

2016 Regular Session

HOUSE BILL NO. 640

BY REPRESENTATIVE LEGER

COASTAL COMMISSION: Authorizes the Coastal Protection and Restoration Authority Board to develop a natural resource damages restoration bank program and oil spill compensation schedule

1 AN ACT

2 To enact R.S. 49:214.5.2(H) and (I), relative to the functions and responsibilities of the
3 Coastal Protection and Restoration Authority Board; to authorize the board to
4 establish a restoration banking program; to authorize the board to establish an oil
5 spill compensation schedule; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 49:214.5.2(H) and (I) are hereby enacted to read as follows:

8 §214.5.2. Functions and responsibilities; Coastal Protection and Restoration
9 Authority Board

10 * * *

11 H. The board may establish a natural resource damages restoration banking
12 program as an alternative method to offset injuries to natural resources sustained as
13 a result of oil spills in coastal areas as defined in R.S. 49:214.2(4). A "restoration
14 bank" is a site where land or resources are restored, created, enhanced, or preserved
15 for the purpose of restoring for natural resource injuries resulting from oil spills in
16 Louisiana's coastal areas. "Restoration" is an umbrella term whose meaning
17 encompasses the creation, enhancement, preservation, rehabilitation, or replacement
18 of natural resources. Such restoration bank program shall be established through the
19 promulgation of rules and regulations under the Administrative Procedure Act. The
20 rules and procedures developed by the board shall do the following:

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

- 1 (1) Set forth a process and procedures for the certification and establishment
2 of restoration banks in the state, including criteria for adoption of a restoration
3 banking instrument. Such process and procedures shall be in compliance with the
4 Oil Pollution Act of 1990 and the Louisiana Oil Spill Prevention and Response Act,
5 R.S. 30:2451 et seq. "Restoration banking instrument" is the documentation of state
6 and bank sponsor agreement on the objectives and administration of the bank that
7 describes in detail the physical and legal characteristics of the bank, including the
8 service area, the types and numbers of restoration credits expected to be generated,
9 and how the bank will be established and operated. "Restoration credit" means a unit
10 of trade generated by a restoration bank certified or developed by the state and
11 representing the increase in the ecological value of the bank site, as measured by
12 acreage, ecological function, or another recognized assessment method.
- 13 (2) Ensure certification is only provided to restoration banks meeting the
14 requirements of this Chapter and the rules and procedures promulgated by the board.
- 15 (3) Ensure priority for certification is given to restoration banks that enhance
16 the resilience of coastal resources to inundation and coastal erosion.
- 17 (4) Ensure certification is provided only to restoration banks for which the
18 restoration banking sponsor has secured adequate financial assurance and permanent
19 legally enforceable protection for any restored lands or resources. "Financial
20 assurance" means the money or other form of financial instrument required of the
21 sponsor of a restoration bank to ensure that the functions of the bank are achieved
22 and maintained over the long term.
- 23 (5) Establish criteria for determining service areas for restoration banks.
- 24 (6) Establish criteria for operation and monitoring of restoration banks.
- 25 (7) Establish ecological success criteria or performance standards for
26 restoration banks.
- 27 (8) Establish a system for calculating the number and type of restoration
28 credits generated by a restoration bank.

1 (9) Establish a system for the transfer or sale of restoration credits to a
2 responsible party or natural resource trustee and for the transfer of liability for
3 restoration from a responsible party to the restoration bank sponsor in a manner that
4 provides natural resource trustee agencies with certainty as to restoration outcomes.

5 I. The board may adopt rules establishing a compensation schedule for the
6 unauthorized discharge of oil in coastal areas. "Unauthorized discharge of oil"
7 means any actual or threatened discharge of oil not authorized by a federal or state
8 permit as provided in R.S. 30:2451 et seq., the Louisiana Oil Spill Prevention and
9 Response Act. Any compensation schedule adopted under this Section shall reflect
10 adequate compensation for unquantifiable damages or for damages not quantifiable
11 at reasonable cost and shall take into account the following:

12 (1) Characteristics of any oil spilled, such as toxicity, dispersibility,
13 solubility, and persistence, that may affect the severity of the effects on the receiving
14 environment, living organisms, and recreational and aesthetic resources.

15 (2) The sensitivity of the affected areas as determined by such factors as the
16 following:

17 (a) The location of the spill.

18 (b) Habitat and living resource sensitivity.

19 (c) Seasonal distribution or sensitivity of living resources.

20 (d) Areas of recreational use or aesthetic importance.

21 (e) The proximity of the spill to important habitats for birds, aquatic
22 mammals, fish, or to species listed as threatened or endangered under state or federal
23 law.

24 (f) Significant archaeological resources as determined by the division of
25 archaeology of the Department of Culture, Recreation and Tourism.

26 (g) Other areas of special ecological or recreational importance, as
27 determined by the authority.

28 (3) Actions taken by the party who spilled oil or any responsible party for
29 the spill that include the following:

1 (a) Demonstrates a recognition and affirmative acceptance of responsibility
 2 for the spill, such as the immediate removal of oil and the amount of oil removed
 3 from the environment.

4 (b) Enhances or impedes the detection of the spill, the determination of the
 5 quantity of oil spilled, or the extent of damage, including the unauthorized removal
 6 of evidence such as injured fish or wildlife.

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 640 Engrossed

2016 Regular Session

Leger

Abstract: Authorizes the Coastal Protection and Restoration Authority Board to establish a natural resource damages restoration bank and an oil spill compensation schedule.

Proposed law authorizes the Coastal Protection and Restoration Authority Board to establish a natural resource damages restoration bank program as an alternate method to offset damages sustained as a result of oil spills in coastal areas of the state. Defines such bank as a site where land or resources are restored, created, enhanced, or preserved to restore natural resource injuries from oil spills in coastal areas.

Proposed law requires establishment of the bank through promulgation of rules under the Administrative Procedure Act. Requires the rules to set forth procedures for certification of restoration banks in the state including criteria for adoption of a restoration banking instrument; ensure certification can only be given to banks qualifying under the established criteria; ensure priority certification to banks that enhance the resilience of coastal resources to inundation and coastal erosion; ensure certification is given only to banks with secured adequate financial assurance and permanent protection for any restored lands or resources; and establish a system for the transfer of restoration credits to a responsible party or natural resource trustee. Requires that the process and procedures adopted be in compliance with the federal Oil Pollution Act of 1990 and the Louisiana Oil Spill Prevention and Response Act.

Proposed law also authorizes the board to establish a compensation schedule for the unauthorized discharge of oil in the coastal areas of the state. Requires the compensation schedule to reflect adequate compensation for unquantifiable damages taking into account issues such as the characteristics of any oil spilled, the sensitivity of the affected area, and actions taken by the responsible party to mitigate the damage or impede the detection of the oil spill.

(Adds R.S. 49:214.5.2(H) and (I))

Summary of Amendments Adopted by House

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

1. Specify that the restoration bank is an alternate method to offset injuries to natural resources as a result of spills.

2. Requires that the process and procedures adopted by the Coastal Protection and Restoration Authority Board be in compliance with the federal Oil Pollution Act of 1990 and the Louisiana Oil Spill Prevention and Response Act.