

2022 Regular Session

SENATE BILL NO. 351

BY SENATOR ROBERT MILLS

WATER/WATERWAYS. Creates the Louisiana State Surface Water Integrity Act. (8/1/22)

1 AN ACT

2 To enact Chapter 5 of the Code Title V of Code Book III of Title 9 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 9:2800.81 through 2800.86, and to repeal
4 R.S. 30:961(J), relative to civil actions; to prohibit donations in disguise of the state's
5 running surface water; to provide for liability; to provide for damages; to provide for
6 qui tam actions; to provide for payments; to provide for defenses; to provide for
7 litigation expenses; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 5 of the Code Title V of Code Book III of Title 9 of the Louisiana
10 Revised Statutes of 1950, to be comprised of R.S. 9:2800.81 through 2800.86, is hereby
11 enacted to read as follows:

12 **CHAPTER 5. LOUISIANA STATE SURFACE WATER INTEGRITY ACT**

13 **§2800.81. Short title**

14 **This Chapter may be cited as the "Louisiana State Surface Water**
15 **Integrity Act".**

16 **§2800.82. Legislative intent and purpose**

17 **A. The legislature finds all of the following:**

1 **(1) That Article IX, Section 1 of the Constitution of Louisiana provides**
2 **that the state's water resources shall be protected, conserved, and replenished**
3 **insofar as possible and consistent with the health, safety, and welfare of the**
4 **people and that the legislature shall enact laws consistent with this policy.**

5 **(2) That Article VII, Section 14 of the Constitution of Louisiana**
6 **prohibits the donation of a thing of value of the state to any person, association,**
7 **or corporation and this prohibition includes the state's water resources.**

8 **(3) A donation in disguise occurs when the state sells surface water from**
9 **the state's lakes for a price that is below market.**

10 **(4) A donation of the state's surface water resources does not encourage**
11 **preservation, conservation, or replenishment of the state's valuable water**
12 **resources and is, therefore, in violation of Article IX, Section 1 of the**
13 **Constitution of Louisiana.**

14 **(5) Donating the state's surface water, by means of a donation in**
15 **disguise, violates the spirit of Article VII, Section 14 of the Constitution of**
16 **Louisiana which prohibits donations of the state's resources.**

17 **B. The legislature intends private citizens of Louisiana to be agents of**
18 **this state with the ability, authority, and resources to pursue civil monetary**
19 **penalties or other civil remedies to protect the integrity of the citizen's own**
20 **surface water resources for the use of all Louisianans and to prohibit the abuse**
21 **or other ill practices of a certain few, as set forth in this Chapter.**

22 **§2800.83 Definitions**

23 **Wherever used in this Subpart and unless the context otherwise**
24 **indicates, the following terms shall have the following meanings:**

25 **(1) "Defendant" means a person who withdraws running surface waters**
26 **from a state lake in violation of the provisions of this Chapter.**

27 **(2) "Local Citizen" means a person who is a citizen of the parish in**
28 **which the state lake is located. If the state lake is located in more than one**
29 **parish, then "local citizen" means the person who is a citizen of one of the**

1 parishes in which the state lake is located.

2 (3) "Person" means a natural or juridical person as provided in Civil
3 Code Article 24.

4 (4) "Running surface waters" shall have the same meaning as provided
5 for in R.S. 30:962.

6 (5) "State" means the state or any department, office, division, agency,
7 commission, board, committee, or other organizational unit of the state.

8 (6) "State lake" means a lake located on state owned water bottoms.
9 §2800.84. Prohibition against damage caused by removal of the state's surface
10 water; defenses; litigation expenses

11 A. Notwithstanding any other provision of law to the contrary, no
12 defendant shall remove running surface waters from a state lake to the extent
13 that it causes economic damage or damage to the immovable property located
14 in the parish in which part or all of the state lake is located.

15 B.(1) A civil action may be brought to recover economic damage or
16 damage to immovable property pursuant to this Section.

17 (2) The civil action brought to recover damages to immovable property
18 may be brought by a person who owns or lawfully possesses immovable
19 property located in the parish in which part or all of the state lake is located.

20 C. It shall not be a defense against liability that the state has executed
21 an agreement with the defendant for the purchase of running surface water as
22 provided for in Subchapter 9-B of Subtitle II of Title 30 of the Louisiana
23 Revised Statutes of 1950 or under any other provision of law.

24 D.(1) If the court finds in favor of the petitioner, the court shall order
25 that actual damages be paid by the defendant to the petitioner for the economic
26 damage or damage to immovable property that was sustained by the petitioner.

