

Regular Session, 2008

SENATE BILL NO. 349

BY SENATOR DUPRE

COASTAL RESOURCES. Provides relative to lands acquired by the state or political subdivision. (gov sig)

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AN ACT

To amend and reenact R.S. 41:1702(D)(2)(a)(i) and (e) and (f) and to enact R.S. 31:149(I) and R.S. 41:1702(D)(2)(g) and (K), relative to lands acquired by the state or political subdivision; to provide relative to mineral rights; to provide for the reservation of mineral rights under certain circumstances; to provide terms, conditions, procedures, and requirements; to provide certain exceptions; to provide relative to certain agreements and certain mineral agreements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 31:149(I) is hereby enacted to read as follows:

§149. Mineral rights reserved from acquisitions of land by governments or agencies thereof imprescriptible

* * *

I.(1) When property lying in a parish where any portion of the parish is in the coastal zone and consisting of at least five hundred acres is donated to the state or a political subdivision and the property is contiguous to, traversed by or interspersed with any water bottoms belonging to the state, the state, acting through the governor, and the donor may agree in writing to an

1 conservation, restoration and protection plans and projects, including hurricane
2 protection and flood control, pursuant to R.S. 49:214.1 et seq., the secretary of the
3 Department of Natural Resources may enter into agreements with owners of land
4 **within the coastal zone** contiguous to and abutting navigable water bottoms
5 belonging to the state who have the right to reclaim or recover such land, including
6 all oil and gas mineral rights, as provided in Subsection B of this Section, which
7 agreements may establish in such owner **and his heirs, successors or assigns** the
8 perpetual, transferrable ownership of all subsurface mineral rights to the then
9 existing coast or shore line **along lakes, bays, the sea and arms of the sea and to**
10 **the then existing bank line along rivers and streams in exchange for the owner's**
11 **agreement to permit the land to be used by the state, its agents, consultants and**
12 **contractors to facilitate the development, design and implementation of coastal**
13 **conservation, restoration, protection or management plans and projects,**
14 **including hurricane protection and flood control, to the extent deemed**
15 **reasonably necessary by the secretary.** Such agreements may also provide for a
16 limited or perpetual alienation or transfer, in whole or in part, to such owner of
17 subsurface mineral rights owned by the state relating to the ~~emergent~~ **submerged**
18 lands ~~that emerge from water bottoms~~ that are subject to such owner's right of
19 reclamation in exchange for the owner's compromise of his ownership and
20 reclamation rights within such area and for such time as the secretary deems
21 appropriate and in further exchange for the owner's agreement to ~~allow his existing~~
22 ~~property to be utilized in connection with the project to the extent deemed~~ **permit**
23 **the land to be used by the state, its agents, consultants and contractors to**
24 **facilitate the development, design and implementation of coastal conservation,**
25 **restoration, protection or management plans and projects, including hurricane**
26 **protection and flood control, to the extent deemed reasonably** necessary by the
27 secretary. **Changes in the location of the shore line subsequent to agreements**
28 **authorized under this Section shall have no effect on the mineral rights**
29 **established in the owner pursuant to such agreements. The agreements**

1 authorized under this Section may encompass such lands within the coastal zone
2 which the secretary determines are reasonably necessary to facilitate the
3 development, design and implementation of coastal conservation, restoration,
4 protection or management plans and projects, including hurricane protection
5 and flood control, based upon the long term goals and objectives incorporated
6 in the state's comprehensive coastal restoration, protection and conservation
7 plans, as provided under Act 8 of the First Extraordinary Session of 2005, as
8 modified from time to time and shall not be limited to lands currently required
9 for a particular project.

