

2018 Second Extraordinary Session

HOUSE BILL NO. 32

BY REPRESENTATIVE MAGEE

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

1 AN ACT
2 To amend and reenact R.S. 39:91(B) and (E) and to enact Subpart F-2 of Part II-A of
3 Chapter 1 of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950, to be
4 comprised of R.S. 39:99.51 through 99.69, relative to the issuance of bonds to
5 securitize the state's allocation of the economic damage settlement of the Deepwater
6 Horizon oil spill economic damage litigation; to create the Louisiana Roads and
7 Infrastructure Corporation; to provide for the qualifications of the members of the
8 corporation; to provide for the authority of the corporation to issue bonds; to provide
9 for the pledge and transfer of certain assets of the state to the corporation; to provide
10 for the deposit of the proceeds of the bonds into the Deepwater Horizon Economic
11 Damages Collection Fund; to provide for the use of the monies in the Deepwater
12 Horizon Economic Damages Collection Fund; to authorize the financing, purchase,
13 ownership, and management of payments from the Deepwater Horizon economic
14 damage settlement; to provide for the security for the payment of the bonds; to
15 provide for bond validation actions; to provide for tax exemptions; to provide for
16 ancillary contracts and derivative instruments; to provide for an effective date; and
17 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 * * *

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

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

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

21 ~~(2) Forty-five percent of each such receipt of economic damages proceeds to~~
22 ~~the Medicaid Trust Fund for the Elderly provided for in R.S. 46:2691 until an~~
23 ~~amount not to exceed seven hundred million dollars has been deposited into such~~
24 ~~fund. The proceeds deposited into the Construction Subfund shall be appropriated~~
25 ~~solely for the direct costs associated with actual project delivery, construction, and~~
26 ~~maintenance of transportation and capital transit infrastructure projects of the state,~~
27 ~~including one hundred million dollars for the costs for and associated with the~~
28 ~~Louisiana Highway 1 Improvement Project from Golden Meadow to Leeville in~~
29 ~~southern Lafourche Parish, and shall not be used by the Department of~~

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

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

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

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

8 (6) "Corporation" means the Louisiana Roads and Infrastructure Corporation
9 created pursuant to this Subpart.

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

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

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

23 (10) "Economic damage revenue assets" means all right, title, and interest in
24 and to the portion of the state allocation that may be pledged and transferred to the
25 corporation from time to time.

26 (11) "Economic damage revenue bonds" means the bonds, notes, and other
27 obligations issued by the corporation, exclusive of bonds that the corporation may
28 issue to refund bonds, the net proceeds, after financing costs, of the first issue of

1 which shall be used by the corporation in consideration of the transfer of the
2 economic damage revenue payments by the state of Louisiana to the corporation.

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

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

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

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

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

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

22 (18) "Residual interests" means the income of the corporation, and bond
23 proceeds, if any, not previously paid to the state, that are in excess of the
24 corporation's requirements to pay its operating expenses, debt service, sinking fund,
25 and other redemption requirements, reserve fund requirements, and any other
26 contractual obligations to the holders or that may be incurred in connection with the
27 issuance or repayment of the bonds, the amounts of which shall be determined by the
28 board on or before January first and July first of each year for the next twelve
29 months, and which, within ten days after each determination, shall be transferred and

1 paid by the corporation to the state treasurer for deposit in and credit to the
2 Deepwater Horizon Economic Damages Collection Fund pursuant to the agreement
3 between the state and the corporation.

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

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

14 §99.53. Corporation created; domicile; fiscal year

15 The Louisiana Roads and Infrastructure Corporation is hereby created as a
16 special purpose, public corporate entity, and instrumentality independent of the state.
17 The corporation shall be a public corporate body, intended, created, and empowered
18 to effectuate only the purposes set forth in this Subpart, and shall have a legal
19 existence, separate and distinct from the state of Louisiana. The domicile of the
20 corporation shall be East Baton Rouge Parish. The corporation shall operate on a
21 fiscal year basis commencing on July first and ending on June thirtieth of each year.

