

2020 Regular Session

SENATE BILL NO. 440

BY SENATORS FESI AND ALLAIN

COASTAL RESOURCES. Provides for enforcement of the Coastal Zone Management Program. (8/1/20)

1 AN ACT

2 To amend and reenact R.S. 49:214.36(E) and (J), relative to the Coastal Zone Management
3 Program; to provide for enforcement actions; to provide for the imposition of civil
4 liability, the assessment of damages, and court orders; to provide for distribution of
5 monies collected; to provide for the use of funds; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 49:214.36(E) and (J) are hereby amended and reenacted to read as
8 follows:

9 §214.36. Enforcement; injunction; penalties and fines

10 * * *

11 E. A court may impose civil liability and assess damages; order, where
12 feasible and practical, the payment of the restoration costs; require, where feasible
13 and practical, actual restoration of areas disturbed; or otherwise impose reasonable
14 and proper sanctions for uses conducted within the coastal zone without a coastal use
15 permit where a coastal use permit is required or which are not in accordance with the
16 terms and conditions of a coastal use permit. **Any monies collected for the payment**
17 **of restoration costs shall be expended in a manner consistent with Subsection J**

1 **of this Section.** The court in its discretion may award costs and reasonable ~~attorney's~~
2 **attorney** fees to the prevailing party.

3 * * *

4 J. The monies collected by the state under the provisions of this Section shall
5 be deposited as follows:

6 (1) The monies collected by the secretary for violations relating to use of
7 state concern shall be used for the following purposes only, in the proportions stated:

8 (a) Fifty percent of the monies collected shall be used to reimburse the
9 Department of Natural Resources for the cost of enforcing the provisions of this
10 Subpart; and shall be deposited in the Coastal Resources Trust Fund, as provided in
11 R.S. 49:214.40.

12 (b) Twenty-five percent of the monies collected shall be placed in ~~local~~
13 ~~government mitigation banks established in accordance with R.S. 49:214.41 and the~~
14 ~~rules and regulations adopted thereunder~~ **a restricted fund administered by the**
15 **parish governing authority of the parish or parishes in which the adverse**
16 **impact related to the use is located. Such funds shall be used only for projects**
17 **consistent with Paragraph (O)(2) of this Section within or for the benefit of**
18 **areas within the geographic borders of that parish.**

19 (c) Twenty-five percent of the monies collected shall be placed in the
20 ~~Wetlands Conservation and Restoration Fund established in Article VII, Section 10.2~~
21 ~~of the Constitution of Louisiana~~ **Coastal Protection and Restoration Fund**
22 **established in Article VII, Section 10.2 of the Constitution of Louisiana and used**
23 **for projects that are consistent with Paragraph (O)(2) of this Section.**

24 (2) The monies collected by the secretary for violations relating to a use of
25 local concern shall be placed in ~~local government mitigation banks established in~~
26 ~~accordance with R.S. 49:214.41 and the rules and regulations adopted thereunder.~~
27 ~~Each local government's mitigation bank shall be credited one hundred percent of the~~
28 ~~monies collected for violations relating to a use of local concern occurring within its~~
29 ~~geographic borders, except that for violations occurring within the geographic~~

1 ~~borders of two or more local governments the monies shall be divided on a pro rata~~
2 ~~basis and deposited accordingly in the local government's mitigation banks. In the~~
3 ~~event there is no local government mitigation bank in the parish in which the adverse~~
4 ~~impact is located, the monies shall be deposited in the Wetlands Conservation and~~
5 ~~Restoration Fund established in Article VII, Section 10.2 of the Constitution of~~
6 ~~Louisiana, and can~~ **a restricted fund administered by the parish governing**
7 **authority of the parish or parishes in which the adverse impact related to the**
8 **use is located. Such funds shall** ~~only be used~~ **only** ~~for mitigation projects~~ **consistent**
9 **with Paragraph (O)(2) of this Section** ~~within~~ **or for the benefit of areas within**
10 the geographic borders of that local government.

11 **(3) Notwithstanding any provision of this Section to the contrary, any**
12 **monies received under Subsection E of this Section in settlement or by final**
13 **judgment for assessed damages, restoration costs, actual restoration of areas**
14 **disturbed, or reasonable and proper sanctions or any monies received under**
15 **Subsection D of this Section in settlement or by final judgment shall be**
16 **distributed based on the type of use of the coastal zone involved in the action as**
17 **follows:**

18 **(a) For uses of state concern, the monies shall be used for projects that**
19 **are consistent with Paragraph (O)(2) of this Section and shall be deposited as**
20 **follows:**

21 **(i) Fifty percent of the monies collected shall be placed in the Coastal**
22 **Protection and Restoration Fund.**

23 **(ii) Twenty-five percent of the monies collected shall be placed in a**
24 **restricted fund administered by the parish governing authority of the parish or**
25 **parishes in which the adverse impact related to the use is located. Such funds**
26 **shall be used only for projects selected by the local governing authority. Unless**
27 **otherwise prohibited by law, preferences may be given to local contractors for**
28 **project planning, permitting, and implementation for such selected projects.**

29 **(iii) The remaining twenty-five percent of the monies collected shall be**

1 placed in the Coastal Protection and Restoration Fund to be used to match
 2 funding for projects selected by local governing authorities pursuant to Item (ii)
 3 of this Subparagraph and that are approved in the coastal master plan
 4 developed in accordance with R.S. 49:214.5.3. The match funding provided for
 5 in this Item shall be at a minimum dollar-for-dollar match. The Coastal
 6 Protection and Restoration Authority shall promulgate rules and regulations
 7 in accordance with the Administrative Procedure Act in order to provide for
 8 submission and approval of plans, projects, policies, or programs for funding
 9 under this Item.

