

2023 Regular Session

SENATE BILL NO. 90

BY SENATOR ROBERT MILLS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WATER MANAGEMENT. Provides for Cooperative Endeavor Agreement for surface water. (7/1/23)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

To amend and reenact R.S. 30:961(A), (B), (D), (E), the introductory paragraph of (G)(1), (G)(2), (J), and (K), relative to water management; to provide for cooperative endeavor agreements for the use of surface water; to provide for the authority of the secretary of the Department of Natural Resources and the State Mineral and Energy Board; to provide for the consideration of impacts; to provide for terms and conditions; to provide for fair market value; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:961(A), (B), (D), (E), the introductory paragraph of (G)(1), (G)(2), (J), and (K) are hereby amended and reenacted to read as follows:

§961. Cooperative endeavor agreements; withdrawal of surface water; intent

A. **(1)** As provided by this Chapter and except as otherwise provided by law, a person or entity ~~may~~ **shall** enter into a cooperative endeavor agreement **with the state** to withdraw running surface water as described in this Chapter. The cooperative endeavor agreement shall prohibit the resale of withdrawn running surface water for a price greater than provided for in the agreement; however, a

1 person or entity may receive compensation for the transportation, manufacturing, or
2 processing of withdrawn running surface water. Unless otherwise provided by law,
3 all cooperative endeavor agreements to withdraw running surface water, and any
4 assignment **or renewal** of such agreement, shall be approved by the secretary as
5 provided in this Chapter. ~~No provision contained in this Chapter should be construed~~
6 ~~as a requirement for any person or entity to enter into any cooperative endeavor~~
7 ~~agreement to withdraw running surface water.~~ This Chapter shall have no effect on
8 the rights provided for in Civil Code Articles 657 and 658 or any rights held by
9 riparian owners in accordance with the laws of this state. It is also the intent of the
10 legislature that should any portion of this Chapter be found to be unconstitutional
11 that the remaining parts shall continue in force and effect.

12 **(2) The provisions of this Section shall not apply to waterbodies lying**
13 **within the coastal zone, as described in R.S. 49:214.24, or any salt or brackish**
14 **waterbodies.**

15 B. No agency or subdivision of the state otherwise authorized to enter into
16 **of the state shall enter into** a cooperative endeavor agreement to withdraw running
17 surface water, or **the** assignment **or renewal** of such ~~shall do so,~~ unless the
18 agreement is in writing, provides for fair market value to the state, is in the public
19 interest, and is contained on a uniform form developed and prescribed by the State
20 Mineral and Energy Board and approved by the attorney general. ~~Except when water~~
21 ~~is withdrawn from bodies of water managed by the Department of Wildlife and~~
22 ~~Fisheries and determined by the office of fisheries to be negatively impacted by~~
23 ~~invasive aquatic vegetation, fair market value to the state shall include but not be~~
24 ~~limited to the economic development, employment, and increased tax revenues~~
25 ~~created by the activities associated with the withdrawal of running surface water.~~
26 **The secretary may choose to waive fair market value for water withdrawals by**
27 **Louisiana municipalities and public water systems.** No such cooperative endeavor
28 agreement to withdraw running surface water shall be valid unless and until such
29 agreement is approved by the secretary following the submission of an application

1 for approval, which the secretary shall develop and prescribe. The secretary shall
 2 conduct the evaluation provided for in Subsection D of this Section and take action
 3 on the application within sixty days of the application being deemed complete. If the
 4 secretary denies the application, the secretary shall provide written reasons for the
 5 denial at the time of the denial.

6 * * *

7 D. The secretary shall evaluate each application for a cooperative endeavor
 8 agreement to withdraw running surface water and each such cooperative endeavor
 9 **agreement** that he may enter to ensure that each is in the public interest. The
 10 secretary shall ensure the proposed agreement is based on best management practices
 11 and sound science, and is consistent with the required balancing of environmental
 12 and ecological impacts with the economic and social benefits found in Article IX,
 13 Section 1 of the Constitution of Louisiana. In his evaluation, the secretary shall also
 14 ensure that all cooperative endeavor agreements to withdraw running surface water,
 15 or assignments **or renewal** of such, adequately consider the potential and real effects
 16 of such contracted activity on the sustainability of the water body, **esthetic quality**
 17 **of the environment**, and on navigation. Any assignment of any such cooperative
 18 endeavor agreement to withdraw running surface water may be approved by the
 19 secretary in the same manner as an agreement as provided in this Section, unless
 20 otherwise provided for by law.

