

2018 Regular Session

SENATE BILL NO. 555

BY SENATORS LAFLEUR AND WHITE

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

AN ACT

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

1 Be it enacted by the Legislature of Louisiana:

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

5 §91. Deepwater Horizon Economic Damages Collection Fund

6 A.

7 * * *

8 B. All After making the deposit to the Fiscal Year 2015-2016 Deficit
9 Elimination Fund as provided in Subsection A of this Section, and an amount
10 sufficient to fulfill the state match requirement of Senate Bill No. 129 of the
11 2018 Regular Session which shall be held in the state treasury until
12 appropriated by the legislature, the treasurer shall deposit the economic
13 damages proceeds from the DWH litigation; ~~in excess of the first two hundred~~
14 ~~million dollars deposited in the Fiscal Year 2015-2016 Deficit Elimination Fund~~

15 (1) Received by the state as a result of the sale of all or a portion of the
16 economic damage proceeds as provided in Subpart F-2 of this Part, including
17 any residual interests, in the Construction Subfund within the Transportation
18 Trust Fund.

19 (2) Received by the state from the DWH litigation and which are not sold
20 as provided in Subpart F-2 of this Part, in the Construction Subfund within the
21 Transportation Trust Fund.

22 shall be deposited by the treasurer as follows:

23 (1) ~~Forty-five percent of each such receipt of economic damages proceeds to~~
24 ~~the Budget Stabilization Fund until that fund reaches the amount statutorily~~
25 ~~mandated by R.S. 39:94.~~

26 (2) ~~Forty-five percent of each such receipt of economic damages proceeds to~~
27 ~~the Medicaid Trust Fund for the Elderly provided for in R.S. 46:2691 until an~~
28 ~~amount not to exceed seven hundred million dollars has been deposited into such~~
29 ~~fund.~~

1 **§99.52. Definitions**

2 **As used in this Subpart:**

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

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

10 **(3) "Board" means the board of the corporation.**

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

14 **(5) "Closing date" means the date of delivery of the first issue of DWH**
15 **economic damage revenue bonds.**

16 **(6) "Corporation" means the Louisiana Economic Financing**
17 **Corporation created pursuant to this Subpart.**

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

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

24 **(9) "Economic damage revenue" means the state allocation of the**
25 **revenues received in settlement of the economic damage claims of the state**
26 **against BP Exploration and Production, Inc., and any of its corporate affiliates,**
27 **arising out of the Deepwater Horizon oil spill in the Gulf of Mexico. Economic**
28 **damage revenues do not include amounts received by the state from or through**
29 **natural resource damage assessment (NRDA) claims, the Resources and**

1 Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the
2 Gulf State Act of 2012 (RESTORE Act), or claims otherwise restricted by
3 federal law or court order.

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

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

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

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

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

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

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

29 (17) "Outstanding", when used with respect to bonds, shall exclude

1 bonds that shall have been paid in full at maturity, or shall have otherwise been
2 refunded, redeemed, defeased, or discharged, or that may be deemed not
3 outstanding pursuant to agreements with the holders.

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

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

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

27 §99.53. Corporation created; domicile; fiscal year

28 The Louisiana Economic Financing Corporation is hereby created as a
29 special purpose, public corporate entity, an instrumentality independent of the

1 state. The corporation shall be a public corporate body, intended, created, and
2 empowered to effectuate only the purposes set forth in this Subpart, and shall
3 have a legal existence, separate and distinct from the state of Louisiana. The
4 domicile of the corporation shall be East Baton Rouge Parish. The corporation
5 shall operate on a fiscal year basis commencing on July first and ending on June
6 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 Louisiana Economic Financing Corporation shall be governed by
11 a board which shall exercise all powers, rights, and duties conferred by this
12 Subpart or other provisions of law upon the corporation. The board shall
13 consist of the governor, the state treasurer, the attorney general, the president
14 of the Senate, the speaker of the House of Representatives, or their designees,
15 and seven members appointed by the governor with one member appointed
16 from each congressional district and the remaining member or members
17 appointed from the state at large. The members of the board who are appointed
18 by the governor shall represent the state's diverse population as near as
19 practicable, and shall have a background and significant experience in financial
20 management and investments. The members of the board appointed by the
21 governor shall be subject to Senate confirmation and shall serve at the pleasure
22 of the governor for terms of four years each, or until their successors shall have
23 been appointed and qualified, as designated by the governor. Any appointment
24 to fill a vacancy on the board shall be made for the unexpired term of the
25 member whose death, resignation, or removal created such vacancy. Members
26 on the board may be appointed to an additional term.

