the board may determine. The term "financing agreement"
17 includes, without limitation, a loan agreement, trust indenture, security
18 agreement, reimbursement agreement, guarantee agreement, bond or note, or
19 similar instrument.

20 (9) "Governmental unit" means a political subdivision, public body, or
21 instrumentality of the state including combinations of two or more of these
22 entities acting jointly to construct, own, or operate a qualified project, and any
23 other state or local authority, board, commission, agency, or department
24 created by the Legislature of Louisiana or pursuant to the constitution and laws
25 of this state which may construct, own, or operate a qualified project.

26 (10) "Loan" means an obligation subject to repayment which is provided
27 by the bank to a qualified borrower for all or a part of the eligible cost of a
28 qualified project. A loan may be disbursed in anticipation of reimbursement
29 for or direct payment of eligible costs of a qualified project.

1 **(11) "Loan obligation" means a bond, note, or other evidence of an**
2 **obligation issued by a qualified borrower.**

3 **(12) "Other financial assistance" means, but is not limited to, grants,**
4 **contributions, credit enhancement, capital or debt reserves for bonds or debt**
5 **instrument financing, interest rate subsidies, provision of letters of credit and**
6 **credit instruments, provision of bond or other debt financing instrument**
7 **security, and other lawful forms of financing and methods of leveraging funds**
8 **that are approved by the board, and in the case of federal funds, as allowed by**
9 **federal law.**

10 **(13) "Private entity" means a private person or entity that has entered**
11 **into a contract with a government unit to design, finance, construct, and operate**
12 **a highway, bridge, tunnel, or approach that is within the jurisdiction of the**
13 **government unit that is responsible for complying with applicable federal**
14 **requirements.**

15 **(14) "Project revenues" means all rates, rents, fees, assessments, charges,**
16 **and other receipts derived or to be derived by a qualified borrower from a**
17 **qualified project or made available from a special source, and, as provided in**
18 **the applicable financing agreement, derived from any system of which the**
19 **qualified project is a part of, from any other revenue producing facility under**
20 **the ownership or control of the qualified borrower including, without limitation,**
21 **proceeds of grants, gifts, appropriations and loans, including the proceeds of**
22 **loans made by the bank, investment earnings, reserves for capital and current**
23 **expenses, proceeds of insurance or condemnation and proceeds from the sale or**
24 **other disposition of property and from any other special source as may be**
25 **provided by the qualified borrower.**

26 **(15) "Qualified borrower" means any government unit or private entity**
27 **which is authorized to plan, design, construct, operate, or own a qualified**
28 **project.**

29 **(16) "Qualified project" means an eligible project which has been**

1 selected by the bank to receive a loan or other financial assistance from the
2 bank to defray an eligible cost.

3 (17) "Revenues" means, when used with respect to the bank, any
4 receipts, fees, income, or other payments received or to be received by the bank
5 including, without limitation, receipts and other payments deposited in the bank
6 and investment earnings on its funds and accounts.

7 (18) "State accounts" means, collectively, the separate account for state
8 highway funds and state transit funds.

9 §1800.53. Board of directors; members; terms; vacancies; bylaws; rule-making

10 A. The Louisiana Infrastructure Bank shall be governed by a board of
11 directors composed of the following persons:

12 (1) One member appointed by the governor who shall serve as
13 chairman.

14 (2) The secretary of the Department of Transportation and Development
15 or his designee.

16 (3) The secretary of the Department of Economic Development or his
17 designee.

18 (4) The state treasurer or his designee.

19 (5) One member appointed by the President of the Senate.

20 (6) One member appointed by the Speaker of the House of
21 Representatives.

22 (7)(a) One member appointed by the Louisiana Bankers Association and
23 who shall possess no less than five years experience in commercial lending and
24 investment banking practices.

25 (b) The member selected pursuant to this Paragraph will serve a three
26 year term. A vacancy in this position shall be filled in the manner provided in
27 Subparagraph (a) of this Paragraph.

28 B. Except as provided in Paragraph (A)(7) of this Section, directors shall
29 serve terms coterminous with those of their appointing authority.

