

2017 Regular Session

SENATE BILL NO. 251

BY SENATOR LAFLEUR

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

1 AN ACT

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

1 Be it enacted by the Legislature of Louisiana:

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

6 §91. Deepwater Horizon Economic Damages Collection Fund

7 A.

8 * * *

9 B. All economic damages proceeds from the DWH litigation in excess of the
10 first two hundred million dollars deposited in the Fiscal Year 2015-2016 Deficit
11 Elimination Fund, **and in such amounts as remain after payment of the amounts**
12 **due on bonds, refunding bonds, or related expenses which are secured by the**
13 **state allocation as provided in the documents pursuant to which the bonds were**
14 **issued under the provisions of Subpart F-2 of this Part,** shall be deposited by the
15 treasurer as follows:

16 * * *

17 E. This Subpart shall be null, void, and of no effect at the later of the
18 conclusion of the DWH litigation, or July 1, 2024, or at such time as all
19 **outstanding bonds issued pursuant to Subpart F-2 of this Part, or any refunding**
20 **bonds issued pursuant to the provisions of Chapter 14-A or 15 of Title 39 of the**
21 **Louisiana Revised Statutes of 1950 or other indebtedness issued for the**
22 **purposes enumerated in this Section and payable from the sale of all or a**
23 **portion of the state's recovery of economic damages as a result of the settlement**
24 **of the Deepwater Horizon economic damage litigation as provided in Subpart**
25 **F-2 of this Part, and the corporation no longer has any bonds outstanding.**

26 * * *

27 **SUBPART F-2. LOUISIANA ECONOMIC**

28 **SETTLEMENT FINANCING CORPORATION**

29 **§99.51. Title**

1 This Subpart shall be known and may be cited as the "Louisiana
2 Economic Settlement Financing Corporation Act".

3 §99.52. Definitions

4 As used in this Subpart:

5 (1) "Agreement" means the agreement or agreements, as authorized
6 under this Subpart, between the state of Louisiana, as the seller, and the
7 corporation, as the purchaser, of the DWH economic damage revenue assets.
8 The sale by the state of the DWH economic damage revenue assets pursuant to
9 any such agreement shall be a true sale and absolute transfer and not a
10 borrowing, nor a pledge or other security interest for any borrowing.

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

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

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

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

18 (6) "Corporation" means the Louisiana Economic Financing
19 Corporation created pursuant to this Subpart.

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

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

26 (9) "Economic damage revenue" means the state allocation of the
27 revenues received in settlement of the economic damage claims of the state
28 against BP Exploration and Production, Inc., and any of its corporate affiliates,
29 arising out of the Deepwater Horizon oil spill in the Gulf of Mexico. Economic

1 damage revenues do not include amounts received by the state from or through
2 natural resource damage assessment (NRDA) claims, the Resources and
3 Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the
4 Gulf State Act of 2012 (RESTORE Act), or claims otherwise restricted by
5 federal law or court order.

6 (10) "Economic damage revenue assets" means all right, title and
7 interest in and to the portion of the state allocation that may be sold to the
8 corporation from time to time.

9 (11) "Economic damage revenue bonds" means the bonds, notes, and
10 other obligations issued by the corporation, exclusive of bonds that the
11 corporation may issue to refund bonds, the net proceeds, after financing costs,
12 of the first issue of which shall be used by the corporation to pay a portion of the
13 purchase price to the state of Louisiana to purchase the economic damage
14 revenue assets.

15 (12) "Economic damage revenue payments" means the monies paid or
16 payable to the corporation pursuant to the agreement as in effect from time to
17 time.

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

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

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

29 (16) "Indenture trustee" means the trust company or bank at the time

1 servicing as trustee under the trust indenture referred to in R.S. 39:99.64.

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

6 (18) "Residual interests" means the income of the corporation, and bond
7 proceeds, if any, not previously paid to the state, that are in excess of the
8 corporation's requirements to pay its operating expenses, debt service, sinking
9 fund and other redemption requirements, reserve fund requirements, and any
10 other contractual obligations to the holders or that may be incurred in
11 connection with the issuance or repayment of the bonds, the amounts of which
12 shall be determined by the board on or before January first and July first of
13 each year for the next twelve months, and which, within ten days after each
14 such determination, shall be transferred and paid by the corporation to the state
15 treasurer for deposit in and credit to the Deepwater Horizon Economic
16 Damages Collection Fund pursuant to the agreement between the state and the
17 corporation.

