

2015 Regular Session

HOUSE BILL NO. 352

BY REPRESENTATIVE LEGER

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

COASTAL RESOURCES: Relative to approval for land acquisition for integrated coastal protection projects by "acquiring authorities"

1 AN ACT

2 To amend and reenact R.S. 41:1702(C), (D)(introductory paragraph) and (1), (2)(a)(i),

3 (ii)(introductory paragraph), (dd), (b), (d), and (f), (G)(1) and (2), (H), and (I),

4 relative to land reclamation for coastal protection and restoration purposes; to

5 provide relative to approval of land reclamation by an "acquiring authority" for

6 integrated coastal protection purposes; to provide relative to the administrative

7 responsibility for reclamation of lands lost through erosion, compaction, subsidence,

8 and sea level rise; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 41:1702(C), (D)(introductory paragraph) and (1), (2)(a)(i),

11 (ii)(introductory paragraph), (dd), (b), (d), and (f), (G)(1) and (2), (H), and (I) are hereby

12 amended and reenacted to read as follows:

13 §1702. Reclamation of lands lost through erosion, compaction, subsidence, and sea

14 level rise; land acquisition for certain coastal projects; requirements

15 * * *

16 C. Application for the reclamation or recovery of land lost through erosion,

17 compaction, subsidence, or sea level rise shall be made to the ~~Department of Natural~~

18 ~~Resources~~ State Land Office, pursuant to Paragraph (D)(1) of this Section, on forms

19 to be provided and with such reasonable fee as may be prescribed by the office,

1 provided that all such applications shall be accompanied by a deed of ownership or
2 a certified map or plat of survey prepared by a professional land surveyor qualified
3 and currently licensed by the Louisiana Professional Engineering and Land
4 Surveying Board in accordance with R.S. 37:681 et seq., defining the boundary
5 between lands belonging to the state and those of riparian owners and showing the
6 exact extent of land claimed to be lost through erosion, compaction, subsidence, or
7 sea level rise, and by such other evidence as may be required by the administrator
8 showing ownership of the riparian lands in question by the applicant.

9 D. In all cases in which a definitive boundary may be arrived at by mutual
10 consent or through the procedures applicable to contested boundaries, the
11 administrator of the State Land Office, as provided in Paragraph (1) of this
12 Subsection, or the ~~secretary of the Department of Natural Resources~~ executive
13 director of the Coastal Protection and Restoration Authority, as provided in
14 Paragraph (2) of this Subsection, may allow reclamation.

15 (1) The administrator of the State Land Office may issue a permit for the
16 carrying out of the work necessary to implement the recovery of the land lost through
17 erosion, compaction, subsidence, or sea level rise; however, no such permit shall be
18 issued until plans and specifications for such work have been first submitted to the
19 governing authority of the parish in which the proposed project is located, the
20 Department of Transportation and Development, the Department of Wildlife and
21 Fisheries, the ~~Office of Coastal Protection and Restoration~~ Authority, and the
22 Department of Natural Resources for review and comment not less than sixty days
23 prior to the issuance of such permit. No permit shall be required for projects to
24 facilitate the development, design, engineering, implementation, operation,
25 maintenance, or repair of ~~coastal or barrier island restoration~~ integrated coastal
26 protection projects by the ~~Office of Coastal Protection and Restoration~~ Authority
27 under R.S. 49:214.1 et seq. or other applicable law or projects for the Atchafalaya
28 Basin Program. Within sixty days of completion of the reclamation project, the
29 riparian owner shall submit to the State Land Office proof of the extent of the land

1 area actually reclaimed in the manner provided in Subsection C of this Section for
2 showing the submerged area, which map or plat shall be employed for fixing the
3 definitive boundary between the reclaimed land area and the state water bottoms.
4 Permits issued pursuant to these provisions shall be effective for a period not to
5 exceed two years from the date of issuance and shall thereupon expire. All work
6 remaining or any additional work may be completed only by application in the
7 manner provided by this Section.

