

2016 Regular Session

HOUSE BILL NO. 902

BY REPRESENTATIVE LEOPOLD

FISHING/OYSTERS: Provides a process by which the oyster lease moratorium can be lifted

1 AN ACT

2 To amend and reenact R.S. 56:423(A) and (B) and 429 and Sections 2(B) and (C) and 3 of
3 Act No. 808 of the 2008 Regular Session of the Legislature and to enact R.S.
4 56:427(F) and (G), relative to oyster leases; to provide for lifting the moratorium on
5 new oyster leases; to provide relative to liability under certain circumstances; to
6 provide relative to public notification and opportunity to protest or withdraw oyster
7 lease applications under certain circumstances; to eliminate auction of rent-
8 delinquent oyster leases; to provide certain terms, conditions, procedures, and
9 requirements; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 56:423(A) and (B) and 429 are hereby amended and reenacted and
12 R.S. 56:427(F) and (G) are hereby enacted to read as follows:

13 §423. Property rights, larceny or other public offenses concerning; leases heritable
14 and transferable; adjudication of claims

15 A. A lessee shall enjoy the exclusive use of the water bottoms leased and of
16 all oysters and cultch grown or placed thereon, subject to the restrictions and
17 regulations of this Subpart and Part II of Chapter 2 of Title 49 of the Louisiana
18 Revised Statues of 1950.

19 (1) This exclusive use of water bottoms is subordinate to the rights or
20 responsibilities of the state, any political subdivision of the state, the United States,

1 or any agency or agent thereof, to take any action in furtherance of ~~coastal~~
2 ~~protection, conservation, or restoration.~~ For purposes of this Subpart, "~~coastal~~
3 ~~protection, conservation, or restoration~~" means any project, plan, act, or activity for
4 ~~the protection, conservation, restoration, enhancement, creation, preservation,~~
5 ~~nourishment, maintenance, or management of the coast, coastal resources, coastal~~
6 ~~wetlands, and barrier shorelines or islands, including but not limited to projects~~
7 ~~authorized under any comprehensive coastal protection master plan or annual coastal~~
8 ~~protection plan issued pursuant to Part II of Chapter 2 of Title 49 of the Louisiana~~
9 ~~Revised Statutes of 1950~~ integrated coastal protection as defined in R.S. 49:214.2.

10 (2) This exclusive use of water bottoms for any oyster lease initially applied
11 for after January 1, 2017, or any renewal or judicial partition of such lease is also
12 subordinate to the rights of any person:

13 (a) To engage in any activity authorized by a coastal use permit,
14 determination, or coastal use authorization pursuant to R.S. 49:214.30 or a drilling
15 permit, for which the coastal use authorization or drilling permit application was
16 issued prior to the date the application for the oyster lease was issued. This
17 Subparagraph applies only in the following areas:

18 (i) The area from the centerline of the pipeline or area from the outside of the
19 well, platform, shell pad, or facility as designated by the coastal use permit,
20 determination, or other coastal use authorization pursuant to R.S. 49:214.30 or
21 drilling permit, or

22 (ii) If no such area delineated in Item (i) of this Subparagraph is designated,
23 then this Item applies in the following areas:

24 (aa) For a pipeline, within seventy-five feet from the centerline of the pipe.

25 (bb) For a well, platform, shell pad, or facility, within two hundred fifty feet
26 from the outside of the well, platform, shell pad, or facility.

27 (b) To operate, maintain, repair, replace, rehabilitate, or remove any pipeline,
28 well, platform, shell pad, or facility on or impacting an oyster lease in which the
29 pipeline, well, platform, shell pad, or facility was placed or constructed before

1 September 20, 1980, or was placed or constructed prior to the date the oyster lease
2 was issued. This Subparagraph applies only in the following areas:

3 (i) For a pipeline, within seventy-five feet from the centerline of the pipe.

4 (ii) For a well, platform, shell pad, or facility, within two hundred fifty feet
5 from the outside of the well, platform, shell pad, or facility.

