

LOUISIANA COASTAL LAW

LCL 99, APRIL 2019



BILLS PASSED IN THE 2018 FIRST EXTRAORDINARY, REGULAR, SECOND EXTRAORDINARY, AND THIRD EXTRAORDINARY SESSIONS OF THE LOUISIANA LEGISLATURE AFFECTING COASTAL RESOURCE USE AND CONSERVATION

BY LOUISIANA SEA GRANT INTERNS

All Acts are from the Regular Session unless otherwise indicated.

Fish, Fisheries, Oysters, and Aquaculture

ACT 40

SB 327

Senator Lambert

(Amends and reenacts R.S. 56:325(B)(4) and 325.1(C)(1) and (2)(a) and (c); enacts R.S. 56:325.1(A)(4)). First, the Act removes the sunset date of July 1, 2016, on the possession limit of largemouth bass and spotted bass taken south of U.S. Hwy 90. Second, the Act adds a possession limit for red drum and spotted sea trout taken south of U.S. Hwy 90. For all four fish species, the possession limits are three times the daily take limit when the fisherman holds a valid recreational fishing license and can show via dock receipt that the fisherman has either been on the water or at a remote camp two days or more. The Act also corrects wording for the penalties for violations in order to reference the new possession limit for red drum and spotted sea trout. The penalty for exceeding possession or minimum size limits (\$25 per fish) remains unchanged.

ACT 462

HB 706

Representative Zeringue

(Amends and reenacts R.S. 56:325.1(A)(3)). This Act works in conjunction with Act 40 and creates possession limits for certain filleted saltwater finfish. Fishermen with recreational licenses, who can prove they have been on the water or at a remote water-access camp for at least two days and launched south of Hwy. 90, are allowed to possess up to the possession limit for filleted red drum, spotted sea

trout, and southern flounder. The Act requires that sufficient amount of skin remains to identify the species of the fish and that the fish be sorted and marked by species in plastic bags or containers. The markings should include the date caught, species, and name/license number of the person who took the fish. The fish must meet certain size limits and be in possession of the individual who took them.

ACT 41

HB 4

Representative Bishop

(Amends and reenacts R.S. 56:10(B)(1)(g) and (16)(a) and 302.1(C)(1)(c); enacts R.S. 56:10(B)(16)(d) and 639.8(E)(4)). The Act extends the time period of annual payments into the Saltwater Fish and Research Conservation Fund from June 1, 2014-May 31, 2018 to June 1, 2014-May 31, 2022. The additions to the Act further provide that monies in the Fund may be used for the saltwater fish stock estimate and require Wildlife and Fisheries to make an annual report to the Senate Committee on Natural Resources and House Committee on Natural Resources and the Environment regarding the progress and effectiveness of LACREEL and the fish stock estimate. The modifications also provide that the Commission may increase the additional fee for a saltwater fishing license to an amount not to exceed \$9.50. Also, in addition to expenditures already authorized, the Department may use up to two million additional dollars for the administration and conducting of the saltwater fish stock estimate.

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ACT 68

HB 212

Representatives Jackson and Dwight

(Enacts R.S. 14:67.1 and 67.2). This Act creates a crime for the theft of livestock and timber, defines the circumstances under which the crime has been committed, outlines affirmative defenses, and provides for enforcement and penalties. "Livestock" is defined as "any animal except dogs and cats, bred, kept, maintained, raised, or used for profit, that is used in agriculture, aquaculture, agritourism, competition, recreation, or silviculture, or for other related purposes or used in the production of crops, animals, or plant or animal products for market." The Act specifically mentions as livestock 1) animals identified with aquaculture that are located in artificial reservoirs or enclosures that are privately owned and constructed to prevent the ingress and egress of fish life from public waters, and 2) crawfish from a commercial crawfish pond. A theft will have occurred when one of three scenarios is met: 1) the livestock or proceeds from the sale of the livestock are taken either without consent or by means of fraud, 2) the livestock is transported to a slaughterhouse or market with the intent of keeping the livestock, meat, or proceeds, or 3) the person fails or refuses to pay for livestock purchased within 30 days of purchase or the date the payment is due, whichever is longer. The Livestock Brand Commission is responsible for enforcement and collection of information in such cases. The penalty for committing a theft of livestock is a fine of up to five thousand dollars, imprisonment for up to ten years, or both.

ACT 159

SB 451

Senator Morrish

(Amends and reenacts R.S. 56:435.1). The Act repeals all provisions related to approved timing, licensing, and methods of oyster harvesting in Sabine Lake; oyster harvesting in the lake is now prohibited.

ACT 165

HB 425

Representative Zeringue

(Amends and reenacts R.S. 56:303(E)). The Act creates a charter boat fishing guide's license certification comparable to the commercial fisherman's license certification. When more than fifty percent of a person's income comes from charter fishing guide activities, he or she can have their license certified. LDWF shall maintain a list of certified charter fishing guides.

