

Regular Session, 2014

SENATE BILL NO. 469

BY SENATOR ADLEY

COASTAL RESOURCES. Provides relative to the enforcement of the coastal management program. (gov sig)

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§214.36. Enforcement; injunction; penalties and fines

* * *

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

1 conditions of a coastal use permit.

2 * * *

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

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

23 **(2) The violation is under the territorial jurisdiction of the local**
24 **governmental subdivision initiating the enforcement action as provided by its**
25 **approved local program.**

26 **(3) The proposed enforcement action by the local governmental**
27 **subdivision is consistent with this Subpart, including the coastal management**
28 **program authorized herein.**

29 **(4) The proposed enforcement action is consistent with the state's master**

1 **plan for integrated coastal protection.**

2 **(5) The proposed enforcement action is reasonable and appropriate**
3 **under the circumstances.**

4 J. **K.** The monies collected by the state **and local governmental**
5 **subdivisions** under the provisions of this Section shall be deposited as follows:

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

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

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

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

18 (2) The monies collected by the secretary **or a local governmental**
19 **subdivision** for violations relating to a use of local concern shall be placed in ~~local~~
20 ~~government mitigation banks established in accordance with R.S. 49:214.41 and the~~
21 ~~rules and regulations adopted thereunder. Each local government's mitigation bank~~
22 ~~shall be credited one hundred percent of the monies collected for violations relating~~
23 ~~to a use of local concern occurring within its geographic borders, except that for~~
24 ~~violations occurring within the geographic borders of two or more local governments~~
25 ~~the monies shall be divided on a pro rata basis and deposited accordingly in the local~~
26 ~~government's mitigation banks. In the event there is no local government mitigation~~
27 ~~bank in the parish in which the adverse impact is located, the monies shall be~~
28 ~~deposited in the Wetlands Conservation and Restoration Fund established in Article~~
29 ~~7, Section 10.2 of the Louisiana Constitution,~~ **the Coastal Resources Trust Fund,**

1 **as provided in R.S. 49:214.41**, and can only be used for mitigation projects within
2 the geographic borders of that local ~~government~~ **governmental subdivision**.

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

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

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

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

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

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

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

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

25 ~~M. N.~~ Nothing in this Section, shall prohibit any local political subdivision,
26 without a local coastal use permit program approved as provided for in R.S.
27 49:214.30 from enforcing any ordinance or regulation relating to wetlands protection
28 or restoration.

29 ~~N. O.~~(1) In addition to the other enforcement actions authorized by the

1 provisions of this Section, for each incident resulting in an administrative penalty
2 being assessed, the secretary shall issue an after-the-fact coastal use permit or permit
3 modification specifying terms and conditions that must be adhered to for the
4 unauthorized activity to remain in place. In determining the terms and conditions to
5 be placed on the after-the-fact permit, the secretary shall consider the following
6 factors:

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

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

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

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

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

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

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry J. Guillot.

DIGEST

Adley (SB 469)

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 DNR 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 DNR secretary 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 upon signature by governor or lapse of time for gubernatorial action.

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