

2018 Second Extraordinary Session

SENATE BILL NO. 5

BY SENATORS LAFLEUR AND WHITE

BONDS. Authorizes the securitization of the economic damage portion of the Deepwater Horizon income stream. (Item #30) (gov sig)

AN ACT

To amend and reenact R.S. 39:91(B) and (E) and to enact Subpart F-2 of Part II-A of Chapter 1 of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:99.51 through 99.69, relative to the issuance of bonds to securitize the state's allocation of the economic damage settlement of the Deepwater Horizon oil spill economic damage litigation; to create the Louisiana New Roads and Infrastructure Corporation; to provide for the qualifications of the members of the corporation; to provide for the authority of the corporation to issue bonds; to provide for the pledge and transfer of certain assets of the state to the corporation; to provide for the deposit of the proceeds of the bonds into the Deepwater Horizon Economic Damages Collection Fund; to provide for the use of the monies in the Deepwater Horizon Economic Damages Collection Fund; to authorize the financing, purchase, ownership, and management of payments from the Deepwater Horizon economic damage settlement; to provide for the security for the payment of the bonds; to provide for bond validation actions; to provide for tax exemptions; to provide for ancillary contracts and derivative instruments; to provide for an effective date; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 39:91(B) and (E) are hereby amended and reenacted and Subpart F-2  
3 of Part II-A of Chapter 1 of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950,  
4 comprised of R.S. 39:99.51 through 99.69, is hereby enacted to read as follows:

5 §91. Deepwater Horizon Economic Damages Collection Fund

6 A.

7 \* \* \*

8 **B.(1) All After making the deposit to the Fiscal Year 2015-2016 Deficit**  
9 **Elimination Fund as provided in Subsection A of this Section, the treasurer**  
10 **shall deposit the** economic damages proceeds from the DWH litigation ~~in excess of~~  
11 ~~the first two hundred million dollars deposited in the Fiscal Year 2015-2016 Deficit~~  
12 ~~Elimination Fund shall be deposited by the treasurer as follows:~~

13 ~~(1)(a) Forty-five percent of each such receipt of economic damages proceeds~~  
14 ~~to the Budget Stabilization Fund until that fund reaches the amount statutorily~~  
15 ~~mandated by R.S. 39:94. The amount of proceeds received by the state as a result~~  
16 **of the pledge and transfer of all or a portion of the economic damage proceeds**  
17 **as provided in Subpart F-2 of this Part, including any residual interests, in the**  
18 **Construction Subfund within the Transportation Trust Fund.**

19 **(b) The amount of proceeds received by the state from the DWH**  
20 **litigation and which are not pledged and transferred as provided in Subpart F-2**  
21 **of this Part, in the Construction Subfund within the Transportation Trust Fund.**

22 ~~(2) Forty-five percent of each such receipt of economic damages proceeds to~~  
23 ~~the Medicaid Trust Fund for the Elderly provided for in R.S. 46:2691 until an~~  
24 ~~amount not to exceed seven hundred million dollars has been deposited into such~~  
25 ~~fund. The proceeds deposited into the Construction Subfund shall be~~  
26 **appropriated solely for the direct costs associated with actual project delivery,**  
27 **construction, and maintenance of transportation and capital transit**  
28 **infrastructure projects of the state, including one hundred million dollars for**  
29 **the Transportation Infrastructure Model for Economic Development (TIMED)**

1 projects and shall not be used by the Department of Transportation and  
 2 Development for the payment of employee wages and related benefits or  
 3 employee retirement benefits. Transportation and capital transit infrastructure  
 4 projects shall not include any project which is to be funded through Grant  
 5 Anticipation Revenue Vehicle (GARVEE) bonds.

6 ~~(3) Ten percent of each such receipt of economic damages proceeds to the~~  
 7 ~~Health Trust Fund provided for in R.S. 46:2731 until an amount not to exceed thirty~~  
 8 ~~million dollars has been deposited into such fund.~~

9 \* \* \*

10 E. This Subpart shall be null, void, and of no effect at the later of ~~the~~:

11 (1) The date of the conclusion of the DWH litigation ~~or~~.

12 (2) July 1, 2024.

13 (3) Two years after all outstanding bonds or other indebtedness,  
 14 including refunding bonds, issued pursuant to Subpart F-2 of this Part and  
 15 payable from the pledge and transfer of all or a portion of the state's recovery  
 16 of economic damages as a result of the settlement of the Deepwater Horizon  
 17 economic damage litigation, are retired and the corporation no longer has any  
 18 bonds or indebtedness outstanding.

19 \* \* \*

20 SUBPART F-2. LOUISIANA NEW ROADS

21 AND INFRASTRUCTURE CORPORATION

22 §99.51. Title

23 This Subpart shall be known and may be cited as the "Louisiana New  
 24 Roads and Infrastructure Corporation Act".

25 §99.52. Definitions

26 As used in this Subpart:

27 (1) "Agreement" means the agreement or agreements, as authorized  
 28 under this Subpart, between the state of Louisiana, as the pledgor and  
 29 transferor, and the corporation of the DWH economic damage revenue assets.

