

RS 30:121SUBPART A. STATE
MINERAL AND ENERGY BOARD

§121. State Mineral and Energy Board created; composition and powers

A. The State Mineral and Energy Board, as created by Act. No. 93 of the 1936 Regular Session, is hereby continued. The board shall be composed of the governor and the secretary of the Department of Natural Resources, ex officio, and nine members appointed by the governor. Each appointment by the governor shall be submitted to the Senate for confirmation. Six members shall constitute a quorum.

B. Each appointed member shall serve a term concurrent with that of the governor making the appointment.

C. The governor shall be ex officio chairman or may designate the board to elect its chairman to serve for two years. The board shall be a body corporate with power to sue and be sued. The domicile of the board shall be in Baton Rouge and it shall possess in addition to the powers herein granted, all the usual powers incident to corporations. If the governor serves as ex officio chairman, in case of a tie, the vote of the governor shall determine the issue. If the governor has designated the board to elect its chairman, the chairman may vote only once on any motion. The deputy secretary or the undersecretary of the Department of Natural Resources may serve as a proxy member of the board in the absence of the secretary with full authority to act for the secretary as a member of the board.

D. The board shall administer the state's proprietary interest in minerals as herein provided. The governor may appoint to the board members engaged in the industry and related business activity which members and which board shall be subject to the provisions of R.S. 42:1101 through R.S. 42:1168.

Amended by Acts 1950, No. 59, §1; Acts 1956, No. 43, §1; Acts 1960, No. 453, §1; Acts 1962, No. 352, §1, emerg. eff. July 11, 1962; Acts 1977, No. 667, §1, eff. July 20, 1977; Acts 1978, No. 581, §1; Acts 1979, No. 649, §1; Acts 1980, No. 728, §1; Acts 2003, No. 774, §7; Acts 2006, No. 145, §1; Acts 2009, No. 196, §2, eff. July 1, 2009.

RS 30:122

§122. Compensation

The appointed members shall receive no salaries, but attending members shall receive seventy-five dollars for each day or part thereof while attending regular or called board meetings, committee meetings, or attending to official business of the board, plus actual expenses as provided for state employees.

Amended by Acts 1950, No. 59, §1; Acts 1955, No. 115, §1; Acts 1981, No. 514, §1.

RS 30:123

§123. Meetings

The board shall meet at the call of the governor and may meet at places other than its domicile.

RS 30:123.1

§123.1. Registration of prospective leaseholders

A. All prospective leaseholders of leases awarded by the State Mineral and Energy Board shall register with the office of mineral resources. Registration shall be in the form and content as prescribed by the office of mineral resources. At a minimum, the registration shall include the current physical address, telephone number, e-mail address, and facsimile number of the prospective leaseholder. In addition, the prospective leaseholder shall submit written documentation from the Louisiana secretary of state indicating that the prospective leaseholder is registered and in good standing with the secretary of state. For such purposes, a copy of the detailed record from the secretary of state web site evidencing that the company is in good standing shall suffice.

B. The registration with the office of mineral resources shall be renewed annually by January thirty-first each year by updating all information on the registration form on file at the office of mineral resources and by providing the required documentation of good standing from the Louisiana secretary of state.

C. If at any time during the period for which a given mineral lease is in full force and effect, the office of the mineral resources finds that any current record lessee of that lease is not properly registered with the office of mineral resources, the office of mineral resources shall notify the record lessee in writing by certified mail, return receipt requested, and request proper registration by a fixed date no more than thirty days after receipt of the notification. Should the record lessee, after being duly notified, fail to properly register by the date fixed in the notification, the State Mineral and Energy Board may levy liquidated damages against that lessee in the amount of one hundred dollars per day until the record lessee is properly registered with the office of mineral resources. The liquidated damage assessment may be waived, in whole or in part, by the State Mineral and Energy Board.

Acts 2008, No. 283, §1; Acts 2009, No. 196, §2, eff. July 1, 2009.

RS 30:124

§124. Board may lease public lands; fee

A. The legislature finds that the state, through the Department of Natural Resources, should promote the generation and use of alternative energy sources, including but not limited to wind energy, geothermal energy, solar energy, and hydrokinetic energy, throughout the state to ensure the viability of the state's natural resources, to provide a continuing utility-scale clean energy source for the citizens and businesses of Louisiana, to support economic development through job retention and creation in Louisiana, and to promote a clean environment.

B. The State Mineral and Energy Board, hereinafter referred to as the "board", has authority to lease for the development and production of minerals, oil, gas, or alternative energy sources, any lands belonging to the state, or the title to which is in the public, including road beds, water bottoms, vacant state lands, and lands adjudicated to the state at tax sale. The board, in consultation with the Department of Transportation and Development, shall adopt rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of this Subpart.

C. As used in this Section, "alternative energy sources" means energy sources other than oil, gas, and other liquid, solid, or gaseous minerals. It shall include, but not be limited to, wind energy, geothermal energy, solar energy, and hydrokinetic energy. It shall not include the cultivation or harvesting of biomass fuels or the use of state land or water bottoms for facilities which utilize biomass fuel to produce energy.

D. No lease shall be granted for hydrokinetic energy development that is inconsistent with the terms of a preliminary permit, license, exemption, or other authorization issued by the Federal Energy Regulatory Commission pursuant to its authority under the Federal Power Act, 16 U.S.C. 791a, et seq.

E.(1)(a) No lease affecting the following lands shall be granted for alternative energy sources development on such lands without prior written approval of a port; harbor and terminal district; or port, harbor, and terminal district;

(i) Lands held in title by such port or district or held by lease or servitude by such port or district.

(ii) Public navigable waters that flow through any lands within the jurisdiction of such port or district. Approval pursuant to this Item shall not be unreasonably withheld unless such lease would be detrimental to the needs of commerce and navigation.

(b) No such port or district shall receive compensation for their approval; however, such port or district shall receive reimbursement from the lease applicant for actual expenses incurred for any studies or reports conducted in conjunction with their approval.

(2) After the port; harbor and terminal district; or port, harbor, and terminal district decides whether or not to grant approval, the board shall send a notice by certified mail to the lease applicant for alternative energy sources development. The notice shall include the following:

(a) The decision of such port or district to provide either prior written approval of the lease or to deny approval of such lease.