6 (c) To cross an oyster lease to access any activity, pipeline, well, platform,
7 shell pad, or facility to which Subparagraph (2)(a) or (2)(b) of this Subsection
8 applies. This Subparagraph applies only to a single access channel across each oyster
9 lease per activity, pipeline, well, platform, shell pad, or facility, determined as
10 follows:

11 (i) For any activity, pipeline, well, platform, shell pad, or facility, including
12 the removal of any pipeline, well, platform, shell pad, or facility, to which
13 Subparagraph (2)(a) of this Subsection applies, if an access channel across each
14 oyster lease is identified in the coastal use authorization or permit, it shall be the sole
15 access channel for purposes of this Subparagraph. If more than one access channel
16 across each oyster lease is identified, the holder of the authorization or permit shall
17 designate a single access channel to the department in writing identifying the
18 centerline of the access channel using the North American Datum 1983 state plane
19 coordinates; and when the holder does so and the department consents to the
20 designated access channel in writing, it shall be the sole access channel for purposes
21 of this Item.

22 (ii) For any activity, pipeline, well, platform, shell pad, or facility to which
23 Subparagraph (2)(b) of this Subsection applies, the holder of the authorization or
24 permit shall designate a single access channel across each oyster lease to the
25 department in writing identifying its centerline using the North American Datum
26 1983 state plane coordinates; and when the holder does so and the department
27 consents to the designated access channel in writing, it shall be the sole access
28 channel for purposes of this Item.

1 (iii) This Subparagraph applies only within fifty feet from the centerline of
2 the access channel across each oyster lease. In addition, if a spoil area was
3 previously identified in an authorization or permit for an access channel designated
4 pursuant to this Item, this Item shall also apply to the same spoil area; however, such
5 spoil area shall be limited to eighty feet in width adjacent to one side of the access
6 channel.

7 (iv) The department shall be immune from any action or liability arising out
8 of or related to its consent or agreement to any access channel or spoil area
9 designated pursuant to this Subparagraph.

10 (v) The department shall consult with the lessee under any oyster lease
11 located within a proposed access channel, before consenting or agreeing to any
12 access channel pursuant to this Subparagraph.

13 (3) The provisions of Paragraph (2) of this Subsection shall not apply to any
14 oyster lease initially applied for before January 1, 2017, or any renewal or judicial
15 partition of such lease, or to any oyster lease issued pursuant to Section 2(B)(1) of
16 the Act that originated as House Bill No. 902 of the 2016 Regular Session or any
17 renewal of such lease.

18 B.(1) A lessee of oyster beds or grounds who has obtained, recorded, and
19 marked his lease in compliance with the law shall have the right to maintain an
20 action for damages against any person, partnership, corporation, or other entity
21 causing wrongful or negligent injury or damage to the beds or grounds under lease
22 to such lessee.

23 (a) ~~However, no~~ No lessee shall have any right to maintain any action
24 against the state, any political subdivision of the state, the United States, or any
25 agency, agent, contractor, or employee thereof for any claim arising from any
26 project, plan, act, or activity in relation to ~~coastal protection, conservation, or~~
27 ~~restoration~~ integrated coastal protection, except as provided in R.S. 56:427.1.

28 (b) No lessee shall have any right to maintain any action against any person
29 arising from any activity to which R.S. 56:423(A)(2) applies provided that the person

1 has not violated any coastal use permit, determination, or other coastal use
2 authorization pursuant to R.S. 49:214.30, or drilling permit, or any Louisiana or
3 federal law or regulation applicable to the activity.

4 * * *

5 §427. Initial application for lease

6 * * *

7 F. The secretary may not execute a lease until the department has posted
8 notice of the application for the lease on its website for ninety consecutive days.

9 (1) Any person claiming ownership of the water bottoms to be leased may
10 protest the issuance of the lease on the grounds that the protesting party owns the
11 water bottoms, but only by delivering via certified mail notice of the protest in
12 writing to the secretary, the administrator of the state land office, and the lease
13 applicant on or before the ninetieth day after notice of the application was posted.
14 The notice of protest shall include all information and documentation that the
15 protesting party believes is relevant to the question of ownership. The right to
16 protest issuance of the lease pursuant to this Subsection shall expire if a protest is not
17 made on or before the ninetieth day after notice of the application was posted.

