

2016 Regular Session

HOUSE BILL NO. 902

BY REPRESENTATIVE LEOPOLD

1 AN ACT

2 To amend and reenact R.S. 56:423(A) and (B) and 429 and Sections 2(B) and (C) and 3 of
3 Act No. 808 of the 2008 Regular Session of the Legislature and to enact R.S.
4 56:425(F) and 427(F) and (G), relative to oyster leases; to provide for lifting the
5 moratorium on new oyster leases; to provide relative to liability under certain
6 circumstances; to provide relative to public notification and opportunity to protest
7 or withdraw oyster lease applications under certain circumstances; to eliminate
8 auction of rent-delinquent oyster leases; to provide certain terms, conditions,
9 procedures, and requirements; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 56:423(A) and (B) and 429 are hereby amended and reenacted and
12 R.S. 56:425(F) and 427(F) and (G) are hereby enacted to read as follows:

13 §423. Property rights, larceny or other public offenses concerning; leases heritable
14 and transferable; adjudication of claims

15 A. A lessee shall enjoy the exclusive use of the water bottoms leased and of
16 all oysters and cultch grown or placed thereon, subject to the restrictions and
17 regulations of this Subpart and Part II of Chapter 2 of Title 49 of the Louisiana
18 Revised Statutes of 1950.

19 (1) This exclusive use of water bottoms is subordinate to the rights or
20 responsibilities of the state, any political subdivision of the state, the United States,
21 or any agency or agent thereof, to take any action in furtherance of ~~coastal~~
22 ~~protection, conservation, or restoration.~~ For purposes of this Subpart, "~~coastal~~
23 ~~protection, conservation, or restoration~~" means any project, plan, act, or activity for
24 ~~the protection, conservation, restoration, enhancement, creation, preservation,~~

~~nourishment, maintenance, or management of the coast, coastal resources, coastal wetlands, and barrier shorelines or islands, including but not limited to projects authorized under any comprehensive coastal protection master plan or annual coastal protection plan issued pursuant to Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950~~ integrated coastal protection as defined in R.S. 49:214.2.

(2) This exclusive use of water bottoms for any oyster lease initially applied for after July 1, 2016, or any renewal or judicial partition of such lease is also subordinate to the rights of any person:

(a) To engage in any activity authorized by a coastal use permit, determination, or coastal use authorization pursuant to R.S. 49:214.30 or a drilling permit, for which the coastal use authorization or drilling permit application was issued prior to the date the application for the oyster lease was issued. This Subparagraph applies only in the following areas:

(i) The area from the centerline of the pipeline or area from the outside of the well, platform, shell pad, or facility as designated by the coastal use permit, determination, or other coastal use authorization pursuant to R.S. 49:214.30 or drilling permit, or

(ii) If no such area delineated in Item (i) of this Subparagraph is designated, then this Item applies in the following areas:

(aa) For a pipeline, within seventy-five feet from the centerline of the pipe.

(bb) For a well, platform, shell pad, or facility, within two hundred fifty feet from the outside of the well, platform, shell pad, or facility.

(b) To operate, maintain, repair, replace, rehabilitate, or remove any pipeline, well, platform, shell pad, or facility on or impacting an oyster lease in which the pipeline, well, platform, shell pad, or facility was placed or constructed before September 20, 1980, or was placed or constructed prior to the date the oyster lease was issued. This Subparagraph applies only in the following areas:

(i) For a pipeline, within seventy-five feet from the centerline of the pipe.

(ii) For a well, platform, shell pad, or facility, within two hundred fifty feet from the outside of the well, platform, shell pad, or facility.

