

2018 Regular Session

SENATE BILL NO. 427

BY SENATOR CHABERT

COASTAL PROTECT/RES AUTH. Transfers the responsibilities of the Atchafalaya Basin Research and Promotion Board and the Atchafalaya Basin Program from within the Department of Natural Resources to the Coastal Protection and Restoration Authority. (7/1/18)

1 AN ACT

2 To amend and reenact R.S. 36:4(Z), 41:1706(A)(2) and (4), and 1709(A), to enact Subpart

3 D of Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950, to be

4 comprised of R.S. 49:214.51 through 214.57, and to repeal Chapter 17 of Subtitle 1

5 of Title 30 of the Louisiana Revised Statutes of 1950, comprised of R.S. 30:2000.1

6 through 2000.12, and R.S. 36:359(J), relative to the transfer of the responsibilities

7 of the Atchafalaya Basin Research and Promotion Board and the Atchafalaya Basin

8 Program from the Department of Natural Resources to the Coastal Protection and

9 Restoration Authority; to provide for the effect of such transfer on previously

10 executed partnerships, memoranda of understanding, and cooperative endeavors; to

11 provide for the transfer of all property; to provide for the effect of the transfer on

12 employees, legal proceedings, and contractual obligations; and to provide for related

13 matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 36:4(Z) is hereby amended and reenacted to read as follows:

16 §4. Structure of executive branch of state government

17 * * *

1 §1709. Terms and conditions of leases

2 A. Owners or occupiers of encroachments, constructed pursuant to a permit
 3 issued hereunder, and those existing upon state lands as of July 13, 1978, which are
 4 otherwise lawful except for a permit, shall apply to the office for a lease of the
 5 encroachment. No permit shall be required for projects to facilitate the development,
 6 design, engineering, implementation, operation, maintenance, or repair of ~~coastal or~~
 7 ~~barrier island restoration~~ **integrated coastal protection** projects by the ~~Department~~
 8 ~~of Natural Resources~~ **Coastal Protection and Restoration Authority** under R.S.
 9 ~~49:214.1~~ **214.6.1** et seq. or other applicable law or projects for the Atchafalaya Basin
 10 Program. Where the best interests of the state and applicant will be served, a
 11 noncompetitive lease shall be granted upon the conditions contained in this Chapter.
 12 The term "noncompetitive lease" as used in this Chapter shall not refer to any
 13 proposed use for which the lease is granted. All such leases shall be for a cash
 14 consideration and such terms and other considerations as deemed most beneficial to
 15 the state of Louisiana, considering the type and extent of the encroachment. The cash
 16 and other considerations for the leases and renewals shall be based upon linear feet,
 17 area, values of the improvement and the public land occupied, degree of impairment
 18 to the public interest, and benefit to the owner, be it income, profit or otherwise, that
 19 is derived by use of the public lands. The cash and considerations for leases of minor
 20 commercial wharves and piers shall be a nominal fee, sufficient to cover the costs
 21 of processing and administration by the office. If it is determined that the
 22 considerations paid to the state are not reasonable, fair, and adequate value of the
 23 lands occupied as of the date of renewal, additional cash, or other considerations may
 24 be required of the lessee at that time in order that the state be justly compensated for
 25 use of the public lands. All leases shall be reviewed and approved by the attorney
 26 general prior to issuance or renewal.

27 * * *

28 Section 3. Subpart D of Part II of Chapter 2 of Title 49 of the Louisiana Revised
 29 Statutes of 1950, comprised of R.S. 49:214.51 through 214.57, is hereby enacted to read as

1 follows:

2 SUBPART D. ATCHAFALAYA BASIN PROGRAM

3 §214.51. Purpose

4 The provisions of this Subpart are intended to establish an Atchafalaya
5 Basin Program within the Coastal Protection and Restoration Authority to
6 serve as the authority on behalf of the state to work in partnership with the
7 United States Army Corps of Engineers and other public entities, and
8 coordinate state and local activities, in developing and implementing the
9 federally sponsored and funded Atchafalaya Basin Floodway System, Louisiana
10 Project.

