Regular Session, 2011

HOUSE BILL NO. 536

BY REPRESENTATIVE SIMON

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

BUILDING CODES: Provides relative to equal access to governmental and public facilities for the disabled community

AN ACT

To amend and reenact the heading of Part V of Chapter 8 of Title 40 of the Louisiana Revised Statutes of 1950, R.S. 40:1731, 1732(2), (3), (4), (7), and (9), 1733 through 1736, 1737(A), 1738(A) and (B), 1740, 1741, 1742(A)(1) and (3), 1742.1, and 1742.2(A)(1) and to repeal R.S. 40:1739, relative to building codes; to provide for the purpose; to provide for definitions; to provide for the Americans with Disabilities Act standards; to require ADA standards accessibility in public and private buildings; to provide with respect to the use of parking spaces; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The heading of Part V of Chapter 8 of Title 40 of the Louisiana Revised Statutes of 1950, R.S. 40:1731, 1732(2), (3), (4), (7), and (9), 1733 through 1736, 1737(A), 1738(A) and (B), 1740, 1741, 1742(A)(1) and (3), 1742.1, and 1742.2(A)(1) are hereby amended and reenacted to read as follows:

PART V. EQUAL ACCESS TO GOVERNMENTAL AND PUBLIC FACILITIES FOR ~~PHYSICALLY HANDICAPPED~~ THE DISABLED COMMUNITY

§1731. Purposes

A. The legislature hereby finds that the ~~physically handicapped are~~ disabled community is denied access to much of the built environment and that this denial of

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access often prevents the ~~physically handicapped~~ disabled community from exercising their rights and privileges as citizens. Denial of access further impairs the ability of the ~~physically handicapped~~ disabled community to secure an education, to find and maintain gainful employment, to live independently, and to otherwise participate fully in society. The legislature further finds that a large proportion of the population is ~~physically handicapped~~ disabled and that this state has a moral interest in securing equal rights for all its citizens and an economic interest in the removal of architectural barriers which keep members of the ~~physically handicapped~~ disabled community on public assistance programs and from becoming productive citizens.

B. It is therefore the policy of this state to bring to an end, as quickly as possible, the undue hardship caused by architectural barriers. The state shall enable persons who are ~~physically handicapped~~ disabled to achieve maximum personal independence, to become gainfully employed, and to use and enjoy all buildings and facilities. It is the intent of the legislature to implement the removal or architectural barriers so that members of the ~~physically handicapped may begin to~~ disabled community will share equally ~~with the nonphysically handicapped~~ in the right to use and enjoy the man-made environment including, but not limited to places of employment, recreation, entertainment, shopping, and education.

§1732. Definitions

As used in this Part:

* * *

(2) ~~"ADAAG"~~ "ADA Standards" means the ~~Americans with Disabilities Act Accessibility Guidelines in effect on September 1, 1994~~ 2010 Americans with Disabilities Act Standards for Accessible Design as adopted by the United States Department of Justice pursuant to the ADA and any subsequent amendments or additions to or editions adopted by the Department of Justice.

(3) "Alteration" means deliberate reconstruction of an existing building in whole or in part in order to bring it up to date in conformity with present uses of the structure and to which other rules and regulations on the upgrading of health and

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safety provisions are applicable. It shall also include "alteration" as defined in the ~~ADAAG~~ ADA Standards. For purposes of this Part, alteration shall also mean any change in occupancy as defined by the Life Safety Code.

(4) "Building" means a structure to which the general public customarily has access or utilizes as defined in the ~~ADAAG~~ ADA Standards.

* * *

(7) ~~"Governmental facility"~~ "Public building or facility" means a building, structure, or facility designed, constructed, or altered by, on behalf of, or for the use of a quasi public agency, the state, or any agency or department thereof, or any political subdivision or any governmental agency or department thereof or as defined by the ADA Standards.

* * *

(9)~~(a) "Public facility"~~ "Private building or facility" means a commercial facility or a place of public accommodation as such terms are defined ~~in~~ by the ~~ADAAG~~ ADA Standards or in the Life Safety Code.