1 (c) To cross an oyster lease to access any activity, pipeline, well, platform,
2 shell pad, or facility to which Subparagraph (2)(a) or (2)(b) of this Subsection
3 applies. This Subparagraph applies only to a single access channel across each oyster
4 lease per activity, pipeline, well, platform, shell pad, or facility, determined as
5 follows:

6 (i) For any activity, pipeline, well, platform, shell pad, or facility , including
7 the removal of any pipeline, well, platform, shell pad, or facility, to which
8 Subparagraph (2)(a) of this Subsection applies, if an access channel across each
9 oyster lease is identified in the coastal use authorization or permit, it shall be the sole
10 access channel for purposes of this Subparagraph. If more than one access channel
11 across each oyster lease is identified, the holder of the authorization or permit shall
12 designate a single access channel to the department in writing identifying the
13 centerline of the access channel using the North American Datum 1983 state plane
14 coordinates; and when the holder does so and the department consents to the
15 designated access channel in writing, it shall be the sole access channel for purposes
16 of this Item.

17 (ii) For any activity, pipeline, well, platform, shell pad, or facility to which
18 Subparagraph (2)(b) of this Subsection applies, the holder of the authorization or
19 permit shall designate a single access channel across each oyster lease to the
20 department in writing identifying its centerline using the North American Datum
21 1983 state plane coordinates; and when the holder does so and the department
22 consents to the designated access channel in writing, it shall be the sole access
23 channel for purposes of this Item.

24 (iii) This Subparagraph applies only within fifty feet from the centerline of
25 the access channel across each oyster lease. In addition, if a spoil area was
26 previously identified in an authorization or permit for an access channel designated
27 pursuant to this Item, this Item shall also apply to the same spoil area; however, such
28 spoil area shall be limited to eighty feet in width adjacent to one side of the access
29 channel.

1 F. The Coastal Protection and Restoration Authority shall determine areas
 2 of the coast where buffer zones between oyster leases and the shoreline may be
 3 necessary to protect sensitive and eroding coastal lands. The Coastal Protection and
 4 Restoration Authority shall review each application for an oyster lease or renewal or
 5 expansion of an oyster lease to determine if the water bottom applied for is located
 6 in an area where a buffer zone may be necessary and shall delineate the extent of the
 7 buffer zone necessary for each application.

8 * * *

9 §427. Initial application for lease

10 * * *

11 F. The secretary may not execute a lease until the department has posted
 12 notice of the application for the lease on its website for ninety consecutive days.

13 (1) Any person claiming ownership of the water bottoms to be leased may
 14 protest the issuance of the lease on the grounds that the protesting party owns the
 15 water bottoms, but only by delivering via certified mail notice of the protest in
 16 writing to the secretary, the administrator of the state land office, and the lease
 17 applicant on or before the ninetieth day after notice of the application was posted.
 18 The notice of protest shall include all information and documentation that the
 19 protesting party believes is relevant to the question of ownership. The right to
 20 protest issuance of the lease pursuant to this Subsection shall expire if a protest is not
 21 made on or before the ninetieth day after notice of the application was posted.

22 (2) If a protest is timely made, the administrator of the state land office shall
 23 review the state’s claim to ownership of the contested water bottoms and issue a
 24 preliminary determination to the secretary, the protesting party, and the lease
 25 applicant within ninety days of receiving the notice of protest, as to whether the state
 26 claims ownership of the contested water bottoms. The administrator shall issue a
 27 final written determination as to whether the state claims ownership of the water
 28 bottom within one hundred eighty days of receiving the notice of protest. If a protest
 29 is timely made, the secretary may execute the lease as otherwise authorized under
 30 this Subpart only to the extent that the administrator of the state land office

1 determines that the state claims ownership of the contested water bottoms. The relief
 2 available pursuant to and the results and effects of such a protest and determination
 3 are limited to those set forth in this Subsection. The determination by the
 4 administrator of the state land office shall not be reviewable under the
 5 Administrative Procedure Act, and is appealable only to the Nineteenth Judicial
 6 District Court. Any petition for judicial review of the determination pursuant to this
 7 Subsection must be filed within sixty days after issuance of the determination.
 8 Failure to make a protest pursuant to this Subsection has no effect on the right to
 9 claim ownership of the leased water bottom authorized by R.S. 56:423(D) or the
 10 reasonable investigation into the ownership of the water bottom by the state required
 11 by R.S. 56:425(A).