ACT 190

HB 118

Representative Billiot

(Amends and reenacts R.S. 56:700.2(A)(4) and 700.6). This Act extends the existence of the Fishermen's Gear Compensation Fund from June 30, 2018, to June 30, 2022. The Act also extends payments into the Underwater Obstruction Removal (UOR) Fund until June 30, 2022. The State Treasurer shall annually deposit \$250,000 into the UOR Fund and seek to match funds with any available state or federal funds.

ACT 338

HB 799

Representative Garafolo

(Amends and reenacts R.S. 56:332(N)(3)). This Act changes the wording of the rule requirements related to crab trap removal under the abandoned crab trap removal program. The rules must still, at a minimum, specify the beginning and ending dates for the prohibition on the use of crab traps, the geographical area within which the use of crab traps shall be prohibited, and who is authorized to remove the abandoned traps. Prior to this Act, the rules needed to specify the location where the removed abandoned traps are to be placed for disposal; now the rules must specify the disposition of the abandoned traps.

ACT 700

HB 812

Representative Leopold

(Amends and reenacts R.S. 56:578.2(A)(1) and (C)). This Act adds four new members to the Louisiana Seafood Promotion and Marketing Board: the Secretary of the Department of Wildlife and Fisheries or his representative, the Director of Louisiana Sea Grant or his representative, the Commissioner of Agriculture or his representative, and the President of the Louisiana Farm Bureau Federation or his representative. All will serve as ex officio nonvoting members of the Board.

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Waters, Waterways, Drainage

ACT 95

HB 442

Representative Thibaut

(Amends and reenacts R.S. 9:1110). This Act indicates the boundary between state and privately-owned land on the banks of the False River in Point Coupee Parish. The property boundary is set per the final map dated February 21, 2018, and filed with the Point Coupee Parish Clerk of Court.

ACT 163

HB 490

Senator White

(Enacts R.S. 56:1855(P)). This Act provides that there shall be no prohibition on channelization, clearing and snagging, channel realignment, reservoir construction, or dredging for drainage purposes in the Comite River from August 1, 2018, until August 1, 2021. Additionally, during this time period, the use of motorized vehicles and other wheeled or tracked vehicles on the Comite River is prohibited except when being used for permitted uses or for direct crossings by immediately-adjacent landowners, lessees, or persons with written permission from the landowner to access adjoining tracts of land for non-commercial activities that do not significantly and directly degrade the ecological integrity of the stream. If someone has written permission from the landowner for access, he must have that permission in his possession and it must include contact information for the landowner.

ACT 231

SB 104

Senator Allain

(Amends and reenacts R.S. 32:1252(27)). This Act narrows the definition of “marine product” for the purpose of a licensing exception for certain manufacturers. Prior to this Act, a “marine product” is a “new or used watercraft, boat, marine motor, [...] a boat or watercraft trailer [...], an outboard motor or a boat with an inboard/outboard motor attached to it” and did not include watercraft or boat powered only by occupant’s energy. This amendment adds that it also does not include “watercraft designed for use primarily for commercial or governmental purposes.”

ACT 318

HB 435

Representative Morris

(Amends and reenacts R.S. 34:851.27(A); enacts R.S. 38:2758). This Act allows water conservation boards with a jurisdiction that includes parishes with populations between 190,000 and 135,000 and one other adjacent parish with a population between 30,000 and 26,000 to regulate or

prohibit, after a public hearing, the operation of vessels on a lake located at the border of one of parishes within the Board’s jurisdiction when that body of water is above flood stage. Any such regulations will not apply to law enforcement, the National Guard, or relief organizations that are acting in exercise of their duty.

ACT 430

HB 411

Representative Schexnayder

(Amends and reenacts R.S. 56:1855(O)). This Act adds language allowing for clearing, snagging, and dredging operations for drainage purposes in the Tickfaw and Blind Rivers, in addition to the previously listed rivers, when conducted by or contracted for by a political subdivision, the state, or the federal government.

ACT 500

HB 47

Representative Bishop

(Amends and reenacts R.S. 30:961(E)). This Act extends the time for entering into new cooperative endeavor agreements for withdrawal of surface water to December 31, 2020 (originally scheduled to end December 31, 2018). The Act also extends the time for two-year renewals of existing agreements from December 31, 2020, to December 31, 2028. The Act further extends the time for withdrawing from such agreements to December 31, 2020 (originally December 31, 2018).