1 **C. The board shall adopt bylaws for its own internal organization and**
2 **government, including the election of officers and conduct of meetings, in**
3 **accordance with the Louisiana Open Meetings Law.**

4 **D. The board shall promulgate rules and regulations, in accordance with**
5 **the Administrative Procedure Act, for the appointment and responsibility of**
6 **committees; review, consideration, and approval or rejection of applications for**
7 **infrastructure bank loans; and the administration of the infrastructure bank**
8 **and the fulfillment of any and all responsibilities and duties and the exercise of**
9 **any rights and authority of the infrastructure bank as provided in this Chapter.**

10 **§1800.54. Powers of the bank**

11 **A. The bank shall have the powers necessary or convenient to carry out**
12 **its mission and the purposes described in this Chapter, including the following:**

13 **(1) To sue and be sued.**

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

15 **(3) To appoint an administrative director to administer the affairs of the**
16 **infrastructure bank, who shall be appointed and serve at the pleasure of the**
17 **board of directors of the infrastructure bank.**

18 **(4) To make loans to qualified borrowers to finance the eligible costs of**
19 **qualified projects and to acquire, hold, and sell loan obligations at prices and**
20 **in a manner as the board determines advisable.**

21 **(5) To provide qualified borrowers with other financial assistance**
22 **necessary to defray eligible costs of a qualified project.**

23 **(6) To enter into contracts, arrangements, and agreements with qualified**
24 **borrowers and other persons and execute and deliver all financing**
25 **arrangements and other instruments necessary or convenient in the exercise of**
26 **the power granted in this Chapter.**

27 **(7) To enter into agreements with a department, agency, or**
28 **instrumentality of the United States or the state or another state for the purpose**
29 **of planning and providing for the financing of qualified projects.**

1 **(8) To establish fiscal controls and accounting procedures to ensure**
2 **proper accounting and reporting by the bank, government units, and private**
3 **entities.**

4 **(9) To acquire by purchase, lease, donation, or other lawful means and**
5 **to sell, convey, pledge, lease, exchange, transfer, and dispose of all or any part**
6 **of its properties and assets of every kind and character or any interest in it to**
7 **further the public purpose of the bank.**

8 **(10) To procure insurance, guarantees, credit enhancement devices,**
9 **interest rate swap agreements, letters of credit, and other forms of collateral or**
10 **security or credit support from any public or private entity, including any**
11 **department, agency, or instrumentality of the United States or this state, for the**
12 **payment of any bonds issued by it, including the power to pay premiums or fees**
13 **on any insurance, guarantees, letters of credit, and other forms of collateral or**
14 **security or credit support.**

15 **(11) To collect or authorize the trustee under any trust indenture**
16 **securing any bonds to collect amounts due under any loan obligations owned by**
17 **it, including taking the action required to obtain payment of any sums in**
18 **default.**

19 **(12) To borrow money through the issuance of bonds and other forms**
20 **of indebtedness as provided in this Chapter.**

21 **(13) To expend funds to obtain accounting, management, legal, financial,**
22 **consulting, and other professional services necessary to the operations of the**
23 **bank.**

24 **(14) To expend funds credited to the bank as the board determines**
25 **necessary for the costs of administering the operations of the bank.**

26 **(15) To apply for, receive and accept from any source, aid, grants and**
27 **contributions of money, property, labor, or other things of value to be used to**
28 **carry out the purposes of this Chapter subject to the conditions upon which the**
29 **aid, grants, or contributions are made.**

1 **(16) To do all other things necessary or convenient to exercise the**
2 **powers granted or reasonably implied by this Chapter.**

3 **B. The bank is not authorized or empowered to be or constitute a bank**
4 **or trust company within the jurisdiction or under the control of the state or an**
5 **agency of it or the Comptroller of the Currency or the Treasury Department of**
6 **the United States, or a bank, banker, or dealer in securities within the meaning**
7 **of, or subject to the provisions of, any securities, security exchange, or securities**
8 **dealers' law of the United States or this state.**

9 **§1800.55. Sources of capitalization of the infrastructure bank**

10 **The following sources may be used to capitalize the bank in order for the**
11 **bank to carry out its purposes:**

12 **(1) An annual contribution through the comprehensive capital outlay act.**

13 **(2) Federal funds made available to the state for the bank.**

14 **(3) Nonrecurring revenues of the state.**

15 **(4) All monies paid or credited to the bank, by contract or otherwise,**
16 **payments of principal and interest on loans or other financial assistance made**
17 **from the bank, and interest earnings which may accrue from the investment or**
18 **reinvestment of the bank's monies.**

