

2022 Regular Session

HOUSE BILL NO. 61

BY REPRESENTATIVES KERNER, BOURRIAQUE, BRYANT, BUTLER, CARRIER,
FISHER, GREEN, ILLG, NEWELL, ORGERON, SELDERS, ST. BLANC,
THOMPSON, AND ZERINGUE

FISHING: Extends the Fishermen's Gear Compensation Fund and extends payments into
the Underwater Obstruction Removal Fund

1 AN ACT

2 To amend and reenact the heading of Part VIII of Chapter 1 of Title 30 of the Louisiana

3 Revised Statutes of 1950, R.S. 30:101.1, 101.2(A), 101.3(1) and (4), 101.4(Section

4 heading) and (A), 101.5(A)(1), 101.6(A)(5) and (6), and 101.9(Section heading), (A)

5 and (C)(4), R.S. 36:354(E)(2), and R.S. 56:700.2(A)(4) and 700.6, to enact R.S.

6 30:101.3(7) and (8), 101.6(A)(8) and (9), 101.9(D)(5), and 101.11 through 101.15,

7 and to repeal Part XIV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of

8 1950, comprised of R.S 56:700.1 through 700.6, relative to the Fishermen's Gear

9 Compensation Fund, to extend the existence of such fund; to repeal such fund after

10 a certain date; to extend payments into the Underwater Obstruction Removal Fund;

11 to create the Fishermen's Gear Compensation and Underwater Obstruction Removal

12 Program and the Fishermen's Gear Compensation and Underwater Obstruction

13 Removal Dedicated Fund Account; to provide for definitions; to provide for the

14 transfer of funds from the Fishermen's Gear Compensation Fund to the Fishermen's

15 Gear Compensation and Underwater Obstruction Removal Dedicated Fund Account;

16 to provide for effective dates; and to provide for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. R.S. 56:700.2(A)(4) and 700.6 are hereby amended and reenacted to read
19 as follows:

1 §700.2. Establishment, continuance, and purposes of fund; geographical coverage;
2 assessments

3 A. There is hereby established in the state treasury a Fishermen's Gear
4 Compensation Fund into which amounts paid pursuant to this Section shall be
5 deposited. The fund shall be available to the secretary only for the following
6 purposes:

7 * * *

8 (4) On July 1, 2014, and on each July first thereafter and ending on June 30,
9 ~~2022~~, 2023, the state treasurer shall annually deposit the amount of two hundred fifty
10 thousand dollars into the Underwater Obstruction Removal Fund as provided in R.S.
11 30:101.9. The department shall seek to match these funds with whatever federal or
12 state funds may be available for such purposes.

13 * * *

14 §700.6. Termination date

15 The provisions of this Part shall terminate and have no effect after June 30,
16 ~~2022~~. 2023.

17 Section 2. The heading of Part VIII of Chapter 1 of Title 30 of the Louisiana Revised
18 Statutes of 1950, R.S. 30:101.1, 101.2(A), 101.3(1) and (4), 101.4(Section heading) and (A),
19 101.5(A)(1), 101.6(A)(5) and (6), and 101.9(Section heading), (A) and (C)(4) are hereby
20 amended and reenacted and R.S. 30:101.3(7) and (8), 101.6(A)(8) and (9), 101.9(D)(5), and
21 101.11 through 101.15 are hereby enacted to read as follows:

22 PART VIII. LOUISIANA FISHERMEN'S GEAR COMPENSATION AND
23 UNDERWATER OBSTRUCTION REMOVAL PROGRAM

24 §101.1. Citation

25 This Part may be cited as the "Louisiana Fishermen's Gear Compensation and
26 Underwater Obstruction Removal Program".

27 §101.2. Policy and purpose

28 A. The legislature finds and declares that it is in the public interest and
29 within the police power of this state to establish ~~an~~ a fishermen's gear compensation

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

9 * * *

10 §101.3. Definitions

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

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

15 * * *

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

18 * * *

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

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

1 §101.4. Fishermen's Gear Compensation and Underwater Obstruction Removal
2 Program

3 A. The Fishermen's Gear Compensation and Underwater Obstruction
4 Removal Program is hereby created within the office of the secretary of the
5 Department of Natural Resources, and shall be administered by the assistant
6 secretary of the office of conservation.

7 * * *

8 §101.5. Powers of the secretary

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

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

14 * * *

15 §101.6. Powers of the assistant secretary

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

18 * * *

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

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

24 * * *

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

26 (9) Administer the payment of appropriate compensation for commercial
27 fishermen whose fishing gear is damaged by underwater obstructions in the Louisiana

1 territorial waters that overlie state-owned waterbottoms that are contained within the
2 coastal zone boundaries as defined in R.S. 49:214.24.

