Regular Session, 2011

HOUSE BILL NO. 423

BY REPRESENTATIVES HOWARD AND SMILEY

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

WATERWAYS/RIVERS: Provides relative to acquisition of property for wetlands mitigation associated with the Comite River Diversion Project

AN ACT

To amend and reenact R.S. 49:214.6.3(B)(5), relative to wetlands mitigation; to authorize the acquisition of property for wetlands mitigation associated with the Comite River Diversion Project, Amite River and Tributaries, Louisiana project under certain conditions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 49:214.6.3(B)(5) is hereby amended and reenacted to read as follows:

§214.6.3. Functions and responsibilities; hurricane protection and flood control

* * *

B. Office of Coastal Protection and Restoration duties and responsibilities regarding hurricane protection and flood control:

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(5)(a) ~~No funds of the state nor of any political subdivision or political corporation of the state shall be used nor provided to the United States or any of its agencies, by contract, agreement, a required contribution of a project cost-share or otherwise, for the expropriation of property~~ Property acquired by the state or any political subdivision or political corporation of the state or the United States or any of its agencies, by contract, agreement, required project cost-share, or otherwise, for the purpose of compensatory mitigation of wetlands or other natural habitat, as

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authorized or required by state or federal law, to offset, compensate, or replace actual or anticipated damages to or loss of wetlands or other natural habitat caused by the Comite River Diversion Project, Amite River and Tributaries, Louisiana, shall be subject to a conservation servitude under the provisions of R.S. 9:1271 et seq. Persons from whom property is acquired for such mitigation purposes shall be allowed to avail themselves of the applicable provisions of R.S. 31:149 and R.S. 9:2795, for the sale of property, or any right or servitude thereof, made pursuant to this Paragraph. However, any mineral rights reserved under R.S. 31:149 shall except and exclude any and all rights to use the surface of the above-described property for any purpose including the right to enter upon or over the surface of said property for the purpose of exploration, development, production, or removal of minerals and shall be subject to the condition that no exploration, development, production, or removal of minerals of any kind may be conducted upon the property or in a manner that may impact or interfere with the use of the property for mitigation purposes. ~~However, the provisions of this Paragraph shall not apply where such funds are to be used to obtain property voluntarily offered for compensatory mitigation purposes, including but not limited to mitigation banking.~~

(b) When land is acquired from any person for mitigation associated with the Comite River Diversion Project, Amite River and Tributaries, Louisiana, such acquisition shall be only the minimum real property interest in said property that is necessary to support or fulfill the mitigation requirements of the project or project agreements, or that which is necessary to comply with any applicable state or federal statutes, laws, rules, or regulations. However, whether or not full ownership, excluding any reservations of mineral rights permitted under this Paragraph, is acquired for such mitigation purposes, the acquiring authority shall grant to any property owner from whom only a portion of his property has been acquired for such purpose, authority to traverse such formerly owned property in order to gain access to the Comite River. Such servitude of passage shall be limited to property owners

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who transfer a portion of their property for mitigation purposes. Such servitude of passage shall be heritable and subject to transfer.

(c) If it is necessary to acquire the mitigation land in full ownership, excluding any reservation of mineral rights permitted under this Paragraph, a conservation servitude shall be imposed on such land for the purpose of retaining or protecting fish and wildlife mitigation lands, ecosystems, restorations, and other environmental purposes, unless it is determined by the state agency or other authority acting as the nonfederal sponsor of the Comite River Diversion Project, Amite River and Tributaries, Louisiana that the imposition of such conservation servitude would interfere with the mitigation requirements of the project, project agreements, or applicable state or federal, laws, rules, or regulations. Further, any conservation servitude established under this Paragraph shall grant and be subject to the servitude of passage provided for in Subparagraph (b) of this Paragraph, and shall be subject to a permanent easement, servitude, right-of-way, or right-of-use as necessary to facilitate the principal purpose of acquisition of the property, including but not limited to the operation, maintenance, repair, replacement, restoration, and rehabilitation of the mitigation area by the state or any of its political subdivisions, or the federal government pursuant to state or federal law.

