

SENATE BILL NO. 73

BY SENATOR WOMACK

1 AN ACT

2 To amend and reenact R.S. 40:5.9(C)(1) and (2) and R.S. 40:5.9.1(F) and to enact R.S.
3 30:2075.4, R.S. 39:1351(B)(1)(c), and R.S. 40:5.9.1(E)(1)(d) and (3), relative to
4 community sewerage and water systems; to create and provide for the Community
5 Sewerage System Infrastructure Sustainability Act; to provide for public purpose;
6 to provide for definitions; to provide for compliance status verification and fiscal
7 status verification requirements for certain community sewerage systems; to provide
8 for the duties of the Department of Environmental Quality, the Louisiana Department
9 of Health, the state health officer, and the legislative auditor; to provide for
10 prohibited uses of sewerage system funds; to provide for penalties; to provide for
11 civil actions; to provide for rulemaking; to provide for an effective date; and to
12 provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 30:2075.4 is hereby enacted to read as follows:

15 **§2075.4. Community sewerage system infrastructure accountability**

16 **A. This Section shall be known and may be cited as "The Community**
17 **Sewerage System Infrastructure Sustainability Act" which has been enacted by**
18 **the legislature to provide:**

19 **(1) For the development and implementation of a community sewerage**
20 **system accountability process which supports sewerage system infrastructure**

1 sustainability for the residents of Louisiana.

2 (2) Assurance to the residents that the quality of sewage treatment is
3 monitored and maintained at levels essential for health, safety, welfare, and
4 long-term sustainability.

5 (3) Accountability of local government authorities and other entities
6 operating community sewerage systems.

7 (4) Consequences for community sewerage systems that do not achieve
8 state and federal standards.

9 (5) Transparent regulatory compliance and fiscal accountability
10 information presented to the State Bond Commission, the division of
11 administration for the capital outlay program, and rate setting authorities for
12 consideration in approving additional debt, capital outlay, or a rate increase.

13 B.(1) "Community sewerage system" means any treatment works,
14 whether publicly or privately owned, which serves multiple connections and
15 consists of a collection or pumping and transport system and a treatment
16 facility. For the purposes of this Section, "community sewerage system"
17 includes any local governing authority which operates a community sewerage
18 system.

19 (2) "Community water system" has the same meaning as provided for
20 in R.S. 40:5.8.

21 C.(1)(a) Applications to the State Bond Commission. Except as provided
22 in Subparagraph (b) of this Paragraph, any community sewerage system that
23 seeks approval from the State Bond Commission to incur any additional debt
24 for anything not directly related to the improvement and sustainability of the
25 community sewerage system or a related community water system shall submit
26 with the application to the commission a compliance status verification from the
27 Department of Environmental Quality, a compliance status verification from
28 the Louisiana Department of Health, and a fiscal status verification from the
29 legislative auditor in accordance with Subsection F of this Section.

30 (b) The provisions of this Subsection shall not apply to any application

1 to the State Bond Commission seeking approval for financing involving:

2 (i) Cash flow loans.

3 (ii) Dedicated tax or bond revenue streams.

4 (iii) Emergency financing as determined by the State Bond Commission.

5 (iv) Refinancing of existing debt.

6 (2) After consideration of the information provided pursuant to
7 Paragraph (1) of this Subsection, the State Bond Commission may prohibit the
8 community sewerage system from incurring any additional debt for anything
9 not directly related to the improvement and sustainability of the community
10 sewerage system or a related community water system.

11 (3) Notwithstanding any provision of law to the contrary, the community
12 sewerage system shall not be precluded from obtaining funding for the
13 improvement and sustainability of the community sewerage system or a related
14 community water system based upon the information provided pursuant to
15 Paragraph (1) of this Subsection or R.S. 40:5.9.1.

16 D.(1) Applications to the capital outlay program. Any community
17 sewerage system that receives notification of a capital outlay appropriation
18 from the division of administration, office of facility planning and control shall
19 submit to the division of administration a compliance status verification from
20 the Department of Environmental Quality, a compliance status verification
21 from the Louisiana Department of Health, and a fiscal status verification from
22 the legislative auditor in accordance with Subsection F of this Section.

23 (2) After consideration of the information provided pursuant to
24 Paragraph (1) of this Subsection, the division of administration may prohibit
25 the community sewerage system from participating in the capital outlay
26 program for anything not directly related to the improvement and sustainability
27 of the community sewerage system or a related community water system.

28 (3) The provisions of this Subsection notwithstanding, the community
29 sewerage system shall not be precluded from obtaining funding for the
30 improvement and sustainability of the community sewerage system or a related

1 community water system based upon the information provided pursuant to
2 Paragraph (1) of this Subsection.

