

Regular Session, 2011

HOUSE BILL NO. 640 (Substitute for House Bill No. 430 by Representative Billiot)

BY REPRESENTATIVE BILLIOT

LEVEES: Revises Provisions relative to the rights and powers of levee districts

1 AN ACT

2 To amend and reenact R.S. 38:213, 225(A)(1)(a), (2), (D), and 226 and to enact R.S.  
3 38:321.1, relative to levee districts and flood control structures; to restrict access  
4 upon a levee or flood control structure in certain circumstances; to provide for  
5 penalties; to provide exceptions for access upon public levees or flood control  
6 structures; to provide relative to the obstruction of levees; to provide for the authority  
7 for a board or commission having jurisdiction over a levee to issue or renew permits  
8 or letters of no objection; to authorize a levee district or levee drainage district to  
9 purchase certain items through an existing public contract of another political  
10 subdivision; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 38:213, 225(A)(1)(a),(2), (D), and 226 are hereby amended and  
13 reenacted and R.S. 38:321.1 is hereby enacted to read as follows:

14 §213. Riding or hauling on levees prohibited

15 A. No person shall ride, drive, or haul upon the public levees or integrated  
16 coastal protection projects or their rights of way except where, in the judgment of the  
17 levee commissioners of a district and the Department of Transportation and  
18 Development, or, for levees or integrated coastal protection projects in the coastal  
19 area as defined in R.S. 49:214.2(3), the Office of Coastal Protection and Restoration,  
20 ample provision has been made to guard against any damage to which the levees or

1 integrated coastal protection projects may thereby be exposed from wear, tear, and  
2 abuse. Each levee district shall publish guidance, erect signage and require special  
3 permits as they deem appropriate to allow them to make provisions for limited  
4 riding, driving, or hauling. As a condition of the issuance of a permit, the district  
5 may require the applicant to construct an asphalt or concrete ramp or crossing in  
6 accordance with specifications for the construction thereof approved by the  
7 governing authority.

8 B. ~~Whoever violates this Section shall be fined not more than fifty dollars~~  
9 ~~or imprisoned for not more than thirty days, or both~~ Each governing authority is  
10 authorized to set the penalty for violation of this Section, provided that the penalty  
11 shall not exceed the penalty for criminal trespass, as defined in R.S. 14:63, and the  
12 governing authority may seek injunctive relief and collect all expenses incurred as  
13 a result of the violation.

14 C. This Section shall not be construed to restrict the proper officers of the  
15 state or of any levee district or parish while in the performance of duty in inspecting,  
16 guarding, or repairing the levees or integrated coastal protection projects.

17 D. Nothing in this Section shall interfere with the crossing over any public  
18 levees, at ramps or inclines established under plans and specifications of the  
19 Department of Transportation and Development, or, for levees or integrated coastal  
20 protection projects in the coastal area as defined in R.S. 49:214.2(3), the Office of  
21 Coastal Protection and Restoration, ~~for the purpose of transporting any material that~~  
22 ~~may be used or required in the business of the population living behind the levees.~~

23 \* \* \*

24 §225. Obstructions on levees, waterways and rights of way therefor; removal at  
25 expense of person responsible; destroying markers prohibited

26 A. No person shall:

27 (1)(a) Place or cause to be placed upon or within ~~six~~ fifteen feet of any part  
28 of the levees fronting any waterway subject to the control or surveillance of police  
29 juries, levee boards, municipal corporations, or other authorized boards or

1 departments any object, material, or matter of any kind or character which obstructs  
2 or interferes with the safety of the levees or is an obstacle to the inspection,  
3 construction, maintenance, or repair of any levee; or place or cause to be placed any  
4 object, structure, material, or matter of any kind or character upon any part of any  
5 land which the state or any agency or subdivision thereof may own or acquire by  
6 deed, lease, servitude, charge, or otherwise, and through its authorized  
7 representative, may donate, grant, or otherwise convey to the United States' rights-  
8 of-way, easements, or other servitudes for the construction, improvement, or  
9 maintenance of any flood-control structures or natural or other waterway, which may  
10 obstruct or interfere with the improvement or maintenance of such waterway or use  
11 of the land for flood-control purposes.

