

Regular Session, 2011

HOUSE BILL NO. 476

BY REPRESENTATIVE TIM BURNS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PROPERTY/PUBLIC: Relative to the Bohemia Spillway

1 AN ACT

2 To amend and reenact Sections 1 and 2 of Act No. 233 of the 1984 Regular Session of the  
3 Legislature, amended by Act No. 847 of the 1992 Regular Session of the Legislature,  
4 Act No. 1364 of the 1997 Regular Session of the Legislature, Act No. 1378 of the  
5 1999 Regular Session of the Legislature, and Act No. 130 of the 2005 Regular  
6 Session of the Legislature, relative to the Bohemia spillway; to provide for payment  
7 by the Board of Commissioners of the Orleans Levee District or its successor in  
8 interest to the certified owner or his successor for mineral revenues received by the  
9 Board of Commissioners of the Orleans Levee District from such property after June  
10 29, 1984; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Section 1 and 2 of Act No. 233 of the 1984 Regular Session of the  
13 Legislature, as amended by Act No. 847 of the 1992 Regular Session of the Legislature, Act  
14 No. 1364 of the 1997 Regular Session of the Legislature, Act No. 1378 of the 1999 Regular  
15 Session of the Legislature, and Act No. 130 of the 2005 Regular Session of the Legislature,  
16 are hereby amended and reenacted to read as follows:

17 Section 1. ~~(1)~~ Pursuant to authority of Louisiana Constitution Article VII,  
18 Section 14(B), the legislature hereby declares that the public and necessary purpose  
19 set forth in Act No. 99 of 1924, which may have originally supported the acquisition  
20 of property, or any right of ownership thereto, on the east bank of the Mississippi

1 River in the parish of Plaquemines for the construction of a spillway, known as the  
2 Bohemia Spillway, has ceased to exist insofar as it ever may have affected the  
3 ownership of property, including all mineral rights and revenues. The legislature  
4 recognizes the following:

5 (a) In accordance with previous Acts of the legislature, the Department of  
6 Natural Resources, the "department", has provided over the last ~~twenty~~ twenty-six  
7 years written certification to the Board of Levee Commissioners of the Orleans  
8 Levee District of the names and fractional interests as determined by the department  
9 of all owners of the property and mineral rights and/or the successors of such  
10 owners, from whom property was acquired by expropriation, or by purchase under  
11 threat of expropriation, or by purchase between January 1, 1924, and December 31,  
12 1932. Such certification also included all owners and/or successors to such owners  
13 whether or not they had fully complied with the department's rules and regulations.

14 (b)(i) The Board of Levee Commissioners of the Orleans Levee District, the  
15 "board", has returned those interests by quitclaim deeds filed in the conveyance  
16 records of Plaquemines Parish, Louisiana as certified by the Department of Natural  
17 Resources.

18 (ii) Upon determining additional interests through claims filed, certain  
19 previously certified claims would be rescinded by the department and re-certified to  
20 include new or a new division of fractional interests, whereby the board would  
21 rescind the previously recorded quitclaim deeds and reissue new deeds to reflect the  
22 newly certified interest as tendered by the department.

23 (iii) The board has settled all claims of members of the class established in  
24 the matter of 'Haspel and Davis, Milling and Planting, Co., Ltd., et al. vs. Board of  
25 Levee Commissioners' Docket No. 31-357 of the 25<sup>th</sup> Judicial District Court for the  
26 Parish of Plaquemines with respect to the mineral revenues owned by the class  
27 members; by judgment dated December 11, 2000, and the settlement agreement  
28 homologated therein, the "judgment", and the board has made partial payments of  
29 amounts owned under the judgment.

1           ~~(iv)~~ The board intends to make additional payments to satisfy its obligations  
2 under the judgment.

3           ~~(v)~~(iv) Certain title disputes have arisen between owners of record and new  
4 claimants.

5           ~~(vi)~~(v) All revenues ordered returned by the legislature to all existing owners  
6 of record have been paid or are being settled ~~in the current fiscal year~~ by the board.

7           ~~(vii)~~(vi) Where disputed titles exist the board has suspended payments until  
8 those claims have been litigated.

9           Section 2.(1) ~~In order to bring this massive project to an end~~ Effective June  
10 22, 2005, the legislature ~~hereby orders~~ ordered the following:

11           (a) Within thirty days of ~~final passage of this Act~~ June 22, 2005, the board  
12 shall place a final advertisement in the official journals of the parishes of Jefferson,  
13 Orleans, Plaquemines, and St. Bernard giving notice that anyone claiming ownership  
14 of property within the Bohemia Spillway shall make a formal application to the  
15 Department of Natural Resources to be certified as owner or as a successor of the  
16 owner for the return of such property.

17           (b) Any claims for the return of property within the Bohemia Spillway shall  
18 be filed with the department on or before June 30, 2007, for determination of  
19 certification as an owner or successor to such owner.

20           (c) After conveyance of property by the board to any owner who has been  
21 certified by the department, the board shall contact such owners within thirty days  
22 to negotiate a final settlement for the payment of mineral revenues received by the  
23 board after June 29, 1984.

24           (d) No property or mineral rights provided for in this Act shall be required  
25 to be returned to any person who has not filed a claim with the department for  
26 certification as an owner by June 30, 2007.