3 E.(1) Applications to a rate setting authority. Any community sewerage
4 system that seeks approval for a rate adjustment from the appropriate rate
5 setting authority not directly related to the improvement and sustainability of
6 the community sewerage system or a related community water system shall
7 submit with the application to the rate setting authority a compliance status
8 verification from the Department of Environmental Quality, a compliance
9 status verification from the Louisiana Department of Health, and a fiscal status
10 verification from the legislative auditor in accordance with Subsection F of this
11 Section.

12 (2) After consideration of the information provided pursuant to
13 Paragraph (1) of this Subsection, the rate setting authority may prohibit the
14 community sewerage system from adjusting rates for anything not directly
15 related to the improvement and sustainability of the community sewerage
16 system or a related community water system.

17 (3) The provisions of this Subsection notwithstanding, the community
18 sewerage system shall not be precluded from receiving approval for a rate
19 adjustment for the improvement and sustainability of the community sewerage
20 system or a related community water system based upon the information
21 provided pursuant to Paragraph (1) of this Subsection.

22 F.(1)(a) Not later than twenty calendar days after receiving a request
23 from a community sewerage system, the Department of Environmental Quality
24 shall review the department's records and provide a compliance status
25 verification based upon criteria determined by the department, including but
26 not limited to the following:

27 (i) Federal water quality significant violation history.

28 (ii) State enforcement action history.

29 (b) The compliance status verification provided by the Department of
30 Environmental Quality shall clearly state whether the community sewerage

1 system is "NOT IN COMPLIANCE – Found on a federal significant
2 noncompliance list or is under state enforcement action" or "IN
3 COMPLIANCE – Not found on a federal significant noncompliance list or is
4 under state enforcement action" as appropriate.

5 (2)(a) Not later than twenty calendar days after receiving a request from
6 a community sewerage system, the Louisiana Department of Health shall review
7 the department's records and provide a compliance status verification based
8 upon criteria determined by the department, including but not limited to the
9 following:

10 (i) State violation history.

11 (ii) Operation and maintenance performance history.

12 (iii) Infrastructure violations.

13 (b) The compliance status verification provided by the Louisiana
14 Department of Health shall clearly state the community sewerage system's
15 compliance status using the phrase "IN COMPLIANCE" or "NOT IN
16 COMPLIANCE" as appropriate.

17 (3) Not later than twenty calendar days after receiving a request from a
18 community sewerage system, the legislative auditor shall review its records and
19 provide a fiscal status verification regarding the community sewerage system's
20 financial sustainability based upon criteria determined by the auditor. The
21 fiscal status verification shall clearly state in plain language the community
22 sewerage system's level of financial sustainability.

23 (4)(a) A compliance status verification provided by the Department of
24 Environmental Quality or the Louisiana Department of Health pursuant to this
25 Section shall be either of the following:

26 (i) On an official certification form supplied by the department.

27 (ii) On the department's official letterhead and signed by a member of
28 the department's staff who is qualified to verify the compliance status of the
29 community sewerage system.

30 (b) A fiscal status verification provided pursuant to this Section shall be

1 on the legislative auditor's official letterhead and signed by a member of the
2 auditor's staff who is qualified to verify the fiscal status of the community
3 sewerage system.

4 G.(1) Notwithstanding any provision of law to the contrary, a local
5 governing authority that operates a community sewerage system shall not
6 expend any money raised through payments made by customers for sewerage
7 services or from any other sewerage system revenue for any item, debt payment,
8 or public purpose other than the improvement and sustainability of the
9 community sewerage system. For purposes of this Subsection "sustainability"
10 means the ability to be maintained at the required rate or level necessary to
11 comply with applicable state and federal regulations. Sustainability may include
12 but not be limited to the purchase and maintenance of equipment and
13 employment of personnel whose primary functions are related to ensuring
14 compliance with state and federal laws, rules, and regulations governing the
15 effective operation of a sewer system.

16 (2) The provisions of this Subsection shall not be construed to prohibit
17 the payment of bonded indebtedness secured by the sewerage system's revenue
18 prior to August 1, 2024.

19 H.(1) Any community sewerage system that is not in compliance with the
20 Department of Environmental Quality or the Louisiana Department of Health,
21 is not financially sustainable based on the standards of the legislative auditor,
22 or is in violation of the expenditure prohibitions of Subsection G of this Section
23 shall, in addition to the provisions of Subsection C of this Section, be subject to
24 either or both of the following, as appropriate:

25 (a) An oversight and accountability hearing before the Legislative Audit
26 Advisory Council.

27 (b) A hearing before the Fiscal Review Committee for potential initiation
28 of an action for a court-appointed fiscal administrator filed in accordance with
29 R.S. 39:1351 et seq.

30 (2) Any community sewerage system that is not in compliance with the

1 Department of Environmental Quality or the Louisiana Department of Health,
2 is not financially sustainable based on the standards of the legislative auditor,
3 or is in violation of the expenditure prohibitions of Subsection G of this Section
4 may, in addition to the provisions of Subsection C of this Section, be subject to
5 either or both of the following, as appropriate:

6 (a) A civil action for court-appointed receivership filed in accordance
7 with R.S. 30:2075.3 or R.S. 33:42.

