

RÉSUMÉ DIGEST

ACT 595 (HB 902)

2016 Regular Session

Leopold

Existing law provides that an oyster lessee enjoys exclusive use of the water bottoms leased and the oysters and cultch grown or placed on that water bottom subject to certain restrictions resulting from coastal restoration efforts by the state, any political subdivision of the state, and the federal government.

New law, for any oyster lease initially applied for after July 1, 2016, or any judicial partition or renewal of such lease, further subordinates the lessee's right of use to the following:

- (1) Any person engaged in any activity authorized by a coastal use permit for which the coastal use permit application was issued prior to the date the oyster lease application was issued. New law applies the subordination of right of use to an area 75 feet from the center of a pipeline or 250 feet from the outside of a well, platform, shell pad, or facility.
- (2) Any person operating, maintaining, replacing, repairing, rehabilitating, or removing any pipeline, well, platform, shell pad, or facility placed prior to Sept. 20, 1980, and placed prior to the issuance date for the oyster lease. New law applies the subordination of right of use to an area 75 feet from the center of a pipeline or 250 feet from the outside of a well, platform, shell pad, or facility.
- (3) Any person crossing an oyster lease to access an activity, pipeline, well, platform, shell pad, or facility through a single access channel identified in the coastal use permit for such activity or a single access channel identified by the permit holder. New law applies this subordination of right of use to an area within 50 feet of the centerline of the access channel and a spoil area previously identified and limited to 80 feet to one side of the access channel.

New law provides immunity for the Dept. of Wildlife and Fisheries for actions arising out of its consent or agreement to a specific access channel and requires the department to consult with the lessee prior to approving an access channel. New law further specifies that these provisions do not apply to any lease initially applied for prior to July 1, 2016, or any lease issued under certain provisions of Act No. 595 of the 2016 R.S.

Existing law provides that a lessee of an oyster bed has a right to maintain an action for damages to that oyster bed. Existing law does hold harmless the state, any political subdivision of the state, and the federal government for activities related to coastal restoration.

New law adds that no lessee has a right to maintain any action against another person arising from an activity delineated in the new law above if that person has not violated any coastal use permit, determination, or other coastal use authorization pursuant to law or any La. or federal law or regulation applicable to the activity.

New law requires the Coastal Protection and Restoration Authority (CPRA) to determine areas of the coast where buffer zones between oyster leases and the shoreline may be necessary to protect sensitive and eroding coastal lands. New law further requires the CPRA to review each application for an oyster lease or renewal or expansion of an oyster lease to determine if the water bottom applied for is located in an area where a buffer zone may be necessary and shall delineate the extent of the buffer zone necessary for each application.

New law requires that, prior to issuance of a lease, the Dept. of Wildlife and Fisheries must post notice of the application on their website for 90 consecutive days. Authorizes any person claiming ownership of the water bottoms to be leased to protest the issuance of a lease on the grounds of ownership. Provides a detailed process and timeline by which the protest is to be investigated including review and determination by the administrator of the state land office. Allows the state land office 90 days from the date a protest is filed to make a preliminary determination of state ownership and 180 days from the date a protest is filed to make a final determination. Specifies that a lease may be issued only to the extent that the administrator of the state land office determines that the water bottom is owned by the state. Specifies that the determination by the administrator is not appealable under the

Administrative Procedure Act but may be appealed to the 19th Judicial District Court. Authorizes an applicant for an oyster lease to withdraw the application and receive a full refund within 120 days after the department posts notice of the application on the website, within 30 days after a determination by the administrator, or within 30 days after a final judgment in any proceeding for judicial review of the determination. Prohibits oyster leasing on right-of-way purchased by pipelines.

Existing law provides relative to default in payment of oyster leases. Requires rent to be paid punctually on Jan. 1st each year or within 30 days thereafter. New law changes the 30-day time period to 60 days.

Prior law provided that after 30 days the lease would be in default and could be taken back by the department and opened for lease to the highest bidder. New law removes the ability of the highest bidder to lease defaulted lease acreage. New law further requires that on or before Feb. 1st each year, the department publish a notice of each delinquency in the official journal of the parish where the lease is located. Any lessee who pays the rent on or before Feb. 1st shall pay the rent plus an additional 10% penalty.

