

2020 Regular Session

SENATE BILL NO. 359

BY SENATORS HENSGENS, ALLAIN, BERNARD, CATHEY, CLOUD, CORTEZ, FESI, HENRY, HEWITT, JOHNS, MCMATH, MILLIGAN, ROBERT MILLS, MIZELL, PEACOCK, REESE, TALBOT, WHITE AND WOMACK AND REPRESENTATIVES AMEDEE, BEAULLIEU, BUTLER, CARRIER, COUSSAN, DEVILLIER, EMERSON, GOUDEAU, HORTON, MCCORMICK AND MIGUEZ

COASTAL RESOURCES. Provides for the enforcement of coastal use permits. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 49:214.36(D) and (E), relative to the Louisiana Coastal Zone
3 Management Program; to provide for the authority to bring enforcement actions; to
4 provide for the imposition of civil liability and the assessment of damages; to
5 provide certain terms, procedures, conditions, requirements, and effects; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 49:214.36(D) and (E) are hereby amended and reenacted to read as
9 follows:

10 §214.36. Enforcement; injunction; penalties and fines

11 * * *

12 D. The authority to bring an action to impose civil liability or assess
13 damages shall be as follows:

14 (1) Uses of state concern. The secretary; or the attorney general; ~~an~~
15 ~~appropriate district attorney, or a local government with an approved program~~ may
16 bring such injunctive, declaratory, or other actions as are necessary to ensure that no
17 uses of state concern, as defined by R.S. 49:214.25(A)(1), are made of the coastal

1 zone for which a coastal use permit has not been issued when required or which are
2 not in accordance with the terms and conditions of a coastal use permit.

3 **(2) Uses of local concern. The secretary, the attorney general, an**
4 **appropriate district attorney unless otherwise precluded by state law or home**
5 **rule charter, or a local government with an approved program, may bring such**
6 **injunctive, declaratory, or other actions as are necessary to ensure that no uses**
7 **of local concern, as defined by R.S. 49:214.25(A)(2), are made of the coastal**
8 **zone for which a coastal use permit has not been issued when required or which**
9 **are not in accordance with the terms and conditions of a coastal use permit. The**
10 **authority of such district attorney or local government to bring an action shall**
11 **be limited to uses of local concern within their jurisdiction.**

12 E. ~~A~~ **In accordance with Subsection D of this Section, a** court may impose
13 civil liability and assess damages; order, where feasible and practical, the payment
14 of the restoration costs; require, where feasible and practical, actual restoration of
15 areas disturbed; or otherwise impose reasonable and proper sanctions for uses
16 conducted within the coastal zone without a coastal use permit where a coastal use
17 permit is required or which are not in accordance with the terms and conditions of
18 a coastal use permit. The court in its discretion may award costs and reasonable
19 attorney's fees to the prevailing party.

20 * * *

21 Section 2. The provisions of this Act shall be applicable to all claims existing or
22 actions pending on its effective date and all claims arising or actions filed on and after its
23 effective date.

24 Section 3. This Act shall become effective upon signature by the governor or, if not
25 signed by the governor, upon expiration of the time for bills to become law without signature
26 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If
27 vetoed by the governor and subsequently approved by the legislature, this Act shall become
28 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 Tyler S. McCloud.

DIGEST

SB 359 Engrossed

2020 Regular Session

Hensgens

Present law establishes a coastal zone management program within the Dept. of Natural Resources administered by the secretary of the department. An aspect of the program is the application and issuance of required coastal use permits prior to commencing a use of state or local concern in the coastal zone.

Present law authorizes the secretary, the attorney general, an appropriate district attorney, or a local government with an approved program to bring injunctive, declaratory, or other actions necessary to ensure no use of the coastal zone is made without the necessary permit or that is not in accordance with the terms and conditions of a coastal use permit.

Proposed law authorizes the secretary or the attorney general to bring such actions necessary to ensure no uses of state concern and no uses of local concern are made in the coastal zone without the necessary permit or which are not in accordance with the terms and conditions of a coastal use permit.

Proposed law authorizes the appropriate district attorney, unless otherwise precluded by state law or home rule charter, and the local government, with an approved program, to bring such actions as are necessary to ensure that no uses of only local concern are made of the coastal zone without the required coastal use permit or which are not in accordance with the terms and conditions of a coastal use permit.

Proposed law provides that the authority of such district attorney or local government to bring an action shall be limited to uses of local concern within their jurisdiction.

Present law defines "uses of state concern" as those that directly and significantly affect coastal waters and which are in need of coastal management and which have impacts of greater than local significance or which significantly affect interests of regional, state, or national concern. Present law provides examples of uses of state concern as follows:

- (1) Any dredge or fill activity which intersects with more than one waterbody.
- (2) Projects involving use of state owned lands or water bottoms.
- (3) State publicly funded projects.
- (4) National interest projects.
- (5) Projects occurring in more than one parish.
- (6) All mineral activities, including exploration for, and production of, oil, gas, and other minerals, all dredge and fill uses associated therewith, and all other associated uses.
- (7) All pipelines for the gathering, transportation or transmission of oil, gas, and other minerals.
- (8) Energy facility siting and development.
- (9) Uses of local concern which may significantly affect interests of regional, state, or national concern.

Present law defines "uses of local concern" as those that directly and significantly affect

coastal waters and are in need of coastal management but are not uses of state concern and which should be regulated primarily at the local level if the local government has an approved program. Present law provides examples of uses of local concern as follows:

- (1) Privately funded projects which are not uses of state concern.
- (2) Publicly funded projects which are not uses of state concern.
- (3) Maintenance of uses of local concern.
- (4) Jetties or breakwaters.
- (5) Dredge or fill projects not intersecting more than one water body.
- (6) Bulkheads.
- (7) Piers.
- (8) Camps and cattlewalks.
- (9) Maintenance dredging.
- (10) Private water control structures of less than \$15,000 in cost.
- (11) Uses on cheniers, salt domes, or similar land forms.

Proposed law retains present law.

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 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. Further authorizes the court to award costs and reasonable attorney fees to the prevailing party.

Proposed law authorizes such court action subject to the requirements of the proposed law.

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

(Amends R.S. 49:214.36(D) and (E))

Summary of Amendments Adopted by Senate

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

1. Limits the authority of a local district attorney to enforce uses of local concern if otherwise precluded by state law or home rule charter.