

THE LOUISIANA OIL & GAS  
ASSOCIATION, INC.

VERSUS

HONORABLE JAMES D. "BUDDY"  
CALDWELL, IN HIS CAPACITY AS  
ATTORNEY GENERAL OF THE STATE  
OF LOUISIANA

\* 19TH JUDICIAL DISTRICT COURT

\* DOCKET NO. 626798

\* EAST BATON ROUGE PARISH

\* STATE OF LOUISIANA

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**PETITION FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

NOW INTO COURT, through undersigned counsel, comes petitioner, Louisiana Oil & Gas Association, Inc. ("LOGA"), who, in seeking a declaratory judgment and injunctive relief, respectfully avers as follows:

1.

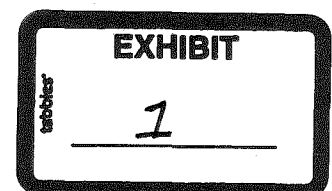
Made defendant herein is Honorable James D. "Buddy" Caldwell, in his capacity as Attorney General of the State of Louisiana, (hereinafter "Attorney General"), domiciled in Baton Rouge, Louisiana, and executive and chief administrative officer of the Department of Justice of the State of Louisiana.

2.

Louisiana Oil and Gas Association ("LOGA") is a non-profit trade association whose membership includes individuals and independent oil and gas exploration, development, production and transportation companies conducting oil and gas activities in Louisiana and on public lands owned by the State of Louisiana. The functions of LOGA include the promotion of the interests of its members with respect to environmental compliance and natural resource conservation. LOGA has a substantial interest in the execution and validity of the Attorney General's approval of "Resolution No. 06-06-13-04 – Engagement of Jones, Swanson, Huddell & Garrison, LLC" submitted by the Southeast Louisiana Flood Protection Authority-East ("SLFPA-E") and, thereby, the Attorney General's approval of the "Contingency Fee Agreement and Authority to Represent" executed by the SLFPA-E.

3.

Venue is proper in East Baton Rouge Parish pursuant to La. R.S. 13:5104.



## BACKGROUND

4.

Under Louisiana Constitution Article VI, § 38.1, “[t]he legislature by law may establish regional flood protection authorities . . . for the purpose of constructing and maintaining levees, levee drainage, flood protection, and hurricane flood protection within the territorial jurisdiction of [such] authorit[ies].” The legislature thereby created the Southeast Louisiana Flood Protection Authority – East (“SLFPA-E”) in Louisiana Revised Statutes §§ 38:330.1 – 38:330.13, effective January 1, 2007. The SLFPA-E was established as a “levee district.”<sup>1</sup> A levee district is “a political subdivision of this state organized for the purpose and charged with the duty of constructing and maintaining levees, and all other things incidental thereto within its territorial limits.”<sup>2</sup> The statute states that the specific purpose of SLFPA-E is “regional coordination of flood protection in order to promote such coordination over parochial concerns.”<sup>3</sup> Pursuant to that purpose, the SLFPA-E governs certain levee districts, namely: Orleans Levee District, Lake Borgne Basin Levee District, and East Jefferson Levee District.<sup>4</sup>

5.

On July 24, 2013, Civil Action No. 13-6911 was filed in the Civil District Court of the Parish of Orleans, State of Louisiana, entitled “Board of Commissioners of the Southeast Louisiana Flood Protection Authority – East, Individually and as the Board Governing the Orleans Levee District, the Lake Borgne Basin Levee District and the East Jefferson Levee District v. Tennessee Gas Pipeline Company, LLC, et al.” The suit was filed by SLFPA-E against 97 oil, gas, and pipeline companies to require those companies to repair and pay for damages to wetlands caused by oil, gas, and pipeline operations.

6.

SLFPA-E’s Petition for Damages and Injunctive Relief is herein referred to as the “Original Petition” and attached as **Exhibit 1**. The Original Petition alleges that SLFPA-E’s “mission of protecting the communities within its jurisdiction from catastrophic storm surge and consequent

<sup>1</sup> La. R.S. 38:330.1(A)(1) (“The [SLFPA-E and SLFPA-W], referred to herein as ‘flood protection authority’ or ‘authority,’ are **established as levee districts** pursuant to Article VI, Sections 38 and 38.1 of the Constitution of Louisiana.”) (emphasis added).

<sup>2</sup> La. R.S. § 38:281(6).

<sup>3</sup> La. R.S. § 38:330.1(F)(2)(a).

<sup>4</sup> La. R.S. § 38:330.1(B)(1)(a)(i)-(iii).

flooding is increasingly impracticable as a direct result of Defendants' acts and omissions."<sup>5</sup> Specifically, SLFPA-E alleges that a network of canals dredged along the state's coastal lands to access oil and gas wells and transport products of oil and gas production has caused direct land loss and increased erosion, resulting in increased storm surge risk and increased flood protection costs. SLFPA-E claims that the oil and gas companies exacerbated the land loss by failing to maintain the canal network and banks of the canals. The petition demands damages for the increased flood protection costs that have been and will further be imposed on the SLFPA-E as well as "injunctive relief in the form of abatement and restoration of the coastal land loss at issue."<sup>6</sup>

7.

Prior to filing suit, the SLFPA-E sought employment of special counsel to represent them in the suit. On June 14, 2013, the SLFPA-E adopted "Resolution No. 06-06-13-04 – Engagement of Jones, Swanson, Huddell & Garrison, LLC" – hereinafter referred to as the "Resolution" and attached as **Exhibit 2**. In the one-page Resolution, the SLFPA-E claimed that the recovery of "damages due to land loss and erosion caused by third parties" would require "a law firm with special expertise and experience." The SLFPA-E authorized its President or Vice President "to engage Jones, Swanson, Huddell & Garrison, LLC, on behalf of itself and the levee districts within its jurisdictions." The Resolution further stipulates that Jones, Swanson, Huddell & Garrison, LLC, would be compensated "on a contingency basis ranging from 32.5 percent to 22.5 percent of any gross recovery depending on the amount of the recovery."

8.

The Attorney General, acting in his official capacity, approved the Resolution by letter dated July 16, 2013 - hereinafter referred to as the "Approval" and attached as **Exhibit 3**. In the Approval, the Attorney General states: "[W]e find that the employment of counsel and the fee arrangements set forth therein conform to Louisiana law and are hereby approved."

9.

Pursuant to the Attorney General's approval, the SLFPA-E entered into a contract with Jones, Swanson, Huddell & Garrison, LLC entitled "Contingency Fee Agreement and Authority on July 17, 2013 – hereinafter referred to as the "Contract" and attached as **Exhibit 4**.