12 (3) A lease applicant may withdraw a lease application and receive a full
 13 refund from the department of all application fees, by submitting a written request
 14 for withdrawal to the department within one hundred twenty days after the
 15 department posts notice of the application on its website, within thirty days after
 16 issuance of the determination of the administrator of the state land office regarding
 17 the state’s claim to ownership pursuant to a protest authorized by this Subsection, or
 18 within thirty days after final judgment in any proceeding for judicial review of the
 19 determination, whichever is the later date.

20 G. The secretary shall not lease any water bottom located within seventy-five
 21 feet of the centerline of a pipeline that is located on purchased right-of-way.
 22 However, if the right-of-way is abandoned and returned to commerce, the secretary
 23 may then lease such water bottom.

24 * * *

25 §429. Default in payment of rent; cancellation and forfeitures

26 The failure of the ~~tenant~~ lessee to pay the rent punctually on or before the
 27 first of each January, or within ~~thirty~~ sixty days thereafter, ipso facto and without
 28 demand or putting in default, terminates and cancels the lease and forfeits to the
 29 department all the works, improvements, betterments, and oysters on the leased
 30 water bottoms. The department may at once enter on the water bottoms and take

1 suit entitled Albert J. Avenal, Jr. et al. v. the State of Louisiana and the Department
 2 of Natural Resources. The Department of Wildlife and Fisheries and the ~~Department~~
 3 ~~of Natural Resources~~ Coastal Protection and Restoration Authority shall cooperate
 4 in the ~~determination~~ identification of these non-renewed leases ~~those leases that are~~
 5 ~~eligible for a new lease for previously leased acreage under this phase of the~~
 6 ~~moratorium lifting.~~ The ~~lease holder~~ lessee of record at the time the lease was not
 7 renewed shall have the right of first refusal for a new lease for the previously
 8 leased acreage under this phase of the moratorium lifting. ~~Under the provisions of~~
 9 ~~R.S. 56:425,~~ No lease may be granted under this phase unless the secretary of the
 10 Department of Wildlife and Fisheries and the ~~secretary of the Department of Natural~~
 11 ~~Resources~~ shall executive director of the Coastal Protection and Restoration
 12 Authority agree that issuing a new lease for previously leased acreage for such water
 13 bottom is otherwise appropriate and the water bottom is not necessary for ~~coastal~~
 14 ~~protection, conservation, or restoration~~ integrated coastal protection. ~~At a minimum,~~
 15 ~~the department shall advertise the availability of a new lease for previously leased~~
 16 ~~acreage on two separate days in the official journal of the parish where the acreage~~
 17 ~~is located.~~

18 (b) The Department of Wildlife and Fisheries shall post on its website for
 19 sixty consecutive days a list of nonrenewed leases eligible for new leases under this
 20 phase, together with notice of the right of first refusal for new leases for the
 21 previously leased acreage and the deadline for applying for new leases under this
 22 phase. The deadline for application shall be sixty days after notice is first posted.
 23 If the ~~lease holder~~ lessee of record at the time the lease was not renewed ~~does not~~
 24 ~~desire to be issued a new lease for previously leased acreage or fails to respond to the~~
 25 ~~notice of the availability of~~ apply for a new lease for previously leased acreage
 26 within these sixty days of the date of the last advertisement or notification, he shall
 27 ~~forfeit~~ forfeits all rights to that lease.

