

# LOUISIANA COASTAL LAW

LCL 90, NOVEMBER 2008



## Bills Passed in the 2008 Regular Legislative Session and the 2008 1st and 2nd Extraordinary Sessions of the Louisiana Legislature Affecting Coastal Resource Use and Conservation

*By Jessica Orgeron and Cole Garrett*

### Environmental Quality

#### **Act No. 56**

SB 326

Senator Hebert

(Amends and reenacts R.S. 30:2074(B)(3)(e), R.S. 36:231(B) and 258(B), and R.S. 40.4(A)(6), 31.31(1) and 31.32(C), and enacts R.S. 30:2074(B)(3)(f) and (11)). Gives the secretary of the Department of Environmental Quality the authority to promulgate regulations regarding transportation and disposal in permitted landfills in accordance with the Federal Water Pollution Act or state standards. Gives the secretary the authority to promulgate regulations requiring the training and certification of generators when such use or disposal is by land application, surface disposal, or incineration. Also gives the secretary authority to license transporters of sewage sludge and biosolids. The Department of Health and Hospitals is prohibited from issuing rules and regulations regarding the licensing of persons engaged in the business of hauling the contents of septic tanks or similar facilities.

#### **Act No. 81**

HB 528

Representative Lambert

(Amends and reenacts R.S. 30:2366(C) and (D)). Provides under the Hazardous Materials Information Act for the one-call notification system for releases.

The Department of Environmental Quality must adjust its requirements for the prompt reporting of a release that does not cause an emergency condition but is in excess of the applicable reportable quantity. Proper notification of such a release under the one-call system will satisfy the prompt reporting requirement.

#### **Act No. 119**

SB 321

Senator Hebert

(Amends and reenacts R.S. 49:316.1(A)(2)(a) and (c)). The Department of Environmental Quality is now authorized to accept credit cards for payment of obligations to the state and to collect an additional convenience fee for the use of a third-party processor for credit card transactions.

#### **Act No. 186**

SB 197

Senator Hebert

(Amends and reenacts R.S. 30:2183(G)(1)). Provides for a prescriptive period, as found in the Louisiana Code of

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Criminal Procedure article 572, for the prosecution of willful or knowing violations of the Hazardous Waste Control Law. The prescriptive period begins to run from the date of discovery of disposal of the hazardous waste.

**ACT No. 241**

SB 754

Senator Hebert

(Enacts R.S. 30:4(K) and 4.1(K), and R.S. 38:3097.3(E)). Provides that the commissioner of conservation may not authorize any permit for the use or withdrawal of three million gallons or more of ground water per day from the Chicot aquifer that will be injected into the subsurface in a parish that has a population of more than 70,000 and less than 75,000.

**Act No. 547**

SB 384

Senator Hebert

(Amends and reenacts R.S. 30:2054(B)(2)(b)(ix)). Allows for the secretary of the Department of Environmental Quality to adopt, promulgate, and enforce standards, limitations, and other regulations for certain persons who discharge toxic air pollutants into the atmosphere of Louisiana.

**Ports, Harbors, and Water**

**ACT No. 35**

HB 697

Representative St. Germain and Senator Dupre

(Amends and reenacts R.S. 34:851.2(3) and 851.19). Changes the definition of a “motorboat” to include vessels that would otherwise be exempt because they have licenses from the U.S. Bureau of Customs, when those licensed vessels are recreational or commercial use vessels. In addition, motorboats must now be numbered according to both state *and* applicable federal law.

**Act No. 42**

SB 48

Senator McPherson

(Enacts 56:1847(63)). Designates Drake’s Creek in Vernon Parish as a natural and scenic river.

**Wildlife and Fisheries**

**Act No. 16**

HB 343

Representatives Perry and St. Germain and Senator Dupre

(Amends and reenacts R.S. 56:499.4). Changes the boundaries for areas where night shrimping is allowed in the waters of Southwest Pass at Marsh Island.

**Act No. 23**

HB 701

Representative St. Germain and Senator Dupre

(Amends and reenacts parts of R.S. 56:8 and repeals 56:327(A)(1)(a)-(c)). Modifies current recreational and commercial fishing law and creates laws regarding aquaculture. The definition of “income” for the purpose of determining who is a “commercial fisherman” is refined to exclude prizes or awards from fishing tournaments. The act also modifies the definition of “domesticated fish” to mean “any fish approved by the department through promulgation under the Administrative Procedure Act of a list of approved aquatic organisms.” Definitions are also given for the terms “freshwater game fish,” “saltwater game fish,” and “recreational purpose.” Skin divers fishing for recreational purposes may not take game fish as defined in R.S. 56:8 except red drum with a bow and arrow or standard spearing equipment.

Additionally, the legislature recognizes that “production of aquatic organisms in private facilities in Louisiana significantly contributes to the vitality of Louisiana’s economy” and that “the introduction of nonnative aquatic organisms for the purpose of aquaculture may pose a real threat.” Aquaculture and related terms are defined, and a “domesticated aquatic organism license” is required for all those desiring to engage in aquaculture. The license is valid for one year, costs

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fifteen dollars for residents, and is renewable. The license allows for transportation of the organisms and certain exceptions to regular limits and prohibitions on sale.

**Act No. 24**

HB 702

Representatives St. Germain and Dove and Senator Dupre

(Amends and reenacts R.S. 56:322.1(A), (H) and 3.22(B), (D); repeals R.S. 56:322.1(D)). Properly licensed fishermen may take shad and other freshwater commercial fish of legal size with a shad seine. Shad gill nets shall only be used to take shad and shipjack; however a fisherman may keep other commercial fish up to a maximum of twenty-five fish. Shad and shipjack may be taken in Pat's Bay in Iberville Parish from November 1, 2008, through June 31, 2010, during open season.

**Act No. 27**

HB 1025

Representative St. Germain

(Amends and reenacts R.S. 56:104(A)(2), (4), (7) and 203.1(b)(1), (C)(2)(a); enacts R.S. 56:104(E); and repeals R.S. 56:104(A)(6)). A nonresident who was born in Louisiana and possesses a valid Louisiana birth certificate may purchase a temporary hunting license for five consecutive days for the cost of a resident hunting license. Slightly alters current laws for temporary hunting and fishing licenses for other nonresidents to provide for small game, deer and turkey licenses; increases price of saltwater fishing license to seventeen dollars.