~~(b) A "public facility" does not include a governmental facility.~~

* * *

§1733. ~~ADAAG standards~~ ADA Standards

A. The Americans with Disabilities Act ~~Accessibility Guidelines~~ Standards for Accessible Design in effect on ~~September 1, 1994~~ March 15, 2011, as adopted by the United States Department of Justice pursuant to the ADA are hereby adopted as of October 1, 2011, and requirements therein, shall be complied with.

B. The Americans with Disabilities Act Accessibility Guidelines in effect on September 1, 1994, shall remain in effect through September 30, 2011.

C. The state fire marshal shall have the power and authority to promulgate those rules and regulations as may be necessary to incorporate or adopt any subsequent amendments or additions to or editions of the ADA Standards, as it is subsequently amended or issued as a new edition adopted by the United States Department of Justice.

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§1734. Accessibility features required of new public buildings or facilities ~~or governmental facilities~~; private buildings or facilities; dwelling units

A. Any new or altered public building or facility or ~~governmental~~ private building or facility shall be made accessible pursuant to ~~ADAAG standards~~ ADA Standards subject only to the limitations or exceptions provided for therein. However, any altered public building or facility or ~~governmental~~ private building or facility shall not be made to comply with ~~Section 4.1.6(2)~~ Sections 202.4 and F202.4 of the ~~ADAAG standards~~ ADA Standards relative to path of travel.

B. Any dwelling unit in a facility which incorporates four or more dwelling units shall be made accessible in accordance with the ADA Standards and rules promulgated by the fire marshal pursuant to the Administrative Procedure Act. ~~Such rules shall, at a minimum, provide that at least five percent of the dwelling units in complexes containing more than fifteen units shall be fully accessible to a disabled potential resident.~~

§1735. Public buildings or facilities ~~and governmental~~ or private buildings or facilities to display signs

All public and governmental facilities constructed or remodeled in accordance with ~~ADAAG standards~~ ADA Standards shall display signs indicating entrances, facilities, directions, accommodations for the disabled, and other signs as required by and also in accordance with such standards.

§1736. Obstruction of common or emergency exits prohibited; standards of accessibility; penalty

A. Any common or emergency exit on the first floor or ground level of any new or altered public building or facility or ~~governmental~~ private building or facility shall remain free of any obstruction which would prevent a ~~physically handicapped~~ person with a disability from using same. Common and emergency entrances and exits shall conform to the ~~ADAAG standards~~ ADA Standards.

B. Iron posts not used for structural support or similar barricades at common or emergency entrances and exits of public facilities or facilities used by the public

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that are existing, under construction, or under contract for construction which would prevent a ~~physically handicapped~~ person with a disability from using such entrances or exits shall be removed.

§1737. Violations; enforcement by fire marshal

A. In cases of practical difficulty or unnecessary hardship, the state fire marshal may, after consultation with the office of rehabilitative services, grant exceptions from the literal requirements of the standards and specifications required by this Part or permit the use of other methods or materials. Unless a written exception is granted by the fire marshal, any unauthorized deviation from ~~ADAAG standards~~ ADA Standards shall be rectified by full compliance within ninety days after discovery of the deviation and delivery of a copy of the order requiring remedying of the deviation to the occupant or any person in charge of the premises personally or by registered or certified mail. If no person is found on the premises, the order may be served by affixing a copy thereof in a conspicuous place on the door at the entrance of the premises.

* * *

§1738. Review of plans and specifications before construction begins

A. No building permits shall be issued, no state contracts shall be awarded, nor shall any change in new building plans which affect compliance with ~~ADAAG standards~~ ADA Standards be approved concerning any public buildings or facilities or ~~governmental~~ private buildings or facilities until the fire marshal has reviewed and stated that the plans and specifications regarding accessibility appear to him to comply with ~~ADAAG standards~~ the ADA Standards.

B. In each case the application for review shall be accompanied by the plans and full, complete, and accurate specifications which shall comply in every respect with any and all requirements prescribed by ~~ADAAG~~ the ADA Standards.