18 (2) If a protest is timely made, the administrator of the state land office shall
19 review the state's claim to ownership of the contested water bottoms and issue a
20 preliminary determination to the secretary, the protesting party, and the lease
21 applicant within ninety days of receiving the notice of protest, as to whether the state
22 claims ownership of the contested water bottoms. The administrator shall issue a
23 final written determination as to whether the state claims ownership of the water
24 bottom within one hundred eighty days of receiving the notice of protest. If a protest
25 is timely made, the secretary may execute the lease as otherwise authorized under
26 this Subpart only to the extent that the administrator of the state land office
27 determines that the state claims ownership of the contested water bottoms. The relief
28 available pursuant to and the results and effects of such a protest and determination
29 are limited to those set forth in this Subsection. The determination by the

1 administrator of the state land office shall not be reviewable under the
 2 Administrative Procedure Act, and is appealable only to the Nineteenth Judicial
 3 District Court. Any petition for judicial review of the determination pursuant to this
 4 Subsection must be filed within sixty days after issuance of the determination.
 5 Failure to make a protest pursuant to this Subsection has no effect on the right to
 6 claim ownership of the leased water bottom authorized by R.S. 56:423(D) or the
 7 reasonable investigation into the ownership of the water bottom by the state required
 8 by R.S. 56:425(A).

9 (3) A lease applicant may withdraw a lease application and receive a full
 10 refund from the department of all application fees, by submitting a written request
 11 for withdrawal to the department within one hundred twenty days after the
 12 department posts notice of the application on its website, within thirty days after
 13 issuance of the determination of the administrator of the state land office regarding
 14 the state’s claim to ownership pursuant to a protest authorized by this Subsection, or
 15 within thirty days after final judgment in any proceeding for judicial review of the
 16 determination, whichever is the later date.

17 G. The secretary shall not lease any water bottom located within seventy-five
 18 feet of the centerline of a pipeline that is located on purchased right-of-way.
 19 However, if the right-of-way is abandoned and returned to commerce, the secretary
 20 may then lease such water bottom.

21 * * *

22 §429. Default in payment of rent; cancellation and forfeitures

23 The failure of the ~~tenant~~ lessee to pay the rent punctually on or before the
 24 first of each January, or within ~~thirty~~ sixty days thereafter, ipso facto and without
 25 demand or putting in default, terminates and cancels the lease and forfeits to the
 26 department all the works, improvements, betterments, and oysters on the leased
 27 water bottoms. The department may at once enter on the water bottoms and take
 28 possession thereof. Such water bottoms shall then be open for lease in accordance
 29 with R.S. 56:425 ~~to the highest bidder~~. Ten days thereafter the department shall

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 enter the termination, cancellation, and forfeiture on its books and give public notice
 2 thereof by publication in one local paper in the parish where the formerly leased
 3 water bottoms are located. On or before the first day of each February, the
 4 department shall issue a written notice of delinquency by certified mail to each lessee
 5 who has not yet paid the rent. The department shall also publish notice of such
 6 delinquency on its website and in the official journal of the parish in which the
 7 delinquent lease is located. Any lessee who pays the rent on or after the first day of
 8 February shall pay ~~The department may waive the termination, cancellation, and~~
 9 ~~forfeiture, provided the rent due~~ plus an additional ten percent penalty is paid at any
 10 ~~time before the water bottoms are leased to another person.~~

11 Section 2. Sections 2(B) and (C) of Act No. 808 of the 2008 Regular Session of the
 12 Legislature are hereby amended and reenacted to read as follows:

13 Section 2.

14 * * *

15 B. Prior to the commencement of the phases contained in this Subsection,
 16 the state land office shall make a determination of state ownership of all water
 17 bottoms for all oyster lease applications submitted before the imposition of the
 18 moratorium and the department shall act upon such applications as required by R.S.
 19 56:427. The moratorium may not be lifted until the following preferential rights
 20 have been claimed or forfeited:

21 (1) Phase One – Right of First Refusal for Non-Renewed Leases:

