

2018 Regular Session

HOUSE BILL NO. 113

BY REPRESENTATIVE GREGORY MILLER (BY REQUEST)

WATERWAYS/CANALS: Relative to the disposition of property with respect to certain waterways

1 AN ACT

2 To amend and reenact R.S. 34:843(A)(1) and (B)(1) and to enact R.S. 34:843(B)(3) and (4),  
3 relative to navigation; to provide for the removal of objects from waterways; to  
4 provide for notice; to provide for plans to remove such objects; to provide for  
5 riparian owners; to provide for causes of action; to provide for remedies; to provide  
6 for an exception; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 34:843(A)(1) and (B)(1) are hereby amended and reenacted and  
9 R.S. 34:843(B)(3) and (4) are hereby enacted to read as follows:

10 §843. Objects; removal; disposition

11 A.(1) The owner of any tug, towboat, barge, watercraft, ship, vessel,  
12 equipment, machinery, or any object of any kind or description, whether foreign or  
13 domestic, which has been left unattended, stored, junked, or abandoned in any canal,  
14 coulee, drainage ditch, outfall canal, bayou, bay, lake, or any other waterway,  
15 whether navigable or not, or on the banks thereof within the state of Louisiana, or the  
16 owner of any such object moored or tied off in a drainage ditch or canal, or in an  
17 outfall canal shall present a plan as provided ~~herein~~ in this Section to remove the  
18 object from the waterway or bank within thirty days after receipt of a written notice  
19 by certified mail from the federal, state, or local governing authority having  
20 jurisdiction thereof, ~~hereinafter~~ referred to in this Section as an "authority", to

1 remove the object. In the event that the owner cannot be identified or located by the  
 2 authority, the authority shall publish in the official journal of the parish where the  
 3 object is located, a notice that the object shall be removed by the authority at any  
 4 time after thirty calendar days of publication of the notice at the cost of the owner  
 5 and shall be disposed of by the authority. If the object poses no immediate danger  
 6 to life or property, the owner shall, within thirty days after receipt of notice by  
 7 certified mail, present to the authority having jurisdiction over the matter, a plan for  
 8 the removal of the object ~~as soon as possible~~ by a date certain, considering factors  
 9 of safety, cost, and efficiency in accomplishing the removal. The authority shall  
 10 approve or reject the plan within thirty days from the date of submission by the  
 11 owner. The provisions of this Section shall not apply to objects which are in  
 12 customary fleeting, mooring, or docking areas, or those objects that are moving  
 13 through navigation channels that may, for the purpose of navigational safety, have  
 14 a need for laying in on the banks and spoils of such channels on a temporary basis.

15 \* \* \*

16 B.(1) In the event that a plan for removal of the object is not presented to the  
 17 authority, ~~or~~ a plan is not approved by the authority, within the periods provided for  
 18 in Paragraph A(1), or an approved plan is not executed within the allotted time  
 19 specified within the plan, then the authority may have the object removed at the  
 20 owner's cost and junk, discard, or otherwise dispose of the object or sell, exchange,  
 21 or otherwise transfer ownership of the object to any person, corporation, or entity  
 22 whatsoever for any price or consideration which the authority may deem advisable,  
 23 or for no consideration, and apply the proceeds received, if any, to the cost of  
 24 removing the object, and the balance, if any, shall become the property of the  
 25 authority.

26 \* \* \*

27 (3) In the event the object is sunken and the owner of the object fails to  
 28 execute a plan approved by the authority and the authority does not have the object  
 29 removed in accordance with the power granted in Paragraph (1) of this Subsection,

1        an adjacent property owner whose peaceful use and enjoyment and riparian rights are  
 2        affected by the object may initiate litigation against the owner of the object. The  
 3        court in such case may order the removal of the object pursuant to a plan offered by  
 4        the adjacent property owner. The owner of the object shall be responsible for any and  
 5        all costs associated with the removal of the object and for court costs.

6                (4) In the event the object is sunken and is situated in a manner that has a  
 7        negative impact on the peaceful use and enjoyment of an adjacent property and  
 8        affects the adjacent property owner's riparian rights, the adjacent property owner  
 9        may initiate litigation against the owner of the object. The court in such case may  
 10        order the removal of the object pursuant to a plan offered by either party that  
 11        considers the object's effect on the adjacent property, effect on the adjacent owner's  
 12        riparian rights, and the immediacy of any danger the object poses to life or property  
 13        as adopted or modified by the court. The owner of the object shall be responsible for  
 14        any and all costs associated with the removal of the object and for court costs.

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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 113 Engrossed                                      2018 Regular Session                                      Gregory Miller

**Abstract:** Provides for removal of objects in waterways by governmental entities and adjacent landowners.

Present law requires that within 30 days from written notice the object's owner present a plan to remove any object, including vessels, equipment, ship, barges, and machinery that has been left unattended, stored, junked, or abandoned in any waterway, whether navigable or not, on the banks of such waterways, or moored or tied off in a drainage ditch or canal or outfall canal. Authorizes the federal, state, or local governing authority to issue the written notice and are referred to in present law as an authority. Specifies that when the owner cannot be located a notice is published in the official journal of the parish in which the object is located stating the object will be removed in 30 days at the cost of the owner of the object. Proposed law retains present law.

Present law provides that if the object poses no immediate danger to life or property the owner has 30 days to present to the authority a plan for the removal of the object as soon as possible, considering factors of safety, cost, and efficiency in accomplishing the removal. Requires the authority to approve or reject the plan within 30 days from the date of submission.

Proposed law retains present law except changes the timing of the planned removal from as soon as possible to a date certain.

Proposed law provides an exception to present law for objects that are in customary fleeting, mooring, or docking areas, or those objects that are moving through navigation channels that may have a need for laying in on the banks and spoils of such channels on a temporary basis.

Present law provides that if the object is not removed timely or a plan for approval is not presented or approved by the authority, the authority may remove it at the cost of the owner and may sell or dispose of the object.

Proposed law retains present law and adds for the removal by the authority in the event the plan is not executed within the plan's timeline.

Proposed law authorizes the adjacent property owner to initiate litigation against the owner of the object when the object is sunken and the owner of the object fails to execute a plan approved by the authority and the authority does not have the object removed. Authorizes the court in such case to order the removal of the object pursuant to a plan offered by the adjacent property owner. Specifies that the owner of the object is responsible for any and all costs associated with the removal of the object and for court costs.

Proposed law authorizes the adjacent property owner to initiate litigation against the owner of the object if the object is sunken and is situated in a manner that has a negative impact on the peaceful use and enjoyment of an adjacent property and affects the adjacent property owner's riparian rights. Authorizes the court in such case to order the removal of the object pursuant to a plan offered by either party.

Proposed law requires the plan consider the object's effect on the adjacent property, effect on the adjacent owner's riparian rights, and the immediacy of any danger the object poses to life or property as adopted or modified by the court. Specifies that the owner of the object is responsible for any and all costs associated with the removal of the object and for court costs.

(Amends R.S. 34:843(A)(1) and (B)(1); Adds R.S. 34:843(B)(3) and (4))

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the original bill:

1. Provide a technical change.
2. Provide an exception to present law for objects which are in customary, fleeting, mooring, or docking areas, or those objects that are moving through navigation channels.
3. Clarify that when an object is sunken and the owner of the object fails to take the necessary steps to remove the object, the adjacent property owner may initiate litigation against the owner of the object.
4. Clarify that when the object is sunken and situated in a manner that negatively impacts the peaceful use and enjoyment and riparian rights of an adjacent property owner, the adjacent owner may initiate litigation against the owner of the object.