27 (2) In addition to actual damages as provided in Paragraph (1) of this
28 Subsection, the state may order that the defendant pay all court costs as well as
29 reasonable attorney fees, expert witness fees, and expenses incurred by the

1 petitioner related to the civil action filed pursuant to this Section.

2 §2800.85. Qui tam action; local citizen petitioner; donation in disguise
3 prohibited; recoverable litigation expenses

4 A. A local citizen may institute a civil action to seek recovery on behalf
5 of the state, pursuant to this Section. The institutor shall be known as a "qui
6 tam petitioner" in all court filings and the civil action shall be known as a "qui
7 tam action". The civil action shall be titled in the name of the local citizen as the
8 qui tam petitioner versus the defendant.

9 B. A qui tam action, pursuant to this Section, may be instituted against
10 a defendant that fails to pay the fair market value of running surface waters
11 which are withdrawn from a state lake. The failure to pay the fair market value
12 of running surface waters pursuant to this Section shall be considered a
13 donation in disguise and a violation of Article XII, Section 14 of the Constitution
14 of Louisiana.

15 C. It shall not be a defense against liability that the state has executed
16 an agreement with the defendant for the purchase of running surface water as
17 provided for in Subchapter 9-B of Subtitle II of Title 30 of the Louisiana
18 Revised Statutes of 1950 or under any other provision of law.

19 D.(1) If the court finds that the defendant is liable under this Section, the
20 court shall order that the defendant pay an amount no less than the fair market
21 value of the running surface water withdrawn from the state lake. All proceeds
22 collected pursuant to this Paragraph shall be deposited into the Aquatic Plant
23 Control Fund, as provided in R.S. 56:10.1.

24 (2) In addition to the payments provided in Paragraph (1) of this
25 Paragraph, the court shall order that the defendant pay all court costs as well
26 as reasonable attorney fees, expert witness fees, and expenses incurred by the
27 local citizen related to the recovery made on behalf of the state by the citizen
28 petitioner.

29 E.(1) A prevailing defendant may only seek recovery for costs, expenses,

1 fees, and attorney fees if the court finds, following a contradictory hearing, that
 2 the action was instituted by the local citizen pursuant to this Section and the suit
 3 is frivolous or the court finds that the suit was instituted as vexatious or brought
 4 primarily for the purpose of harassment.

5 (2) Recovery awarded to a prevailing defendant shall be awarded only
 6 for those reasonable, necessary, and proper costs, expenses, fees, and attorney
 7 fees actually incurred by the prevailing defendant.

8 F. An action to recover costs, expenses, fees, and attorney fees may be
 9 brought no later than sixty days after the rendering of judgment by the district
 10 court, unless the district court decision is appealed. If the district court decision
 11 is appealed, such action may be brought no later than sixty days after the
 12 rendering of the final opinion on appeal by the court of appeal or, if applicable,
 13 by the supreme court.

14 §2800.86. Venue

15 An action under this Chapter may be brought in the district court in any
 16 parish in which all or part of the state lake is located or in the district court of
 17 the domicile of the defendant.

18 Section 2. R.S. 30:961(J) is hereby repealed.

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

DIGEST

SB 351 Original

2022 Regular Session

Robert Mills

Proposed law provides for Louisiana State Surface Water Integrity Act and provides for civil suits to protect the running surface waters in the state's lakes.

Proposed law provides that a civil action may be brought against a defendant who removes running surface waters from a state lake to the extent that it causes economic damage or damage to the immovable property belonging to another. Proposed law provides that it is not a defense against liability that the state executed an agreement with the defendant for the purchase of running surface water if the defendant causes actual economic harm or property damage to another person in the parish where the lake is located. Proposed law provides that, in addition to actual economic and property damages, the court may also award attorney fees and the costs of litigation.

Proposed law provides that a local citizen may institute a civil action on behalf of the state when a defendant fails to pay the fair market value of running surface waters which are withdrawn from a state lake. Proposed law provides that the failure to pay the fair market

value shall be considered a donation in disguise and, therefore, prohibited under the La. Constitution. Proposed law provides that a court is to order that defendant pay the fair market value of the running surface water and such payments will be deposited into the Aquatic Plant Control Fund. Proposed law provides that a prevailing local citizen will be paid for his attorney fees and other costs of litigation. Proposed law provides that the defendant may recover his attorney fees and litigation expenses if the citizen suit was frivolous or brought primarily for the purpose of harassment.

Proposed law provides that venue for the civil action is in the district court in any parish in which all or part of the state lake is located or in the district court of the domicile of the defendant.

Proposed law repeals present law that allows the state to sell running surface water for 15 cents per 1,000 gallons.

Effective August 1, 2022.

(Adds R.S. 9:2800.81-2800.86; repeals R.S. 30:961(J))