3 * * *

4 §101.9. Fishermen's Gear Compensation and Underwater Obstruction Removal
5 Dedicated Fund Account

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

20 * * *

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

22 * * *

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

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

28 * * *

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

6 * * *

7 §101.11. Geographical coverage; annual assessments

8 A. The dedicated fund account shall be established to compensate
 9 commercial fishermen operating in Louisiana territorial waters which overlies
 10 state-owned waterbottoms which are contained within the coastal zone boundaries
 11 as described and established by R.S. 49:214.24.

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

18 (2) The state treasurer shall be authorized to deposit into the account a sum
 19 in the amount of one hundred thousand dollars from proceeds remaining in the Bond
 20 Security and Redemption Fund after compliance with dedications of mineral
 21 royalties, leases, bonuses, and rights-of-way and other sums payable to the state as
 22 lessor of mineral leases and grantor of rights-of-way as required pursuant to R.S.
 23 30:136(B) and 136.1(A), (B), and (C), after a sufficient amount has been allocated
 24 from the Bond Security and Redemption Fund to pay all obligations secured by the
 25 full faith and credit of the state which become due and payable within the fiscal year.

26 §101.12. Promulgation and adoption of rules and regulations

27 A. In carrying out the provisions of this Part applicable to compensation to
 28 commercial fishermen for damage to their fishing gear, the secretary shall prescribe,
 29 and from time to time amend, regulations for the filing, processing, and the fair and

1 expeditious settlement of claims pursuant to this Part, including a time limitation on
2 the filing of such claims and the appointment of a hearing examiner. These
3 regulations shall ensure that the whole claim procedure is as simple as possible. Any
4 designee of the secretary authorized to prescribe and amend such rules and
5 regulations shall do so under the overall supervision and control of the secretary.

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

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

11 §101.13. Disbursement of funds; eligibility; hearings

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

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

21 (1) The fishing vessel was being used for fishing in Louisiana territorial
22 waters within the boundaries established for this dedicated fund account.

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

27 (3) The fisherman made a good faith effort to locate the financially
28 responsible party. Evidence of a good faith effort shall be established by regulation,

1 and shall include attempts to identify the responsible party with the assistance of the
2 Department of Natural Resources where necessary.

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

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

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

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

12 (4) Shall be made for any claim at a site that has been certified by the
13 assistant secretary of the office of conservation for the Department of Natural
14 Resources as having been cleared under the provisions of this Part. Once a site has
15 been cleared under the Louisiana Fishermen's Gear Compensation and Underwater
16 Obstruction Removal Program, the assistant secretary shall certify that the site of at
17 least two hundred yards in diameter is free of obstructions and future claims at a site
18 so certified shall be denied. Whenever four or more claims are reported after a site
19 has been certified as clear, the site shall be revisited and the new or leftover
20 obstruction shall be located and, if the department determines it is feasible, removed.

21 D. Upon receipt of a claim against the fund, the secretary shall assign the
22 matter to a hearing examiner for disposition. Claimants shall submit such
23 documentary evidence as the hearing examiner requires to prove a valid claim
24 justifying payment from the fund. In the event that a dispute arises over any claim
25 that cannot otherwise be resolved, the hearing examiner shall hold a hearing, after
26 giving public notice. At such hearing, the claimant and any other interested person
27 may submit evidence. The hearing examiner shall have the power to administer
28 oaths and subpoena witnesses and books, records, and other evidence pertinent to the
29 issue. The hearing shall be held in the state at a place and time determined by the

1 secretary. After the hearing, a prompt decision shall be made, all in accordance with
2 rules and regulations adopted pursuant to this Part and the Administrative Procedure
3 Act.

4 §101.14. Facilities reports; survey of obstruction; labeling

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

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

15 C. The secretary shall establish regulations for all materials, equipment,
16 tools, containers, pipelines, and other items used within Louisiana waters by the oil
17 and gas industry to be properly stamped or labeled, wherever practicable, with the
18 owner's identification prior to actual use. These regulations shall be consistent with
19 labeling regulations promulgated by the U.S. Department of Interior pursuant to the
20 provisions of Title IV of the Outer Continental Shelf Lands Act Amendments of
21 1978.

