2018 Regular Session

HOUSE BILL NO. 423

BY REPRESENTATIVE MAGEE

COASTAL COMMISSION: Authorizes the Coastal Protection and Restoration Authority to acquire property for integrated coastal protection purposes prior to judgment

1	AN ACT	
2	To amend and reenact R.S. 38:281(3) and (4), 351, 352(1) and (3)(a), 353, 354, 355, 356(A),	
3	358, 360(B)(1), 363(B), 364, 385(B), 386(A), 387(D), 390, and 396, relative to	
4	acquisition of property by the Coastal Protection and Restoration Authority; to allo	
5	the Coastal Protection and Restoration Authority acquire property for integrat	
6	coastal protection purposes prior to judgment in the same authority as levee district	
7	and levee and drainage districts; and to provide for related matters.	
8	Be it enacted by the Legislature of Louisiana:	
9	Section 1. R.S. 38:281(3) and (4), 351, 352(1) and (3)(a), 353, 354, 355, 356(A),	
10	358, 360(B)(1), 363(B), 364, 385(B), 386(A), 387(D), 390, and 396 are hereby amended and	
11	reenacted to read as follows:	
12	§281. Definitions	
13	As used in this Chapter, unless the context clearly indicates otherwise, the	
14	following terms shall have the meanings ascribed to them as follows:	
15	* * *	
16	(3) "Fair market value" means the value of the lands or improvements	
17	actually taken, used, damaged, or destroyed for levees or levee drainage or integrated	
18	coastal protection purposes as determined in accordance with the uniform criteria for	
19	determining fair market value as defined in R.S. 47:2321 et seq. Pursuant to Article	
20	1, Section 4(G) Sections 4(F) and (G) and Article VI, Section 42(A) of the	

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Constitution of Louisiana and R.S. 49:214.5.6 and 214.6.5, such determination of fair
market value shall not exceed the compensation required by the Fifth Amendment
of the Constitution of the United States of America unless an exception as provided
in Article I, Section 4(G) Sections 4(F) and (G) of the Constitution of Louisiana is
applicable.

6 (4) "Full extent of the loss" shall not be construed to include payment for 7 uses which are remote, speculative, or contrary to law; uses for which the property 8 is still suitable; or elements of property ownership which are not actually taken, used, 9 damaged, or destroyed for levees or drainage or integrated coastal protections 10 purposes. Further, pursuant to Article I, Section 4(G) Sections 4(F) and (G) and 11 Article VI, Section 42(A) of the Constitution of Louisiana and R.S. 49:214.5.6 and 12 214.6.5, payment for the full extent of the loss shall not exceed fair market value and shall not exceed the compensation required by the Fifth Amendment of the 13 14 Constitution of the United States of America unless an exception as provided in 15 Article I, Section 4(G) Sections 4(F) and (G) of the Constitution of Louisiana is 16 applicable.

17

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* * *

§351. Authority to expropriate and acquire property prior to judgment

19 Notwithstanding any other law to the contrary, and in addition to the methods 20 and procedures for acquisition or utilization of servitudes for levee and related 21 purposes by levee districts, and levee and drainage districts, and the Coastal 22 Protection and Restoration Authority, whenever any levee district or levee and 23 drainage district or the Coastal Protection and Restoration Authority cannot 24 appropriate or amicably acquire immovable property needed for levee purposes, 25 including but not limited to flooding and hurricane protection purposes, or integrated 26 coastal protection projects, the levee district, or levee and drainage district, or the 27 Coastal Protection and Restoration Authority may acquire the property by 28 expropriation prior to judgment in accordance with the provisions of this Part. The