* * *

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§1740. Enforcement of Part

A. For purposes of enforcing this Part, in any instance in which the ~~ADAAG standards~~ ADA Standards are not complied with the local building code authorities and the health authorities shall have authority to enforce these standards. Written approval by the fire marshal shall be presumptive evidence of compliance with ~~ADAAG standards~~ ADA Standards but shall not be considered conclusive and local building code authorities and health authorities shall have the power to review all construction within their jurisdiction to the end that the intent of this legislation shall be enforced.

B. Local building code authorities, health authorities, or any individual may seek an injunction to halt construction or require compliance with ~~ADAAG standards~~ ADA Standards of any public building or facility or ~~governmental~~ private building or facility which has been constructed or is being constructed in violation of this Part. All actions shall be brought in the district court of the parish in which the public building or facility or ~~governmental~~ private building or facility, or portion thereof, that is not in compliance, is situated.

§1741. Educational program by the office of rehabilitative services and fire marshal

Subject to appropriation for such purpose, the office of rehabilitative services and the state fire marshal may provide for educating the public and working with officials of cities, local building code inspectors, parishes, municipalities and other political subdivisions, private architects, designers, planners, and other interested parties in order to encourage and help them make all buildings, facilities, and improved areas accessible to and usable by ~~handicapped~~ persons with disabilities for purposes of rehabilitation, employment, business, recreation, and all other aspects of normal living. They shall work with architectural schools of the state and the State Board of Architectural Examiners to develop for inclusion in the architecture curriculum a course on barrier free design and to develop for inclusion in the architectural licensing test a section on barrier free design.

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§1742. Parking spaces for certain disabled persons

A.(1) Each state agency and political subdivision having jurisdiction over ~~street parking or~~ a ~~government~~ public facility and each owner or lessee of a ~~public~~ private facility shall, in accordance with applicable zoning and building codes, provide and maintain a minimum number of specially designed and marked motor vehicle parking spaces for the exclusive use of persons whose vehicles are identified by license plates, hang tags, or special parking cards for the mobility impaired issued pursuant to R.S. 47:463.4 or 463.4.1. The mobility impaired parking spaces shall adhere to the ~~ADAAG specifications~~ ADA Standards and shall include mobility-impaired loading and unloading areas, access aisles, access ramps, and curb cuts. The minimum number of such parking spaces shall be as established by ~~ADAAG~~ the ADA Standards. Public building or facility and private building or facility, as the ~~term is~~ terms are used in this Section, shall be as defined in R.S. 40:1732, and shall include public and private property which is open to the public and to which the public is invited for commercial or governmental purposes.

* * *

(3) Any owner or lessee of a ~~public~~ facility who fails to provide and maintain spaces reserved and designated for the exclusive use of vehicles bearing a special license plate or parking card issued to a mobility-impaired driver free of obstructions shall be fined not more than five hundred dollars.

* * *

§1742.1. Additional fine for enforcement of mobility-impaired parking regulations

In addition to all fines, fees, costs, and punishment authorized for violation of mobility-impaired parking regulations, any parish or municipality which institutes a formal ~~handicapped~~ mobility-impaired parking enforcement program to assist the law enforcement agency in enforcing such regulations may, by ordinance, provide for and enforce an additional twenty-five dollar fine for each violation of such regulations. The proceeds of such additional fine shall be used by such parish or municipal governing authority exclusively to fund such program.

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§1742.2. Local variances in mobility-impaired parking restrictions

A.(1) The legislature finds that providing sufficient mobility-impaired parking spaces for use by both employees and visitors to public or private buildings or facilities, as defined in R.S. 40:1732, is essential to protecting the civil rights of the disabled. To this end, the state, through the fire marshal, has insisted on compliance with the ~~Americans with Disabilities Act Accessibility Guidelines~~ ADA Standards, and the legislature has set substantial fines for ~~handicapped~~ mobility-impaired parking violations.

* * *

Section 2. R.S. 40:1739 is hereby repealed in its entirety.

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)]

Simon HB No. 536

Abstract: Amends the provisions regarding access to governmental and public facilities for the disabled community.