18 (19) "State allocation" means all economic damages to be received by the
19 state of Louisiana beginning in 2009 and ending in 2033 as a result of the
20 Deepwater Horizon economic damage consent decree, including all of the state
21 of Louisiana's allocable share as determined thereunder, without giving effect
22 to any sale of any portion thereof.

23 (20) "Consent decree" means the settlement agreement and related
24 documents between the state of Louisiana, other gulf states, local governments,
25 and BP Exploration & Production, Inc. settling the claims of economic damage,
26 which consent decree was approved by the United States District Court for the
27 Eastern District of Louisiana on April 4, 2016.

28 §99.53. Corporation created; domicile; fiscal year

29 The corporation is created as a special purpose, public corporate entity,

1 an instrumentality independent of the state. The corporation shall be a public
2 corporate body, intended, created, and empowered to effectuate only the
3 purposes set forth in this Subpart, and shall have a legal existence, separate and
4 distinct from the state of Louisiana. The domicile of the corporation shall be
5 East Baton Rouge Parish. The corporation shall operate on a fiscal year basis
6 commencing on July first and ending on June thirtieth of each year.

7 §99.54. Governing board; membership; terms; compensation and expenses;
8 chairman and vice chairman; quorum; employees; agents;
9 limitation of liability

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

26 B. The members of the board shall not receive compensation by reason
27 of their membership on the board or attendance at the meetings thereof. The
28 appointed members of the board shall receive a per diem allowance to be
29 established by the board in an amount not to exceed the amount of per diem

1 authorized for members of the legislature for attendance at meetings of the
2 corporation or committees thereof or for other official duties of the corporation
3 or board, and all members may be reimbursed for travel expenses incurred in
4 the performance of their official duties. The travel expense reimbursement shall
5 be fixed by the corporation in an amount not to exceed those authorized under
6 state travel regulations.

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

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

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

29 §99.55. Purposes and powers

1 A. The corporation's purposes are, and it shall have the authority and
2 powers, to carry out the financing, purchasing, owning and managing of the
3 economic damage revenues and the economic damage revenue assets, the
4 corporation being vested, subject to R.S. 39:99.59 and the other provisions
5 hereof, with all the powers of a private corporation to effectuate the purposes
6 of the corporation including, without limitation, the power to sue and be sued,
7 to make contracts, to adopt and use a corporate seal and to alter same, and is
8 further particularly authorized and empowered to:

9 (1) Purchase the economic damage revenue assets and receive, or
10 authorize the indenture trustee to receive, as the same shall become due, the
11 economic damage revenue payments.

12 (2) Adopt, or alter, or repeal any bylaws, rules or regulations as the
13 board may deem necessary.

14 (3) Issue bonds as authorized by this Subpart and refund any of such
15 bonds.

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

18 (5) Pay its operating expenses.

19 (6) Determine the amounts of the residual interests, and pay and transfer
20 such residual interests to the state treasurer, semiannually, in accordance with
21 the provisions of this Subpart.

22 (7) Enter into such agreements with such parties as the corporation may
23 deem necessary to effectuate the prompt and orderly transfer of the state of
24 Louisiana's allocation and for such other purposes that the corporation shall
25 deem advisable.

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

28 B. The corporation is further authorized and empowered to incur
29 obligations to pay its operating expenses in such form as may be authorized by

1 the corporation. This Subpart shall govern the issuance of such obligations
2 insofar as the same may be applicable.

3 C. The corporation shall prepare an operating budget annually which
4 shall be submitted for approval to the State Bond Commission and the Joint
5 Legislative Committee on the Budget.

6 D. The corporation shall prepare and submit an annual report to the
7 governor, the State Bond Commission, the Senate committees on finance and
8 health and welfare, and the House of Representatives committees on
9 appropriations and health and welfare on or before March first of each year.
10 The annual report shall contain, among other appropriate matters, the annual
11 operating and financial statements of the corporation for the fiscal year ending
12 the preceding June thirtieth.

13 E. Any funds held by the corporation or by the indenture trustee may be
14 invested and reinvested in investments and securities that are legal investments
15 under the laws of the state of Louisiana for funds of the state, funds of the
16 political subdivisions of the state, or tax exempt bonds as defined in R.S.
17 49:342(C).

