2015 Regular Session

1

HOUSE BILL NO. 767

BY REPRESENTATIVES ST. GERMAIN AND ARMES AND SENATORS ADLEY, BROWN, BUFFINGTON, NEVERS, AND GARY SMITH

AN ACT

2	To amend and reenact R.S. 48:77(B)(2) and to enact R.S. 36:769(M) and Subpart B of Part
3	V of Chapter 1 of Title 48 of the Louisiana Revised Statutes of 1950, to be
4	comprised of R.S. 48:81 through 90.1, relative to providing funds to certain entities
5	for transportation related projects; to create the Louisiana State Transportation
6	Infrastructure Bank; to provide for a board of directors; to provide for membership,
7	duties, and authority of the board; to provide for the adoption of bylaws, rules, and
8	regulations by the board; to create the Louisiana State Transportation Infrastructure
9	Fund; to provide for the receipt, administration, and expenditure of monies allotted
10	for the fund; to provide for the investment and disposition of the monies of the fund;
11	to authorize the bank to incur debt and issue bonds, notes, or other evidences of
12	indebtedness and to guarantee the debt of other entities; to authorize loans from the
13	fund to certain entities; to provide procedures to enter into such indebtedness; to
14	exempt evidence of indebtedness from taxation; to exempt any debt of or obligation
15	entered into by the bank from being used in the calculation of net state tax supported
16	debt; and to provide for related matters.
17	Be it enacted by the Legislature of Louisiana:
18	Section 1. R.S. 36:769(M) is hereby enacted to read as follows:
19	§769. Transfer of boards, commissions, departments, and agencies to Department
20	of the Treasury
21	* * *

1	M. The Louisiana State Transportation Infrastructure Bank (R.S. 48:81 et
2	seq.) is placed within the Department of the Treasury and shall perform and exercise
3	its powers, duties, functions, and responsibilities in the manner provided by law.
4	Section 2. R.S. 48:77(B)(2) is hereby amended and reenacted and Subpart B of Part
5	V of Chapter 1 of Title 48 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.
6	48:81 through 90.1 is hereby enacted to read as follows:
7	§77. Transportation Trust Fund; dedication and uses of certain monies for
8	transportation purposes
9	* * *
10	B. The avails of the taxes dedicated pursuant to Subsection A of this Section
11	shall be deposited for the purposes specified:
12	* * *
13	(2) Seven percent to the Transportation Mobility Fund Louisiana State
14	Transportation Infrastructure Fund, established in R.S. 48:86. Unless otherwise
15	approved by the Louisiana Transportation Authority, the avails deposited in the
16	Transportation Mobility Fund pursuant to Subsection A of this Section shall be used
17	exclusively for final design and construction and shall not be used for studies.
18	* * *
19	SUBPART B. LOUISIANA STATE TRANSPORTATION
20	<u>INFRASTRUCTURE BANK</u>
21	§81. Louisiana State Transportation Infrastructure Bank; purposes; establishment
22	A. There is hereby established within the Department of the Treasury the
23	Louisiana State Transportation Infrastructure Bank, which shall be allocated to the
24	Department of the Treasury as an agency of the state.
25	B. The purpose of the Louisiana State Transportation Infrastructure Bank is
26	to select and assist in financing eligible transportation projects by providing loans
27	and other financial assistance to municipalities, parishes, publicly operated ports,
28	harbors, or terminal districts, publicly operated airports, publicly operated ferries, or
29	publicly operated transit systems in the state for planning, constructing, and
30	improving transportation facilities necessary for public purposes.