(b) If such port or district does not grant prior written approval, notice that the lease applicant has sixty days from receipt of the notice to request an administrative hearing with the division of administrative law pursuant to Chapter 13-B of Title 49 of the Louisiana Revised Statutes of 1950. The request for an administrative hearing shall be filed with the division of administrative law, with copies mailed to the board and such port or district.

(3) The port; harbor and terminal district; or port, harbor, and terminal district which does not grant prior written approval of a lease shall have the burden of proof, at the administrative hearing, that the lease is detrimental to the needs of commerce and navigation.

(4) The port; harbor and terminal district; or port, harbor, and terminal district shall contract with the division of administrative law to conduct the hearing. The administrative law judge may, in his discretion, assess the costs of the administrative hearing and reasonable attorney fees of the prevailing party against the losing party.

(5) Notwithstanding any provision of the law to the contrary, the lease applicant or the port; harbor and terminal district; or port, harbor, and terminal district may petition the district court for the parish of East Baton Rouge for judicial review of any final decision or order of the administrative law judge.

F. The board is further authorized to collect a fee for such leasing in the amount of ten percent of the total cash bonus paid at the lease sale. The fee shall be in addition to the total cash bonus paid.

Acts 2002, 1st Ex. Sess., No. 106, §1, eff. April 18, 2002; Acts 2009, No. 196, §2, eff. July 1, 2009; Acts 2010, No. 875, §1; Acts 2010, No. 930, §1; Acts 2012, No. 641, §1.

RS 30:125

§125. Application for lease; fee

A. All proposals for mineral leases under this Section and R.S. 30:126 shall be submitted to and examined by the assistant secretary of the office of mineral resources who shall transmit them to the board for its action. All proposals shall be submitted by application as provided herein in the form required by the office of mineral resources, giving the description of the land, including a map, and submission of four hundred dollars, payable to the office of mineral resources, to satisfy the cost of processing the application. The fee shall not be returned, even in the event of a bid.

B. Repealed by Acts 2008, No. 283, §2.

Acts 1989, No. 282, §1, eff. June 27, 1989; Acts 1992, No. 177, §1; Acts 1995, No. 92, §1, eff. July 1, 1995; Acts 2002, 1st Ex. Sess., No. 106, §1, eff. April 18, 2002; Acts 2005, No. 449, §1, eff. July 11, 2005; Acts 2007, No. 451, §1; Acts 2008, No. 283, §2.

RS 30:126

§126. Inspection; quantity of land; advertisements for bids; fees

A. Upon receipt of an application accompanied by the nonrefundable fee, the State Mineral and Energy Board may cause an inspection of the land to be made, including geophysical and geological surveys. After receiving the report of the inspection, the board may offer for lease all or part of the lands described in the application. However, no lease shall contain more than five thousand acres. The board shall publish in the official journal of the state, and in the official journal of the parish where the lands are located, an advertisement which must appear in these journals not more than sixty days prior to the date for the opening of bids. The board may, at its discretion, publish other such advertisements. This advertisement shall contain a description of the land proposed to be leased, the time when and place where sealed bids shall be received and publicly opened, a statement that the bid may be for the whole or any particularly described portion of the land advertised, and any other information that the board may consider necessary, and the royalty to be demanded should the board deem it to be in the interest of the state to call for bids on the basis of a royalty fixed by it. If the lands are situated in two or more parishes, the advertisement shall appear in the official journals of all the parishes where the lands may be partly located. This advertisement and any other published by the board shall constitute judicial advertisement and legal notice within the contemplation of Chapter 5 of Title 43 of the Louisiana Revised Statutes of 1950. When requested to furnish proof of publication, the board may charge a fee of twenty dollars to furnish the proof of publication.

B.(1) The board may also cause notices to be sent to those whom it thinks would be interested in submitting bids. Upon the request of the board, the office of mineral resources shall prepare and mail the notice of publication. In addition, the board may make available, in whatever format it deems appropriate, maps showing tracts from past and present lease sales (G5 maps), proof of no conflict or overlap of tracts, and proof that tracts are within the three-mile limit of the Louisiana coastline.

(2) The office of mineral resources may charge the following fees for the following services:

- (a) Yearly subscription for notice of publication - one hundred twenty dollars per year.
- (b) Copies of maps of tracts north of the thirty-first parallel - ten dollars per month.
- (c) Copies of maps of tracts south of the thirty-first parallel - twenty dollars per month.
- (d) Proofs of no conflict or overlap - five dollars each.
- (e) Proofs that tracts are within the three-mile limit of the Louisiana coastline - five dollars each.
- (f) Subscription for any of the information listed in this Paragraph in electronic form - two hundred dollars per year.

(3) On its own motion and after complying with the provisions of R.S. 36:354(A)(2), or at the request of the secretary of the Department of Natural Resources, the board shall advertise for bids for a lease in the same manner as if an application had been made therefor.

Amended by Acts 1950, No. 388, §1; Acts 1958, No. 353, §1; Acts 1970, No. 582, §1; Acts 1975, No. 286, §1; Acts 1977, No. 667, §1, eff. July 20, 1977; Acts 1978, No. 583, §1; Acts 1985, No. 980, §1, eff. July 23, 1985; Acts 1992, No. 178, §1; Acts 1995, No. 92, §1, eff. July 1, 1995; Acts 2002, 1st Ex. Sess., No. 106, §1, eff. April 18, 2002; Acts 2009, No. 196, §2, eff. July 1, 2009.

RS 30:127

§127. Opening bids; minimum royalties; terms of lease; deposit

A. Only those bidders who are registered prospective leaseholders with the office of mineral resources, or those who register within two business days after the lease sale at which the bid is opened and prior to the conditional issuance of the lease, shall be allowed to obtain a mineral lease from the state of Louisiana. Any bidder who is not properly registered with the office of mineral resources at the time bids are opened, but whose bid is otherwise acceptable, shall have until the end of the second business day following the date on which the bid was conditionally accepted by the State Mineral and Energy Board to become properly registered with the office of mineral resources. If said bidder remains unregistered by the close of business of the second business day following the day the mineral lease sale at which the bid was conditionally accepted, the conditionally accepted bid shall be deemed rejected. The provisions of this Subsection shall also apply in cases where there is no more than one bid made by unregistered prospective leaseholders. Bids may be for the whole or any particularly described portion of land advertised. At the time and place mentioned in the advertisement for the consideration of bids, they shall be publicly opened. Bids received by the mineral board shall be opened at any state-owned buildings situated in the city in which the capitol is located. The mineral board has authority to accept the bid most advantageous to the state and may lease upon whatever terms it considers proper. However, the minimum royalties to be stipulated in any lease, other than a lease executed by or on behalf of a school board, shall be:

- (1) One-eighth of all oil and gas produced and saved.
- (2) One-eighth of the value per long ton of sulphur produced and saved which shall yield not less than two dollars per long ton.
- (3) One-eighth of the value per ton for all potash produced and saved, which shall yield not less than ten cents per ton.
- (4) Five percent of all lignite produced and saved.
- (5) Five percent of the value per ton on a dry salt basis for all salt produced and saved, which shall yield not less than ten cents per ton.
- (6) One-eighth of all other minerals produced and saved.