**Act No. 36**

HB 698

Representative St. Germain and Senator Dupre

(Amends and reenacts R.S. 56:143(A)). Modifies "hunter orange" law to require hunter orange for those hunting *any* wildlife during open deer season— not just deer.

**Act No. 37**

SB 13

Senator Dupre

(Amends and reenacts R.S. 56:302.3(B)(2)(a)). Increases the allowable number of "hoop nets" per individual from three to five (provided that a twenty dollar fee is paid for the gear license).

**Act No. 38**

SB 22

Senator Dupre and Representative St. Germain

(Amends and reenacts R.S. 56:325.4(D)(1)). Provides for a commission to monitor and evaluate the condition of black drum, sheepshead, and flounder in Louisiana and to submit biennial reports.

**Act No. 45**

SB 67

Senators Dupre and Walsworth and Representatives St. Germain and Dove

(Enacts R.S. 49:191(4)(a) and repeals R.S. 49:191(2)(a)). States that the Department of Wildlife and Fisheries and entities within it shall be terminated (along with its legislative authority) unless it is legislatively recreated before July 1, 2012.

**Act No. 51**

SB 130

Senator Duplessis

(Amends and reenacts R.S. 56:103(C)(2), 103.1(B)(2), 104(A)(3) and (4), 104(B)(4), 104.1(A), 116(B) and (C), 302.1(G), 643(B)(2)(a), 646, 649.1(A), 699.8(B) and (D)). Alters Wildlife and Fisheries law to change the word "muzzleloaders" to "primitive firearms" and to add law allowing the Wildlife and Fisheries Commission to establish special deer hunting seasons for crossbow and primitive firearms.

**Act No. 58**

SB 352

Senator Gautreaux and Representative Perry

Authorizes the sale of certain state lands in Vermillion Parish by the secretary of the Department of Wildlife and Fisheries to the Vermillion Parish School Board.

**Act No. 65**

SB 731

Senators Dupre, Thompson, and Walsworth

Provides for the transfer of certain state lands in East Baton Rouge Parish from the Board of Supervisors of Louisiana State University to the Department of Wildlife and Fisheries.

**ACT No. 226**

SB 305

Senator Dupre

(Amends and reenacts R.S. 56:30.3). Changes Department of Wildlife and Fisheries law regarding leases to provide that if the secretary determines a public need exists to “maintain the current lessee” of state lands, the secretary may offer the current lessee, if the current lessee made a bid, the option to match the highest bid to lease the state lands. This change is not applicable to oyster leases, oil and gas leases, alligator leases, or any lease entered into by the State Mineral Board.

**Act No. 235**

SB 271

Senator Dupre

(Amends and reenacts R.S. 56:101(C)). Eliminates a provision prohibiting monies from the Aquatic Plant Control Fund to be used for salaries and benefits for the Department of Wildlife and Fisheries. Also, the funds provided pursuant to this section shall be in addition to other amounts appropriated by the legislature.

**Act No. 280**

HB 488

Representative Gisclair and Senator Dupre

(Enacts R.S. 56:579.1(C)(4)). No permit for an offshore mariculture project shall be issued unless the applicant demonstrates that the project has been reviewed or developed by marine biologists from Louisiana State University, the marine fisheries division of the Department of Wildlife and Fisheries, or the Louisiana Universities Marine Consortium for Research and Education. No reviewer may have legal or commercial ties with or be involved in a grant from anyone applying for the permit.

**Act No. 320**

HB 1138

Representatives Gisclair and Baldone and Senator Dupre

(Amends and reenacts R.S. 56:495.1(A)(1)(b), (c)). Trawl vessels may now have two trawls with trawl doors no larger than eight feet (changed from six feet) in length and forty-three inches (changed from thirty-four inches) in height and two trawls with no more than two

outer trawl doors no larger than eight feet in length and forty-three inches (changed from forty inches) in height.

**Act No. 321**

HB 1142

Representatives St. Germain, Billiot, and Henderson and Senator Dupre

(Enacts R.S. 56:422(E)). Authorizes the Wildlife and Fisheries Commission to promulgate rules and regulations allowing for the operation of oyster cargo vessels. Persons owning an oyster cargo vessel must purchase an oyster cargo vessel permit.

The permit is two hundred fifty dollars per year for residents and one thousand one hundred five dollars for nonresidents. Funds received from permits will be used for the enforcement of oyster laws, rules, and regulations.

**Act No. 334**

HB 1376 (Substitute for HB 501)

Representative Mills and Senator Hebert

(Amends and reenacts R.S. 3556.1). States that the promotion and marketing of farm-raised or wild-caught Louisiana crawfish is of great public interest. The Commissioner of Agriculture and the Secretary of the Department of Wildlife and Fisheries are directed to enter into a memorandum of understanding on the importance of marketing both farm-raised and wild-caught Louisiana crawfish. The memorandum should include a pledge to work together to find funding for these purposes, a pledge to support and enhance the crawfish industry, and a pledge to work with the state’s congressional delegation to insure disaster funding for all elements of the industry.

**Act No. 363**

HB 699

Representative St. Germain and Senator Dupre

(Enacts R.S. 56:69.21-.31). Adopts the Wildlife Violator Compact to facilitate enforcement of wildlife conservation laws in this state and other participating states. Member states must cooperate to “the fullest extent” to enforce compliance with the terms of citations made in other member states. Upon conviction of a violation, the appropriate official will create a report and send it to the home state. Non-residents who violate a state’s law and fail to comply with the terms of the violation will have their

hunting/fishing privileges suspended in other member states. The Department of Wildlife and Fisheries is in charge of appointing the board of compact administrators and creating rules and regulations to administer the compact.

**Act No. 548**

SB 411

Senator McPherson

(Enacts R.S. 36:610(L) and Part III of Chapter 2 of Title 56 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 56:901). This act establishes the Coastal Land Stewardship Authority within the Department of Wildlife and Fisheries. The authority is established to provide for management and administration of immovable properties acquired by the state in connection with the implementation of coastal conservation, restoration, and protection plans.