22 (a) ~~Prior to lifting the moratorium, there shall be an examination of those~~
 23 ~~leases that were not renewed by the~~ The Department of Wildlife and Fisheries shall
 24 identify the leases that were not renewed since January 1, 1996, due to
 25 recommendations from the Department of Natural Resources that such leases would
 26 be in the operational or impact area of a planned ~~coastal restoration~~ integrated coastal
 27 protection project, and those leases whose lessee voluntarily failed to renew the lease
 28 between January 1, 1996, and October 19, 2004, and was a party to the class action
 29 suit entitled Albert J. Avenal, Jr. et al. v. the State of Louisiana and the Department

1 ~~of Natural Resources.~~ The Department of Wildlife and Fisheries and the ~~Department~~
2 ~~of Natural Resources~~ Coastal Protection and Restoration Authority shall cooperate
3 in the ~~determination~~ identification of ~~these non-renewed leases~~ those leases that are
4 ~~eligible for a new lease for previously leased acreage under this phase of the~~
5 ~~moratorium lifting.~~ The ~~lease holder~~ lessee of record at the time the lease was not
6 renewed shall have the right of first refusal for a new lease for the previously
7 leased acreage under this phase of the moratorium lifting. ~~Under the provisions of~~
8 ~~R.S. 56:425,~~ No lease may be granted under this phase unless the secretary of the
9 Department of Wildlife and Fisheries and the ~~secretary of the Department of Natural~~
10 ~~Resources shall~~ executive director of the Coastal Protection and Restoration
11 Authority agree that issuing a new lease for previously leased acreage for such water
12 bottom is otherwise appropriate and the water bottom is not necessary for ~~coastal~~
13 ~~protection, conservation, or restoration~~ integrated coastal protection. ~~At a minimum,~~
14 ~~the department shall advertise the availability of a new lease for previously leased~~
15 ~~acreage on two separate days in the official journal of the parish where the acreage~~
16 ~~is located.~~

17 (b) The Department of Wildlife and Fisheries shall post on its website for
18 sixty consecutive days a list of nonrenewed leases eligible for new leases under this
19 phase, together with notice of the right of first refusal for new leases for the
20 previously leased acreage and the deadline for applying for new leases under this
21 phase. The deadline for application shall be sixty days after notice is first posted.
22 If the ~~lease holder~~ lessee of record at the time the lease was not renewed ~~does not~~
23 ~~desire to be issued a new lease for previously leased acreage or fails to respond to the~~
24 ~~notice of the availability of~~ apply for a new lease for previously leased acreage
25 within these sixty days ~~of the date of the last advertisement or notification,~~ he shall
26 ~~forfeit~~ forfeits all rights to that lease.

27 (2) Phase Two - Incorporation of Adjacent Water Bottoms:

28 (a) A lessee may expand any lease existing as of January 1, 2016, under this
29 phase by amending the lease to incorporate immediately adjacent water bottom that

1 is not leased. Such expansion shall be limited to five hundred feet beyond the
2 existing lease boundary, and only toward previously existing Louisiana coastline as
3 shown on the last survey of the existing lease recorded with the department,
4 presently existing Louisiana coastline located within one thousand feet of the
5 existing lease boundary, or another existing lease. No expansion shall extend closer
6 than one hundred feet from existing coastline. No expansion is allowed toward
7 another existing lease as to the portions of the existing leases where there is more
8 than five hundred feet between them. As to the portions of the existing leases where
9 there is five hundred feet or less between them and the lessees under only two
10 existing leases apply to expand their leases into this area, the area shall be divided
11 equally between them. If the lessees under three or more existing leases apply to
12 expand their leases into this area, the lessees shall provide to the Department of
13 Wildlife and Fisheries a written agreement signed by each of them under authentic
14 act agreeing to an allocation of the area, and the area shall be divided among them
15 in accordance with this agreement.

16 (b) The Department of Wildlife and Fisheries shall post on its website for
17 one hundred eighty consecutive days notice of the availability of lease expansions
18 and the deadline for applying for expansions under this phase. The deadline for
19 application shall be one hundred eighty days after notice is first posted. If a lessee
20 does not apply for an expansion or if an agreement is not signed under authentic act
21 agreeing to allocation of expansions as provided in Subparagraph (a) of this
22 Paragraph of this phase within these one hundred eighty days, he forfeits all rights
23 to expansion under this phase.