B. The minimum royalties to be stipulated in any lease executed by or on behalf of any school board shall be:

- (1) One-sixth of all oil and gas produced and saved.
- (2) One-sixth of the value per long ton of sulphur produced and saved which shall yield not less than two dollars per long ton.
- (3) One-sixth of the value per ton for all potash produced and saved, which shall yield not less than ten cents per ton.
- (4) Five percent of all lignite produced and saved.
- (5) Five percent of the value per ton on a dry salt basis for all salt produced and saved, which shall yield not less than ten cents per ton.
- (6) One-sixth of all other minerals produced and saved.

C. Each lease where ascertainable shall clearly describe the land leased by section, township, and range, or where authorized by the office of mineral resources, by points along the lease boundary delineated by Lambert X,Y coordinates connected by lines having distances and bearing, or in any other manner authorized by the office of mineral resources, and shall contain a provision permitting the state, at its option, to take in kind the portion due it as royalty of any minerals produced and saved from the leased premises. The office of mineral resources may collect a fee of five dollars each to furnish a proof of lease.

D. The board may reject any and all bids, or may lease a lesser quantity of property than advertised and withdraw the rest.

E. If all written bids are rejected, the board may immediately offer for competitive bidding a lease upon all or any designated part of the land advertised, upon terms appearing most advantageous to the state. This offering shall be subject to the board's right to reject any and all bids. No lease shall be for more than five thousand acres. Where a lease provides for delay rental, the annual rental shall not be for less than one-half the cash bonus. All lands shall be accurately described in a lease.

F. Deposit that may be required to be submitted with each bid shall be in the form of certified check, cashier's check, bank money order, or electronic funds transfer.

G. Any contract entered into for the lease of state lands for any purpose shall require that access by the public to public waterways through the state lands covered by the lease shall be maintained and preserved for the public by the lessee. The provisions of this Section shall not prohibit the secretary of the agency having control over the property from restricting access to public waterways if he determines that a danger to the public welfare exists. The provisions of this Section shall not apply in cases involving title disputes.

Amended by Acts 1965, No. 44, §1; Acts 1970, No. 599, §1, Acts 1973, No. 123, §1; Acts 1975, No. 688, §1; Acts 1976, 2nd Ex.Sess. No. 6, §1, eff. Oct. 14, 1976; Acts 1979, No. 292, §1, eff. July 10, 1979; Acts 1980, No. 216, §1; Acts 1982, No. 289, §1; Acts 1984, No. 302, §1; Acts 1999, No. 1142, §1; Acts 2002, 1st Ex. Sess., No. 106, §1, eff. April 18, 2002; Acts 2005, No. 449, §1, eff. July 11, 2005; Acts 2007, No. 451, §1; Acts 2009, No. 196, §2, eff. July 1, 2009; Acts 2014, No. 48, §1.

RS 30:128

§128. Transfers; approval by board; fees; penalties

A. No transfer or assignment in relation to any lease of minerals or mineral rights owned by the state shall be valid unless approved by the State Mineral and Energy Board. The mineral board may charge a fee of one hundred dollars to cover the cost of preparing and docketing transfers or assignments of leases of mineral or mineral rights. All parties to transfers or assignments in relation to any lease of mineral or mineral rights from the state shall be registered prospective leaseholders with the office of mineral resources. Transfers or assignments shall not be granted to prospective leaseholders that are not currently registered with the office of mineral resources.

B.(1) Failure to obtain approval of the board of any transfer or assignment of a lease within sixty days of execution of the transfer or assignment shall subject the transferor or assignor to a civil penalty of one hundred dollars per day beginning on the sixty-first day following the execution of the transfer or assignment. The penalty shall continue to accrue on a daily basis until the date on which the transfer or assignment is received by the office of mineral resources for submission to the board for approval or to a maximum amount of one thousand dollars.

(2) The penalties shall be paid into the Mineral and Energy Operation Fund on behalf of the board. The board may waive all or any part of the penalties provided in this Section.

C. A transfer for purposes of this Section shall not be deemed to occur by the granting of a mortgage in, collateral assignment of production from, or other security interest in a mineral lease or sublease or the transfer of an overriding royalty interest, production, payment, net profits interest, or similar interest in a mineral lease or sublease.

Acts 1993, No. 114, §1, eff. May 26, 1993; Acts 1995, No. 1087, §4; Acts 1999, No. 169, §1; Acts 2002, 1st Ex. Sess., No. 106, §1, eff. April 18, 2002; Acts 2005, No. 449, §1, eff. July 11, 2005; Acts 2009, No. 196, §2, eff. July 1, 2009.

NOTE: SEE ACTS 1993, NO. 114, §2.