**Act No. 564**

SB 744

Senator Dupre

(Amends and reenacts R.S. 56:302.9(H) and enacts R.S. 56:302.9(I)). Requires charter boat fishing guide licensees to provide landing reports and information to the Department of Wildlife and Fisheries. The information included in the report is to be established by the commission, but is not to include any financial information.

**Act No. 922**

HB 1383

Representatives Wooton, Baldone, and Richard and Senator Dupre

(Enacts R.S. 36:610(L) and R.S. 56:433.1) Creates a new public oyster seed ground vessel permit that will be required in order to take oysters from the public seed grounds. The annual permit is issued in the name of the owner of the vessel and requires a resident fee of fifteen dollars and a nonresident fee of sixty dollars. New applications for the permit may be submitted until Dec. 31, 2009, after which time only renewals may be granted. Provides that taking oysters from the seed grounds without the permit is a Class 2 violation and, upon conviction, will require use of a vessel monitoring system for that vessel. Provides that the permits cannot be sold, exchanged, or otherwise transferred. The act describes the three classifications of vessel owners who will be eligible to receive the permit.

**Natural Resources and Public Lands**

**Act No. 48**

SB 124

Senator Dupre and Representative Dove

(Enacts R.S. 49:191(4) and repeals R.S. 49:191(2)(b)). States that the Department of Natural Resources and entities within it shall be terminated (along with its legislative authority) unless it is legislatively recreated before July 1, 2012.

**Act No. 92**

HB 848

Representative Hutter

(Amends and reenacts R.S. 56:433(B) and reenacts 56:433(G)). Natural reefs may be fished for the harvest of seed oysters only starting the first Wednesday after Labor Day. Beginning on the second Monday in October, the seed grounds may be opened for the harvest of oysters for market. All harvest of oysters on public seed grounds shall cease on April 30 of each year. One of the designated areas for the exclusive use of sackers shall be located in the American Bay area east of the Mississippi River in Plaquemines Parish.

**Act No. 103**

HB 171

Representative Hutter and Senator Crowe

(Amends and reenacts R.S. 56:421(D) relative to the Louisiana Oyster Task Force). The members of the task force shall serve without compensation, but may receive the same reimbursement for travel expenses for attending the meetings as is allowed for other state employees' travel.

**Act No. 230**

SB 14

Senator Dupre and Representative Baldone

(Amends and reenacts R.S. 38:2212(A)(1)(d)(v) relative to levees). Extends a contract limit of one million dollars to contracts to perform mitigation on public lands. This limit not only applies to projects undertaken by the public entity, but also applies to projects undertaken with the resources and employees of another public entity through a cooperative endeavor.

**Act No. 384**

HB 1328

Representatives Mills, Bobby Badon, Gisclair, and Harrison.

(Amends and reenacts R.S. 30:83(F)(6), 84(A)(1), (2), 86(A); enacts R.S. 30:83(I)). Divests from the Oilfield Site Restoration Commission the authority to expend, disburse, or invest monies in the Oilfield Site Restoration Fund. The commission retains the responsibility to provide general administration and management of the Fund and all site-specific trust accounts. The act authorizes the secretary of the Department of Natural Resources to approve and disburse monies from the fund and site-specific accounts.

**Act No. 545**

SB 367

Senator Dupre and Representatives Arnold, *et al.*

(Amends and reenacts R.S. 38:351 and R.S. 49:213(D), 213.2(9), (10), and (11), 213.3(C), 213.4(A)(1), (2), (4), (7), (B)(1), (2), (4), (5), (6), (8), (9), (C)(1), (2), (4), and (D), 213.5(A)(10), (11), (12), and (13), 213.6(A)(1), and 213.11; enacts R.S. 38:251 and R.S. 49:213.2(12), 213.4(A)(8) and (E), 213.5(A)(14), and 213.7(C)(3)). Eliminates the statement that the primary responsibility for carrying out coastal restoration and wetlands conservation is with the Department of Natural Resources and that carrying out the hurricane protection part of the plan is the primary responsibility of the Department of Transportation and Development. Creates a definition for “infrastructure.” Creates the authority for the Governor’s executive assistant to use the contracting authority of any state department or agency to implement the legislation, including the authority to design-build where appropriate. The executive assistant shall also commission a study to determine appropriate qualifications for a person to serve as the director of engineering and science and shall employ a staff person as such. It expands the power of the Coastal Protection and Restoration Authority to include control over infrastructure and mitigation projects and expresses that the authority shall adopt rules and regulations. The act also changes the membership guidelines for the Coastal Protection and Restoration Authority and provides that the Authority should review, revise, and amend the master plan when necessary or at minimum every 5 years. The act allows for funding from federal revenues received by the state generated from outer continental shelf oil and gas activity to be

used for the purposes of infrastructure directly impacted by coastal wetlands. It implements an Infrastructure Priority Program, which guides how applications will be handled for proposed infrastructure projects.

**Act No. 580**

HB 375

Representative Dove

(Amends and reenacts R.S. 3:4383(C), R.S. 30:6.1(C), 77, 90(A), 101.10(A), 142(E)(3), 144(B), 1355(C)(4), 1356, 1402(A), 2004(9), 2011(D)(16) and (21)(e), 2050.7(E)(3), 2058 and (1), 2060(N)(10), 2106(B)(3), 2117(D) and (G), 2162(A)(2), 2179(C), 2191.1, 2195(B) and (E), 2195.9(A)(6), 2226(B) and (E), 2377, 2378(B), 2413(A)(8) and (9)(b), 2418(H) and (3) and (J), 2457(C)(1), 2458(A)(1)(c), 2525(C)(18), and 2551(H), R.S. 31:149(A), R.S. 38:245(B)(3), 3097.3(C)(10), and 3097.6(A), R.S. 41:16(B), 134(D), 140(B), (C), and (F), 151(B), (C), (G), and (H), 1702(D) and (2)(d), and 1733(D), R.S. 49:213.4(A)(3), 213.6(D)(1), 214.7(C), 214.9(C), 214.12(A)(1)(o), 214.37, 953(F)(3)(h), and 968(B)(11), (13), and (22), and R.S. 56:109.2(B), 266(F), 279(E), 360.3(A)(5), 409.1(C), 431.1(A)(2)(c), 575, 699.21(B)(12), 700.2(A)(3), 700.3(C), and 700.14(C)). Corrects references in the statutes to House committees to refer to the new name of the House Committee on Natural Resources and Environment. Provides for the oversight of rules and regulations, the receipt of certain reports, and the approval of certain actions by the House Committee on Natural Resources and Environment. Also provides for instructions to the Louisiana State Law Institute and for related matters.