ACT 618

HB 130

Representative Schexnayder

(Amends and reenacts R.S. 56:109.1; enacts R.S. 56:109.4). This Act provides for the operation of airboats on the Maurepas Swamp Wildlife Management Area. The Act permits airboats meeting certain specifications, namely that they have a muffler or other device capable of muffling the sound of the exhaust of an engine and that the engine is no greater than three hundred fifty-one cubic inches in size. Approved airboats may only be used on airboat trails which will be established in the Wildlife Management Area. These trails will not be available for use between September 1st and the following January 31st. A person who violates the rules adopted for airboat trails three times within a ten-year period will be prohibited from operating an airboat on any wildlife management area.

ACT 628

HB 549

Representative White

(Amends and reenacts sections of R.S. 34:851.19 – 21, 32; enacts R.S. 34:851.2(13) and R.S. 56:10.2). This

Act broadens the legislative scheme in place to regulate registration of motorboats and sailboats to apply to houseboats, which are defined by the revisions as vessels constructed for the primary purpose of temporary or permanent dwelling without an effective means of propulsion for safe navigation. Funds collected by the state from houseboat registration fees is credited to the Bond Security and Redemption Fund or the Derelict Houseboat Fund, depending on how much has been collected. The Derelict Houseboat Fund, created by this Act, will be used to provide parish governments with funding “to remove any unattended, derelict, junked, or abandoned houseboat in any canal, coulee, drainage ditch, outfall canal, bayou, bay, lake, or any other waterway.”

ACT 698

HB 784

Representatives McFarland, Bishop, and Reynolds

(Amends and reenacts R.S. 34:851.20(A)(1), 851.32, and R.S. 56:10.1(C)). This Act adds an additional fee of \$9 to the registration fees for motorboats and sailboats, limited to applications or renewals between January 1, 2019, and December 31, 2023. This additional fee must be paid into the Aquatic Plant Control Fund.

Minerals, Oil & Gas

ACT 57

HB 104

Representatives Jim Morris and Bishop

(Amends and reenacts R.S. 30:544(A)(1)). This Act increases the maximum amount of the penalty for pipeline safety violations from ten thousand to two hundred thousand dollars for each day a violation persists and increases the cap from five hundred thousand to two million dollars for related series of violations.

ACT 60

HB 120

Representative Bishop

(Enacts R.S. 30:551(E)). The additions in this Act allow the Commissioner of Conservation to certify to the United States Department of Transportation that the state Office of Conservation has regulatory jurisdiction over intrastate underground gas storage facility safety and practices, unless otherwise regulated by FERC, including transportation and storage at those facilities. The Commissioner may also enter into an agency relationship with the United States Department of Transportation to enforce compliance at interstate facilities.

ACT 84

HB 331

Representatives Jim Morris and Bishop

(Amends and reenacts R.S. 30:87(A)). Act adds language making the Oilfield Site Restoration Fee payable upon the “initial disposition of each barrel of oil and condensate.” This new language clarifies when such fees are payable, which was not initially apparent in the legislation.

ACT 105

HB 814

Representative Jim Morris

(Amends and reenacts R.S. 30:83(F)(6), 86(C) and (F); enacts R.S. 30:86(D)(8)). This Act provides that, in addition to providing general administration and management of the Oilfield Site Restoration Fund and site-specific trust accounts, the Oilfield Site Restoration Commission may also provide management and administration for funds collected from financial security instruments that were tied to plugged wells or that are not otherwise tied to a specific well.

ACT 106

HB 860

Representative Pugh

(Amends and reenacts R.S. 30:4(Q)). The Act authorizes the Office of Conservation’s Commissioner to develop a program to expedite review of permits (the expedition of processing the permits was previously allowed). The Act also sets the minimum administrative fee for expedited permit review at five hundred dollars.

ACT 191

HB 119

Representative Bishop

(Amends and reenacts R.S. 30:4(C)(16)(c)). This Act prohibits the Commissioner of Conservation from regulating the hours of operation or receiving of offsite treatment, storage, and disposal facilities for waste material.

ACT 245

SB 456

Senator Johns

(Repeals R.S. 9:4861(4)(b)(iii)). The Act removes the provision that excluded transportation, handling, processing, treating, or otherwise dealing with saltwater or another waste substance associated with the production of hydrocarbons when being transported away from the well site for disposal from the definition of “operations” under the Louisiana Oil Well Lien Act.

Boards, Departments, Commissions, and Other Agency Matters

ACT 8

HB 313

Representative Anders

(Amends and reenacts R.S. 3:3403(J)). This Act provides for frequency of the Louisiana Agricultural Commodities Commission meetings. The Act states that the Commission shall meet three times per year (previously four), but may also meet more frequently if called for by the Chairman.

ACT 25

SB 82

Senator Walsworth

(Enacts R.S. 49:191(10)(c) and repeals R.S. 49:191(8)(l)). This sunset law provides for the recreation of the Department of Environmental Quality and its continued existence until July 1, 2023, and the enacted section states that “the Department of Environmental Quality and all statutory entities are made a part of the department by law.”