19 **(5) Proceeds from the issuance of bonds as provided in this Chapter.**

20 **(6) Investment by the state retirement systems.**

21 **(7) Investment by state and nationally chartered banks.**

22 **(8) Loans from the Department of Transportation and Development to**
23 **the bank to be repaid from revenues committed to the bank for the following**
24 **year.**

25 **(9) Contributions and donations from government units, private entities,**
26 **and any other source as may become available to the bank, including but not**
27 **limited to, appropriations by the Legislature of Louisiana.**

28 **§1800.56. Earnings on federal and state accounts; establishment of accounts**

29 **and subaccounts; commingling of funds, compliance with federal**

1 law

2 A. Earnings on balances in the federal accounts shall be credited and
3 invested according to federal law. Earnings on state accounts shall be credited
4 to the state highway account or the state transit account that generates the
5 earnings. The bank may establish accounts and subaccounts within the state
6 accounts and federal accounts as considered desirable to effectuate the purposes
7 of this Chapter, or to meet the requirements of any state or federal program.
8 All accounts shall be held in trust by the state treasurer.

9 B. The treasurer shall establish federal and state accounts and
10 subaccounts within the bank as necessary to meet any applicable federal law
11 requirements or as determined to be necessary or desirable in order to
12 implement the provisions of this Chapter.

13 C. The bank shall comply with all applicable federal laws and
14 regulations prohibiting the commingling of certain federal funds deposited in
15 the bank.

16 §1800.57. Loans and other financial assistance; approval by State Bond

17 Commission

18 A. No money in the bank may be expended or otherwise used, nor any
19 bonds or other evidences of indebtedness or other obligations issued or insured
20 for any specific infrastructure project or for any payment, expenditure,
21 commitment, pledge, loan, letter of credit, guarantee, subsidy, or other activity
22 related to infrastructure projects or the financing thereof without the prior
23 written approval of the State Bond Commission.

24 B. The board shall determine which projects are eligible projects and
25 then select from among the eligible projects those qualified to received from the
26 bank a loan or other financial assistance. Preference must be given to eligible
27 projects which have local financial support. In selecting qualified projects, the
28 board shall consider the projected feasibility of the project and the amount and
29 degree of risk to be assumed by the bank. The board may also consider the

1 following criteria in making its determination that an eligible project is a
2 qualified project:

3 (1) The local support of the project, expressed by resolutions by the
4 governing bodies in the areas in which the project will be located, and the
5 financial or in-kind contributions to the project.

6 (2) The maximum economic benefit, enhancement of mobility,
7 enhancement of public safety, acceleration of project completion, and
8 enhancement of transportation services.

9 (3) The ability of the applicant to repay a loan according to the terms
10 and conditions established pursuant to this Chapter, consideration of which
11 may include, the existence of current investment grade rating on existing debt
12 of the applicant secured by the same revenues to be pledged to secure
13 repayment under the loan repayment agreement.

14 (4) Greater weighting in recommending priorities for eligible projects to
15 areas of the state experiencing high unemployment.

16 (5) A recommendation from the secretary of the Department of
17 Economic Development that the project is essential to economic development
18 in the state.

19 §1800.58. Louisiana State Infrastructure Bank Fund; loans for facilities;
20 authorizing and issuing debt; security; interest rates; tax
21 exemption

22 A.(1) Notwithstanding any provision of law to the contrary, and in
23 addition to the authority to lend or borrow money or incur or guarantee
24 indebtedness provided by any other provisions of law, sums on deposit in and
25 credited to the bank may be loaned to government units for use in connection
26 with eligible infrastructure projects. However, this Section shall not be deemed
27 to be the exclusive authority under which government units may borrow money
28 or incur indebtedness.

29 (2) Parishes, municipalities, or political subdivisions may enter into

1 infrastructure bank loans in accordance with this Section, provided that no
2 loan shall be made nor debt evidencing a loan by any government unit shall be
3 issued or incurred without the prior approval of the State Bond Commission.