24 (c) This phase of the moratorium lifting shall not begin before the time
25 period for applying for leases under Phase One has expired.

26 (d) The lease as amended pursuant to an expansion shall be treated as a
27 single existing lease, subject to all provisions of the existing lease including term;
28 except, solely for purposes of R.S. 56:423(A)(2) and (B)(1)(b), the lease shall be

1 considered to have been granted as to the expanded portion as of the date the
2 expansion is granted.

3 (3) Phase Three – Right of First Refusal for Lessees under Private Leases

4 (a) For any water bottom claimed by a private person that is under a private
5 oyster lease recorded in the public records of the parish where it is located by
6 February 1, 2016, the private lessee of that water bottom at the time of
7 implementation of Phase Three shall have the right of first refusal for a new state
8 lease on any water bottom claimed by the state within the area of the existing private
9 oyster lease under this phase. For purposes of this Paragraph, a “private oyster
10 lease” is one granted by a person other than the State of Louisiana.

11 (b) The Department of Wildlife and Fisheries shall post on its website for
12 sixty consecutive days notice of the right of first refusal for new state leases within
13 the area of private oyster leases and the deadline for applying for new state leases
14 under this phase. The deadline for application shall be sixty days after notice is first
15 posted. If a private lessee fails to apply for a state lease within these sixty days, he
16 forfeits all rights to a state lease under this phase.

17 (c) This phase of the moratorium lifting shall not begin before the time
18 periods for applying for leases or expansions under Phases One and Two have
19 expired.

20 (4) Phase Four – First Lottery for Appointments for New Leases:

21 (a) The Department of Wildlife and Fisheries shall establish a one-time
22 lottery system for submitting applications for new leases under this phase. The
23 department shall post on its website for sixty consecutive days notice of the lottery
24 and the deadline for entering the lottery. The deadline for submitting an entry shall
25 be sixty days after notice is first posted. Any person eligible for an oyster lease
26 under R.S. 56:425 may submit a single lottery entry for an appointment to apply for
27 a single lease under this phase. If any person fails to submit a lottery entry within
28 these sixty days, he forfeits all rights to a new lease under this phase.

1 (b) The Department of Wildlife and Fisheries shall randomly assign a
2 priority to all timely lottery entries, and shall schedule an appointment with each
3 lottery entry to receive a single application for leases during each appointment under
4 this phase in the order of this priority. Any lottery participant who fails to attend the
5 scheduled appointment shall be moved to the bottom of the priority list and his
6 appointment shall be rescheduled, but if he does not make the second scheduled
7 appointment, he forfeits all rights to a new lease under this phase. Any lottery
8 participant who fails to request a lease at his appointment forfeits all rights to a new
9 lease under this phase.

10 (c) This phase of the moratorium lifting shall not begin before all
11 applications for leases or expansions under the Phases One, Two, and Three have
12 been finally received by the department. Any water bottom for which there is a
13 pending application under Phases One, Two, or Three shall not be eligible for leasing
14 under Phase Four.

15 (5) Phase Five – Second Lottery for Appointments for New Leases:

16 (a) The Department of Wildlife and Fisheries may establish a second one-
17 time lottery system for submitting applications for new leases under this phase. If
18 the department establishes a second lottery, the department shall post on its website
19 for sixty consecutive days notice of the lottery and the deadline for entering the
20 lottery. The deadline for submitting an entry shall be sixty days after notice is first
21 posted. Any person eligible for an oyster lease under R.S. 56:425 may submit a
22 single lottery entry for an appointment to apply for a single lease under this phase.
23 If any person fails to submit a lottery entry within these sixty days, he forfeits all
24 rights to a new lease under this phase.

25 (b) The Department of Wildlife and Fisheries shall randomly assign a
26 priority to all timely lottery entries, and shall schedule an appointment with each
27 lottery entry to receive a single application for leases during each appointment under
28 this phase in the order of this priority. Any lottery participant who fails to attend the
29 scheduled appointment shall be moved to the bottom of the priority list and his

1 appointment shall be rescheduled, but if he does not make the second scheduled
2 appointment, he forfeits all rights to a new lease under this phase. Any lottery
3 participant who fails to request a lease at his appointment forfeits all rights to a new
4 lease under this phase.

