

2021 Regular Session

SENATE BILL NO. 122

BY SENATOR ALLAIN

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

COASTAL RESOURCES. Provides for monies collected from enforcement actions of coastal use permits. (8/1/21)

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AN ACT

To amend and reenact R.S. 49:214.36(E), (J), and (O)(2), relative to the Coastal Zone Management Program; to provide for enforcement actions; to provide for the imposition of civil liability, the assessment of damages, and court orders; to provide for distribution of monies collected; to provide for the use of funds; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 49:214.36(E), (J), and (O)(2), are hereby amended and reenacted to read as follows:

§214.36. Enforcement; injunction; penalties and fines

* * *

E. A court may impose civil liability and assess damages; order, where feasible and practical, the payment of the restoration costs; require, where feasible and practical, actual restoration of areas disturbed; or otherwise impose reasonable and proper sanctions for uses conducted within the coastal zone without a coastal use permit where a coastal use permit is required or which are not in accordance with the terms and conditions of a coastal use permit. **Any monies collected for the payment**

1 of restoration costs shall be expended in a manner consistent with Subsection J
 2 of this Section. The court in its discretion may award costs and reasonable attorney's
 3 attorney fees to the prevailing party.

4 * * *

5 J. (1) The monies collected by the state under the provisions of this Section
 6 ~~shall be deposited as follows:~~

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

9 (a) Fifty After deducting the costs to reimburse the Department of
 10 Natural Resources for the expenses incurred enforcing the provisions of this
 11 Subpart, fifty percent of the monies collected shall be ~~used to reimburse the~~
 12 ~~Department of Natural Resources for the cost of enforcing the provisions of this~~
 13 ~~Subpart, and shall be deposited in the Coastal Resources Trust Fund, as provided in~~
 14 ~~R.S. 49:214.40~~ placed in the Coastal Protection and Restoration Fund
 15 established in Article VII, Section 10.2 of the Constitution of Louisiana and used
 16 for projects that are consistent with Paragraph (O)(2) of this Section.

17 (b) Twenty-five percent of the monies collected shall be placed in local
 18 government mitigation banks established in accordance with R.S. 49:214.41 and the
 19 rules and regulations adopted thereunder. In the event there is no local government
 20 mitigation bank for the area in which the adverse impact is located, the monies
 21 shall be deposited in a restricted fund administered by the parish governing
 22 authority of the parish or parishes in which the adverse impact related to the
 23 use is located. Such funds shall only be used for projects consistent with
 24 Paragraph (O)(2) of this Section within or for the benefit of areas within the
 25 geographic borders of that parish.

26 (c) Twenty-five percent of the monies collected shall be placed in the
 27 ~~Wetlands Conservation and Restoration Fund established in Article VII, Section 10.2~~
 28 ~~of the Constitution of Louisiana~~ Coastal Protection and Restoration Fund
 29 established in Article VII, Section 10.2 of the Constitution of Louisiana and used

1 to match funding for projects selected by local governing authorities pursuant
 2 to Item (b) of this Subparagraph that are approved in the coastal master plan.
 3 The Coastal Protection and Restoration Authority shall promulgate rules and
 4 regulations in accordance with the Administrative Procedure Act that provide
 5 for submission and approval of projects for match funding.

6 (2) The monies collected by the secretary, the attorney general, an
 7 appropriate district attorney, or a local government with an approved program
 8 under the provisions of this Section, for violations relating to a use of local concern
 9 shall be placed in local government mitigation banks established in accordance with
 10 R.S. 49:214.41 and the rules and regulations adopted thereunder. Each local
 11 government's mitigation bank shall be credited one hundred percent of the monies
 12 collected for violations relating to a use of local concern occurring within its
 13 geographic borders, except that for violations occurring within the geographic
 14 borders of two or more local governments the monies shall be divided on a pro rata
 15 basis and deposited accordingly in the local government's mitigation banks. In the
 16 event there is no local government mitigation bank in the parish in which the adverse
 17 impact is located, the monies shall be deposited in ~~the Wetlands Conservation and~~
 18 ~~Restoration Fund established in Article VII, Section 10.2 of the Constitution of~~
 19 ~~Louisiana~~, a restricted fund administered by the parish governing authority of
 20 the parish or parishes where the adverse impact related to the use is located and
 21 can only be used for mitigation projects within the geographic borders of that local
 22 government that are consistent with Paragraph (O)(2) of this Section.