1        The pledge and transfer by the state of the DWH economic damage revenue  
2        assets pursuant to any agreement shall be a true pledge and absolute transfer  
3        and not a borrowing.

4                (2) "Ancillary contracts" means the contracts described in R.S. 39:99.65.

5                (3) "Board" means the board of the corporation.

6                (4) "Bonds" means the DWH economic damage revenue bonds and  
7        refunding bonds, notes, and other evidences of indebtedness issued by the  
8        corporation pursuant to this Subpart.

9                (5) "Closing date" means the date of delivery of the first issue of DWH  
10        economic damage revenue bonds.

11                (6) "Corporation" means the Louisiana New Roads and Infrastructure  
12        Corporation created pursuant to this Subpart.

13                (7) "Derivative instrument" means a contract whose value is based on  
14        the performance of an underlying financial asset, index, or other investment.  
15        Derivative instruments include but are not limited to interest rate swaps and  
16        hedge instruments.

17                (8) "DWH" means the April 20, 2010, Deepwater Horizon oil spill in the  
18        Gulf of Mexico which caused economic damage to the state.

19                (9) "Economic damage revenue" means the state allocation of the  
20        revenues received in settlement of the economic damage claims of the state  
21        against BP Exploration and Production, Inc., and any of its corporate affiliates,  
22        arising out of the Deepwater Horizon oil spill in the Gulf of Mexico. Economic  
23        damage revenues do not include amounts received by the state from or through  
24        Natural Resource Damage Assessment (NRDA) claims, the Resources and  
25        Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the  
26        Gulf State Act of 2012 (RESTORE Act), or claims otherwise restricted by  
27        federal law or court order.

28                (10) "Economic damage revenue assets" means all right, title, and  
29        interest in and to the portion of the state allocation that may be pledged and

1 transferred to the corporation from time to time.

2 (11) "Economic damage revenue bonds" means the bonds, notes, and  
3 other obligations issued by the corporation, exclusive of bonds that the  
4 corporation may issue to refund bonds, the net proceeds, after financing costs,  
5 of the first issue of which shall be used by the corporation in consideration of  
6 the transfer of the economic damage revenue payments by the state of Louisiana  
7 to the corporation.

8 (12) "Economic damage revenue payments" means the monies paid or  
9 payable to the corporation pursuant to the agreement in effect or as may be  
10 amended.

11 (13) "Financing costs" means all capitalized interest, costs, fees, reserves,  
12 and credit and liquidity enhancements as the corporation determines to be  
13 desirable in issuing, securing, and marketing the bonds.

14 (14) "Holders" and similar terms refer to the owners of the bonds.  
15 References to covenants and contracts with holders, and to their rights and  
16 remedies shall, if so provided by the corporation, extend to the parties to  
17 derivative instruments and ancillary contracts.

18 (15) "Income" means the Deepwater Horizon economic damage revenue  
19 payments as set forth in the consent decree and all fees, charges, payments, and  
20 other income and receipts paid or payable to the corporation or a trustee or  
21 other party for the account of the corporation or the holders.

22 (16) "Indenture trustee" means the trust company or bank at the time  
23 servicing as trustee under the trust indenture referred to in R.S. 39:99.64.

24 (17) "Outstanding", when used with respect to bonds, shall exclude  
25 bonds that shall have been paid in full at maturity, or shall have otherwise been  
26 refunded, redeemed, defeased, or discharged, or that may be deemed not  
27 outstanding pursuant to agreements with the holders.

28 (18) "Residual interests" means the income of the corporation, and bond  
29 proceeds, if any, not previously paid to the state, that are in excess of the

1 corporation's requirements to pay its operating expenses, debt service, sinking  
2 fund, and other redemption requirements, reserve fund requirements, and any  
3 other contractual obligations to the holders or that may be incurred in  
4 connection with the issuance or repayment of the bonds, the amounts of which  
5 shall be determined by the board on or before January first and July first of  
6 each year for the next twelve months, and which, within ten days after each  
7 determination, shall be transferred and paid by the corporation to the state  
8 treasurer for deposit in and credit to the Deepwater Horizon Economic  
9 Damages Collection Fund pursuant to the agreement between the state and the  
10 corporation.

11 (19) "State allocation" means all economic damages to be received by the  
12 state of Louisiana beginning in 2009 and ending in 2033 as a result of the  
13 Deepwater Horizon economic damage consent decree, including all of the state  
14 of Louisiana's allocable share as determined under the decree, without giving  
15 effect to any pledge or transfer of any portion of the allocable share.

16 (20) "Consent decree" means the settlement agreement and related  
17 documents between the state of Louisiana, other states bordering on the Gulf  
18 of Mexico, local governments, and BP Exploration & Production, Inc. settling  
19 the claims of economic damage, which consent decree was approved by the  
20 United States District Court for the Eastern District of Louisiana on April 4,  
21 2016.

22 §99.53. Corporation created; domicile; fiscal year

23 The Louisiana New Roads and Infrastructure Corporation is hereby  
24 created as a special purpose, public corporate entity, and instrumentality  
25 independent of the state. The corporation shall be a public corporate body,  
26 intended, created, and empowered to effectuate only the purposes set forth in  
27 this Subpart, and shall have a legal existence, separate and distinct from the  
28 state of Louisiana. The domicile of the corporation shall be East Baton Rouge  
29 Parish. The corporation shall operate on a fiscal year basis commencing on July

1 first and ending on June thirtieth of each year.

