

2015 Regular Session

HOUSE BILL NO. 680

BY REPRESENTATIVE LEOPOLD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FISHING/OYSTERS: Provides relative to private oyster leases on privately owned water bottoms

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AN ACT

To amend and reenact R.S. 41:1702(D)(1), (2)(e), (F), and (G)(2) and R.S. 56:425(A) and to enact R.S. 56:425(F), (G), (H), and (I), relative to private oyster leases on private water bottoms; to authorize private oyster leases on private water bottoms; to provide for clarification of water bottom ownership in relation to private oyster leases; to provide for a presumption of legally harvested oysters from a private oyster lease on a private water bottom; to authorize reclamation of water bottoms through the development of engineered oyster reefs on private oyster leases; to provide relative to permits for reclamation projects that involve private oyster leases; to provide for challenges to state claims to the ownership of certain water bottoms; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 56:425(A) is hereby amended and reenacted and R.S. 56:425(F), (G), (H), and (I) are hereby enacted to read as follows:

§425. Lease of water bottoms; stipulations; boundary disputes

A. The secretary may lease to any resident, any firm composed of residents, or any corporation domiciled in or organized under the laws of this state any state-owned water bottoms and natural reefs in the water bottoms of this state under the limitations stipulated or authorized in this Subpart. No lease shall be granted until a reasonable investigation into the question of ownership is complete and, based

1 on the findings, a formal written determination is made that the state owns the water  
 2 bottoms to be leased. No later than thirty days prior to the issuance of the formal  
 3 written determination, the acceptance of an application for a new oyster lease, the  
 4 issuance of a new lease, or the renewal of an existing lease that extends over or  
 5 encroaches upon an existing, recorded private oyster lease or privately owned water  
 6 bottom, the secretary or the state agency that issues the formal written determination  
 7 shall send notice of such action by certified mail to any person or entity holding a  
 8 recorded property interest in the water bottom at issue. Upon receipt of such notice,  
 9 any affected person or entity shall have fifteen days to file suit to challenge such  
 10 action, including the question of title, in a court of competent jurisdiction in the  
 11 parish where the water bottom at issue is located. Any new lease or renewal of an  
 12 existing lease for the taking of oysters granted by the secretary prior to ~~June 15, 2006~~  
 13 July 1, 2015, ~~which that~~ affects privately owned water bottoms or an existing  
 14 recorded private oyster lease on private water bottoms shall be subordinate to the  
 15 rights of the private landowner, ~~or~~ recorded land title owner, or the holder of an  
 16 existing, recorded private oyster lease effective on that date.

\* \* \*

18 F. Notwithstanding any other applicable law, a private landowner may issue  
 19 a private oyster lease for the cultivation, bedding, or harvesting of oysters on water  
 20 bottoms owned by that landowner. The secretary may not grant or renew an oyster  
 21 lease that extends over or encroaches upon, an existing, recorded private oyster lease  
 22 on a private water bottom.

23 G. A private landowner and the holder of an existing, recorded private oyster  
 24 lease on private lands may jointly create and establish living shoreline on a private  
 25 oyster lease as an element or goal of a reclamation project pursuant to R.S. 41:1702,  
 26 et seq.

27 H. Should a formerly private water bottom containing an existing private  
 28 oyster lease be deemed to be owned by the state following the reasonable  
 29 investigation and the issuance of the formal written determination required by



1 development, design, engineering, implementation, operation, maintenance, or repair  
 2 of coastal or barrier island restoration projects by the Office of Coastal Protection  
 3 and Restoration under R.S. 49:214.1 et seq. or other applicable law or projects for  
 4 the Atchafalaya Basin Program. Within sixty days of completion of the reclamation  
 5 project, the riparian owner shall submit to the State Land Office proof of the extent  
 6 of the land area actually reclaimed in the manner provided in Subsection C of this  
 7 Section for showing the submerged area, which map or plat shall be employed for  
 8 fixing the definitive boundary between the reclaimed land area and the state water  
 9 bottoms. ~~Permits~~ Except for permits issued for the establishment of living shorelines  
 10 as defined in Subparagraph (D)(2)(e)(ii) of this Section, permits issued pursuant to  
 11 these provisions shall be effective for a period not to exceed two years from the date  
 12 of issuance and shall thereupon expire. Permits issued for the establishment of living  
 13 shorelines shall be issued for an initial period of two years but may be renewed or  
 14 extended to facilitate the establishment, enhancement, or perpetuation of such living  
 15 shorelines. All work remaining or any additional work may be completed only by  
 16 application in the manner provided by this Section.

