

Regular Session, 2014

SENATE BILL NO. 531

BY SENATOR ALLAIN

FEES/LICENSES/PERMITS. Provides relative to the authority of certain state and local government entities to bring causes of action arising from or related to certain permits issued in the coastal area. (gov sig)

1 AN ACT

2 To enact R.S. 49:214.36.1, relative to the authority of certain state and local government
3 entities to bring causes of action arising from or related to certain permits issued in
4 the coastal area; to provide relative to causes of action relating to certain permits
5 issued in the coastal area against state or local governmental entities; and to provide
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 49:214.36.1 is hereby enacted to read as follows:

9 **§214.36.1. Causes of action arising from or related to permits issued in the**
10 **coastal area pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or**
11 **33 U.S.C. 408**

12 **A.(1) No state or local governmental entity, except the Department of**
13 **Natural Resources, the attorney general, or the Coastal Protection and**
14 **Restoration Authority, shall have, nor may pursue, any right or cause of action**
15 **arising from or related to a state or federal permit issued pursuant to R.S.**
16 **49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408 in the coastal area as defined**
17 **by R.S. 49:214.2(4), violation thereof, or enforcement thereof, or for damages**

1 or other relief arising from or related to any of the foregoing. Notwithstanding
2 the foregoing, any contractual claims that any state or local governmental entity
3 may possess against the permittee are preserved.

4 (2) Nothing in this Section shall impair any authority under R.S.
5 49:214.36 of the secretary of the Department of Natural Resources, the attorney
6 general, an appropriate district attorney, or a local government with a coastal
7 management program approved under R.S. 49:214.21 et seq., the State and
8 Local Coastal Resources Management Act of 1978.

9 B. No person shall have, nor may pursue, any right or cause of action
10 against any state or local governmental entity for or relating to any violation of,
11 enforcement of, or damages or other relief arising from or related to any action
12 or inaction in relation to a permit issued pursuant to R.S. 49:214.21 et seq., 33
13 U.S.C. 1344 or 33 U.S.C. 408.

14 C. Any monies received by any state or local governmental entity except
15 the Department of Natural Resources arising from or related to a state or
16 federal permit issued pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33
17 U.S.C. 408, violation thereof, or enforcement thereof, or for damages or other
18 relief arising from or related to any of the foregoing shall be deposited and
19 credited by the treasurer to the Coastal Protection and Restoration Fund for
20 integrated coastal protection, including coastal restoration, hurricane
21 protection and improving the resiliency of the coastal area.

22 D. Nothing in this Section shall constitute a waiver of sovereign
23 immunity under the Eleventh Amendment of the United States Constitution.

24 E. Nothing in this Section shall prevent or preclude any state or local
25 governmental entity or any other person from pursuing any remedy otherwise
26 authorized pursuant to C.C.P. Art. 3861 et seq. or any administrative remedy
27 otherwise authorized by law arising from or related to a state or federal permit
28 issued in the coastal area pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or
29 33 U.S.C. 408.

1 Section 2. Where litigation asserting a right or cause of action as set forth in R.S.
2 49:214.36.1(A) has been filed as of the effective date of this Act, the state or local
3 governmental entity which has filed such litigation shall provide written notice via certified
4 mail, return receipt requested, to the three agencies identified in R.S. 49:214.36.1(A) within
5 thirty days of the effective date of this Act. Upon motion of the secretary of the Department
6 of Natural Resources, the executive director of the Coastal Protection and Restoration
7 Authority, or the attorney general, the moving parties shall be made parties and shall be
8 substituted for the person who brought the suit. If none of the foregoing moves to be made
9 party to the suit and substituted for the person who brought the suit within ninety days of
10 issuance of such notice, the court on its own motion or on the motion of any party or
11 interested person shall dismiss the litigation without prejudice as to any state or local
12 governmental entity.

13 Section 3. Where litigation asserting a right or cause of action as set forth in R.S.
14 49:214.36.1(B) has been filed as of the effective date of this Act, the court on its own motion
15 or on the motion of any party or interested person shall dismiss the litigation without
16 prejudice as to any state or local governmental entity.

17 Section 4. It is the intent of the legislature that the provisions of R.S. 49:214.36.1(A)
18 are procedural and interpretive in nature and intended to clarify existing law, and that they
19 shall be applicable to all claims existing or actions pending on its effective date and all
20 claims arising or actions filed on and after its effective date. It is further the intent of the
21 legislature to clarify that attempted enforcement of the claims described in R.S.
22 49:214.36.1(A) by any person other than those entities named therein is and has always been
23 contrary to the public policy of this state and ultra vires.

