

GREEN SHEET REDIGEST

HB 902

2016 Regular Session

Leopold

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

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

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DIGEST

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 July 1, 2016, 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 July 1, 2016, or any lease issued under certain provisions of HB902 of the 2016 R.S.

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 the Coastal Protection and Restoration Authority (CPRA) to determine areas of the coast where buffer zones between oyster leases and the shoreline may be necessary to protect sensitive and eroding coastal lands. Proposed law further requires CPRA to review each application for an oyster lease or renewal or expansion of an oyster

lease to determine if the water bottom applied for is located in an area where a buffer zone may be necessary and shall delineate the extent of the buffer zone necessary for each application.

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 as of January 1, 2016 as shown in the 2015 U.S. Dept. of Agriculture, Farm Service Agency, Aerial Photography Field Office, National Agriculture Imagery Program 4 band aerial imagery for Louisiana, 1 meter resolution (the "2015 NAIP imagery"), located within 1,000

feet of the lease boundary, or another existing lease. 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. 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 on July 1, 2016, if and when House Bill No. 1130 of this 2016 R.S. is enacted.

(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. 56:425(F) and 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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the reengrossed bill

1. Change date for the initial application for any oyster lease from Jan. 1, 2017, to July 1, 2016, for determination of subordination and applicability of certain provisions of proposed law.
2. Add provision that requires the CPRA to determine areas of the coast where buffer zones between oyster leases and the shoreline may be necessary to protect sensitive and eroding coastal lands, and to review each application for an oyster lease or renewal or expansion of an oyster lease to determine if the water bottom applied for is located in an area where a buffer zone may be necessary and will delineate the extent of the buffer zone necessary for each application.
3. Add provision that defines existing coastline as of January 1, 2016 as shown in the 2015 U.S. Dept. of Agriculture, Farm Service Agency, Aerial Photography Field Office, National Agriculture Imagery Program 4 band aerial imagery for Louisiana, 1 meter resolution (the "2015 NAIP imagery").
4. Remove provision that prohibits expansion closer than 100 feet from existing coastline.
5. Provides that no lease or expansion may be granted under any phase until all applications under the previous phases are received by the DW&F.
6. Change effective date from when HB1130 becomes effective to when HB1130 becomes enacted.