Present law provides that the legislature hereby finds that the physically handicapped are denied access to much of the built environment and that this denial of access often prevents the physically handicapped from exercising their rights and privileges as citizens. Denial of access further impairs the ability of the physically handicapped to secure an education, to find and maintain gainful employment, to live independently, and to otherwise participate fully in society. The legislature further finds that a large proportion of the population is physically handicapped and that this state has a moral interest in securing equal rights for all its citizens and an economic interest in the removal of architectural barriers which keep the physically handicapped on public assistance programs and from becoming productive citizens.

Proposed law retains present law but changes the phrase "physically handicapped" to "disabled community".

Present law provides that it is the policy of this state to bring to an end, as quickly as possible, the undue hardship caused by architectural barriers. The state shall enable persons who are physically handicapped to achieve maximum personal independence, to become gainfully employed, and to use and enjoy all buildings and facilities. It is the intent of the legislature to implement the removal or architectural barriers so that the physically handicapped may begin to share equally with the nonphysically handicapped the right to use and enjoy the man-made environment including, but not limited to, places of employment, recreation, entertainment, shopping, and education.

Proposed law retains present law but changes the phrase "physically handicapped" to "disabled community".

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Present law defines "ADAAG" as the Americans with Disabilities Act Accessibility Guidelines in effect on September 1, 1994 as adopted by the U. S. Dept. of Justice pursuant to the ADA.

Proposed law defines "ADA Standards" as the 2010 Americans with Disabilities Act Standards for Accessible Design as adopted by the U. S. Dept. of Justice pursuant to the ADA and any subsequent amendments or additions to or editions adopted by the Dept. of Justice.

Present law defines "alteration" as a deliberate reconstruction of an existing building in whole or in part in order to bring it up to date in conformity with present uses of the structure and to which other rules and regulations on the upgrading of health and safety provisions are applicable. It shall also include "alteration" as defined in the ADAAG.

Proposed law retains present law but changes "ADAAG" to "ADA Standards".

Present law defines "building" as a structure to which the general public customarily has access or utilizes as defined in the ADAAG.

Proposed law retains present law but changes "ADAAG" to "ADA Standards".

Present law defines "governmental facility" as a building, structure, or facility designed, constructed, or altered by, on behalf of, or for the use of a quasi public agency, the state, or any agency or department thereof, or any political subdivision or any agency or department thereof.

Proposed law defines "public building or facility" as a building, structure, or facility designed, constructed, or altered by, on behalf of, or for the use of a quasi public agency, the state, or any agency or department thereof, or any political subdivision or any governmental agency or department thereof or as defined by the ADA Standards.

Present law defines "public facility" as a commercial facility or a place of public accommodation as such terms are defined in the ADAAG.

Proposed law defines "private building or facility" as a commercial facility or a place of public accommodation as such terms are defined by the ADA Standards or in the Life Safety Code.

Present law provides that a "public facility" does not include a governmental facility.

Proposed law repeals present law.

Present law provides that the Americans with Disabilities Act Accessibility Guidelines in effect on Sept. 1, 1994, as adopted by the U. S. Dept. of Justice pursuant to the ADA are adopted, and requirements therein, shall be complied with.

Proposed law provides that the Americans with Disabilities Act Standards for Accessible Design in effect on Mar. 15, 2011, as adopted by the U. S. Dept. of Justice pursuant to the ADA are adopted as of October 1, 2011, and requirements therein, shall be complied with.

Proposed law provides that the Americans with Disabilities Act Accessibility Guidelines in effect on Sept. 1, 1994 shall remain in effect through Sept. 30, 2011.

Proposed law authorizes the state fire marshal to promulgate those rules and regulations as may be necessary to incorporate or adopt any subsequent amendments to or additions to or editions of the ADA Standards, as it is subsequently amended or issued as a new edition adopted by the U. S. Dept. of Justice.

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Present law provides that any new or altered public facility or governmental facility shall be made accessible pursuant to ADAAG standards subject only to the limitations or exceptions provided for therein. However, any altered public facility or governmental facility shall not be made to comply with Section 4.1.6(2) of the ADAAG standards relative to path of travel.

Proposed law provides that any new or altered public building or facility or private building or facility shall be made accessible pursuant to ADA Standards subject only to the limitations or exceptions provided for therein. However, any altered public building or facility or private building or facility shall not be made to comply with Sections 202.4 and F202.4 of the ADA Standards relative to path of travel.