ACT 149

SB 170

Senator Thompson

(Amends and reenacts the introductory paragraph of R.S. 3:1382(A); enacts R.S. 3:1382(A)(8) and (9)). This Act increases the number of members of the Louisiana Agricultural Chemistry and Seed Commission from seven to nine. The two additional members of the committee must be actively engaged in farming, with one appointed by the chairman of the House Agriculture, Forestry, Aquaculture, and Rural Development Committee and one appointed by the chairman of the Senate Agriculture, Forestry, Aquaculture, and Rural Development Committee.

ACT 157

SB 439

Senator Chabert

(Enacts R.S. 49:214.5.2(K)). This Act requires that the Coastal Protection and Restoration Authority Board broadcast live streams of all board meetings where there is a scheduled vote. All broadcast meetings must be archived and stored for six years, but this recording is not intended to be the official record of the meeting. If the necessary equipment is unavailable for the only meeting room available, or a technical problem beyond the control of the Board presents itself, it will not be considered a violation of this requirement. However, if a circumstance arises that prevents broadcast, a vote shall not occur.

ACT 239

SB 279

Senator Morrish

(Enacts Part IV of Chapter 3 of Title 34 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 34:481 through 490). This Act creates the Calcasieu-Cameron Navigation District, a “navigation and river improvement and maintenance district” for the Calcasieu River. The Act provides for the structure of the District, including establishing a territory for the District (the parishes of Calcasieu and Cameron, excluding any facility that compensates another navigation district for dredging), establishing the domicile of the District (Calcasieu Parish), and establishing rules and regulations governing the District, including selection of the Commission and Board, responsibilities of the Board, funding, and projects. The District will serve as agent for the State for the Calcasieu River and Pass Project.

ACT 244

SB 432

Senator Chabert

(Amends and reenacts R.S. 49:214.5.3(A)(1)). This Act requires the Coastal Protection and Restoration Authority Board to develop a master plan for coastal protection every six years at minimum, extended from every five years.

ACT 316

HB 433

Representative Shadoin

(Enacts R.S. 38:3087.138 and 3097.8(D)). This Act provides that reports regarding groundwater resources must be generated annually by the Sparta Groundwater Conservation District and articulates what must go into these reports. The reports must include: the amount of water used for public supply, industrial, or agricultural purposes; actual and projected saltwater intrusion or encroachment; and any current or projected sale of water for use outside of the state. It also provides that the Sparta Groundwater Conservation District is exempt from normal requirements for semiannual reports regarding groundwater quality and saltwater intrusion.

ACT 323

HB 516

Representative Guinn

(Amends and reenacts R.S. 33:3819(H)). This Act removes references to the “Jefferson Davis Parish Water District #4” and replaces with more generic terms. It authorizes the treasurers of “a waterworks district located in Jefferson Parish” to pay commissioners a \$150 maximum per diem for attending meetings for the board (increase from \$100). Any increase in this per diem amount must be

approved by a two-thirds vote of the members of the parish governing authority after a public hearing advertised in the official journal of the waterworks district on at least two separate occasions in the fifteen days prior to the meeting where a vote will be taken.

ACT 340

HB 802

Representative Hill

(Amends and reenacts R.S. 38:1794(A)(2)(a)). The Act provides for an increase in compensation for members of the Board of Commissioners for gravity drainage districts in Calcasieu Parish. Members will receive up to \$150, instead of \$100, for every day actually employed in the service of the district. The Act also provides that commissioners may be reimbursed for expenses incurred in carrying out duties of the Commission.

ACT 366

SB 227

Senator Morrell, Representative Bagneris, et al.

(Amends and reenacts R.S. 33:4071(A)(1), (2)(a), (4), and (5), 4074, and the introductory paragraph of 4091(C); enacts R.S. 33:4091(C)(8), (D), and (E)). This act modifies the membership of the New Orleans Sewerage and Water Board by adding the Chair of the Public Works, Sanitation, and Environment Committee of the New Orleans City Council, or a member of the Committee appointed by the Chair or a Civil Engineer appointed by the Chair, as a member. The Act also reduces the number of citizens appointed to the Board by the mayor from eight to seven. One of the appointees must also be a retired civil engineer. The Act also requires that the Board's quarterly reports include certain information and establishes procedures following non-compliance. Finally, the Act requires an email report be sent to the Orleans Parish Legislative Delegation and members of the Orleans Parish governing authority detailing the pumping power, electrical power, and available manpower of each of its facilities no later than twenty-four hours prior to a hurricane entering the Gulf of Mexico and no later than forty-eight hours after a flood watch, flood warning, thunderstorm watch, or thunderstorm warning is issued for any area of Orleans Parish.

