

CONFERENCE COMMITTEE REPORT
House Bill No. 640 By Representative Billiot

June 23, 2011

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 640 by Representative Billiot, recommend the following concerning the Engrossed bill:

1. That Senate Committee Amendments Nos. 2, 9, 10 and 11 proposed by the Senate Committee on Transportation, Highways, and Public Works and adopted by the Senate on June 14, 2011, be adopted.
2. That Senate Committee Amendments Nos. 1 and 3 through 8 proposed by the Senate Committee on Transportation, Highways, and Public Works and adopted by the Senate on June 14, 2011, be rejected.
3. That all of the Legislative Bureau Amendments proposed by the Legislative Bureau and adopted by the Senate on June 15, 2011 be rejected.
4. That Senate Floor Amendment No. 1 proposed by Senator Heitmeier and adopted by the Senate on June 20, 2011, be adopted.
5. That the following amendments to the engrossed bill be adopted:

AMENDMENT NO. 1

On page 1, line 2, delete "and 226" and insert "and 291(R)(1) and (Y)(1)(a)"

AMENDMENT NO. 2

On page 1, line 6, after "levees;" delete the remainder of the line and line 7 in its entirety

AMENDMENT NO. 3

On page 1, at the beginning of line 8 delete "or letters of no objection;"

AMENDMENT NO. 4

On page 1, line 12, delete "and 226" and insert "and 291(R)(1) and (Y)(1)(a)"

AMENDMENT NO. 5

On page 2, line 4, after "hauling." delete the remainder of line 4 and delete lines 5, 6, and 7

AMENDMENT NO. 6

On page 2, line 21, after "Restoration." insert "Nothing in this Section shall interfere with the ability of the Coastal Protection and Restoration Authority to carry out its responsibilities as the local sponsor for all integrated coastal protection projects, in its jurisdiction, pursuant to R.S. 49:214.1(F)."

AMENDMENT NO. 7

On page 3, at the end of line 17, delete "of any levee;" an insert "from the crown of any federally authorized and funded levees or levees designated by the Office of Coastal Protection and Restoration or the Department of Transportation and Development;"

AMENDMENT NO. 8

On page 3, at the end of line 27, insert "subject to the following penalties:

(1) Not more than one hundred dollars for each violation or, in the case of willful and wanton violations, imprisonment for not more than six months, or both.

AMENDMENT NO. 9

On page 3, delete lines 28 and 29 in their entirety and insert the following:

(2)(a) Within the parishes of Jefferson and Orleans, a civil fine of not more than ten thousand dollars for each violation or, in the case of willful and wanton violations, imprisonment for not more than six months, or both.

AMENDMENT NO. 10

On page 4, at the beginning of line 1, delete "than six months, or both."

AMENDMENT NO. 11

On page 4, between lines 3 and 4 insert the following:

"(b) The provisions of this Paragraph shall remain in effect until such time as the Coastal Protection and Restoration Authority promulgates regulations that will provide levee districts, within the coastal area, as defined in R.S. 49:214.2(3), with the authority to enforce the necessary prohibitions related to Subparagraph (2)(a) of this Section as determined or approved by the Coastal Protection and Restoration Authority.

AMENDMENT NO. 12

On page 4, at the beginning of line 4, insert "E." and on the same line, after "of" and before "levee" change "the" to "a"

AMENDMENT NO. 13

On page 4, between lines 7 and 8, insert the following

F. Nothing in this Section shall interfere with the ability of the Coastal Protection and Restoration Authority to carry out its responsibilities as the local sponsor for all flood control projects, in its jurisdiction, pursuant to R.S. 49:214.1(F)."

AMENDMENT NO. 14

On page 4, delete lines 8 through 29 in their entirety

AMENDMENT NO. 15

On page 5, delete lines 1 and 2 in their entirety

Respectfully submitted,

Representative Nita Rusich Hutter

Senator Joe McPherson

Representative Robert E. Billiot

Senator Norby Chabert

Representative Jeffery J. Arnold

Senator David Heitmeier

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)]

CONFERENCE COMMITTEE REPORT DIGEST

House Bill No. 640 by Representative Billiot

Keyword and oneliner of the instrument as it left the House

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

Report adopts Senate amendments to:

1. Deletes provision that levee crossing permit or letter of no objection does not alleviate necessity to obtain or comply with requirements of other local, state, or federal permits.
2. Revises limits of West Jefferson Levee District as it existed on January 1, 2007.
3. Revises limits of Lafitte Area Independent Levee District as it existed on January 1, 2011.
4. Transfers certain books, records, documents, and property between West Jefferson Levee District and Lafitte Area Independent Levee District.

