

2018 Second Extraordinary Session

SENATE BILL NO. 21

BY SENATOR 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 \* \* \*

7 ~~B.(1) At~~ **After making the deposit to the Fiscal Year 2015-2016 Deficit**  
8 **Elimination Fund as provided in Subsection A of this Section, the treasurer**  
9 **shall deposit the** economic damages proceeds from the DWH litigation ~~in excess of~~  
10 ~~the 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**~~  
15 **of the pledge and transfer of all or a portion of the economic damage proceeds**  
16 **as 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**  
19 **litigation and which are not pledged and transferred as provided in Subpart F-2**  
20 **of this Part, in 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**~~  
25 **appropriated solely for the direct costs associated with actual project delivery,**  
26 **construction, and maintenance of transportation and capital transit**  
27 **infrastructure projects of the state, including one hundred million dollars for**  
28 **the Transportation Infrastructure Model for Economic Development (TIMED)**  
29 **projects and shall not be used by the Department of Transportation and**



1 assets pursuant to any agreement shall be a true pledge and absolute transfer  
2 and not a borrowing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27           (18) "Residual interests" means the income of the corporation, and bond  
28           proceeds, if any, not previously paid to the state, that are in excess of the  
29           corporation's requirements to pay its operating expenses, debt service, sinking

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

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

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

21 §99.53. Corporation created; domicile; fiscal year

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

1        §99.54. Governing board; membership; terms; compensation and expenses;  
2                    chairman and vice chairman; quorum; employees; agents;  
3                    limitation of liability

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

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

1 state travel regulations.

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

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

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

24 §99.55. Purposes and powers

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

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

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

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

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

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

12 (5) Pay its operating expenses.

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

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

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

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

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

27 D. The corporation shall prepare and submit an annual report to the  
28 governor, the State Bond Commission, the Senate committees on finance and  
29 transportation, highways and public works, and the House of Representatives

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

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

10 §99.56. Corporate existence; dissolution

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

25 §99.57. Staff; counsel; assistance by state officers, departments, and agencies;  
26 auditors; consultants

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

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

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

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

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

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

24          §99.58. Exemption from taxation

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

1 taxation, fees, or assessments, or any other similar charges.

2 §99.59. Bankruptcy

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

16 §99.60. Exclusive jurisdiction and venue; service of process; bond validation  
17 actions

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

23 §99.61. Pledge and transfer of economic damage revenue assets

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

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

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

17 §99.62. Ownership of economic damage revenue assets and economic damage  
18 revenue payments

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

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

7 §99.63. Issuance of bonds of the corporation

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

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

16 (a) Economic damage revenue assets.

17 (b) The proceeds of the pledge and transfer of any such bonds.

18 (c) Earnings on funds of the corporation or the indenture trustee.

19 (d) Income.

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

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

29 B. The bonds of each issue shall be dated, shall bear interest, which may

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

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

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

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

17       §99.64. Security for payment of bonds; provisions of trust indenture or  
18       resolution

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

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

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

29       (3) Include covenants setting forth the duties of the corporation in

1 relation to the bonds, the income of the corporation, and the economic damage  
2 revenue assets.

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

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

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

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

26 §99.65. Ancillary contracts and derivative instruments

27 A. The corporation may execute, amend, or terminate, as it determines  
28 to be necessary or appropriate, any ancillary contracts (i) to facilitate the  
29 issuance, pledge and transfer, purchase, repurchase, or payments of bonds,

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

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

1 giving consideration to the creditworthiness of the counterparty or other  
2 obligated party, including any rating by any nationally recognized rating  
3 agency, and any other criteria as may be appropriate.

4 **§99.66. Bonds exempt from taxation**

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

9 **§99.67. Bond and other proceeds received by the state**

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

15 **§99.68. Pledge and agreement**

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

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

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

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

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

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

5                    **§99.69. Construction and effect**

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

---

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

---

DIGEST

SB 21 Original

2018 Second Extraordinary Session

White

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)