11 §214.52. Definitions

12 As used in this Subpart, the following terms shall have the meaning
13 ascribed to them below:

14 (1) "Access project" means construction or renovation of a boat launch
15 or a roadway that provides access to areas of the Atchafalaya Basin, or
16 acquisition of a maximum of fifteen hundred acres, all in compliance with the
17 provisions of the state or federal master plans.

18 (2) "Annual basin plan" means the list of projects or stages of projects
19 to be undertaken in any single fiscal year, as included in the annual plan as
20 defined in R.S. 49:214.2.

21 (3) "Atchafalaya Basin" means the area located within the guide levees
22 of the Atchafalaya Basin and those areas directly adjacent to the levees bounded
23 on the north by U.S. Highway 190 and on the south by Morgan City, and as
24 defined in the Atchafalaya Basin Floodway System, Louisiana Project.

25 (4) "Atchafalaya Basin Floodway System, Louisiana Project" means the
26 Atchafalaya Basin Floodway System, Louisiana Project and enacted by the 1982
27 Atchafalaya Basin Floodway System, U.S. Army Corps of Engineers feasibility
28 study, Supplemental Appropriations Act of 1985, Public Law 99-88, as amended
29 by the Water Resources Development Act of 1986, Public Law 99-662, the

1 Energy and Water Development Appropriations Act of 1991, Public Law 101-
2 514, the Energy and Water Development Appropriations Act of 1997, Public
3 Law 104-206, the Water Resources Development Act of 2000, Public Law 106-
4 541, and the Water Resources Development Act of 2007, Public Law 110-114.

5 (5) "Authority" means the Coastal Protection and Restoration
6 Authority.

7 (6) "Basin master plan" means the plan developed by the state in
8 accordance with the federal Atchafalaya Basin Floodway System, Louisiana
9 Project, pursuant to federal law, including the Supplemental Appropriations
10 Act of 1985, Public Law 99-88, and the Water Resources Development Act of
11 1986, Public Law 99-662.

12 (7) "Board" means the Coastal Protection and Restoration Authority
13 Board.

14 (8) "Director" means the executive director of the Coastal Protection
15 and Restoration Authority.

16 (9) "Program" means the Atchafalaya Basin Program.

17 (10) "Water management project" means any project that facilitates
18 improvements to water quality, interior circulation, water access, or
19 improvements to general ecosystem function by means of sediment reduction,
20 removal, or diversion.

21 §214.53. Creation of program

22 A. The Atchafalaya Basin Program is hereby created as a program
23 within the Coastal Protection and Restoration Authority.

24 B. The program shall include the director, the Coastal Protection and
25 Restoration Authority Board, the technical advisory committee, and the staff
26 for the authority.

27 §214.54. Powers and duties

28 A. The director, in consultation with the board as desired, shall:

29 (1) Develop, implement, and manage a comprehensive state master plan

1 for the Atchafalaya Basin Floodway System, Louisiana Project.

2 (2) Present the annual basin plan to the board each year for its review
3 and approval.

4 (3) Coordinate state implementation of congressional mandates
5 concerning the Atchafalaya Basin Floodway System, Louisiana Project.

6 (4) Serve as primary liaison on behalf of the state with the U.S. Army
7 Corps of Engineers on the Atchafalaya Basin Floodway System, Louisiana
8 Project, including representation of the state in state and federal partnerships,
9 cost and share agreements, and other public and private cooperative endeavors.

10 (5) Represent the policy and consensus viewpoint of the state at the
11 federal, regional, state, and local levels with respect to the Atchafalaya Basin
12 Floodway System, Louisiana Project.

13 (6) Enter into partnerships, memoranda of understanding, and
14 cooperative endeavors with state agencies and departments to implement the
15 basin master plan or annual basin plan, including:

16 (a) Department of Wildlife and Fisheries: to operate and maintain
17 wildlife management areas created by the Atchafalaya Basin Floodway System,
18 Louisiana Project, and to plan and monitor projects to improve water quality
19 and fish and wildlife production.

20 (b) Department of Culture, Recreation and Tourism: to operate and
21 maintain tourist information centers and state parks funded by the Atchafalaya
22 Basin Floodway System, Louisiana Project.