**Act 606**

HB 1135

Representatives St. Germain, *et c.*

(Amends and reenacts R.S. 30:2000.2, 2000.4(A)(5) and (B)(4), (6), (7), and (9), 2000.5, 2000.8(C), and 2000.9(C); enacts R.S. 30:2000.4(A)(1.1) and (B)(11), 2000.11, and 2000.12; and repeals R.S. 30:2000.4(B)(8) and 2000.10). Relative to the Atchafalaya Basin program; provides definitions for “Access Project,” for “Atchafalaya Basin Floodway System, Louisiana Project” and for “water management project.” Provides that an annual plan should be submitted to the legislature for its approval. Authorizes the secretary of the Department of Natural Resources to negotiate and execute project specific or

programmatic project cooperation agreements with the federal government for projects that are a part of the Atchafalaya Basin Floodway System. Provides for the duties of the Atchafalaya Basin Research and Promotion Board and of Atchafalaya Basin Advisory Committee. Creates the technical advisory group and provides for its chair and responsibilities. States that the board shall develop an annual plan to be adopted by advisory boards and then submitted to the Coastal Protection and Restoration Authority and then to the House and Senate Committees on Natural Resources. Creates the Atchafalaya Basin Conservation Fund, and provides for revenues and expenditures for the fund and related matters.

**Act No. 808**

HB 798

Representatives Hutter and Baldone

(Repeals §501(B)(1) and (3)(b) of Chapter V of Part VII of Title 76 of the LAC). Provides for lifting the oyster lease moratorium as follows: leases that have not been renewed since 1996 due to a recommendation from the Department of Natural Resources that such leases would be in either the operational or impact area of a coastal restoration project will be available for the first right of refusal for renewal to the lease holder of record at the time the lease was not renewed. Allows the leaseholder 60 days to indicate his desire to enter into a new lease for previously leased acreage. If the leaseholder does not wish to enter into a new lease for previously leased acreage or fails to respond to the offer within 60 days, he forfeits all rights to the lease. Authorizes leaseholders to expand their leases by incorporation of immediately adjacent water bottoms, limited to 500 feet beyond the existing lease boundary except in cases where another lease is less than 500 feet away.

**Oil, Gas, and Minerals**

**Act No. 278**

HB 439

Representative Dove

(Amends and reenacts R.S. 30:905(B)(2), (14), 905.1, 905.3(A), (D), 905.4(A)(1)(a), (c), (2), (B)-(H), (J)(2); repeals R.S. 30:905.2, 905.4(K)). Lays out funding sources and the appropriation process for reclamation of mining operations. Funds go first to the state treasury

and are then credited to the office of conservation. Coal mining impact projects have priority for appropriations over other solid mineral development impact projects. Lands eligible for reclamation are those affected by mining and without continuing reclamation responsibility under law. The term “coal mining” is replaced several places in this act by the term “solid mineral development.”

**Act No. 283**

HB 557

Representative Dove and Senator Dupre

(Amends and reenacts R.S. 30:215(A); enacts R.S. 30:123.1; repeals R.S. 30:125(B)). Prospective leaseholders of mineral leases awarded by the State Mineral Board must register with the office of mineral resources. This registration must be renewed annually by January 31. Failure to properly register will result in notification to the record lessee and may result in one hundred dollars per day in damages if proper registration is not completed. Fees for non-exclusive geophysical permits shall be determined at least every twelve months (changed from every six months).

**Act No. 315**

HB 1117

Representative Morris and Senator Dupre

(Amends and reenacts R.S. 30:22, 23, 148.1-6, 148.8, 148.9(A), (B); repeals R.S. 30:148.9(B)(1)-(3)). Extends the provisions on storage of natural gas to also apply to the storage of liquid hydrocarbons and carbon dioxide. Reservoirs for liquid hydrocarbons and carbon dioxide shall not be used if they are still capable of producing in paying quantities unless all owners have agreed to do so and unless gas originally in the reservoir has been produced or the reservoir has a greater value as a reservoir than for the production of the remaining volumes of gas. The reservoir must not contaminate other formations containing fresh water or other commodities and must not endanger lives or properties. Provisions for “lands which may be leased” are modified to allow lessees to lease land for the creation of separation and hydration facilities and compressor stations. This act also includes other minor modifications to the application and bidding process.

**Act No. 382**

HB 1270

Representatives Perry et al. and Senators N. Gautreaux et al.

(Amends and reenacts R.S. 39:364(A)(a); enacts R.S. 39:364(A)(4) and R.S. 3:3761-3763). Creates the Biofuel Industry Development Initiative, which provides for pilot programs with ethanol blends, state incentives, purchase or lease of fleet vehicles, and the purchase of biofuels.

**Miscellaneous**

**Act No. 1**

HB 1116

Representatives Ellington and Morris and Senators Nevers, Thompson, and Walsworth

Allocates two million dollars to the Department of Agriculture for boll weevil eradication.

**Act No. 19 (Appropriations)**

HB 1

Representatives Fannin et al.