(d) No funds of the state nor of any political subdivision or political corporation of the state shall be used nor provided to the United States or any of its agencies, by contract, agreement, a required contribution of a project cost-share or otherwise, for the expropriation of property for the purpose of compensatory mitigation of wetlands or other natural habitat, as authorized or required by state or federal law, to offset, compensate, or replace actual or anticipated damages to or loss of wetlands or other natural habitat caused by the Comite River Diversion Project, Amite River and Tributaries, Louisiana unless the use of such expropriation is specifically approved in writing by the state agency or other authority acting as the nonfederal sponsor of the Comite River Diversion Project, Amite River and

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Tributaries, Louisiana and there has been a determination by such agency or authority that the following conditions exist:

(i) Expropriation proceedings are necessary for the purpose of providing clear title to the property to be acquired.

(ii) The acquiring authority can not amicably acquire the property from an otherwise willing seller because the property owner has rejected an offer of at least the amount of the highest appraisal obtained on behalf of the acquiring authority, and use of the expropriation process is necessary to obtain a judicial determination of the just compensation to be paid for the property to be expropriated.

(e) The provisions of this Paragraph shall not apply in cases where property is acquired through a mitigation bank for purposes of compensatory mitigation.

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)]

Howard HB No. 423

Abstract: Provides relative to acquisition of property for wetlands mitigation associated with the Comite River Diversion Project.

Present law prohibits funds of the state nor of any political subdivision or political corporation of the state being used nor provided to the U.S. or any of its agencies, by contract, agreement, a required contribution of a project cost-share, or otherwise, for the expropriation of property for the purpose of wetlands mitigation in association with the Comite River Diversion Project.

Proposed law provides that if property is acquired for compensatory wetlands mitigation in association with the Comite River Diversion Project, such acquisition shall be subject to a conservation servitude. Provides that the person from whom the property is acquired can avail themselves of state laws relative to preservation of mineral rights and conservation easements but prohibits retention of the right to use the surface of such property for exploration, development, production, or removal of minerals of any kind.

Proposed law provides that acquisition of property shall be only the minimum real property interest necessary to fulfill the wetlands mitigation requirement of the existing project agreement with the Corps of Engineers. Further provides a heritable and transferable servitude of passage over the property acquired.

Proposed law provides that if acquisition in full ownership, excluding mineral rights, is necessary, a conservation servitude shall be imposed on the land unless it is determined by the state or local sponsor of the project that such conservation servitude would interfere with the project or applicable state or federal laws.

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Proposed law prohibits use of state or political subdivision funds for the expropriation of property for wetlands mitigation unless such expropriation is specifically approved in writing by the state or local sponsor following a determination that: (1) expropriation is necessary to clear title or (2) when the acquiring authority cannot amicably acquire the property from an otherwise willing seller because the owner has rejected an offer of the amount of the highest appraisal, and the expropriation process is necessary to obtain a judicial determination of just compensation.

Proposed law further provides that these provisions are not applicable to property acquired through a mitigation bank.

(Amends R.S. 49:214.6.3(B)(5))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Natural Resources and Environment to the original bill.

1. Provided that the person from whom the property is acquired can avail themselves of state laws relative to preservation of mineral rights and conservation easements but prohibits retention of the right to use the surface of such property for exploration, development, production, or removal of minerals of any kind.

2. Provided a heritable and transferable servitude of passage over the property acquired.

3. Provided that if acquisition in full ownership, excluding mineral rights, is necessary, a conservation servitude shall be imposed on the land unless it is determined by the state or local sponsor of the project the such conservation servitude would interfere with the project or applicable state or federal laws.

4. Prohibited use of state or political subdivision funds for the expropriation of property for wetlands mitigation unless such expropriation is specifically approved in writing by the state or local sponsor following a determination that: (1) expropriation is necessary to clear title or (2) when the acquiring authority cannot amicably acquire the property from an otherwise willing seller because the owner has rejected an offer of the amount of the highest appraisal, and the expropriation process is necessary to obtain a judicial determination of just compensation.

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