ACT 408

SB 168

Senator Thompson

(Enacts R.S. 44:3.5). This Act creates three exemptions from disclosing public records for the Department of Agriculture and Forestry. The Act provides that such records need not be disclosed if they are: held by forestry officers and livestock inspectors pertaining to pending or reasonably anticipated criminal litigation until the matter is adjudicated

or settled; pertaining to the Medical Marijuana Program if they contain internal procedures, security procedures, transportation plans, and the proprietary information of a licensee; or Emergency Preparedness information specifically pertaining to the location of emergency fuel and the identity of pets and pet owners in a declared emergency.

ACT 421

SB 539

Senators Lambert and Erdy

(Amends and reenacts R.S. 38:3304(A); enacts R.S. 38:3304(C)). The Act requires the Amite River Basin Drainage and Water Conservation District to hold Board meetings adhering to Open Meetings Law and following Robert's Rules of Order. The Board is required to designate the time and place for holding regular sessions. All meetings must be in a public space within a public building and be open to the public. The location of these meetings will be rotated between public buildings located in East Baton Rouge, Ascension, and Livingston parishes. These sessions may be convened by the call of the president or two commissioners but must be at least quarterly.

ACT 437

HB 614

Representative Hodges and Senator Barrow

(Amends and reenacts R.S. 38:90.2(A); enacts R.S. 38:90.2(B)(6)). The amendments add the Department of Environmental Quality to the list of members comprising the Floodplain Evaluation and Management Commission, which is made up of state agencies and representatives from other public bodies.

ACT 448

HB 116

Representative Zeringue

(Amends and reenacts R.S. 49:214.6.2(A); enacts R.S. 49:191(11)(a)). The Act authorizes the Coastal Protection and Restoration Authority to create rules, regulations and guidelines for the implementation of their existing contracting authority. The Act further provides that the Coastal Protection and Restoration Authority and its Board shall be reviewed and re-created every six years to coincide with the review and adoption of its comprehensive master plan for integrated coastal restoration.

ACT 454

HB 189

Representative Wright

(Amends and reenacts R.S. 49:953(C), 968(K), and 968(L)). The Act adds that every agency with an operating budget in excess of five million dollars must include on

its website a description of the procedure for submitting petitions for review. The Act provides that such agencies must also conduct periodic hearings to receive public comment on proposed rules. Finally, thirty days before the beginning of the regular session, each agency must submit a report with a statement of the action taken by the agency with respect to each proposed rule during the previous year and must include in this report a recitation of each position and submission received in connection with the proposals (prior to this act, only agencies that had proposed the change to a rule needed to report).

ACT 474

SB 524

Senator Long

(Amends and reenacts R.S. 38:3097.4(D)(7); enacts R.S. 38:2325(A)(16)(e), 3097.4(D)(8)). This Act requires the Sabine River Authority to have written approval of the Water Resources Commission for contracts and other agreements that provide for the sale, utilization, consumption, or distribution outside the state of water that is under the Authority's jurisdiction or control. The Act also gives the Water Resources Commission the authority to issue the required written concurrence.

ACT 509

HB 688

Representative Lyons

(Amends and reenacts Chapter 20 of Subtitle II of Title 30 of the Louisiana Revised States of 1950; repeals R.S. 30:2521-2530, 2537-2543, 2546(D) and R.S. 36:239(B) (6)). Provides relative to the powers, duties, functions, and responsibilities of the Department of Wildlife and Fisheries relative to environmental education and litter reduction. The Act changes the title of Chapter 20 to the "Louisiana Environmental Education and Litter Reduction Act." The Act redefines "Commission" in the context of the Act to mean the Louisiana Environmental Education Commission, "Department" to mean the Department of Wildlife and Fisheries, and "Section" to mean the Environmental Education and Litter Reduction Section within the Department of Wildlife and Fisheries. The Act creates the Environmental Education and Litter Reduction Section within the Department of Wildlife and Fisheries, which is responsible for assisting the Commission and performing responsibilities relative to education and litter control as provided under the law. The Act provides for the various duties under the law. Under Chapter 21, the law establishes penalties for violations of litter laws and provides for the distribution of funds collected for violations. The Act also establishes how funds in the "litter abatement and education account" shall be used.

ACT 625

HB 403

Representatives Carter, Anders, et al.

(Amends and reenacts various sections of R.S. 38:3074; enacts R.S. 38:3074(A)(9)). The Act increases by one, up to seventeen, the number of people on the Capital Area Groundwater Conservation District Board of Commissioners. Additionally, the revisions add specific (and lengthy) restrictions on who can fill the seventeen positions.