22 §99.54. Governing board; membership; terms; compensation and expenses;
23 chairman and vice chairman; quorum; employees; agents; limitation of
24 liability

25 A. The Louisiana Roads and Infrastructure Corporation shall be governed by
26 a board which shall exercise all powers, rights, and duties conferred by this Subpart
27 or other provisions of law upon the corporation. The board shall consist of the
28 governor, the state treasurer, the attorney general, the president of the Senate, the
29 speaker of the House of Representatives, or their designees, and seven members

1 appointed by the governor with one member appointed from each congressional
2 district and the remaining member or members appointed from the state at large. The
3 members of the board who are appointed by the governor shall represent the state's
4 diverse population as near as practicable, and shall have a background and
5 significant experience in financial management and investments. The members of
6 the board appointed by the governor shall be subject to Senate confirmation and shall
7 serve at the pleasure of the governor for terms of four years each, or until their
8 successors shall have been appointed and qualified, as designated by the governor.
9 Any appointment to fill a vacancy on the board shall be made for the unexpired term
10 of the member whose death, resignation, or removal created such vacancy. Members
11 on the board may be appointed to an additional term.

12 B. The members of the board shall not receive compensation by reason of
13 their membership on the board or attendance at meetings of the board. The appointed
14 members of the board shall receive a per diem allowance to be established by the
15 board in an amount not to exceed the amount of per diem authorized for members
16 of the legislature for attendance at meetings of the corporation or its committees or
17 for other official duties of the corporation or its board, and all members may be
18 reimbursed for travel expenses incurred in the performance of their official duties.
19 The travel expense reimbursement shall be fixed by the corporation in an amount not
20 to exceed those authorized under state travel regulations.

21 C. The members of the board shall annually elect a chairperson and vice
22 chairperson, and, except for secretary-treasurer of the board, any other officers as the
23 members determine necessary. The state treasurer shall serve as secretary-treasurer
24 of the corporation and board. The chairperson shall sign and execute all vouchers and
25 other orders for the disbursement of funds belonging to the corporation upon
26 authorization by the board. The vice chairperson shall exercise the powers of the
27 chairperson when directed by the chairperson or when the chairperson is absent.
28 Seven members of the board shall constitute a quorum for the transaction of all
29 business of the corporation. Meetings of the board shall be held at a time and place

1 as determined by and at the call of the chairperson or when requested by a majority
2 of the members, provided that the board shall meet no less than once annually.

3 D. The board may delegate its powers to its chairperson, the
4 secretary-treasurer, officers of the corporation, or committees of the board, with
5 those standards for the exercise of delegated powers as the board may specify, and
6 may, to the extent not inconsistent with the rights of the holders, revoke any such
7 delegation.

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

13 §99.55. Purposes and powers

14 A. The corporation is authorized to carry out the financing, receiving,
15 depositing, owning, and managing of the economic damage revenues and the
16 economic damage revenue assets, the corporation being vested, subject to R.S.
17 39:99.59 and the other provisions of this Subpart, with all the powers of a private
18 corporation to effectuate the purposes of the corporation including, without
19 limitation, the power to sue and be sued, to make contracts, to adopt and use a
20 corporate seal and to alter same, and is further particularly authorized and
21 empowered to:

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

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

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

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

1 (5) Pay its operating expenses.

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

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

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

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

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

16 D. The corporation shall prepare and submit an annual report to the governor,
17 the State Bond Commission, the Senate committees on finance and transportation,
18 and the House of Representatives committees on appropriations and transportation
19 on or before March first of each year. The annual report shall contain, among other
20 appropriate matters, the annual operating and financial statements of the corporation
21 for the fiscal year ending the preceding June thirtieth.

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

26 §99.56. Corporate existence; dissolution

27 The corporation shall have perpetual existence. However, the board shall
28 dissolve and terminate the existence of the corporation no later than two years after
29 the date of final payment of all outstanding bonds and the payment or satisfaction of

1 all other outstanding obligations and liabilities of the corporation, except to the
2 extent necessary to remain in existence, and only for the additional time, as shall be
3 necessary to fulfill any outstanding covenants or agreements with holders or other
4 parties made in accordance with the provisions of this Subpart. Upon dissolution of
5 the corporation, title to all assets and properties of the corporation shall vest in and
6 become the property of the state of Louisiana and shall be deposited in and credited
7 to the Deepwater Horizon Economic Damages Collection Fund. The corporation
8 shall execute all necessary conveyances, assignments, or other documents to
9 establish and evidence this transfer and ownership, including all conveyances or
10 assignments of all right, title, and interest to the economic damage revenues.