Schedule 04-160 Department of Agriculture and Forestry

Management and Finance: \$16,293,281

Marketing: \$6,951,504

Agriculture and Environmental Sciences: \$23,707,646

Animal Health Service Program: \$9,569,362

Agro-consumer Service Program: \$5,034,734

Forestry: \$20,080,373

Soil and Water Conservation Program: \$6,059,372

Schedule 06-264 Office of State Parks: \$32,817,424

Schedule 07-275 Department of Transportation and Development

Administration: \$ 41,884,609

Public Works, Hurricane Flood Protection and Intermodal Transportation: \$31,596,785

Schedule 11 Department of Natural Resources

Office of the Secretary: \$40,162,704

Office of Conservation: \$19,618,613

Office of Mineral Resources: \$11,256,019

Office of Coastal Restoration and Management: \$99,984,165

Schedule 13 Department of Environmental Quality

Office of the Secretary: \$11,091,306

Office of Environmental Compliance: \$22,973,773

Office of Environmental Services: \$14,690,566

Office of Environmental Assessment: \$37,766,805

Additional Funding Related to Hurricane Disaster Recovery: \$6,939,353

Office of Management and Finance: \$58,540,049

Schedule 16 Department of Wildlife and Fisheries

Office of Management and Finance: \$11,190,174

Office of the Secretary: \$27,104,262

Office of Wildlife: \$40,036,312

Office of Fisheries: \$28,242,392

Additional Funding Related to Hurricane Disaster Recovery: \$23,027,840

Schedule 19-674 Higher Education

Louisiana Universities Marine Consortium: \$9,211,071

**Act No. 52**

SB 175

Senator Thompson

(Amends and reenacts R.S. 2:135.3(B) relative to the office of agricultural and environmental sciences). Changes the words “environmental services” to “environmental sciences” and “secretary” to “commissioner.”

**Act No. 61**

SB 550

Senator Thompson

(Amends and reenacts R.S. 3:1311(2), (3), 1312(A), (C), (F), and (F)(2), 1313(B)(7), 1314, 1316, 1317; enacts R.S. 3:1316.1-.3 and 1319; repeals R.S. 3:1312(G)). When a state chemist determines that fertilizer does not meet guaranteed standards, a deficiency assessment is issued. Newly enacted violations in 1316 include failing to register with the commission, failing to properly label fertilizer, failing to timely pay fees, failing to timely file required reports, and altering or forging any registration or other document provided for in this part. Each violation is considered a separate offence, and a new section lays out the adjudicatory proceedings and applicable penalties. Finally, local regulation of fertilizer is preempted except that local governments may request that the rules be amended to provide for their specific problems.



**Act No. 62**

SB 619

Senator Thompson

(Repeals R.S. 3:445.1-.10, R.S. 36:629(D)(4), (5), R.S. 39:1482(D), (G), 1572(A)(3), (4)). Repeals the Louisiana Crawfish Market Development Authority.

**Act No. 96**

HB 1196

Representatives Lafonta *et al.*

(Amends and reenacts R.S. 30:2113(D) relative to the Louisiana Nuclear Energy and Radiation Control Law). In addition to current restrictions, no radioactive waste generated outside of the U.S. except waste generated by the US Armed Forces shall be transported into the state for disposal or storage in this state or elsewhere.

**Act No. 123**

SB 697

Senator Dupre and Representatives Austin *et al.*

(Enacts R.S. 47:102.82). Allows taxpayers to donate their state income tax refund to the Coastal Protection and Restoration Fund or to make an additional donation by paying the amount in addition to any tax or refund due.

**Act No. 189**

SB 525

Senator Erdey and Representative Billiot

(Enacts R.S. 38:84(C)). Before beginning construction of any project for local flood protection or hurricane damage reduction which involves federal assistance from the Secretary of the United States Army, local governments must agree to participate in all applicable federal flood plain management and insurance programs.

**Act No. 264**

HB 266

Representatives Mills *et al.* and Senators Dupre *et al.*

(Enacts R.S. 56:578.14). Prohibits owners and managers of restaurants that sell imported crawfish or shrimp from representing in any form that the crawfish or shrimp are domestic. The statute provides for a fine of fifty dollars for the first offense, two hundred and fifty dollars for the second offense, and five hundred dollars for the third or subsequent offense.

**Act No. 272**

HB 360

Representatives Montoucet *et al.* and Senator N. Gautreaux

(Amends and reenacts R.S. 36:630(I), 56:266(A)-(C), (D)(1), (E)(3), (F), 279(B)(2), (3), (C)(1), (D)(3), (E), 578.2(A), (C); enacts R.S. 36:610(L), 56:278). Removes alligators from the jurisdiction of the Fur and Alligator Council and creates the Louisiana Alligator Advisory Council. This act describes how the council is formed and what its functions are. Revenues from licenses as provided in R.S. 56:251(A)(2) will go to the Louisiana Alligator Resource Fund. The Louisiana Seafood Promotion and Marketing Board shall include as a member one representative of the alligator industry.

**Act No. 294**

HB 733

Representative Schroder

(Amends and reenacts R.S. 33:1236(54)). Except as provided in R.S. 30:2531(1), parishes that utilize an administrative adjudication process in the enforcement of building codes or other ordinances may use the process to enforce litter ordinances. Such parish may appoint a litter abatement officer and may establish fines of up to five hundred dollars per day or up to 40 hours of community service, or both.

**Act No. 296**

HB 765

Representative Hutter

(Enacts R.S. 38:84(C)). Requires each parish and municipality to agree to comply with all applicable provisions of federal flood plain management and flood insurance programs before construction of any project for flood protection or hurricane or storm damage reduction involving federal assistance.

**Act No. 327**

HB 1206

Representatives Dove and Baldone and Senators Dupre and B. Gautreaux

(Enacts R.S. 25:1311-1316 and R.S. 26:744(M)). Creates the South Louisiana Wetlands Discovery Center Commission in Terrebonne Parish to establish a tourism center to promote wetlands. This act outlines the composition and duties

of the commission, including the authority to purchase property for its purposes and to solicit and accept gifts.

**Act No. 346**

HB 301

Representative Sam Jones

(Amends and reenacts R.S. 38:291(Z)(2) and (4)(c)). Eliminates the requirement that some members of the St. Mary Levee District board of commissioners must own property in St. Mary Parish. Also changes the law for term limitations for board members to be in accordance with the provisions of SB 233 of the 2008 Regular Session.

**Act No. 347**

HB 302

Representatives Sam Jones and Harrison and Senators Dupre and B. Gautreaux

(Amends and reenacts R.S. 22:1430.12(D)). Adds St. Mary's Parish to the list of parishes that do not receive a ten percent rate in excess of the rates charged among the ten insurers with the greatest written premium in the parish for the past year.

**Act No. 388**

SB 17

Senator Cravins

(Amends and reenacts R.S. 22:1430.11(A), (D)). Persons wanting coverage through the Coastal Plan or the Fair Plan must have an insurable interest in insurable property and must have been denied coverage by an authorized insurer in the state. The application for coverage must clearly state that the corporation is an insurer of last resort and shall disclose which insurers denied coverage. Applicants who fail to show previous denial of coverage will not have the right to an appeal in the event that the corporation denies coverage.