23 (c) Department of Agriculture and Forestry: to monitor environmental
24 easements as required by the Atchafalaya Basin Floodway System, Louisiana
25 Project.

26 (d) State land office: to monitor and enforce timber harvesting and
27 campsite development on state-owned lands in the basin as required by the
28 Atchafalaya Basin Floodway System, Louisiana Project.

29 (e) Department of Transportation and Development, Department of

1 Environmental Quality, and Louisiana Department of Health: to advise the
2 program on departmental operations relating to the Atchafalaya Basin.

3 (7) Provide recommendations to the board, legislature, and congress with
4 respect to the implementation, management, and funding of the basin master
5 plan.

6 (8) Monitor and seek available federal and private funds and property
7 consistent with the purposes of this Subpart, including funds from matching
8 sources.

9 (9) Enter into agreements and cooperative endeavors consistent with the
10 purposes of this Subpart.

11 (10) Conduct meetings, hold hearings, and promulgate rules as necessary
12 and consistent with the purposes of this Subpart.

13 (11) Appoint advisory committees.

14 (12) Expend funds consistent with the purposes of this Subpart.

15 (13) Enter into memoranda of understanding and cooperative endeavors
16 with state, local, and federal public entities consistent with the purposes of this
17 Subpart.

18 (14) Utilize the services and personnel of state, local, and federal public
19 entities upon mutually agreeable terms and conditions consistent with the
20 purposes of this Subpart.

21 (15) Seek, accept, and use, in accordance with law, gifts, grants, bequests,
22 and endowments, including immovable property, for purposes consistent with
23 the powers and duties in this Subpart and take such actions as are necessary to
24 comply with any conditions required for such acceptance.

25 (16) Administer and enforce the provisions of this Subpart relating to
26 duties and activities of the program.

27 (17) Perform such other acts and duties as necessary to effectuate the
28 purposes of this Subpart.

29 (18) Comply with the provisions of Part II and Part III of Chapter 1 of

1 Subtitle 1 of Title 39 of the Louisiana Revised Statutes of 1950, relative to the
2 operating and capital outlay budgets.

3 (19) Develop an annual basin plan as provided in R.S. 49:214.56 and
4 present the annual basin plan to the board.

5 (20) Develop and adopt criteria which must be met prior to a project
6 being included in an annual basin plan.

7 (21) Hold public hearings on the annual basin plan prior to adoption.
8 The director shall hold a minimum of two public hearings on the annual basin
9 plan each year with at least one hearing to be held at a location on the west side
10 of the Atchafalaya Basin and at least one hearing to be held at a location on the
11 east side of the Atchafalaya Basin. The director shall advertise in the official
12 journal of the state the date, time, and location of the public hearings at least
13 seven days prior to the hearings.

14 B. The director is authorized to:

15 (1) Acquire one thousand five hundred acres of land in the Atchafalaya
16 Basin for recreation purposes, and to construct new recreation areas, facilities,
17 and water management features.

18 (2) Conduct environmental easement monitoring.

19 (3) Operate and maintain public access features.

20 (4) Enter into cooperative endeavors or other agreements with federal,
21 state, or local departments or agencies to implement the basin master plan or
22 annual basin plan.

23 (5) Enter into a minimum of four cooperative endeavors or agreements
24 with the United States Army Corps of Engineers for projects covering public
25 access, environmental easements, water management, and recreation as
26 provided in the state master plan and in the congressional authorization
27 contained in Public Laws 99-88 of 1985 and 99-662 of 1986.

28 (6) Use any federal funds that are, or that may become, available as
29 matching funds or on any other basis for any of the projects contained in the

1 annual basin plan or any other projects authorized for purposes of this Subpart,
2 including federal funds from the Atchafalaya Basin Floodway System,
3 Louisiana Project, Transportation Equity Act for the 21st Century (TEA-21)
4 funds, and Section 204, Section 206, Section 235, and Section 1135 funds.

5 (7) Expend funds to implement the annual plan.