4 B. All bonds, notes, or other evidence of indebtedness of any government
5 unit issued to represent an infrastructure bank loan shall be authorized and
6 issued pursuant to a resolution of the governing authority of the entity, which
7 resolution shall prescribe the form and details thereof, including the terms,
8 security for, manner of execution, repayment schedule, and redemption features
9 thereof and the resolution may provide that an officer of the entity may execute
10 in connection with the obligation any related contract, including but not limited
11 to a credit enhancement device, indenture of trust, loan agreement, pledge
12 agreement, or other agreement or contract needed to accomplish the purposes
13 for which said evidence of indebtedness is given, in substantially the form
14 attached to the resolution, but which final executed credit enhancement device,
15 indenture of trust, loan agreement, pledge, or other contract or agreement may
16 contain the changes, additions and deletions as shall in the sole opinion of the
17 executing officer be appropriate under the circumstances. Any resolution shall
18 include a statement as to the maximum principal amount of any obligation, the
19 maximum interest rate to be incurred or borne by said obligation or guaranteed
20 by said obligation, the maximum redemption premium, if any, and the
21 maximum term in years for the obligation, guarantee, or pledge.

22 C. Notwithstanding any other provision of law to the contrary, a
23 government unit, upon entering into an infrastructure bank loan as provided
24 in this Chapter, may dedicate and pledge a portion of any revenues it has
25 available to it, including, but not limited to revenues from the general revenue
26 fund, sales taxes, sewer user fees, assessments, parcel fees, or ad valorem
27 property taxes of the governmental unit for repayment of the principal of,
28 interest on, and any premium, administrative fee or other fee or cost incurred,
29 in connection with the loan.

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

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

8 **F. Any resolution authorizing an infrastructure bank loan pursuant to**
9 **this Section shall be published once in the official journal of the government**
10 **unit incurring the loan. It shall not be necessary to publish exhibits to any**
11 **resolution, but the exhibits shall be made available for public inspection at the**
12 **offices of the governing authority of the government unit at reasonable times**
13 **and the fact must be stated in the publication within the official journal. For a**
14 **period of thirty days after the date of such publication, any interested person**
15 **may contest the legality of the resolution authorizing the evidence of**
16 **indebtedness or other infrastructure bank loan and any provision thereof made**
17 **for the security and payment thereof. After the thirty-day period, no one shall**
18 **have any cause or right of action to contest the regularity, formality, legality, or**
19 **effectiveness of said resolution and the provisions thereof or of the bonds, notes,**
20 **or other evidence of indebtedness or other infrastructure bank loan, or to**
21 **provide for the payment thereof, or the legality thereof, and all of the provisions**
22 **of the resolution and the evidence of indebtedness shall be conclusively**
23 **presumed, and no court shall have authority or jurisdiction to inquire into the**
24 **matter.**

25 **G. Bonds, notes, or other evidence of indebtedness issued or any**
26 **infrastructure bank loan entered into under the authority of this Section shall**
27 **be exempt from all taxation for state, parish, municipal, or other purposes. The**
28 **bonds, notes, or other evidence of indebtedness or infrastructure bank loans**
29 **may be used for deposit with any officer, board, municipality, or other political**

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

3 §1800.59. General power to issue and incur debt; to issue and undertake
4 guarantees of the debt of other entities

5 A. The infrastructure bank may issue, incur, and deliver debt evidenced
6 by bonds, notes, or other evidences of indebtedness, payable from or secured by
7 sums deposited in, credited to, or to be received in the infrastructure bank. The
8 infrastructure bank is further authorized to undertake and to issue and deliver
9 evidences of its guarantee of the debt of other entities and is authorized to enter
10 into and execute pledges of the sums deposited in, credited to, or to be received
11 by the infrastructure bank, including payments pursuant to letters of credit, to
12 secure the debt or performance of obligation entities for eligible infrastructure
13 projects. The bonds, notes, or other evidences of indebtedness, guarantees, and
14 pledges issued and delivered pursuant to this authority shall constitute special
15 and limited obligations of the infrastructure bank and shall not be secured by
16 the full faith and credit of the state or any source of revenue of the state other
17 than those sums on deposit in, credited to, or to be received by the
18 infrastructure bank, including payments to be made pursuant to letters of
19 credit.