**Act No. 409**

SB 235

Senator Nevers

(Amends and reenacts R.S. 40:2009.4(A)(6), 2109(B)(1)(c), and 2180.2(10)). Authorizes the Department of Health and Hospitals to promulgate rules for facilities located in areas subject to hurricanes, tidal surges, or flooding. Also provides for a determination of substantial damage in accordance

with the Louisiana State Uniform Construction Code by an architect or civil engineer registered in the state.

**Act No. 484**

HB 198

Representative Arnold

(Amends and reenacts R.S. 40:1730.22(C), 1730.26(2), and 1730.28(A) and (C)). Adds affordability as a criterion to making amendments to the state uniform construction code. Also states that the council shall review, evaluate, and update the state code within two years of the release of the latest edition of the appropriate code, as opposed to the old adoption and updating cycle of every three years. Includes evaluation of the process of mandatory adoption of certain nationally recognized codes and standards.

**Act No. 503**

HB 1112

Representatives Smith, Billiot, Dixon, and Gisclair

(Amends and reenacts R.S. 38:1000, 101, and 103(B)). Allows for future project modifications or additions within the parishes of Jefferson, Orleans, Plaquemines, and St. Charles concerning the Westwego to Harvey Canal hurricane protection project. It increases the coverage area west to include portions of St. Charles Parish and the West Bank up to the easternmost guide levee of the Davis Pond Freshwater Diversion Project.

**Act No. 511 (Supplemental Appropriations)**

HB 1287

Representative Fannin and Senator Marionneaux

Schedule 07-276 Department of Transportation and Development, Office of Engineering and Operations

Paid \$150,000 out of the State General Fund (Direct) to the Water Resources and Intermodal Program for maintenance and construction expenses of the Fifth Levee District.

Schedule 11-435 Department of Natural Resources, Office of Coastal Restoration and Management

Adjusts the means of financing in the Coastal Restoration and Management Program by reducing the appropriation of the State General Fund by Statutory Dedications out of the Coastal Protection and Restoration Fund by \$7,000,000. Now the amount payable out of the State General Fund by interagency transfers for

repairs to three coastal restoration projects damaged by Hurricanes Katrina and Rita is \$2,121,826.

Schedule 16-513 Department of Wildlife and Fisheries, Office of Wildlife

Adjusts the means of finance in the Wildlife Program by reducing the appropriation out of the State General Fund by Statutory Dedications out of the Rockefeller Refuge and Game Preserve Fund by \$2,000,000.

Schedule 16-514 Office of Fisheries

Adjusts the means of finance for the Fisheries Program by reducing the appropriation out of the State General Fund by Statutory Dedications out of the Shrimp Trade Petition Account by \$268,000.

Schedule 07-275 Department of Transportation and Development, Office of Public Works, Hurricane Flood Protection, and Intermodal Transportation

\$8,565,374 payable out of the State General Fund (Direct) to Lower Mississippi River Portwide Strategic Security Council, Port of Greater Baton Rouge, Port of Lake Charles, Federal Match (Ascension, Calcasieu, East Baton Rouge, Iberville, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, West Baton Rouge).

**Act No. 513**

HB 926

Representatives Fannin, Greene, and Tucker and Senator Michot

(Enacts Subpart P of Part II-A of Chapter 1 of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:100.71, R.S. 24:39, and R.S. 51:2365(F)(1)(c)). Creates the Community Water Enrichment Fund as a special fund in the state treasury and provides for the deposit and use of monies in the fund.

**Act No. 542**

SB 351

Senator N. Gautreaux

(Amends and reenacts R.S. 39:364). Provides that the commissioner of administration shall purchase or lease for state use only alternative fuel and hybrid vehicles; provides exceptions to the use of alternative fuel and hybrid vehicles;

eliminates the previous requirement that one-third of the state fleet be made up of alternative fuel or hybrid vehicles.

**Act No. 544**

SB 365

Senator Dupre

(Amends and reenacts R.S. 30:2503(A)(1), (2), and (C)(2), 2504(A) and (B), and R.S. 47:463.43(A), (D), and (E); enacts R.S. 36:609(B)(4) and 610(B)(10); and repeals R.S. 36:4(O)). Creates the environmental education division within the Department of Wildlife and Fisheries.

**Act No. 553**

SB 566

Senator Crowe

(Enacts Chapter 34 of Title 25 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 25:1311-1315). Recognizes that it is appropriate to establish a Louisiana Wetlands Conservation and Hurricane Protection Tourist Center to promote awareness of wetlands conservation and the integral role it plays in protecting and rebuilding Louisiana's coast. The center will be located in St. Bernard Parish.

**Act No. 581**

HB 376

Representatives Dove and St. Germain

(Enacts R.S. 38:3097.3(E)). Provides enforcement for ground water management provisions. Provides for compliance orders, civil penalties and fines for violations of laws, regulations, and orders relating to ground water management and related matters.

**Act No. 588**

HB 539

Representative Lambert

(Amends and reenacts R.S. 30:2066(B) and enacts R.S. 30:2066(D)). Reduces fees relative to one-hour ozone air quality standards paid in severe and extreme ozone nonattainment zones from \$5,000 to an amount determined by the department up to \$5,000.

**Act 607**

HB1141

Representatives Leger and Hutter

(Amends and reenacts R.S. 38:247(D) and enacts R.S. 49:213.4(E)). Prohibits any state agency or entity from entering into a contract with the U.S. Army Corps of Engineers that would require the state to assume liability for or provide the cost of operations for a hurricane protection project unless the contract provides for independent third party review.

**Act No. 613**

HB 1355

Representative Ellington

(Amends and reenacts R.S. 3:5559.28(A) and (B)(2), enacts R.S. 3:559.28(B)(3), and repeals R.S. 3:559.25(C)). Revises provisions relative to the Aquatic Chelonian Research and Promotion Board.