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<sup>5</sup> Original Petition, p. 6, ¶ 4.6.

<sup>6</sup> Original Petition, p. 23.

COUNT ONE

10.

The Attorney General improperly approved the Resolution for SLFPA-E to hire and compensate special counsel because under La. R.S. § 38:330.6, hiring special counsel for the SLFPA-E is solely the responsibility of the Attorney General.

11.

Generally, “the district attorneys of the several judicial districts ... shall ... be the regular attorneys and counsel for ... every state board or commission domiciled therein.”<sup>7</sup> Levee boards, however, “may employ one or more attorneys to represent it and to offer advice and assistance of a legal nature.”<sup>8</sup> In the event a levee board retains special counsel other than the district attorney, the levee board must comply with the requirements under La. R.S. §§ 42:261 *et seq.* regarding the necessity of employing special counsel and the approval of compensation for such special counsel.

12.

SLFPA-E differs from other levee boards in terms of counsel. The statutory provisions establishing the SLFPA-E specifically provide that the Attorney General, rather than any district attorney, will serve as counsel for the SLFPA-E. La. R.S. § 38:330.6, which pertains specifically to the SLFPA-E, provides:

The state attorney general and his assistants shall be and are hereby designated as counsel for each flood protection authority in the execution of the purposes of this Chapter and are hereby charged with the responsibility of representing each authority in any and all matters when called upon to do so.

13.

La. R.S. § 38:330.6 was added by Acts 2006, 1<sup>st</sup> Ex. Sess., No. 1, Section 1; however, La. R.S. § 42:263, which allows levee boards other than the SLFPA-E to obtain special counsel with approval, was amended by Acts 1979, No. 78, Section 1 and Acts 1982, No. 570, Section 2. Therefore, La. R.S. § 38:330.6 supersedes the provisions of La. R.S. § 42:263 as being the later expression of legislative intent.

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<sup>7</sup> La. R.S. § 42:261(A).

<sup>8</sup> La. R.S. § 38:305.

14.

In the statutory provisions that establish the SLFPA-E, La. R.S. § 36:330.1 *et seq.*, the Legislature did not provide any authority for the SLFPA-E to retain and compensate its own general or special counsel. In contrast, the Legislature granted other levee boards authority to employ counsel through La. R.S. § 38:305 and La. R.S. § 42:261 *et seq.* La. R.S. § 38:330.6, establishing the Attorney General as counsel for the SLFPA-E, supersedes those provisions regarding other levee boards, and the Legislature did not expressly grant the SLFPA-E any similar authority to retain or compensate counsel within La. R.S. § 38:330.1 *et seq.*

15.

Without express Legislative authority to hire special counsel, the SLFPA-E must rely solely on the Attorney General as counsel under La. R.S. § 38:330.6. If the Attorney General and his assistants are unable to represent the flood protection authority because of the need for special expertise and experience, the Attorney General would hire the special counsel, and the special counsel would be paid on an hourly rate rather than under a contingency fee basis.

COUNT TWO

16.

In the event that SLFPA-E *can* hire its own special counsel other than the Attorney General, the SLFPA-E and the Attorney General must still comply with La. R.S. § 42:261 *et seq.* for the approval of hiring and compensating such counsel.

17.

The Attorney General acted outside his authority in approving the Resolution that did not provide a “real necessity” for special counsel or “stat[e] fully the reasons for the action and the compensation to be paid” as required under La. R.S. § 42:263.

18.

La. R.S. § 42:262 addresses the approval of hiring and compensating special counsel “in the event it should be necessary” to retain such special counsel. La. R.S. § 42:263 further provides the procedure for how such “necessity” may be established. La. R.S. § 42:263, entitled “Resolution requesting special counsel,” provides, in pertinent part:

No parish governing authority, levee board ... or other local or state board shall retain or employ any special attorney or counsel to represent it in any special matter or pay any compensation for any

legal services whatever **unless a real necessity exists**, made to appear by a resolution thereof **stating fully the reasons for the action and the compensation to be paid**. The resolution then shall be subject to the approval of the attorney general and, if approved by him, shall be spread upon the minutes of the body and published in the official journal of the parish. (emphasis added).

19.

La. R.S. § 42:263 applies to the SLFPA-E as a levee board created under La. R.S. § 38:330.1 with special authority over numerous levee districts.

20.

Under La. R.S. § 42:263, the Attorney General approved an improper resolution that did not “stat[e] fully the reasons for the action.” The Resolution submitted by SLFPA-E set forth the following:

**WHEREAS**, the levee districts within jurisdiction of the Southeast Louisiana Flood Protection Authority-East (SLFPA-E) have experienced damages due to land loss and erosion caused by third parties; and

**WHEREAS**, retaining counsel to represent SLFPA-E in this matter will require a law firm with special expertise and experience.

**BE IT HEREBY RESOLVED**, that the SLFPA-E authorizes its President or Vice President to engage Jones, Swanson, Huddell & Garrison, LLC, on behalf of itself and the levee districts within its jurisdictions, regarding claims for damages due to land loss and erosion, for the benefit of and on behalf of the residents within its jurisdiction.

**BE IT FURTHER RESOVLED**, that Jones, Swanson, Huddell & Garrison, LLC, shall be paid on a contingency basis ranging from 32.5 percent to 22.5 percent of any gross recovery depending on the amount in controversy.<sup>9</sup>

The Resolution states that the reason for the action will be “land loss and erosion caused by a third party.” However, the Resolution does not indicate the type of damages sought by the SLFPA-E and does not identify from whom the damages will be sought. The Resolution provides only vague, imprecise, and unspecified allegations without providing sufficient information to establish whether a “real necessity” exists for hiring special counsel.

21.

Additionally, under La. R.S. § 42:263, the Attorney General approved an improper resolution that did not “stat[e] fully ... the compensation to be paid.” The Resolution submitted by SLFPA-E provided only a range of percentages under the contingency fee agreement. The day after the Attorney General approved the Resolution, SLFPA-E entered into a contingency fee contract with

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<sup>9</sup> See Exhibit 2, Resolution No. 06-06-13-04.

Jones, Swanson, Huddell & Garrison, LLC (“JSHG”) that contained not only the percentages stated in the Resolution but also a significant “poison pill” provision that provided:

Client understands that, in the event that JSHG’s representation under this agreement is terminated prior to full and final recovery and payment of attorney’s fees, costs and expenses owed to JSHG under this agreement, Client will be responsible for any attorney fees or costs incurred prior to such discharge or termination, whether such discharge or termination is at Client’s impetus or that of third parties. In such circumstances, fees shall be based on all of the facts and circumstances deemed relevant by Louisiana statutory law and/or jurisprudence, including JSHG’s prevailing standard hourly rates and the risk taken by JSHG ...