2 §99.54. Governing board; membership; terms; compensation and expenses;  
3 chairman and vice chairman; quorum; employees; agents;  
4 limitation of liability

5 A. The Louisiana New Roads and Infrastructure Corporation shall be  
6 governed by a board which shall exercise all powers, rights, and duties  
7 conferred by this Subpart or other provisions of law upon the corporation. The  
8 board shall consist of the governor, the state treasurer, the attorney general, the  
9 president of the Senate, the speaker of the House of Representatives, or their  
10 designees, and seven members appointed by the governor with one member  
11 appointed from each congressional district and the remaining member or  
12 members appointed from the state at large. The members of the board who are  
13 appointed by the governor shall represent the state's diverse population as near  
14 as practicable, and shall have a background and significant experience in  
15 financial management and investments. The members of the board appointed  
16 by the governor shall be subject to Senate confirmation and shall serve at the  
17 pleasure of the governor for terms of four years each, or until their successors  
18 shall have been appointed and qualified, as designated by the governor. Any  
19 appointment to fill a vacancy on the board shall be made for the unexpired term  
20 of the member whose death, resignation, or removal created such vacancy.  
21 Members on the board may be appointed to an additional term.

22 B. The members of the board shall not receive compensation by reason  
23 of their membership on the board or attendance at meetings of the board. The  
24 appointed members of the board shall receive a per diem allowance to be  
25 established by the board in an amount not to exceed the amount of per diem  
26 authorized for members of the legislature for attendance at meetings of the  
27 corporation or its committees or for other official duties of the corporation or  
28 its board, and all members may be reimbursed for travel expenses incurred in  
29 the performance of their official duties. The travel expense reimbursement shall

1 be fixed by the corporation in an amount not to exceed those authorized under  
2 state travel regulations.

3 C. The members of the board shall annually elect a chairperson and vice  
4 chairperson, and, except for secretary-treasurer of the board, any other officers  
5 as the members determine necessary. The state treasurer shall serve as  
6 secretary-treasurer of the corporation and board. The chairperson shall sign  
7 and execute all vouchers and other orders for the disbursement of funds  
8 belonging to the corporation upon authorization by the board. The vice  
9 chairperson shall exercise the powers of the chairperson when directed by the  
10 chairperson or when the chairperson is absent. Seven members of the board  
11 shall constitute a quorum for the transaction of all business of the corporation.  
12 Meetings of the board shall be held at a time and place as determined by and at  
13 the call of the chairperson or when requested by a majority of the members,  
14 provided that the board shall meet no less than once annually.

15 D. The board may delegate its powers to its chairperson, the  
16 secretary-treasurer, officers of the corporation, or committees of the board,  
17 with those standards for the exercise of delegated powers as the board may  
18 specify, and may, to the extent not inconsistent with the rights of the holders,  
19 revoke any such delegation.

20 E. Members of the board and persons acting on the corporation's behalf,  
21 while acting within the scope of their duties or employment, shall not be subject  
22 to any personal liability resulting from carrying out the powers and duties  
23 conferred on them pursuant to this Subpart, and shall have the indemnification  
24 rights provided in R.S. 13:5108.1 with respect to their actions.

25 §99.55. Purposes and powers

26 A. The corporation is authorized to carry out the financing, receiving,  
27 depositing, owning, and managing of the economic damage revenues and the  
28 economic damage revenue assets, the corporation being vested, subject to R.S.  
29 39:99.59 and the other provisions of this Subpart, with all the powers of a

1 private corporation to effectuate the purposes of the corporation including,  
2 without limitation, the power to sue and be sued, to make contracts, to adopt  
3 and use a corporate seal and to alter same, and is further particularly  
4 authorized and empowered to:

5 (1) Receive and deposit the economic damage revenue assets and receive,  
6 or authorize the indenture trustee to receive and deposit, as the same shall  
7 become due, the economic damage revenue payments.

8 (2) Adopt, or alter, or repeal any bylaws, rules, or regulations as the  
9 board may consider necessary.

10 (3) Issue bonds as authorized by this Subpart and refund any bonds.

11 (4) Commence and prosecute any action or other proceeding to protect  
12 or enforce any right conferred upon it by any law, contract, or other agreement.

13 (5) Pay its operating expenses.

14 (6) Determine the amounts of the residual interests, and pay and transfer  
15 any residual interests to the state treasurer, semiannually, in accordance with  
16 the provisions of this Subpart.

17 (7) Enter into agreements with such parties as the corporation may  
18 consider necessary to effectuate the prompt and orderly transfer of the state's  
19 allocation and for other purposes that the corporation shall consider advisable.

20 (8) Do any and all other acts and things necessary, convenient,  
21 appropriate or incidental in carrying out the provisions of this Subpart.

22 B. The corporation is authorized to incur obligations to pay its operating  
23 expenses in any form as may be authorized by the corporation. This Subpart  
24 shall govern the issuance of obligations insofar as they may be applicable.