1	method of expropriation provided by this Part shall be authorized for corporeal	
2	property and servitudes and for both riparian and nonriparian property.	
3	§352. Petition for expropriation of property; contents; place of filing	
4	The rights of expropriation of property granted by this Part shall be exercised	
5	in the following manner:	
6	(1) A petition shall be filed by the governing authority of the levee district,	
7	or levee and drainage district, or the Coastal Protection and Restoration Authority	
8	in the district court of the parish in which the property to be expropriated is situated.	
9	Where the property to be expropriated extends into two or more parishes and the	
10	owner of the property resides in one of them, the petition shall be filed in the district	
11	court of the parish where the owner resides, but if the owner does not reside in any	
12	one of the parishes into which the property extends, the petition may be filed in any	
13	one of the parishes. In all such cases, the court wherein the petition is filed shall	
14	have jurisdiction to adjudicate as to all the property involved.	
15	* * *	
16	(3) The petition shall have annexed thereto the following:	
17	(a) A certified copy of a resolution adopted by the governing authority of the	
18	levee district, or levee and drainage district, or the Coastal Protection and	
19	Restoration Authority, with the concurrence of not less than two-thirds of a quorum,	
20	declaring that the expropriation is necessary or useful for the purposes of this Part.	
21	* * *	
22	§353. Appointment of estimators; restrictions in selection	
23	The governing authority of the levee district, or levee and drainage district,	
24	or the Coastal Protection and Restoration Authority shall select two or more persons	
25	to make the estimate, but two of them shall be appraisers or agents who are in the	
26	regular employ of the levee district or licensed realtors who are familiar with land	
27	values in the vicinity of the property to be taken.	
28	§354. Prayer of petition; ex parte order of expropriation	

1	The petition shall conclude with a prayer that the property be declared
2	expropriated for levee or integrated coastal protection purposes. Upon presentation
3	of the petition, the court shall issue an order directing that the amount of the estimate
4	be deposited in the registry of the court and declaring that the property described in
5	the petition has been expropriated for levee or integrated coastal protection purposes
6	at the time of the deposit.
7	§355. Vesting of title
8	Upon the deposit of the amount of the estimate in the registry of the court, for
9	the use and benefit of the persons entitled thereto, the clerk shall issue a receipt
10	showing the amount deposited, the date it was deposited, the style and number of the
11	cause, and the description of the property and property right as contained in the
12	petition. Upon such deposit, title to the property and the property rights specified in
13	the petition shall vest in the levee district or the Coastal Protection and Restoration
14	Authority, and the right to just and adequate compensation therefor shall vest in the
15	persons entitled thereto.
16	§356. Notice to defendant
17	A. Upon receipt of the deposit, the clerk of court shall issue a notice to each
18	defendant in the suit notifying him that the property described in the petition has
19	been expropriated for levee or integrated coastal protection purposes.
20	* * *
21	§358. Right of possession; limitation by court
22	A. If there are no buildings located wholly or partially upon the property
23	described in the petition, the levee district levee district, or levee and drainage
24	district, or the Coastal Protection and Restoration Authority is entitled to enter upon
25	and take possession of the property upon the deposit of the estimated compensation.
26	B. If any building is located wholly or partially upon the property described
27	in the petition, the court may postpone the right of entry for any period not to exceed
28	thirty days from the date on which the last of any parties defendant was served with
29	the notice. However, the board of commissioners of the levee district, or levee and

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1	drainage district, or the Coastal Protection and Restoration Authority in its discretion		
2	may request the court to order possession surrendered after a longer delay. The court		
3	may fix a reasonable rental to be paid to the levee district, or levee and drainage		
4	district, or the Coastal Protection and Restoration Authority by a defendant in		
5	possession of the property for each day he remains in possession after the withdrawal		
6	of any part of the amount deposited.		
7	* * *		
8	§360. Defendant's answer; requirements; delay for filing		
9	* * *		
10	B. Where a portion of a lot, block, or tract of land is expropriated, any		
11	defendant may apply for a trial to determine the measure of compensation to which		
12	he is entitled, provided:		
13	(1) He files an answer within one year from the date he is notified in writing		
14	by the levee district, or levee and drainage district, or the Coastal Protection and		
15	Restoration Authority that it has finally accepted the construction of the levee project		
16	for which the property was expropriated; however, he may file his answer prior to		
17	the date he is notified by the levee district.		
18	* * *		
19	§363. Time limit for demanding jury trial; waiver of demand for jury trial;		
20	limitations		
21	* * *		
22	B. The levee district, or levee and drainage district, or the Coastal Protection		
23	and Restoration Authority may demand jury trial by motion filed no later than fifteen		
24	days after an answer filed by a defendant.		
25	* * *		
26	§364. Deposit of security for jury costs		
27	The court shall require any defendant, other than a political subdivision of the		
28	state of Louisiana, who demands a jury trial to post a bond or other security as may		
29	be required in ordinary civil jury cases. The levee district, or levee and drainage		

