

Regular Session, 2010

HOUSE BILL NO. 1090

BY REPRESENTATIVE DOVE AND SENATOR CHABERT

1 AN ACT

2 To amend and reenact R.S. 30:2459(A) and (D) and 2460(A)(14), R.S. 36:351(B), R.S.
3 38:111, 112, 213, 221, and 226, R.S. 39:366.3(1) and 1482(A)(1)(a), R.S.
4 41:1701.1(D) and 1702(D)(1), and R.S. 49:214.61(A) and to enact R.S. 39:14(7) and
5 R.S. 49:214.5.2(F), 214.6.3(B)(5), and 214.6.10(C), relative to the Office of Coastal
6 Protection and Restoration; to provide relative to the role of the Coastal Protection
7 and Restoration Authority and the Office of Coastal Protection and Restoration in
8 response to oil spills; to provide relative to responsibilities of the office with coastal
9 levees; to provide relative to immunity for cooperating landowners; to provide for
10 the responsibilities of the office in reclamation of land; to provide certain terms,
11 conditions, and procedures; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 30:2459(A) and (D) and 2460(A)(14) are hereby amended and
14 reenacted to read as follows:

15 §2459. State oil spill contingency plan

16 A. The coordinator shall develop and distribute to the public a state oil spill
17 contingency plan of response for actual or threatened unauthorized discharges of oil
18 and clean up of pollution from such discharges. In addition, the Department of
19 Environmental Quality, in cooperation with the coordinator, shall recommend
20 provisions of the plan relating to unauthorized discharges of oil. The Department of
21 Wildlife and Fisheries, in cooperation with the coordinator, shall recommend
22 provisions of the plan providing for protection, rescue, and rehabilitation of aquatic
23 life and wildlife and appropriate habitats on which they depend under its jurisdiction.

24 The director of the Office of Coastal Protection and Restoration, in cooperation with

1 the coordinator, shall recommend provisions of the plan for providing for the
 2 protection and restoration of the coastal areas of the state. The Department of
 3 Natural Resources, in cooperation with the coordinator, shall recommend provisions
 4 of the plan providing for protection and rehabilitation of appropriate resources under
 5 its jurisdiction. The Department of Public Safety and Corrections, in cooperation
 6 with the coordinator, shall recommend provisions of the plan providing for
 7 emergency response coordination to protect life and property, excluding prevention,
 8 abatement, containment, and removal of pollution from an unauthorized discharge.

9 * * *

10 D. Prior to adopting the state oil spill contingency plan, the coordinator shall
 11 adopt a fully delineated inland boundary for coastal waters as defined in this Chapter,
 12 which boundary shall be based upon data provided by, including but not limited to
 13 the United States Army Corps of Engineers, United States Department of the
 14 Interior, Minerals Management Service, the Coastal Protection and Restoration
 15 Authority, the Louisiana Department of Natural Resources, and the oil and gas
 16 industry. The coordinator shall be authorized to amend the boundary by rule as
 17 conditions may warrant. The boundary, as adopted, shall be clearly marked on large
 18 scale maps or charts, official copies of which shall be available for public inspection
 19 in the Office of Coastal Protection and Restoration, the office of coastal ~~restoration~~
 20 ~~and~~ management in the Department of Natural Resources, in each agency comprising
 21 the interagency council, and in the parish seat of each parish located within the
 22 boundary.

23 §2460. Contingency plan provisions

24 A. The plan shall include all of the following:

25 * * *

26 (14) Procedures established in cooperation with the Department of
 27 Environmental Quality, Department of Wildlife and Fisheries, the Coastal Protection
 28 and Restoration Authority, and Department of Natural Resources for assessment of
 29 natural resources damages and plans for mitigation of damage to and restoration,
 30 protection, rehabilitation, or replacement of damaged natural resources. Pursuant to

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 R.S. 49:214.1 et seq., the Coastal Protection and Restoration Authority is responsible
 2 for integrated coastal protection in the coastal area of the state, therefore, the Coastal
 3 Protection and Restoration Authority and the Office of Coastal Protection and
 4 Restoration shall assist the coordinator in a primary role in assessing natural resource
 5 damages in the coastal area.

6 * * *

7 Section 2. R.S.36:351(B) is hereby amended and reenacted to read as follows:

8 §351. Department of Natural Resources; creation, domicile; composition; purposes
 9 and functions

10 * * *

11 B. The Department of Natural Resources, through its offices and officers,
 12 shall be responsible for the conservation, management, and development of water,
 13 minerals, and other such natural resources of the state, including coastal ~~restoration~~
 14 ~~and~~ management, except timber and fish and wildlife and their habitats.