8 (2)(a)(i) To facilitate the development, design, and implementation of ~~coastal~~
9 ~~conservation, restoration and protection plans and~~ integrated coastal protection
10 projects, including hurricane protection and flood control, pursuant to R.S. 49:214.1
11 et seq., the ~~secretary of the Department of Natural Resources~~ executive director of
12 the Coastal Protection and Restoration Authority, after consultation with other state
13 agencies, including the Department of Natural Resources and the State Land Office,
14 may enter into agreements with owners of land contiguous to and abutting navigable
15 water bottoms belonging to the state who have the right to reclaim or recover such
16 land, including all oil and gas mineral rights, as provided in Subsection B of this
17 Section, which agreements may establish in such owner the perpetual, transferrable
18 ownership of all subsurface mineral rights to the ~~then-existing~~ then-existing coast or
19 shore line. Such agreements may also provide for a limited or perpetual alienation
20 or transfer, in whole or in part, to such owner of subsurface mineral rights owned by
21 the state relating to the emergent lands that emerge from waterbottoms that are
22 subject to such owner's right of reclamation in exchange for the owner's compromise
23 of his ownership and reclamation rights within such area and for such time as the
24 ~~secretary~~ executive director deems appropriate and in further exchange for the
25 owner's agreement to allow his existing property to be utilized in connection with the
26 project to the extent deemed necessary by the ~~secretary~~ executive director.

27 (ii) When land is acquired from any person by an "acquiring authority" as
28 defined in R.S. 31:149, for the principal purpose of facilitating the development,
29 design, and implementation of ~~coastal conservation, restoration, protection or~~

1 ~~management plans and~~ integrated coastal protection projects, including hurricane
 2 protection and flood control, by the state, its political subdivisions, or by the state
 3 and federal government, the ~~secretary of the Department of Natural Resources~~
 4 executive director of the Coastal Protection and Restoration Authority, after
 5 consultation with other state agencies, including the Department of Natural
 6 Resources and the State Land Office, may, in accordance with rules and regulations
 7 adopted in accordance with the Administrative Procedure Act by the ~~Department of~~
 8 ~~Natural Resources~~ Coastal Protection and Restoration Authority after consultation
 9 with other state agencies, including the Department of Natural Resources and the
 10 State Land Office, enter into an agreement under this Section with respect to the
 11 ownership of minerals and other matters to the same extent as authorized under Item
 12 (i) of this Paragraph. In addition, such agreement shall, at a minimum, specify:

13 * * *

14 (dd) Permanent easements, servitudes, rights-of-way, and rights of use as
 15 necessary to facilitate the principal purposes of the acquisition. These shall include,
 16 but are not limited to, those necessary for construction, operation, maintenance,
 17 repair, replacement and rehabilitation of any projects or cooperative agreements
 18 undertaken by the state or a political subdivision for ~~coastal protection, conservation,~~
 19 ~~restoration or management~~ integrated coastal protection or by the state and federal
 20 governments pursuant to state or federal law, including but not limited to, the Coastal
 21 Wetlands Planning, Protection and Restoration Act, the Coastal Zone Management
 22 Act, the Water Resources Development Act, the Coastal Impact Assistance Program,
 23 and the North American Wetlands Conservation Act.

24 * * *

25 (b) In addition to the provisions of Subparagraph (a) of this Paragraph, in the
 26 case of a project involving a barrier island, the ~~secretary~~ executive director may also
 27 require the owner to transfer title to all or a portion of the island in exchange for any
 28 subsurface mineral rights acquired by said owner.

29 * * *

1 (d) When the ~~secretary~~ executive director proposes to execute an agreement
2 by which an election pursuant to this Section is affected, the ~~secretary~~ executive
3 director shall first submit the agreement for review and approval to the House
4 Committee on Natural Resources and Environment and the Senate Committee on
5 Natural Resources, after publishing the agreement as provided in the Administrative
6 Procedure Act.

7 * * *

8 (f) The ~~Department of Natural Resources~~ Coastal Protection and Restoration
9 Authority shall provide an owner granted subsurface mineral rights pursuant to this
10 Paragraph, recordable evidence of the rights transferred, which documents shall
11 include an adequate legal description of the area subject to such owners' rights and
12 a plat thereof. The owner shall be responsible for filing any such document in the
13 conveyance records of the parish in which such property is located, which filing shall
14 be public notice thereof.

15 * * *

16 G.(1) The administrator of the State Land Office shall have the authority to
17 adopt regulations allowing reclamation of land in compliance with the provisions of
18 Paragraph (D)(1) of this Section, and the ~~secretary of the Department of Natural~~
19 ~~Resources~~ executive director of the Coastal Protection and Restoration Authority
20 shall have the authority to adopt regulations pursuant to Paragraph (D)(2) of this
21 Section.