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

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

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

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

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

1 §99.55. Purposes and powers

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

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

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

15 (3) Issue bonds as authorized by this Subpart and refund any 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 any residual interests to the state treasurer, semiannually, in accordance with
21 the provisions of this Subpart.

22 (7) Enter into agreements with such parties as the corporation may deem
23 necessary to effectuate the prompt and orderly transfer of the state of
24 Louisiana's allocation and for other purposes that the corporation shall deem
25 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 authorized to incur obligations to pay its operating
29 expenses in any form as may be authorized by the corporation. This Subpart

1 shall govern the issuance of obligations insofar as they may be applicable.

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

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

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

17 §99.56. Corporate existence; dissolution

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

1 evidence this transfer and ownership, including all conveyances or assignments
2 of all right, title, and interest to the economic damage revenues.

3 §99.57. Staff; counsel; assistance by state officers, departments, and agencies;
4 auditors; consultants

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

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

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

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

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

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

1 13:5121 et seq.)

2 §99.58. Exemption from taxation

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

9 §99.59. Bankruptcy

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

23 §99.60. Exclusive jurisdiction and venue; service of process; bond validation
24 actions

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

1 §99.61. Sale of economic damage revenue assets

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

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

25 §99.62. Ownership of economic damage revenue assets and economic damage
26 revenue payments

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

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

12 §99.63. Issuance of bonds of the corporation

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

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

21 (i) Economic damage revenue assets.

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

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

24 (iv) Income.

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

27 (3) Bonds issued under the provisions of this Subpart shall not be
28 deemed to be nor constitute a debt or obligation of the state of Louisiana or a
29 pledge of the full faith or credit of the state, and all bonds shall contain on their

1 face a statement to the effect that neither the full faith and credit nor the taxing
2 power nor any other asset or revenues of the state or any political subdivision
3 of the state is or shall be obligated or pledged to the payment of the principal of
4 or the interest on the bonds.

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

28 C. Bonds of the corporation shall not be invalid because of any
29 irregularity or defect in the proceedings or in the issuance and sale thereof and

1 shall be incontestable in the hands of a bona fide purchaser or holder. The
2 corporation, after authorizing the issuance of bonds by resolution, shall publish
3 once in a newspaper of general circulation in the parish in which the
4 corporation is domiciled, a notice of intention to issue the bonds. The notice
5 shall include a description of the bonds and their security. Within thirty days
6 after the publication, any person in interest may contest the legality of the
7 resolution, any provision of the bonds to be issued pursuant to it, the provisions
8 securing the bonds, and the validity of all other provisions and proceedings
9 relating to the authorization and issuance of the bonds. If no action or
10 proceeding is instituted within the thirty days, no person may contest the
11 validity of the bonds, the provisions of the resolution pursuant to which the
12 bonds were issued, the security of the bonds, or the validity of any other
13 provisions or proceedings relating to their authorization and issuance, and the
14 bonds shall be presumed conclusively to be legal. Thereafter no court shall have
15 authority to inquire into these matters.

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

20 §99.64. Security for payment of bonds; provisions of trust indenture or
21 resolution

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

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

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

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

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

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

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

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

29 **§99.65. Ancillary contracts and derivative instruments**

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

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

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

7 §99.66. Bonds exempt from taxation

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

11 §99.67. Bond and other proceeds received by the state

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

16 §99.68. Pledge and agreement

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

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

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

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

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

29 (5) Not in any way impair the rights and remedies of the holders or the

1 security for the bonds until such bonds, together with the interest thereon and
 2 all costs and expenses in connection with any action or proceeding by or on
 3 behalf of the holders, are fully paid and discharged.