11 §99.57. Staff; counsel; assistance by state officers, departments, and agencies;
12 auditors; consultants

13 A. The staff of the Department of Treasury, including the staff of the State
14 Bond Commission, may, pursuant to a cooperative endeavor agreement, serve as
15 staff to the corporation under the supervision of the state treasurer.

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

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

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

28 E. The corporation may employ or retain professionals, consultants, agents,
29 financial advisers, and accountants as it may deem necessary to carry out its duties

1 under this Subpart and, notwithstanding the provisions of any law to the contrary, it
2 may determine their duties and compensation subject only to the approval of the
3 State Bond Commission.

4 F. The corporation shall be subject to the Code of Governmental Ethics (R.S.
5 42:1101 et seq.), the Open Meetings Law (R.S. 42:11 et seq.), the Public Records
6 Law (R.S. 44:1 et seq.), and the bond validation procedures law (R.S. 13:5121 et
7 seq.).

8 §99.58. Exemption from taxation

9 The exercise of the powers and authorities granted by this Subpart shall be
10 in all respects for the benefit of the citizens of the state of Louisiana and for the
11 promotion of their welfare, convenience, and prosperity. Property of the corporation,
12 whether immovable, movable, corporeal, or incorporeal, and the income, earnings,
13 and operations of the corporation, shall be exempt from all taxation, fees, or
14 assessments, or any other similar charges.

15 §99.59. Bankruptcy

16 Prior to the date that is one year and one day after which the corporation no
17 longer has any bonds outstanding, the corporation is prohibited from filing and shall
18 have no authority to file a voluntary petition under the federal bankruptcy code as it
19 may, from time to time, be amended, and neither any public official nor any
20 organization, entity, or other person shall authorize the corporation to be or to
21 become a debtor under the federal bankruptcy code during that period. The
22 provisions of this Section shall be part of any contractual obligation owed to the
23 holders of bonds issued under this Subpart. Any contractual obligation shall not
24 subsequently be modified by state law during the period of the contractual
25 obligation, and the state of Louisiana hereby covenants with the holders that the state
26 shall not limit or alter the denial of authority under this Section during the period
27 referred to in the first sentence of this Section.

1 §99.60. Exclusive jurisdiction and venue; service of process; bond validation actions

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

7 §99.61. Pledge and transfer of economic damage revenue assets

8 A. The State Bond Commission subject to approval of the Joint Legislative
9 Committee on the Budget and subject to approval by a majority vote of the
10 legislature if the legislature is in session and by mail ballot during the interim, may
11 pledge and transfer, from time to time, a portion of the state allocation to the
12 corporation, up to one hundred percent from and after that date, and, in particular,
13 to execute and deliver an agreement on the closing date. The agreement shall
14 provide, among other matters, that the purchase price payable by the corporation to
15 the state for the economic damage revenue assets pledged and transferred, up to one
16 hundred percent of the state allocation from and after that date, shall consist of the
17 net proceeds, after financing costs, of the first issue of economic damage revenue
18 bonds and the residual interests to be paid and transferred semiannually pursuant to
19 the provisions of this Subpart.

20 B. Any pledge and transfer of economic damage revenue assets in accordance
21 with this Section shall be treated as a true pledge and absolute conveyance and
22 transfer of the property, and all of the right, title, and interest in and to the property,
23 so conveyed and transferred. The characterization of such a pledge and transfer as
24 an absolute transfer by the parties shall not be negated or adversely affected if less
25 than all of the state allocation is pledged and transferred, nor by the state's
26 acquisition of residual interests or a subordinate interest in the economic damage
27 revenue assets, nor by any characterization of the corporation or its bonds for
28 purposes of accounting, taxation, or securities regulation, nor by any other factor
29 whatsoever.