1	C. Any loan or other financial assistance provided pursuant to this Subpart
2	shall be made pursuant to a cooperative endeavor agreement between the Louisiana
3	State Transportation Infrastructure Bank and a qualified borrower. Any such
4	cooperative endeavor agreement shall meet the following requirements:
5	(1) The loan or other financial assistance shall be for a public purpose that
6	comports with the governmental purpose that the Louisiana State Transportation
7	Infrastructure Bank and the qualified borrower have the legal authority to pursue and
8	the loan or other financial assistance comports with the requirements of this Subpart.
9	(2) The loan or other financial assistance is not gratuitous.
10	(3) The Louisiana State Transportation Infrastructure Bank has a
11	demonstrable, objective, and reasonable expectation of receiving at minimum the
12	equivalent value in exchange for the loan or other financial assistance.
13	§82. Definitions
14	The following terms as used in this Subpart shall have the following
15	meanings:
16	(1) "Bank" means the Louisiana State Transportation Infrastructure Bank.
17	(2) "Board" means the board of directors of the Bank.
18	(3) "Department" means the Department of Transportation and
19	Development.
20	(4) "Eligible costs" means:
21	(a) For an eligible transportation project to be financed from the federal
22	roadway account or federal nonroadway account, the costs that are permitted under
23	applicable federal laws, requirements, procedures, and guidelines in regard to
24	establishing, operating, and providing assistance from the Bank.
25	(b) For an eligible transportation project to be financed from the state and
26	local roadway account, the costs of preliminary engineering, traffic and revenue
27	studies, environmental studies, right-of-way acquisition, legal and financial services
28	associated with development of the eligible transportation project, construction,
29	construction management, facilities, and other costs necessary for the eligible
30	transportation project.

1 (c) As applied to an eligible transportation project to be financed from the 2 state nonroadway account, the costs that include preliminary engineering, traffic and 3 revenue studies, environmental studies, right-of-way acquisition, legal and financial 4 services associated with development of the eligible transportation project, construction, construction management, equipment, facilities, and other nonoperating 5 6 costs necessary for the eligible transportation project. 7 (5) "Eligible transportation project" means any transportation facility which 8 has been approved by the department and selected by the Bank to receive a loan or 9 other financial assistance from the Bank to defray an eligible cost. (6) "Financing agreement" means any agreement entered into between the 10 11 Bank and a qualified borrower pertaining to a loan or other financial assistance. The term "financing agreement" includes, without limitation, a loan agreement, trust 12 13 indenture, security agreement, reimbursement agreement, guarantee agreement, bond 14 or note, ordinance or resolution, or similar instrument. 15 (7) "Governmental unit" means a parish, municipality, publicly operated 16 port, harbor, or terminal district, publicly operated airport, publicly operated ferry, 17 or publicly operated transit system. 18 (8) "Loan" means an obligation subject to repayment which is provided by 19 the Bank to a qualified borrower for all or part of the eligible costs of an eligible 20 transportation project. A loan may be disbursed in anticipation of reimbursement for 21 or direct payment of eligible costs of an eligible transportation project. 22 (9) "Loan obligation" means a bond, note, or other evidence of an obligation 23 issued by a qualified borrower. 24 (10) "Other financial assistance" means but is not limited to credit 25 enhancement, capital or debt reserves for bonds or debt instrument financing, interest 26 rate subsidies, provision of letters of credit and credit instruments, provisions of 27 bond or other debt financing instrument security, and other lawful forms of financing 28 and methods of leveraging funds that are approved by the board, and in the case of

federal funds, as allowed by federal law or regulation.

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(11) "Project revenues" means all rates, rents, fees, assessments, charges, and
other receipts derived or to be derived by a qualified borrower from an eligible
transportation project or made available from a special source, and as provided in an
applicable financing agreement, derived from any system of which the eligible
transportation project is a part or from any other revenues producing facility under
the ownership or control of the qualified borrower, including, without limitation,
proceeds of grants, gifts, appropriations and loans, including the proceeds of loans
made by the Bank, investment earnings, reserves for capital and current expenses,
proceeds of insurance or condemnation, and proceeds from the sale or other
disposition of property and from any other special source as may be provided by the
qualified borrower.
(12) "Qualified borrower" means any governmental unit authorized by the
board to construct, operate, or own an eligible transportation project.
(13) "Revenues" means, when used with respect to the Bank, any receipts,
fees, income, or other payments received or to be received by the Bank, including,
without limitation, receipts and other payments deposited in the Bank and investment
earnings on its funds and accounts.
(14) "Transportation facility" means any public road, highway, bridge,
airport, port, ferry, or transit facility or system that provides access or benefits to the
state highway system and benefits the public by either enhancing mobility or safety,
promoting economic development, or increasing the quality of life and general
welfare of the public. "Transportation facility" also includes mass transit including,
but not limited to, monorail and monobeam mass transit systems.
§83. Louisiana State Transportation Infrastructure Bank; board of directors
A. The Louisiana State Transportation Infrastructure Bank shall be governed,
administered, and operated by a board of directors composed of the following
members:
(1) The secretary of the Department of Transportation and Development, or
his designee.