5 (c) This phase of the moratorium lifting shall not begin before all
6 applications for leases or expansions under the Phases One, Two, Three, and Four
7 have been finally received by the department. Any water bottom for which there is
8 a pending application under Phases One, Two, Three, or Four shall not be eligible
9 for leasing under Phase Five.

10 (6) No lease or expansion may be granted under any phase of lifting the
11 moratorium required by this Act until all applications from prior phases have been
12 finally processed by the department. In the event of multiple applications for the
13 same water bottoms within the same phase, the earlier-filed application shall have
14 priority, except as otherwise expressly provided in this Act.

15 (7) Except as otherwise expressly provided in this Act, all leasing of state
16 water bottoms for oyster production under this Act shall be in accordance with the
17 provisions of Subpart D of Part VII of Chapter 1 of Title 56 of the Louisiana Revised
18 Statutes of 1950.

19 C. Upon implementation of the provisions of this Act, the Louisiana Wildlife
20 and Fisheries Commission shall promulgate and implement rules ~~necessary for the~~
21 ~~final lifting of~~ to lift the moratorium. ~~Such rules shall be developed in conjunction~~
22 ~~with a special committee composed of representatives from the Department of~~
23 ~~Wildlife and Fisheries, the Department of Natural Resources, the Louisiana Oyster~~
24 ~~Task Force, the Louisiana Landowner's Association, the Louisiana Oil and Gas~~
25 ~~Association, and Louisiana Mid-Continent Oil and Gas Association and may include~~
26 ~~offering lease holders the opportunity to expand their existing leases by~~
27 ~~incorporation of immediately adjacent water bottom. Such expansion shall be limited~~
28 ~~to five hundred feet beyond the existing lease boundary except in cases where there~~
29 ~~is a lease held by another lease holder whose boundary line is less than five hundred~~

1 ~~feet away. In those cases, the two lease holders may agree to divide the distance~~
2 ~~equally or, if one lease holder declines to expand his lease, the other lease holder~~
3 ~~may expand up to the boundary line of the other lease. The opportunity to expand~~
4 ~~leases shall be provided for a limited period of time. The committee shall report~~
5 ~~their recommendations to the Wildlife and Fisheries Commission prior to June 1,~~
6 ~~2009.~~

7 * * *

8 Section 3. Section 3 of Act No. 808 of the 2008 Regular Session of the Legislature
9 is hereby amended and reenacted to read as follows:

10 Section 3. Once the oyster lease moratorium has been finally lifted by the
11 Louisiana Wildlife and Fisheries Commission, the provisions of Section 2 of this Act
12 shall cease to have effect, except the provisions of Section 2(B)(2)(d) of this Act
13 regarding designation of lease expansions as new or existing shall continue in full
14 force and effect; and except as provided in Section 2(B)(2)(d) of this Act, further
15 leasing of state water bottoms for oyster production shall be in accordance with the
16 provisions of Subpart D of Part VII of Chapter 1 of Title 56 of the Louisiana Revised
17 Statutes of 1950.

18 Section 4. This Act shall take effect and become operative if and when the Act that
19 originated as House Bill No. 1130 of this 2016 Regular Session of the Legislature is enacted
20 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 902 Reengrossed 2016 Regular Session Leopold

Abstract: Provides a process by which the oyster lease moratorium may be lifted and provides relative to the right of use of certain water bottoms.

Present law provides that an oyster lessee enjoys exclusive use of the water bottoms leased and the oysters and cultch grown or placed on that water bottom subject to certain restrictions resulting from coastal restoration efforts by the state, any political subdivision of the state, and the federal government.