10 * * *

11 (e) ~~As used in this Section, the term "emergent land" shall mean land that~~
12 ~~emerges from a public water bottom to an elevation sufficient to support emergent~~
13 ~~vegetation, except that in the case of the seaward side of a barrier island the~~
14 ~~minimum elevation required shall be the lowest elevation sufficient to support~~
15 ~~emergent vegetation on the landward side of such island. However, no land which~~
16 ~~lies below the elevation of ordinary low water shall be considered emergent land.~~

17 (f) The Department of Natural Resources shall provide an owner granted
18 subsurface mineral rights pursuant to this Paragraph, recordable evidence of the
19 rights transferred, which documents shall include an adequate legal description of
20 the area subject to such owners' rights and a plat thereof. The owner shall be
21 responsible for filing any such document in the conveyance records of the parish in
22 which such property is located, which filing shall be public notice thereof.

23 (f) Land acquired from any person by an "acquiring authority," as
24 defined in R.S. 31:149, shall not be conveyed or transferred except to another
25 acquiring authority or to the original transferor, his heirs, successors or assigns,
26 and any act purporting to convey the land to a third party who is not an
27 acquiring authority or the original transferor, his heirs, successors or assigns
28 shall be null and void and without legal effect.

29 (g) In the event land is acquired by a "qualified conservation

1 organization," as defined in R.S. 31:149, and as further defined in the rules and
2 regulations adopted in accordance with the Administrative Procedures Act by
3 the Department of Natural Resources, the subsequent disqualification or
4 decertification of the qualified conservation organization by the secretary
5 pursuant to such rules and regulations shall have no effect on the mineral rights
6 established in the owner pursuant to agreements authorized under this Section.

7 * * *

8 K.(1) When property lying in a parish where any portion of the parish
9 is in the coastal zone and consisting of at least five hundred acres is donated to
10 the state or a political subdivision and the property is contiguous to, traversed
11 by or interspersed with any water bottoms belonging to the state, the state,
12 acting through the governor, and the donor may agree in writing to an
13 apportionment of any and all production of oil, gas or other hydrocarbons,
14 without having to survey and define the boundaries of such reserved mineral
15 rights. Nothing in this Paragraph is intended to preclude the donor and the
16 state or political subdivision from defining the boundaries of such property by
17 separate agreement or survey pursuant to existing law.

18 (2) An apportionment agreement shall require the concurrence of the
19 attorney general, the Coastal Protection and Restoration Authority, the
20 Department of Natural Resources, the State Land Office, and the department
21 or political subdivision receiving or managing the property.

22 (3) An apportionment agreement shall provide that the donor of the
23 property shall pay to the political subdivision or parish governing authority a
24 certain amount in lieu of taxes previously paid by the donor upon the property,
25 which amount shall be not less than the amount of taxes previously paid by the
26 donor, and shall include an amount to be adjusted for inflation in accordance
27 with the Consumer Price Index. The amount and duration of the payments
28 shall be determined by the parties with the approval of the political subdivision
29 or parish governing authority.

1 Section 3. The provisions of this Act shall become effective upon signature by the
2 governor or, if not signed by the governor, upon expiration of the time for bills to become
3 law without signature by the governor, as provided by Article III, Section 18 of the
4 Constitution of Louisiana. If vetoed by the governor and subsequently approved by the
5 legislature, this Act shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by J. W. Wiley.

DIGEST

Dupre (SB 349)

Present law provides for the interruption of the prescription of nonuse in certain land acquisitions by the state or political subdivision.

Proposed law provides that when property lying in a parish where any portion of the parish is in the coastal zone and consisting of at least 500 acres is donated to the state or a political subdivision pursuant to present law and the property is contiguous to, traversed by or interspersed with any water bottoms belonging to the state, the state, acting through the governor, and the donor may agree in writing to an apportionment of any and all production of oil, gas or other hydrocarbons, without having to survey and define the boundaries of such reserved mineral rights.

Proposed law provides that nothing in the proposed law is intended to preclude the donor and the state or political subdivision from defining the boundaries of such property by separate agreement or survey pursuant to present law.

