

Regular Session, 2014

SENATE BILL NO. 469

BY SENATORS ALLAIN AND ADLEY

COASTAL RESOURCES. Provides relative to the enforcement of the State and Local Coastal Resources Management Act of 1978. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 49:214.36(D) and to enact R.S. 49:214.36(O), relative to the  
3 coastal zone management program; to provide relative to the initiation or  
4 continuation of enforcement actions under the coastal zone management program;  
5 to prohibit certain state or local governmental entities from initiating certain causes  
6 of action; to provide for the uses of certain monies received by any state or local  
7 governmental entity; to allow any person or state or local governmental entity to  
8 enforce certain rights or administrative remedies; to provide terms, conditions, and  
9 requirements; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 49:214.36(D) is hereby amended and reenacted and R.S.  
12 49:214.36(O) is hereby enacted to read as follows:

13 §214.36. Enforcement; injunction; penalties and fines

14 \* \* \*

15 D. The secretary, the attorney general, ~~an appropriate district attorney, or a~~  
16 ~~local government with an approved~~ **a district attorney for a local government**  
17 **without an approved program,** or a local government with an approved program

1 may bring such injunctive, declaratory, or other actions as are necessary to ensure  
2 that no uses are made of the coastal zone for which a coastal use permit has not been  
3 issued when required or which are not in accordance with the terms and conditions  
4 of a coastal use permit.

5 \* \* \*

6 **O.(1) Except as provided in this Subpart, no state or local governmental**  
7 **entity shall have, nor may pursue, any right or cause of action arising from any**  
8 **activity subject to permitting under R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33**  
9 **U.S.C. 408 in the coastal area as defined by R.S. 49:214.24, or arising from or**  
10 **related to any use as defined by R.S. 49:214.23(13), regardless of the date such**  
11 **use or activity occurred.**

12 **(2) Any monies received by any state or local governmental entity arising**  
13 **from or related to a state or federal permit issued pursuant to R.S. 49:214.21 et**  
14 **seq., 33 U.S.C. 1344 or 33 U.S.C. 408, a violation thereof, or enforcement**  
15 **thereof, or for damages or other relief arising from or related to any of the**  
16 **foregoing, or for damages or other relief arising from or related to any use as**  
17 **defined by R.S. 49:214.23(13) shall be used for integrated coastal protection,**  
18 **including coastal restoration, hurricane protection and improving the resiliency**  
19 **of the coastal area.**

20 **(3) Nothing in this Section shall constitute a waiver of sovereign**  
21 **immunity under the Eleventh Amendment of the United States Constitution.**

22 **(4) Nothing in this Section shall prevent or preclude any person or any**  
23 **state or local governmental entity from enforcing contractual rights or from**  
24 **pursuing any administrative remedy otherwise authorized by law arising from**  
25 **or related to a state or federal permit issued in the coastal area pursuant to R.S.**  
26 **49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408.**

27 **(5) Nothing in this Subsection shall alter the rights of any governmental**  
28 **entity for claims related to sixteenth section school lands.**

29 Section 2. This Act shall become effective upon signature by the governor or, if not

1 signed by the governor, upon expiration of the time for bills to become law without signature  
2 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
3 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
4 effective on the day following such approval.

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The original instrument was prepared by Jerry J. Guillot. The following digest, which does not constitute a part of the legislative instrument, was prepared by J. W. Wiley.

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#### DIGEST

Allain (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 changes "an appropriate district attorney" to "a district attorney for a local government without an approved program".

Proposed law provides that except as provided in present law, no state or local governmental entity may have, nor may pursue, any right or cause of action arising from any activity subject to permitting under present law or certain federal statutes in the coastal area, or arising from or related to any use as defined by present law, regardless of the date such use or activity occurred.

Proposed law requires any monies received by any state or local governmental entity arising from or related to a certain state or federal permit, 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 provides that nothing in the present law and proposed law will constitute a waiver of sovereign immunity under the 11th Amendment of the United States Constitution.

Proposed law provides that nothing in the present law and proposed law will prevent or preclude any person or any state or local governmental entity from enforcing contractual rights or from pursuing any administrative remedy otherwise authorized by law arising from or related to certain state or federal permit issued in the coastal area.

Proposed law provides that nothing in proposed law will alter the rights of any governmental entity for claims related to 16th school lands.

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

(Amends R.S. 49:214.36(D); adds R.S. 49:214.36(O))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill

1. Changes "an appropriate district attorney" to "a district attorney for a local government without an approved program".
2. Removes certain provisions of proposed law.
3. Prohibits certain state or local governmental entities from initiating certain causes of action arising from certain activities subject to permitting.
4. Provides for the uses of certain monies.
5. Provides that sovereign immunity is not waived.
6. Retains certain rights or remedies of persons or state or local governmental entities.
7. Retains rights related to 16<sup>th</sup> section school lands.