

2017 Regular Session

HOUSE BILL NO. 618

BY REPRESENTATIVE GAROFALO

COASTAL RESOURCES: Authorizes the Coastal Protection and Restoration Financing Corporation to finance payments from the RESTORE Act and Natural Resources Damages Act

1 AN ACT

2 To amend and reenact R.S. 39:99.27(1), (4), (5), (10), (18), 99.30(A)(introductory

3 paragraph) and (1), 99.38(A), (B), and (C), and 99.42 and to enact R.S. 39:99.27(19)

4 through (28) and 99.41 and 99.42, relative to the Louisiana Coastal Protection and

5 Restoration Financing Corporation; to authorize the financing, purchasing, owning,

6 and managing payments from the Deepwater Horizon natural resource damage act

7 and the Resources and Ecosystems Sustainability, Tourist Opportunities, and

8 Revived Economies of the Gulf Coast States Act; to provide for terms and conditions

9 associated with the financing, purchasing, owning, and managing; to direct the

10 Louisiana State Law Institute to redesignate section numbers; and to provide for

11 related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 39:99.27(1), (4), (5), (10), (18), 99.30(A)(introductory paragraph)

14 and (1), 99.38(A), (B), and (C), and 99.42 are hereby amended and reenacted and R.S.

15 39:99.27(19) through (28) and 99.41 and 99.42 are hereby enacted to read as follows:

16 §99.27. Definitions

17 As used in this Subpart:

18 (1) "Agreement" means the agreement or agreements, as authorized under

19 this Subpart, between the state of Louisiana, as the seller, and the corporation, as the

1 purchaser, of the ~~offshore royalty~~ revenue assets. The sale by the state of the
2 ~~offshore royalty~~ revenue assets pursuant to any such agreement shall be a true sale
3 and absolute transfer and not a borrowing, nor a pledge or other security interest for
4 any borrowing.

5 * * *

6 (4) "Bonds" means ~~Offshore Royalty Revenue~~ bonds and refunding bonds,
7 notes and other evidences of indebtedness issued by the corporation pursuant to this
8 Subpart.

9 (5) "Closing date" means the date of delivery of the first issue of ~~Offshore~~
10 ~~Royalty Revenue~~ bonds.

11 * * *

12 (10) "Income" means the ~~Offshore Royalty Revenue~~ payments and all fees,
13 charges, payments, and other income and receipts paid or payable to the corporation
14 or a trustee or other party for the account of the corporation or the holders.

15 * * *

16 (18) "State allocation" means all monies to be received by the state of
17 Louisiana as a result of the Gulf of Mexico Energy Security Act of 2006, the
18 Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived
19 Economies of the Gulf Coast States Act as provided in the consent decree, or the
20 Deepwater Horizon (DWH) natural resource damages as provided in the consent
21 decree including all of the state of Louisiana's allocable share as determined
22 thereunder, without giving effect to any sale of any portion thereof.

23 (19) "Consent decree" means the settlement agreement and related documents
24 between the state of Louisiana and other gulf coast states, the United States, and BP
25 Exploration & Production Inc. (BPXP) including the Consent Decree Among
26 Defendant BPXP, the United States of America, and the States of Alabama, Florida,
27 Louisiana, Mississippi, and Texas and Final Judgment approving the consent decree
28 entered in the case "In re: Oil Spill by the Oil Rig 'Deepwater Horizon' in the Gulf

1 of Mexico, on April 20, 2010," bearing MDL No. 2179 of the docket of the United
2 States District Court for the Eastern District of Louisiana.

3 (20) "DWH NRD assets" means all rights, title and interest in and to the
4 portion of the state allocation of DWH natural resource damages as set forth in the
5 consent decree that may be sold to the corporation from time to time.

6 (21) "DWH NRD bonds" means the bonds, notes, and other obligations
7 issued by the corporation, exclusive of bonds that the corporation may issue to
8 refund bonds, the net proceeds, after financing costs, of the first issue of which shall
9 be used by the corporation to pay a portion of the purchase price to the state of
10 Louisiana to purchase the DWH NRD assets.