(2) The state treasurer, or his designee.

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1	(3) The chairman of the Senate Committee on Transportation, Highways and
2	Public Works, or his designee.
3	(4) The chairman of the House Committee on Transportation, Highways and
4	Public Works, or his designee.
5	(5) One member appointed by a majority of the other members enumerated
6	in this Subsection from among three persons who shall be nominated by the
7	Louisiana Bankers Association and who shall possess no less than five years'
8	experience in commercial lending or investment banking practices.
9	(6) One member appointed by the board members of the State Board of
10	Certified Public Accountants of Louisiana and who shall possess no less than five
11	years' experience in professional accounting and auditing standards for financial
12	accounting, management, and reporting.
13	(7) One member appointed by the board of directors of the Louisiana Good
14	Roads and Transportation Association and who shall possess no less than five years'
15	experience in transportation program planning.
16	(8) The members appointed pursuant to Paragraphs (5) through (7) of this
17	Subsection shall serve three-year terms.
18	B.(1) Any vacancy of an appointed member of the board shall be filled in the
19	manner provided for the original appointment for the remainder of the three-year
20	term.
21	(2) In the event that the entity responsible for the appointment of a member
22	fails to fill a vacancy within thirty days or appoint a board member within thirty
23	days of the expiration of a three-year term, then the remaining members of the board
24	shall appoint an interim successor to serve until the position is filled by the
25	appointing entity.
26	C. The board shall adopt bylaws for its own internal organization and
27	government. Such bylaws shall provide for the election of officers and conduct of
28	meetings in accordance with the Louisiana Open Meetings Law, R.S. 42:11, et seq.

1	D. The state treasurer or his designee shall serve as chairman of the board
2	and the board may select such other officers as may be required by the board's
3	bylaws.
4	E. The board shall be staffed by the Department of the Treasury.
5	§84. Louisiana State Transportation Infrastructure Bank; board of directors; powers
6	and duties
7	A. In addition to the powers contained elsewhere in this Subpart, the board
8	shall have all the power necessary, useful, or appropriate to fund, operate, and
9	administer the Bank, and to perform its other functions including, but not limited to
10	the following:
1	(1) Have perpetual succession.
12	(2) To sue, only after obtaining the written approval of the attorney general,
13	and be sued in the name of the Bank.
14	(3) To adopt an official seal and alter the same at its pleasure, although the
15	failure to affix the seal does not affect the validity of an instrument executed on
16	behalf of the Bank.
17	(4) Pursuant to a cooperative endeavor agreement, make loans to qualified
18	borrowers to finance the eligible costs of eligible transportation projects and to
19	acquire, hold, and sell loan obligations at prices and in a manner as the board
20	determines advisable.
21	(5) Pursuant to a cooperative endeavor agreement, provide qualified
22	borrowers with other financial assistance necessary to defray eligible costs of an
23	eligible transportation project.
24	(6) Pursuant to a cooperative endeavor agreement, enter into contracts,
25	arrangements, and agreements with qualified borrowers and other persons and
26	execute and deliver all financing agreements and other instruments necessary or
27	convenient to the exercise of the powers granted in this Subpart.
28	(7) Establish rules and regulations, in accordance with the Administrative
29	Procedure Act, R.S. 49:950, et. seq., regarding review, consideration, and approval
30	or rejection of Bank loans or other financial assistance. Notwithstanding the