Present law requires any dwelling unit in a facility which incorporates four or more dwelling units to be made accessible in accordance with rules promulgated by the fire marshal pursuant to present law. Such rules shall, at a minimum, provide that at least five percent of the dwelling units in complexes containing more than 15 units shall be fully accessible to a disabled potential resident.

Proposed law requires any dwelling unit in a facility which incorporates four or more dwelling units to be made accessible in accordance with the ADA Standards and rules promulgated by the fire marshal pursuant to proposed law.

Present law requires all public and governmental facilities constructed or remodeled in accordance with ADAAG standards to display signs indicating entrances, facilities, directions, accommodations for the disabled, and other signs as required by and also in accordance with such standards.

Proposed law retains present law but changes "ADAAG standards" to "ADA Standards".

Present law requires any common or emergency exit on the first floor or ground level of any new or altered public or governmental facility to remain free of any obstruction which would prevent a physically handicapped person from using same. Common and emergency entrances and exits shall conform to the ADAAG standards.

Proposed law requires any common or emergency exit on the first floor or ground level of any new or altered public building or facility or private building or facility to remain free of any obstruction which would prevent a person with a disability from using same. Common and emergency entrances and exits shall conform to the ADA Standards.

Present law provides that iron posts not used for structural support or similar barricades at common or emergency entrances and exits of public facilities or facilities used by the public that are existing, under construction, or under contract for construction which would prevent a physically handicapped person from using such entrances or exits shall be removed.

Proposed law retains present law but changes "physically handicapped person" to "person with a disability".

Present law provides that, in cases of practical difficulty or unnecessary hardship, the state fire marshal may, after consultation with the office of rehabilitative services, grant exceptions from the literal requirements of the standards and specifications required by present law or permit the use of other methods or materials. Unless a written exception is granted by the fire marshal, any unauthorized deviation from ADAAG standards shall be rectified by full compliance within 90 days after discovery of the deviation and delivery of a copy of the order requiring remedying of the deviation to the occupant or any person in charge of the premises personally or by registered or certified mail. If no person is found on the premises the order may be served by affixing a copy thereof in a conspicuous place on the door at the entrance of the premises.

Proposed law retains present law but changes "ADAAG standards" to "ADA Standards".

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Present law provides that no building permits shall be issued, no state contracts shall be awarded, nor shall any change in new building plans which affect compliance with ADAAG standards be approved concerning any public or governmental facilities until the fire marshal has reviewed and stated that the plans and specifications regarding accessibility appear to him to comply with ADAAG standards.

Proposed law provides that no building permits shall be issued, no state contracts shall be awarded, nor shall any change in new building plans which affect compliance with ADA Standards be approved concerning any public buildings or facilities or private buildings or facilities until the fire marshal has reviewed and stated that the plans and specifications regarding accessibility appear to him to comply with the ADA Standards.

Present law requires, in each case, the application for review to be accompanied by the plans and full, complete, and accurate specifications which shall comply in every respect with any and all requirements prescribed by ADAAG.

Proposed law retains present law but changes "ADAAG" to "ADA Standards".

Present law provides that in any instance in which the ADAAG standards are not complied with the local building code authorities and the health authorities shall have authority to enforce these standards. Written approval by the fire marshal shall be presumptive evidence of compliance with ADAAG standards but shall not be considered conclusive and local building code authorities and health authorities shall have the power to review all construction within their jurisdiction to the end that the intent of this legislation shall be enforced.

Proposed law retains present law but changes "ADAAG standards" to "ADA Standards".

Present law provides that local building code authorities, health authorities, or any individual may seek an injunction to halt construction or require compliance with ADAAG standards of any public facility or governmental facility which has been constructed or is being constructed in violation of present law. All actions shall be brought in the district court of the parish in which the public facility or governmental facility, or portion thereof, that is not in compliance, is situated.

Proposed law provides that local building code authorities, health authorities, or any individual may seek an injunction to halt construction or require compliance with ADA Standards of any public building or facility or private building or facility which has been constructed or is being constructed in violation of proposed law. All actions shall be brought in the district court of the parish in which the public building or facility or private building or facility, or portion thereof, that is not in compliance, is situated.