15 * * *

16 Section 3. R.S. 38:111, 112, 213, 221, and 226 are hereby amended and reenacted
 17 to read as follows:

18 §111. Contracts by drainage districts, levee boards, and political subdivisions with
 19 Department of Public Works or the Office of Coastal Protection and
 20 Restoration

21 Any drainage or subdrainage district, gravity drainage, or gravity subdrainage
 22 district, levee board, or political subdivision may contract with the Department of
 23 Public Works or, for projects in the coastal area as defined in R.S. 49:214.2(3), the
 24 Office of Coastal Protection and Restoration, upon any terms for the payment of the
 25 cost of the drainage and reclamation projects within the confines of the district or
 26 districts involved proportionately by the Department of Public Works, or the Office
 27 of Coastal Protection and Restoration, and the districts as may be agreed upon
 28 between the Department of Public Works, or the Office of Coastal Protection and
 29 Restoration, and the governing authorities of the districts entering into any contract.

1 §112. Cooperation with federal government and ~~State~~ state of Mississippi in
2 building levees

3 By and with the concurrence and approval of the local levee authorities in
4 interest in Louisiana, and of the Department of Public Works, or, for levees in the
5 coastal area as defined in R.S. 49:214.2(3), the Office of Coastal Protection and
6 Restoration, the state of Mississippi and the United States Government, or either of
7 them, jointly or severally, may construct and have entire charge and control of, both
8 in construction and maintenance, and for protection and preservation, all levees
9 which may be deemed necessary by the grantees, or by either of them, for protection
10 against overflow from the Mississippi River, through and over all parts of the ~~State~~
11 state of Louisiana which by the changes of the channel of the Mississippi River have
12 been separated from other parts of the state of Louisiana, and which are now on the
13 east side of the present channel of the river, and attached to the mainland of the state
14 of Mississippi. The levees shall be of the dimensions and shall be located, and built
15 from adjacent soil, along the lines, and for the distances, determined by the engineers
16 in charge of levee construction either for the United States or for the ~~State~~ state of
17 Mississippi, or for both.

18 * * *

19 §213. Riding or hauling on levees prohibited

20 A. No person shall ride, drive, or haul upon the public levees or integrated
21 coastal protection projects except where, in the judgment of the levee commissioners
22 of a district and the Department of Public Works, or, for levees or integrated coastal
23 protection projects in the coastal area as defined in R.S. 49:214.2(3), the Office of
24 Coastal Protection and Restoration, ample provision has been made to guard against
25 any damage to which the levees or integrated coastal protection projects may thereby
26 be exposed from wear, tear, and abuse.

27 B. Whoever violates this Section shall be fined not more than fifty dollars
28 or imprisoned for not more than thirty days, or both.

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

4 D. Nothing in this Section shall interfere with the crossing over any public
5 levees, at ramps or inclines established under plans and specifications of the
6 Department of Public Works, or, for levees or integrated coastal protection projects
7 in the coastal area as defined in R.S. 49:214.2(3), the Office of Coastal Protection
8 and Restoration, for the purpose of transporting any material that may be used or
9 required in the business of the population living behind the levees.

10 * * *

11 §221. Rice-flumes, dahls, or pipes in public levees prohibited

12 A. No person shall place in, through, or under any public levee any rice-
13 flume, dahl, pipe, or other conduit or, after due notification by the levee board or
14 governing authority of the parish, shall fail to remove from the public levee any rice-
15 flume, dahl, pipe, or other conduit that may at such date exist.

16 B. Whoever violates this Section shall be fined not more than five hundred
17 dollars or imprisoned for not more than sixty days, or both.

18 C. For each conviction under this Section the district attorney prosecuting
19 shall receive a fee of fifteen dollars.

20 D. The provisions of this Section shall not be applicable to levees on the
21 Mississippi River not embraced within the limits of the Fifth Louisiana, the
22 Atchafalaya Basin, the Lafourche Basin, the Grand Prairie, the Buras, and the
23 Orleans Levee Districts.

24 E. The provisions of this Section shall not apply to pipes or other conduits
25 placed through or under the public levees in New Orleans, or in municipalities or
26 parishes when and where needed for the purpose of sewerage, gas, or for furnishing
27 gas or electricity for the use of the cities, municipalities, or parishes and their
28 inhabitants.

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1 F. The laying of such pipes through or under the public levees in cities,
 2 municipalities, or parishes shall be with the consent and approval of the levee board,
 3 the Department of Public Works, for levees in the coastal area as defined in R.S.
 4 49:214.2(3), the Office of Coastal Protection and Restoration, and the governing
 5 authorities of the cities, municipalities, or parishes and under the supervision of the
 6 Department of Public Works, or the Office of Coastal Protection and Restoration.