18 §99.56. Corporate existence; dissolution

19 The corporation shall have perpetual existence; provided, however, the
20 board shall dissolve and terminate the existence of the corporation no later than
21 two years after the date of final payment of all outstanding bonds and the
22 payment or satisfaction of all other outstanding obligations and liabilities of the
23 corporation, except to the extent necessary to remain in existence, and only for
24 such additional time, as shall be necessary to fulfill any outstanding covenants
25 or agreements with holders or other parties made in accordance with the
26 provisions of this Subpart. Upon dissolution of the corporation, title to all assets
27 and properties of the corporation shall vest in and become the property of the
28 state of Louisiana and shall be deposited in and credited to the Deepwater
29 Horizon Economic Damages Collection Fund, and the corporation shall execute

1 all necessary conveyances, assignments or other documents to establish and
2 evidence such transfer and ownership, including all conveyances or assignments
3 of all rights, title and interest to the economic damage revenues.

4 **§99.57. Staff; counsel; assistance by state officers, departments and agencies;**
5 **auditors; consultants**

6 **A. The staff of the Department of Treasury, including that of the State**
7 **Bond Commission, may, pursuant to a cooperative endeavor agreement, serve**
8 **as staff to the corporation under the supervision of the state treasurer.**

9 **B. The attorney general shall, pursuant to a cooperative endeavor**
10 **agreement, serve as counsel to the corporation, and subject to approval of the**
11 **State Bond Commission and the attorney general, the corporation may employ**
12 **or retain such other attorneys as it may deem necessary and fix their**
13 **compensation.**

14 **C. State officers, departments, and agencies may render support and**
15 **services to the corporation within their respective functions, as requested by the**
16 **corporation.**

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

23 **E. The corporation may employ or retain such professionals, consultants,**
24 **agents, financial advisers, and accountants as it may deem necessary to carry**
25 **out its duties under this Subpart and, the provisions of any other law to the**
26 **contrary notwithstanding, may determine their duties and compensation subject**
27 **only to the approval of the State Bond Commission.**

28 **F. The corporation shall be subject to the Code of Governmental Ethics**
29 **(R.S. 42:1101, et seq.), the Open Meetings Law (R.S. 42:11, et seq.), the Public**

1 Records Law (R.S. 44:1, et seq.), and the Bond Validation Procedures Law (R.S.
2 13:5121, et seq.).

3 §99.58. Exemption from taxation

4 The exercise of the powers and authorities granted by this Subpart shall
5 be in all respects for the benefit of the citizens of the state of Louisiana and for
6 the promotion of their welfare, convenience, and prosperity. Property of the
7 corporation, whether immovable, personal, tangible or intangible, and the
8 income, earnings, and operations of the corporation, shall be exempt from all
9 taxation, fees, or assessments, or any other similar charges.

10 §99.59. Bankruptcy

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

24 §99.60. Exclusive jurisdiction and venue; service of process; bond validation
25 actions

26 The Nineteenth Judicial District Court for the state of Louisiana shall
27 have exclusive jurisdiction and venue of any suit or action of any nature
28 brought by or against the corporation. Any suit or action to determine or
29 contest the validity of bonds of the corporation shall be brought and conducted

1 only in accordance with R.S. 13:5121, et seq.

2 §99.61. Sale of economic damage revenue assets

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

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

26 §99.62. Ownership of economic damage revenue assets and economic damage
27 revenue payments

28 On and after the effective date of each sale of economic damage revenue
29 assets, the state of Louisiana shall have no right, title, or interest in or to the

1 economic damage revenue assets sold and conveyed; and the economic damage
2 revenue payments shall be property of the corporation and not of the state, and
3 shall be owned, received, held, and disbursed by the corporation or the
4 indenture trustee and not the state or the state treasury. On or before the
5 closing date and the effective date of any subsequent sale, the state, through the
6 attorney general, shall notify the appropriate parties that the economic damage
7 revenue assets have been sold and conveyed to the corporation, irrevocably
8 instruct such parties or any successor agency that, subsequent to the closing
9 date or other effective date, the economic damage revenue payments are to be
10 paid directly to the corporation or to the indenture trustee or other designee for
11 the account of the corporation, and take such other actions necessary and
12 appropriate to effectuate such notice and instruction.