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1	district, or the Coastal Protection and Restoration Authority shall not be required to		
2	post any such bond or security.		
3	* * *		
4	§385. Delay by defendant forfeits defenses; judgment		
5	* * *		
6	B. This provision shall be operative without formal order, but on ex parte		
7	motion of the levee district, or levee and drainage district, or the Coastal Protection		
8	and Restoration Authority, the trial court shall render final judgment fixing just		
9	compensation in the amount deposited in the registry of the court and awarding that		
10	sum to the defendant.		
11	§386. Abandonment in trial and appellate court		
12	A. An owner's claim for an increase in the compensation is abandoned when		
13	he fails to take any step in the prosecution of that claim for a period of five years.		
14	This provision shall be operative without formal order, but on ex parte motion of the		
15	levee district, or levee and drainage district, or the Coastal Protection and		
16	Restoration Authority, the trial court shall render final judgment fixing just		
17	compensation in the amount deposited in the registry of the court and awarding that		
18	sum to the defendant and dismissing with prejudice any claim for any increase in		
19	compensation.		
20	* * *		
21	§387. Measure of compensation; burden of proof		
22	* * *		
23	D. The levee district, or levee and drainage district, or the Coastal Protection		
24	and Restoration Authority shall present its evidence of value first.		
25	* * *		
26	§390. Judgment as to difference awarded; payment of judgment		
27	A. If the amount finally awarded exceeds the amount so deposited, the court		
28	shall enter judgment against the levee district, or levee and drainage district, or the		
29	Coastal Protection and Restoration Authority and in favor of the persons entitled		

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1	thereto for the amount of the deficiency. The final judgment together with legal	
2	interest thereon shall be paid within sixty days after becoming final. Thereafter upon	
3	application by the owner or owners, the trial court shall issue a writ of mandamus to	
4	enforce payment.	
5	B. If the amount finally awarded is less than the amount so deposited, the	
6	court shall enter judgment in favor of the levee district, or levee and drainage district,	
7	or the Coastal Protection and Restoration Authority and against the proper parties for	
8	the amount of the excess together with legal interest from the date of withdrawal of	
9	the deposit to the date of payment.	
10	* * *	
11	§396. Appropriation; effect on other authority	
12	Nothing in this Part shall be construed to affect the authority of any levee	
13	district, or levee and drainage district, or the Coastal Protection and Restoration	
14	Authority conferred by the constitution or laws to appropriate property for levee	
15	drainage, levee drainage, integrated coastal protection, or related purposes.	

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)]

HB 423 Original	2018 Regular Session	Magee

Abstract: Allows the Coastal Protection and Restoration Authority to acquire property prior to judgment for integrated coastal protection purposes.

<u>Present law</u> authorizes levee districts and levee and drainage districts to acquire servitudes for levee and related purposes. Further allows such districts to acquire such property by expropriation prior to judgment. <u>Proposed law</u> provides the Coastal Protection and Restoration the same authorization for acquisition of property for integrated coastal protection purposes.

<u>Present law</u> requires levee districts and levee and drainage districts to file a petition in the appropriate district court along with a certified copy of a resolution by the governing board of the district declaring the expropriation to be necessary. Provides for the process by which the acquisition must be accomplished. <u>Proposed law</u> includes acquisition of property for integrated coastal protection by the Coastal Protection and Restoration Authority in each step of the process.

(Amends R.S. 38:281(3) and (4), 351, 352(1) and (3)(a), 353, 354, 355, 356(A), 358, 360(B)(1), 363(B), 364, 385(B), 386(A), 387(D), 390, and 396)

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