12 \* \* \*

13 (2)(a)(i) Tie or moor logs, rafts, boats, water craft, or floating objects of any  
14 description to the levees, or, when the water is against the levees, tie or moor any  
15 floating objects ~~insecurely~~ to mooring posts, revetments, trees or other ~~stationary or~~  
16 ~~supposedly stationary objects on the foreshore where they can be driven against the~~  
17 ~~levees during windstorms~~ within one hundred eighty feet of any levee;

18 (ii) When the water is against the levees, drive or push any logs, rafts, boats,  
19 water craft, or floating objects of any description onto or against any levees;

20 (b) Nothing herein shall prohibit the mooring or berthing of floating vessels  
21 at such locations as have been permitted for this purpose by the United States Coast  
22 Guard Captain of the Port, United States Army Corps of Engineers, the Louisiana  
23 Department of Transportation and Development, the jurisdictional levee district or  
24 flood protection authority, the Office of Coastal Protection and Restoration or any  
25 other permitting authority;

26 \* \* \*

27 D. Whoever violates this Section shall be ~~fin~~~~ed not more than one hundred~~  
28 ~~dollars or~~ subject to a civil fine of not more than ten thousand dollars for each  
29 violation or, in the case of willful and wanton violations, imprisoned for not more

1       than six months or both. Second and any subsequent violations shall be subject to a  
2       civil fine of up to twenty thousand dollars for each violation or, in the case of willful  
3       and wanton violations, imprisonment for not more than six months or both. The  
4       governing authority that has jurisdiction of the levee, may bring a civil action for  
5       damages and/or injunctive relief, including but not limited to the issuance of a  
6       mandatory injunction. In any suit for the issuance of an injunction, proof of  
7       irreparable harm shall not be necessary.

8       §226. Permits for levee crossings

9               ~~If an appointed board or commission having jurisdiction over levees receives~~  
10       ~~letters of no objection from the United States Army Corps of Engineers and the~~  
11       ~~Louisiana Department of Transportation and Development, office of public works,~~  
12       ~~or, for levees in the coastal area as defined in R.S. 49:214.2(3), the Office of Coastal~~  
13       ~~Protection and Restoration, in~~ In response to a request to the board or commission,  
14       having jurisdiction over levees, for a permit or letter of no objection to a levee  
15       crossing or a request to renew or transfer an existing permit, it shall be incumbent  
16       ~~upon and a ministerial duty of the executive or administrative officer to issue the~~  
17       ~~requested permit or letter of no objection to the crossing, subject to any conditions~~  
18       ~~or stipulations contained in the letters received from the United States Army Corps~~  
19       ~~of Engineers and the Louisiana Department of Transportation and Development,~~  
20       ~~office of public works or, for levees in the coastal area as defined in R.S.~~  
21       ~~49:214.2(3), the Office of Coastal Protection and Restoration. the board or~~  
22       commission, after submitting the request to United States Army Corps of Engineers,  
23       the Department of Transportation and Development, or Office of Coastal Protection  
24       and Restoration, as applicable, may issue the requested permit or letter of no  
25       objection. The board or commission may impose customary fees, insurance, bonds,  
26       and other general stipulations. The executive or administrative officer shall enforce  
27       ~~such permits for levee crossings~~ Such permits shall be enforced only to the extent of  
28       the conditions and stipulations contained in the permit or letter of no objection. Any  
29       such permit or letter of no objection does not alleviate the necessity of the applicant

1 from obtaining any other local, state, or federal permits required by law and  
2 complying with any requirements in those permits.

3 \* \* \*

4 §321.1. Additional procurement methods; levee districts

5 A. In addition to the procurement methods available to all political  
6 subdivisions, as an alternate cost effective means of acquiring materials, supplies,  
7 vehicles, and equipment, a levee district or levee drainage district may purchase  
8 these items through an existing public contract of another political subdivision within  
9 one year of the opening of bids, provided that the following conditions are met:

10 (1) The contract was bid in compliance with R.S. 38:2211 et seq.

11 (2) The total purchases on the contract do not exceed two times what was  
12 purchased by the political subdivision bidding the contract.

13 (3) The written consent of the political subdivision which bid the contract  
14 is obtained, as well as the contract number, and if applicable, the resolution accepting  
15 the contract.

16 (4) The vendor agrees to the additional purchase.

17 (5) The vendor, product, materials, supplies, vehicles, or equipment are  
18 identical to those specified in the existing public contract of the other political  
19 subdivision, and the price is the same as the original contract price.