27           (e)(i) All conveyances to owners or successors of owners of property, whose  
28 interest were certified by the department, were made in good faith and without  
29 warranty by the board.

1           (ii) There shall be no cause or right of action against the board or the  
2 department as to any interest involving title to any property certified by the  
3 department and conveyed by the board to the record owner pursuant to certification  
4 by the department nor shall the board be made a party to such litigation to resolve  
5 the title dispute.

6           (iii) If an award of a title interest in property located in the Bohemia  
7 Spillway is rendered in favor of a third party against the record owner who has  
8 received mineral revenues paid directly by the board under the judgment, then any  
9 claim for payment of such revenues shall be included as part of the judgment against  
10 the record owner only and the board shall not be a party to such judgment nor shall  
11 the board be liable for payment under such judgment. After the end of the time  
12 period for filing claims, the third party litigant shall have no cause or right of action  
13 against the board for payment of mineral revenues formerly paid or paid  
14 prospectively to the owner of record pursuant to this Act.

15           (2) In order to bring closure to the settlement agreement between the board  
16 and the members of the class homologated more than ten years ago in the judgment  
17 rendered in the matter of 'Haspel and Davis, Milling and Planting, Co., Ltd., et al.  
18 vs. Board of Levee Commissioners' Docket No. 31-357 of the 25<sup>th</sup> Judicial District  
19 Court for the Parish of Plaquemines, the legislature hereby orders the following:

20           (a) The board, and/or its successor in interest, shall return the unpaid balance  
21 of mineral revenues owed to the class members' class under the judgment.

22           (b) In addition, the board, and/or its successor in interest, shall pay interest  
23 on the unpaid balance of the judgment from the date of the judgment until paid.

24           (c) The rate of such interest shall be the annual, average interest rate earned  
25 by the board, or its successor in interest, on its income-producing investments during  
26 the same time period as determined by the legislative auditor. If the legislative  
27 auditor is unable or cannot calculate the interest rate for any past or future time  
28 period, then the interest shall be the annual legal interest rate for that time period.

1                    (d) Payment on the unpaid balance of the judgment, and interest thereon,  
 2                    shall be made by July 1, 2020; however, the board shall make all reasonable efforts  
 3                    to complete payments earlier than that date.

4                                            \*       \*       \*

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Tim Burns HB No. 476

**Abstract:** Provides for the return of the unpaid balance of mineral revenues and the interest on the unpaid balance for a certain class action judgment regarding the Bohemia Spillway. Further provides for the interest rate and the calculation of interest in the event the previous interest rate cannot be calculated. Provides for a deadline for payment.

Present law provides that the legislature recognizes that the Dept. of Natural Resources provided over the last 20 years, written certification to the Board of Commissioners of the Orleans Levee District (OLD) of all names of property owners and/or successors of such owners and fractional interests in mineral rights from the acquired by expropriation, or threat of expropriation between Jan. 1, 1924, and Dec. 31, 1932.

Proposed law retains present law, except that it changes the number of years the department provided the written certification to the board of commissioners of the OLD from 20 years to 26 years.

Present law provides that the legislature recognizes that the board settled all claims of members of the class established in the Bohemia Spillway case by judgment dated Dec. 11, 2000, and the settlement agreement homologated in the judgment, and has made partial payments of amounts owed under the judgment.

Proposed law retains present law, except that it adds a provision to specify that the settlement of claims are with respect to the mineral revenues owned by the class members.

Present law provides that the legislature recognizes that the board intends to make additional payments to satisfy its obligations under the judgment.

Proposed law deletes this provision of present law.

Present law provides that in order to bring this massive project to an end the legislature orders certain requirements by the board.

Proposed law provides that effective June 22, 2005, the legislature ordered certain requirements by the board.

Present law provides that within 30 days of the final passage of the enactment of present law, the board place a final advertisement in the official journals of the parishes of Jefferson, Orleans, Plaquemines, and St. Bernard giving notice that anyone claiming ownership of property within the Bohemia Spillway shall make a formal application to the Dept. of Natural Resources to be certified as owner or as a successor of the owner for the return of such property.

Proposed law retains present law, except that it provides the enactment date of June 22, 2005.

Proposed law provides that to bring closure to the settlement agreement between the board and the members of the class in the Bohemia Spillway judgment, the legislature orders the following:

- (1) The board, and/or its successor in interest, shall return the unpaid balance of mineral revenues owed to the class members' class under the judgment.
- (2) The board, and/or its successor in interest, shall pay interest on the unpaid balance of the judgment from the date of the judgment until paid.
- (3) The rate of such interest shall be the annual, average interest rate earned by the board, or its successor in interest, on its income-producing investments during the same time period as determined by the legislative auditor. If the legislative auditor is unable or cannot calculate the interest rate for any past or future time period, then the interest shall be the annual legal interest rate for that time period.
- (4) Payment on the unpaid balance of the judgment, and interest thereon, shall be made by July 1, 2020; however, the board shall make all reasonable efforts to complete payments earlier than that date.

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

(Amends §§1 and 2 of Act No. 233 of the 1984 R.S., amended by Act No. 847 of the 1992 R.S., Act No. 1364 of the 1997 R.S., Act No. 1378 of the 1999 R.S., and Act No. 130 of the 2005 R.S.)