Coastal Zone and Coastal Restoration

ACT 47

HB 49

Representative Gisclair

(Amends and reenacts R.S. 49:214.41(A)(1) and (C)). The Act expands the definition of "compensatory mitigation," originally defined as the "replacement, substitution, enhancement, or protection of ecological values to offset anticipated losses of those values caused by a permitted activity," to include "the construction or implementation of an integrated coastal protection project consistent with the state's master plan for coastal protection and restoration within the same watershed as the permitted activity."

ACT 286

HB 797

Representatives Zeringue and Morris

(Amends and reenacts R.S. 49:214.41(B)). Under R.S. 49:214.41, the secretary of the Department of Natural Resources must adopt regulations to require mitigation of coastal wetlands losses. This Act adds that the regulations require consultation with the Coastal Protection and Restoration Authority to determine the ecological values impacted and ways to avoid or minimize these impacts.

ACT 393

HB 573

Representative Zeringue

(Enacts R.S. 38:2320.1). Allows political subdivisions to use the outcome-based performance contract alternative for integrated coastal protection projects, as consistent with certain other provisions of the law or the Comprehensive Master Plan for a Sustainable Coast. Outcome-based performance contract is defined as a "delivery method by which the owner contracts with an entity for results-based, specific agreed-upon outcomes, goals, or outputs, with payment provide by an owner upon successful completion of the pre-agreed result, outcome, goal, output, or result." The

Act establishes reasons to use outcome-based performance contracting, disallows use of this method if the project is estimated to cost more than \$25,000,000 or take more than seven years, provides for definitions relative to the execution of this provision, and outlines the procedure and mechanics of this process.

ACT 570

SB 427

Senator Chabert

(Amends and reenacts R.S. 36:4(Z); 41:1706(A), 1709(A); enacts R.S. 49:214.8.1 – 214.8.17; repeals R.S. 30:2000.1 – 2000.12 and R.S. 36:359(J)). Transfers the responsibilities of the Atchafalaya Basin Research and Promotion Board and the Atchafalaya Basin Program from the Department of Natural Resources to the Coastal Protection and Restoration Authority.

Agriculture

ACT 172

HB 624

Representative Schexnayder

(Amends and reenacts R.S. 3:4603(E) - (J), 4633(B); enacts R.S. 3:4602(22), 4603(K), (L)). The Act defines certain oyster measurements to be enforced by the Commission of Weights and Measures. The Act defines “basket” as a one and one-half bushel, circular container that may be used for measuring oysters for sale or purchase. The Act further provides that a mini-sack contains one-half of a bushel, a sack shall contain one and one-half bushels, and a barrel contains three bushels. The Act also makes several modifications to the selection and dismissal of members to the to the Commission of Weights and Measures. Members must be removed is they are no longer a resident of the state, if they are no longer active in their original organization under which they were appointed, or the member is absent for three consecutive meetings without valid excuse.

Ports, Harbors, and Terminals

ACT 173

HB 648

Representative Leger

(Enacts R.S. 38:2320.1). The Act authorizes all port commissions and port, harbor, and terminal districts to purchase specialized cranes and replacement parts through methods of procurement. This Act also establishes

requirements for requests for qualifications and requests for proposals necessary to make these purchases. The Commission or District may pre-qualify bidders, otherwise it will negotiate the price, conditions, and terms of contracts before awarding the contract to the most advantageous proposal.

ACT 175

HB 665

Representative Gregory Miller

(Enacts R.S. 44:22.1). Provides an exemption from required public records disclosure for certain documents related to port economic development negotiations if the person involved in the negotiations requests confidentiality in writing and the port can demonstrate that disclosure would be harmful. The Act also outlines the procedures for and the effects of a confidentiality determination. The Act provides that this exemption does not apply to permit applications, license applications, and negotiations regarding hazardous waste and waste sites.

ACT 587

HB 804

Representative Thibaut

(Amends and reenacts R.S. 34:340.11). The Act provides for leasing or subleasing of land or buildings owned by ports, harbors, or terminal districts for processing, manufacturing, or commercial business purposes. The lease, or sublease, may run for a term up to forty years at a fixed rate, after which the lease or sublease may be extended for a term no longer than ninety-nine years, provided the lease contains a clause for readjustment of the rentals upon expiration of the first term.

Disasters and Flooding

ACT 384

SB 372

Senator Cortez, Representative Brass, et al.

(Amends and reenacts the introductory paragraph of R.S. 38:90.4(A)(1) and 90.9; enacts R.S. 38:90.1(12), (13), and 90.4.1). This Act provides for the Rural Grant Opportunity Program within the Statewide Flood Control Program. The Act defines this program as a mechanism for a rural grant opportunity authority located in a rural area that lacks the financial ability to satisfy the local match requirements to participate in the Statewide Flood Control Program. The Act defines a “rural grant opportunity authority” as a municipality with a population of less than 5,000 or a parish with a population of less than 50,000 people in a rural area.

