

2019 Regular Session

HOUSE BILL NO. 231

BY REPRESENTATIVE PEARSON

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

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 prohibit the restriction of the
3 right to access running waters in certain circumstances; to provide for applicability
4 to ownership of banks or water bottoms of waterways; to provide exceptions; to
5 provide for the definition of "running waters"; to provide for limitations of liability;
6 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. No person may restrict or prohibit, pursuant to the authority of Civil Code
11 Article 3413 or otherwise, the public navigation of running waters which are
12 navigable by a motorboat required to be registered or numbered pursuant to the laws
13 of this state or the United States. However, the provisions of this Section shall not
14 apply to running waters passing over privately owned water bottoms where
15 navigation has been prevented or impeded by an obstacle constructed pursuant to a
16 coastal use permit granted by the Department of Natural Resources.

17 B. The provisions of this Section shall not apply to the following:

18 (1) Running waters during any open migratory waterfowl season when such
19 running waters have been posted against trespassing, hunting, or fishing.

1 (2) Public or private wildlife refuges, preserves, or sanctuaries where either
2 hunting or fishing are prohibited.

3 (3) Public port commission-owned or operated property, docks, wharves,
4 harbors, or other maritime facilities or their surrounding areas.

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

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

17 E. An owner of any privately owned water bottom or bank shall be entitled
18 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 231 Original

2019 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 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 coastal use permit issued by the Dept. of Natural Resources.

Proposed law provides exceptions to proposed law during any open migratory waterfowl season when the running waters are posted against trespassing, hunting, and fishing, for wildlife refuges where hunting or fishing are prohibited, and public port commissioned-owned facilities.

Proposed law provides that for the purposes of proposed law, "running waters" mean running waters as provided in present law 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)