

## Senate Bills 1765 & 1766 Would Hurt, Not Help, Hurricane Katrina Victims



Two identical bills, introduced by Louisiana Sens. David Vitter and Mary Landrieu, purport to be a comprehensive response to help Hurricane Katrina victims, but in fact could endanger Louisiana residents by exempting numerous projects from health, safety, and environmental protections. Moreover, the bills would provide huge sums of federal taxpayer money for pork barrel projects, many of which have little or nothing to do with Hurricane Katrina or its aftermath.

### The Exemption Provisions

**The Pelican Grief:** The bills (section 501) would create a “Pelican Commission” to work with the Army Corps of Engineers to develop a plan to “protect the Louisiana coastal area from future flooding and devastation caused by hurricanes,” “restore and reconstruct critical wetlands,” and “provide for navigational interests.” At a minimum, the commission would be required to consider approximately 20 projects, including controversial plans for navigational or other purposes that are completely unrelated to Hurricane Katrina.

The commission would be composed primarily of presidential appointees who would be able to carry out much of their work without public input. Once the commission implements a project, it would be exempt from environmental review under the National Environmental Policy Act and from all Clean Water Act requirements.

These waivers are potentially dangerous. Unreviewed projects by the Army Corps of Engineers could sacrifice clean drinking water, fisheries, wildlife habitat, and even flood protection, creating new threats to Louisiana’s public health, environment, economy and safety in both the short- and long-term.

- Without legal safeguards, projects could dump contaminated sediment into drinking water sources, filling them with toxins that cause cancer, birth defects and miscarriages.
- Without legal safeguards, projects could destroy countless acres of wetlands, which provide flood protection as well as water purification and wildlife habitat. Largely as a result of the Corps’ channelization of the Mississippi River, nearly 2,000 square miles of the Louisiana Delta have eroded away and, as a result, New Orleans has been robbed of a significant natural barrier against hurricane storm surge.
- Without legal safeguards, the Corps also could build projects that let massive freight ships through, but leave the public, birds, and fish high and dry – or, even

worse, flooded. The Corps has fought local communities, fishermen, environmentalists and scientists for years to keep open a barely used shipping channel, known as the Mississippi River Gulf Outlet. In addition to eroding the coastal wetlands, this funnel-shaped canal is believed to have carried a wall of Katrina's storm surge up into the heart of New Orleans, destroying the containment levees and flooding much of the eastern part of the city.

**Free Pass from All Federal Laws:** The bills (section 502) would grant the president a two-year window to issue all-inclusive permits for projects "relating to Hurricane Katrina" whenever he determines that the projects are "in the best interests of the United States." The bills provide no standards for such a finding, and do not provide for any public review.

The bills also fail to define what a "project" might be, so the president could define wide-ranging reconstruction activities as a single project. Even more disconcerting, the bills would allow the president to grant an exemption not only in response to damage caused by Katrina, but to "a related condition." Conceivably a related condition could include increased energy prices, allowing the president to grant a permit for an energy-related project anywhere across the country. And those projects could be railroaded through without the president's authorization because an exemption would take effect automatically unless the president disapproves an application within 30 days of receiving it. This is an impossibly short time to substantively review all of the aspects of a major reconstruction project.

Once a project receives a presidential permit, the bills automatically waive "any applicable federal law (including regulations)." Therefore, unless limited by state or local laws, a project could:

- Pump unlimited levels of toxic petroleum products or industrial chemicals, fecal matter, heavy metals or other toxins into drinking water or surface waters;
- Disregard requirements for testing water for toxic chemicals to determine if it is safe;
- Destroy wetlands, potentially resulting in more flooded homes and businesses, even during routine rain events;
- Avoid all applicable federal air pollution requirements allowing, for example, burning of huge quantities of debris, including toxic chemicals, plastics, destroyed vehicles, and other materials that could create dangerous pollution;
- Dump highly hazardous waste in unregulated landfills, or even people's backyards;
- Approve energy projects without environmental reviews, including Outer Continental Shelf drilling and/or accelerated licensing and even construction of

new nuclear reactors proposed for Grand Gulf near Port Gibson, Mississippi, and Scottsboro, Alabama; and

- Wipe out endangered species or their habitat.