23 * * *

24 O.

25 * * *

26 (2) Any monies received by any state or local governmental entity arising
 27 from or related to a state or federal permit issued pursuant to R.S. 49:214.21 et seq.,
 28 33 U.S.C. §1344, or 33 U.S.C. §408, a violation thereof, or enforcement thereof, or
 29 for damages or other relief arising from or related to any of the foregoing, or for

1 damages or other relief arising from or related to any use as defined by R.S.
2 49:214.23(13) shall be used for integrated coastal protection, including coastal
3 restoration, hurricane protection, and improving the resiliency of the coastal area.

4 * * *

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Tyler S. McCloud.

DIGEST

SB 122 Original 2021 Regular Session Allain

Present law establishes a coastal zone management program within the Dept. of Natural Resources and administered by the secretary of the department. The program includes regulation of the application and issuance of a coastal use permit prior to commencing a use of state or local concern in the coastal zone.

Present law authorizes a court to impose civil liability and assess damages, order the payment of the restoration costs, require actual restoration of areas disturbed, or otherwise impose reasonable and proper sanctions for uses in the coastal zone that were either without a coastal use permit or not in accordance with the terms and conditions of a coastal use permit.

Present law requires that any monies received by any state or local governmental entity arising from or related to a state or federal permit issued pursuant to the State and Local Coastal Resource Management Act of 1978, a violation thereof, or enforcement thereof, or for damages or other relief arising from or related to any of the foregoing, or for damages or other relief arising from or related to any use as defined by present law, be used for integrated coastal protection, including coastal restoration, hurricane protection, and improving the resiliency of the coastal area. Proposed law retains present law.

Proposed law requires any monies collected for the payment of restoration costs be expended consistent with present law.

Present law authorizes the court to award costs and reasonable attorney fees to the prevailing party. Proposed law retains present law.

Present law provides for the distribution of monies collected from enforcement actions for uses of state concerns as follows:

- (1) 50% deposited into the Coastal Resources Trust Fund for reimbursement to the department for the cost of enforcing the coastal zone management program.
- (2) 25% deposited in the local government's mitigation banks.
- (3) 25% deposited in the Wetlands Conservation and Restoration Fund.

Proposed law changes the 50% deposit from the Coastal Resources Trust Fund to the Coastal Protection and Restoration Fund for projects consistent with present law after deducting the cost to reimburse the department for enforcing the coastal zone management program.

Proposed law retains present law by requiring 25% be deposited in local government mitigation banks. Proposed law further provides that when no local government mitigation bank exists, the funds are deposited into a restricted fund administered by the parish governing authority of the parish or parishes in which the adverse impact related to the use

is located. Proposed law requires the funds be used for projects consistent with present law and within or for the benefit of areas within the geographic borders of that parish.

Proposed law changes the 25% deposit from the Wetlands Conservation and Restoration Fund to the Coastal Protection and Restoration Fund to be used to match funding for projects selected by local governing authorities and that are approved in the coastal master plan. Proposed law requires the Coastal Protection and Restoration Authority to promulgate rules and regulations in accordance with the APA that provide for submission and approval of projects for match funding.

Present law provides that 100% of monies collected by the secretary from enforcement actions for uses of local concerns be deposited in local government mitigation banks. Present law provides for a pro rata division in cases involving two or more local governments. Present law provides for the monies deposited in the Wetlands Conservation and Restoration Fund to be used only for mitigation projects within the geographic borders of that local government in the event there is no local government mitigation bank.

Proposed law expands monies subject to present law from monies collect by the secretary to monies collected by the secretary, the attorney general, an appropriate district attorney, or a local government with an approved program.

Proposed law changes the deposit in the event no local government mitigation bank exists, from the Wetlands Conservation and Restoration Fund to a restricted fund administered by the parish governing authority of the parish or parishes in which the adverse impact related to the use is located. Proposed law requires the funds be used for projects consistent with present law and within or for the benefit of areas within the geographic borders of that parish.

Effective August 1, 2021.

(Amends R.S. 49:214.36(E), (J), and (O)(2))