RS 30:129

§129. Powers, duties, and authority of board; pooling agreements; operating units; fees

A. The board shall have full supervision of all mineral leases granted by the state, in order that it may determine that the terms of these leases are fully complied with, and it has general authority to take any action for the protection of the interests of the state. The board shall take all appropriate action, including the recovery of nonproducing leased acreage whenever possible, to assure that undeveloped or nonproducing state lands and water bottoms are reasonably and prudently explored, developed, and produced for the public good. It may institute actions to annul a lease upon any legal ground. The board has authority to enter into agreements or to amend a lease in whatever manner may most benefit the state. It may join in pooling and unitization agreements covering state lands and water bottoms, and mineral and royalty rights in, to, and under state lands and water bottoms either alone or in conjunction with any other lease, mineral, or royalty rights in and under any other property, so as to create, by the agreement, one or more pooled units. The board may agree in the event of production of minerals from any unit so created, that the state shall receive and accept on account of production, whether or not production is from any part of the state property within the unit, a share of unit production or proceeds proportionate to that part of the production or proceeds which the state is fairly entitled to receive under the unit agreement. In determining this proportionate part which the state may receive, the board may consider the surface acreage, the estimated original reserves in place, the estimated ultimate recovery, sand thickness, porosity, permeability as determined by approved engineering practices, and any other relevant factors. This proportionate share of unit production or proceeds shall be in lieu of all other royalties or other payments which would accrue to the state on account of production from, or attributable to, any part of the state property included in the unit. The office of mineral resources may collect a fee of five hundred dollars to cover the cost of docketing and advertising any instrument related to the administration of mineral leases under the provisions of this Part. In addition, the office may collect a fee of thirty-five dollars per hour for each hour or portion thereof spent in verification of claims, disputes, or questions pertaining to the terms, conditions, obligations, and duties expressed or implied in the state mineral lease.

B.(1)(a) "Operating unit" as herein used means that number of surface acres of land which, under regular or special rules of the commissioner of conservation or other authority having control in the premises, or by agreement of the lessors, lessees, and mineral and royalty owners, may be pooled and unitized for development and operation as a unit. An agreement creating an operating unit may provide for cycling, recycling, pressure maintenance, or repressuring in fields productive of oil, gas, and gas from which condensate, distillate, or other product may be separated or extracted.

(b) "Reworking operations" means the good faith downhole work performed on a well after its completion in a good faith effort to secure production where there has been none, restore production that has ceased, or increased production.

(c) "Commencement of operations for the drilling of a well" means actual spudding in of a well with drilling equipment adequate for the good faith drilling of a well to a depth that is reasonably calculated to establish oil and gas production affecting the lands where such well is commenced.

(2) The commencement of operations for the drilling of a well, the conducting of reworking operations, or production of minerals on any portion of a unit which embraces all or any part of the property covered by a contract of lease in effect on August 1, 1991 or thereafter shall have the same effect, under the terms of the lease as if it had occurred on the lands embraced by the lease.

(3) However, each contract of lease entered into by the board after August 1, 1991, shall contain a clause, commonly referred to as a "Pugh clause", which shall provide that the commencement of operations for the drilling of a well, the conducting of reworking operations, or production of minerals, on any portion of a unit which embraces all or any part of the property covered by such lease shall maintain the lease in effect under the terms of the lease only as to the part of the leased property embraced by the unit. The clause may provide that the acreage outside the unit(s) may be maintained by any means covered by the lease, but if by rental payments, then such payment may be reduced proportionately to the amount of acreage included in the unit as it bears to the total acreage in the lease, provided that the rental per acre on the outside acreage shall not be less than one-half of the cash payment paid for the lease per acre nor shall the lease on the non-unitized acreage be extended more than two years beyond the primary term.

Amended by Acts 1950, No. 46, §1. Acts 1986, No. 764, §1; Acts 1991, No. 786, §1, eff. July 19, 1991; Acts 1997, No. 229, §1; Acts 2002, 1st Ex. Sess., No. 106, §1, eff. April 18, 2002.

RS 30:129.1**§129.1. Public notice of approval of unitization, royalty or other agreements**

The board shall give ten days public notice prior to exercise of its powers and duties in approving for execution unitization agreements, royalty agreements or agreements that could be assimilated to a conveyance involving minerals or mineral rights of the state, exclusive of agreements involving the state's royalty in kind entered into pursuant to R.S. 30:142, which royalty in kind agreements are already subject to advertisement and bidding as therein provided. The board shall give this notice by publication in either the official journal of the state or in the Louisiana Register created by R.S. 49:954.1(B) at the board's election. The notice shall be sufficient if it contains at least a digest or summary of the nature of the proposal, a general description of the state property interest affected thereby, and the time and place of the meeting at which such a proposal will be considered for execution, provided that a full copy of the instrument effecting the proposed agreement is otherwise made available for public inspection in the offices of the board during such notice period by any one desiring to examine the same. The notice provided herein shall constitute judicial advertisement and legal notice within the contemplation of Chapter 5 of Title 43 of the Louisiana Revised Statutes of 1950.

Added by Acts 1974, Ex.Sess., No. 12, §1, eff. Jan. 1, 1975.

RS 30:130

§130. Records; execution of division orders and other documents

The office of mineral resources shall keep the records of the board, including all leases and all bids, proposals, assignments, or transfers pertaining to leases. The office of mineral resources shall be the official custodian of such records and shall certify the contents when appropriate. The office of mineral resources may set and collect a fee of one dollar per copy to cover the cost of certification of records. The board may authorize a member of the board or of the staff of the office of mineral resources to sign for the state all division orders or other documents which are necessary or customary with respect to the production and sale of oil, gas, or other minerals by lessors and royalty owners.

Amended by Acts 1950, No. 290, §1; Acts 1958, No. 353, §1; Acts 1977, No. 667, §1, eff. July 20, 1977; Acts 2002, 1st Ex. Sess., No. 106, §1, eff. April 18, 2002.

RS 30:132

§132. Attorney for the board

The attorney general shall be the attorney for the board, but the board shall have authority to employ additional counsel and fix and pay the compensation for such additional counsel or counselors, subject, however, to the authority of the attorney general and the secretary of the Department of Natural Resources to approve such counsel whereupon the attorney general shall issue, under his power of appointment of assistants, a commission to such counsel as assistant attorney general. However, any contract for legal services which exceed two hundred fifty thousand dollars shall be subject to approval by the Joint Legislative Committee on the Budget.

Amended by Acts 1952, No. 384, §1; Acts 1962, No. 352, §1; Acts 1964, No. 312, §1; Acts 1995, No. 1293, §1, eff. July 1, 1995.

RS 30:135

§135. Secretary and other employees

The Department of Natural Resources, through the office of mineral resources shall provide the necessary staff functions to assist the board in its leasing, supervisory, and other activities and the assistant secretary thereof shall serve as secretary to the board.

Amended by Acts 1950, No. 291, §1; Acts 1977, No. 667, §1, eff. July 20, 1977.

