

2018 Regular Session

HOUSE BILL NO. 391

BY REPRESENTATIVE PEARSON

WATERWAYS/NAVIGATION: Provides for public access to the running waters of the state

1 AN ACT

2 To enact R.S. 9:1251.1, relative to the navigable waters; to provide for aquatic life; to  
3 provide for applicability to ownership of banks or water bottoms of waterways; to  
4 prohibit the restriction of the right to access running waters in certain circumstances;  
5 to provide exceptions; to provide for the definition of "running waters"; to provide  
6 for limitations of liability; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:1251.1 is hereby enacted to read as follows:

9 §1251.1. Public access to certain running waters

10 A. The running waters of the state and the wild aquatic life inhabiting those  
11 waters are and remain the property of the state and as such, title and ownership of  
12 these natural resources remain unchanged whether the running waters flow over  
13 public or private water bottoms. The running waters of the state and the wild aquatic  
14 life inhabiting those waters are therefore subject to the supervision and control of the  
15 state through the applicable departments, agencies, and commissions as provided, in  
16 part, by R.S. 36:351 and 602 and R.S. 56:1.

17 B. No person may restrict or prohibit, pursuant to the authority of Civil Code  
18 Article 3413 or otherwise, the public navigation of running waters which are  
19 navigable by a motorboat required to be registered or numbered pursuant to the laws  
20 of this state or the United States. However, the provisions of this Section shall not

1 apply to running waters passing over privately owned water bottoms where  
2 navigation has been prevented or impeded by an obstacle constructed pursuant to a  
3 permit granted by the United States Army Corps of Engineers.

4 C. The provisions of this Section shall not apply to running waters during  
5 any open migratory waterfowl season when such running waters have been posted  
6 against trespassing, hunting, or fishing.

7 D. For the purposes of this Section, "running waters" shall mean running  
8 waters as provided in Civil Code Article 450 and shall include waters passing over  
9 any privately owned water bottom which has a direct natural or man-made inlet or  
10 outlet to a state-owned water bottom that is subject to the ebb and flow of the tide of  
11 the Gulf of Mexico and the tidally influenced arms and tributaries passing through  
12 the coastal areas of this state.

13 E. Nothing in this Section shall be deemed to establish a change in  
14 ownership of the bottoms and banks of any privately owned waterway, and no  
15 watercraft powered by a combustible engine may be used to navigate running waters  
16 over privately owned water bottoms and banks of waterways in such a way as to  
17 cause damage to the bottoms or banks of the waterway, or to the vegetation on or  
18 above the surface of the waterway.

19 F. An owner of any privately owned water bottom or bank shall be entitled  
20 to the limitations of liability as provided in R.S. 9:2791 and 2795.

---

#### 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 391 Engrossed

2018 Regular Session

Pearson

**Abstract:** Provides for the public navigation of running waters, including those running waters passing over any privately owned water bottom directly connected to a state-owned water bottom that is subject to the ebb and flow of the tide.

Present law (C.C. Art. 450) provides, in part, that public things are owned by the state or its political subdivisions and that running waters are public things.

Present law (C.C. Art. 452) provides, in part, that everyone has the right to fish in the rivers, ports, roadsteads, and harbors, and the right to land on the seashore, to fish, to shelter

himself, to moor ships, to dry nets, and the like, provided he does not cause injury to the property of adjoining owners.

Present law (C.C. Arts. 455 and 456) provides, in part, that private things may be subject to public use in accordance with law or by dedication, and further provides that the banks of navigable rivers or streams are private things that are subject to public use.

Present law (C.C. Art. 3413 and R.S. 56:3) provides, in part, that wild animals, birds, fish, and shellfish in a state of natural liberty either belong to the state or are things without an owner, but that the owner of a tract of land may forbid entry to anyone for purposes of hunting or fishing, and the like.

Proposed law clarifies present law by providing that the running waters of the state and the wild aquatic life inhabiting those waters are and remain the property of the state and that title and ownership of these natural resources remain unchanged whether they flow over public or private water bottoms, and further provides that the running waters and aquatic life are subject to the supervision and control of the state.

Proposed law provides that no person may prohibit the public navigation of running waters which are navigable by a motorboat required to be registered or numbered pursuant to the laws of this state or the U.S., except where navigation has been prevented or impeded by an obstacle constructed pursuant to a permit issued by the U.S. Army Corps of Engineers.

Proposed law provides an exception to proposed law during any open migratory waterfowl season when the running waters are posted against trespassing, hunting, and fishing.

Proposed law provides that for the purposes of proposed law, "running waters" mean running waters as provided in Civil Code Article 450 and includes waters passing over any privately owned water bottom which has a direct natural or man-made inlet or outlet to a state-owned water bottom that is subject to the ebb and flow of the tide of the Gulf of Mexico and the tidally influenced arms and tributaries passing through the coastal areas of this state.

Proposed law specifies that proposed law cannot be deemed to establish a change in ownership of the bottoms and banks of any privately owned waterway, and that no watercraft powered by a combustible engine may be used to navigate running waters over privately owned water bottoms and banks of waterways in such a way as to cause damage to the bottoms or banks of the waterway, or to the vegetation on or above the water surface.

Proposed law provides that the owner of a privately owned water bottom or bank is entitled to the existing limitations of liability for owners of property used for noncommercial recreational purposes.

(Adds R.S. 9:1251.1)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Add technical amendments.
2. Replace requirement that obstacles constructed by the landowner be in place prior to March 2, 2018, with requirement that obstacles constructed by the landowner be permitted by the U.S. Army Corps of Engineers.

3. Add exception to proposed law for areas posted against trespassing, hunting, or fishing during open waterfowl seasons.
4. Add provisions relative to the damage of vegetation.