**Act No. 639**

HB 622

Representative Tucker

(Amends and reenacts R.S. 36:4(H) and R.S. 49:220.4(A)(1), (B)(1) through (4), 220.5(A)(2) and (D)(4)). New law places the Louisiana Recovery Authority (LRA) and the LRA board in the Division of Administration within the Office of the Governor. It reduces the number of board members from thirty-three to seventeen, thirteen who serve at the governor's pleasure and four ex officio. Members will serve until statutory authority for the LRA ceases on July 1, 2010. The act additionally authorizes the LRA to implement special programs and specifies that special programs include The Road Home Program, the Public Assistance Program, the Hazard Mitigation Program, and the Alternative Housing Pilot Program.

**Act No. 699**

SB 780

Senators Crowe et al. and Representative Abramson *et al.*

(Enacts Chapter 49 of Title 34 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 34:3491-3506). Creates the Louisiana International Deep Water Gulf Transfer Terminal Authority to promote, plan, finance, develop, construct, control, license, regulate, supervise, operate, manage, maintain,

and modify deepwater terminal facilities to be constructed within its jurisdiction after July 1, 2008.

**Act No. 722**

HB 475

Representatives St. Germain and Gisclair

(Amends and reenacts R.S. 56:10(B)(1)(e) and enacts R.S. 56:306(B)(6) and 306.1(B)(7)). Relative to sales of crabs outside the state of Louisiana, new law requires the purchase of a retail or wholesale out-of-state shipping license for anyone exporting any type of crab for sale outside the state. The fee for each such license is one-hundred dollars per year. The revenues collected will be deposited with 10 percent going to the Conservation Fund and 90 percent to the Crab Promotion and Marketing Account of the Seafood Promotion and Marketing Fund. Expenditures from the fund shall be administered jointly by the Seafood Promotion and Marketing Board and the Crab Task Force.

**Act No. 791**

SB 611

Senator Murray

(Amends R.S. 33:4720.56(19), 4720.59(A), (B)(1), (C), (D), and (E)(1), (4), (5) and (6) and 4720.60.1; enacts R.S. 33:4720.56(20) and 4720.59(E)(7)). Authorizes the New Orleans Redevelopment Authority (NORA) to purchase property sold resulting from the enforcement of a judicial mortgage and requires that the bid be equal to or greater than the minimum bid advertised. Gives NORA the power to acquire by purchase, gift, bequest, expropriation, negotiation, or otherwise any blighted property as defined in prior law, either within or outside a designated community improvement area and to hold, clear, manage, and dispose of the property. The act defines abandoned property as: (1) property that is vacant or not lawfully occupied or (2) property which because of physical condition is uninhabitable and for which ad valorem taxes are delinquent for three years or more.

**Act No. 829**

HB 910

Representatives Tucker *et al.*

(Enacts R.S. 39:1517.1). Requires that the Division of Administration, Office of Community Development, report monthly to the Legislative Audit Advisory Council

with respect to contract values, payments, subcontractors, and performance by ICF Emergency Services under their contract to administer the Road Home Program.

**Act No. 854**

SB 160

Senators Cravins, Lafleur, Long, Morrish and Quinn

(Enacts R.S. 22:635.3(D), (E) and (F) and 636.2 (E), (F) and (G)). Permits an insurer to file with the commissioner of insurance a written petition for authorization to increase a policy deductible of not more than 4 percent of the value of the property being insured for named storms or hurricanes on a homeowner's policy that has been in effect for more than three years. Requires the commissioner to promulgate regulations setting criteria for the filing, including the requirement for the insurer to itemize to the insured the premium savings based on the increase in the insured's deductible. Prohibits a homeowner's policy from containing any provision that would apply more than one deductible to a loss resulting from any single incident.

**Act No. 3 (2<sup>nd</sup> Extraordinary Session)**

HB 6

Representatives Dove et al. and Senators Adley et al.

Directs the state treasurer to deposit \$300,000,000 into the Coastal Protection and Restoration Fund from the state general fund for Fiscal Year 2007-2008, to be comprised wholly of nonrecurring revenues out of the state general fund for Fiscal Year 2006-2007.

**Act No. 7 (Appropriations) (2<sup>nd</sup> Extraordinary Session)**

HB 7

Representatives Fannin et al. and Senator Scalise.

Schedule 11-425 Appropriates \$300,000,000 to the Office of Coastal Restoration and Management of the Department of Natural Resources for federally authorized projects for hurricane protection and coastal restoration measures.



**The Louisiana Coastal Hazard Mitigation Guidebook: An Overview**

*By Melissa Trosclair Daigle*

The *Louisiana Coastal Hazard Mitigation Guidebook*, published in May 2008, contains valuable information for local governments and individuals who live in the coastal zone. Residents of Louisiana have a 1-in-10 chance of being affected by a hurricane; therefore, it is important that property owners and city planners consider a wide range of hazard mitigation techniques that can reduce property damage and rebuilding costs. The guidebook does not assume that the state or federal government will step in and build a levee system that will protect all and be free from failure. Instead, the goal of the guidebook is to provide individuals with strategies that can reduce, not remove, the threats of storm surge, other flooding, subsidence, and sea level rise. More importantly, the strategies are ones that can be implemented by individuals and local governments and do not depend on state or federal governments. The "self-help" nature of the guidebook makes it an excellent tool for city

planners, developers, and property owners, allowing them to better prepare for and recover from future storms.

The first step in the process is to understand the natural hazards that impact coastal Louisiana, which is covered by the first chapter of the guidebook. There are eight natural hazards that have a significant impact on the Louisiana coastal zone: flooding, subsidence, sea level rise, coastal erosion, tornadoes, windstorms, hurricanes, and storm surge. The most important of these for planning purposes is storm surge, which is the rapid rise of water above sea level created by the cyclonic winds and low barometric pressure of a hurricane. While it was originally believed that marshes had no predictable continuing effect on storm surge, recent data has shown otherwise. In fact, wetlands reduce the maximum surge inland as well as delay the peak and slow the rate at which water level drops after reaching its zenith. Surge model developers

are now incorporating the “drag” created by wetlands into computer models, which will facilitate development of more effective hurricane protection systems. This data also emphasizes how important restoration projects such as freshwater diversions and reforestation are to reducing the impact of future hurricanes.