11 (22) "DWH NRD payments" means the monies paid or payable for natural
12 resource damages pursuant to the consent decree, to the corporation and the
13 agreement as in effect from time to time.

14 (23) "DWH NRD revenue" means all monies constituting the state of
15 Louisiana's allocable share of natural resource damages pursuant to the consent
16 decree.

17 (24) "RESTORE Act" means the Resources and Ecosystems Sustainability,
18 Tourist Opportunities, and Revived Economies of the Gulf Coast States Act or 2012.

19 (25) "RESTORE assets" means all rights, title, and interest in and to the
20 portion of the state allocation of civil penalties related to the Deepwater Horizon oil
21 spill as set forth in the RESTORE Act and the consent decree.

22 (26) "RESTORE bonds" means the bonds, notes, and other obligations issued
23 by the corporation, exclusive of bonds that the corporation may issue to refund
24 bonds, the net proceeds, after financing costs, of the first issue of which shall be used
25 by the corporation to pay a portion of the purchase price to the state of Louisiana to
26 purchase the RESTORE assets.

27 (27) "RESTORE payments" means the monies paid or payable for civil
28 penalties pursuant to the RESTORE Act and the consent decree, to the corporation,
29 and the agreement as in effect from time to time.

1 corporation or the indenture trustee, (iv) income, and (v) such other funds as may
2 become available, as shall be provided by the resolution of the board authorizing any
3 such bonds. ~~Bonds~~ Offshore royalty revenue bonds issued under the provisions of
4 this Subpart shall not be deemed to nor constitute a debt or obligation of the state of
5 Louisiana or a pledge of the full faith or credit of the state, and all bonds shall
6 contain on the face thereof a statement to the effect that neither the full faith and
7 credit nor the taxing power nor any other asset or revenues of the state or any
8 political subdivision thereof is or shall be obligated or pledged to the payment of the
9 principal of or the interest on such bonds.

10 B. The offshore royalty revenue bonds of each issue shall be dated, shall
11 bear interest, which may be includable or excludable in the gross income of the
12 holder for federal income tax purposes, at such fixed or variable rates, payable at or
13 prior to maturity, and shall mature at such time or times, as may be determined by
14 the board and may be redeemable before maturity, at the option of the corporation,
15 at such price or prices and under such terms and conditions as may be fixed by the
16 board, subject to approval of the State Bond Commission and the Joint Legislative
17 Committee on the Budget. The board shall determine the form of the bonds,
18 including any interest coupons to be attached thereon, and the manner of execution
19 of the bonds and shall fix the denomination or denominations of the bonds and the
20 place or places of payment of principal and interest thereof, which may be at any
21 bank or trust company within or without the state. The bonds may be issued in
22 coupon or in registered form or both, as the board may determine, and provisions
23 may be made for the registration of any coupon bonds as to principal alone and as
24 to both principal and interest and for the reconversion of any bonds registered as to
25 both principal and interest into coupon bonds. The board may sell such bonds in
26 such manner, either at public or at private sale, and for such price as it may
27 determine to be in the best interests of the corporation, subject to approval of the
28 State Bond Commission and the Joint Legislative Committee on the Budget. The
29 proceeds of such bonds shall be disbursed for the purposes for which such bonds

1 authorized to sell and convey to the corporation, from time to time, a portion of the
2 state allocation, up to one hundred percent thereof from and after such date, and, in
3 particular, to execute and deliver an agreement on the closing date. The agreement
4 shall provide, among other matters, that the purchase price payable by the
5 corporation to the state for the DWH NRD assets sold, up to one hundred percent of
6 the state allocation from and after such date, shall consist of the net proceeds, after
7 financing costs, of the first issue of DWH NRD bonds and the residual interests to
8 be paid and transferred semiannually pursuant to the provisions of this Subpart.

