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DIGEST

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SB 440 Reengrossed

2020 Regular Session

Fesi

Present law establishes a coastal zone management program within the Dept. of Natural Resources and administered by the secretary of the department. An aspect of the program is the application and issuance of 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 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 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.

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 by the secretary through enforcement actions for uses of state concern and uses of local concern. 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 25% deposit from local government mitigation banks to a restricted fund administered by the local 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.

Present law provides that 100% of monies collected 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 deposit in the Wetlands Conservation and Restoration Fund, but can 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 changes the deposit from local government mitigation banks to a restricted fund administered by the local 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 provides for distribution based on the type of use of the coastal zone involved of any monies received in settlement or by final judgment for assessed damages, restoration costs, actual restoration of areas disturbed, or reasonable and proper sanctions.

Proposed law provides that for uses of state concern the monies shall be used consistent with present law and shall be deposited as follows:

- (1) 50% deposited into the Coastal Protection and Restoration Fund.
- (2) 25% 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 and used for projects selected by the local governing authority. Unless otherwise prohibited by law, proposed law authorizes preferences to local contractors for project planning, permitting, and implementation for such selected projects.
- (3) 25% deposited into the Coastal Protection and Restoration Fund to be used as match funding for projects selected by local governing authorities.

Proposed law deposits 100% of the monies collected for uses of local concern in 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. Use of such funds limited to projects selected by the local governing authority that are consistent with present law.

Proposed law provides that the provisions of the Act are applicable to all claims existing or actions pending on the effective date of the Act and to all claims arising or actions filed on and after its effective date.

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

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

Summary of Amendments Adopted by Senate

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

1. Changes the deposit of monies from local government mitigation banks to a restricted fund administered by the local governing authority.
2. Provides relative to the deposits in the Coastal Protection and Restoration Fund.
3. Provides relative to monies received from settlement or final judgment from civil liability, damages, restoration costs, actual restoration, or sanctions.

Senate Floor Amendments to engrossed bill

1. Provides relative to monies collected for violations.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Natural Resources and Environment to the engrossed bill:

1. Authorize the secretary or the attorney general to bring such actions of state concern but no uses of local concern.
2. Authorize the appropriate district attorney and the local government, with an approved program, to bring actions of only local concern.
3. Limit the authority of a district attorney or local government to bring an action of local concern only within their jurisdiction.
4. Provide that the provisions of the Act are applicable to all claims existing or actions pending on the effective date of the Act and to all claims arising or actions filed on and after its effective date.
5. Make the bill effective upon signature of governor or lapse of time for gubernatorial action.