The Contract does not provide the exact hourly rates to be considered in assessing costs and fees, and the Resolution also fails to mention or provide these provisions of the contingent fee agreement. The Attorney General’s Approval of the Resolution allows for a vague and imprecise compensation agreement in violation of La. R.S. § 42:263.

22.

Under La. R.S. § 42:263, the Attorney General approved an improper resolution that did not establish a “real necessity” for the hiring and compensation of special counsel. In his Approval, the Attorney General noted the following:

[T]his office is not involved in deciding which claims the Board may or may not pursue. Neither is this office involved in deciding which party or parties the Board wishes to pursue, if the Board decided to move forward with a claim. Under Louisiana law, the role of this office includes a review of the resolution the Board has submitted and a determination that counsel chosen by the Board is in good standing and is licensed to practice law in Louisiana and that the fee to be paid to counsel by the Board is reasonable under the circumstances.

Any finding of “real necessity” for retaining special counsel logically requires some knowledge of the claims the SLFPA-E intended to bring and against whom the SLFPA-E intended to bring them. Generally, the Attorney General would serve as counsel for the SLFPA-E.<sup>10</sup> Therefore, the hiring of special counsel would require special skill, expertise, or other need beyond that which the Attorney General and his assistants may provide.<sup>11</sup> The Resolution stated *only* that SLFPA-E “will require a law firm with special expertise and experience” but did not indicate or explain what area

<sup>10</sup> La. R.S. § 38:330.6.

<sup>11</sup> Compare *Bd. of Comm’rs of Buras Levee Dist. v. Perez*, 12 So.2d 670 (La. 1943) (held that a levee board did not show “real necessity” for special counsel when they “were ably represented by the Attorney General ... without added expense”), with *Cortina v. Gulf States Utilities-Cajun Elec. Power Co-op., Inc.*, 594 So.2d 1326 (La. App. 1 Cir. 1991) (held “real necessity” existed for a school board to hire special counsel to pursue delinquent taxpayer because evidence of the volume and technical aspects of the tax litigation supported that an attorney specializing in taxes was needed).

of expertise would be required or how general representation by the Attorney General would otherwise be unsuitable.

COUNT THREE

23.

The approval of the Resolution results in an unconstitutional diversion and appropriation of state funds and usurpation of legislative power by the Attorney General.

24.

Article VII, § 9 of the Louisiana Constitution provides: "All money received by the state or by any state board, agency, or commission shall be deposited immediately upon receipt in the state treasury . . ."

25.

Funds received in settlement or judgment of the suit must be deposited into the state treasury due to the state-wide environmental nature of SLFPA-E's claims. SLFPA-E asserts that the oil companies are liable for the following "highly costly but necessary remedial measures" that have been or will be taken to reduce the risk to the coastal lands, with SLFPA-E and the levee districts it governs bearing the costs:

- 1) Abatement and restoration including backfilling and re-vegetating the canals, wetlands creation, reef creation, land bridge construction, hydrologic restoration, shoreline protection, structural protection, bank stabilization, ridge restoration, and diversion projects.
- 2) Managing the Hurricane and Storm Damage Risk Reduction System, which was developed by the Federal Government and designed by the Corps of Engineers to provide 100-year level storm protection. The system is being turned over to the State of Louisiana and shifting future costs to the State and the flood protection authorities or operation, maintenance, repair, rehabilitation, and replacement.
- 3) Mandatory levee certification costs for components of the flood protection systems other than the Risk Reduction System that the flood protection authorities are responsible.
- 4) Additional flood protection expenses including more safe houses for employees.

Many of these restoration and flood protection costs are shared by the state and the flood protection authorities, and therefore, some, if not all, funds received in damages for SLFPA-E's claims should be deposited into the state treasury then appropriated to the flood authorities at the direction of the Legislature.



26.

Additionally, some or potentially all of the funds received in settlement or judgment of these claims must be deposited into the state treasury due to the position of the SLFPA-E as merely a component of a comprehensive state-managed and established system for coastal and flood protection.

27.

The SLFPA-E is part of a hierarchy for comprehensive management over coastal affairs meant to operate as one collaborative state effort. Under Louisiana Revised Statutes Title 49, the legislature declared a public policy of the state “to develop and implement, on a comprehensive and coordinated basis, an integrated coastal protection program in order to reduce if not eliminate the catastrophic rate of coastal land loss in Louisiana.”<sup>12</sup> In furtherance of this public policy, the legislature created the Coastal Protection and Restoration Authority (“CPRA”) as “a single agency with authority to articulate a clear statement of priorities and to focus development and implantation of efforts to achieve comprehensive integrated coastal protection.”<sup>13</sup> The legislature created the CPRA within the office of the governor and mandated “joint coordinat[ion]” among the CPRA, flood authorities, levee districts, and other agencies for implementing the state’s coastal protection plan.<sup>14</sup> The SLFPA-E and the levee districts encompassed therein remain “subject to Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes.”<sup>15</sup>

28.

Article VII, § 10 of the Louisiana Constitution governs the expenditure of all state funds deposited into the state treasury: “[M]oney shall be drawn from the state treasury only pursuant to an appropriation made in accordance with law.”

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<sup>12</sup> La. R.S. § 49:214.1(D).

<sup>13</sup> La. R.S. § 49:214.1(B).

<sup>14</sup> La. R.S. § 49:214.1(E) (“[T]he legislature places responsibility for the direction and development of the state’s comprehensive master coastal protection plan with the Coastal Protection and Restoration Authority Board within the office of the governor. In order to maximize the effectiveness of integrated coastal protection efforts, the Coastal Protection and Restoration Authority Board shall use an integrated effort to jointly coordinate master plan and annual plan development with the Coastal Protection and Restoration Authority, state agencies, political subdivisions, including flood protection authorities, levee districts, and federal agencies.”).

<sup>15</sup> La. R.S. § 38:330.1(A)(2).

29.

Appropriation of state money is vested in the legislative branch of government. Article III, § 16 of the Louisiana Constitution states that “no money shall be withdrawn from the state treasury except through specific appropriation.”

30.

The Attorney General approved the SLFPA-E’s statement in the Resolution that special counsel “shall be paid on a contingency basis ranging from 32.5 percent to 22.5 percent of any gross recovery depending on the amount of the recovery.”

31.