RS 30:141

§141. Power of mineral board not derogated - Other rights and remedies not modified

R.S. 30:137 to 141 are not intended in any way to derogate from or question the power and authority of the State Mineral and Energy Board to enter into any agreements of any type whatsoever pursuant to its power and authority heretofore expressly or impliedly granted by law; and the provisions hereof shall not modify in any way the right of any lessee or other party to invoke the rights and remedies available under existing laws.

Acts 1963, No. 13, §5; Acts 2009, No. 196, §2, eff. July 1, 2009.

RS 30:142

§142. Board as agency to receive, administer, and control royalties in-kind; contract authority

A. In addition to the powers and duties of the board as specified in R.S. 30:129 and other provisions of this Subpart, the board is hereby designated as the agency of the state of Louisiana authorized to exercise the option granted to the state by R.S. 30:127(C) to receive in kind the portion due to the state as royalty of any minerals produced and saved from leased premises and to receive, administer, and control royalties due in kind to the state of Louisiana. The board may adopt rules in accordance with the Administrative Procedure Act providing for the assessment of fees from the purchaser to recover the costs associated with the administration of the sale of in-kind royalties pursuant to this Section.

B. The board may contract under terms which it deems to be most advantageous to the state with persons, corporations, municipalities, other political subdivisions, associations, and partnerships engaged in the storage, transportation, refining, processing, distribution, sale and/or use of oil, natural gas, and other minerals, for the storage, transportation, refining, processing, distribution, sale and/or use of such royalties.

C. In the exercise of these powers and duties, the board is specifically authorized to negotiate such contracts with applicants desiring the acquisition and use of the in-kind natural gas royalties to satisfy and meet human needs, and public bidding shall not be required. For these purposes, the contract for the use of in-kind royalties shall not constitute nor be defined as a conveyance, lease, or royalty agreement of minerals or mineral rights.

D. Human needs for purposes of this Section are defined as those needs involving the public health, welfare, safety, and economic well-being for the following:

(1) Maintenance of gas and electrical services for residences, such as individual homes, apartments, and similarly occupied dwelling units, hospitals, nursing homes, dormitories, education facilities, hotels, motels, juvenile and adult correctional institutions, and publicly owned water, sewerage and storm drainage systems producing their own energy, which systems supply services to the aforesaid.

(2) Maintenance of agricultural operations and processing of agricultural products, including farming, ranching, dairy, water conservation and commercial fishing activities, operations of food processing plants, fertilizer manufacturing plants, businesses and facilities processing products for human consumption, and services directly related to the activities described in this Paragraph.

(3) Maintenance of commercial and industrial business activities utilizing less than three thousand Mcf of natural gas on a peak day.

(4) Maintenance of all public services including facilities and services provided by municipal, cooperative, or investor owned utilities required for customers who come under Paragraphs 2 and 3 of this Subsection or by any state or local government or authority, and including transportation facilities and services which serve the public at large.

(5)(a) Maintenance of depressed energy-intensive industry, the closure of which Louisiana facilities is threatened as a result of high energy costs and competition from comparable industries located outside of Louisiana to which energy is offered at significantly lower costs. The purpose of this Subpart is to encourage the retention of such depressed energy-intensive industries and the substantial number of jobs that they provide in Louisiana.

(b) An industry may qualify as a "depressed energy-intensive industry" if the Board of Commerce and Industry, after hearing conducted pursuant to the Administrative Procedure Act, certifies that the industry applying therefor meets each of the following requirements:

(i) The applicant industry verifies that the expense of electricity and natural gas utilized for facility power requirements and not for feedstock purposes to its Louisiana facility exceeds thirty-three percent of the total cost of the product or products manufactured at such facility.

(ii) The applicant industry verifies that the amount of electricity or natural gas consumed for facility power requirements and not for feedstock purposes at the facility is in excess of one billion Btu's in a peak hour per month and that the ratio of hourly peak demand is not in excess of three million Btu's per employee. For the purposes of this Subsubparagraph, one kilowatt hour of electrical energy is deemed equivalent to ten thousand Btu's and one thousand cubic feet of gas is deemed equivalent to one million Btu's.

(iii) The applicant industry verifies that its Louisiana facility has been substantially curtailed for a period of at least twelve months prior to June 1, 1984 resulting in the loss of direct employment at that single facility in excess of one thousand regular employees and that qualifying as a depressed energy-intensive industry for purchase of energy available to such qualifying industry would substantially aid in the reopening of or the preclusion of closure of such facility.

(iv) The accounting procedure for allocation of costs to the Louisiana facility of the applicant is certified by the Board of Commerce and Industry, and the applicant agrees that based upon that method of allocation, twenty-five percent of any net profit after taxation realized by that Louisiana facility on an annual fiscal basis subsequent to the receipt of energy available to certified depressed energy-intensive industries will be utilized for and dedicated to capital improvements to the Louisiana facility in question.

(c) The Department of Economic Development shall review the application of any industry wishing to qualify as a depressed energy-intensive industry to determine whether the requirements set forth above have been satisfied and shall make recommendations with respect thereto to the Board of Commerce and Industry. If the Board of Commerce and Industry concurs in the recommendation of the Department of Economic Development and concludes pursuant to hearing that applicant has made the appropriate verifications required by Subsection D hereinabove, the board shall notify the mineral board and the Public Service Commission. Upon certification to the mineral board, the depressed energy-intensive industry shall qualify for in-kind royalty gas pursuant to the provisions of this Section.

E.(1)(a) Upon receipt of a written proposal by an applicant to enter into a contract with the board authorized by Subsection C of this Section concerning the acquisition and use of available in-kind natural gas royalties and after publication of its intent to do so in the official journal of the state, the board may undertake arm's-length negotiations with the applicant resulting in terms which it deems to be most advantageous to the state and assuring that the applicant will use the in-kind royalties to satisfy and meet bona fide human needs, as defined herein. Under any such contract, the price at which any natural gas is to be sold shall be not less than the first of the month published price for the subject month for Henry Hub natural gas as reported in McGraw-Hill Companies' Platts Inside FERC's Gas Market Report or its successor, plus or minus the basis differential for the pipeline system into which the natural gas is delivered. However, for those leases for which an existing pricing mechanism provides a higher price than the above published price, the price the state receives for those specific leases shall not be less than the existing pricing mechanism. If the Inside FERC's Gas Market Report ceases to be published, the secretary of the Department of Natural Resources shall designate a substitute published source for the price data. If the above-referenced Henry Hub natural gas spot market price is discontinued, the secretary of the Department of Natural Resources shall designate a substitute reference price, to ensure a reasonably consistent pricing mechanism, until the legislature adopts a replacement.