1	provisions of R.S. 49:968(B)(15)(a), the House Committee on Transportation,
2	Highways and Public Works and the Senate Committee on Transportation, Highways
3	and Public Works shall exercise oversight and approval of any rules or regulations
4	to be promulgated pursuant to this Subpart.
5	(8) Establish fiscal controls and accounting procedures to ensure proper
6	accounting and reporting by the Bank and qualified borrowers.
7	(9) Enter into agreements with a department, agency, or instrumentality of
8	the United States, this state, or another state for the purpose of providing financing
9	for eligible transportation projects.
10	(10) Procure insurance, guarantees, letters of credit, and other forms of
11	collateral or security or credit support from any public or private entity or
12	instrumentality of the United States for the payment of any bonds issued by it,
13	including the power to pay premiums or fees on any insurance, guarantees, letters of
14	credit, and other forms of collateral, security, or credit support.
15	(11) Collect or authorize the trustee under any trust indenture securing any
16	bonds to collect amounts due under any loan obligations owned by it, including
17	taking the action required to obtain payment of any sums in default.
18	(12) Unless restricted under any agreement with holders of bonds, consent
19	to any modification with respect to the rate of interest, time, and payment of any
20	installment of principal or interest, or any other term of any loan obligations owned
21	by it.
22	(13) Borrow money through the issuance of bonds and other forms of
23	indebtedness as provided by this Subpart.
24	(14) Expend funds to obtain accounting, management, legal, financial
25	consulting, and other professional services necessary for the operation of the Bank.
26	(15) Expend funds credited to the Bank as the board determines necessary
27	for the costs of administering the operations of the Bank.
28	(16) Establish advisory committees as the board determines appropriate,
29	which may include individuals from the private sector with banking and financial
30	expertise.

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1	(17) Collect fees and charges in connection with its loans or other financial
2	assistance.
3	(18) Apply for, receive, and accept from any source, aid, grants, or
4	contributions of money, property, labor, or other things of value to be used to carry
5	out the purposes of this Subpart, subject to the conditions upon which the aid, grants,
6	or contributions are made.
7	(19) Enter into contracts or agreements for the servicing and processing of
8	financial agreements.
9	(20) Accept and hold, with or without payment of interest, funds deposited
10	with the Bank by the state, governmental units in the state, or private entities.
1	(21) Do all other things necessary or convenient to exercise the powers
12	granted or reasonably implied by this Subpart.
13	B. Following the close of each state fiscal year, the board shall submit an
14	annual report of its activities to the governor and the legislature no later than
15	September first of each year. The Bank shall submit an annual report to any
16	appropriate federal agency in accordance with the requirements of any federal
17	program.
18	§85. Use of the word "Bank"
19	A. The Bank is not authorized or empowered to be or to constitute a bank or
20	trust company within the jurisdiction or under the control of the state of Louisiana,
21	or any agency of the state, the Office of the Comptroller of the Currency, the United
22	States Department of the Treasury, a bank, a banker, or a dealer in securities within
23	the meaning of, or subject to the provisions of, any securities, securities exchange,
24	or securities dealers' law of the United States or this state.
25	B. All deposits taken by the Bank shall contain a notice stating that the
26	deposits are not insured by the Federal Deposit Insurance Corporation.
27	§86. Louisiana State Transportation Infrastructure Fund; creation; sources of
28	monies; establishment of accounts
29	A.(1) There is hereby created, as a special fund in the state treasury, the
30	Louisiana State Transportation Infrastructure Fund, hereinafter referred to as the

1	"fund". The fund shall be maintained and operated by the board of the Bank to
2	administer a revolving fund for eligible transportation projects and to use sums on
3	deposit in, credited to, or otherwise received by the Bank for the purposes provided
4	for in this Subpart.
5	B. Monies in the fund shall be used exclusively by the Bank to provide
6	assistance to qualified borrowers pursuant to a cooperative endeavor agreement for
7	eligible transportation projects as may be permitted by federal law or regulations and
8	by this Subpart.
9	C.(1) Money needed for the operation of the Bank or otherwise dedicated
10	shall be invested by the state treasurer as provided by law for the investment of other
11	state funds, except as may be limited by federal law or the terms and conditions of
12	any grant, related to money deposited in the revolving loan fund.
13	(2) Revenues used to capitalize the fund shall include but are not limited to
14	the following:
15	(a) Investments by the state treasurer as provided by law for the investment
16	of other state funds.
17	(b) Monies deposited into the fund pursuant to R.S. 48:77.
18	(c) Grants, gifts, and donations received by the state for the purposes of this
19	Subpart.
20	(d) Any other revenues, whether local, state, or federal, as may be provided
21	<u>by law.</u>
22	(e) Any monies which may be appropriated by the legislature to the fund.
23	D.(1) The Bank shall establish and maintain at least the four following
24	accounts in the fund:
25	(a) State and local roadway account.
26	(b) State and local nonroadway account.
27	(c) Federal roadway account.
28	(d) Federal nonroadway account.