28 (2) Phase Two - Incorporation of Adjacent Water Bottoms:

29 (a) A lessee may expand any lease existing as of January 1, 2016, under this
 30 phase by amending the lease to incorporate immediately adjacent water bottom that

1 is not leased. Such expansion shall be limited to five hundred feet beyond the
2 existing lease boundary, and only toward previously existing Louisiana coastline as
3 shown on the last survey of the existing lease recorded with the department, existing
4 Louisiana coastline as of January 1, 2016 as shown in the 2015 U.S. Department of
5 Agriculture, Farm Service Agency, Aerial Photography Field Office, National
6 Agriculture Imagery Program 4 band aerial imagery for Louisiana, 1 meter resolution
7 (the "2015 NAIP imagery") located within one thousand feet of the existing lease
8 boundary, or another existing lease. No expansion is allowed toward another
9 existing lease as to the portions of the existing leases where there is more than five
10 hundred feet between them. As to the portions of the existing leases where there is
11 five hundred feet or less between them and the lessees under only two existing leases
12 apply to expand their leases into this area, the area shall be divided equally between
13 them. If the lessees under three or more existing leases apply to expand their leases
14 into this area, the lessees shall provide to the Department of Wildlife and Fisheries
15 a written agreement signed by each of them under authentic act agreeing to an
16 allocation of the area, and the area shall be divided among them in accordance with
17 this agreement.

18 (b) The Department of Wildlife and Fisheries shall post on its website for
19 one hundred eighty consecutive days notice of the availability of lease expansions
20 and the deadline for applying for expansions under this phase. The deadline for
21 application shall be one hundred eighty days after notice is first posted. If a lessee
22 does not apply for an expansion or if an agreement is not signed under authentic act
23 agreeing to allocation of expansions as provided in Subparagraph (a) of this
24 Paragraph of this phase within these one hundred eighty days, he forfeits all rights
25 to expansion under this phase.

26 (c) This phase of the moratorium lifting shall not begin before the time
27 period for applying for leases under Phase One has expired.

28 (d) The lease as amended pursuant to an expansion shall be treated as a
29 single existing lease, subject to all provisions of the existing lease including term;
30 except, solely for purposes of R.S. 56:423(A)(2) and (B)(1)(b), the lease shall be

1 considered to have been granted as to the expanded portion as of the date the
2 expansion is granted.

3 (3) Phase Three – Right of First Refusal for Lessees under Private Leases

4 (a) For any water bottom claimed by a private person that is under a private
5 oyster lease recorded in the public records of the parish where it is located by
6 February 1, 2016, the private lessee of that water bottom at the time of
7 implementation of Phase Three shall have the right of first refusal for a new state
8 lease on any water bottom claimed by the state within the area of the existing private
9 oyster lease under this phase. For purposes of this Paragraph, a “private oyster
10 lease” is one granted by a person other than the State of Louisiana.

11 (b) The Department of Wildlife and Fisheries shall post on its website for
12 sixty consecutive days notice of the right of first refusal for new state leases within
13 the area of private oyster leases and the deadline for applying for new state leases
14 under this phase. The deadline for application shall be sixty days after notice is first
15 posted. If a private lessee fails to apply for a state lease within these sixty days, he
16 forfeits all rights to a state lease under this phase.

17 (c) This phase of the moratorium lifting shall not begin before the time
18 periods for applying for leases or expansions under Phases One and Two have
19 expired.

20 (4) Phase Four – First Lottery for Appointments for New Leases:

21 (a) The Department of Wildlife and Fisheries shall establish a one-time
22 lottery system for submitting applications for new leases under this phase. The
23 department shall post on its website for sixty consecutive days notice of the lottery
24 and the deadline for entering the lottery. The deadline for submitting an entry shall
25 be sixty days after notice is first posted. Any person eligible for an oyster lease
26 under R.S. 56:425 may submit a single lottery entry for an appointment to apply for
27 a single lease under this phase. If any person fails to submit a lottery entry within
28 these sixty days, he forfeits all rights to a new lease under this phase.