The Act also outlines the requirements for applying for funds under to Rural Grant Opportunity Program and eligibility requirements. Pre-applications are now allowed to be submitted at any time; to be considered for funding the next program approval, it must be submitted by May first of each year.

ACT 544

HB 316

Representative Carter

(Amends and reenacts R.S. 39:94(A) - (C), 73(D)). The Act provides for use of the Budget Stabilization Fund to offset state costs incurred from federally declared disasters. Once a disaster in the state is declared a disaster by the federal government, the Revenue Estimating Conference shall incorporate a specified amount of the Fund into the forecast for the year in which the costs are incurred pursuant to a concurrent resolution.

ACT 713

HB 645

Representative Zeringue

(Amends and reenacts R.S. 29:725 – 727, 735; enacts R.S. 9:2793.10; repeals R.S. 29:725.6(B)(6)(a)(ii)(ff)). This Act provides that the Director of the Governor’s Office of Homeland Security and Emergency Preparedness shall coordinate public-private sector relationships to meet the needs of an emergency or disaster. An additional member is added to the first responders subcommittee of the State Unified Command Group; this member shall be a representative of a credentialed private nonprofit disaster volunteer group. Additionally, the Act creates a long-term recovery subcommittee with several appointees listed. The Act also creates the Statewide Cemetery Response Task Force to address needs of cemeteries during any emergency. The task force is comprised of six members and will have several duties, including determining whether response and recovery efforts are necessary and which response method best fits the needs. They will also coordinate with federal, parish, and local government agencies on cemetery response and recovery.



ST. BERNARD PARISH V. UNITED STATES¹ LIABILITY BASIS ON MRGO FLOODING AND GOVERNMENTAL INACTION: COURT SAYS NO GO

**BY: MORGAN ROGERS
BACKGROUND AND LATEST RULING**

On August 3, 2009, St. Bernard Parish and private property owners in St. Bernard Parish and the lower Ninth Ward of New Orleans filed a suit arguing that the United States Army Corps of Engineers constructed, operated, and maintained a seventy-six mile long navigational channel known as the Mississippi River - Gulf Outlet, or “MRGO,” that caused severe flooding to their property in 2005 and intermittent reoccurring flooding thereafter, for which the Fifth Amendment of the United States Constitution requires just compensation.² Under the Fifth Amendment of the United States Constitution, private property shall not be taken for public use without just compensation.³

Various courts over the course of nine years (2009-2018) have ruled on a plethora of motions, dismissals, and settlement conferences.⁴ Finally, on April 20th, 2018, the United States Court of Appeals for the Federal Circuit examined the plaintiffs’ claim that the government was liable for flood damage to their properties caused by Hurricane Katrina and other hurricanes.⁵ The plaintiffs’ theory was that the government incurred liability because of government inaction, including the failure to properly maintain or to modify the Mississippi River-Gulf Outlet channel, and government action.⁶

The court specifically examined whether the increased flooding from the MRGO constituted a temporary taking under the Fifth Amendment of the United States Constitution.⁷ A temporary taking claim requires the plaintiffs establish that the government’s action caused the injury, or damage, to their properties and that the invasion was the “direct, natural, or probable result of an authorized activity.”⁸

The court reasoned that while the theory that the government failed to maintain or modify a government-constructed project may assert a tort claim, it does not assert a takings claim.⁹ The government cannot be liable for failure to act, but only for affirmative acts by the government.¹⁰ The plaintiffs’ pointed to no case where the government incurred takings liability based on inaction.¹¹ The failure of the government to properly maintain the MRGO channel or to modify the channel cannot be the basis of takings liability.¹² Furthermore, the plaintiffs failed to present evidence comparing the flood damage that actually occurred to the flood damage that would have occurred if there had been no government action at all.¹³

Under the correct legal standard, the plaintiffs failed to establish that government action, including both the construction of MRGO and the levees, caused their injury.¹⁴ By their own admission, they failed to consider the impact of the risk-reducing Lake Pontchartrain and Vicinity Hurricane Protection Project.¹⁵ Because plaintiffs' failed to show that government action, including both MRGO and the Lake Pontchartrain and Vicinity Hurricane Protection Project, caused their injury, the government was not liable for a taking under the Fifth Amendment based on the construction or operation of MRGO.¹⁶

Petition for certiorari

In response to the appellate court decision, the plaintiffs' filed for a *writ of certiorari* to the United State Supreme Court.¹⁷ Parties who are not satisfied with a lower court's decision can petition the United States Supreme court to review the case by filing a *writ of certiorari*.¹⁸ This petition is considered a request and the Court is not usually under an obligation to hear or review the case.¹⁹