9 (2) Any sale of DWH NRD assets hereunder shall be treated as a true sale
10 and absolute conveyance and transfer of the property, and all of the rights, title, and
11 interest in and to such property, so conveyed and transferred, and not as a pledge or
12 any other security interest or lien for borrowing. The characterization of such a sale
13 as an absolute transfer by the parties and herein shall not be negated or adversely
14 affected if less than all of the state allocation is conveyed and transferred, nor by the
15 state's acquisition of residual interests or a subordinate interest in the DWH NRD
16 assets, nor by any characterization of the corporation or its bonds for purposes of
17 accounting, taxation, or securities regulation, nor by any other factor whatsoever.

18 B. Ownership of DWH NRD assets and DWH NRD payments

19 On and after the effective date of each sale of DWH NRD assets, the state of
20 Louisiana shall have no right, title, or interest in or to the DWH NRD assets sold and
21 conveyed; and the DWH NRD payments shall be property of the corporation and not
22 of the state, and shall be owned, received, held, and disbursed by the corporation or
23 the indenture trustee and not the state or the state treasury. On or before the closing
24 date and the effective date of any subsequent sale, the state, through the attorney
25 general, shall notify the necessary parties as provided for in the consent decree that
26 the DWH NRD assets have been sold and conveyed to the corporation, irrevocably
27 instruct such necessary parties as provided for in the consent decree that, subsequent
28 to the closing date or other effective date, the DWH NRD payments are to be paid
29 directly to the corporation or to the indenture trustee or other designee for the

1 account of the corporation, and take such other actions necessary and appropriate to
2 effectuate such notice and instruction.

3 C. Issuance of DWH NRD bonds of the corporation

4 (1)(a) In order to provide current assets and funds for the Coastal Protection
5 and Restoration Fund pursuant to this Subpart for the benefit of the state, the board
6 is hereby authorized and empowered to provide by resolution, at one time or from
7 time to time, for the issuance of DWH NRD bonds of the corporation in such amount
8 or amounts as the board shall determine, subject to the approval of the State Bond
9 Commission and the Joint Legislative Committee on the Budget.

10 (b) Such bonds shall be payable solely from funds of the corporation,
11 including, without limitation, all or any combination of the following sources:

12 (i) DWH NRD assets.

13 (ii) The proceeds of the sales of any such bonds.

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

15 (iv) Income.

16 (v) Such other funds as may become available, as shall be provided by the
17 resolution of the board authorizing any such bonds.

18 (c) DWH NRD bonds issued under the provisions of this Subpart shall not
19 be deemed to nor constitute a debt or obligation of the state of Louisiana or a pledge
20 of the full faith or credit of the state, and all bonds shall contain on the face thereof
21 a statement to the effect that neither the full faith and credit nor the taxing power nor
22 any other asset or revenues of the state or any political subdivision thereof is or shall
23 be obligated or pledged to the payment of the principal of or the interest on such
24 bonds.

25 (2) The DWH NRD bonds of each issue shall be dated, shall bear interest,
26 which may be includable or excludable in the gross income of the holder for federal
27 income tax purposes, at such fixed or variable rates, payable at or prior to maturity,
28 and shall mature at such time or times, as may be determined by the board and may
29 be redeemable before maturity, at the option of the corporation, at such price or

1 prices and under such terms and conditions as may be fixed by the board, subject to
2 approval of the State Bond Commission and the Joint Legislative Committee on the
3 Budget. The board shall determine the form of the bonds, including any interest
4 coupons to be attached thereon, and the manner of execution of the bonds and shall
5 fix the denomination or denominations of the bonds and the place or places of
6 payment of principal and interest thereof, which may be at any bank or trust
7 company within or without the state. The bonds may be issued in coupon or in
8 registered form, or both, as the board may determine, and provisions may be made
9 for the registration of any coupon bonds as to principal alone and as to both principal
10 and interest and for the reconversion of any bonds registered as to both principal and
11 interest into coupon bonds. The board may sell such bonds in such manner, either at
12 public or at private sale, and for such price as it may determine to be in the best
13 interests of the corporation, subject to approval of the State Bond Commission and
14 the Joint Legislative Committee on the Budget. The proceeds of such bonds shall be
15 disbursed for the purposes for which such bonds were issued under such restrictions,
16 if any, as the laws of the state of Louisiana, any applicable federal laws, and the
17 resolution authorizing the issuance of such bond or the trust indenture may provide.
18 The corporation may also provide for temporary bonds and for the replacement of
19 any bond that shall become mutilated or shall be destroyed or lost. Such bonds may
20 be issued without any other proceedings or the happening of any other conditions or
21 things than the proceedings, conditions, and things that are specified and required by
22 this Subpart.