Pursuant to the Attorney General’s approval, the SLFPA-E entered into a contract with Jones, Swanson, Huddell & Garrison, LLC, entitled “Contingency Fee Agreement and Authority to Represent.” The Contract provides that the firm will represent SLFPA-E “in connection with Client’s and the Levee Districts’ claims for damages, including but not limited to increased costs and property damages, sustained as a consequence of the ongoing land loss and erosion.” As compensation for such representation, SLFPA-E contracted to pay the firm as follows:

- a) Thirty-two and a half percent (32.5%) on any gross recovery totalling up to and including one hundred million dollars (\$100,000,000);
- b) Twenty-seven and a half percent (27.5%) on any gross recovery totalling more than one hundred million dollars (\$100,000,000) up to and including three hundred million dollars (\$300,000,000); and
- c) Twenty-two and a half percent (22.5%) on any gross recovery totalling more than three hundred million dollars (\$300,000,000).

32.

The Contract provides that the contingency fee be deducted from all amounts collected; therefore, the Contract deducts from funds that are, in part, due to the State.

33.

The Attorney General’s approval of such a contingency fee arrangement by his approval of the Resolution that proposed the Contract amounts to an unconstitutional usurpation of the power vested in the Legislature to appropriate state monies, pursuant to Article III, § 16, in violation of the Article VII, § 10.<sup>16</sup>

<sup>16</sup> *Meredith v. Ieyoub*, 96-C-1110 (La. 9/9/97); 700 So.2d 478 (held that the Attorney General acted without express grant of power in contracting with private firms, and thus violated separation of powers doctrine).

INJUNCTIVE RELIEF

34.

The matters set forth in Counts One through Three constitute direct violation of prohibitory law entitling petitioners to injunctive relief without the necessity of demonstrating irreparable injury.

35.

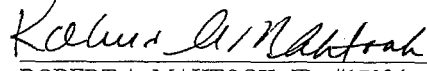
Implementation and performance of said Contract pursuant to the Attorney General's invalid approval of the Resolution will result in irreparable injury to the Petitioner as a result of its chilling effect on the exploration, production, development and transportation of the oil and gas resources of the State, and the resulting diminution in sales taxes, severance taxes, royalties on state leases, and other funds that would otherwise be available for public use.

WHEREFORE, petitioner, Louisiana Oil & Gas Association, Inc., prays for judgment against the defendant, the Honorable James D. "Buddy" Caldwell, as follows:

1. For a declaration that the Attorney General's approval of SLFPA-E's Resolution for retaining and compensating special counsel is invalid under Louisiana Law;
2. For a preliminary and permanent injunction for the withdrawal of the Attorney General's approval of SLFPA-E's Resolution for retaining and compensating special counsel;
3. For all costs of suit incurred herein; and
4. For all other general and equitable relief.

Respectfully submitted,

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Attorneys for Petitioner,  
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PLEASE SERVE:

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Baton Rouge, Louisiana

THE LOUISIANA OIL & GAS  
ASSOCIATION, INC.

VERSUS

HONORABLE JAMES D. "BUDDY"  
CALDWELL, IN HIS CAPACITY AS  
ATTORNEY GENERAL OF THE STATE  
OF LOUISIANA

NUMBER: C626798 SEC: 21 DIV: D

19<sup>TH</sup> JUDICIAL DISTRICT COURT

EAST BATON ROUGE PARISH

STATE OF LOUISIANA

DEFENDANT/PLAINTIFF-IN-RECONVENTION'S  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

MAY IT PLEASE THE COURT:

Defendant/Plaintiff-in-Reconvention, James D. "Buddy" Caldwell, in his capacity as Attorney General for the State of Louisiana ("*Mr. Caldwell*" or "*the Attorney General*"), respectfully submits these Findings of Fact and Conclusions of Law in accordance with the Court's instructions given at the February 24, 2013, trial on the above-captioned matter.

FINDINGS OF FACT

- I. THE ATTORNEY GENERAL NEVER POSSESSED A COPY OF THE CONTRACT BETWEEN SLFPA-E AND JONES, SWANSON, HUDDALL & GARRISON, L.L.C. PRIOR TO HIS APPROVAL OF THE RESOLUTION.
- II. THE ATTORNEY GENERAL WAS NOT CALLED UPON TO REPRESENT SLFPA-E IN ITS LAWSUIT AGAINST THE OIL COMPANIES.
- III. THE ATTORNEY GENERAL NEVER RECOMMENDED ANY LAW FIRM TO SLFPA-E REGARDING SLFPA-E'S LAWSUIT AGAINST THE OIL COMPANIES.
- IV. THE ATTORNEY GENERAL NEVER SANCTIONED THE BRINGING OF THE LAWSUIT AGAINST THE OIL COMPANIES.
- V. THE ATTORNEY GENERAL MERELY APPROVED SLFPA-E'S RESOLUTION REQUESTING LEGAL REPRESENTATION BY JONES, SWANSON, HUDDALL & GARRISON, L.L.C.
- VI. THE RESOLUTION CONTAINED LANGUAGE DEMONSTRATING THE REAL NECESSITY FOR SLFPA-E TO HIRE PRIVATE COUNSEL.
- VII. THE RESOLUTION CONTAINED A DESCRIPTION OF THE FEE ARRANGEMENT BETWEEN SLFPA-E AND ITS PRIVATE COUNSEL.
- VIII. UPON RECEIVING SLFPA-E'S RESOLUTION, THE ATTORNEY GENERAL VERIFIED THAT THE RESOLUTION CONTAINED A STATEMENT OF REAL NECESSITY AND A DESCRIPTION OF THE FEE ARRANGEMENT BETWEEN SLFPA-E AND ITS PRIVATE COUNSEL.
- IX. UPON RECEIVING SLFPA-E'S RESOLUTION, THE ATTORNEY GENERAL CONFIRMED THAT SLFPA-E'S PRIVATE COUNSEL WERE IN GOOD STANDING WITH THE LOUISIANA STATE BAR.