(b) Sale of natural gas to a certified depressed energy-intensive industry shall be at a price which will enable that industry to restart and/or continue the operation of its Louisiana facility and

that price, established by the board, may be less than the average price of purchases reported to the Public Service Commission by intrastate pipeline companies. If the board establishes a price for the sale of natural gas to a qualifying depressed energy-intensive industry below that of the average paid by intrastate pipelines, the contract establishing the price for sale to that applicant must include a provision for monthly adjustment of the price in accordance with a generally referenced market price for the specific product or products manufactured by the applicant at its Louisiana facility.

(2) The board shall publish in the official journal of the state an advertisement which will appear at least ten but not more than sixty days prior to the approval of the contract by the board.

The board may publish other such advertisements in its discretion. The advertisements shall contain the terms of the contract to be executed including the name of the applicant, the source of the in-kind royalties, the consideration to be given for the in-kind royalties, and the general use intended for the in-kind royalties and any other information that the board may consider necessary.

This advertisement and any others published by the board shall constitute a judicial advertisement and legal notice within the contemplation of Chapter 5 of Title 43 of the Louisiana Revised Statutes of 1950.

(3) Any proposed contract authorized by this Subsection which is negotiated and approved by the board shall be submitted to the governor and to the Senate Committee on Natural Resources and the House Committee on Natural Resources and Environment for their approval. The minutes of the board or of such a committee reciting its approval shall be official evidence of its approval.

No such contract shall be valid unless it is approved by the board and by the Senate Committee on Natural Resources and the House Committee on Natural Resources and Environment and is signed by the chairman of the board and by the governor. The provisions of this Paragraph shall not apply to any such contract if the applicant is a state agency or a local governmental subdivision.

F. Except as otherwise provided in this Section, in the exercise of the powers and duties granted in this Section, the board shall publish in the official journal of the state an advertisement for a period of not less than fifteen days. This advertisement shall contain such information as may be necessary and desirable to solicit the most advantageous bids and the advertisement shall contain in addition thereto, the time when bids will be received and any other information the board may consider necessary. These advertisements need not appear more often than once a week. These advertisements shall constitute judicial advertisements and legal notices within the contemplation of Chapter 5 of Title 43 of the Louisiana Revised Statutes of 1950. The board may also cause notices to be sent to those whom it thinks may be interested in submitting bids. Bids received by the mineral board shall be opened and considered in the same manner and under the same restrictions as are applicable to the board in the leasing of the public domain. The board may reject any and all bids.

Acts 1972, No. 749, §1; Acts 1974, No. 151, §1; Acts 1975, No. 479, §1; Acts 1984, No. 201, §1 and §2; Acts 1986, No. 477, §1; Acts 1990, No. 1017, §1, eff. July 26, 1990; Acts 2001, No. 864, §2; Acts 2008, No. 580, §2.

RS 30:143

§143. Transfer of solid mineral leases, approval by board

A. In addition to the provisions of R.S. 30:128, in the case of a proposed transfer, under the circumstances described in Subsection B hereof, of any lease or sublease entered into by or under the authority of or subject to the jurisdiction of the State Mineral and Energy Board which includes the development and production of solid minerals, the board shall determine whether to approve such proposed transfer pursuant to this Section and to such rules and regulations as may be issued hereunder.

B. The procedures set forth in this Section shall be followed only where the lease or sublease proposed to be transferred is either (i) one solely for the development and production of solid minerals or (ii) one under which solid minerals have been developed or produced at any time during the three years next preceding the proposed transfer. The procedures set forth in this Section shall be followed irrespective of the form of the proposed transfer, and shall be followed if the transfer is proposed to be effected by way of sale, assignment, or sublease or by the acquisition, directly or indirectly, whether by merger or otherwise, of the beneficial ownership of any class of equity securities of a corporate entity which is either (i) the lessee or sublessee of a lease solely for the development and production of solid minerals or (ii) the entity which has as its principal business the development and production of solid minerals, provided, however, that a transfer for purposes of this Section shall not be deemed to occur (i) by the giving of a mortgage or other security interest in a lease or sublease or (ii) by the acquisition of less than ten percent of any class of equity securities of a corporate entity or (iii) when the proposed transfer covers only minerals other than solid minerals.

C. When a transfer is proposed under the circumstances described in Subsection B hereof, the proposed transferee shall first make application on forms to be prescribed by the secretary of the Department of Natural Resources pursuant to regulation. Such regulations shall require at a minimum, detailed information concerning the competence and integrity of the proposed transferee, including its financial and performance capabilities, as these bear upon its ability to perform all obligations under the lease or sublease in such a manner as not to adversely affect the public interest of the state as respects its natural resources, including potential economic and physical waste and development of such resources, or both. All applications shall be accompanied by a fee of one hundred dollars and a bond to secure payment by the applicant of the actual costs of any investigation or hearing hereunder.

D.(1) Prior to any action by the board on any such application, the secretary of the Department of Natural Resources shall conduct a hearing on the application, which shall be conducted as expeditiously as practicable consistent with developing a full factual record. The seller, assignor, or sublessor of the lease or sublease or the corporate entity whose stock the transferee proposes to acquire under the circumstances described in Subsection B hereof shall be a necessary party to any hearing hereunder, and to any investigation or other proceedings had in connection therewith.

(2) In advance of any such hearing, the secretary of the Department of Natural Resources shall have the same powers as are conferred upon the commissioner of conservation by R.S. 30:909 to investigate, receive written statements, administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records or documents; and any party to any such hearing shall have the right to take the testimony of any witness and to compel any witness to appear and depose and to produce books, papers, correspondence, memoranda, contracts and agreements, or other records or documents, on the same terms as are contained in R.S. 30:909.

(3) Except as otherwise provided herein, the hearing required hereby shall be conducted in accordance with and pursuant to the provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 and such regulations as the secretary of the Department of Resources may issue hereunder.