25 C. The corporation shall prepare an operating budget annually which  
26 shall be subject to approval by the State Bond Commission and the Joint  
27 Legislative Committee on the Budget.

28 D. The corporation shall prepare and submit an annual report to the  
29 governor, the State Bond Commission, the Senate committees on finance and

1 transportation, and the House of Representatives committees on appropriations  
2 and transportation on or before March first of each year. The annual report  
3 shall contain, among other appropriate matters, the annual operating and  
4 financial statements of the corporation for the fiscal year ending the preceding  
5 June thirtieth.

6 E. Any funds held by the corporation or by the indenture trustee may be  
7 invested and reinvested in investments and securities that are legal investments  
8 under the laws of the state of Louisiana for funds of the state, funds of the  
9 political subdivisions of the state, or tax exempt bonds as defined in R.S.  
10 49:342(C).

11 §99.56. Corporate existence; dissolution

12 The corporation shall have perpetual existence. However, the board shall  
13 dissolve and terminate the existence of the corporation no later than two years  
14 after the date of final payment of all outstanding bonds and the payment or  
15 satisfaction of all other outstanding obligations and liabilities of the corporation,  
16 except to the extent necessary to remain in existence, and only for the additional  
17 time, as shall be necessary to fulfill any outstanding covenants or agreements  
18 with holders or other parties made in accordance with the provisions of this  
19 Subpart. Upon dissolution of the corporation, title to all assets and properties  
20 of the corporation shall vest in and become the property of the state of  
21 Louisiana and shall be deposited in and credited to the Deepwater Horizon  
22 Economic Damages Collection Fund. The corporation shall execute all  
23 necessary conveyances, assignments, or other documents to establish and  
24 evidence this transfer and ownership, including all conveyances or assignments  
25 of all right, title, and interest to the economic damage revenues.

26 §99.57. Staff; counsel; assistance by state officers, departments, and agencies;  
27 auditors; consultants

28 A. The staff of the Department of Treasury, including the staff of the  
29 State Bond Commission, may, pursuant to a cooperative endeavor agreement,

1 serve as staff to the corporation under the supervision of the state treasurer.

2 B. The attorney general shall, pursuant to a cooperative endeavor  
3 agreement, serve as counsel to the corporation, and subject to approval of the  
4 State Bond Commission and the attorney general, the corporation may employ  
5 or retain any other attorneys as it may consider necessary and fix their  
6 compensation.

7 C. State officers, departments, and agencies may render support and  
8 services to the corporation within their respective functions, as requested by the  
9 corporation.

10 D. The books and accounts of the corporation shall be subject to audit  
11 not less than annually by the legislative auditor in accordance with R.S. 24:513.  
12 The corporation shall submit to the governor, the attorney general, and the  
13 Legislative Audit Advisory Council, within thirty days of its receipt, a copy of  
14 every final external audit of the books and accounts of the corporation, other  
15 than copies of the reports of examinations of the legislative auditor.

16 E. The corporation may employ or retain professionals, consultants,  
17 agents, financial advisers, and accountants as it may deem necessary to carry  
18 out its duties under this Subpart and, notwithstanding the provisions of any law  
19 to the contrary, it may determine their duties and compensation subject only to  
20 the approval of the State Bond Commission.

21 F. The corporation shall be subject to the Code of Governmental Ethics  
22 (R.S. 42:1101 et seq.), the Open Meetings Law (R.S. 42:11 et seq.), the Public  
23 Records Law (R.S. 44:1 et seq.), and the bond validation procedures law (R.S.  
24 13:5121 et seq.).

25 §99.58. Exemption from taxation

26 The exercise of the powers and authorities granted by this Subpart shall  
27 be in all respects for the benefit of the citizens of the state of Louisiana and for  
28 the promotion of their welfare, convenience, and prosperity. Property of the  
29 corporation, whether immovable, movable, corporeal, or incorporeal, and the

1 income, earnings, and operations of the corporation, shall be exempt from all  
2 taxation, fees, or assessments, or any other similar charges.

3 §99.59. Bankruptcy

4 Prior to the date that is one year and one day after which the corporation  
5 no longer has any bonds outstanding, the corporation is prohibited from filing  
6 and shall have no authority to file a voluntary petition under the federal  
7 bankruptcy code as it may, from time to time, be amended, and neither any  
8 public official nor any organization, entity, or other person shall authorize the  
9 corporation to be or to become a debtor under the federal bankruptcy code  
10 during that period. The provisions of this Section shall be part of any  
11 contractual obligation owed to the holders of bonds issued under this Subpart.  
12 Any contractual obligation shall not subsequently be modified by state law  
13 during the period of the contractual obligation, and the state of Louisiana  
14 hereby covenants with the holders that the state shall not limit or alter the  
15 denial of authority under this Section during the period referred to in the first  
16 sentence of this Section.

17 §99.60. Exclusive jurisdiction and venue; service of process; bond validation  
18 actions

19 The Nineteenth Judicial District Court for the state of Louisiana shall  
20 have exclusive jurisdiction and venue of any suit or action of any nature  
21 brought by or against the corporation. Any suit or action to determine or  
22 contest the validity of bonds of the corporation shall be brought and conducted  
23 only in accordance with R.S. 13:5121 et seq.