1	(2) Earnings on balances in the federal roadway account and federal
2	nonroadway account shall be credited and invested according to applicable federal
3	<u>law.</u>
4	(3) Earnings on the state and local roadway account and state and local
5	nonroadway account shall be credited to the account that generates the earnings.
6	(4) Accounts may be established within each account as necessary to
7	effectuate the purposes of this Subpart or to meet the requirements of any state or
8	federal program.
9	(5) The Bank shall comply with all applicable federal laws and regulations
10	prohibiting the commingling of certain federal funds deposited in the fund.
11	E. All unexpended and unencumbered monies in the fund and its accounts
12	shall remain in the fund and its accounts at the end of each fiscal year as authorized
13	by this Subpart, except as may be limited or required by federal law or the terms and
14	conditions of any grant, related to money deposited in the fund.
15	F. No monies in the fund may be expended or otherwise used, nor any bonds
16	or other evidences of indebtedness or other obligations issued or insured for any
17	eligible transportation project or for any payment, expenditure, commitment, pledge,
18	loan, letter of credit, guarantee, subsidy, or other activity related to eligible
19	transportation projects or the financing thereof without the prior written approval of
20	the State Bond Commission.
21	§87. Applications for funding; project eligibility limitations
22	A. Notwithstanding any provision of the law to the contrary, and in addition
23	to the authority to lend or borrow money or to incur or guarantee indebtedness
24	provided by any other provisions of the law, the Bank may provide loans and other
25	financial assistance pursuant to a cooperative endeavor agreement from sums on
26	deposit in and credited to the fund to a qualified borrower for all or part of the
27	eligible costs of an eligible transportation project. However, this Subpart shall not

borrow money or incur indebtedness for eligible transportation projects.

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be deemed to be the exclusive authority under which a governmental unit may

1	B. The board shall determine the form and content of loan applications,
2	financing agreements, and loan obligations including but not limited to the term and
3	rate or rates of interest on a financing agreement. A financing agreement may
4	contain, in addition to financial terms, provisions relating to the regulation and
5	supervision of an eligible transportation project, or other provisions as the board may
6	determine appropriate. The terms and conditions of a loan or other financial
7	assistance from federal accounts shall comply with applicable federal requirements.
8	C.(1) Following approval of a project by the department, the board shall
9	determine which projects are eligible transportation projects from all applications
10	submitted.
11	(2) In selecting eligible transportation projects, the board shall consider the
12	projected feasibility of the project, the amount and degree of risk to be assumed by
13	the Bank, and the level of local financial support for the eligible transportation
14	project as evidenced by resolutions of the governing bodies in the area the project
15	will be located.
16	(3) In addition, the board may consider the following non-exclusive criteria
17	in making its determination that a proposed project is an eligible transportation
18	project:
19	(a) In-kind contributions to the project.
20	(b) The maximum economic benefit, enhancement of mobility, enhancement
21	of public safety, acceleration of project completion, and enhancement of
22	transportation services.
23	(c) The ability of the governmental unit to repay a loan according to the
24	terms and conditions established pursuant to this Subpart, consideration of which
25	may include, at the option of the board, the existence of its current investment grade
26	rating on existing debt of the applicant secured by the same revenues to be pledged
27	to secure repayment under the loan repayment agreement.