Existing regulation adopted by the Wildlife and Fisheries Commission on March 7, 2002, placed a total moratorium on the issuance of new oyster leases by the Dept. of Wildlife and Fisheries.

Prior to commencement of any of the phases delineated in the legislation, new law requires that the state land office make a determination of state ownership of all water bottoms for oyster lease applications submitted before the imposition of the moratorium, and the department take appropriate actions resulting from the determination. Also establishes a process to allow preferential rights to be claimed or forfeited in the following order prior to the lifting of the moratorium:

Phase One – applies to those leases that were not renewed since Jan. 1, 1996, due to the lease being located in the operational or impact area of a planned coastal project and to those that were voluntarily given up between Jan. 1, 1996, and Oct. 19, 2004, and were a party to the class action Avenal suit. Provides that the lessee of record at the time the lease was not renewed be given right of first refusal for a new lease for the previously leased acreage. Requires approval by the secretary of the Dept. of Wildlife and Fisheries and the secretary of the Dept. of Natural Resources. New law changes the approval from the secretary of the Dept. of Natural Resources to the executive director of the CPRA. Requires the Dept. of Wildlife and Fisheries to post on their website for 60 days a list of non-renewed leases eligible for re-leasing. Applications for the re-leasing of those water bottoms must be filed prior to the end of the 60 days.

Phase Two – Incorporation of adjacent water bottoms. Authorizes a lessee to expand an existing lease by incorporating immediately adjacent water bottom. Limits the incorporation to 500 feet beyond the existing boundary and only toward previously existing coastline as of Jan. 1, 2016, as shown in the 2015 U.S. Dept. of Agriculture, Farm Service Agency, Aerial Photography Field Office, National Agriculture Imagery Program 4 band aerial imagery for Louisiana, 1 meter resolution (the 2015 NAIP imagery), located within 1,000 feet of the lease boundary, or another existing lease. Prohibits expansion toward another lease that is more than 500 feet away. If there is 500 feet or less between two leases, the incorporation area shall be divided equally. If there are more than two leases, the lessees must provide to the Dept. of Wildlife and Fisheries a written, signed agreement for dividing the area among the lessees. Requires the Dept. of Wildlife and Fisheries to post on its website for 180 days notice of the availability of lease expansions. If a lessee does not apply to exercise the right to incorporate adjacent water bottoms within that period of time, he forfeits his right to do so.

Phase Three – Right of first refusal for leases under private lease. Specifies that for any water bottom claimed by a private person that is under a private oyster lease recorded in the public records in the parish where the water bottom is located by Feb. 1, 2016, the lessee of that water bottom will have the right of first refusal for a new state lease on any water bottom claimed by the state within the area of the existing private oyster lease. Requires the Dept. of Wildlife and Fisheries to post on its website for 60 days the notice of such right of first refusal ability. Any lessee that does not apply for a state lease within the 60-day time period forfeits his right to a state lease under this phase.

Phase Four – First lottery for appointment for new leases. Requires the Dept. of Wildlife and Fisheries to establish a lottery system for submitting applications for new leases. Requires posting on the department website for 60 days a notice of the lottery and deadline for entering the lottery which shall be the 60th day of the posting. If a person does not apply within the 60 days, he forfeits his right to apply for a new lease under this phase. Requires the department to randomly assign a priority to all lottery entries and schedule appointments to receive an application for a new lease. If the lottery participant misses his scheduled appointment, he can be rescheduled after all other lottery participants have completed their appointments.

Phase Five – Second lottery for appointments for new leases. Authorizes the department to establish an additional lottery that will be conducted in the same manner as the first.

New law requires that each phase be taken in order and that each phase cannot begin until all applications under the previous phases are received. Limits the availability of water bottoms eligible for leasing under the two lottery phases to those water bottoms for which there is not a pending application under any of the earlier phases.

New law requires that upon implementation of all phases outlined in this Act, the La. Wildlife and Fisheries Commission promulgate and implement the rules necessary to lift the oyster leasing moratorium.

Effective July 1, 2016.

(Amends R.S. 56:423(A) and (B) and 429, and Sections 2(B) and (C), and 3 of Act No. 808 of the 2008 Regular Session; Adds R.S. 56:425(F) and 427(F) and (G))