21 E.(1) A cooperative endeavor agreement to withdraw running surface water,
 22 or an assignment of such, entered into pursuant to the provisions of this Chapter shall
 23 have an initial term not to exceed ~~two years~~ **one year**. Existing **At the discretion of**
 24 **the secretary, existing** agreements may be renewed ~~in two-year increments~~ **for one**
 25 **additional one-year term beyond the initial one-year term.**

26 ~~(2) A person or entity who has entered into a cooperative endeavor agreement~~
 27 ~~to withdraw running surface waters or has obtained an assignment of such, may~~
 28 ~~terminate such agreement after December 31, 2022. In order to be effective, the~~
 29 ~~person or entity seeking to terminate shall provide written notice by certified mail~~

1 ~~to the secretary at least thirty days prior to termination.~~

2 * * *

3 G.(1) The secretary, in deciding whether to approve or require changes in an
4 application for a cooperative endeavor agreement to withdraw running surface water,
5 or the assignment or renewal of such, shall consider the various existing and
6 potential users of the resource and shall give appropriate consideration and priority
7 to the following users or uses in the following order of priority:

8 * * *

9 (2) The secretary shall also consider the impact of any proposed contract,
10 agreement, assignment, renewal, or use on resource planning. By way of illustration
11 but not limitation, these would include any potential project or use that impacts:

- 12 (a) Stream or water flow energy.
- 13 (b) Sediment load and distribution.
- 14 (c) Navigation.
- 15 (d) Aquatic life.
- 16 (e) Other vegetation or wildlife.

17 **(f) Scenic, esthetic, and other natural and physical features of the water**
18 **body and surrounding area.**

19 * * *

20 J. The state shall be reimbursed at fair market value for all use or withdrawal
21 of running surface water ~~from bodies of water managed by the Department of~~
22 ~~Wildlife and Fisheries and determined by the office of fisheries to be negatively~~
23 ~~impacted by invasive aquatic vegetation. Fair market value as used in this Subsection~~
24 ~~shall be at a rate of not more than fifteen cents per thousand gallons, and shall be set~~
25 **on an annual basis by the State Mineral and Energy Board, after conducting a**
26 **properly noticed public hearing and an opportunity to receive public comment.**
27 **The determination of fair market value** shall not include the economic
28 development, employment, and increased tax revenues created by the activities
29 associated with the withdrawal of running surface water.

1 K. ~~All~~ **Ninety percent of the** monies collected by the state pursuant to this
2 Chapter as a result of the use or withdrawal of surface water shall be deposited into
3 the Aquatic Plant Control **Dedicated** Fund **Account** as established in R.S. 56:10.1,
4 and shall be used for the treatment of aquatic weed, preferably on the body of water
5 from which revenues were generated. **The remainder of the monies collected shall**
6 **be used by the department solely for the efficient administration of this**
7 **Chapter.**

8 Section 2. This Act shall become effective on July 1, 2023; if vetoed by the governor
9 and subsequently approved by the legislature, this Act shall become effective on the day
10 following such approval by the legislature or July 1, 2023, whichever is later.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Tyler S. McCloud.

	DIGEST	
SB 90 Original	2023 Regular Session	Robert Mills

Present law authorizes a person or entity to enter into a cooperative endeavor agreement to withdraw running surface water with an agency or subdivision of the state authorized in existing law to enter into such agreements or with the secretary of the Dept. of Natural Resources.

Proposed law changes the authorization to a requirement for a person or entity to enter into a cooperative endeavor agreement to withdraw running surface water.

Present law requires the cooperative endeavor agreement to prohibit resale of the water for a higher price, except for transporting, manufacturing, or processing the water. Proposed law retains present law.