6 (8) In addition to funds appropriated for the program, use any other
7 funds, goods, lands, or services donated or otherwise made available, including
8 federal funds made available to the program.

9 (9) Enter into cooperative endeavors or agreements with designated local
10 sponsors for the operation and maintenance of capital improvements under the
11 recreation feature of the program.

12 (10) Negotiate and execute, on behalf of the state, project-specific or
13 programmatically project cooperation agreements or similar agreements with the
14 federal government for those projects that are part of the Atchafalaya Basin
15 Floodway System, Louisiana Project. The director shall also be authorized to
16 negotiate and execute such agreements.

17 (11) Promulgate rules in accordance with the Administrative Procedure
18 Act in order to carry out its duties and shall conduct its meetings in accordance
19 with R.S. 42:11 et seq., the Open Meetings Law.

20 §214.55. Capital improvement program

21 Any project which is proposed for inclusion in an annual basin plan but
22 is not included in the basin master plan nor is included in the Atchafalaya Basin
23 Floodway System, Louisiana Project shall first be reviewed, studied, and
24 analyzed by the board. The board may consider the proposal, and if approved,
25 the project shall be included in an annual plan for presentation to the board for
26 its approval.

27 §214.56. Annual basin plan

28 A. The director shall develop an annual basin plan that includes all
29 projects or stages of projects that will be proposed for funding or funded in any

1 one fiscal year. The annual basin plan may include projects that are any of the
2 following:

3 (1) A part of the basin master plan.

4 (2) A part of the Atchafalaya Basin Floodway System, Louisiana Project.

5 (3) A water management or water quality project that meets the criteria
6 developed by the board for inclusion in an annual plan and has been approved
7 through the procedures adopted by the board for inclusion of a project in the
8 annual plan, including public hearings.

9 (4) A project consistent with the mission statement contained in the basin
10 master plan.

11 (5) A project to be completed which was previously approved by the
12 board.

13 (6) A project consistent with the master plan as defined in R.S. 49:214.2.

14 B. As a part of the procedures to be followed by the director in the
15 development of an annual basin plan, the chair of the board shall appoint a
16 technical advisory group to review, evaluate, and approve all water
17 management and water quality projects proposed for inclusion in an annual
18 plan. The technical advisory group shall consist of the following appointments:

19 (1) The director or his designee who shall serve as the chair of the group.

20 (2) One member from the Department of Environmental Quality.

21 (3) One member from the Department of Agriculture and Forestry.

22 (4) One member from the Department of Natural Resources.

23 (5) One member from the United States Geological Survey.

24 (6) One member from the United States Fish and Wildlife Service.

25 (7) One member from the United States Army Corps of Engineers.

26 (8) One member from the Louisiana State University School of
27 Renewable Natural Resources.

28 (9) One member from the Department of Wildlife and Fisheries.

29 (10) One member from the Department of Culture, Recreation and

1 **Tourism.**

2 **(11) One member from the Louisiana Department of Health.**

3 **(12) One member from the state land office.**

4 **(13) One member from the Atchafalaya Basin Levee Board, selected by**
5 **the levee board.**

6 **(14) Two members chosen by the Police Jury Association of Louisiana**
7 **from a list of names submitted by the parish governing authorities of parishes**
8 **which lie, all or part thereof, within the boundaries of the Atchafalaya Basin**
9 **west of the Atchafalaya River.**

10 **(15) Two members chosen by the Police Jury Association of Louisiana**
11 **from a list of names submitted by the parish governing authorities of parishes**
12 **which lie, all or part thereof, within the boundaries of the Atchafalaya Basin**
13 **east of the Atchafalaya River.**

14 **C. Meetings of the technical advisory group shall be held in accordance**
15 **with R.S. 42:11 et seq., the Open Meetings Law, and the group shall allow for**
16 **public input and comment into its deliberations. The date, time, and location of**
17 **any meeting held to discuss projects for inclusion in the annual basin plan shall**
18 **be advertised in the official journal of the state at least seven days prior to the**
19 **meeting. Any project recommended by the technical advisory group for**
20 **inclusion in an annual basin plan shall first be certified by that group as a**
21 **project that would result in significant water management or water quality**
22 **improvements that will enhance the wildlife, fisheries, or forest resources of the**
23 **Atchafalaya Basin.**