- X. SLFPA-E IS A POLITICAL SUBDIVISION, NOT A STATE AGENCY.
- XI. LOGA, THROUGH A JUDICIAL ADMISSION CONTAINED IN PARAGRAPH 4 OF ITS ORIGINAL PETITION, ADMITS THAT SLFPA-E IS A LEVEE BOARD, AND THUS, A POLITICAL SUBDIVISION.
- XII. DESPITE FILING THE LAWSUIT AGAINST THE ATTORNEY GENERAL, NOT ONE OF LOGA'S SIXTEEN HUNDRED (1600) MEMBERS HAD THE COURTESY TO APPEAR AT THE TRIAL TO SUPPORT LOGA'S CONTENTIONS.
- XIII. DESPITE FILING THE LAWSUIT AGAINST THE ATTORNEY GENERAL, NOT ONE OF LOGA'S SEVENTY (70) BOARD MEMBERS HAD THE COURTESY TO APPEAR AT THE TRIAL TO SUPPORT LOGA'S CONTENTIONS.
- XIV. DESPITE FILING THE LAWSUIT AGAINST THE ATTORNEY GENERAL, NOT ONE OF LOGA'S EIGHT (8) EXECUTIVE COMMITTEE MEMBERS HAD THE COURTESY TO APPEAR AT THE TRIAL TO SUPPORT LOGA'S CONTENTIONS.
- XV. DESPITE FILING THE LAWSUIT AGAINST THE ATTORNEY GENERAL, NEITHER LOGA'S VICE-PRESIDENT NOR ITS CHAIRMAN HAD THE COURTESY TO APPEAR AT THE TRIAL TO SUPPORT LOGA'S CONTENTIONS.
- XVI. DESPITE NOT APPEARING AT THE TRIAL TO SUPPORT LOGA'S CONTENTIONS, LOGA'S VICE-PRESIDENT WAS NEVERTHELESS COMMUNICATING WITH THE PRESS WHILE THE TRIAL WAS OCCURRING.
- XVII. LOGA HAS NEVER SET FORTH ANY EVIDENCE TO SUPPORT ITS REQUEST FOR A PRELIMINARY AND PERMANENT INJUNCTION.
- XVIII. WHEN LOGA FILED ITS REQUEST FOR A PRELIMINARY INJUNCTION, IT FAILED TO ATTACH AN ORDER SETTING THE PRELIMINARY INJUNCTION FOR HEARING.
- XIX. WHEN ONE FILES A LAWSUIT, HE MUST HAVE A GOOD-FAITH BELIEF THAT HE WILL PREVAIL ON THE MERITS; HOWEVER, WHEN ONE REQUESTS PRELIMINARY INJUNCTIVE RELIEF, HE MUST ALSO MAKE A PRIMA FACIE SHOWING THAT HE WILL PREVAIL ON THE MERITS. FURTHERMORE, WHEN ONE REQUESTS PERMANENT INJUNCTIVE RELIEF, HE MUST PROVE HIS CASE BY A PREPONDERANCE OF THE EVIDENCE. LOGA HAS FAILED TO PROVE THE ALLEGATIONS CONTAINED IN PARAGRAPH 35 OF ITS ORIGINAL PETITION REGARDING THE IRREPARABLE INJURY ("CHILLING EFFECT") THAT WILL BE INFLICTED UPON THE OIL AND GAS INDUSTRY SHOULD THIS COURT NOT GRANT ITS REQUEST FOR INJUNCTIVE RELIEF. AT TRIAL, NO EVIDENCE – EITHER TESTIMONIAL OR DOCUMENTARY – WAS OFFERED BY LOGA IN SUPPORT OF ITS CONTENTIONS. AT HIS DEPOSITION, LOGA'S PRESIDENT, DON BRIGGS, ADMITTED THAT HE DID NOT KNOW HOW LOGA WAS GOING TO PROVE ITS CASE REGARDING ITS REQUEST FOR INJUNCTIVE RELIEF (SEE TRANSCRIPT, PAGE 133) AND THAT HE POSSESSES NO INFORMATION THAT WILL ALLOW LOGA TO PROVE ITS CASE REGARDING ITS REQUEST FOR INJUNCTIVE RELIEF (SEE TRANSCRIPT, PAGE 135). INSTEAD, DON BRIGGS STATED THAT HIS STATEMENTS GIVING RISE TO LOGA'S REQUEST FOR INJUNCTIVE RELIEF COME FROM HIS "HEART" (SEE TRANSCRIPT, PAGE 134). BUT THERE WAS NO EVIDENCE THAT EXISTED AT THE TIME OF

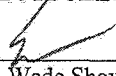
LOGA'S FILING OF ITS LAWSUIT AND THERE WAS NO SCINTILLA OF EVIDENCE PRESENTED BY LOGA AT TRIAL IN SUPPORT OF ITS CLAIMS.

- XX. FOR THE REASONS SET FORTH HEREINABOVE, LOGA'S REQUEST FOR INJUNCTIVE RELIEF WAS FRIVOLOUS AND A WASTE OF THE COURT'S AND THE ATTORNEY GENERAL'S TIME AND RESOURCES.

CONCLUSIONS OF LAW

- I. THE ATTORNEY GENERAL COMPLIED WITH LA. R.S. § 38.330.6 AND LA. R.S. § 42:263 IN APPROVING SLFPA-E'S RESOLUTION REQUESTING LEGAL REPRESENTATION BY JONES, SWANSON, HUDDALL & GARRISON, L.L.C.
- II. THE ATTORNEY GENERAL'S APPROVAL OF THE RESOLUTION WAS PROPER BECAUSE IT SATISFIED THE CRITERIA SET FORTH IN LA. R.S. § 42:263(A).
- III. SLFPA-E IS A POLITICAL SUBDIVISION, NOT A STATE AGENCY, AND THUS, THE ATTORNEY GENERAL'S APPROVAL OF THE RESOLUTION WAS PROPER.
- IV. LA. R.S. § 38.330.1(A)(1) DEFINES SLFPA-E AS A LEVEE BOARD, WHICH IS STATUTORILY DEFINED AS A POLITICAL SUBDIVISION PURSUANT TO LA. R.S. § 38:281(6).
- V. BECAUSE SLFPA-E IS A POLITICAL SUBDIVISION AND NOT A STATE AGENCY, ANY FUNDS THAT WILL BE RECOVERED BY SLFPA-E WILL NOT BE STATE FUNDS.
- VI. LA. R.S. § 38.330.6 REQUIRES THE ATTORNEY GENERAL AND HIS ASSISTANTS TO REPRESENT FLOOD PROTECTION AUTHORITIES ONLY WHEN CALLED UPON TO DO SO.
- VII. LA. R.S. § 38.330.6 DOES NOT MANDATE THAT THE ATTORNEY GENERAL HAS THE SOLE RESPONSIBILITY TO HIRE SPECIAL COUNSEL FOR THE FLOOD AUTHORITIES.
- VIII. SLFPA-E HAS AUTHORITY TO HIRE SPECIAL COUNSEL ON ITS OWN, UPON APPROVAL OF A RESOLUTION BY THE ATTORNEY GENERAL PURSUANT TO LA. R.S. § 42:263.
- IX. LOGA'S REQUEST FOR A PRELIMINARY INJUNCTION WAS DEFICIENT BECAUSE WHEN LOGA FILED ITS PETITION, IT FAILED TO ATTACH AN ORDER SETTING THE PRELIMINARY INJUNCTION FOR HEARING NOT LESS THAN TWO NOR MORE THAN TEN DAYS AFTER SERVICE OF THE NOTICE OF FILING, AS IS REQUIRED UNDER LA. C.C.P. ART. 3602.
- X. LOGA'S REQUEST FOR A PRELIMINARY INJUNCTION WAS FRIVOLOUS BECAUSE WHEN LOGA FILED ITS PETITION, IT COULD NOT MAKE A PRIMA FACIE SHOWING OF A THREAT OF IRREPARABLE INJURY, LOSS, OR DAMAGE, AS IS REQUIRED UNDER LA. C.C.P. ART. 3601.
- XI. LOGA'S REQUEST FOR A PERMANENT INJUNCTION IS FRIVOLOUS BECAUSE WHEN LOGA FILED ITS PETITION, IT COULD NOT PROVE BY A PREPONDERANCE OF THE EVIDENCE THE EXISTENCE OF A THREAT OF IRREPARABLE INJURY, LOSS, OR DAMAGE, AS IS REQUIRED UNDER LA. C.C.P. ART. 3601.

