

2016 Regular Session

HOUSE BILL NO. 1130

BY REPRESENTATIVE GAROFALO

FISHING/OYSTERS: Allows for dual leasing of water bottoms for oyster cultivation and harvest

1 AN ACT

2 To enact R.S. 56:425.1, relative to leasing of water bottoms for oyster cultivation and
3 harvest; to authorize the state to jointly lease certain water bottoms; to provide for
4 the terms and conditions of such joint leases; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 56:425.1 is hereby enacted to read as follows:

7 §425.1. Joint leasing of water bottoms for oyster cultivation and harvest

8 A. In an effort to allocate competing and dual claims to the ownership of
9 water bottoms in the best interest of all parties, the Department of Wildlife and
10 Fisheries is hereby authorized to enter into an agreement with a private claimant, not
11 to exceed fifteen years in duration, whereby certain water bottoms may, in
12 cooperation between the state and the private claimant, be leased to a third party for
13 the cultivation and harvest of oysters. Any such agreement shall not in any way be
14 interpreted to indicate or determine ownership of the water bottom nor shall any such
15 agreement be interpreted to allocate or designate ownership of mineral rights beneath
16 the water bottom. The department may promulgate under the Administrative
17 Procedure Act the processes by which such agreements shall be negotiated and
18 administered.

19 B. Any such agreement may originate with either the department or the
20 private claimant and any annual rental payments required by R.S. 56:428(C) shall be

1 made to the department as provided by R.S. 56:428(C). Except for the requirements
2 of R.S. 56:425(A) for determination of state ownership, the lease shall be subject to
3 the provisions of Subpart D of Part VII of Chapter 1 of Title 56 of the Louisiana
4 Revised Statutes of 1950 in addition to any other conditions of the agreement
5 between the state and the private claimant.

6 C. The joint agreement between the state and the private claimant shall
7 remain in effect throughout the term of any lease issued subject to the agreement or
8 until ownership of the water bottom has been determined by final judgment of the
9 court. Any lease subject to the joint agreement shall terminate at the time a court has
10 issued a final determination of ownership of the water bottom.

11 D. Beginning July 1, 2016, and continuing until the final implementation of
12 Phase Three of Section 2 of the Act which originated as House Bill No. 902 of the
13 2016 Regular Session of the Legislature, oysters found on a vessel owned and
14 operated by the holder of a private oyster lease executed and properly recorded prior
15 to February 1, 2016, or operated by an agent or employee of such private oyster
16 leaseholder shall be presumed to have been legally harvested from the leaseholder's
17 private oyster lease. In order to document the legality of the harvest of oysters from
18 the private lease, a certified copy of the lease as filed in the public records of the
19 parish in which the lease is located shall be carried on each vessel used to harvest
20 oysters from the private lease and shall be available for examination by
21 representatives of the department.

22 E. In order to preserve private contract rights and to protect existing
23 investments, the department shall recognize as valid a private oyster lease in effect
24 and properly recorded as of February 1, 2016, until such time as the processing of
25 said lease acreage pursuant to the provisions of Phase Three of Section 2 of the Act
26 which originated as House Bill No. 902 of the 2016 Regular Session of the
27 Legislature is complete. Such recognition shall not in any way be interpreted to
28 indicate or determine ownership of the water bottom nor shall any such agreement

1 be interpreted to allocate or designate ownership of mineral rights beneath the water
2 bottom.

3 F. For the purposes of this Section, "dual claim" shall refer to a claim to
4 immovable property for which a private claimant holds title and to which the state
5 also makes an ownership claim as a sovereign navigable water bottom, but to which
6 title has not been adjudicated to either party by a final, unappealable judgment of a
7 court of competent jurisdiction.

8 Section 2. This Act shall take effect and become operative if and when the Act that
9 originated as House Bill No. 902 of this 2016 Regular Session of the Legislature is enacted
10 and becomes effective.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1130 Reengrossed

2016 Regular Session

Garofalo

Abstract: Authorizes joint leasing between the Dept. of Wildlife and Fisheries and private claimants of certain water bottoms for oyster cultivation and harvest

Proposed law authorizes the Dept. of Wildlife and Fisheries to enter into an agreement with a private claimant whereby certain water bottoms may, in cooperation between the state and the private claimant, be leased to a third party for the cultivation and harvest of oysters. Limits the agreements to a 15-year duration. Specifies that any such agreement does not in any way indicate or determine ownership of the water bottom nor does the agreement allocate or designate ownership of mineral rights beneath the water bottom. Authorizes the Dept. of Wildlife and Fisheries to promulgate the processes by which the agreements will be negotiated and administered.

Proposed law provides that an agreement may originate with either the department or the private claimant; requires annual rental payments to be made to the department; and specifies that except for a determination of state ownership, the lease is subject to the provisions in law that govern oyster leasing in addition to any other conditions of the agreement between the state and the private claimant.

Proposed law specifies that the joint agreement between the state and the private claimant remains in effect for the term of any lease issued subject to the agreement or until ownership of the water bottom has been determined by final judgment of the court. Terminates any lease subject to the joint agreement at the time a court has issued a final determination of ownership of the water bottom.

Proposed law provides that between July 1, 2016, and the final implementation of Phase Three of the oyster moratorium lifting process, oysters found on a vessel owned by the holder of a private oyster lease properly recorded prior to Feb. 1, 2016, are presumed to be legally harvested. Requires a certified copy of the lease to be carried on each vessel harvesting oysters from the private lease.

Proposed law requires the Dept. of Wildlife and Fisheries to recognize as valid a private oyster lease properly recorded prior to Feb. 1, 2016, until the processing of Phase Three of the oyster moratorium lifting process is complete. Provides that recognizing the validity of such lease is not to be interpreted to indicate ownership of the water bottom or mineral rights beneath the water bottom.

Proposed law defines "dual claim" as a claim to immovable property for which a private claimant holds title and to which the state claims ownership as a sovereign navigable water bottom but for which title has not been adjudicated.

Effective if and when House Bill No. 902 of this 2016 R.S. is enacted and becomes effective.

(Adds R.S. 56:425.1)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Natural Resources and Environment to the original bill:

1. Limit agreements between the state and a private claimant to a 15-year duration.
2. Require the Dept. of Wildlife and Fisheries to promulgate the processes by which the agreements will be negotiated and administered.
3. Remove the exemption from the oyster leasing moratorium.
4. Add a provision that states the bill will become effective if and when House Bill No. 902 of this 2016 R.S. is enacted and becomes effective.

The House Floor Amendments to the engrossed bill:

1. Specify that the oyster lease is to a third party.
2. Authorize the Dept. of Wildlife and Fisheries to promulgate rules and regulations rather than require such promulgation.
3. Provide that between July 1, 2016, and the final implementation of Phase Three of the oyster moratorium lifting process, oysters found on a vessel owned by the holder of a private oyster lease properly recorded prior to Feb. 1, 2016, are presumed to be legally harvested. Require a certified copy of the lease to be carried on each vessel harvesting oysters from the private lease.
4. Require the Dept. of Wildlife and Fisheries to recognize as valid a private oyster lease properly recorded prior to Feb. 1, 2016, until the processing of Phase Three of the oyster moratorium lifting process is complete. Provide that recognizing the validity of such lease is not to be interpreted to indicate ownership of the water bottom or mineral rights beneath the water bottom.
5. Define "dual claim" as a claim to immovable property for which a private claimant holds title and to which the state claims ownership as a sovereign navigable water bottom but for which title has not been adjudicated.