8 (b) A criminal action for malfeasance in office pursuant to R.S. 14:134.

9 (3) If the condition or operations of any community sewerage system that
10 is not in compliance with the Department of Environmental Quality or the
11 Louisiana Department of Health, is not financially sustainable based on the
12 standards of the legislative auditor, or is in violation of the expenditure
13 prohibitions of Subsection G of this Section, necessitates the expenditure of state
14 funds to address or mitigate an emergency related to that community sewerage
15 system, the circumstances shall be grounds for a civil action for court appointed
16 receivership in accordance with R.S. 30:2075.3 or R.S. 33:42, or to the
17 appointment of a fiscal administrator in accordance with R.S. 39:1351 et seq.

18 Section 2. R.S. 39:1351(B)(1)(c) is hereby enacted to read as follows:

19 §1351. Appointment of a fiscal administrator

20 * * *

21 B.(1) The trial court, in the absence of a joint motion and consent judgment,
22 shall appoint a fiscal administrator in the following instances:

23 * * *

24 (c) If the condition or operations of any community water system or
25 community sewerage system necessitates the expenditure of state funds to
26 address or mitigate an emergency related to that community system as provided
27 for in R.S. 30:2075.4 or R.S. 40:5.9.1.

28 * * *

29 Section 3. R.S. 40:5.9(C)(1) and (2) and 5.9.1(F) are hereby amended and reenacted
30 and R.S. 40:5.9.1(E)(1)(d) and (3) are hereby enacted to read as follows:

1 §5.9. Enforcement of drinking water regulations; administrative compliance orders;
2 civil actions; receiverships

3 * * *

4 C.(1) ~~In any civil action brought under this Chapter relative to public water~~
5 ~~systems, the court may, on its own motion or upon application of the~~ The state health
6 officer, ~~appoint~~ **may apply to a court of competent jurisdiction for the**
7 **appointment of** a receiver **of a public water system** to collect the system's assets
8 and carry on the system's business ~~of the defendant public water system and to~~
9 ~~otherwise assist the court in adjudicating the issues in the case before the court.~~
10 Application by the state health officer shall not be subject to any bond requirement.

11 (2) ~~The~~ **In addition to any other criteria for receivership set forth in this**
12 **Part, the** court may place the public water system in receivership upon finding one
13 of the following:

14 (a) The system has been abandoned by the operator, or service to the system's
15 customers has ceased, and no provisions have been made for the continued operation
16 of the system by a qualified operator, or for providing the water system's users with
17 potable water in sufficient quantities to serve the users of the systems.

18 (b) The operator of the system has failed or refused to comply with
19 administrative orders issued pursuant to Subsection A of this Section.

20 **(c) Such other circumstances indicating that receivership is necessary to**
21 **ensure uninterrupted safe water service to, or the protection of the health of, the**
22 **system's users.**

23 ~~(e)~~**(d)** Such circumstances as may be identified in rules promulgated by the
24 state health officer acting through the Louisiana Department of Health, office of
25 public health, under which a receivership may be needed.

26 * * *

27 §5.9.1. Community water system accountability process; creation of letter grade
28 schedule; penalties for failing systems

29 * * *

30 E.(1) Any community water system that receives a letter grade of "D" or "F"

shall be considered operationally unacceptable and may be subject to the following:

* * *

(d) If the condition or operations of any community water system that receives a letter grade of "D" or "F" necessitates the expenditure of state funds to address or mitigate an emergency related to that community water system, such circumstances shall be grounds for a civil action for court appointed receivership in accordance with R.S. 40:5.9 or to the appointment of a fiscal administrator in accordance with R.S. 39:1351 et seq.

* * *

(3) A community water system that receives a letter grade of "D" or "F" shall constitute prima facie evidence that a community water system is financially at risk and not able to maintain financial stability, and shall serve as grounds for the Fiscal Review Committee to determine that a political subdivision is reasonably certain to not maintain financial stability.

F. Notwithstanding any provision of law to the contrary, no local governing authority that operates a community water system that receives a grade of "D" or "F" shall expend any money raised through payments made by customers for access to water or from any other water system revenue for any item, debt payment, or public purpose other than the improvement and sustainability of the community water system. A violation of this Subsection shall be grounds for ~~a court to appoint a receiver or fiscal administrator~~ a civil action for court appointed receivership in accordance with R.S. 40:5.9, the appointment of a fiscal administrator in accordance with R.S. 39:1351 et seq, or for a court to order the mandatory safe water purchase from another system determined to be available by the department. The provisions of this Subsection shall not be construed to prohibit the payment of bonded indebtedness secured by the water system's revenue prior to August 1, 2021.

* * *

Section 4. The Department of Environmental Quality and the Louisiana Department of Health shall individually promulgate, in accordance with the Administrative Procedure Act, any rules necessary to implement the provisions of this Act relevant to that department.

1 Section 5. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without signature
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
5 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____