

2015 Regular Session

HOUSE BILL NO. 680

BY REPRESENTATIVE LEOPOLD

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

FISHING/OYSTERS: Provides relative to private oyster leases on privately owned water bottoms

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AN ACT

To amend and reenact R.S. 41:1702(D)(1), (2)(e), (F), and (G)(2) and R.S. 56:425(A) and to enact R.S. 56:425(F), (G), (H), and (I), relative to private oyster leases on private water bottoms; to authorize private oyster leases on private water bottoms; to provide for clarification of water bottom ownership in relation to private oyster leases; to provide for a presumption of legally harvested oysters from a private oyster lease on a private water bottom; to authorize reclamation of water bottoms through the development of engineered oyster reefs on private oyster leases; to provide relative to permits for reclamation projects that involve private oyster leases; to provide for challenges to state claims to the ownership of certain water bottoms; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 56:425(A) is hereby amended and reenacted and R.S. 56:425(F), (G), (H), and (I) are hereby enacted to read as follows:

§425. Lease of water bottoms; stipulations; boundary disputes

A. The secretary may lease to any resident, any firm composed of residents, or any corporation domiciled in or organized under the laws of this state any state-owned water bottoms and natural reefs in the water bottoms of this state under the limitations stipulated or authorized in this Subpart. No lease shall be granted until a reasonable investigation into the question of ownership is complete and, based

1 on the findings, a formal written determination is made that the state owns the water
2 bottoms to be leased. No later than thirty days prior to the issuance of the formal
3 written determination, the acceptance of an application for a new oyster lease, the
4 issuance of a new lease, or the renewal of an existing lease that extends over or
5 encroaches upon an existing, recorded private oyster lease or privately owned water
6 bottom, the secretary or the state agency that issues the formal written determination
7 shall send notice of such action by certified mail to any person or entity holding a
8 recorded property interest in the water bottom at issue. Upon receipt of such notice,
9 any affected person or entity shall have fifteen days to file suit to challenge such
10 action, including the question of title, in a court of competent jurisdiction in the
11 parish where the water bottom at issue is located. Any new lease or renewal of an
12 existing lease for the taking of oysters granted by the secretary prior to ~~June 15, 2006~~
13 July 1, 2015, ~~which that~~ affects privately owned water bottoms or an existing
14 recorded private oyster lease on private water bottoms shall be subordinate to the
15 rights of the private landowner, ~~or~~ recorded land title owner, or the holder of an
16 existing, recorded private oyster lease effective on that date.

17 * * *

18 F. Notwithstanding any other applicable law, a private landowner may issue
19 a private oyster lease for the cultivation, bedding, or harvesting of oysters on water
20 bottoms owned by that landowner. The secretary may not grant or renew an oyster
21 lease that extends over or encroaches upon, an existing, recorded private oyster lease
22 on a private water bottom.

23 G. A private landowner and the holder of an existing, recorded private oyster
24 lease on private lands may jointly create and establish living shoreline on a private
25 oyster lease as an element or goal of a reclamation project pursuant to R.S. 41:1702,
26 et seq.

27 H. Should a formerly private water bottom containing an existing private
28 oyster lease be deemed to be owned by the state following the reasonable
29 investigation and the issuance of the formal written determination required by

1 Subsection A of this Section, the holder of the private oyster lease shall have the first
2 right of refusal for a lease to be granted by the secretary with the same dimensions
3 as the existing, recorded private oyster lease.

4 I. Oysters found on a vessel owned and operated by a private oyster
5 leaseholder or operated by an agent or employee of such private oyster leaseholder
6 shall be presumed to have been legally harvested from the leaseholder's private
7 oyster lease. In order to document legality of the harvest of oysters from the private
8 lease, a copy of the lease shall be carried on each vessel used to harvest oysters from
9 the private lease and shall be available for examination by representatives of the
10 department.