24 §99.61. Pledge and transfer of economic damage revenue assets

25 A. The State Bond Commission subject to approval of the Joint  
26 Legislative Committee on the Budget and subject to approval by a majority vote  
27 of the legislature if the legislature is in session and by mail ballot during the  
28 interim, may pledge and transfer, from time to time, a portion of the state  
29 allocation to the corporation, up to one hundred percent from and after that

1 date, and, in particular, to execute and deliver an agreement on the closing date.

2 The agreement shall provide, among other matters, that the purchase price  
3 payable by the corporation to the state for the economic damage revenue assets  
4 pledged and transferred, up to one hundred percent of the state allocation from  
5 and after that date, shall consist of the net proceeds, after financing costs, of the  
6 first issue of economic damage revenue bonds and the residual interests to be  
7 paid and transferred semiannually pursuant to the provisions of this Subpart.

8 B. Any pledge and transfer of economic damage revenue assets in  
9 accordance with this Section shall be treated as a true pledge and absolute  
10 conveyance and transfer of the property, and all of the right, title, and interest  
11 in and to the property, so conveyed and transferred. The characterization of  
12 such a pledge and transfer as an absolute transfer by the parties shall not be  
13 negated or adversely affected if less than all of the state allocation is pledged  
14 and transferred, nor by the state's acquisition of residual interests or a  
15 subordinate interest in the economic damage revenue assets, nor by any  
16 characterization of the corporation or its bonds for purposes of accounting,  
17 taxation, or securities regulation, nor by any other factor whatsoever.

18 §99.62. Ownership of economic damage revenue assets and economic damage  
19 revenue payments

20 On and after the effective date of each pledge and transfer of economic  
21 damage revenue assets, the state of Louisiana shall have no right, title, or  
22 interest in or to the economic damage revenue assets pledged and transferred;  
23 and the economic damage revenue payments shall be property of the  
24 corporation and not of the state, and shall be owned, received, held, and  
25 disbursed by the corporation or the indenture trustee and not the state or the  
26 state treasury. On or before the closing date and the effective date of any  
27 subsequent pledge and transfer, the state, through the attorney general, shall  
28 notify the appropriate parties that the economic damage revenue assets have  
29 been pledged and transferred to the corporation, irrevocably instruct the

1 parties or any successor agency that, subsequent to the closing date or other  
2 effective date, the economic damage revenue payments are to be paid directly  
3 to the corporation or to the indenture trustee or other designee for the account  
4 of the corporation, and to take any and all such other actions necessary and  
5 appropriate to effectuate the notice and instruction or cause the economic  
6 damage revenue payments to be deposited directly with the corporation of the  
7 indenture trustee.

8 §99.63. Issuance of bonds of the corporation

9 A.(1) In order to provide current assets and funds for the Deepwater  
10 Horizon Economic Damages Collection Fund pursuant to this Subpart for the  
11 benefit of the state, the board may provide by resolution, at one time or from  
12 time to time, for the issuance of bonds of the corporation in the amount or  
13 amounts as the board shall determine, subject to the approval of the State Bond  
14 Commission and the Joint Legislative Committee on the Budget.

15 (2) The bonds shall be payable solely from funds of the corporation,  
16 including, without limitation, all or any combination of the following sources:

17 (i) Economic damage revenue assets.

18 (ii) The proceeds of the pledge and transfer of any such bonds.

19 (iii) Earnings on funds of the corporation or the indenture trustee.

20 (iv) Income.

21 (v) Any other funds as may become available, as shall be provided by the  
22 resolution of the board authorizing any bonds.

23 (3) Bonds issued under the provisions of this Subpart shall not be  
24 deemed to be nor constitute a debt or obligation of the state of Louisiana or a  
25 pledge of the full faith or credit of the state, and all bonds shall contain on their  
26 face a statement to the effect that neither the full faith and credit nor the taxing  
27 power nor any other asset or revenues of the state or any political subdivision  
28 of the state is or shall be obligated or pledged to the payment of the principal of  
29 or the interest on the bonds.

1           **B. The bonds of each issue shall be dated, shall bear interest, which may**  
2           **be includable or excludable in the gross income of the holder for federal income**  
3           **tax purposes, at such fixed or variable rates, payable at or prior to maturity,**  
4           **and shall mature at the time or times, as may be determined by the board and**  
5           **may be redeemable before maturity, at the option of the corporation, at such**  
6           **price or prices and under such terms and conditions as may be fixed by the**  
7           **board, subject to the approval of the State Bond Commission and the Joint**  
8           **Legislative Committee on the Budget. The board shall determine the form of the**  
9           **bonds, the manner of execution of the bonds, and shall fix the denomination or**  
10           **denominations of the bonds and the place or places of payment of principal and**  
11           **interest, which may be at any bank or trust company within or without the**  
12           **state. The bonds shall be issued in registered form. The board may pledge and**  
13           **transfer the bonds in the manner, either publicly or privately, and for the price**  
14           **as it may determine to be in the best interests of the corporation, subject to**  
15           **approval of the State Bond Commission and the Joint Legislative Committee on**  
16           **the Budget. The proceeds of the bonds shall be disbursed for the purposes for**  
17           **which the bonds were issued under the restrictions, if any, as the laws of the**  
18           **state of Louisiana and the resolution authorizing the issuance of such bonds or**  
19           **the trust indenture may provide. The corporation may also provide for**  
20           **temporary bonds and for the replacement of any bond that shall become**  
21           **mutilated or shall be destroyed or lost. Bonds may be issued without any other**  
22           **proceedings or the happening of any other conditions or things than the**  
23           **proceedings, conditions, and things that are specified and required by this**  
24           **Subpart.**