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

24 C. Withdrawal from the fund to pay debt service on any bond, note, or
25 other evidence of indebtedness, obligation of guarantee of any debt, or pledge
26 to secure any debt, does not constitute and shall not be subject to annual
27 appropriation by the legislature as provided by Article III, Section 16 of the
28 Constitution of Louisiana.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Martha S. Hess.

DIGEST

Proposed law creates the Louisiana Infrastructure Bank Fund, to fund or assist in funding "eligible infrastructure projects" of public entities through a revolving loan fund, to be capitalized by federal grants, state funds when required or available, and other funds generated by the operation of the fund.

Proposed law provides for a board of directors to include a member selected by the governor, who shall serve as chairman, the secretary of DOTD, the secretary of DED, the state treasurer, a member appointed by the President of the Senate and one appointed by the Speaker of the House, and one representative of the banking industry for a three-year term appointed by the La. Banker's Association. Authorizes the board to establish, administer, maintain and operate the fund as the "infrastructure bank." Proposed law further authorizes the bank to issue and incur debt, to guarantee debt issued by other entities and to secure the debt of other entities in order to fund eligible infrastructure projects.

Proposed law requires the board of governors to adopt bylaws for its internal organization and government and to adopt rules and regulations to provide for approval or rejection of loan applications, administration of the bank, and related matters.

Proposed law authorizes the infrastructure bank as follows:

- (1) To sue and be sued.
- (2) To adopt and alter an official seal.
- (3) To appoint an executive director.
- (4) To make loans to qualified borrowers.
- (5) To provide qualified borrowers with other financial assistance.
- (6) To enter into contracts with qualified borrowers and others necessary or convenient in exercising the powers granted in proposed law.
- (7) To enter into contracts with agencies of the federal or state government.
- (8) To establish fiscal controls and accounting procedures.
- (9) To acquire and to sell properties and assets.
- (10) To procure insurance, guarantees, credit enhancement devices, interest rate swap agreements, letters of credit, and other forms of collateral or security or credit support.
- (11) To collect amounts due under loan obligations owned by the bank.
- (12) To borrow money through the issuance of bonds.
- (13) To expend funds to obtain accounting, management, legal, financial, consulting, and other professional services.
- (14) To expend to administer the operations of the bank.

- (15) To apply for and receive aid, grants and contributions of money, property, labor, or other things of value.
- (16) To do all things necessary or convenient to exercise the powers granted by proposed law.

Proposed law provides that bank is not a bank or trust company under the control of the state or the Comptroller of the Currency or the U.S. Treasury Department or under any securities, security exchange, or securities dealers' law.

Proposed law provides that the bank may be capitalized from the following sources:

- (1) An annual contribution through the comprehensive capital outlay act.
- (2) Federal funds made available to the state for the bank.
- (3) Nonrecurring revenues of the state.
- (4) All monies paid or credited to the bank, by contract or otherwise, payments of principal and interest on loans or other financial assistance made from the bank, and interest earnings which may accrue from the investment or reinvestment of the bank's monies.
- (5) Proceeds from the issuance of bonds as provided in this Chapter.
- (6) Investment by the state retirement systems.
- (7) Investment by state and nationally chartered banks.
- (8) Loans from the Dept. of Transportation and Development to the bank to be repaid from revenues committed to the bank for the following year.
- (9) Contributions and donations from government units, private entities, and any other source as may become available to the bank including, but not limited to, appropriations by the legislature.

Proposed law requires that loans made from the fund and any other expenditure by the bank on behalf of an infrastructure project receive State Bond Commission approval.

Proposed law provides that the board shall determine which projects are eligible and then select which of the eligible projects will receive financial assistance. Proposed law provides factors in determining which projects should be selected.

Proposed law provides for the issuance of debt and authorizes a political subdivision to dedicate a portion of its revenues for repayment of any portion of the loan. Proposed law further provides for the sale, advertisement, and contesting of the bonds, notes, or other evidence of indebtedness of a political subdivision.

Proposed law exempts the bonds, notes, and other evidence of indebtedness from taxation and authorizes their investment for banks, savings banks, U.S. Treasury securities and other investments.

Proposed law provides that the debt will not be considered net state tax supported debt for purposes of the debt limitation.

Proposed law provides that no appropriation is needed in order to pay debt service.

Effective August 15, 2011.

(Adds R.S. 39:1800.51-1800.59)