

HOUSE COMMITTEE AMENDMENTS

2022 Regular Session

Amendments proposed by House Committee on Natural Resources and Environment to Original House Bill No. 61 by Representative Kerner

1 AMENDMENT NO. 1

2 On page 1, delete lines 2 through 5 in their entirety and insert in lieu thereof the following:

3 "To amend and reenact the heading of Part VIII, of Chapter 1, of title 30 of
 4 the Louisiana Revised Statutes of 1950, R.S. 30:101.1, 101.2(A), 101.3(1) and (4),
 5 101.4(Section heading) and (A), 101.5(A)(1), 101.6(A)(5) and (6), and 101.9(Section
 6 heading), (A) and (C)(4), and R.S. 56:700.2(A)(4) and 700.6, to enact R.S.
 7 30:101.3(7) and (8), 101.6(8) and (9), 101.9(D)(5), and 101.11 through 101.15, and
 8 to repeal Part XIV or Title 56 of the Louisiana Revised Statutes, comprised of R.S
 9 56:700.1 through 700.6, relative to the Fishermen's Gear Compensation Fund, to
 10 extend the existence of such fund; to repeal such fund after a certain date; to extend
 11 payments into the Underwater Obstruction Removal Fund; to create the Fishermen's
 12 Gear Compensation and Underwater Obstruction Removal Program and the
 13 Fishermen's Gear Compensation and Underwater Obstruction Removal Dedicated
 14 Fund Account; to provide for definitions; to provide for the transfer of funds from
 15 the Fishermen's Gear Compensation Fund to the Fishermen's Gear Compensation
 16 and Underwater Obstruction Removal Dedicated Fund Account; to provide for
 17 effective dates; and to provide for related matters."

18 AMENDMENT NO. 2

19 On page 1, at the beginning of line 17, change "2026," to "2023,"

20 AMENDMENT NO. 3

21 On page 2, line 3, "2026." to "2023."

22 AMENDMENT NO. 4

23 On page 2, delete lines 4 through 8 in their entirety and insert in lieu thereof the following:

24 "Section 2. The heading of Part VIII, of Chapter 1, of title 30 of the
 25 Louisiana Revised Statutes of 1950, R.S. 30:101.1, 101.2(A), 101.3(1) and (4),
 26 101.4(Section heading) and (A), 101.5(A)(1), 101.6(A)(5) and (6), and 101.9(Section
 27 heading), (A) and (C)(4) are hereby amended and reenacted and R.S. 30:101.3(7) and
 28 (8), 101.6(8) and (9), 101.9(D)(5), and 101.11 through 101.15 are hereby enacted to
 29 read as follows:

30 PART VIII. LOUISIANA FISHERMEN'S GEAR COMPENSATION AND
 31 UNDERWATER OBSTRUCTION REMOVAL PROGRAM

32 §101.1. Citation
 33 This Part may be cited as the "Louisiana Fishermen's Gear
 34 Compensation and Underwater Obstruction Removal Program".
 35

36 §101.2. Policy and purpose
 37 A. The legislature finds and declares that it is in the public interest
 38 and within the police power of this state to establish ~~an~~ a fishermen's gear
 39 compensation and ~~an~~ underwater obstruction removal program and an
 40 fishermen's gear compensation and ~~an~~ underwater obstruction removal
 41 dedicated fund account to provide for the proper and timely identification,

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 inventory, and removal of underwater obstructions ~~which that~~ are a hazard
2 to navigation and commercial fishing in the state, and to compensate
3 commercial fishermen for damage to their fishing gear from the underwater
4 obstructions. The program and fund account shall ~~to~~ be administered by the
5 assistant secretary of the office of conservation within the Department of
6 Natural Resources.

7 * * *

8 §101.3. Definitions

9 As used in this Part, the following terms shall have the meanings
10 ascribed to them in this Section, unless the context or use clearly indicates
11 otherwise:

12 (1) "Account" means the Fishermen's Gear Compensation and
13 Underwater Obstruction Removal Dedicated Fund Account.

14 * * *

15 (4) "Program" means the Fishermen's Gear Compensation and
16 Underwater Obstruction Removal Program.

