

ACT No. 362

2016 Regular Session

HOUSE BILL NO. 640

BY REPRESENTATIVE LEGER

1 AN ACT

2 To enact R.S. 49:214.5.2(H), (I), and (J), relative to the functions and responsibilities of the
3 Coastal Protection and Restoration Authority Board; to authorize the board to
4 establish a restoration banking program; to authorize the board to establish an oil
5 spill compensation schedule; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 49:214.5.2(H), (I), and (J) are hereby enacted to read as follows:

8 §214.5.2. Functions and responsibilities; Coastal Protection and Restoration
9 Authority Board

10 * * *

11 H.(1) The board may establish a natural resource damages restoration
12 banking program as an alternative method to offset injuries to natural resources
13 sustained as a result of oil spills in coastal areas as defined in R.S. 49:214.2(4),
14 consistent with the Oil Pollution Act of 1990 and the Oil Spill Prevention and
15 Response Act, R.S. 30:2451 et seq. A "restoration bank" is a site where land or
16 resources are restored, created, enhanced, or preserved for the purpose of restoring
17 natural resources injured by oil spills in Louisiana's coastal areas. "Restoration" is
18 an umbrella term whose meaning encompasses the creation, enhancement,
19 preservation, rehabilitation, or replacement of natural resources. Such restoration
20 bank program shall be established through the promulgation of rules and regulations
21 under the Administrative Procedure Act and shall be submitted to the House
22 Committee on Natural Resources and Environment and the Senate Committee on
23 Natural Resources for oversight. The rules and procedures developed by the board
24 shall do the following:

1 (a) Set forth a process and procedures for the certification and establishment
2 of restoration banks in the state, including criteria for adoption of a restoration
3 banking instrument. "Restoration banking instrument" is the documentation of state
4 and bank sponsor agreement on the objectives and administration of the bank that
5 describes in detail the physical and legal characteristics of the bank, including the
6 service area, the types and numbers of restoration credits expected to be generated,
7 and how the bank will be established and operated. "Restoration credit" means a unit
8 of trade generated by a restoration bank certified by the state and representing the
9 increase in the ecological value of the bank site, as measured by acreage, ecological
10 function, or another recognized assessment method.

11 (b) Ensure certification is provided only to restoration banks meeting the
12 requirements of this Chapter and the rules and procedures promulgated by the board.

13 (c) Ensure priority for certification is given to restoration banks that enhance
14 the resilience of coastal resources to inundation and coastal erosion.

15 (d) Ensure certification is provided only to restoration banks for which the
16 restoration banking sponsor has secured adequate financial assurance and permanent
17 legally enforceable protection for any restored lands or resources. "Financial
18 assurance" means the money or other form of financial instrument required of the
19 sponsor of a restoration bank to ensure that the functions of the bank are achieved
20 and maintained over the long term.

21 (e) Establish criteria for determining service areas for restoration banks.

22 (f) Establish criteria for operation and monitoring of restoration banks.

23 (g) Establish ecological success criteria or performance standards for
24 restoration banks.

25 (h) Establish a system for calculating the number and type of restoration
26 credits generated by a restoration bank.

27 (i) Establish a system for the transfer or sale of restoration credits to a
28 responsible party or natural resource trustee and for the transfer of liability for
29 restoration from a responsible party to the restoration bank sponsor in a manner that
30 provides natural resource trustee agencies with certainty as to restoration outcomes.

1 (2) Neither the state nor any state agency may act as a natural resource
2 damage restoration bank sponsor under the provisions of this Subsection. For the
3 purposes of this Subsection, a "bank sponsor" is a person or entity responsible for
4 developing and operating a natural resource damage restoration bank.

5 I. The board may adopt rules establishing a compensation schedule for the
6 unauthorized discharge of oil in coastal areas. The compensation schedule shall be
7 adopted under the provisions of the Administrative Procedure Act and submitted to
8 the House Committee on Natural Resources and Environment and the Senate
9 Committee on Natural Resources for oversight. "Unauthorized discharge of oil"
10 means any actual or threatened discharge of oil not authorized by a federal or state
11 permit as provided in R.S. 30:2451 et seq., the Oil Spill Prevention and Response
12 Act. Any compensation schedule adopted pursuant to this Section shall reflect
13 adequate compensation for unquantifiable damages or for damages not quantifiable
14 at reasonable cost and shall take into account the following:

15 (1) Characteristics of any oil spilled, such as toxicity, dispersibility,
16 solubility, and persistence, that may affect the severity of the effects on the receiving
17 environment, living organisms, and recreational and aesthetic resources.

18 (2) The sensitivity of the affected areas as determined by such factors as the
19 following:

20 (a) The location of the spill.

21 (b) Habitat and living resource sensitivity.

22 (c) Seasonal distribution or sensitivity of living resources.

23 (d) Areas of recreational use or aesthetic importance.

24 (e) The proximity of the spill to important habitats for birds, aquatic
25 mammals, fish, or to species listed as threatened or endangered under state or federal
26 law.

27 (f) Significant archaeological resources as determined by the division of
28 archaeology of the Department of Culture, Recreation and Tourism.

29 (g) Other areas of special ecological or recreational importance, as
30 determined by the authority.

1 (3) Actions taken by the party who spilled oil or any other responsible party
2 for the spill that include the following:

3 (a) Demonstrating a recognition and affirmative acceptance of responsibility
4 for the spill, such as the immediate removal of oil and the amount of oil removed
5 from the environment.

6 (b) Enhancing or impeding the detection of the spill, the determination of the
7 quantity of oil spilled, or the extent of damage, including the unauthorized removal
8 of evidence such as injured fish or wildlife.

9 J. The board shall submit to the House Committee on Natural Resources and
10 Environment and the Senate Committee on Natural Resources by January fifteenth
11 of each calendar year a report listing each restoration bank certified under the
12 provisions of Subsection H of this Section, including the names of the principals
13 involved in the bank, every restoration credit traded over the past twelve months, and
14 the two parties between whom the credits were traded.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____