**RESPECTFULLY SUBMITTED,**

  
BY: E. Wade Shows (7637)

**JAMES D. "BUDDY" CALDWELL, ATTORNEY  
GENERAL FOR THE STATE OF LOUISIANA**

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*Attorneys for James D. "Buddy" Caldwell, in his capacity  
as Attorney General of the State of Louisiana*

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing *Findings of Fact and Conclusion of Law* has been served upon counsel for LOGA by faxing, emailing and/or mailing the same to each by first class United States mail, properly addressed and postage prepaid on this 28<sup>th</sup> day of February, 2014.

  
E. WADE SHOWS



## East Baton Rouge Parish Clerk of Court Docket Report Results

**Report Selection Criteria**

Case ID: C626798

Docket Start Date:

Docket Ending Date:

**Case Description**

Case ID: C626798 - THE LA OIL &amp; GAS ASS INC VS LA STATE ATTY GENERAL - NON JURY-

Filing Date: Friday, December 13, 2013

Type: IN - Injunction

Status: SIGN - SIGNED

**Charges**

No charges were found.

**Related Cases**

No related cases were found.

**Case Event Schedule**

Event	Date/Time	Room	Location	Judge
BENCH TRIAL	19-Jun-2014 09:30:00 AM	Division D	10A	CLARK, JANICE
STATUS CONFERENCE	11-Aug-2014 01:00:00 PM	Division D	10A	CLARK, JANICE

**Case Parties**











Seq #	Assoc	End Date	Type	ID	Name	Race	Sex	Birth Date
1	4		Plaintiff	@916748	THE LOUISIANA OIL AND GAS ASSOCIATION INC			
Address: THRU ROBERT A MAHTOOK JR ATY PO BOX 3089 LAFAYETTE LA 70502						Aliases: none		
2	5		Defendant	@916750	LA STATE ATTORNEY GENERAL			
Address: THRU JAMES D CALDWELL ATTY 1885 N 3RD ST BATON ROUGE LA 70802						Aliases: none		
3			Judge	SD	CLARK, HON JANICE			
Address: 19TH JUDICIAL DISTRICT COURT 300 NORTH BLVD, RM 10A BATON ROUGE LA 70802 (225)389-5012						Aliases: none		
4			Attorney	BR17034	MAHTOOK JR, ROBERT A			
Address: MAHTOOK & LAFLEUR LLC PO BOX 3605 LAFAYETTE LA 70502 (337)266-2189						Aliases: none		
5			Attorney	BR29443	TERRELL, MEGAN K			
Address: STATE OF LA DEPT OF JUSTICE PO BOX 94005 BATON ROUGE LA 70804 (225)326-6099						Aliases: none		
6	2		Attorney	BR7637	SHOWS, E WADE			
Address: SHOWS CALI BERTHELOT & WALSH PO DRAWER 4425 BATON ROUGE LA 70821 (225)346-1461						Aliases: none		
7			Attorney	BR25230	RUTLEDGE, DOMOINE			
Address: ATTORNEY AT LAW PO BOX 66551 BATON ROUGE LA 70896						Aliases: none		
8			Intervenor	@934755	SOUTHEAST LA FLOOD PROTECTION AUTHORITY COMM BOARD			



Address:	THRU ATTY BENJAMIN REICHARD 201 ST CHARLES AVE SUITE 4600 NEW ORLEANS LA 70170 (504)586-5252	Aliases:	none
9	8	Attorney	BR31933 REICHARD, BENJAMIN D
Address:	FISHMAN HAYGOOD PHELPS 201 ST CHARLES AVE 46TH FL NEW ORLEANS LA 70170 (504)586-5252	Aliases:	none
10	2	Attorney	BR29020 WHITE, MARY ANN M
Address:	SHOWS CALI BERTHELOT LLP PO DRAWER 4425 BATON ROUGE LA 70821 (225)346-1461	Aliases:	none
15	2	Attorney	BR32484 GUILLOT, GRANT J
Address:	SHOWS CALI & WALSH LLP PO DRAWER 4425 BATON ROUGE LA 70821 (225)346-1461	Aliases:	none
19	8	Attorney	BR25796 MINCE, LORETTA G
Address:	CORRERO FISHMAN HAYGOOD ET AL 201 ST CHARLES AVE 46TH FL NEW ORLEANS LA 70170-4600	Aliases:	none