23 (3) DWH NRD bonds of the corporation shall not be invalid because of any
24 irregularity or defect in the proceedings or in the issuance and sale thereof and shall
25 be incontestable in the hands of a bona fide purchaser or holder. The corporation,
26 after authorizing the issuance of bonds by resolution, shall publish once in a
27 newspaper of general circulation in the parish in which the corporation is domiciled,
28 a notice of intention to issue the bonds. The notice shall include a description of the
29 bonds and the security therefor. Within thirty days after the publication, any person

1 in interest may contest the legality of the resolution, any provisions of the bonds to
2 be issued pursuant to it, the provisions securing the bonds, and the validity of all
3 other provisions and proceedings relating to the authorization and issuance of the
4 bonds. If no action or proceeding is instituted within the thirty days, no person may
5 contest the validity of the bonds, the provisions of the resolution pursuant to which
6 the bonds were issued, the security of the bonds, or the validity of any other
7 provisions or proceedings relating to their authorization and issuance, and the bonds
8 shall be presumed conclusively to be legal. Thereafter no court shall have authority
9 to inquire into such matters.

10 (4) Neither the members of the board, its staff, nor any other person or
11 persons executing the bonds shall be subject to any personal liability or
12 responsibility by reason of the issuance thereof, and shall have the indemnification
13 rights provided in R.S. 13:5108.1 with respect to such issuance.

14 D. Pledge and agreement

15 The state covenants and agrees with the corporation, and the holders of the
16 bonds in which the corporation has included such pledge and agreement, that the
17 state will do the following:

18 (1) Irrevocably direct the necessary parties as provided for in the consent
19 decree to transfer all conveyed DWH NRD payments directly to the corporation or
20 its assignee.

21 (2) Enforce the corporation's rights to receive the DWH NRD payments to
22 the full extent permitted by the law.

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

25 (4) Not limit or alter the rights of the corporation to fulfill the terms of its
26 agreements with such holders.

27 (5) Not in any way impair the rights and remedies of such holders or the
28 security for such bonds until such bonds, together with the interest thereon and all

1 costs and expenses in connection with any action or proceeding by or on behalf of
2 such holders, are fully paid and discharged.

3 §99.42. RESTORE revenue

4 A. Sale of RESTORE assets

5 (1) The State Bond Commission, subject to approval of the Joint Legislative
6 Committee on the Budget and subject to approval by a majority vote of the
7 legislature if the legislature is in session and by mail ballot during the interim, is
8 authorized to sell and convey to the corporation, from time to time, a portion of the
9 state allocation, up to one hundred percent thereof from and after such date, and, in
10 particular, to execute and deliver an agreement on the closing date. The agreement
11 shall provide, among other matters, that the purchase price payable by the
12 corporation to the state for the RESTORE assets sold, up to one hundred percent of
13 the state allocation from and after such date, shall consist of the net proceeds, after
14 financing costs, of the first issue of RESTORE bonds and the residual interests to be
15 paid and transferred semiannually pursuant to the provisions of this Subpart.

16 (2) Any sale of RESTORE assets hereunder shall be treated as a true sale and
17 absolute conveyance and transfer of the property, and all of the rights, title, and
18 interest in and to such property, so conveyed and transferred, and not as a pledge or
19 any other security interest or lien for borrowing. The characterization of such a sale
20 as an absolute transfer by the parties and herein shall not be negated or adversely
21 affected if less than all of the state allocation is conveyed and transferred, nor by the
22 state's acquisition of residual interests or a subordinate interest in the RESTORE
23 assets, nor by any characterization of the corporation or its bonds for purposes of
24 accounting, taxation, or securities regulation, nor by any other factor whatsoever.