And those are just a few examples of how the bills would undermine environmental protections. They also could exempt approved projects from all other federal laws – worker protections, civil rights guarantees, and even criminal laws. For example, the bills, if enacted, could allow the president to:

- Permit workplace discrimination against minorities and women;
- Waive workplace safety requirements and minimum wage guarantees;
- Authorize no-bid, price-gouging contracts for recovery efforts; and
- Excuse companies from truthful accounting, allowing Enron-style schemes.

A separate section of the bills (section 651) suggests indirectly that the president, in granting a permit to a given project, could modify applicable legal requirements instead of waiving them altogether. Even that authority is overly sweeping, and the legislation provides no check on how the president could exercise it.

**Environmental Giveaways:** The bills would exempt certain kinds of projects in the Hurricane Katrina disaster area from specific federal laws. Most of these exemptions would not be time-limited, so they could last indefinitely.

Companies applying pesticides for mosquito control would not have to meet Federal Insecticide, Fungicide, and Rodenticide Act or the Clean Water Act standards. Therefore, they could use unlicensed, unsafe or even banned pesticides, ignore required safety protocols when applying the chemicals, and allow untrained workers to spray. Companies also could dump pesticides into local lakes, rivers and streams where they could kill the fish and poison the water supply. (Section 652(a)(2)(A).)

The bills authorize waivers of laws “relating to timber production” to “expedite the process of salvaging timber in the [disaster] area” and “ensure a secure timber supply for the pulp and paper industry.” This provision puts a number of wild areas at risk, such as the De Soto National Forest’s Black Creek Wilderness and Black Creek Wild and Scenic River, home to the endangered Red-cockaded Woodpecker and threatened Gopher Tortoise as well as some of Mississippi’s best hiking, camping and canoeing areas. In addition, it opens the door to fraud, worker injury, and a host of other ills that current agency regulations guard against. (Section 652(a)(2)(B).)

In the case of pesticide and timber requirements, the bills are unclear. One interpretation is that they would provide a blanket exemption from these legal safeguards. Another interpretation is that the president could waive the safeguards.

The bills definitively waive the requirements of the Endangered Species Act, the Marine Mammal Protection Act and other laws protecting vulnerable species in the “immediate waters impacted by Katrina” for one year. (Title I, Subtitle D.)

Within the disaster area, any project relating to Katrina “recovery, reconstruction, or repair” would be exempt from complying with the National Environmental Policy Act. For example, if the Department of Transportation decided to build a new superhighway through low-income communities as part of “reconstructing” New Orleans, it would not have to assess its environmental impact or consider alternatives to the plan under NEPA. (Section 652(b).)

Finally, the bills contain an odd and potentially sweeping provision that prohibits the modification or application of federal, state or local laws – including zoning laws – in the wake of Katrina in any way that would “negate or otherwise affect the private ownership rights of any individual or entity” that owned property in the disaster area when the hurricane struck. This provision conceivably could be interpreted to mean that local officials could not change local zoning designations if it would in any way alter corporations’ or residents’ pre-Katrina land use options. If so, it could prevent city planners from ensuring that industrial operations susceptible to hurricane damage would not be built in flood-prone or residential areas. Likewise, it could restrict the responsible rebuilding of New Orleans by limiting officials’ ability to plan a reconstructed city that promotes transit use. (Section 652(c).)

### **Follow the Money**

On September 27 the Washington Post described these two bills as the legislative equivalent of looting. In particular, the paper said that “the Louisiana legislators are out to grab more federal cash than they could possibly spend usefully.” The numbers for planned spending on a number of environmental projects tell the story. The bills would provide:

- \$35 million to the Louisiana Seafood Promotion and Marketing Board – \$30 million more than they would provide to restore fish, shrimp and crab habitat;
- \$100 million for “mosquito abatement activities,” without any indication why such an enormous sum is needed, and without any specific standards to ensure that these activities are conducted safely;
- Approximately \$3 billion to EPA and approximately \$6.1 billion to the Louisiana Department of Environmental Quality for various reconstruction activities. It is unclear that either agency is prepared to administer such sums. EPA’s entire operating budget for fiscal year 2005 was roughly \$8 billion, while LDEQ’s budget was only about \$141 million. Furthermore, there are few restrictions on how these funds would be spent. The bills direct the agencies to spend them on such broad categories of activities as “science and technology,” “environmental

programs and infrastructure assistance,” and “restoration of wastewater treatment infrastructure systems.”

The bills also would divert 50 percent of revenues derived from offshore federal oil and gas leasing to coastal states and their local governments, putting a further drain on the federal treasury. There are few restrictions or oversight over how states and local governments use these federal dollars.