

Regular Session, 2011

SENATE CONCURRENT RESOLUTION NO. 8

BY SENATORS MORRELL AND MURRAY AND REPRESENTATIVE BROSSETT

LEVEES. Directs the Southeast LA Flood Protection Authority-East to establish a \$25 Million Fund for indemnification of claims arising from activities on certain property approved by the authority.

A CONCURRENT RESOLUTION

To direct the Southeast Louisiana Flood Protection Authority-East to establish a twenty-five million dollar fund for the purpose of indemnification of claims arising from activities or projects approved by the Southeast Louisiana Flood Protection Authority-East to be performed on certain property.

WHEREAS, pursuant to R.S. 38:330.12.1, the Non-Flood Protection Asset Management Authority within the Department of Transportation and Development is charged with the management, control, regulation, operation, and maintenance of non-flood protection facilities or improvement assets or functions; and

WHEREAS, pursuant to R.S. 38:330.12, any facility or improvement within a levee district within the territorial jurisdiction of an authority, which facility or improvement is not directly related to providing adequate drainage, flood control, or water resources development pertaining to tidewater flooding, hurricane protection, or saltwater intrusion, that is owned or operated by a board of commissioners of the levee district, including all land, rights-of-way, servitudes, and improvements situated thereon, or connected therewith, for such purpose, shall be managed and controlled by the Non-Flood Protection Asset Management Authority; and

WHEREAS, such statute further authorizes the Non-Flood Protection Asset

1 Management Authority to enter into contracts, agreements, or cooperative endeavors for the  
2 operation and maintenance of any facility or improvement which it manages or controls; to  
3 sell, lease, or otherwise transfer any such property to carry out the authority's objects and  
4 purposes; and, if it determines that a sale, lease, or transfer of property is appropriate, to first  
5 offer such property to public entities other than levee districts, political subdivisions, or  
6 agencies responsible for flood control; and

7 WHEREAS, the agenda of the April 21, 2011, board meeting of the Southeast  
8 Louisiana Flood Protection Authority-East includes an item "Motion to grant the U.S. Army  
9 Corps of Engineers rights-of-entries to the properties which were previously considered non-  
10 flood assets by converting the properties to flood assets and issuing the rights-of-entries for  
11 the LPV Permanent Canal Closures and Pumps (PCCP) for the Orleans Avenue and London  
12 Avenue Outfall Canals"; and

13 WHEREAS, such item does not specify the particular properties involved but does  
14 identify such property as "non-flood assets"; and

15 WHEREAS, the language of such motion further suggests that the Southeast  
16 Louisiana Flood Protection Authority-East believes it has the authority on its own unilateral  
17 action to convert "non-flood assets" into "flood assets", despite the failure of the motion to  
18 cite legal authority for such belief and despite the specific language of R.S. 38:330.12 and  
19 330.12.1; and

20 WHEREAS, such motion further fails to cite whether the Non-Flood Protection Asset  
21 Management Authority within the Department of Transportation and Development has been  
22 consulted regarding the legality of this attempted action of "conversion" and, if so, the  
23 response of the Non-Flood Protection Asset Management Authority; and

24 WHEREAS, in light of the legal issues surrounding the attempted "conversion" of  
25 such properties for the purpose of granting activities or projects, especially rights-of-entries  
26 onto such properties, there is a legitimate concern that such action may expose the state or  
27 its political subdivisions to legal liability for claims arising from such activities or projects  
28 that occur due to an unauthorized and invalid "conversion"; and

29 WHEREAS, in light of all the circumstances and to protect the citizens and public  
30 entities of the state, the Southeast Louisiana Flood Protection Authority-East should

1       establish a fund of not less than twenty-five million dollars for the purpose of  
2       indemnification of claims arising from activities or projects occurring on these properties  
3       as a result of such attempted "conversions".

4               THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby  
5       direct the Southeast Louisiana Flood Protection Authority-East to establish a twenty-five  
6       million dollar fund for the purpose of indemnification of claims arising from activities or  
7       projects approved by the Southeast Louisiana Flood Protection Authority-East to be  
8       performed on certain property.

9               BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the  
10      secretary of the board of commissioners for the Southeast Louisiana Flood Protection  
11      Authority-East and to the secretary of the Department of Transportation and Development.

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        The original instrument and the following digest, which constitutes no part  
        of the legislative instrument, were prepared by Cathy Wells.

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DIGEST

Morrell

SCR

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