

ACT No. 100

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

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
30 and underwater obstruction removal program and ~~an~~ a fishermen's gear

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

10 * * *

11 §101.3. Definitions

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

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

16 * * *

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

19 * * *

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

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

29

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, for purposes of
6 fishermen's gear compensation, by the assistant secretary of the office of coastal
7 management and, for purposes of underwater obstruction, by the assistant secretary
8 of the office of conservation.

9 * * *

10 §101.5. Powers of the secretary

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

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

16 * * *

17 §101.6. Powers of the assistant secretary

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

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

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

26 * * *

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

28 (9) Administer the payment of appropriate compensation for commercial
29 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 * * *

29 (5) Payment of any fully justified claim made in accordance with procedures
 30 established in this Section for actual damages suffered by a commercial fisherman

1 as a result of hitting or snagging an obstruction or hazard in the waters of the state
2 resulting from natural occurrences, oil and gas activities, or other activities where the
3 owner of said obstruction is unknown.

4 * * *

5 §101.11. Geographical coverage; annual assessments

6 A. The dedicated fund account as established in R.S. 30:101.9 shall be
7 utilized to compensate commercial fishermen operating in Louisiana territorial
8 waters which overlie state-owned waterbottoms which are contained within the
9 coastal zone boundaries as described and established by R.S. 49:214.24.

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

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

24 §101.12. Promulgation and adoption of rules and regulations

25 A. In carrying out the provisions of this Part applicable to compensation to
26 commercial fishermen for damage to their fishing gear, the secretary shall prescribe,
27 and from time to time amend, regulations for the filing, processing, and the fair and
28 expeditious settlement of claims pursuant to this Part, including a time limitation on
29 the filing of such claims and the appointment of a hearing examiner. These
30 regulations shall ensure that the whole claim procedure is as simple as possible. Any

1 designee of the secretary authorized to prescribe and amend such rules and
2 regulations shall do so under the overall supervision and control of the secretary.

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

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

8 §101.13. Disbursement of funds; eligibility; hearings

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

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

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

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

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

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

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

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

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

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

17 D. Upon receipt of a claim against the fund, the secretary shall assign the
18 matter to a hearing examiner for disposition. Claimants shall submit such
19 documentary evidence as the hearing examiner requires to prove a valid claim
20 justifying payment from the fund. In the event that a dispute arises over any claim
21 that cannot otherwise be resolved, the hearing examiner shall hold a hearing, after
22 giving public notice. At such hearing, the claimant and any other interested person
23 may submit evidence. The hearing examiner shall have the power to administer
24 oaths and subpoena witnesses and books, records, and other evidence pertinent to the
25 issue. The hearing shall be held in the state at a place and time determined by the
26 secretary. After the hearing, a prompt decision shall be made, all in accordance with
27 rules and regulations adopted pursuant to this Part and the Administrative Procedure
28 Act.

1 §101.14. Facilities reports; survey of obstruction; labeling

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

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

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

19 §101.15. Termination date

20 The provisions of this Part shall terminate and have no effect after June 30,
21 2027.

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

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

24 * * *

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

28 * * *

29 (2) Administer and implement laws relating to the foregoing, including
30 without limitation the laws relative to research and development of solar energy

1 sources, building energy conservation, including the regulation of training,
 2 certification, and quality control of home energy raters throughout the state, and
 3 energy impacted area assistance; the laws relative to coastal energy impact
 4 assistance; the laws relative to power plants and industrial fuel use; the laws relative
 5 to the Fishermen's Gear Compensation and Underwater Obstruction Removal
 6 Program and the Fishermen's Gear Compensation and Underwater Obstruction
 7 Removal Dedicated Fund Account; ~~and the laws relative to the Fishermen's Gear~~
 8 ~~Compensation Fund.~~

9 Section 4. Part XIV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of
 10 1950, comprised of R.S 56:700.1 through 700.6, is hereby repealed in its entirety.

11 Section 5. The state treasurer is authorized and directed to transfer any balances
 12 remaining in the Fishermen's Gear Compensation Fund repealed and abolished in Section
 13 4 of this Act to the Fishermen's Gear Compensation and Underwater Obstruction Removal
 14 Dedicated Fund Account created in Section 2 of this Act.

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

17 Section 7. This Section and Sections 1 and 6 of this Act shall become effective July
 18 1, 2022; if vetoed by the governor and subsequently approved by the legislature, this Act
 19 shall become effective on July 1, 2022, or on the day following such approval by the
 20 legislature, whichever is later.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____