25           **C. Bonds of the corporation shall not be invalid because of any**  
26           **irregularity or defect in the proceedings or in the issuance and pledge and**  
27           **transfer thereof and shall be incontestable in the hands of a bona fide purchaser**  
28           **or holder. The corporation, after authorizing the issuance of bonds by**  
29           **resolution, shall publish once in a newspaper of general circulation in the parish**

1 in which the corporation is domiciled, a notice of intention to issue the bonds.  
2 The notice shall include a description of the bonds and their security. Within  
3 thirty days after the publication, any person in interest may contest the legality  
4 of the resolution, any provision of the bonds to be issued pursuant to it, the  
5 provisions securing the bonds, and the validity of all other provisions and  
6 proceedings relating to the authorization and issuance of the bonds. If no action  
7 or proceeding is instituted within the thirty days, no person may contest the  
8 validity of the bonds, the provisions of the resolution pursuant to which the  
9 bonds were issued, the security of the bonds, the performance by the state of the  
10 agreement, the pledge and transfer of the economic damage revenue payments,  
11 or the validity of any other provisions or proceedings relating to their  
12 authorization and issuance, and the bonds shall be presumed conclusively to be  
13 legal. Thereafter no court shall have authority to inquire into these matters.

14 D. Neither the members of the board, its staff, nor any other person or  
15 persons executing the bonds shall be subject to any personal liability or  
16 responsibility by reason of their issuance, and shall have the indemnification  
17 rights provided in R.S. 13:5108.1 with respect to such issuance.

18 §99.64. Security for payment of bonds; provisions of trust indenture or  
19 resolution

20 A. Any bonds issued, and any ancillary contracts or derivative  
21 instruments made under the provisions of this Subpart, may be secured by a  
22 trust indenture by and between the corporation and the indenture trustee,  
23 which may be any trust company or bank having the powers of a trust  
24 company, whether located within or without the state. The trust indenture, or  
25 the resolution of the board providing for the issuance of the bonds, may:

26 (1) Pledge or assign all or any part of the income or other assets of the  
27 corporation available for such purpose.

28 (2) Provide for the creation and maintenance of such reserves as the  
29 board shall determine to be proper.

1           **(3) Include covenants setting forth the duties of the corporation in**  
2           **relation to the bonds, the income of the corporation, and the economic damage**  
3           **revenue assets.**

4           **(4) Contain provisions respecting the custody, safeguarding, and**  
5           **application of all monies and securities and provisions for protecting and**  
6           **enforcing the rights and remedies, pursuant thereto and to the related**  
7           **agreement, of the holders and other beneficiaries as may be reasonable and**  
8           **proper and not in violation of law.**

9           **(5) Contain other provisions as the corporation may consider reasonable**  
10           **and proper for priorities and subordination among the holders and other**  
11           **beneficiaries. Any reference in this Subpart to a resolution of the board shall**  
12           **include any trust indenture authorized by the board.**

13           **B. Any pledge or security interest made by the corporation shall be valid**  
14           **and binding from the time when the pledge or security interest is made. The**  
15           **income or other assets so pledged and then or thereafter received by the**  
16           **corporation shall immediately be subject to the lien of the pledge or security**  
17           **interest without any physical delivery or further act, and the lien of any pledge**  
18           **or security interest shall be valid and binding as against all parties asserting or**  
19           **having claims of any kind in tort, contract or otherwise against the corporation,**  
20           **irrespective of whether the parties have notice thereof. Neither the resolution**  
21           **nor any other instrument by which a pledge or security interest is created need**  
22           **be recorded or filed to perfect such pledge or security interest.**

23           **C. Whether or not the bonds are of the form and character as to be**  
24           **negotiable instruments under the provisions of the Uniform Commercial Code,**  
25           **the bonds are hereby made negotiable instruments for all purposes, subject only**  
26           **to the provisions of the bonds for registration.**

27           **§99.65. Ancillary contracts and derivative instruments**

28           **A. The corporation may execute, amend, or terminate, as it determines**  
29           **to be necessary or appropriate, any ancillary contracts (i) to facilitate the**

1 issuance, pledge and transfer, purchase, repurchase, or payments of bonds,  
2 including without limitation bond insurance, letters of credit and liquidity  
3 facilities, or (ii) to attempt to hedge risk or achieve a desirable effective interest  
4 rate or cash flow, subject to approval of the State Bond Commission and the  
5 Joint Legislative Committee on the Budget. The determination of the board, so  
6 approved, that an ancillary contract or the amendment or termination thereof  
7 is necessary or appropriate as aforesaid shall be conclusive. The contracts shall  
8 be made upon the terms and conditions established by the board and approved  
9 by the State Bond Commission and the Joint Legislative Committee on the  
10 Budget, including without limitation provisions as to security, default,  
11 termination, payment, remedy, and consent to service of process.