Proposed law, for any oyster lease initially applied for after Jan. 1, 2017, or any judicial partition or renewal of such lease, further subordinates the lessee's right of use to the following:

- (1) Any person engaged in any activity authorized by a coastal use permit for which the coastal use permit application was issued prior to the date the oyster lease application was issued. Proposed law applies the subordination of right of use to an area 75 feet from the center of a pipeline or 250 feet from the outside of a well, platform, shell pad, or facility.
- (2) Any person operating, maintaining, replacing, repairing, or removing any pipeline, well, platform, shell pad, or facility placed prior to Sept. 20, 1980, and placed prior to the issuance date for the oyster lease. Proposed law applies the subordination of right of use to an area 75 feet from the center of a pipeline or 250 feet from the outside of a well, platform, shell pad, or facility.
- (3) Any person crossing an oyster lease to access an activity, pipeline, well, platform pad, or facility through a single access channel identified in the coastal use permit for such activity or a single access channel identified by the permit holder. Proposed law applies this subordination of right of use to an area within 50 feet of the centerline of the access channel and a spoil area previously identified and limited to 80 feet to one side of the access channel.

Proposed law provides immunity for the Dept. of Wildlife and Fisheries for actions arising out of its consent or agreement to a specific access channel and requires the department to consult with the lessee prior to approving an access channel. Proposed law further specifies that these provisions do not apply to any lease initially applied for prior to Jan. 1, 2017, or any lease issued under the provision of this Act.

Present law provides that a lessee of an oyster bed has a right to maintain an action for damages to that oyster bed. Present law does hold harmless the state, any political subdivision of the state, and the federal government for activities related to coastal restoration.

Proposed law adds that no lessee has a right to maintain any action against another person arising from an activity delineated in the Digest above if that person has not violated any coastal use permit, determination, or other coastal use authorization pursuant to law or any Louisiana or federal law or regulation applicable to the activity.

Proposed law requires that prior to issuance of a lease, the Dept. of Wildlife and Fisheries must post notice of the application on the website for 90 consecutive days. Authorizes any person claiming ownership of the water bottoms to be leased to protest the issuance of a lease on the grounds of ownership. Provides a detailed process and timeline by which the protest is to be investigated including review and determination by the administrator of the state land office. Allows the state land office 90 days from the date a protest is filed to make a preliminary determination of state ownership and 180 days from the date a protest is filed to make a final determination. A lease may only be issued only to the extent that the administrator of the state land office determines that the water bottom is owned by the state. The determination by the administrator is not appealable under the Administrative Procedure Act but may be appealed to the 19th Judicial District Court. Authorizes an applicant for an oyster lease to withdraw the application and receive a full refund within 120 days after the department posts notice of the application on the website, within 30 days after a determination by the administrator, or within 30 days after a final judgment in any proceeding for judicial review of the determination. Prohibits oyster leasing on right-of-way purchased by pipelines.

Present law provides relative to default in payment of oyster leases. Requires rent to be paid punctually on Jan. 1st each year or within 30 days thereafter. Proposed law changes the 30 days to 60 days.

Present law provides that after 30 days the lease is in default and can be taken back by the department and opened for lease to the highest bidder. Proposed law removes the ability of the highest bidder to lease defaulted lease acreage. Proposed law further requires that on or before Feb. 1st each year, the department publish a notice of each delinquency in the official journal of the parish where the lease is located. Any lessee who pays the rent on or before Feb. 1st shall pay the rent plus an additional 10% penalty.

Present regulation adopted by the Wildlife and Fisheries Commission on March 7, 2002, placed a total moratorium on the issuance of new oyster leases by the Dept. of Wildlife and Fisheries.

Proposed law requires that prior to commencement of any of the phases delineated in the legislation, the state land office make a determination of state ownership of all water bottoms for oyster lease applications submitted before the imposition of the moratorium and the department take appropriate actions resulting from the determination. Also establishes a process of allowing preferential rights to be claimed or forfeited in the following order prior to the lifting of the moratorium:

Phase One – applies to those leases that were not renewed since Jan. 1, 1996, due to the lease being located in the operational or impact area of a planned coastal project and to those that were voluntarily given up between Jan. 1, 1996 and Oct. 19, 2004, and were a party to the class action Avenal suit. Provides that the lessee of record at the time the lease was not renewed be given first right of refusal for a new lease for the previously leased acreage. Requires approval by the secretary of the Dept. of Wildlife and Fisheries and the secretary of the Dept. of Natural Resources. Proposed law changes the approval from the secretary of the Dept. of Natural Resources to the executive director of the Coastal Protection and Restoration Authority. Requires the Dept. of Wildlife and Fisheries to post on their website for 60 days a list of non-renewed leases eligible for re-leasing. Applications must be filed prior to the end of the 60 days.