25 B. Ownership of RESTORE assets and RESTORE payments

26 On and after the effective date of each sale of RESTORE assets, the state of
27 Louisiana shall have no right, title, or interest in or to the RESTORE assets sold and
28 conveyed; and the RESTORE payments shall be property of the corporation and not
29 of the state, and shall be owned, received, held, and disbursed by the corporation or

1 the indenture trustee and not the state or the state treasury. On or before the closing
2 date and the effective date of any subsequent sale, the state, through the attorney
3 general, shall notify the necessary parties as provided for in the consent decree that
4 the RESTORE assets have been sold and conveyed to the corporation, irrevocably
5 instruct such necessary parties as provided for in the consent decree that, subsequent
6 to the closing date or other effective date, the RESTORE payments are to be paid
7 directly to the corporation or to the indenture trustee or other designee for the
8 account of the corporation, and take such other actions necessary and appropriate to
9 effectuate such notice and instruction.

10 C. Issuance of RESTORE bonds of the corporation

11 (1)(a) In order to provide current assets and funds for the Coastal Protection
12 and Restoration Fund pursuant to this Subpart for the benefit of the state, the board
13 is hereby authorized and empowered to provide by resolution, at one time or from
14 time to time, for the issuance of RESTORE bonds of the corporation in such amount
15 or amounts as the board shall determine, subject to the approval of the State Bond
16 Commission and the Joint Legislative Committee on the Budget. Such bonds shall
17 be payable solely from funds of the corporation, including, without limitation, all or
18 any combination of the following sources:

19 (i) RESTORE assets.

20 (ii) Proceeds of the sales of any such bonds.

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

22 (iv) Income.

23 (v) Such other funds as may become available, as shall be provided by the
24 resolution of the board authorizing any such bonds.

25 (b) Bonds issued under the provisions of this Subpart shall not be deemed
26 to nor constitute a debt or obligation of the state of Louisiana or a pledge of the full
27 faith or credit of the state, and all bonds shall contain on the face thereof a statement
28 to the effect that neither the full faith and credit nor the taxing power nor any other

1 asset or revenues of the state or any political subdivision thereof is or shall be
2 obligated or pledged to the payment of the principal of or the interest on such bonds.

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

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

17 (4) Neither the members of the board, its staff, nor any other person or
18 persons executing the bonds shall be subject to any personal liability or
19 responsibility by reason of the issuance thereof, and shall have the indemnification
20 rights provided in R.S. 13:5108.1 with respect to such issuance.

21 D. Pledge and agreement

22 The state covenants and agrees with the corporation, and the holders of the
23 bonds in which the corporation has included such pledge and agreement, that the
24 state will do the following:

25 (1) Irrevocably direct the necessary parties as provided for in the RESTORE
26 Act and the consent decree to transfer all conveyed RESTORE payments directly to
27 the corporation or its assignee.

28 (2) Enforce the corporation's rights to receive the RESTORE payments to the
29 full extent permitted by the law.

For assets and revenues from NRDA and RESTORE, proposed law authorizes the State Bond Commission, subject to approval from the Joint Legislative Committee on the Budget and a majority of each house of the legislature, to sell to the Coastal Protection and Restoration Financing Corp. allocation received by the state from those two settlements. Authorizes the corporation to use the assets received from the sale to support the sale of bonds, either RESTORE bonds or DWH NRD bonds.

Proposed law authorizes the corporation to issue revenue bonds backed by the RESTORE assets or the DWH NRD assets. Provides for the procedures that are to be followed for each, including approval by the State Bond Commission and the Joint Legislative Committee on the Budget. Requires that the proceeds of the sale of the bonds be used for the purposes for which the bonds were issued. Specifies that the bonds are bonds of the corporation and are in no way backed by the full faith and credit of the state.

Proposed law requires that all proceeds and monies received by the state, whether through purchase of assets, as residual interests, or any other way be deposited to the Coastal Protection and Restoration Fund.

(Amends R.S. 39:99.27(1), (4), (5), (10), (18), 99.30(A)(intro. para.) and (1), 99.38(A), (B), and (C), and 99.42; Adds R.S. 39:99.27(19)-(28) and 99.41 and 99.42)