**Docket Entries**

Filing Date	Description	Name	Party Association
13-Dec-2013 10:01 AM	LETTER FROM ATTORNEY	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	none		
Image:	Image Available -	Microfilm #:	S/R 12/23/13
13-Dec-2013 10:03 AM	PET/INJUNCTION	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	none		
Image:	Image Available -	Microfilm #:	S/R 12/23/13
13-Dec-2013 10:04 AM	ATTACH/EXHIBITS(W/COST)	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	none		
Image:	Image Available -	Microfilm #:	S/R 12/23/13
17-Dec-2013 02:32 PM	NOTICE	SHOWS, E WADE	LA STATE ATTORNEY GENERAL
Entry:	NOTICE OF APPEARANCE AND REQUEST FOR WRITTEN NOTICE		
Image:	Image Available -	Microfilm #:	S/R 12/19/13
23-Dec-2013 05:03 PM	CITATION	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	none		
Image:	Image Available -	Microfilm #:	
09-Jan-2014 03:56 PM	LETTER FROM ATTORNEY	SHOWS, E WADE	LA STATE ATTORNEY GENERAL
Entry:	none		
Image:	Image Available -	Microfilm #:	S/R 01/15/14
09-Jan-2014 03:56 PM	ANSWER & RECONV DEMAND	SHOWS, E WADE	LA STATE ATTORNEY GENERAL
Entry:	none		
Image:	Image Available -	Microfilm #:	S/R 01/13/14
09-Jan-2014 04:57 PM	PET/RECONVENTIONAL DEMAND	SHOWS, E WADE	LA STATE ATTORNEY GENERAL
Entry:	SUPPLEMENTAL		
Image:	Image Available -	Microfilm #:	S/R 01/15/14
09-Jan-2014 04:58 PM	ATTACH/EXHIBITS(W/COST)	SHOWS, E WADE	LA STATE ATTORNEY GENERAL
Entry:	none		
Image:	Image Available -	Microfilm #:	S/R 01/15/14
09-Jan-2014 05:20 PM	SERVICE INFORMATION		
Entry:	Citation/MS/EBR DATE SERVED: 1/8/2014 12:00:00 AM SERVICE TYPE: Personal Service PARTY SERVED: LA STATE ATTORNEY GENERAL SERVED BY: EAST BATON ROUGE PARISH SHERIFFS OFFICE		
Image:	Image Available -	Microfilm #:	

Entry:	MOTION TO STRIKE		
Image:		Microfilm #:	S/R 3-20
10-Mar-2014 03:32 PM	Hearing Held		
Entry:	This matter came before the Court for Continuation of Motions and Trial. Present in Court: Robert Mahtook, Jr., Amy Goode, and Cliff LaBorde, counsel for plaintiffs; E. Wade Shows, Demoine Rutledge, and Grant Guillot, counsel for LA State Attorney General; Lori Mince and Rock Palermo, counsel for Southeast LA Flood Protection Authority Commission Board. The Court, ex proprio motu, strikes all the provisions with respect to the argument of counsel in the briefs concerning the constitutionality vel non of any provision not pled and served and noticed. Therefore, the remaining issues should be completed on this date. On the issue of the reconventional demand, testimony was taken. The matter was argued by counsel and submitted to the Court. Whereupon, the Court ruled that the attorney general to hire people in a legacy case and to be able to recoup attorney's fees, and it does not violate Merdith vs. Ieyoub. Judgment to be signed accordingly. In regards to the principle demand, the Court deferred its ruling to after hearing its docket of Monday, March 10, 2014. The Court ruled as follows: "The Court has reviewed the memoranda together with the proposed findings of fact and conclusion of law. The Court has reviewed the conclusions of law of the intervenor. The Court finds that the preponderance of evidence supports the facts of the outlined in the memorandum together with the conclusion of law, and the Court has therefore signed the judgment and will file it with the Clerk of Court forthwith. The judgment was presented to the Court in accordance therewith. Unless there is any objection, the Court will proceed as outlined. Moreover, the Court has reviewed findings of fact, conclusion of law of the plaintiff in reconvention. It is firmly of the opinion that the facts and law comport with the presentation thereof. The Court therefore finds in favor of the defendant and plaintiff in reconvention. Judgment will be signed accordingly as long its presented in accordance with the minute entry the Court is not spreading upon the minutes." All counsel were present when the Court made its ruling. (Lori Achee, Monday, March 10, 2014)		
Image:		Microfilm #:	
10-Mar-2014 03:37 PM	FAX FEE/PLEADING	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	OPPOSITION		
Image:	Image Available - 	Microfilm #:	S/R 3-20
10-Mar-2014 03:37 PM	LTR / FAX RECT	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	OPPOSITION		
Image:		Microfilm #:	S/R 3-20
10-Mar-2014 03:37 PM	LETTER FROM ATTORNEY	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	none		
Image:	Image Available - 	Microfilm #:	S/R 03/17/14
10-Mar-2014 03:37 PM	MOTION FOR LEAVE	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	none		
Image:	Image Available - 	Microfilm #:	S/R 03/17/14
10-Mar-2014 03:38 PM	MEMORANDUM/SUPPLEMENTAL	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	none		
Image:	Image Available - 	Microfilm #:	S/R 03/17/14
10-Mar-2014 03:38 PM	ATTACH/EXHIBITS(W/COST)	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	none		
Image:	Image Available - 	Microfilm #:	S/R 03/17/14
10-Mar-2014 03:40 PM	LETTER FROM ATTORNEY	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	none		
Image:	Image Available - 	Microfilm #:	S/R 03/17/14
10-Mar-2014 03:40 PM	OPPOSITION	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	none		
Image:	Image Available - 	Microfilm #:	S/R 03/17/14
10-Mar-2014 03:41 PM	ATTACH/EXHIBITS(W/COST)	MAHTOOK JR, ROBERT A	THE LOUISIANA OIL AND GAS ASSOCIATION INC
Entry:	none		
Image:	Image Available - 	Microfilm #:	S/R 03/17/14
10-Mar-2014 03:54 PM	LETTER FROM ATTORNEY	SHOWS, E WADE	LA STATE ATTORNEY GENERAL
Entry:	none		
Image:		Microfilm #:	S/R 03/12/14
10-Mar-2014 03:55 PM	MOTION TO STRIKE W/ORDER	SHOWS, E WADE	LA STATE ATTORNEY GENERAL
Entry:	none		
Image:	Image Available - 	Microfilm #:	S/R 03/12/14
10-Mar-2014 03:55 PM	MEMORANDUM IN SUPPORT	SHOWS, E WADE	LA STATE ATTORNEY GENERAL
Entry:	none		
Image:	Image Available - 	Microfilm #:	S/R 03/12/14
10-Mar-2014 03:55 PM	ATTACH/EXHIBITS(W/COST)	SHOWS, E WADE	LA STATE ATTORNEY GENERAL

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ORIGINAL

Regular Session, 2014

SENATE BILL NO. 531

BY SENATOR ALLAIN

FEES/LICENSES/PERMITS. Provides relative to the authority of certain state and local government entities to bring causes of action arising from or related to certain permits issued in the coastal area. (gov sig)

1

AN ACT

2

To enact R.S. 49:214.36.1, relative to the authority of certain state and local government

3

entities to bring causes of action arising from or related to certain permits issued in

4

the coastal area; to provide relative to causes of action relating to certain permits

5

issued in the coastal area against state or local governmental entities; and to provide

6

for related matters.