Proposed law provides that the apportionment agreement must require the concurrence of the A.G.'s office, the Coastal Protection and Restoration Authority, the Department of Natural Resources, the State Land Office, and the department or political subdivision receiving or managing the property.

Proposed law provides that the apportionment agreement must provide that the donor of the property must pay to the political subdivision or parish governing authority a certain amount in lieu of taxes previously paid by the donor upon the property, which amount must be not less than the amount of taxes previously paid by the donor, and must include an amount to be adjusted for inflation in accordance with the CPI. The amount and duration of the payments will be determined by the parties with the approval of the political subdivision or parish governing authority.

Present law provides for reclamation of land lost through erosion, compaction, subsidence, and sea level rise. Further provides for land acquisitions for certain coastal projects.

Present law provides for certain boundary agreements arrived at by mutual consent or through certain procedure.

Proposed law authorizes the secretary of DNR to only enter into certain agreements with owners of land within the coastal zone.

Present law provides for the perpetual, transferrable ownership of all subsurface mineral rights to the then existing coast or shore line.

Proposed law retains present law and adds lakes, bays, the sea and arms of the sea and to the

then existing bank line along rivers and streams, in exchange for the owner's agreement to permit the land to be used by the state, its agents, consultants and contractors to facilitate the development, design and implementation of coastal conservation, restoration, protection or management plans and projects, including hurricane protection and flood control, to the extent deemed reasonably necessary by the secretary of DNR.

Present law provides that such agreements may also provide for a limited or perpetual alienation or transfer, in whole or in part, to such owner of subsurface mineral rights owned by the state relating to the emergent lands that emerge from waterbottoms.

Proposed law changes "emergent lands that emerge from waterbottoms" to "submerged lands."

Proposed law requires in exchange for such agreement the landowner must permit the land to be used by the state, its agents, consultants and contractors to facilitate the development, design and implementation of coastal conservation, restoration, protection or management plans and projects, including hurricane protection and flood control, to the extent deemed reasonably necessary by the secretary of DNR.

Proposed law provides that changes in the location of the shore line subsequent to agreements authorized under both the present law and proposed law will have no effect on the mineral rights established in the owner pursuant to such agreements.

Proposed law provides that the agreements authorized under both the present law and proposed law may encompass such lands within the coastal zone which the secretary of DNR determines are reasonably necessary to facilitate the development, design and implementation of coastal conservation, restoration, protection or management plans and projects, including hurricane protection and flood control, based upon the long term goals and objectives incorporated in the state's comprehensive coastal restoration, protection and conservation plans, as modified from time to time and shall not be limited to lands currently required for a particular project.

Proposed law deletes the definition of "emergent lands".

Proposed law provides that land acquired from any person by an "acquiring authority", as defined in R.S. 31:149, shall not be conveyed or transferred except to another acquiring authority or to the original transferor, his heirs, successors or assigns, and any act purporting to convey the land to a third party who is not an acquiring authority or the original transferor, his heirs, successors or assigns shall be null and void and without legal effect.

Proposed law provides that in the event land is acquired by a "qualified conservation organization", as defined in R.S. 31:149, and as further defined in the rules and regulations adopted in accordance with the APA by the DNR, the subsequent disqualification or decertification of the qualified conservation organization by the secretary pursuant to such rules and regulations shall have no effect on the mineral rights established in the owner pursuant to agreements authorized under present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 41:1702(D)(2)(a)(i) and (e) and (f); adds R.S. 31:149(I) and R.S. 41:1702(D)(2)(g) and (K))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill.

1. Added 500 acre minimum for donation.

2. Added requirement of concurrence by certain entities.
3. Added requirement of certain payment in lieu of taxes to political subdivisions.
4. Added language relative to agreements for facilitation of the development, design, and implementation of certain coastal conservation projects.
5. Deleted definition of "emergent lands"
6. Revised language relative to donations and the prescription of nonuse.