Phase Two – Incorporation of adjacent water bottoms. Authorizes a lessee to expand an existing lease by incorporating immediately adjacent water bottom. Limits the incorporation to 500 feet beyond the existing boundary and only toward previously existing coastline, coastline located within 1,000 feet of the lease boundary, or another existing lease. Prohibits the taking up of water bottom closer than 100 feet from existing coastline. Prohibits expansion toward another lease that is more than 500 feet away. If there is 500 feet or less between two leases, the incorporation area shall be divided equally. If there are more than two leases, the lessees must provide to the Dept. of Wildlife and Fisheries a written, signed agreement for dividing the area among the lessees. Requires the Dept. of Wildlife and Fisheries to post on its website for 180 days notice of the availability of lease expansions. If a lessee does not apply to exercise the right to incorporate adjacent water bottoms within that period of time, he forfeits his right to do so.

Phase Three – Right of first refusal for leases under private leases. For any water bottom claimed by a private person that is under a private oyster lease recorded in the public records in the parish where the water bottom is located by Feb. 1, 2016, the lessee of that water bottom will have the right of first refusal for a new state lease on any water bottom claimed by the state within the area of the existing private oyster lease. Requires the Dept. of Wildlife and Fisheries to post on its website for 60 days the notice of such right of first refusal ability. Any lessee that does not apply for a state lease within the 60-day time period shall forfeit his right to a state lease under this phase.

Phase Four – First lottery for appointment for new leases. Requires the Dept. of Wildlife and Fisheries to establish a lottery system for submitting applications for new leases.

Requires posting on the department website for 60 days a notice of the lottery and deadline for entering the lottery which shall be the 60th day of the posting. If a person does not apply within the 60 days, he forfeits his right to apply for a new lease under this phase. Requires the department to randomly assign a priority to all lottery entries and schedule appointments to receive an application for a new lease. If the lottery participant misses his scheduled appointment, he can be rescheduled after all other lottery participants have completed their appointments.

Phase Five – Second lottery for appoint for new leases. Authorizes the department to establish an additional lottery that will be conducted in the same manner as the first.

Proposed law requires that each phase be taken in order and that each phase cannot begin until all applications under the previous phases are received and processed. Limits the availability of water bottoms eligible for leasing under the two lottery phases to those water bottoms for which there is not a pending application under any of the earlier phases.

Proposed law requires that upon implementation of all phases outlined in this Act, the Louisiana Wildlife and Fisheries Commission promulgate and implement the rules necessary to lift the oyster leasing moratorium.

Effective if and when House Bill No. 1130 of this 2016 R.S. is enacted and becomes effective.

(Amends R.S. 56:423(A) and (B) and 429, and Sections 2(B) and (C), and 3 of Act No. 808 of the 2008 Regular Session; Adds R.S. 56:427(F))

Summary of Amendments Adopted by House

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

1. Specify that there will be only one access channel for any single oyster lease.
2. Provide for a preliminary determination of state ownership by the state land office within 90 days of the date a protest is filed and a final determination within 180 days.
3. Prohibit oyster leasing on right-of-way purchased by pipelines.
4. Limit the availability of water bottoms eligible for leasing under the two lottery phases to those water bottoms for which there is not a pending application under any of the earlier phases.
5. Provide that the bill will become effective only if and when HB No. 1130 becomes effective.

The House Floor Amendments to the engrossed bill:

1. Make provisions applicable to any person engaged in any activity authorized by a coastal use permit for which the coastal use permit was issued prior to the date the oyster lease was issued rather than when the applications for permits and leases were filed.
2. Make provisions applicable to any person operating, maintaining, replacing, repairing, or removing any pipeline, well, platform, shell pad, or facility placed prior to Sept. 20, 1980, and placed prior to the issuance date for the oyster lease rather than the date the lease application was filed.

3. Prohibit in Phase Two of the moratorium lifting the taking up of water bottom closer than 100 feet from existing coastline.