20 B. The levee district or levee drainage district may rely on a certificate of the  
21 political subdivision that the contract was bid in compliance with state law.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Billiot

HB No. 640

**Abstract:** Provides for specific restrictions of certain activities on public levees and further revises the penalties and exceptions associated with the restrictions. Provides for the obstruction of levees and the associated penalties. Further provides the authority of a board or commission related to the issuance of permits and letters of no objection. Provides for additional procurement methods for a levee district or levee drainage district.

Present law provides for restriction of certain activities on public levees or coastal protection projects, unless provisions are made by the levee district, DOTD, or the Office of Coastal Protection and Restoration (OCPR). Provides for penalties. Exempts an employee of the state from performing their duties or the interference with the crossing of a public levees by projects of DOTD or OCPR.

Proposed law retains present law except that it adds a provision that requires each levee district to publish guidance, erect signage and require special permits as they deem appropriate to allow them to make provisions for limited riding, driving, or hauling. As a condition of the issuance of a permit, the district may require the applicant to construct an asphalt or concrete ramp or crossing in accordance with specifications for the construction thereof approved by the governing authority.

Present law requires that whoever violates present law , shall be fined not more than \$50 or imprisoned for not more than 30 days, or both.

Proposed law deletes this provision and authorizes each governing authority to set the penalty for violation of present law, provided that the penalty does not exceed the penalty for criminal trespass as defined in present law. Proposed law further provides that the authority may seek injunctive relief and collect all expenses for policing, inspecting and repairing the levee, structure and rights of way caused by the violation.

Present law provides that nothing in present law or proposed law shall interfere with the crossing over any public levees, at ramps or inclines established under plans and specifications of DOTD, or, for levees or integrated coastal protection projects in the coastal area as defined in R.S. 49:214.2(3), the OCPR, for the purpose of transporting any material that may be used or required in the business of the population living behind the levees.

Proposed law retains present law except that it removes the provision that provides the specific reason for crossing over the public levees at ramps or inclines.

Present law prohibits any person from placing upon any part of the levees fronting any waterway subject to the control or surveillance, any object, material, or matter of any kind or character which obstructs or interferes with the safety of the levees or is an obstacle to the inspection, construction, maintenance, or repair of any levee.

Proposed law retains present law and adds a restriction of 15 feet.

Present law prohibits any person to tie or moor logs, rafts, boats, water craft, or floating objects of any description to the levees, or, when the water is against the levees, tie or moor floating objects insecurely to mooring posts, revetments, trees or other stationary or supposedly stationary objects on the foreshore where they can be driven against the levees during windstorms.

Proposed law retains present law except that it expands present law to include any floating objects from being tied or moored to any object within 180 feet of any levee.

Proposed law provides that no person, when the water is against the levees, drive or push any logs, rafts, boats, water craft, or floating objects of any description onto or against any levee.

Proposed law exempts the mooring or berthing of floating vessels at such locations that have been permitted for this purpose by the U.S. Coast Guard Captain of the port, Corps of Engineers, DOTD, OCPR and other permitting authority.

Present law provides for permits or letters of no objection from the corps, DOTD, and OCPR for issuance of a permit to a project which involves a levee crossing and further provides as a ministerial duty of the executive or administrative officer to issue the requested permit or letter of no objection, subject to any conditions or stipulations contained therein. Further

authorizes the board or commission to impose fees, bonds, and general stipulations, to be enforced by the executive or administrative officer.

Proposed law deletes the provision that provides for the permits or letters of no objection to come from the Corps, DOTD, or OCPR and further provides that the permits or letters of no objection will be issued at the discretion of the board or commission of a levee district, after submitting the request to the Corps of Engineers, DOTD, or OCPR.

Proposed law further deletes the provisions that requires as a ministerial duty of the executive or administrative officer to issue the requested permit or letter of no objection, subject to any conditions or stipulations contained therein. Further allows the board to issue insurance bonds.

Proposed law authorizes a levee district or levee drainage district to purchase certain items through an existing public contract of another political subdivision within one year of opening of bids, provided that the contract is in compliance with public bid law; the total purchases do not exceed two times the purchase by the political subdivision; written consent is obtained, as well as the contract number; the vendor agrees to the additional purchase; and the vendor or items are identical to those specified in the existing public contract and the price is the same as the original contract price.

(Amends R.S. 38:213, 225(A)(1)(a), (2), (D), and 226; Adds R.S. 38:321.1)