10 (b) For uses of local concern, all of the monies collected shall be
 11 deposited in a restricted fund administered by the parish governing authority
 12 of the parish or parishes in which the adverse impact related to the use is
 13 located. Such funds shall be used only for projects selected by the local
 14 governing authority that are consistent with Paragraph (O)(2) of this Section.

15 * * *

The original instrument was prepared by Tyler McCloud. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

DIGEST

SB 440 Reengrossed

2020 Regular Session

Fesi

Present law establishes a coastal zone management program within the Dept. of Natural Resources and administered by the secretary of the department. An aspect of the program is the application and issuance of coastal use permit prior to commencing a use of state or local concern in the coastal zone.

Present law authorizes a court to impose civil liability and assess damages, order the payment of the restoration costs, require actual restoration of areas disturbed, or otherwise impose reasonable and proper sanctions for uses in the coastal zone that were either without a coastal use permit or not in accordance with the terms and conditions of a coastal use permit.

Present law requires that any monies received by any state or local governmental entity arising from or related to a state or federal permit issued pursuant to the State and Local Coastal Resource Management Act of 1978, a violation thereof, or enforcement thereof, or for damages or other relief arising from or related to any of the foregoing, or for damages or other relief arising from or related to any use as defined by present law be used for integrated coastal protection, including coastal restoration, hurricane protection, and improving the resiliency of the coastal area. Proposed law retains present law.

Proposed law requires any monies collected for the payment of restoration costs be expended

consistent with present law.

Present law authorizes the court to award costs and reasonable attorney fees to the prevailing party. Proposed law retains present law.

Present law provides for the distribution of monies collected by the secretary through enforcement actions for uses of state concern and uses of local concern. Proposed law retains present law.

Present law provides for the distribution of monies collected from enforcement actions for uses of state concerns as follows:

- (1) 50% deposited into the Coastal Resources Trust Fund for reimbursement to the department for the cost of enforcing the coastal zone management program.
- (2) 25% deposited in the local government's mitigation banks.
- (3) 25% deposited in the Wetlands Conservation and Restoration Fund.

Proposed law changes the 25% deposit from local government mitigation banks to a restricted fund administered by the local governing authority of the parish or parishes in which the adverse impact related to the use is located. Proposed law requires the funds be used for projects consistent with present law and within or for the benefit of areas within the geographic borders of that parish.

Proposed law changes the 25% deposit from the Wetlands Conservation and Restoration Fund to the Coastal Protection and Restoration Fund.

Present law provides that 100% of monies collected from enforcement actions for uses of local concerns be deposited in local government mitigation banks. Present law provides for a pro rata division in cases involving two or more local governments. Present law provides for the monies deposit in the Wetlands Conservation and Restoration Fund, but can be used only for mitigation projects within the geographic borders of that local government in the event there is no local government mitigation bank.

Proposed law changes the deposit from local government mitigation banks to a restricted fund administered by the local governing authority of the parish or parishes in which the adverse impact related to the use is located. Proposed law requires the funds be used for projects consistent with present law and within or for the benefit of areas within the geographic borders of that parish.

Proposed law provides for distribution based on the type of use of the coastal zone involved of any monies received in settlement or by final judgment for assessed damages, restoration costs, actual restoration of areas disturbed, or reasonable and proper sanctions.

Proposed law provides that for uses of state concern the monies shall be used consistent with present law and shall be deposited as follows:

- (1) 50% deposited into the Coastal Protection and Restoration Fund.
- (2) 25% deposited into a restricted fund administered by the parish governing authority of the parish or parishes in which the adverse impact related to the use is located and used for projects selected by the local governing authority. Unless otherwise prohibited by law, proposed law authorizes preferences to local contractors for project planning, permitting, and implementation for such selected projects.
- (3) 25% deposited into the Coastal Protection and Restoration Fund to be used as match funding for projects selected by local governing authorities.

Proposed law deposits 100% of the monies collected for uses of local concern in a restricted fund administered by the parish governing authority of the parish or parishes in which the adverse impact related to the use is located. Use of such funds limited to projects selected by the local governing authority that are consistent with present law.

Effective August 1, 2020.

(Amends R.S. 49:214.36(E) and (J))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill

1. Changes the deposit of monies from local government mitigation banks to a restricted fund administered by the local governing authority.
2. Provides relative to the deposits in the Coastal Protection and Restoration Fund.
3. Provides relative to monies received from settlement or final judgment from civil liability, damages, restoration costs, actual restoration, or sanctions.

Senate Floor Amendments to engrossed bill

1. Provides relative to monies collected for violations.