

2018 Regular Session

HOUSE BILL NO. 423

BY REPRESENTATIVE MAGEE

COASTAL COMMISSION: Authorizes the Coastal Protection and Restoration Authority to acquire property for integrated coastal protection purposes prior to judgment

1 AN ACT

2 To amend and reenact R.S. 38:281(3) and (4), 351, 352(1) and (3)(a), 353, 354, 355, 356(A),
3 358, 360(B)(1), 363(B), 364, 385(B), 386(A), 387(D), 390, and 396, relative to
4 acquisition of property by the Coastal Protection and Restoration Authority; to allow
5 the Coastal Protection and Restoration Authority acquire property for integrated
6 coastal protection purposes prior to judgment in the same authority as levee districts
7 and levee and drainage districts; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 38:281(3) and (4), 351, 352(1) and (3)(a), 353, 354, 355, 356(A),
10 358, 360(B)(1), 363(B), 364, 385(B), 386(A), 387(D), 390, and 396 are hereby amended and
11 reenacted to read as follows:

12 §281. Definitions

13 As used in this Chapter, unless the context clearly indicates otherwise, the
14 following terms shall have the meanings ascribed to them as follows:

15 * * *

16 (3) "Fair market value" means the value of the lands or improvements
17 actually taken, used, damaged, or destroyed for levees or levee drainage or integrated
18 coastal protection purposes as determined in accordance with the uniform criteria for
19 determining fair market value as defined in R.S. 47:2321 et seq. Pursuant to Article
20 1, ~~Section 4(G)~~ Sections 4(F) and (G) and Article VI, Section 42(A) of the

1 Constitution of Louisiana and R.S. 49:214.5.6 and 214.6.5, such determination of fair
2 market value shall not exceed the compensation required by the Fifth Amendment
3 of the Constitution of the United States of America unless an exception as provided
4 in Article I, ~~Section 4(G)~~ Sections 4(F) and (G) of the Constitution of Louisiana is
5 applicable.

6 (4) "Full extent of the loss" shall not be construed to include payment for
7 uses which are remote, speculative, or contrary to law; uses for which the property
8 is still suitable; or elements of property ownership which are not actually taken, used,
9 damaged, or destroyed for levees or drainage or integrated coastal protections
10 purposes. Further, pursuant to Article I, ~~Section 4(G)~~ Sections 4(F) and (G) and
11 Article VI, Section 42(A) of the Constitution of Louisiana and R.S. 49:214.5.6 and
12 214.6.5, payment for the full extent of the loss shall not exceed fair market value and
13 shall not exceed the compensation required by the Fifth Amendment of the
14 Constitution of the United States of America unless an exception as provided in
15 Article I, ~~Section 4(G)~~ Sections 4(F) and (G) of the Constitution of Louisiana is
16 applicable.

17 * * *

18 §351. Authority to expropriate and acquire property prior to judgment

19 Notwithstanding any other law to the contrary, and in addition to the methods
20 and procedures for acquisition or utilization of servitudes for levee and related
21 purposes by levee districts, ~~and~~ levee and drainage districts, and the Coastal
22 Protection and Restoration Authority, whenever any levee district or levee and
23 drainage district or the Coastal Protection and Restoration Authority cannot
24 appropriate or amicably acquire immovable property needed for levee purposes,
25 including but not limited to flooding and hurricane protection purposes, or integrated
26 coastal protection projects, the levee district, ~~or~~ levee and drainage district, or the
27 Coastal Protection and Restoration Authority may acquire the property by
28 expropriation prior to judgment in accordance with the provisions of this Part. The

1 method of expropriation provided by this Part shall be authorized for corporeal
2 property and servitudes and for both riparian and nonriparian property.

3 §352. Petition for expropriation of property; contents; place of filing

4 The rights of expropriation of property granted by this Part shall be exercised
5 in the following manner:

6 (1) A petition shall be filed by the governing authority of the levee district,
7 ~~or levee and drainage district,~~ or the Coastal Protection and Restoration Authority
8 in the district court of the parish in which the property to be expropriated is situated.
9 Where the property to be expropriated extends into two or more parishes and the
10 owner of the property resides in one of them, the petition shall be filed in the district
11 court of the parish where the owner resides, but if the owner does not reside in any
12 one of the parishes into which the property extends, the petition may be filed in any
13 one of the parishes. In all such cases, the court wherein the petition is filed shall
14 have jurisdiction to adjudicate as to all the property involved.