The second chapter of the guidebook discusses how existing regulatory programs can be used to achieve hazard mitigation goals. While not as effective as directed planning for hazard mitigation, many laws do provide incentives to encourage hazards planning. The Coastal Zone Management Act allows states to establish their own coastal zone management programs, while the Coastal Barrier Resources Act restricts federal subsidies that promote growth on barrier islands and beaches. The Clean Water Act regulates the placement of dredge and fill materials in “waters of the United States” and establishes the National Pollutant Discharge Elimination System. Finally, the National Flood Insurance Program allows communities to be eligible for subsidized flood insurance programs if proposed developments meet minimal standards.

The third chapter examines the role of coastal restoration and protection in hazard mitigation. In 2005, the Louisiana Legislature created the Coastal Protection and Restoration Authority (CPRA). The CPRA developed a master plan that contains recommendations for comprehensive hurricane protection and coastal restoration measures, two goals that are not inherently compatible. Additionally, the CPRA must balance short- and long-term needs, which is an almost impossible task. At the time the guidebook was published, the estimated cost to provide 10-year surge protection to the Greater New Orleans area was estimated at \$14 billion and would not be in place until 2011. However, as the guidebook points out, there are practical steps that residents, planners, and developers can take to supplement federal levee-building and flood protection

projects. These include restoring coastal wetlands and barrier islands and elevating homes and businesses. The integration of “hard” and “soft” measures is known as the Multiple Lines of Defense Strategy (MLODS) and was endorsed by the CPRA in the 2007 master plan.

While the MLODS is an integral part of both coastal restoration and flood protection, the primary focus of the guidebook and the two most important aspects of effective hazard mitigation are zoning and land use planning. The goal of natural hazards planning is to anticipate, map, and understand the impacts from natural forces before development takes place in order to minimize potential damage. The philosophy proposed by the Association of State Floodplain Managers is “No Adverse Impact” (NAI); everyone benefits when the actions of every community and property owner do not adversely affect others. The guidebook explores the benefits a community can expect by adopting NAI, including financial savings due to less damage, lower cleanup costs, and reduced strain on public resources after a hurricane. Additionally, a flexible, light-handed approach is beneficial because it allows every parish to address its specific needs and areas of concern. The guidebook discusses all elements and sub-elements of implementation; when all elements are used in conjunction, many new mitigation options become available.

The fifth chapter examines the development process faced by parishes. It is easier and less expensive to implement hazard mitigation techniques early in the development process and allows for greater consistency and fewer conflicts. Where to build and how to build (siting and construction) are both important tools that can reduce the hazard risk if implemented early. Early implementation also provides the government with the ability to purchase property for a public purpose at a reasonable price before the landowner has expended large amounts of money on preparing the land for development. This chapter also discusses a variety of

steps that community planners should take in identifying hazard zones and guidelines for properly developing those zones, including issues related to subdividing land, utilizing existing drainage, and retaining green space.

In addition to steps that can be taken by community planners, builders and existing homeowners can implement many construction practices that can help reduce hurricane-related damage. Chapter 6 discusses the forces exerted on a building during a storm, including air pressure, uplift, detached elements, projectiles, and water and flood loads. The Louisiana Legislature adopted the Louisiana State Uniform Construction Code in 2005, and its rules apply to new construction, reconstruction, and extensive renovation. However, there are a number of benefits owners of existing constructions may experience by retrofitting their structure to code compliance. Their home or business will be better prepared for facing future storms, and they may even be able to receive a discount or other adjustment on their insurance. The chapter ends with a step-by-step checklist for inspecting a yard and building, interior and exterior, both before and after a hurricane.

As community planners and property owners begin to implement hazard mitigation techniques, undoubtedly some legal issues will arise. The Association of State Floodplain Managers conducted extensive research and determined that the NAI approach is best for local governments to mitigate flood hazards and avoid legal pitfalls. Under Louisiana case law, local governments can be found liable for actions that cause or increase the severity of flooding. However, there are many areas where the law is unclear, such as whether governments can be held liable for allowing development of hazardous areas when they know the extent of the risk but have not assumed responsibility for preventing the hazard. Another area of concern involves takings. While governments often have to place restrictions on the use of private property for legitimate reasons, if the level

of interference is great, the landowner may be able to successfully sue the government for compensation for his loss. However, there are few successful takings claims when it is clear that government action is necessary to protect public safety. Governments are more likely to be liable when their actions cause losses from hazards than when they limit development to mitigate hazards.

While levees and other structural storm protections will play an important role in storm protection, they are expensive, take time to construct, and can fail. The land use planning and construction techniques discussed in the guidebook can be used to supplement structural protections and provide a last line of defense should other methods fail. If you are interested in receiving a copy of the guidebook, contact:

Louisiana Sea Grant Law and Policy Program  
227-B Sea Grant Building  
Louisiana State University  
Baton Rouge, LA 70803  
225/578-5936  
Attention: Jim Wilkins  
[Jwilkins@lsu.edu](mailto:Jwilkins@lsu.edu)

The guidebook is free if picked up from the Sea Grant Office; however, there is a \$5 charge for shipping. Additionally, the guidebook can be found online at [www.lsu.edu/sglegal](http://www.lsu.edu/sglegal). Videos of workshops held across the state on the material presented in the guidebook will be posted on our website soon. You can sign up to receive updates on the Sea Grant website; just click on the “Subscribe to Web Feeds” button.



## ANNOUNCEMENTS



### **New Legal Coordinator Named**

The Sea Grant Law and Policy Program welcomes Melissa Trosclair Daigle as its new Legal Coordinator. Mrs. Daigle is a recent graduate of the LSU Law School, and she hails from Thibodaux, Louisiana. Growing up in coastal Louisiana she is acutely aware of the problems facing

the region and is excited to have the opportunity to use her skills and training to find solutions to the complex problems facing the people who live and work there. 🏠

### **LCL E-mail Update Service**

The Louisiana Sea Grant Legal Program disseminates an e-mail/web-based update to our biannual newsletter four times a year. These updates cover environmental law news relevant to the LSL's audience, summaries of recently introduced environmental legislation and regulations and recent court decisions. To subscribe to the LCL E-mail Update Service, send an e-mail to [mtrosc2@lsu.edu](mailto:mtrosc2@lsu.edu). 🏠

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