12 B. The corporation may execute, amend, or terminate, any derivative  
13 instrument that it determines to be necessary or appropriate to place the  
14 obligations or investments of the corporation, as represented by the bonds or  
15 the investment of their proceeds, in whole or in part, on the interest rate, cash  
16 flow or other basis desired by the board, which contract may include without  
17 limitation contracts commonly known as interest rate swap agreements, and  
18 futures or contracts providing for payments based on levels of, or changes in,  
19 interest rates, subject to approval of the State Bond Commission and the Joint  
20 Legislative Committee on the Budget. These contracts or arrangements may be  
21 executed by the corporation, subject to approval of the State Bond Commission  
22 and the Joint Legislative Committee on the Budget, in connection with, or  
23 incidental to, entering into, or maintaining any (i) agreement which secures  
24 bonds, or (ii) investment or contract providing for investment otherwise  
25 authorized by law. The determination of the board, so approved, that a  
26 derivative instrument or the amendment or termination of the derivative  
27 instrument is necessary or appropriate, shall be conclusive. These contracts and  
28 arrangements may contain such payment, security, default, remedy, and other  
29 terms and conditions as determined by the board and approved by the State

1 Bond Commission and the Joint Legislative Committee on the Budget, after  
2 giving consideration to the creditworthiness of the counterparty or other  
3 obligated party, including any rating by any nationally recognized rating  
4 agency, and any other criteria as may be appropriate.

5 §99.66. Bonds exempt from taxation

6 The bonds, their transfer, and the income therefrom, including any  
7 profit made on their pledge and transfer, shall at all times be free and exempt  
8 from taxation by the state of Louisiana and by any other political subdivision  
9 of the state.

10 §99.67. Bond and other proceeds received by the state

11 All proceeds and monies received by the state, whether received as  
12 consideration for economic damage revenue assets pledged and transferred or  
13 as the residual interests or in any other way pursuant to this Subpart, shall be  
14 deposited in and credited to the Deepwater Horizon Economic Damages  
15 Collection Fund.

16 §99.68. Pledge and agreement

17 The state covenants and agrees with the corporation, and the holders of  
18 the bonds in which the corporation has included such pledge and agreement,  
19 that the state shall:

20 (1) Irrevocably direct the necessary parties or any successor agency to  
21 transfer all conveyed economic damage revenue payments directly to the  
22 corporation or its assignee or cause the irrevocable transfer of such economic  
23 damage revenue payments directly to the state or its assignee, including the  
24 indenture trustee.

25 (2) Enforce the corporation's rights to receive the economic damage  
26 revenue payments to the full extent permitted by the law.

27 (3) Not amend the state law in any manner that would materially impair  
28 the rights of the holders.

29 (4) Not limit or alter the rights of the corporation to fulfill the terms of

1           its agreements with the holders.

2                   (5) Not in any way impair the rights and remedies of the holders or the  
3           security for the bonds until such bonds, together with the interest thereon and  
4           all costs and expenses in connection with any action or proceeding by or on  
5           behalf of the holders, are fully paid and discharged.

6           §99.69. Construction and effect

7                   This Subpart and all powers granted in this Subpart shall be liberally  
8           construed to effectuate its and their purposes, without implied limitations  
9           thereon. This Subpart shall constitute full and complete authority for all things  
10          in this Subpart contemplated to be done. All rights and powers granted  
11          pursuant to this Subpart shall be cumulative with those derived from other  
12          sources and shall not, except as expressly stated in this Subpart, be construed  
13          in limitation thereof. Insofar as the provisions of this Subpart are inconsistent  
14          with the provisions of any other law, general or special, the provisions of this  
15          Subpart shall control. If a provision of this Subpart or its application is held  
16          invalid, the invalidity shall not affect other provisions or application of this  
17          Subpart which can be given effect without the invalid provisions or application.

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

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

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DIGEST

SB 5 Engrossed

2018 Second Extraordinary Session

LaFleur

Proposed law creates the Louisiana New Roads and Infrastructure Corporation as a special purpose, public corporate entity, which is an independent instrumentality of the state, and domiciled in East Baton Rouge Parish.

Proposed law creates a board consisting of the governor, the state treasurer, the attorney general, the president of the Senate, and speaker of the House of Representatives, or their designees, and seven members appointed by the governor with one member appointed from

each of the congressional districts and the remaining member from the state at large.

Proposed law provides that the members of the board appointed by the governor shall be subject to Senate confirmation, shall represent the state's diverse population as near as practicable, and shall have a background and significant experience in financial management and investments. Provides that the members of the board appointed by the governor serve at the pleasure of the governor for terms of four years each, or until their successors shall have been appointed and qualified. Also provides that the board members shall not receive compensation but shall receive a per diem for attending meetings of the corporation or committees and may be reimbursed for travel expenses incurred in the performance of their official duties.