Report rejects Senate amendments which would have:

1. Added a provision that requires levee districts to issue permits for servitude of passage over roadway upon top of levee to owners of enclosed estates if such servitude provides shortest and least injurious route to and from such enclosed estate.
2. Added a provision that owners of land, lessees and servitude holders may continue to conduct normal activities on, under, nearby, or through a levee as previously authorized by appropriate governmental authority and that no new or additional authorization is required for such persons to continue to conduct normal activities.
3. Added a provision to restrict the prohibition to tie or moor logs, rafts, boats, watercraft, or floating objects to levees or to objects within 180 feet of any levee to federally authorized and funded levees or levees recognized by OCPR.
4. Changed the provision for a levee board or commission to issue permits for levee crossings after approval or issuance of letter of no objection by Corps of Engineers, DOTD or OCPR from permissive to mandatory.
5. Deleted provision that levee crossing permit or letter of no objection does not alleviate necessity to obtain or comply with requirements of other local, state, or federal permits.

Report amends the bill to:

1. Provides that the prohibition and penalties for riding or hauling on levees shall not interfere with the ability of CPRA to carry out its responsibilities as the local sponsor for all flood control projects in its jurisdiction and as authorized by law.

2. Limits application of the 180 foot prohibition to tie or moor to a levee and to tie or moor when the water is against the levee to federally authorized and funded levees or levees recognized by OCPR and DOTD.
3. Adds a provision that the prohibition and penalties regarding the obstructions on levees, waterways, and rights-of-way shall not interfere with the ability of CPRA to carry out its responsibilities as the local sponsor for all flood control projects in its jurisdiction and as authorized by law.
4. Provides for the following penalties related to mooring, anchoring, or otherwise positioning watercraft and other vessels in a manner that could threaten the integrity of flood control infrastructure: (1) \$100 dollars for each violation or imprisonment for not more than 6 months or both. (2) Within the parishes of Orleans and Jefferson, a fine of not more than \$10,000 for each violation or, imprisonment for not more than 6 months or both.
5. Provides that the penalty for Jefferson and Orleans parishes will no longer remain in effect at such time as the Coastal Protection and Restoration Authority promulgates rules that will provide coastal area levee districts with the authority to enforce the necessary prohibitions related to mooring, anchoring, or otherwise positioning watercraft and other vessels in a manner that could threaten the integrity of flood control infrastructure.
6. Deletes the provision that authorizes the district to require the applicant for a permit to construct an asphalt or concrete ramp or crossing in accordance with specifications for the construction thereof.

Digest of the bill as proposed by the Conference Committee

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 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.

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 present law, 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.

Proposed law provides that the prohibition and penalties for riding or hauling on levees shall not interfere with the ability of CPRA to carry out its responsibilities as the local sponsor for all flood control projects in its jurisdiction and as authorized by law.

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, watercraft, 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 but includes any floating objects from being tied or moored to any object within 180 feet from the crown of any federally authorized and funded levees or levees recognized by OCPR and DOTD.

Proposed law provides that no person, when the water is against the levees, drive or push any logs, rafts, boats, watercraft, 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.

Proposed law provides that the prohibition and penalties regarding the obstructions on levees, waterways, and rights-of-way shall not interfere with the ability of CPRA to carry out its responsibilities as the local sponsor for all flood control projects in its jurisdiction and as authorized by law.

Present law provides that whoever violates the provisions of present law shall be fined not more than \$100 or imprisoned for not more than 6 months or both.

Proposed law retains present law and adds a civil fine of not more than \$10,000 for each violation or, in the case of willful and wanton violations, imprisoned for not more than 6 months or both in the parishes of Jefferson and Orleans and that any subsequent violations shall be subject to a civil fine of up to \$20,000 for each violation, or, in the case of willful and wanton violations, imprisonment for not more than 6 months or both.

Proposed law provides that the penalty for Jefferson and Orleans parishes will shall no longer remain in effect at such time as the CPRA promulgates rules that will provide coastal area levee districts with the authority to enforce the necessary prohibitions related to mooring, anchoring, or otherwise positioning watercraft and other vessels in a manner that could threaten the integrity of flood control infrastructure.

Proposed law further provides that the governing authority that has jurisdiction of a levee, may bring a civil action for damages and/or injunctive relief, including but not limited to the issuance of a mandatory injunction. In any suit for the issuance of an injunction, proof of irreparable harm shall not be necessary.

Proposed law revises the boundaries of the West Jefferson Levee District and the Lafitte Area Independent Levee District and requires the transfer of books, records, documents, and property between the districts which are related to the boundary revision.

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) and (2) and (D), 291(R)(1) and (Y)(1); adds R.S. 38:321.1)