24 **§214.57. Atchafalaya Basin Conservation Fund**

25 **A. There is hereby created, as a special fund in the state treasury, the**
26 **Atchafalaya Basin Conservation Fund, hereinafter referred to as the "fund".**
27 **The source of monies for the fund shall be appropriations, donations, grants,**
28 **and other monies which may become available for the purposes of the fund.**

29 **B. The monies in the fund shall be subject to appropriation and may be**

1 used only as provided in Subsection C of this Section. The monies in the fund
2 shall be invested by the treasurer in the same manner as monies in the state
3 general fund, and interest earnings shall be deposited in and credited to the
4 fund. All unexpended or unencumbered monies remaining in the fund at the
5 end of the fiscal year shall remain to the credit of the fund.

6 C.(1) Monies appropriated from the fund shall be used exclusively by the
7 authority to fund projects contained in the state or federal basin master plans,
8 an annual basin plan, or to provide match for the Atchafalaya Basin Floodway
9 System, Louisiana Project. The monies in the fund shall not be used to pay
10 salaries or operating costs of the program or authority.

11 (2) Of the monies received by the fund each year in accordance with the
12 provisions of Article VII, Section 4(D)(4)(b) of the Constitution of Louisiana, a
13 minimum of five percent shall be set aside until the total amount reaches ten
14 million dollars. Such funds shall be used by the authority for the purchase of
15 land, or rights, or servitudes, specifically including conservation servitudes
16 pursuant to R.S. 9:1271 et seq., from willing sellers to improve water quality,
17 access, or other projects consistent with the basin master plan. Annual set-
18 asides shall continue to be used to replenish funds used to make qualifying
19 purchases, with such set-asides not to exceed ten million dollars. Any land, or
20 right, or servitude thereof proposed to be purchased pursuant to the provisions
21 of this Section shall be included in a annual basin plan presented to the
22 legislature, and no proposed contract made pursuant to the provisions of this
23 Section shall be executed without such purchase having been included in an
24 approved annual basin plan. Willing sellers shall be permitted to avail
25 themselves of the applicable provisions of R.S. 31:149 and R.S. 9:2795, for the
26 sale of property, or any right or servitude thereof, made pursuant to this
27 Section, specifically including the sale or lease of other rights, to the exclusion
28 of the general public, upon the same parcel of land; however, the authority shall
29 not enter into an agreement pursuant to this Section unless such an agreement

1 specifically provides that the assertion of such rights will not impact surface
2 activities on such parcels, including coastal restoration and conservation
3 projects constructed by or at the direction of the state. The director shall seek
4 from the United States Army Corps of Engineers, or its successor, credit
5 towards any voluntary or mandatory funding matching requirement for the
6 Atchafalaya Basin Floodway System, Louisiana Project equal to the value of the
7 property, or right thereof, secured by any contract of sale executed pursuant to
8 this Section.

9 D. Any credit provided toward the nonfederal share of the cost of a study
10 or project authorized in an annual basin plan may be applied toward the
11 nonfederal share of the cost of any other study or project included in an annual
12 basin plan.

13 Section 4. Chapter 17 of Subtitle 1 of Title 30 of the Louisiana Revised Statutes of
14 1950, comprised of R.S. 30:2000.1 through 2000.12, is hereby repealed.

15 Section 5. R.S. 36:359(J) is hereby repealed.

16 Section 6. All books, papers, records, money, equipment, actions, and other property
17 of every kind, movable and immovable, real and personal, heretofore possessed, controlled,
18 or used by the Atchafalaya Basin Program and the Atchafalaya Basin Research and
19 Promotion Board, the provisions for which are enacted, amended, or repealed by this Act,
20 in carrying out functions, duties, and responsibilities granted by this Act are hereby
21 transferred to the Coastal Protection and Restoration Authority.