15 * * *

16 (3) The petition shall have annexed thereto the following:

17 (a) A certified copy of a resolution adopted by the governing authority of the
18 levee district, ~~or levee and drainage district,~~ or the Coastal Protection and
19 Restoration Authority, with the concurrence of not less than two-thirds of a quorum,
20 declaring that the expropriation is necessary or useful for the purposes of this Part.

21 * * *

22 §353. Appointment of estimators; restrictions in selection

23 The governing authority of the levee district, ~~or levee and drainage district,~~
24 or the Coastal Protection and Restoration Authority shall select two or more persons
25 to make the estimate, but two of them shall be appraisers or agents who are in the
26 regular employ of the levee district or licensed realtors who are familiar with land
27 values in the vicinity of the property to be taken.

28 §354. Prayer of petition; ex parte order of expropriation

1 drainage district, or the Coastal Protection and Restoration Authority in its discretion
 2 may request the court to order possession surrendered after a longer delay. The court
 3 may fix a reasonable rental to be paid to the levee district, ~~or~~ levee and drainage
 4 district, or the Coastal Protection and Restoration Authority by a defendant in
 5 possession of the property for each day he remains in possession after the withdrawal
 6 of any part of the amount deposited.

7 * * *

8 §360. Defendant's answer; requirements; delay for filing

9 * * *

10 B. Where a portion of a lot, block, or tract of land is expropriated, any
 11 defendant may apply for a trial to determine the measure of compensation to which
 12 he is entitled, provided:

13 (1) He files an answer within one year from the date he is notified in writing
 14 by the levee district, ~~or~~ levee and drainage district, or the Coastal Protection and
 15 Restoration Authority that it has finally accepted the construction of the levee project
 16 for which the property was expropriated; however, he may file his answer prior to
 17 the date he is notified by the levee district.

18 * * *

19 §363. Time limit for demanding jury trial; waiver of demand for jury trial;
20 limitations

21 * * *

22 B. The levee district, ~~or~~ levee and drainage district, or the Coastal Protection
 23 and Restoration Authority may demand jury trial by motion filed no later than fifteen
 24 days after an answer filed by a defendant.

25 * * *

26 §364. Deposit of security for jury costs

27 The court shall require any defendant, other than a political subdivision of the
 28 state of Louisiana, who demands a jury trial to post a bond or other security as may
 29 be required in ordinary civil jury cases. The levee district, ~~or~~ levee and drainage

1 thereto for the amount of the deficiency. The final judgment together with legal
2 interest thereon shall be paid within sixty days after becoming final. Thereafter upon
3 application by the owner or owners, the trial court shall issue a writ of mandamus to
4 enforce payment.

5 B. If the amount finally awarded is less than the amount so deposited, the
6 court shall enter judgment in favor of the levee district, ~~or~~ levee and drainage district,
7 or the Coastal Protection and Restoration Authority and against the proper parties for
8 the amount of the excess together with legal interest from the date of withdrawal of
9 the deposit to the date of payment.

10 * * *

11 §396. Appropriation; effect on other authority

12 Nothing in this Part shall be construed to affect the authority of any levee
13 district, ~~or~~ levee and drainage district, or the Coastal Protection and Restoration
14 Authority conferred by the constitution or laws to appropriate property for levee,
15 drainage, levee drainage, integrated coastal protection, or related purposes.

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)]

HB 423 Original

2018 Regular Session

Magee

Abstract: Allows the Coastal Protection and Restoration Authority to acquire property prior to judgment for integrated coastal protection purposes.

Present law authorizes levee districts and levee and drainage districts to acquire servitudes for levee and related purposes. Further allows such districts to acquire such property by expropriation prior to judgment. Proposed law provides the Coastal Protection and Restoration the same authorization for acquisition of property for integrated coastal protection purposes.

Present law requires levee districts and levee and drainage districts to file a petition in the appropriate district court along with a certified copy of a resolution by the governing board of the district declaring the expropriation to be necessary. Provides for the process by which the acquisition must be accomplished. Proposed law includes acquisition of property for integrated coastal protection by the Coastal Protection and Restoration Authority in each step of the process.

(Amends R.S. 38:281(3) and (4), 351, 352(1) and (3)(a), 353, 354, 355, 356(A), 358, 360(B)(1), 363(B), 364, 385(B), 386(A), 387(D), 390, and 396)