Proposed law provides for annual election of a chairperson and vice chairperson. Provides for the state treasurer to serve as secretary-treasurer of the corporation and board. Provides that seven members of the board shall constitute a quorum for the transaction of all business of the corporation. Provides that the board shall meet no less than once annually.

Proposed law provides that the corporation's purpose is to carry out the financing, receiving, depositing, owning, and managing of the state allocation of the Deepwater Horizon economic damage revenues. Provides that upon dissolution of the corporation, title to all assets and properties of the corporation shall vest in and become the property of the state and shall be deposited in and credited to the Deepwater Horizon Economic Damages Collection Fund.

Present law provides for the creation of the Deepwater Horizon Economic Damages Collection Fund, and provides that all economic damage proceeds from the Deepwater Horizon litigation in excess of the first \$200 million deposited into the FY 15-16 Deficit Elimination Fund, shall be deposited into the Economic Damages Collection Fund and then deposited as follows:

- (1) 45% to the Budget Stabilization Fund.
- (2) 45% to the Trust Fund for the Elderly.
- (3) 10% to the Health Trust Fund.

Proposed law revises present law to provide that after making the \$200 million deposit to the Fiscal Year 2015-2016 Deficit Elimination Fund, the treasurer shall deposit the economic damage proceeds received by the state as a result of the pledge and transfer of all or a portion of the economic damage proceeds as provided in proposed law, including any residual interests, in the Construction Subfund within the Transportation Trust Fund. Proposed law further provides that the economic damage proceeds received by the state from the DWH litigation and which are not pledged and transferred as provided in proposed law, shall be deposited in the Construction Subfund within the Transportation Trust Fund. The proceeds deposited into the Construction Subfund shall be appropriated solely for the direct costs associated with actual project delivery, construction, and maintenance of transportation and capital transit infrastructure projects of the state, including \$100 million for the TIMED projects and shall not be used by the Department of Transportation and Development for the payment of employee wages and related benefits or employee retirement benefits. Proposed law further provides that transportation and capital transit infrastructure projects shall not include any project which is to be funded through GARVEE bonds.

Proposed law further provides that present law shall be null and void no later than two years after such time as any bonds or indebtedness issued pursuant to proposed law are retired and the corporation has no outstanding indebtedness.

Proposed law provides that the staff of the Department of Treasury, including that of the State Bond Commission, may, pursuant to a cooperative endeavor agreement, serve as staff

to the corporation under the supervision of the state treasurer. Further provides that the attorney general shall, pursuant to a cooperative endeavor agreement, serve as counsel to the corporation, and, subject to the approval of the attorney general and the State Bond Commission, the corporation may employ or retain such other attorneys as it may consider necessary and fix their compensation.

Proposed law provides that the books and accounts of the corporation shall be subject to audit not less than annually by the legislative auditor. Provides that the corporation may employ or retain such professionals, consultants, agents, financial advisers, and accountants as it may deem necessary to carry out its duties under the proposed law and, the provisions of any other law to the contrary notwithstanding, may determine their duties and compensation subject only to the approval of the State Bond Commission.

Proposed law provides exemption from all taxation, fees, or assessments, or any other similar charges for all property of the corporation.

Proposed law prohibits the corporation from filing for voluntary bankruptcy while bonds are outstanding.

Proposed law provides that the corporation is subject to the Code of Governmental Ethics, the Open Meetings Law, the Public Records Law, and the bond validation procedures law.

Proposed law provides that the State Bond Commission, subject to approval of the Joint Legislative Committee on the Budget and subject to approval by a majority vote of the legislature if the legislature is in session and by mail ballot during the interim, is authorized to pledge and transfer, from time to time, a portion of the state allocation to the corporation, up to one hundred percent thereof.

Proposed law further provides that, in order to provide current assets and funds for the Deepwater Horizon Economic Damages Collection Fund, the corporation board may provide for the issuance of bonds, subject to the approval of the State Bond Commission and Joint Legislative Committee on the Budget.

Proposed law provides that such bonds shall be payable solely from funds of the corporation, including, without limitation, all or any combination of the following sources:

- (1) Economic damage revenue assets.
- (2) The proceeds of the pledge and transfer of any such bonds.
- (3) Earnings on funds of the corporation or the indenture trustee.
- (4) Income.
- (5) Such other funds as may become available.

Proposed law further provides that bonds issued under the provisions of proposed law shall not be deemed to nor constitute a debt or obligation of the state or a pledge of the faith or credit of the state. Provides for security for payment of bonds through trust indentures. Provides for ancillary contracts and derivative instruments to facilitate the issuance, pledge and transfer, purchase, repurchase or payments of bonds or the making or performance of swap contracts, subject to the approval of the State Bond Commission and Joint Legislative Committee on the Budget.

Proposed law provides that the bonds shall be exempt from taxation by the state and by any other political subdivision of the state. Provides that all proceeds and monies received by the state, whether received as economic damage revenue assets sold or as the residual interests, shall be deposited in and credited to the Deepwater Horizon Economic Damages Collection

Fund.

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

(Amends R.S. 39:91(B) and (E); adds R.S. 39:99.51-99.69)