24 Section 5. It is the intent of the legislature that the provisions of R.S. 49:214.36.1(B)
25 shall be applicable to all claims existing or actions pending on its effective date and all
26 claims arising or actions filed on and after its effective date, as authorized by Article XII,
27 Section 10(C) of the Louisiana Constitution. It is further the intent of the legislature to
28 declare that the claims described in R.S. 49:214.36.1(B) are and have always been contrary
29 to the public policy of this state.

1 Section 6. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without signature
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
5 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

Allain (SB 531)

Proposed law provides that no state or local governmental entity, except the Department of Natural Resources (DNR), the attorney general, or the Coastal Protection and Restoration Authority (CPRA), shall have, nor may pursue, any right or cause of action arising from or related to a state or federal permit issued pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408 in the coastal area as defined by R.S. 49:214.2(4), violation thereof, or enforcement thereof, or for damages or other relief arising from or related to any of the foregoing. However, preserves any contractual claims that any state or local governmental entity may possess against the permittee.

Provides that nothing in proposed law shall impair any authority under R.S. 49:214.36 of the DNR secretary, the attorney general, an appropriate district attorney, or a local government with a coastal management program approved under R.S. 49:214.21 et seq., the State and Local Coastal Resources Management Act of 1978.

Provides that no person shall have, nor may pursue, any right or cause of action against any state or local governmental entity for or relating to any violation of, enforcement of, or damages or other relief arising from or related to any action or inaction in relation to a permit issued pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408.

Provides that any monies received by any state or local governmental entity except DNR arising from or related to a state or federal permit issued pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408, violation thereof, or enforcement thereof, or for damage or other relief arising from or related to any of the foregoing shall be deposited and credited by the treasurer to the Coastal Protection and Restoration Fund for integrated coastal protection, including coastal restoration, hurricane protection and improving the resiliency of the coastal area.

Provides that nothing in proposed law:

- (1) Shall constitute a waiver of sovereign immunity under the Eleventh Amendment of the US Constitution.
- (2) Shall prevent or preclude any state or local governmental entity or any other person from pursuing any remedy otherwise authorized pursuant to C.C.P. Art. 3861 et seq. or any administrative remedy otherwise authorized by law arising from or related to a state or federal permit issued in the coastal area pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408.

Provides that where litigation asserting a right or cause of action as set forth in R.S. 49:214.36.1(A) has been filed as of the effective date of proposed law, the state or local governmental entity which has filed such litigation shall provide written notice via certified

mail, return receipt requested, to the three agencies identified in R.S. 49:214.36.1(A) within thirty days of the effective date of proposed law. Upon motion of the DNR secretary, the CPRA executive director, or the attorney general, the moving parties shall be made parties and shall be substituted for the person who brought the suit. However, if none of the foregoing moves to be made party to the suit and substituted for the person who brought the suit within 90 days of issuance of such notice, the court on its own motion or on the motion of any party or interested person shall dismiss the litigation without prejudice as to any state or local governmental entity.

Provides that where litigation asserting a right or cause of action as set forth in R.S. 49:214.36.1(B) has been filed as of the effective date of proposed law, the court on its own motion or on the motion of any party or interested person shall dismiss the litigation without prejudice as to any state or local governmental entity.

States that it is the intent of the legislature that the provisions of R.S. 49:214.36.1(A) are procedural and interpretive in nature and intended to clarify existing law, and that they shall be applicable to all claims existing or actions pending on its effective date and all claims arising or actions filed on and after its effective date. Provides that it is further the intent of the legislature to clarify that attempted enforcement of the claims described in R.S. 49:214.36.1(A) by any person other than those entities named therein is and has always been contrary to the public policy of this state and ultra vires.

States that it is the intent of the legislature that the provisions of R.S. 49:214.36.1(B) shall be applicable to all claims existing or actions pending on its effective date and all claims arising or actions filed on and after its effective date, as authorized by Article XII, Section 10(C) of the La. Constitution. Provides that it is further the intent of the legislature to declare that the claims described in R.S. 49:214.36.1(B) are and have always been contrary to the public policy of this state.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 49:214.36.1)