22 §101.15. Termination date

23 The provisions of this Part shall terminate and have no effect after June 30,
24 2027.

25 Section 3. R.S. 36:354(E)(2) is hereby amended and reenacted to read as follows:

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

2 * * *

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

6 * * *

7 (2) Administer and implement laws relating to the foregoing, including
8 without limitation the laws relative to research and development of solar energy
9 sources, building energy conservation, including the regulation of training,
10 certification, and quality control of home energy raters throughout the state, and
11 energy impacted area assistance; the laws relative to coastal energy impact
12 assistance; the laws relative to power plants and industrial fuel use; the laws relative
13 to the Fishermen's Gear Compensation and Underwater Obstruction Removal
14 Program and the Fishermen's Gear Compensation and Underwater Obstruction
15 Removal Dedicated Fund Account; ~~and the laws relative to the Fishermen's Gear~~
16 ~~Compensation Fund.~~

17 Section 4. Part XIV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of
18 1950, comprised of R.S 56:700.1 through 700.6, is hereby repealed in its entirety.

19 Section 5. The state treasurer is authorized and directed to transfer any balances
20 remaining in the Fishermen's Gear Compensation Fund repealed and abolished in Section
21 4 of this Act to the Fishermen's Gear Compensation and Underwater Obstruction Removal
22 Dedicated Fund Account created in Section 2 of this Act.

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

25 Section 7. This Section and Sections 1 and 6 of this Act shall become effective July
26 1, 2022; if vetoed by the governor and subsequently approved by the legislature, this Act
27 shall become effective on July 1, 2022, or on the day following such approval by the
28 legislature, whichever is later.

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

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 61 Reengrossed

2022 Regular Session

Kerner

Abstract: Extends the Fishermen's Gear Compensation Fund and payments into the Underwater Obstruction Removal Fund until June 30, 2023, and creates the Fishermen's Gear Compensation and Underwater Obstruction Removal Dedicated Fund Account.

Present law creates the Fishermen's Gear Compensation Fund to pay compensation for damages suffered by a commercial fisherman as a result of hitting or snagging on an obstruction or a hazard in waters of the state resulting from natural occurrences, oil and gas activities, or other activities where the obstruction is unknown. Provides that payments into the Underwater Obstruction Removal Fund will cease on June 30, 2022.

Proposed law extends payments into the Underwater Obstruction Removal Fund to June 30, 2023, and extends the existence of the Fishermen's Gear Compensation Fund to June 30, 2023.

Proposed law sunsets the Fishermen's Gear Compensation Fund and creates the Fishermen's Gear Compensation and Underwater Obstruction Removal Dedicated Fund Account.

Proposed law authorizes the secretary of the Dept. of Natural Resources to levy an annual fee in the amount of \$400 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. Further prohibits the secretary from levying the fee upon a political subdivision of the state.

Proposed law provides for the eligibility of claimants and the requirements for disbursement of funds.

Proposed law requires the department to maintain an accurate accounting of all structures and facilities on state waterbottoms and to classify all potential hazards to commercial fishing.

Proposed law provides a termination date of June 30, 2027, for the program and fund account.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends the heading of Part VIII of Chapter 1 of Title 30 of the Louisiana Revised Statutes of 1950, R.S. 30:101.1, 101.2(A), 101.3(1) and (4), 101.4(Section heading) and (A), 101.5(A)(1), 101.6(A)(5) and (6), and 101.9(Section heading), (A) and (C)(4), R.S. 36:354(E)(2), and R.S. 56:700.2(A)(4) and 700.6; Adds R.S. 30:101.3(7) and (8), 101.6(A)(8) and (9), 101.9(D)(5), and 101.11-101.15; Repeals R.S. 56:700.1-700.6)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Natural Resources and Environment to the original bill:

1. Reduce the period of extension of payments into the Underwater Obstruction Removal Fund from June 30, 2026, to June 30, 2023. Additionally, provide a special effective date of July 1, 2022, for this provision.
2. Change the termination date of the Fishermen's Gear Compensation Fund from June 30, 2026, to June 30, 2023.
3. Move present law from Title 56 to Title 30 by inserting a new section of law to combine the Fishermen's Gear Compensation Fund with the Underwater Obstruction Removal Program and create a new dedicated fund account for fishermen's gear compensation and underwater obstruction removal. Additionally, provide a special effective date of July 1, 2023, for these provisions.
4. Authorize and direct the state treasurer to transfer any balances in the Fishermen's Gear Compensation Fund that was repealed in connection with the transfer of provisions to Title 30 to the new Fishermen's Gear Compensation and Underwater Obstruction Removal Dedicated Fund. Additionally, provide a special effective date of July 1, 2023, for this provision.
5. Provide for assessment of an annual fee in the amount of \$400 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 to be deposited in to the Fishermen's Gear Compensation and Underwater Obstruction Removal Dedicated Fund Account.
6. Provide for powers of the secretary and the assistant secretary of the Department of Natural Resources.
7. Provide for the eligibility of claimants.
8. Provide for disbursement of funds from the fund account to eligible claimants.
9. Provide a sunset date for the program and account.
10. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.