Present law does not effect the rights of riparian owners. Proposed law retains present law.

Present law requires the cooperative endeavor agreements or assignments be in writing, provide for fair market value, in the public interest, and contained on a uniform form developed by the State Mineral and Energy Board and approved by the attorney general.

Proposed law retains present law except also applies to renewals.

Present law requires fair market value to include but not be limited to the economic development, employment, and increased tax revenues created by the activities associated with the withdrawal of running surface water. Present law excludes these economic considerations when water is withdrawn from bodies of water managed by the Department of Wildlife and Fisheries and determined by the office of fisheries to be negatively impacted by invasive aquatic vegetation.

Proposed law removes the requirement that fair market value include the economic development, employment, and increased tax revenues created from all cooperative endeavor agreements to withdraw running surface water.

Proposed law authorizes the secretary to waive fair market value for water withdrawals by Louisiana municipalities and public water systems.

Present law requires the secretary to develop an application process, complete an evaluation and take action within 60 days of an application being deemed complete, and provide written reasons for a denial. Proposed law retains present law.

Present law prohibits the secretary from entering into any cooperative endeavor agreement to withdraw running surface water that fails to comply with the prohibition against gratuitous donation of state property and that the substance of the agreement is not contained within a written cooperative endeavor agreement. Proposed law retains present law.

Present law requires the secretary to ensure the proposed agreement is based on best management practices and sound science, and is consistent with the required balancing of environmental and ecological impacts with the economic and social benefits. Proposed law retains present law. Further requires the evaluation ensure that all agreements consider the potential and real effects on the sustainability of the water body and on navigation. Proposed law retains present law except applies the evaluation to renewals and the secretary must also consider the impact on the esthetic quality of the environment.

Present law provides that any assignment is approved in the same manner as an agreement as provided in present law. Proposed law retains present law.

Present law provides for the term of a cooperative endeavor agreement to withdraw running surface water, or an assignment have an initial term not to exceed two years and may be renewed in two-year increments.

Proposed law reduces the initial term to one year and limits a renewal to one additional one-year term at the discretion of the secretary.

Present law authorizes a person or entity who has entered into a cooperative endeavor agreement to withdraw running surface waters or has obtained an assignment of such, terminate such agreement after December 31, 2022, in writing. Proposed law removes this authorization for the user to terminate the agreement.

Present law authorizes the secretary to reduce or terminate withdrawals otherwise agreed to in order to protect the resource and maintain sustainability. Proposed law retains present law.

Present law requires the secretary to consider existing users in approving or making changes to an application and prioritizes users as human consumption, agricultural uses, and finally, commercial and industrial or mining uses. Proposed law retains present law except also applies to renewals.

Present law requires the secretary to consider the impact on resource planning and provides examples. Proposed law retains present law except applies to renewals and adds the example of the scenic, esthetic, and other natural and physical features of the water body and surrounding area.

Present law requires reimbursement at fair market value of 15¢ per 1,000 gallons for all use or withdrawal of running surface water from bodies of water managed by the Dept. of Wildlife and Fisheries and determined by the office of fisheries to be negatively impacted by invasive aquatic vegetation.

Proposed law removes the prescribed fair market value requirement applied to those water bodies only managed by the Dept. of Wildlife and Fisheries.

Proposed law requires the State Mineral and Energy Board to set the fair market value annually, after conducting a public hearing and prohibits the determination of fair market

value include the economic development, employment, and increased tax revenues created by the activities.

Present law establishes the Aquatic Plant Control Dedicated Fund Account to be used to control and eradicate aquatic weeds.

Present law requires deposit of monies collected from the use or withdrawal of surface water from state water bodies into the Aquatic Plant Control Fund and further provides that revenues deposited into the fund from the use of water from water bodies with aquatic weed should be used for the treatment of aquatic weed on those bodies of water from which the revenue was generated.

Proposed law retains present law except requires the deposit of monies into the Aquatic Plant Control Dedicated Fund Account.

Effective July 1, 2023.

(Amends R.S. 30:961(A), (B), (D), (E), (G)(1)(intro para) and (G)(2), (J), and (K))