(4) Promptly after the conclusion of the hearing, the secretary of the Department of Natural Resources shall prepare written findings of fact and a recommended decision on the application. He shall transmit these to the State Mineral and Energy Board together with a certified copy of the hearing record. After giving due consideration to whether the evidence establishes that the proposed transferee is competent and otherwise qualified to perform all of the obligations under the lease or sublease in such a manner as not to adversely affect the public interest of the state as respects its natural resources, the State Mineral and Energy Board shall issue a written decision granting or denying the application in whole or in part or upon such conditions as it may deem appropriate.

(5) An appeal may be taken from any final order of the State Mineral and Energy Board under this Section only by a party to the hearing required herein in accordance with R.S. 49:964 and 965.

(6) Anything herein to the contrary notwithstanding, the secretary of the Department of Natural Resources may transmit a recommended decision to the State Mineral and Energy Board without first conducting an investigation or holding a hearing if (i) all necessary parties to the hearing file affidavits with the secretary of the Department of Natural Resources attesting their belief that there are no substantial issues requiring an investigation or hearing and (ii) the secretary independently determines that there are no substantial issues requiring an investigation or hearing.

E. The secretary of the Department of Natural Resources shall have authority to issue all necessary or appropriate regulations to implement this Section.

F. Whenever it appears to the State Mineral and Energy Board or the secretary of the Department of Natural Resources that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Section, the secretary of Department of Natural Resources may investigate and issue orders and notices. In addition to all other remedies, the State Mineral and Energy Board or the secretary of the Department of Natural Resources may bring an action in any court of competent jurisdiction in the name and on behalf of this state against any person or persons participating in or about to participate in a violation of this Section, to enforce compliance with this Section, or enjoin any action in violation of this Section.

G. No transfer in violation of any provision of this Section shall be valid.

H. Any person who wilfully violates this Section or who wilfully makes any false statement in an application, investigation or hearing conducted hereunder, may be imprisoned for a period not to exceed one year, or fined an amount not to exceed five thousand dollars, or both.

Added by Acts 1979, No. 296, §1, eff. July 10, 1979; Acts 2009, No. 196, §2, eff. July 1, 2009.

RS 30:144

§144. Sale of royalties in-kind to small refiners

A. On or before December 31, 1979, the secretary of the Department of Natural Resources shall submit to the State Mineral and Energy Board for implementation a regulatory program for the sale and/or processing of in-kind crude oil royalties to refiners in the state and procedures for the sale and/or processing, delivery, and use of royalty crude oil, which at a minimum include the following:

(1) Provisions to assure that the sale shall not be made to any Louisiana refiner who may not legally condition product sales upon the right of the State to exercise a right of first refusal to any product refined from royalty crude and to give first priority to Louisiana customers in the usual course of sale of end products. A "Louisiana refiner" shall be a Louisiana business entity having its principal place of business in the State of Louisiana.

(2) Provisions which assure a first priority of available supply to refiners with capability to refine typical South Louisiana light, sweet type crude, having a sulphur content of five-tenths or less, and refiners with facilities for the distillation of methanol or ethanol, suitable for blending with gasoline to produce a motor fuel, at least fifty percent of which methanol or ethanol is to be derived from agricultural products produced in Louisiana.

(3) Provisions which assure that qualified refiners have adequate facilities to receive crude by water, pipe, or truck and own or have contractual rights to adequate storage facilities to assure continuity of operations.

(4) Provisions which assure the disclosure of all information relevant to a determination that the refiner has a genuine need for a portion of the state's royalty crude.

(5) Provisions which limit the volume of royalty crude available to any one refiner to no more than seventy-five hundred barrels per day.

(6) Provisions which assure that to the extent permitted by state or federal law the state receives not less than the fair market value for the royalty crude.

(7) Provisions which condition any sales and/or processing upon the right of the state to exercise a right of first refusal to any product refined from royalty crude, and which also requires refiners to give first priority to Louisiana customers in the usual course of sale of end products.

(8) Provisions which prohibit the exchange or resale of any royalty crude without consent of the state and fix penalties of not less than ten thousand dollars per day of violation thereof.

(9) Provisions for the assessment of a fee of not more than twenty cents per barrel in the event of sales to cover costs of administration, and reasonable bond or other acceptable financial assurance which will guarantee good and faithful performance of obligation by small refiners.

(10) Such additional provisions as may be deemed necessary to protect the interests of the state and assure a fair and equitable allocation of the state's royalty crude supply.

(11) Provisions which assure that no gasoline or diesel end product from such crude shall be sold for the ultimate purpose of retail sale outside of the State of Louisiana.

B. Prior to submitting the program to the State Mineral and Energy Board for implementation, the secretary shall present the proposed program to the House Committee on Natural Resources and Environment and Senate Committee on Natural Resources, meeting jointly, for approval thereof. Within thirty days after receipt of the program from the secretary, the mineral board shall initiate rulemaking procedures thereon in compliance with R.S. 49:951 et seq.

C. Notwithstanding the provisions of R.S. 30:142F, public bidding shall not be required for the sale and/or processing of royalty crude oil pursuant to this Section, so long as price controls remain in effect; provided that in the event supplies of royalty crude remain available after allocation of the seventy-five hundred barrel per day maximum allowed under this Section to all

interested refiners, the volumes so remaining shall be made available to the refiners pursuant to public bidding therefor, contingent upon interruption of delivery of such excess supply to accommodate any qualified refiner not receiving the maximum allocation permitted herein and capable of taking delivery of additional volumes which are available.

Added by Acts 1979, No. 592, §1; Acts 2008, No. 580, §2; Acts 2009, No. 196, §2, eff. July 1, 2009.

RS 30:153

§153. Agencies may lease or administer through State Mineral and Energy Board

A. Any agency may by resolution direct the State Mineral and Energy Board to lease its land in the manner provided in Subpart A of this Part. The bonus money, if any, received for the lease shall be transmitted by the State Mineral and Energy Board to the agency. After the execution of the original lease, all rights and authority in connection therewith shall be vested in the agency to the same extent as if the agency had itself leased the land.

B. Upon request, the State Mineral and Energy Board may administer and manage the leases of any levee district, state university, state college, state penal or charitable institution, or agency, unit, or institution of the state. If the State Mineral and Energy Board agrees to administer and manage such leases, the parties shall enter into a cooperative endeavor agreement to accomplish this purpose.

Amended by Acts 1950, No. 290, §3; Acts 2008, No. 93, §1; Acts 2009, No. 196, §2, eff. July 1, 2009.

