

2016 Regular Session

HOUSE BILL NO. 640

BY REPRESENTATIVE LEGER

COASTAL COMMISSION: Authorizes the Coastal Protection and Restoration Authority Board to develop a natural resource damages restoration bank program and oil spill compensation schedule

1 AN ACT

2 To enact R.S. 49:214.5.2(H) and (I), 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) and (I) are hereby enacted to read as follows:

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

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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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 under the Administrative Procedure Act and shall be submitted to the House  
2 Committee on Natural Resources and Environment and the Senate Committee on  
3 Natural Resources for oversight. The rules and procedures developed by the board  
4 shall do the following:

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

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

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

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

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

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

27 (g) Establish ecological success criteria or performance standards for  
28 restoration banks.

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

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

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

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

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

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

26                       (a) The location of the spill.

27                       (b) Habitat and living resource sensitivity.

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

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

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

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

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

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

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

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

16           J. The board shall submit to the House Committee on Natural Resources and  
17           Environment and the Senate Committee on Natural Resources by January 15<sup>th</sup> of  
18           each calendar year a report listing each restoration bank certified under the  
19           provisions of Subsection H of this Section, including the names of the principals  
20           involved in the bank, every restoration credit traded over the past twelve months, and  
21           the two parties between whom the credits were traded.

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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)]

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HB 640 Reengrossed

2016 Regular Session

Leger

**Abstract:** Authorizes the Coastal Protection and Restoration Authority Board to establish a natural resource damages restoration bank and an oil spill compensation schedule.

Proposed law authorizes the Coastal Protection and Restoration Authority Board to establish a natural resource damages restoration bank program as an alternate method to offset damages sustained as a result of oil spills in coastal areas of the state. Defines such bank as

a site where land or resources are restored, created, enhanced, or preserved to restore natural resource injuries from oil spills in coastal areas.

Proposed law requires establishment of the bank through promulgation of rules under the Administrative Procedure Act. Provides oversight of the rules by the House Committee on Natural Resources and Environment and the Senate Committee on Natural Resources. Requires the rules to set forth procedures for certification of restoration banks in the state including criteria for adoption of a restoration banking instrument; ensure certification can only be given to banks qualifying under the established criteria; ensure priority certification to banks that enhance the resilience of coastal resources to inundation and coastal erosion; ensure certification is given only to banks with secured adequate financial assurance and permanent protection for any restored lands or resources; and establish a system for the transfer of restoration credits to a responsible party or natural resource trustee. Requires that the process and procedures adopted be in compliance with the federal Oil Pollution Act of 1990 and the Louisiana Oil Spill Prevention and Response Act.

Proposed law provides that neither the state nor any state agency can act as a natural resource damage restoration bank sponsor. Defines a "bank sponsor" as a person responsible for developing and operating a natural resource damage restoration bank.

Proposed law also authorizes the board to establish a compensation schedule for the unauthorized discharge of oil in the coastal areas of the state. Requires the schedule to be promulgated under the Administrative Procedure Act with oversight by the House Committee on Natural Resources and Environment and the Senate Committee on Natural Resources. Requires the compensation schedule to reflect adequate compensation for unquantifiable damages taking into account issues such as the characteristics of any oil spilled, the sensitivity of the affected area, and actions taken by the responsible party to mitigate the damage or impede the detection of the oil spill.

Proposed law requires the Coastal Protection and Restoration Authority Board to report annually to the Natural Resources committees the banks that have been certified, the principals to those banks, the restoration credits traded over the past year, and the parties who have traded those credits.

(Adds R.S. 49:214.5.2(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. Specify that the restoration bank is an alternate method to offset injuries to natural resources as a result of spills.
2. Requires that the process and procedures adopted by the Coastal Protection and Restoration Authority Board be in compliance with the federal Oil Pollution Act of 1990 and the Louisiana Oil Spill Prevention and Response Act.

The House Floor Amendments to the engrossed bill:

1. Require Natural Resources committees oversight over the rules for establishing and certifying natural restoration banks.
2. Require Natural Resources committees oversight over the compensation schedule.
3. Provide that neither the state nor any state agency can act as a natural resource damage restoration bank sponsor. Defines a "bank sponsor" as a person

responsible for developing and operating a natural resource damage restoration bank.

4. Require the Coastal Protection and Restoration Authority Board to report annually to the Natural Resources committees the banks that have been certified, the principals to those banks, the restoration credits traded over the past year, and the parties who have traded those credits.