7 G. This Section shall not apply to locks connecting navigation canals with
 8 the Mississippi River.

9 * * *

10 §226. Permits for levee crossings

11 If an appointed board or commission having jurisdiction over levees receives
 12 letters of no objection from the United States Army Corps of Engineers and the
 13 Louisiana Department of Transportation and Development, office of public works,
 14 or, for levees in the coastal area as defined in R.S. 49:214.2(3), the Office of Coastal
 15 Protection and Restoration, in response to a request to the board or commission for
 16 a permit or letter of no objection to a levee crossing or a request to renew or transfer
 17 an existing permit, it shall be incumbent upon and a ministerial duty of the executive
 18 or administrative officer to issue the requested permit or letter of no objection to the
 19 crossing, subject to any conditions or stipulations contained in the letters received
 20 from the United States Army Corps of Engineers and the Louisiana Department of
 21 Transportation and Development, office of public works or, for levees in the coastal
 22 area as defined in R.S. 49:214.2(3), the Office of Coastal Protection and Restoration.

23 The board or commission may impose customary fees, bonds, and other general
 24 stipulations. The executive or administrative officer shall enforce such permits for
 25 levee crossings only to the extent of the conditions and stipulations contained in the
 26 permit or letter of no objection.

1 Section 4. R.S. 39:366.3(1) and 1482(A)(1)(a) are hereby amended and reenacted
2 and R.S. 39:14(7) is hereby enacted to read as follows:

3 §14. Exceptions

4 The following shall not be subject to the provision of R.S. 39:11 and 12 but
5 shall be subject to the provisions of R.S. 39:13:

6 * * *

7 (7) Any interest in immovable property, with the exception of the acquisition
8 of full ownership, including but not limited to temporary easements, rights-of-way,
9 rights-of-entry, predial servitudes, and personal servitudes acquired by the state for
10 the purposes of integrated coastal protection as defined in R.S. 49:214.2(4).

11 * * *

12 §366.3. Definitions

13 In this Part, the following words and terms shall have the meanings ascribed
14 in this Section unless the context clearly requires otherwise:

15 (1) "Cooperative endeavor" means any agreement including one of
16 cooperative financing, other than a competitive bid or competitively negotiated
17 contract, whether contracted pursuant to Chapter 10 of Title 38 or Chapter 16 or 17
18 of Title 39 of the Louisiana Revised Statutes of 1950 or pursuant to a request for
19 proposals, request for qualifications, solicitation for offers, or other recognized
20 process for competitively seeking qualified contractors, to which the state is a party
21 and pursuant to which the state has obligated state resources, whether funds, credit,
22 property, or things of value of the state to a nonpublic person for the accomplishment
23 of a public purpose or in the public interest, but shall not include projects contained
24 in the comprehensive state capital outlay budget, projects pursuant to the Governor's
25 Economic Development Rapid Response Program, and ~~coastal restoration projects~~
26 ~~administered by the Department of Natural Resources~~ integrated coastal protection
27 programs and projects authorized in the annual coastal protection and restoration
28 plan and administered by the Office of Coastal Protection and Restoration.

29 * * *

1 §1482. Application of the Chapter

2 A. Except as otherwise provided herein, this Chapter shall apply to every
3 expenditure of public funds in excess of two thousand dollars by the executive
4 branch of this state for professional, personal, consulting, and social services
5 procurement. However, this Chapter shall not apply to the following procurements:

6 (1)(a) Professional services for engineering design contracts, construction
7 contracts, or contracts for surveying pertaining to the maintenance and construction
8 of roads and bridges, flood control, integrated coastal protection, aviation, public
9 transportation, or public works entered into by the Department of Transportation and
10 Development as provided in Part XIII-A of Chapter 1 of Title 48 of the Louisiana
11 Revised Statutes of 1950.

12 * * *

13 Section 5. R.S. 41:1701.1(D) and 1702(D)(1) are hereby amended and reenacted to
14 read as follows:

15 §1701.1. State Land Office; powers, duties, functions, and responsibilities

16 * * *

17 D. The State Land Office shall identify all public lands and water bottoms
18 within the state and develop and maintain a current master list of those lands and
19 water bottoms. All state agencies, including but not limited to Department of
20 Culture, Recreation and Tourism, the Department of Natural Resources, the Office
21 of Coastal Protection and Restoration, the Department of Wildlife and Fisheries, the
22 Department of Transportation and Development, the Louisiana Geological Survey,
23 the state's colleges and universities, all levee boards, drainage boards, parish
24 governing authorities, and any districts created under the jurisdiction of levee boards,
25 drainage boards, or parish governing authorities, shall cooperate with the State Land
26 Office in developing the master list.