22 Section 7. All rules and regulations adopted or permits, licenses, registrations,
23 variances, or orders issued by the Atchafalaya Basin Program and the Atchafalaya Basin
24 Research and Promotion Board prior to the effective date of this Act, shall continue in full
25 force and effect as rules and regulations of the agency within the Coastal Protection and
26 Restoration Authority until and after the effective date of this Act, unless otherwise revoked,
27 repealed, amended, modified, or terminated in accordance with law.

28 Section 8. Any legal proceeding, as defined in R.S. 36:924, to which any agency or
29 office, the statutory provisions for which are amended or repealed by the provisions of this

1 Act, is a party and which is filed, initiated, or otherwise pending before any court on the
2 effective date of this Act and all documents involved in or affected by said legal proceeding,
3 shall retain their effectiveness and shall be continued in the name of the former agency. All
4 further legal proceedings and documents in the continuance, disposition, and enforcement
5 of said legal proceedings shall be in the name of the original party agency, and the Coastal
6 Protection and Restoration Authority shall be substituted for the original party agency
7 without the necessity for amendment of any document to substitute the name of the authority
8 or the name or title of any subdivision or section of the authority. For purposes of this
9 Section, "document" shall be defined as provided in R.S. 36:924.

10 Section 9. All employees heretofore engaged in the performance of functions of the
11 Atchafalaya Basin Program and the Atchafalaya Basin Research and Promotion Board, to
12 the extent the director of the authority deems necessary to carry out the functions formerly
13 performed, shall insofar as practicable and necessary continue to perform the duties
14 heretofore performed, subject to applicable state civil service laws, rules, and regulations.

15 Section 10. This Act is in no way and is to no extent intended to, nor shall it be
16 construed in any manner which will impair the contractual or other obligations of any
17 agency, office, or department, or of the state of Louisiana, the provisions for which are
18 enacted, amended, or repealed by this Act. It is hereby specifically provided that all
19 obligations of any such agency, office, or department hereafter shall be deemed to be
20 obligations of the Coastal Protection and Restoration Authority, to the same extent as if
21 originally made by it. In like manner and in order to prevent any violation of the provisions,
22 terms, or conditions of any gift, donation, deed, will, trust, or other instrument or disposition
23 by which property of any kind has been vested in any such agency, office, or department,
24 or division from the purposes for which such property was thus vested in any agency, office,
25 or department, it is hereby specifically provided that such instrument or disposition hereafter
26 shall be deemed to have been vested in the Coastal Protection and Restoration Authority and
27 its director shall be the successor in every way to each such agency, including all of the
28 obligations and debts of each such agency.

29 Section 11. This Act shall become effective on July 1, 2018.

The original instrument was prepared by Alan Miller. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy Wells.

DIGEST

SB 427 Reengrossed

2018 Regular Session

Chabert

Present law provides for the Atchafalaya Basin Research and Promotion Board and the Atchafalaya Basin Program within the Department of Natural Resources.

Proposed law eliminates the Atchafalaya Basin Research and Promotion Board and transfers the responsibilities of the Atchafalaya Basin Research and Promotion Board and the Atchafalaya Basin Program to the Coastal Protection and Restoration Authority (CPRA).

Proposed law authorizes the CPRA director to appoint a technical advisory group to develop the annual plan.

Present law provides for the membership of the technical advisory group.

Proposed law retains present law members and adds members.

Present law provides for the capital improvement program and authorized projects.

Proposed law removes project listings that have been completed.

Present law requires the House Comm. on Natural Resources and Environment and the Senate Comm. on Natural Resources to take action on the annual basin plan on or before April 15 of each year.

Proposed law changes the committee action date to May first.

Effective July 1, 2018.

(Amends R.S. 36:4(Z), 41:1706(A)(2) and (4) and 1709(A); adds R.S. 49:214.51 - 214.57; repeals R.S. 30:2000.1 - 2000.12 and R.S. 36:359(J))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Eliminates the Atchafalaya Basin Research and Promotion Board and transfers its responsibilities to the CPRA.
2. Adds additional duties to the director of the Atchafalaya Basin Program.
3. Eliminates project listings that have been completed.
4. Adds members to the technical advisory group.
5. Makes technical corrections.