Present law provides that, subject to appropriation for such purpose, the office of rehabilitative services and the state fire marshal may provide for educating the public and working with officials of cities, local building code inspectors, parishes, municipalities and other political subdivisions, private architects, designers, planners, and other interested parties in order to encourage and help them make all buildings, facilities, and improved areas accessible to and usable by handicapped persons for purposes of rehabilitation, employment, business, recreation, and all other aspects of normal living.

Proposed law retains present law but changes "handicapped persons" to "persons with disabilities".

Present law provides that each state agency and political subdivision having jurisdiction over street parking or a government facility and each owner or lessee of a public facility shall, in accordance with applicable zoning and building codes, provide and maintain a minimum number of specially designed and marked motor vehicle parking spaces for the exclusive use

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of persons whose vehicles are identified by license plates, hang tags, or special parking cards for the mobility impaired issued pursuant to present law.

Proposed law provides that each state agency and political subdivision having jurisdiction over a public facility and each owner or lessee of a private facility shall, in accordance with applicable zoning and building codes, provide and maintain a minimum number of specially designed and marked motor vehicle parking spaces for the exclusive use of persons whose vehicles are identified by license plates, hang tags, or special parking cards for the mobility impaired issued pursuant to proposed law.

Present law provides that the mobility impaired parking spaces shall adhere to the ADAAG specifications and shall include mobility-impaired loading and unloading areas, access aisles, access ramps, and curb cuts. The minimum number of such parking spaces shall be as established by ADAAG.

Proposed law retains present law but changes "ADAAG" to "ADA Standards"

Present law provides that public facility, as the term is used in present law, shall be as defined in present law, and shall include private property which is open to the public and to which the public is invited for commercial or governmental purposes.

Proposed law provides that public building or facility and private building or facility, as the terms are used in proposed law, shall be as defined in proposed law, and shall include public and private property which is open to the public and to which the public is invited for commercial or governmental purposes.

Present law provides that any owner or lessee of a public facility who fails to provide and maintain spaces reserved and designated for the exclusive use of vehicles bearing a special license plate or parking card issued to a mobility-impaired driver free of obstructions shall be fined not more than $500.

Proposed law retains present law but deletes the requirement that the facility be public.

Present law provides that, in addition to all fines, fees, costs, and punishment authorized for violation of mobility-impaired parking regulations, any parish or municipality which institutes a formal handicapped parking enforcement program to assist the law enforcement agency in enforcing such regulations may, by ordinance, provide for and enforce an additional $25 fine for each violation of such regulations.

Proposed law retains present law but changes "handicapped" to "mobility-impaired".

Present law provides that the legislature finds that providing sufficient mobility-impaired parking spaces for use by both employees and visitors to public facilities is essential to protecting the civil rights of the disabled. To this end, the state, through the fire marshal, has insisted on compliance with the Americans with Disabilities Act Accessibility Guidelines, and the legislature has set substantial fines for handicapped parking violations.

Proposed law provides that the legislature finds that providing sufficient mobility-impaired parking spaces for use by both employees and visitors to public or private buldings or facilities, as defined in proposed law are essential to protecting the civil rights of the disabled. To this end, the state, through the fire marshal, has insisted on compliance with the ADA Standards, and the legislature has set substantial fines for mobility-impaired parking violations.

Present law provides that, prior to final acceptance of any completed public or governmental facility, for which a permit has been issued under present law, a certificate stating that the building has been constructed in compliance with ADAAG standards as reviewed by the fire

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marshal shall be required of the owner, signed by the project architect or project engineer, or, in the event there is no project architect or project engineer, the certificate shall be signed by the owner. The certificate shall be recorded in the mortgage records in the parish where the project is located.

Proposed law repeals present law.

(Amends the heading of Part V of Chapter 8 of Title 40 of the Louisiana Revised Statutes of 1950, R.S. 40:1731, 1732(2), (3), (4), (7), and (9), 1733-1736, 1737(A), 1738(A) and (B), 1740, 1741, 1742(A)(1) and (3), 1742.1, and 1742.2(A)(1); Repeals R.S. 40:1739)

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