13 §99.63. Issuance of bonds of the corporation

14 A.(1) In order to provide current assets and funds for the Deepwater
15 Horizon Economic Damages Collection Fund pursuant to this Subpart for the
16 benefit of the state, the board is hereby authorized and empowered to provide
17 by resolution, at one time or from time to time, for the issuance of bonds of the
18 corporation in such amount or amounts as the board shall determine, subject
19 to the approval of the State Bond Commission and the Joint Legislative
20 Committee on the Budget.

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

23 (i) Economic damage revenue assets.

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

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

26 (iv) Income.

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

29 (3) Bonds issued under the provisions of this Subpart shall not be

1 deemed to be nor constitute a debt or obligation of the state of Louisiana or a
2 pledge of the full faith or credit of the state, and all bonds shall contain on the
3 face thereof a statement to the effect that neither the full faith and credit nor the
4 taxing power nor any other asset or revenues of the state or any political
5 subdivision thereof is or shall be obligated or pledged to the payment of the
6 principal of or the interest on such bonds.

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

1 **Subpart.**

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

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

23 **§99.64. Security for payment of bonds; provisions of trust indenture or**
24 **resolution**

25 **A. In the discretion of the board, any bonds issued, and any ancillary**
26 **contracts or derivative instruments made under the provisions of this Subpart,**
27 **may be secured by a trust indenture by and between the corporation and the**
28 **indenture trustee, which may be any trust company or bank having the powers**
29 **of a trust company, whether located within or without the state. Such trust**

1 indenture, or the resolution of the board providing for the issuance of such
2 bonds, may:

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

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

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

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

15 (5) Contain such other provisions as the corporation may deem
16 reasonable and proper for priorities and subordination among the holders and
17 other beneficiaries. Any reference in this Subpart to a resolution of the board
18 shall include any trust indenture authorized thereby.

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

29 C. Whether or not the bonds are of such form and character as to be

1 negotiable instruments under the provisions of the Uniform Commercial Code,
2 the bonds are hereby made negotiable instruments for all purposes, subject only
3 to the provisions of the bonds for registration.

4 §99.65. Ancillary contracts and derivative instruments

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

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

1 secures bonds, or (ii) investment or contract providing for investment otherwise
2 authorized by law. The determination of the board, so approved, that a
3 derivative instrument or the amendment or termination thereof is necessary or
4 appropriate as aforesaid shall be conclusive. These contracts and arrangements
5 may contain such payment, security, default, remedy, and other terms and
6 conditions as determined by the board and approved by the State Bond
7 Commission and the Joint Legislative Committee on the Budget, after giving
8 due consideration to the creditworthiness of the counterparty or other obligated
9 party, including any rating by any nationally recognized rating agency, and any
10 other criteria as may be appropriate.

11 §99.66. Bonds exempt from taxation

12 The bonds, their transfer and the income therefrom, including any profit
13 made on the sale thereof, shall at all times be free and exempt from taxation by
14 the state of Louisiana and by any other political subdivision of the state.

15 §99.67. Bond and other proceeds received by the state

16 All proceeds and monies received by the state, whether received as
17 purchase price for economic damage revenue assets sold or as the residual
18 interests or in any other way pursuant to this Subpart, shall be deposited in and
19 credited to the Deepwater Horizon Economic Damages Collection Fund.

20 §99.68. Pledge and agreement

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

24 (1) Irrevocably direct the necessary parties or any successor agency to
25 transfer all conveyed economic damage revenue payments directly to the
26 corporation or its assignee.

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

29 (3) Not amend the state law in any manner that would materially impair

1 the rights of the holders.

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

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

8 §99.69. Construction and effect

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

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

Proposed law creates the Louisiana Economic Financing 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 seven congressional districts.

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 annually.

Proposed law provides that the corporation's purpose is to carry out the financing, purchasing, 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 retains present law and further provides that the economic damage proceeds shall be deposited in such amounts as remain after the payment of debt service and expenses secured by the state allocation as provided in the documents pursuant to which the bonds were issued under proposed law.

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 deem 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 sell and convey, 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:

- (i) Economic damage revenue assets.
- (ii) The proceeds of the sales of any such bonds.
- (iii) Earnings on funds of the corporation or the indenture trustee.
- (iv) Such other funds as may become available.

Proposed law further provides that bonds issued under the provisions of the 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, sale, resale, 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)(intro para) and (E); adds R.S. 39:99.51-99.69)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Finance to the original bill

1. Technical amendments.