

Regular Session, 2014

HOUSE BILL NO. 855

BY REPRESENTATIVE HENRY

COASTAL RESOURCES: Provides relative to the enforcement of the coastal management program

## 1 AN ACT

2 To amend and reenact R.S. 49:214.36(D), (J), (K), (L), (M), and (N) and to enact R.S.  
3 49:214.36(O), relative to the coastal zone management program; to provide relative  
4 to the initiation or continuation of enforcement actions under the coastal zone  
5 management program by local governmental subdivision; to provide for a process  
6 for initiation or continuation of such actions; to provide for the disposition of funds  
7 collected by such actions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 49:214.36(D), (J), (K), (L), (M), and (N) are hereby amended and  
10 reenacted and R.S. 49:214.36(O) is hereby enacted to read as follows:

11 §214.36. Enforcement; injunction; penalties and fines

12 \* \* \*

13 D. The secretary, through the attorney general, ~~an appropriate district~~  
14 ~~attorney~~, or a local ~~government~~ governmental subdivision with an approved program,  
15 may bring such injunctive, declaratory, or other actions as are necessary to ensure  
16 that no uses are made of the coastal zone for which a coastal use permit has not been  
17 issued when required or which are not in accordance with the terms and conditions  
18 of a coastal use permit.

19 \* \* \*

1           J. Prior to a local governmental subdivision initiating or continuing any  
2 previously initiated judicial action to enforce any provisions of this Subpart, or rules,  
3 regulations, or permits issued pursuant thereto, including any judicial actions to  
4 impose civil liability, assess damages, order the payment of restoration damages,  
5 require actual restoration, or impose sanctions, a notice of violation describing with  
6 specificity any alleged violation and the actions required to achieve compliance shall  
7 be served upon the secretary and the person alleged to be in violation of this Subpart,  
8 or rules, regulations or permits issued pursuant thereto. Upon receipt of the notice  
9 of violation, the person alleged to be in violation of this Subpart, or regulations or  
10 permits issued pursuant thereto, shall have sixty days to submit a response to the  
11 secretary and the local governmental subdivision. A judicial action by the local  
12 governmental subdivision to enforce any provisions of this Subpart, or rules,  
13 regulations or permits issued pursuant thereto, shall not be initiated nor allowed to  
14 continue until the secretary conducts an investigation, and upon the conclusion of  
15 such investigation, but not later than one hundred twenty days after issuance of the  
16 notice of violation, the secretary determines in writing that all of the following are  
17 true:

18           (1) A violation of this Subpart, or rules, regulations or permits, as set forth  
19 in the notice of violation, has occurred.

20           (2) The violation is under the territorial jurisdiction of the local  
21 governmental subdivision initiating the enforcement action as provided by its  
22 approved local program.

23           (3) The proposed enforcement action by the local governmental subdivision  
24 is consistent with this Subpart, including the coastal management program  
25 authorized herein.

26           (4) The proposed enforcement action is consistent with the state's master  
27 plan for integrated coastal protection.

28           (5) The proposed enforcement action is reasonable and appropriate under the  
29 circumstances.

1           ~~¶ K.~~ The monies collected by the state and local governmental subdivisions  
2           under the provisions of this Section shall be deposited as follows:

3           (1) The monies collected by the secretary for violations relating to use of  
4           state concern shall be used for the following purposes only in the proportions stated:

5           (a) Fifty percent of the monies collected shall be used to reimburse the  
6           Department of Natural Resources for the cost of enforcing the provisions of this  
7           Subpart, and shall be deposited in the Coastal Resources Trust Fund, as provided in  
8           R.S. 49:214.40.

9           (b) Twenty-five percent of the monies collected shall be placed in local  
10          government mitigation banks established in accordance with R.S. 49:214.41 and the  
11          rules and regulations adopted thereunder.

12          (c) Twenty-five percent of the monies collected shall be placed in the  
13          Wetlands Conservation and Restoration Fund established in Article 7, Section 10.2  
14          of the Louisiana Constitution.

15          (2) The monies collected by the secretary or a local governmental  
16          subdivision for violations relating to a use of local concern shall be placed in ~~local~~  
17          ~~government mitigation banks established in accordance with R.S. 49:214.41 and the~~  
18          ~~rules and regulations adopted thereunder. Each local government's mitigation bank~~  
19          ~~shall be credited one hundred percent of the monies collected for violations relating~~  
20          ~~to a use of local concern occurring within its geographic borders, except that for~~  
21          ~~violations occurring within the geographic borders of two or more local governments~~  
22          ~~the monies shall be divided on a pro rata basis and deposited accordingly in the local~~  
23          ~~government's mitigation banks. In the event there is no local government mitigation~~  
24          ~~bank in the parish in which the adverse impact is located, the monies shall be~~  
25          ~~deposited in the Wetlands Conservation and Restoration Fund established in Article~~  
26          ~~7, Section 10.2 of the Louisiana Constitution, the Coastal Resources Trust Fund, as~~  
27          ~~provided in R.S. 49:214.40, and can only be used for mitigation projects within the~~  
28          geographic borders of that local ~~government~~ governmental subdivision.