17 \* \* \*

18 (2)

19 \* \* \*

20 (e)(i) As used in this Section, the term "emergent land" shall mean land that  
 21 emerges from a public water bottom to an elevation sufficient to support emergent  
 22 vegetation, except that in the case of the seaward side of a barrier island the  
 23 minimum elevation required shall be the lowest elevation sufficient to support  
 24 emergent vegetation on the landward side of such island. However, no land which  
 25 lies below the elevation of ordinary low water shall be considered emergent land.

26 (ii) As used in this Section, the term "living shoreline" shall mean the  
 27 establishment of an engineered, submerged, or inter-tidal oyster reef within a private  
 28 oyster lease on a private water bottom in existing shallow waters not more than four  
 29 feet deep by the placement of oyster shells, cultch, prefabricated structures and

1 devices, or other suitable substrate or reef material as approved by the Coastal  
2 Protection and Restoration Authority pursuant to R.S. 49:214.1, et seq., for the  
3 purpose of establishing a viable oyster reef that will enhance the protection,  
4 preservation, or restoration of land or coastline consistent with Louisiana's  
5 Comprehensive Master Plan for a Sustainable Coast.

6 \* \* \*

7 F. Except as otherwise provided in Paragraph (D)(2) of this Section, the  
8 words "reclamation" or "recovery of land" or "reclamation project" as used in this  
9 Section shall refer to the raising of land through filling or other physical works which  
10 elevate the surface of the theretofore submerged land as a minimum above the level  
11 of ordinary low water in the case of rivers or streams and above the level of ordinary  
12 high water in the case of bodies of water other than rivers and streams, to such  
13 heights as may be prescribed in regulations or forms adopted by the administrator of  
14 the State Land Office to ensure reasonably permanent existence of the reclaimed  
15 lands, or, to the extent approved by the Coastal Protection and Restoration Authority  
16 pursuant to R.S. 49:214.1 et seq., or other applicable law and consistent with  
17 Louisiana's Comprehensive Master Plan for a Sustainable Coast. Living shorelines  
18 as defined in this Subsection may be permitted so as to establish engineered, living  
19 oyster reefs that create a diverse and sustainable marine habitat buffer from wave  
20 energy to the state's coast, and provide a food resource for wildlife and people.  
21 These living shorelines are to be encouraged as they also improve water quality and  
22 clarity by removing nitrogen and other impurities while enhancing the growth of sea  
23 grass beds. Any reclamation pursuant to Paragraph (D)(1) of this Section not in  
24 substantial compliance with the permit procedure provided above shall be an  
25 absolute nullity and no private rights of ownership shall vest or be acquired by  
26 prescription.

27 \* \* \*

28 G.

29 \* \* \*



Present law requires the Dept. of Wildlife and Fisheries to reasonably investigate water bottom ownership prior to issuing an oyster lease and to make a determination that the state owns the water bottom to be leased. Proposed law requires a formal written determination to be made and requires that at least 30 days prior to the issuance of the written determination, issuance of a new lease, or the renewal of an existing lease that extends over an existing private lease, a notice is to be sent to any person or entity holding a recorded property interest in the water bottom in question. Allows the person or entity so notified 15 days to file suit to challenge the determination, the issuance of a new lease, or the renewal of an existing lease.

Present law provides that any lease granted prior to June 15, 2006, that affects privately owned water bottoms is subordinate to the rights of the private landowner at the time the lease was granted. Proposed law changes that date to July 1, 2015, and includes the rights of an existing private oyster leaseholder.

Present law allows for reclamation of land by a private landowner of land that has eroded and thereby becomes water bottoms owned by the state. Requires a permit for such reclamation issued by the State Land Office and reviewed by various state agencies and the governing authority of the parish where the reclamation would take place. Requires the land reclaimed to be above the elevation of the ordinary low water mark and to be emergent land capable supporting emergent vegetation.

Proposed law would allow an oyster reef (or "living shoreline") to be considered a reclamation project. A living shoreline project would be required to go through the same permitting and review process as any other reclamation project.

(Amends R.S. 41:1702(D)(1), (2)(e), (F), and (G)(2) and R.S. 56:425(A); Adds R.S. 56:425(F), (G), (H), and (I))