4 §99.69. Construction and effect

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

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

SB 555 Engrossed

DIGEST
 2018 Regular Session

LaFleur

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 congressional districts and the remaining member from the state at large.

Proposed law provides that the members of the board appointed by the governor shall be subject to Senate confirmation, shall represent the state's diverse population as near as

practicable, and shall have a background and significant experience in financial management and investments. Provides that the members of the board appointed by the governor serve at the pleasure of the governor for terms of four years each, or until their successors shall have been appointed and qualified. Also provides that the board members shall not receive compensation but shall receive a per diem for attending meetings of the corporation or committees and may be reimbursed for travel expenses incurred in the performance of their official duties.

Proposed law provides for annual election of a chairperson and vice chairperson. Provides for the state treasurer to serve as secretary-treasurer of the corporation and board. Provides that seven members of the board shall constitute a quorum for the transaction of all business of the corporation. Provides that the board shall meet no less than once annually.

Proposed law provides that the corporation's purpose is to carry out the financing, 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 revises present law to provide that after making the \$200 million to the Fiscal Year 2015-2016 Deficit Elimination Fund and an amount sufficient to fulfill the state match requirement of S.B. No. 129 of the 2018 R.S. which shall be held in the state treasury until appropriated by the legislature, the treasurer shall deposit the economic damage proceeds received by the state as a result of the sale of all or a portion of the economic damage proceeds as provided in proposed law, including any residual interests, in the Construction Subfund within the Transportation Trust Fund. Proposed law further provides that the economic damage proceeds received by the state from the DWH litigation and which are not sold as provided in proposed law, shall be deposited in the Construction Subfund within the Transportation Trust Fund. The proceeds deposited into the Construction Subfund shall be appropriated solely for the direct costs associated with actual project delivery, construction, and maintenance of transportation and capital transit infrastructure projects of the state, including \$100 million for the TIMED project for LA 3241 from I-12 to Bush (Bogalusa) and local governments, and shall not be used by the Department of Transportation and Development for the payment of employee wages and related benefits or employee retirement benefits. Proposed law further provides that transportation and capital transit infrastructure projects shall not include any project which is to be funded through GARVEE bonds.

Proposed law further provides that present law shall be null and void no later than two years after such time as any bonds or indebtedness issued pursuant to proposed law are retired and the corporation has no outstanding indebtedness.

Proposed law provides that the staff of the Department of Treasury, including that of the State Bond Commission, may, pursuant to a cooperative endeavor agreement, serve as staff to the corporation under the supervision of the state treasurer. Further provides that the

attorney general shall, pursuant to a cooperative endeavor agreement, serve as counsel to the corporation, and, subject to the approval of the attorney general and the State Bond Commission, the corporation may employ or retain such other attorneys as it may 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:

- (1) Economic damage revenue assets.
- (2) The proceeds of the sales of any such bonds.
- (3) Earnings on funds of the corporation or the indenture trustee.
- (4) Income.
- (5) Such other funds as may become available.

Proposed law further provides that bonds issued under the provisions of proposed law shall not be deemed to nor constitute a debt or obligation of the state or a pledge of the faith or credit of the state. Provides for security for payment of bonds through trust indentures. Provides for ancillary contracts and derivative instruments to facilitate the issuance, 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) 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. Provides that the treasurer shall hold in the state treasury an amount of economic damage proceeds sufficient to fulfill the state match requirement of Senate Bill No. 129 of the 2018 Regular Session until appropriated by the legislature.
2. Provides that \$100,000,000 deposited in the Construction Subfund shall be used for the TIMED project for LA 3241 from I-12 to Bush (Bogalusa).
3. Provides that projects which are to be funded through GARVEE bonds shall not be funded with BP securitization proceeds.