1           ~~K.~~ L. In determining whether to assess, pursuant to Subsection I of this  
2           Section, costs or penalties, and the amounts of such assessments, the secretary shall  
3           consider the following factors:

4                   (1) The monetary benefits realized by the violator due to the noncompliance.

5                   (2) The history of previous violations or repeated noncompliance for the last  
6           five years.

7                   (3) The nature and gravity of the violation, including the adverse impact on  
8           the coastal zone.

9                   (4) The degree of culpability, recalcitrance, defiance, or indifference of the  
10          violator to the laws, regulations, or orders of the secretary or regulations of the local  
11          government.

12                  (5) The cost to the department or state of bringing and prosecuting an  
13          enforcement action against the violator.

14                  (6) Whether the person charged has failed to mitigate or to make a  
15          reasonable attempt to mitigate the damages caused by his noncompliance or  
16          violation.

17           ~~L.~~ M. No penalties or costs shall be assessed without the person charged  
18          being given notice and an opportunity for an adjudicatory hearing, pursuant to the  
19          Administrative Procedure Act. The secretary shall appoint an independent hearings  
20          officer. The person charged may waive the adjudicatory hearing upon payment of  
21          the amount demanded by the secretary, and will be liable for all costs associated with  
22          the adjudicatory hearing.

23           ~~M.~~ N. Nothing in this Section, shall prohibit any local political subdivision,  
24          without a local coastal use permit program approved as provided for in R.S.  
25          49:214.30 from enforcing any ordinance or regulation relating to wetlands protection  
26          or restoration.

27           ~~N.~~ O.(1) In addition to the other enforcement actions authorized by the  
28          provisions of this Section, for each incident resulting in an administrative penalty  
29          being assessed, the secretary shall issue an after-the-fact coastal use permit or permit

1 modification specifying terms and conditions that must be adhered to for the  
2 unauthorized activity to remain in place. In determining the terms and conditions to  
3 be placed on the after-the-fact permit, the secretary shall consider the following  
4 factors:

5 (a) The degree to which the activity complies, or fails to comply, with the  
6 coastal use guidelines.

7 (b) The need for compensatory mitigation to be carried out when the activity  
8 altered wetlands of the coastal zone.

9 (c) The need for partial restoration of the site if the coastal use could be  
10 carried out with lesser impact to coastal waters or wetlands.

11 (d) The need for restoration of the site upon abandonment or completion of  
12 the coastal use.

13 (2) Prior to issuing a final after-the-fact permit, the secretary shall provide  
14 to the person conducting the activity and to the owner of the property on which the  
15 activity occurred, a draft after-the-fact coastal use permit. The secretary shall also  
16 cause the draft after-the-fact coastal use permit to be published one time in the  
17 official state journal and allow the public time to offer comments on the proposed  
18 after-the-fact coastal use permit to the secretary. All comments must be received by  
19 the secretary within fifteen calendar days following the date of publication in the  
20 state journal. The secretary shall fully consider all comments received and issue a  
21 final after-the-fact coastal use permit five days following the end of the public  
22 comment period.

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

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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)]

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Henry

HB No. 855

**Abstract:** Provides for a for a process for initiation or continuation of actions by local governmental subdivisions to initiate or continue actions to enforce the coastal management program.

Present law creates a coastal zone management program in the Dept. of Natural Resources. Provides generally for the development of a state program aimed at protecting, developing, and managing the coastal zone of the state. The program defines the coastal zone and delineates the types of uses approved for the coastal zone. Further provides for the development of state and local coastal management plans.

Coastal use permits issued by the Dept. of Natural Resources are used to control the development and activities in the coastal zone. Present law provides for enforcement of the coastal use permits (CUP) and the activities permitted under the CUPs.

Present law specifies that the secretary, the attorney general, an appropriate district attorney, or a local government may bring injunctive, declaratory, or other actions to ensure that only permitted activities may be conducted in the coastal zone. Proposed law specifies that the secretary, through the attorney general and a local governmental subdivision, may bring such actions.

Proposed law also requires that prior to initiating or continuing an action to enforce the coastal management laws or rules, a local governmental subdivision must serve notice of a violation, including specific information about the alleged violation, to the secretary of the Dept. of Natural Resources and the person alleged to be in violation. The person alleged to be in violation must respond to the secretary and the local governmental subdivision within 60 days. No action may be initiated or continued by the local governmental subdivision until the secretary conducts an investigation into the allegations, which investigation must be concluded within 120 days after the issuance of the notice of violation, and finds that a violation has occurred, the violator is under the territorial jurisdiction of the local governmental subdivision desiring to bring action, the enforcement action is consistent with the coastal management program and the state's master plan for integrated coastal protection, and the enforcement action is reasonable and appropriate.

Present law provides for monies collected pursuant to enforcement actions taken by the department to be placed in local government mitigation banks of the parish where the violation took place or the Wetlands Conservation and Restoration Fund if there is no local governmental mitigation bank and used only for mitigation projects within the geographic boundaries of the local government where the violation took place.

Proposed law provides for the funds to be deposited to the Coastal Resources Trust Fund to be used only for mitigation projects within the geographic boundaries of the local governmental subdivision where the violation took place.

Effective on signature by governor or lapse of time for gubernatorial action.

(Amends R.S. 49:214.36(D), (J), (K), (L), (M), and (N); Adds R.S. 49:214.36(O))