

Regular Session, 2014

HOUSE BILL NO. 419

BY REPRESENTATIVE MONTOUCET

DISTRICTS/DRAINAGE: Provides relative to access to public drainage for maintenance purposes

1 AN ACT

2 To enact R.S. 38:215.1, relative to maintenance of public drainage; to prohibit refusal of
3 access to public drainage for maintenance purposes; to provide relative to a
4 determination of the right of access by a court of competent jurisdiction; to provide
5 for an award of court costs and attorney fees; to provide for definitions; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 38:215.1 is hereby enacted to read as follows:

9 §215.1. Public drainage; refusal of access for maintenance purposes; court costs and
10 attorney fees; definitions

11 A. No landowner shall refuse to grant reasonable surface access to any
12 existing natural or artificial public drainage by a local governing authority, drainage
13 district, or other public entity charged with maintaining the public drainage when
14 such access is within the normal course of the entity's duties and written notice has
15 been given to the landowner at least thirty days prior to the commencement of any
16 maintenance activities on the property. The landowner shall also be given an
17 opportunity for a public hearing, held before the municipal drainage authority, parish
18 drainage district, or public works district for the city where the landowner's property
19 is located, subject to the judicial review rights under the Administrative Procedure
20 Act.

1 B. In any action in a court of competent jurisdiction where the court is
 2 required to determine the right of access to the public drainage pursuant to this
 3 Section, the prevailing party shall be entitled to an award of court costs and attorney
 4 fees incurred by the prevailing party.

5 C. For purposes of this Section, "public drainage" means any existing natural
 6 or artificial drainage ditch, drain, culvert, canal, creek, bayou, or small river.

7 D. For the purposes of this Section, "reasonable surface access" means the
 8 utilization of existing ingress and egress points on a landowner's property so as not
 9 to disrupt the activities of the landowner or cause damage to the property.

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)]

Montoucet

HB No. 419

Abstract: Provides that no person shall refuse to grant access to any natural or artificial public drainage by a local governing authority, drainage district, or other public entity charged with maintaining the public drainage.

Present law (R.S. 38:214) provides that no person shall dump or discharge or permit to be dumped or discharged into any waters or drains of the state any trees or other objects, substances, or materials which might interfere with the drainage.

Present law (R.S. 38:215) provides that no person shall willfully obstruct any natural or artificial drainage canal, creek, bayou, or small river, or any public or private drainage.

Proposed law provides that no landowner shall refuse to grant access to any natural or artificial public drainage by a local governing authority, drainage district, or other public entity charged with maintaining the public drainage when they have been given 30 days written notice before the commencement of maintenance activities and an opportunity for a hearing before the governing board of the city or parish where the landowner's property is located, subject to judicial review.

Proposed law provides that in any action in a court of competent jurisdiction where the court is required to determine the right of access to the public drainage, the prevailing party shall be entitled to an award of court costs and attorney fees incurred by the prevailing party.

Proposed law defines "public drainage" as any existing natural or artificial drainage ditch, drain, culvert, canal, creek, bayou, or small river.

Proposed law defines "reasonable surface access" as the utilization of existing ingress and egress points on a landowner's property so as not to disrupt the activities of the landowner or cause damage to the property.

(Adds R.S. 38:215.1)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the original bill.

1. Clarified that a landowner cannot refuse access to any drainage when such access is within the normal course of the entity's duties and they have been given notice and an opportunity for a hearing.
2. Defined reasonable surface access as the utilization of existing ingress and egress points on a landowner's property so as not to disrupt the activities of the landowner or cause damage to the property.

House Floor Amendments to the engrossed bill.

1. Provided that written notice must be given to the landowner at least 30 days prior to the commencement of any maintenance activities on the property. Provides that the landowner should also be given an opportunity for a public hearing before the municipal drainage authority, parish drainage district, or public works district for the city where the landowner's property is located, subject to the judicial review rights under the Administrative Procedure Act.