22 (2) Permits may be granted for bulkheads, generally parallel to the shore,
23 that do not interfere with navigation on any inland navigable water body whether or
24 not the area to be bulkheaded eroded before July 1, 1921, if, on the basis of evidence
25 furnished the administrator of the State Land Office, such bulkheading will aid in
26 reclaiming submerged land or preventing erosion, compaction, or subsidence. No
27 permit shall be required for projects to facilitate the development, design
28 engineering, implementation, operation, maintenance, or repair of ~~coastal or barrier~~
29 ~~island restoration~~ integrated coastal protection projects by the ~~Department of Natural~~

1 ~~Resources~~ Coastal Protection and Restoration Authority under R.S. 49:214.1 et seq.
 2 or other applicable law or projects for the Atchafalaya Basin Program. Such permits
 3 shall not vest any title in any private owner other than as to lands eroded after July
 4 1, 1921.

* * *

6 H. No reclamation by a riparian landowner shall be permitted if, in the
 7 determination of the Department of Natural Resources, the State Land Office, the
 8 Coastal Protection and Restoration Authority, or the attorney general, such activity
 9 would unreasonably obstruct or hinder the navigability of any waters of the state or
 10 impose undue or unreasonable restraints on the state rights which have vested in such
 11 areas pursuant to Louisiana law, and to that extent the land area sought to be
 12 reclaimed may be limited.

13 I. Any person aggrieved either by a substantive agency decision made
 14 pursuant to the provisions of this Section, including interlocutory decisions relating
 15 to boundaries and determinations of areas reclaimed, or by a failure of the agency to
 16 render such decisions timely, may seek immediate judicial review of the agency
 17 action. Proceedings for review of decisions by the Department of Natural Resources,
 18 the Coastal Protection and Restoration Authority, or the State Land Office may be
 19 instituted by filing a petition in the Nineteenth Judicial District Court within thirty
 20 days after mailing of notice of the final decision by the administrator or secretary.
 21 Any party may request and be granted a trial de novo.

* * *

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 352 Reengrossed 2015 Regular Session Leger

Abstract: Provides for approval by the Coastal Protection and Restoration Authority for an reclamation or purchase of land for integrated coastal protection projects.

Present law authorizes an "acquiring authority" to acquire land for facilitation of the development, design, and implementation of coastal conservation, restoration, protection,

or management plans by the state, its political subdivisions, or the state and federal governments. Further provides that the secretary of the Dept. of Natural Resources may, after consultation with other state agencies, enter into an agreement with respect to ownership of minerals and other matters.

Proposed law retains present law but uses the term "integrated coastal protection project" to cover all the possible projects outlined in present law and changes the approval authority from the secretary of the Dept. of Natural Resources to the executive director of the Coastal Protection and Restoration Authority.

Present law provides a process whereby land lost through erosion, compaction, subsidence, or sea level rise can be reclaimed by the previous owner. Application must be made to the Dept. of Natural Resources and permits must be issued by the State Land Office. Proposed law provides that the application is submitted to the State Land Office who then issues the permit.

Present law uses outdated references to the "Office of Coastal Protection and Restoration Authority" and outdated descriptions of coastal protection and restoration projects. Proposed law updates those references to the "Coastal Protection and Restoration Authority" and "integrated coastal protection projects".

Present law authorizes the secretary of the Dept. of Natural Resources to enter into agreements with land owners adjacent to state water bottoms who have a right to reclaim land in order to allow perpetual, transferrable ownership of mineral rights in order to facilitate coastal projects. Proposed law changes that authorization to the executive director of the Coastal Protection and Restoration Authority, after consultation with the Dept. of Natural Resources.

Present law provides that no reclamation can be permitted if the Dept. of Natural Resources, the State Land Office, or the Attorney General objects. Proposed law adds the Coastal Protection and Restoration Authority to that list.

(Amends R.S. 41:1702(C), (D)(intro. para.) and (1), (2)(a)(i), (ii)(intro. para.), (dd), (b), (d), and (f), (G)(1) and (2), (H), and (I))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Natural Resources and Environment to the original bill:

1. Provide for the use of the term "integrated coastal protection project" to cover all the possible coastal protection or restoration projects.
2. Update references from "Coastal Protection and Restoration Authority Office" to "Coastal Protection and Restoration Authority".
3. In efforts by a private landowner to reclaim land lost to erosion, change the approval authority from the secretary of the Dept. of Natural Resources to the executive director of the Coastal Protection and Restoration Authority, after consultation with the Dept. of Natural Resources and the State Land Office.
4. Add the Coastal Protection and Restoration Authority to the list of those entities that may object to issuance of a reclamation permit and to the list of those whose decisions relative to reclamation may be appealed to the 19th JDC.