1	§88. Interest rates; payment schedules; terms
2	A. Any loan from the Bank shall bear interest at or below market interest
3	rates, as determined by the board. Any such rate or rates of interest may be at fixed,
4	variable, or adjustable rates.
5	B. The repayment schedule for any loan or other financial assistance from
6	the Bank shall be determined by the board; however, repayment of any loan or
7	financial assistance from the Bank shall commence not later than five years after the
8	eligible transportation project has been completed or, in the case of a highway
9	project, the facility has opened to traffic, whichever is later.
10	C. The term of a loan shall not exceed thirty years after the date of the first
11	payment on the loan.
12	D. The Bank may require the government unit to enter into a financing
13	agreement in connection with its loan obligation or other financial assistance.
14	§89. Submission of resolution authorizing qualified borrower to enter into loan or
15	financing agreement
16	A. Prior to executing a loan or financing agreement, the board shall require
17	submission of a resolution of the governing body of the qualified borrower
18	authorizing the borrower to enter into such loan or financing agreement.
19	(1) Such resolution shall prescribe the form and details of the public purpose
20	of the eligible transportation project, the cooperative endeavor agreement, the loan
21	or financing agreement, including the terms, security for, manner of execution and
22	repayment schedule, and such resolution may authorize an officer of such governing
23	body to execute contracts relating to a credit enhancement device, indenture of trust,
24	loan or pledge agreement, or any other agreement and authorize that officer to
25	approve changes, additions, and deletions to such documents as, in the sole opinion
26	of the officer, may be appropriate under the circumstances.
27	(2) Any such resolution shall include a statement as to the maximum

principal amount of any such obligation, the maximum interest rate to be incurred

or borne by said obligation or guaranteed by said obligation, the maximum

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redemption premium, if any, and the maximum term in years for such obligation, guarantee, or pledge.

B. Any evidence of indebtedness authorized pursuant to this Subpart shall bear a rate or rates of interest that shall not exceed the rate or rates set forth in the resolution authorizing and providing for the issuance thereof.

C. Any resolution authorizing an infrastructure bank loan or financing agreement pursuant to this Section shall be published once in the official journal of the qualified borrower incurring such loan or seeking to accept financial assistance. It shall not be necessary to publish exhibits to any such resolution, but such exhibits shall be made available for public inspection at the offices of the governing authority of the qualified borrower at reasonable times, and such fact shall be stated in the publication within the official journal. For a period of thirty days after the date of such publication, any person in interest may contest the legality of the resolution authorizing such evidence of indebtedness or other infrastructure bank loan and any provision thereof made for the security and payment thereof. After the thirty-day period, no one shall have any cause or right of action to contest the regularity, formality, legality, or effectiveness of the resolution and the provisions thereof or of the bonds, notes, or other evidence of indebtedness or other infrastructure bank loan or financing agreement, or the legality thereof, and all of the provisions of the resolutions and such evidence of indebtedness shall be conclusively presumed to be executed in accordance with applicable law or regulation, and no court shall have authority or jurisdiction to inquire into any such matter.

§90. Exempt from taxation; not secured by full faith and credit of the state; not used in the calculation of net state tax supported debt

A. Bonds, notes, or other evidence of indebtedness issued or any infrastructure bank loan or financing assistance granted pursuant to the authority of this Subpart shall be exempt from all taxation for state, parish, municipal, or other purposes. Such bonds, notes, or other evidence of indebtedness or infrastructure bank loans may be used for deposit with any officer, board, municipality, or other

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

B. Such bonds, notes, or other evidence of indebtedness, such guarantees, and such pledges issued and delivered pursuant to this authority shall constitute special and limited obligations of the Bank and shall not be secured by the full faith and credit of the state or any source of revenue of the state other than those sums on deposit in, credited to, or to be received by the Bank, including payments to be made pursuant to letters of credit.

C. In no event shall any bond, note, or other evidence of indebtedness, or guarantee, pledge, or other obligation of any type whatsoever entered into by the Bank be used in the calculation of net state tax supported debt as provided by Article VII, Section 6(F) of the Constitution of Louisiana.

§90.1. Public purpose only

<u>Funds</u> expended pursuant to the provisions of this Subpart shall be exclusively used for public purposes to fund eligible transportation projects within the state.

Section 3. In the case of any conflict between the provisions of R.S. 48:77 as amended by this Act and the provisions of the Act which originated as Senate Bill No. 221 of the 2015 Regular Session of the Legislature, the provisions of the Act which originated as Senate Bill No. 221 of the 2015 Regular Session of the Legislature shall supercede and control regardless of the order of enactment.

SPEAKER OF THE HOUSE OF REPRESENTATIVES
PRESIDENT OF THE SENATE
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____