17 * * *

18 (7) "Commercial fisherman" means any citizen of the state of
19 Louisiana whose primary source of earnings is from the harvesting of living
20 marine resources for commercial purposes. For purposes of this Paragraph,
21 "earnings" means the earnings derived solely by the personal efforts of the
22 commercial fisherman, exclusive of the income of a spouse or of any
23 community property interest in the income of a spouse.

24 (8) "Fishing gear" means any vessel and any equipment, whether or
25 not attached to a vessel, which is used in the commercial handling or
26 harvesting of living marine resources.

27
28 §101.4. Fishermen's Gear Compensation and Underwater Obstruction
29 Removal Program

30 A. The Fishermen's Gear Compensation and Underwater Obstruction
31 Removal Program is hereby created within the office of the secretary of the
32 Department of Natural Resources, and shall be administered by the assistant
33 secretary of the office of conservation.

34 * * *

35 §101.5. Powers of the secretary

36 A. The powers of the secretary shall include without limitation the
37 power to do the following:

38 (1) Administer general oversight of expenditures or commitments to
39 make expenditures from the ~~fund~~ dedicated fund account for the
40 identification, inventory, and removal of underwater obstructions as he
41 deems necessary and appropriate.

42 * * *

43 §101.6. Powers of the assistant secretary

44 A. The powers of the assistant secretary shall include without
45 limitation the power to do the following:

46 * * *

47 (5) Administer and manage the Fishermen's Gear Compensation and
48 Underwater Obstruction Removal Program for identification, inventory, and
49 removal of underwater obstructions in the navigable coastal waters of the
50 state.

51 (6) Administer and manage the Fishermen's Gear Compensation and
52 Underwater Obstruction Removal Dedicated Fund Account.

53 * * *

54 (8) Maintain a file on the location of known underwater obstructions.

55 (9) Administer the payment of appropriate compensation for
56 commercial fishermen whose fishing gear is damaged by underwater
57 obstructions in the Louisiana territorial waters that overlie state-owned
58 waterbottoms that are contained within the coastal zone boundaries as
59 defined in R.S. 49:214.24.

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* * *

§101.9. Fishermen's Gear Compensation and Underwater Obstruction Removal Dedicated Fund Account

A. There is hereby established a statutorily dedicated fund account in the custody of the state treasurer to be known as the Fishermen's Gear Compensation and Underwater Obstruction Removal Dedicated Fund Account, hereafter referred to in this Section as the "account", into which the state treasurer shall, each fiscal year, deposit the revenues received from the collection of the monies enumerated in Subsection C of this Section, after those revenues have been deposited in the Bond Security and Redemption Fund. Out of the funds remaining in the Bond Security and Redemption Fund, after a sufficient amount is allocated from that fund to pay all the obligations secured by the full faith and credit of the state that become due and payable within each fiscal year, the treasurer shall pay into the account an amount equal to the revenues generated as provided for in Subsection C of this Section. Such funds shall constitute a special custodial trust account which shall be administered by the secretary who shall make disbursements from the account solely in accordance with the purposes and uses authorized by this Part.

* * *

C. The following monies shall be placed into the account:

* * *

(4) Any monies deposited into the account pursuant to ~~R.S. 56:700.2(A)(4)~~ R.S. 30:101.11(B)(2).

D. The monies in the account may be disbursed and expended pursuant to the authority and direction of the assistant secretary for the following purposes and uses:

* * *

(5) Payment of any fully justified claim made in accordance with procedures established in this Section for actual damages suffered by a commercial fisherman as a result of hitting or snagging an obstruction or hazard in the waters of the state resulting from natural occurrences, oil and gas activities, or other activities where the owner of said obstruction is unknown.

* * *

§101.11 Geographical coverage; annual assessments

A. The dedicated fund account shall be established for Louisiana territorial waters which overlie state-owned waterbottoms which are contained within the coastal zone boundaries as described and established by R.S. 49:214.24.

B.(1) The secretary is authorized and empowered to levy an annual fee in the amount of four hundred dollars upon each lessee or operator for any agreement for mineral or energy production or for subsurface storage entered into by the State Mineral and Energy Board and each grantee of a state right of way, for each lease and right of way on July 1, 2023 and which are located within the coastal zone boundary. The secretary shall not levy the fee upon a political subdivision of the state.