1 §99.62. Ownership of economic damage revenue assets and economic damage
2 revenue payments

3 On and after the effective date of each pledge and transfer of economic
4 damage revenue assets, the state of Louisiana shall have no right, title, or interest in
5 or to the economic damage revenue assets pledged and transferred; and the economic
6 damage revenue payments shall be property of the corporation and not of the state,
7 and shall be owned, received, held, and disbursed by the corporation or the indenture
8 trustee and not the state or the state treasury. On or before the closing date and the
9 effective date of any subsequent pledge and transfer, the state, through the attorney
10 general, shall notify the appropriate parties that the economic damage revenue assets
11 have been pledged and transferred to the corporation, irrevocably instruct the parties
12 or any successor agency that, subsequent to the closing date or other effective date,
13 the economic damage revenue payments are to be paid directly to the corporation or
14 to the indenture trustee or other designee for the account of the corporation, and to
15 take any and all such other actions necessary and appropriate to effectuate the notice
16 and instruction or cause the economic damage revenue payments to be deposited
17 directly with the corporation of the indenture trustee.

18 §99.63. Issuance of bonds of the corporation

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

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

27 (i) Economic damage revenue assets.

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

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

1 (iv) Income.

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

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

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

1 the happening of any other conditions or things than the proceedings, conditions, and
2 things that are specified and required by this Subpart.

3 C. Bonds of the corporation shall not be invalid because of any irregularity
4 or defect in the proceedings or in the issuance and pledge and transfer thereof and
5 shall be incontestable in the hands of a bona fide purchaser or holder. The
6 corporation, after authorizing the issuance of bonds by resolution, shall publish once
7 in a newspaper of general circulation in the parish in which the corporation is
8 domiciled, a notice of intention to issue the bonds. The notice shall include a
9 description of the bonds and their security. Within thirty days after the publication,
10 any person in interest may contest the legality of the resolution, any provision of the
11 bonds to be issued pursuant to it, the provisions securing the bonds, and the validity
12 of all other provisions and proceedings relating to the authorization and issuance of
13 the bonds. If no action or proceeding is instituted within the thirty days, no person
14 may contest the validity of the bonds, the provisions of the resolution pursuant to
15 which the bonds were issued, the security of the bonds, the performance by the state
16 of the agreement, the pledge and transfer of the economic damage revenue payments,
17 or the validity of any other provisions or proceedings relating to their authorization
18 and issuance, and the bonds shall be presumed conclusively to be legal. Thereafter
19 no court shall have authority to inquire into these matters.

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

24 §99.64. Security for payment of bonds; provisions of trust indenture or resolution

25 A. Any bonds issued, and any ancillary contracts or derivative instruments
26 made under the provisions of this Subpart, may be secured by a trust indenture by
27 and between the corporation and the indenture trustee, which may be any trust
28 company or bank having the powers of a trust company, whether located within or

1 without the state. The trust indenture, or the resolution of the board providing for the
2 issuance of the bonds, may:

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

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

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

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

13 (5) Contain other provisions as the corporation may consider reasonable and
14 proper for priorities and subordination among the holders and other beneficiaries.

15 Any reference in this Subpart to a resolution of the board shall include any trust
16 indenture authorized by the board.

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

27 C. Whether or not the bonds are of the form and character as to be negotiable
28 instruments under the provisions of the Uniform Commercial Code, the bonds are

1 hereby made negotiable instruments for all purposes, subject only to the provisions
2 of the bonds for registration.

3 §99.65. Ancillary contracts and derivative instruments

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

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

1 the derivative instrument is necessary or appropriate, shall be conclusive. These
2 contracts and arrangements may contain such payment, security, default, remedy,
3 and other terms and conditions as determined by the board and approved by the State
4 Bond Commission and the Joint Legislative Committee on the Budget, after giving
5 consideration to the creditworthiness of the counterparty or other obligated party,
6 including any rating by any nationally recognized rating agency, and any other
7 criteria as may be appropriate.

8 §99.66. Bonds exempt from taxation

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

12 §99.67. Bond and other proceeds received by the state

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

17 §99.68. Pledge and agreement

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

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

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

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

1 (4) Not limit or alter the rights of the corporation to fulfill the terms of its
2 agreements with the holders.

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

7 §99.69. Construction and effect

8 This Subpart and all powers granted in this Subpart shall be liberally
9 construed to effectuate its and their purposes, without implied limitations thereon.

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

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

DIGEST

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

HB 32 Original 2018 Second Extraordinary Session Magee

Abstract: Changes the dedication of the economic damage settlement of the Deepwater Horizon oil spill litigation to transportation and capital transit infrastructure projects and authorizes the securitization of the economic damage settlement.

Proposed law creates the Louisiana 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 LA 1 Highway Improvement Project from Golden Meadow to Leeville in southern Lafourche Parish 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)