11 Section 2. R.S. 41:1702(D)(1), (2)(e), (F), and (G)(2) are hereby amended and
12 reenacted to read as follows:

13 §1702. Reclamation of lands lost through erosion, compaction, subsidence, and sea
14 level rise; land acquisition for certain coastal projects; requirements

15 * * *

16 D. In all cases in which a definitive boundary may be arrived at by mutual
17 consent or through the procedures applicable to contested boundaries, the
18 administrator of the State Land Office, as provided in Paragraph (1) of this
19 Subsection, or the secretary of the Department of Natural Resources, as provided in
20 Paragraph (2) of this Subsection, may allow reclamation.

21 (1) The administrator of the State Land Office may issue a permit for the
22 carrying out of the work necessary to implement the recovery of the land lost through
23 erosion, compaction, subsidence, or sea level rise; however, no such permit shall be
24 issued until plans and specifications for such work have been first submitted to the
25 governing authority of the parish in which the proposed project is located, the
26 Department of Transportation and Development, the Department of Wildlife and
27 Fisheries, the Office of Coastal Protection and Restoration, and the Department of
28 Natural Resources for review and comment not less than sixty days prior to the
29 issuance of such permit. No permit shall be required for projects to facilitate the

1 development, design, engineering, implementation, operation, maintenance, or repair
 2 of coastal or barrier island restoration projects by the Office of Coastal Protection
 3 and Restoration under R.S. 49:214.1 et seq. or other applicable law or projects for
 4 the Atchafalaya Basin Program. Within sixty days of completion of the reclamation
 5 project, the riparian owner shall submit to the State Land Office proof of the extent
 6 of the land area actually reclaimed in the manner provided in Subsection C of this
 7 Section for showing the submerged area, which map or plat shall be employed for
 8 fixing the definitive boundary between the reclaimed land area and the state water
 9 bottoms. ~~Permits~~ Except for permits issued for the establishment of living shorelines
 10 as defined in Subparagraph (D)(2)(e)(ii) of this Section, permits issued pursuant to
 11 these provisions shall be effective for a period not to exceed two years from the date
 12 of issuance and shall thereupon expire. Permits issued for the establishment of living
 13 shorelines shall be issued for an initial period of two years but may be renewed or
 14 extended to facilitate the establishment, enhancement, or perpetuation of such living
 15 shorelines. All work remaining or any additional work may be completed only by
 16 application in the manner provided by this Section.

17 * * *

18 (2)

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20 (e)(i) As used in this Section, the term "emergent land" shall mean land that
 21 emerges from a public water bottom to an elevation sufficient to support emergent
 22 vegetation, except that in the case of the seaward side of a barrier island the
 23 minimum elevation required shall be the lowest elevation sufficient to support
 24 emergent vegetation on the landward side of such island. However, no land which
 25 lies below the elevation of ordinary low water shall be considered emergent land.

26 (ii) As used in this Section, the term "living shoreline" shall mean the
 27 establishment of an engineered, submerged, or inter-tidal oyster reef within a private
 28 oyster lease on a private water bottom in existing shallow waters not more than four
 29 feet deep by the placement of oyster shells, cultch, prefabricated structures and

1 devices, or other suitable substrate or reef material as approved by the Coastal
2 Protection and Restoration Authority pursuant to R.S. 49:214.1, et seq., for the
3 purpose of establishing a viable oyster reef that will enhance the protection,
4 preservation, or restoration of land or coastline consistent with Louisiana's
5 Comprehensive Master Plan for a Sustainable Coast.

6 * * *

7 F. Except as otherwise provided in Paragraph (D)(2) of this Section, the
8 words "reclamation" or "recovery of land" or "reclamation project" as used in this
9 Section shall refer to the raising of land through filling or other physical works which
10 elevate the surface of the theretofore submerged land as a minimum above the level
11 of ordinary low water in the case of rivers or streams and above the level of ordinary
12 high water in the case of bodies of water other than rivers and streams, to such
13 heights as may be prescribed in regulations or forms adopted by the administrator of
14 the State Land Office to ensure reasonably permanent existence of the reclaimed
15 lands, or, to the extent approved by the Coastal Protection and Restoration Authority
16 pursuant to R.S. 49:214.1 et seq., or other applicable law and consistent with
17 Louisiana's Comprehensive Master Plan for a Sustainable Coast. Living shorelines
18 as defined in this Subsection may be permitted so as to establish engineered, living
19 oyster reefs that create a diverse and sustainable marine habitat buffer from wave
20 energy to the state's coast, and provide a food resource for wildlife and people.
21 These living shorelines are to be encouraged as they also improve water quality and
22 clarity by removing nitrogen and other impurities while enhancing the growth of sea
23 grass beds. Any reclamation pursuant to Paragraph (D)(1) of this Section not in
24 substantial compliance with the permit procedure provided above shall be an
25 absolute nullity and no private rights of ownership shall vest or be acquired by
26 prescription.