(2) The state treasurer shall be authorized to deposit into the account a sum in the amount of one hundred thousand dollars from proceeds remaining in the Bond Security and Redemption Fund after compliance with dedications of mineral royalties, leases, bonuses, and rights of way and other sums payable to the state as lessor of mineral leases and grantor of rights of way as required pursuant to R.S. 30:136(B) and 136.1(A), (B), and (C), after a sufficient amount has been allocated from the Bond Security and Redemption Fund to pay all obligations secured by the full faith and credit of the state which become due and payable within the fiscal year.

§101.12. Promulgation and adoption of rules and regulations

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 A. In carrying out the provisions of this Part applicable to
 2 compensation to commercial fishermen for damage to their fishing gear, the
 3 secretary shall prescribe, and from time to time amend, regulations for the
 4 filing, processing, and the fair and expeditious settlement of claims pursuant
 5 to this Part, including a time limitation on the filing of such claims and the
 6 appointment of a hearing examiner. These regulations shall ensure that the
 7 whole claim procedure is as simple as possible. Any designee of the
 8 secretary authorized to prescribe and amend such rules and regulations shall
 9 do so under the overall supervision and control of the secretary.

10 B. In the promulgation of regulations pursuant to this Part, the
 11 secretary shall establish a procedure whereby a fisherman may recover for
 12 damages from an obstruction encountered previously.

13 C. Any rule, regulation, or guideline shall be proposed or adopted
 14 pursuant to the rulemaking procedures set forth in the Administrative
 15 Procedure Act.

16 §101.13. Disbursement of funds; eligibility; hearings

17 A. Payments may be disbursed by the assistant secretary from the
 18 dedicated fund account to compensate commercial fishermen for actual
 19 property damage suffered as a result of hitting or snagging an obstruction or
 20 hazard in the territorial waters of the state within the boundaries of the fund
 21 but shall not be extended to speculative loss such as anticipated profit or
 22 income.

23 B. In order to be eligible to receive reimbursement from the fund, a
 24 commercial fisherman must show that he has a valid claim. A valid claim
 25 shall be established by the hearing examiner, based on evidence that the
 26 following conditions have been met:

27 (1) The fishing vessel was being used for fishing in Louisiana
 28 territorial waters within the boundaries of this dedicated fund account.

29 (2) The fisherman made a report to the assistant secretary on the
 30 location of the obstruction postmarked within ninety days of the loss. If good
 31 cause is shown, the secretary, when there are extenuating circumstances, may
 32 waive the ninety-day limit on the reporting period, such waiver period not to
 33 exceed forty-five days.

34 (3) The fisherman made a good faith effort to locate the financially
 35 responsible party. Evidence of a good faith effort shall be established by
 36 regulation, and shall include attempts to identify the responsible party with
 37 the assistance of the Department of Natural Resources where necessary.

38 C. Notwithstanding the provisions of Subsections A and B of this
 39 Section, no payment:

40 (1) Shall be made by the fund when the damage set forth in a claim
 41 was caused by materials, equipment, structures, or other items attributable to
 42 a financially responsible party and unless evidence is submitted that the party
 43 responsible for the obstruction cannot be determined.

44 (2) Shall exceed five thousand dollars for any incident.

45 (3) Shall be made unless the claimant shows by a preponderance of
 46 evidence that he is free from contributory negligence in causing the loss.

47 (4) Shall be made for any claim at a site that has been certified by the
 48 assistant secretary of the office of conservation for the Department of Natural
 49 Resources as having been cleared under the Louisiana Fishermen's Gear
 50 Compensation and Underwater Obstruction Removal Program, R.S. 30:101.1
 51 et seq. Once a site has been cleared under the Louisiana Fishermen's Gear
 52 Compensation and Underwater Obstruction Removal Program, the assistant
 53 secretary shall certify that the site of at least two hundred yards in diameter
 54 is free of obstructions and future claims at a site so certified shall be denied.
 55 Whenever four or more claims are reported after a site has been certified as
 56 clear, the site shall be revisited and the new or leftover obstruction shall be
 57 located and, if the department determines it is feasible, removed.