The plaintiffs' petition to the Supreme Court emphasized that the MRGO and the Lake Pontchartrain and Vicinity Hurricane Protection Project were independent of each other and had separate purposes.²⁰ MRGO was primarily used for ease of navigation whereas Lake Pontchartrain and Vicinity Hurricane Protection Project was used for flood control.²¹ The plaintiffs argued that the MRGO is what caused the flooding, not the Lake Pontchartrain and Vicinity Hurricane Protection Project.²² Furthermore, they contend that after it became clear that MRGO would increase the flooding risk in the area, the Army Corps of Engineers did not modify the Lake Pontchartrain and Vicinity Hurricane Protection Project to prevent the risk.²³ This decision allowed MRGO to continue to erode and should not be considered non-compensable government inaction.²⁴

Additionally, the petition emphasized that the Federal Circuit violated *Arkansas Game and Fish Comm'n v. United States* by apply two categorical exemptions from the Takings Clause.²⁵ *Arkansas Game* held that "[f]looding cases, like other takings cases, should be assessed with reference to the particular circumstances of each case, and not by resorting to blanket exclusionary rules."²⁶ The petition also claimed that the Federal Circuit violated the fairness principle in *Armstrong v. United States*. *Armstrong* expressed that the Government should not "forc[e] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."²⁷

On January 7, 2019, the Supreme Court of the United States denied the petition for *writ of certiorari*.²⁸

What does this mean?

By denying the writ, or refusing to review the case, the lower court's decision stands. The United States Court of

Appeals for the Federal Circuit ruled that the plaintiffs failed to show that government action, including both MRGO and the Lake Pontchartrain and Vicinity Hurricane Protection Project, caused their damage, and the government is not liable for a taking under the Fifth Amendment based on the construction or operation of MRGO.²⁹ Thus, for future cases, while alleging that the government failed to maintain or modify a government-constructed project may state a tort claim, it does not state a takings claim. This means that the government will generally not be liable for its failure to act or inaction, with respect to a governmental-constructed project. Nevertheless, the Government may still be liable for such inaction under tort law.

¹ *St. Bernard Parish v. United States*, 88 Fed. Cl 528, 530 (2009).

² *St. Bernard Parish v. United States*, 88 Fed. Cl 528, 530 (2009).

³ U.S. CONST. amend. V.

⁴ *See St. Bernard Parish v. United States*, 88 Fed. Cl 528, 2009); *St. Bernard Parish v. United States*, 99 Fed. Cl. 765, 768 (2011); *St. Bernard Parish v. United States*, No. 05-1119 L, 2015 U.S. Claims LEXIS 525, at 1 (U.S. Fed. Cl. April 28, 2015); *St. Bernard Parish v. United States*, 121 Fed. Cl. 687, 690 (2015); *St. Bernard Parish v. United States*, 126 Fed. Cl. 707, 710 (2016); *St. Bernard Parish v. United States*, 134 Fed. Cl. 730, 732 (2017); *St. Bernard Parish v. United States*, 887 F.3d 1354 (2018).

⁵ *St. Bernard Parish v. United States*, 887 F.3d 1354 (2018).

⁶ *Id.* at 1357.

⁷ *Id.* at 1359-1360.

⁸ *Id.* at 1360.

⁹ *Id.*

¹⁰ *St. Bernard Parish v. United States*, 887 F.3d 1354, 1360 (2018).

¹¹ *Id.* at 1361.

¹² *Id.*

¹³ *Id.* at 1363

¹⁴ *St. Bernard Parish v. United States*, 887 F.3d 1354, 1367 (2018).

¹⁵ *Id.* at 1368

¹⁶ *Id.*

¹⁷ *St. Bernard Parish, et al., Petitioners vs. United States* (1st Cir.R. 2018), *cert filed*, (U.S. Sept. 19, 2018) (18-359).

¹⁸ United States Courts, Supreme Court Procedures, <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-1> (last visited Jan. 22, 2019).

¹⁹ *Id.*

²⁰ *St. Bernard Parish, et al., Petitioners vs. United States* (1st Cir.R. 2018), *cert filed*, (U.S. Sept. 19, 2018) (18-359).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Petition for Writ of Certiorari at 1, St. Bernard Parish Government, et al., v. United States (No. 18-359).

²⁶ *Id.*

²⁷ *Id.* at 2

²⁸ St. Bernard Parish, et al., Petitioners vs. United States (1st Cir.R. 2018), *cert denied*, (U.S. Jan. 7, 2019) (18-359).

²⁹ St. Bernard Parish vs. United States, 887 F.3d 1354, 1368 (2018).



ANNOUNCEMENTS

The Center for Natural Resource Economics and Policy will be hosting its 6th National Forum in New Orleans May 19-21, 2019. The CNREP forum is the longest running U.S. conference dedicated primarily to the role of economic and social science research in coastal systems.

For more information on the forum, please visit <http://www.cnrep.lsu.edu>.



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