27 * * *

28 G.

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1 (2) Permits may be granted for bulkheads or living shorelines as defined in
2 Subparagraph (D)(2)(e)(ii) of this Section, generally parallel to the shore, that do not
3 interfere with navigation on any inland navigable water body whether or not the area
4 to be bulkheaded eroded before July 1, 1921, if, on the basis of evidence furnished
5 the administrator of the State Land Office, such bulkheading will aid in reclaiming
6 submerged land or preventing erosion, compaction, or subsidence. No permit shall
7 be required for projects to facilitate the development, design engineering,
8 implementation, operation, maintenance, or repair of coastal or barrier island
9 restoration projects by the Department of Natural Resources under R.S. 49:214.1 et
10 seq. or other applicable law or projects for the Atchafalaya Basin Program. Such
11 permits shall not vest any title in any private owner other than as to lands eroded
12 after July 1, 1921.

* * *

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 680 Original

2015 Regular Session

Leopold

Abstract: Provides relative to certain aspects of private oyster leases located on privately-held water bottoms.

Present law provides generally for the Dept. of Wildlife and Fisheries to establish and maintain a system of leasing of state water bottoms for the cultivation, bedding, and harvest of oysters.

Proposed law authorizes private oyster leases for such activities on privately-held water bottoms. Prohibits the secretary of the Dept. of Wildlife and Fisheries from granting an oyster lease that extends over or encroaches upon an existing private oyster lease on privately-held water bottoms. Authorizes a private landowner and a private oyster leaseholder to create and establish a living shoreline on a private lease. A living shoreline is defined as an engineered, submerged, or inter-tidal oyster reef in shallow waters not more than four feet deep. Provides that if a formerly private water bottom containing a private oyster lease is deemed to be water bottom owned by the state, the holder of the private lease is to be granted a right of first refusal to a lease to be granted by the Dept. of Wildlife and Fisheries.

Proposed law provides that oysters found on a vessel owned and operated by a private oyster leaseholder or operated by an agent or employee of such private oyster leaseholder are presumed to have been legally harvested from the leaseholders private oyster lease. Requires a copy of the lease to be carried on each vessel used to harvest oysters from the private lease.

Present law requires the Dept. of Wildlife and Fisheries to reasonably investigate water bottom ownership prior to issuing an oyster lease and to make a determination that the state owns the water bottom to be leased. Proposed law requires a formal written determination to be made and requires that at least 30 days prior to the issuance of the written determination, issuance of a new lease, or the renewal of an existing lease that extends over an existing private lease, a notice is to be sent to any person or entity holding a recorded property interest in the water bottom in question. Allows the person or entity so notified 15 days to file suit to challenge the determination, the issuance of a new lease, or the renewal of an existing lease.

Present law provides that any lease granted prior to June 15, 2006, that affects privately owned water bottoms is subordinate to the rights of the private landowner at the time the lease was granted. Proposed law changes that date to July 1, 2015, and includes the rights of an existing private oyster leaseholder.

Present law allows for reclamation of land by a private landowner of land that has eroded and thereby becomes water bottoms owned by the state. Requires a permit for such reclamation issued by the State Land Office and reviewed by various state agencies and the governing authority of the parish where the reclamation would take place. Requires the land reclaimed to be above the elevation of the ordinary low water mark and to be emergent land capable supporting emergent vegetation.

Proposed law would allow an oyster reef (or "living shoreline") to be considered a reclamation project. A living shoreline project would be required to go through the same permitting and review process as any other reclamation project.

(Amends R.S. 41:1702(D)(1), (2)(e), (F), and (G)(2) and R.S. 56:425(A); Adds R.S. 56:425(F), (G), (H), and (I))