27 * * *

1 §1702. Reclamation of lands lost through erosion, compaction, subsidence, and sea
2 level rise; land acquisition for certain coastal projects; requirements

3 * * *

4 D. In all cases in which a definitive boundary may be arrived at by mutual
5 consent or through the procedures applicable to contested boundaries, the
6 administrator of the State Land Office, as provided in Paragraph (1) of this
7 Subsection, or the secretary of the Department of Natural Resources, as provided in
8 Paragraph (2) of this Subsection, may allow reclamation.

9 (1) The administrator of the State Land Office may issue a permit for the
10 carrying out of the work necessary to implement the recovery of the land lost through
11 erosion, compaction, subsidence, or sea level rise; however, no such permit shall be
12 issued until plans and specifications for such work have been first submitted to the
13 governing authority of the parish in which the proposed project is located, the
14 Department of Transportation and Development, the Department of Wildlife and
15 Fisheries, the Office of Coastal Protection and Restoration, and the Department of
16 Natural Resources for review and comment not less than sixty days prior to the
17 issuance of such permit. No permit shall be required for projects to facilitate the
18 development, design, engineering, implementation, operation, maintenance, or repair
19 of coastal or barrier island restoration projects by the ~~Department of Natural~~
20 ~~Resources~~ Office of Coastal Protection and Restoration under R.S. 49:214.1 et seq.
21 or other applicable law or projects for the Atchafalaya Basin Program. Within sixty
22 days of completion of the reclamation project, the riparian owner shall submit to the
23 State Land Office proof of the extent of the land area actually reclaimed in the
24 manner provided in Subsection C of this Section for showing the submerged area,
25 which map or plat shall be employed for fixing the definitive boundary between the
26 reclaimed land area and the state water bottoms. Permits issued pursuant to these
27 provisions shall be effective for a period not to exceed two years from the date of
28 issuance and shall thereupon expire. All work remaining or any additional work may
29 be completed only by application in the manner provided by this Section.

30 * * *

1 Section 6. R.S. 49:214.61(A) is hereby amended and reenacted and R.S.
2 49:214.5.2(F), 214.6.3(B)(5), and 214.6.10(C) are hereby enacted to read as follows:

3 §214.5.2. Functions and responsibilities; Coastal Protection and Restoration

4 Authority

5 * * *

6 F. Notwithstanding any law to the contrary, upon approval by the authority,
7 the state, or any political subdivision thereof, may use its own employees or
8 equipment for satisfying any mitigation requirements resulting from or related to an
9 integrated coastal protection project.

10 * * *

11 §214.6.3. Functions and responsibilities; hurricane protection and flood control

12 * * *

13 B. Office of Coastal Protection and Restoration duties and responsibilities
14 regarding hurricane protection and flood control:

15 * * *

16 (5) No funds of the state nor of any political subdivision or political
17 corporation of the state shall be used nor provided to the United States or any of its
18 agencies, by contract, agreement, a required contribution of a project cost-share or
19 otherwise, for the expropriation of property for the purpose of compensatory
20 mitigation of wetlands or other natural habitat, as authorized or required by state or
21 federal law, to offset, compensate, or replace actual or anticipated damages to or loss
22 of wetlands or other natural habitat caused by the Comite River Diversion Project,
23 Amite River and Tributaries, Louisiana. However, the provisions of this Section
24 shall not apply where such funds are to be used to obtain property voluntarily offered
25 for compensatory mitigation purposes, including but not limited to mitigation
26 banking.

27 * * *

1 §214.6.10. Hold Harmless and cooperative landowner immunity

2 * * *

3 C. Landowners or persons holding an interest in property who, without cost
 4 to the state or its political subdivisions, provide the land, property, access rights,
 5 servitudes, easements, or other property interests necessary for a project conducted
 6 pursuant to the authority of R.S. 49:214.5.2(A)(7), shall be immune from premise
 7 liability, loss, damage, or injury to any third party resulting from or caused by the
 8 construction, operation, or maintenance of that integrated coastal protection project.

9 * * *

10 §214.61. ~~Department of Natural Resources~~ Office of Coastal Protection and
 11 Restoration; acquisition of property prior to judgment; definitions

12 A. When the state ~~Department of Natural Resources~~ Office of Coastal
 13 Protection and Restoration cannot amicably acquire property in the coastal zone
 14 needed for barrier island preservation, restoration, or creation for coastal wetlands
 15 purposes, it may acquire the same by expropriation and may acquire the property
 16 prior to judgment in the trial court as provided in this Part.

17 * * *

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 PRESIDENT OF THE SENATE

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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