1 D. Upon receipt of a claim against the fund, the secretary shall assign
2 the matter to a hearing examiner for disposition. Claimants shall submit such
3 documentary evidence as the hearing examiner requires to prove a valid
4 claim justifying payment from the fund. In the event that a dispute arises
5 over any claim that cannot otherwise be resolved, the hearing examiner shall
6 hold a hearing, after giving public notice. At such hearing, the claimant and
7 any other interested person may submit evidence. The hearing examiner
8 shall have the power to administer oaths and subpoena witnesses and books,
9 records, and other evidence pertinent to the issue. The hearing shall be held
10 in the state at a place and time determined by the secretary. After the
11 hearing, a prompt decision shall be made, all in accordance with rules and
12 regulations adopted pursuant to this Part and the Administrative Procedure
13 Act.

14 §101.14. Facilities reports; survey of obstruction; labeling

15 A. The assistant secretary shall prepare a detailed file of all structures
16 and facilities located on state waterbottoms within the boundaries of this
17 dedicated fund account. In developing the file, the secretary may require the
18 owners and operators of state mineral leases and pipeline rights-of-way to
19 furnish information relative to the location, description, and nature of
20 facilities, both active and abandoned, on and beneath the state's
21 waterbottoms.

22 B. The assistant secretary shall establish and classify all potential
23 hazards to commercial fishing caused by oil and gas exploration,
24 development, and production activities in Louisiana waters, including all
25 obstructions on the bottom, throughout the water column, and on the surface.

26 C. The secretary shall establish regulations for all materials,
27 equipment, tools, containers, pipelines, and other items used within
28 Louisiana waters by the oil and gas industry to be properly stamped or
29 labeled, wherever practicable, with the owner's identification prior to actual
30 use. These regulations shall be consistent with labeling regulations
31 promulgated by the U.S. Department of Interior pursuant to the provisions
32 of Title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

33 §101.15. Termination date

34 The provisions of this Part shall terminate and have no effect after
35 June 30, 2027.

36 Section 3. RS 36:354(E)(2) is hereby amended and reenacted to read
37 as follows:

38 §354. Powers and duties of secretary of natural resources

39 * * *

40 E. The secretary or his designee shall perform and exercise the
41 following powers, duties, functions, and responsibilities relative to land,
42 water, and research, all in accordance with law:

43 * * *

44 (2) Administer and implement laws relating to the foregoing,
45 including without limitation the laws relative to research and development
46 of solar energy sources, building energy conservation, including the
47 regulation of training, certification, and quality control of home energy raters
48 throughout the state, and energy impacted area assistance; the laws relative
49 to coastal energy impact assistance; the laws relative to power plants and
50 industrial fuel use; the laws relative to the Fishermen's Gear Compensation
51 and Underwater Obstruction Removal Program and the Fishermen's Gear
52 Compensation and Underwater Obstruction Removal Dedicated Fund
53 Account; and the laws relative to the Fishermen's Gear Compensation Fund.

1 Section 4. Part XIV or Title 56 of the Louisiana Revised Statutes,
2 comprised of R.S 56:700.1 through 700.6, is hereby repealed in its entirety.

3 Section 5. The state treasurer is authorized and directed to transfer
4 any balances remaining in the Fishermen's Gear Compensation Fund
5 repealed and abolished in Section 4 of this Act to the Fishermen's Gear
6 Compensation and Underwater Obstruction Removal Dedicated Fund
7 Account created in Section 2 of this Act.

8 Section 6. The Louisiana State Law Institute is hereby authorized and
9 directed to arrange in alphabetical order and renumber the definitions
10 provided in R.S 30:101.3

11 Section 7. This Section and Sections 1 and 6 of this Act shall become
12 effective July 1, 2022; if vetoed by the governor and subsequently approved
13 by the legislature, this Act shall become effective on July 1, 2022, or on the
14 day following such approval by the legislature, whichever is later.

15 Section 8. This Section and Sections 2, 3, 4, and 5 of this Act shall
16 become effective July 1, 2023."