29 (b) The Department of Wildlife and Fisheries shall randomly assign a
30 priority to all timely lottery entries, and shall schedule an appointment with each

1 lottery entry to receive a single application for leases during each appointment under
2 this phase in the order of this priority. Any lottery participant who fails to attend the
3 scheduled appointment shall be moved to the bottom of the priority list and his
4 appointment shall be rescheduled, but if he does not make the second scheduled
5 appointment, he forfeits all rights to a new lease under this phase. Any lottery
6 participant who fails to request a lease at his appointment forfeits all rights to a new
7 lease under this phase.

8 (c) This phase of the moratorium lifting shall not begin before all
9 applications for leases or expansions under the Phases One, Two, and Three have
10 been finally received by the department. Any water bottom for which there is a
11 pending application under Phases One, Two, or Three shall not be eligible for leasing
12 under Phase Four.

13 (5) Phase Five – Second Lottery for Appointments for New Leases:

14 (a) The Department of Wildlife and Fisheries may establish a second one-
15 time lottery system for submitting applications for new leases under this phase. If
16 the department establishes a second lottery, the department shall post on its website
17 for sixty consecutive days notice of the lottery and the deadline for entering the
18 lottery. The deadline for submitting an entry shall be sixty days after notice is first
19 posted. Any person eligible for an oyster lease under R.S. 56:425 may submit a
20 single lottery entry for an appointment to apply for a single lease under this phase.
21 If any person fails to submit a lottery entry within these sixty days, he forfeits all
22 rights to a new lease under this phase.

23 (b) The Department of Wildlife and Fisheries shall randomly assign a
24 priority to all timely lottery entries, and shall schedule an appointment with each
25 lottery entry to receive a single application for leases during each appointment under
26 this phase in the order of this priority. Any lottery participant who fails to attend the
27 scheduled appointment shall be moved to the bottom of the priority list and his
28 appointment shall be rescheduled, but if he does not make the second scheduled
29 appointment, he forfeits all rights to a new lease under this phase. Any lottery

1 participant who fails to request a lease at his appointment forfeits all rights to a new
2 lease under this phase.

3 (c) This phase of the moratorium lifting shall not begin before all
4 applications for leases or expansions under the Phases One, Two, Three, and Four
5 have been finally received by the department. Any water bottom for which there is
6 a pending application under Phases One, Two, Three, or Four shall not be eligible
7 for leasing under Phase Five.

8 (6) No lease or expansion may be granted under any phase of lifting the
9 moratorium required by this Act until all applications from prior phases have been
10 finally received by the department. In the event of multiple applications for the same
11 water bottoms within the same phase, the earlier-filed application shall have priority,
12 except as otherwise expressly provided in this Act.

13 (7) Except as otherwise expressly provided in this Act, all leasing of state
14 water bottoms for oyster production under this Act shall be in accordance with the
15 provisions of Subpart D of Part VII of Chapter 1 of Title 56 of the Louisiana Revised
16 Statutes of 1950.

17 C. Upon implementation of the provisions of this Act, the Louisiana Wildlife
18 and Fisheries Commission shall promulgate and implement rules ~~necessary for the~~
19 ~~final lifting of~~ to lift the moratorium. ~~Such rules shall be developed in conjunction~~
20 ~~with a special committee composed of representatives from the Department of~~
21 ~~Wildlife and Fisheries, the Department of Natural Resources, the Louisiana Oyster~~
22 ~~Task Force, the Louisiana Landowner's Association, the Louisiana Oil and Gas~~
23 ~~Association, and Louisiana Mid-Continent Oil and Gas Association and may include~~
24 ~~offering lease holders the opportunity to expand their existing leases by~~
25 ~~incorporation of immediately adjacent water bottom. Such expansion shall be limited~~
26 ~~to five hundred feet beyond the existing lease boundary except in cases where there~~
27 ~~is a lease held by another lease holder whose boundary line is less than five hundred~~
28 ~~feet away. In those cases, the two lease holders may agree to divide the distance~~
29 ~~equally or, if one lease holder declines to expand his lease, the other lease holder~~
30 ~~may expand up to the boundary line of the other lease. The opportunity to expand~~