RS 30:158

§158. Approval of lease by board

No lease executed under the authority of this Subpart shall be valid unless the agency obtains its approval by the State Mineral and Energy Board. The authority of the State Mineral and Energy Board shall be ministerial with regard to whether or not the agency has correctly followed the procedural steps in granting the lease in question, and discretionary with regard to whether or not the terms of the agency lease are in the best interest of the agency and the public which it serves. A lease made under the provisions of this Subpart which is not approved by the State Mineral and Energy Board and countersigned by the duly authorized officer of that body is null and void.

Acts 2005, No. 449, §1, eff. July 11, 2005; Acts 2009, No. 196, §2, eff. July 1, 2009.

RS 30:208

§208. Exploration of public lands

The State Mineral and Energy Board may explore and develop the mineral resources of lands belonging to the state which might lease under Subpart A of Part II of Chapter 2 of this Title.

Acts 2009, No. 196, §2, eff. July 1, 2009.

RS 30:209

§209. State Mineral and Energy Board, authority of

In order to carry out the provisions of R.S. 30:208, the State Mineral and Energy Board may:

(1) Conduct geological and geophysical surveys of any kind, or cause them to be conducted on its behalf under contracts granting exclusivity of operations to the contracted party, and further providing for acquisition of seismic data by the state.

(2) Equip, drill, and operate wells or mines for the production of minerals. If a party is found to be equipping, drilling, or operating wells or mines for the production of minerals and the office of mineral resources finds that it is in the best interest of the state, the office may allow that party to continue such activity under the oversight of the office. Further, the office may collect from that party, after deduction of reasonable costs of drilling, equipping, and operating wells, the value of production from those wells. Revenues collected under the provisions of this Paragraph shall be credited to the Mineral and Energy Operation Fund in the state treasury.

(3) Construct, operate, and maintain necessary or convenient facilities for saving, transporting, and marketing mineral production.

(4)(a) Enter into operating agreements whereby the state receives a share of revenues from the production of oil, gas, and other minerals after deduction of costs, in whole or in part, such as for drilling, testing, completion, equipping, or operating a well or wells, as may be agreed upon by the parties, and assumes all or a portion of the risk cost of development or production activity in those situations where the board determines it is in the best interest of the state, either in equity or in developmental productivity to do so, such as, but not limited to the following illustrations:

(i) Taking over an abandoned well with appropriate land area in an attempt to reestablish production rather than plug and abandon the well.

(ii) Reestablishing a reasonable prospective productive area around a well already drilled wherein the lease was lost through an oversight or technicality.

(iii) Establishing a contract on unleased state acreage within an established unit.

(iv) Establishing a contractual agreement on acreage where title is disputed and production from the disputed acreage is being settled.

(b) The office of mineral resources, on behalf of the mineral board, shall administer all operating agreements. After deposit of all production payments to the Bond Security and Redemption Fund, an amount equal to twenty-five percent of the production payments from any operating agreement entered into after August 15, 1997, shall be credited to the Mineral and Energy Operation Fund for appropriation to the Department of Natural Resources.

(c) Any costs for which the state is held liable shall be paid only from revenues received by the state through production payments.

(d) Those operating agreements entered into by the State Mineral and Energy Board prior to August 15, 1997, are hereby ratified as being in compliance herewith.

(e) Upon a two-thirds vote of the members of the State Mineral and Energy Board and after a public hearing conducted in the affected parish pursuant to R.S. 30:6, enter into operating agreements whereby the state receives a share of revenues from the storage of oil, natural gas, liquid or liquefied hydrocarbons, or carbon dioxide, in whole or in part, as may be agreed upon by the parties, and assumes all or a portion of the risk of the cost of the activity in those situations where the board determines it is in the best interest of the state either in equity or in the promotion of conservation to do so, such as but not limited to the following illustrations:

(i) Creating caverns in salt domes for the storage of hydrocarbons or carbon dioxide.

(ii) Establishing a hydrocarbon or carbon dioxide storage facility in an underground reservoir.

(iii) Taking over an abandoned surface or underground storage facility in order to maximize the useful life of the existing facility.

(iv) Establishing a contractual agreement for the operation of a carbon dioxide storage facility for the storage and distribution of carbon dioxide for secondary or tertiary recovery operations.

(v) Establishing a contractual agreement on unleased acreage or where title is disputed to promote utilization of the state's resources for storage.

(5) Do all other things which may appear to be necessary or desirable.

Acts 1997, No. 530, §1; Acts 2002, 1st Ex. Sess., No. 106, §1, eff. April 18, 2002; Acts 2003, No. 993, §1, eff. July 2, 2003; Acts 2008, No. 610, §1; Acts 2009, No. 196, §2, eff. July 1, 2009.

RS 30:209.1

§209.1. Acquisition of geological information

A. The right of the State Mineral and Energy Board under R.S. 30:209 to conduct or contract for geophysical and geological surveys and other operations on lands which the board might lease for the state in order to carry out the provisions of R.S. 30:208, relative to exploration and development of mineral resources shall include the right to acquire and receive, either as owner in its own right or licensee, from the company acquiring and processing the data under the geophysical or geological surveys, and geophysical, geological, and engineering information and data acquired or processed from the surveys or operations conducted on any lands, whether public or private, for evaluation, administration, and development of the mineral resources of state-owned properties.

B.(1) Information and data acquired as authorized by Subsection A of this Section shall be confidential for all purposes consistent with the terms of acquisition and shall be made available only to the State Mineral and Energy Board, and the commissioner of conservation at the sole discretion of the board, who shall keep such information and data confidential and may use such information and data only in the lawful, official administration and development of publicly owned lands. Whoever knowingly and willfully violates the provisions of this Subsection shall be punished by the penalties provided by R.S. 30:213(B).

(2) Notwithstanding Paragraph (1), the owner of the information and data with the right to license may give permission, under any restrictions and limitations which the owner may deem necessary, to release such information and data for specific purposes proposed by the state. Any release pursuant to this Paragraph and in compliance with the restrictions and limitations set forth by the owner shall not be a violation of this Subsection.

Added by Acts 1975, No. 288, §1; Acts 1997, No. 531, §1; Acts 2006, No. 520, §1; Acts 2009, No. 196, §2, eff. July 1, 2009.