7

Be it enacted by the Legislature of Louisiana:

8

Section 1. R.S. 49:214.36.1 is hereby enacted to read as follows:

9

**§214.36.1. Causes of action arising from or related to permits issued in the**

10

**coastal area pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or**

11

**33 U.S.C. 408**

12

**A.(1) No state or local governmental entity, except the Department of**

13

**Natural Resources, the attorney general, or the Coastal Protection and**

14

**Restoration Authority, shall have, nor may pursue, any right or cause of action**

15

**arising from or related to a state or federal permit issued pursuant to R.S.**

16

**49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408 in the coastal area as defined**

17

**by R.S. 49:214.2(4), violation thereof, or enforcement thereof, or for damages**

EXHIBIT

3

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ORIGINAL  
SB NO. 531

1 or other relief arising from or related to any of the foregoing. Notwithstanding  
 2 the foregoing, any contractual claims that any state or local governmental entity  
 3 may possess against the permittee are preserved.

4 (2) Nothing in this Section shall impair any authority under R.S.  
 5 49:214.36 of the secretary of the Department of Natural Resources, the attorney  
 6 general, an appropriate district attorney, or a local government with a coastal  
 7 management program approved under R.S. 49:214.21 et seq., the State and  
 8 Local Coastal Resources Management Act of 1978.

9 B. No person shall have, nor may pursue, any right or cause of action  
 10 against any state or local governmental entity for or relating to any violation of,  
 11 enforcement of, or damages or other relief arising from or related to any action  
 12 or inaction in relation to a permit issued pursuant to R.S. 49:214.21 et seq., 33  
 13 U.S.C. 1344 or 33 U.S.C. 408.

14 C. Any monies received by any state or local governmental entity except  
 15 the Department of Natural Resources arising from or related to a state or  
 16 federal permit issued pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33  
 17 U.S.C. 408, violation thereof, or enforcement thereof, or for damages or other  
 18 relief arising from or related to any of the foregoing shall be deposited and  
 19 credited by the treasurer to the Coastal Protection and Restoration Fund for  
 20 integrated coastal protection, including coastal restoration, hurricane  
 21 protection and improving the resiliency of the coastal area.

22 D. Nothing in this Section shall constitute a waiver of sovereign  
 23 immunity under the Eleventh Amendment of the United States Constitution.

24 E. Nothing in this Section shall prevent or preclude any state or local  
 25 governmental entity or any other person from pursuing any remedy otherwise  
 26 authorized pursuant to C.C.P. Art. 3861 et seq. or any administrative remedy  
 27 otherwise authorized by law arising from or related to a state or federal permit  
 28 issued in the coastal area pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or  
 29 33 U.S.C. 408.

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1           Section 2. Where litigation asserting a right or cause of action as set forth in R.S.  
2           49:214.36.1(A) has been filed as of the effective date of this Act, the state or local  
3           governmental entity which has filed such litigation shall provide written notice via certified  
4           mail, return receipt requested, to the three agencies identified in R.S. 49:214.36.1(A) within  
5           thirty days of the effective date of this Act. Upon motion of the secretary of the Department  
6           of Natural Resources, the executive director of the Coastal Protection and Restoration  
7           Authority, or the attorney general, the moving parties shall be made parties and shall be  
8           substituted for the person who brought the suit. If none of the foregoing moves to be made  
9           party to the suit and substituted for the person who brought the suit within ninety days of  
10          issuance of such notice, the court on its own motion or on the motion of any party or  
11          interested person shall dismiss the litigation without prejudice as to any state or local  
12          governmental entity.

13          Section 3. Where litigation asserting a right or cause of action as set forth in R.S.  
14          49:214.36.1(B) has been filed as of the effective date of this Act, the court on its own motion  
15          or on the motion of any party or interested person shall dismiss the litigation without  
16          prejudice as to any state or local governmental entity.

17          Section 4. It is the intent of the legislature that the provisions of R.S. 49:214.36.1(A)  
18          are procedural and interpretive in nature and intended to clarify existing law, and that they  
19          shall be applicable to all claims existing or actions pending on its effective date and all  
20          claims arising or actions filed on and after its effective date. It is further the intent of the  
21          legislature to clarify that attempted enforcement of the claims described in R.S.  
22          49:214.36.1(A) by any person other than those entities named therein is and has always been  
23          contrary to the public policy of this state and ultra vires.

24          Section 5. It is the intent of the legislature that the provisions of R.S. 49:214.36.1(B)  
25          shall be applicable to all claims existing or actions pending on its effective date and all  
26          claims arising or actions filed on and after its effective date, as authorized by Article XII,  
27          Section 10(C) of the Louisiana Constitution. It is further the intent of the legislature to  
28          declare that the claims described in R.S. 49:214.36.1(B) are and have always been contrary  
29          to the public policy of this state.

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1 Section 6. This Act shall become effective upon signature by the governor or, if not  
 2 signed by the governor, upon expiration of the time for bills to become law without signature  
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 5 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Jerry J. Guillot.

---

## DIGEST

Allain (SB 531)

Proposed law provides that no state or local governmental entity, except the Department of Natural Resources (DNR), the attorney general, or the Coastal Protection and Restoration Authority (CPRA), shall have, nor may pursue, any right or cause of action arising from or related to a state or federal permit issued pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408 in the coastal area as defined by R.S. 49:214.2(4), violation thereof, or enforcement thereof, or for damages or other relief arising from or related to any of the foregoing. However, preserves any contractual claims that any state or local governmental entity may possess against the permittee.

Provides that nothing in proposed law shall impair any authority under R.S. 49:214.36 of the DNR secretary, the attorney general, an appropriate district attorney, or a local government with a coastal management program approved under R.S. 49:214.21 et seq., the State and Local Coastal Resources Management Act of 1978.

Provides that no person shall have, nor may pursue, any right or cause of action against any state or local governmental entity for or relating to any violation of, enforcement of, or damages or other relief arising from or related to any action or inaction in relation to a permit issued pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408.

Provides that any monies received by any state or local governmental entity except DNR arising from or related to a state or federal permit issued pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408, violation thereof, or enforcement thereof, or for damage or other relief arising from or related to any of the foregoing shall be deposited and credited by the treasurer to the Coastal Protection and Restoration Fund for integrated coastal protection, including coastal restoration, hurricane protection and improving the resiliency of the coastal area.

Provides that nothing in proposed law:

- (1) Shall constitute a waiver of sovereign immunity under the Eleventh Amendment of the US Constitution.
- (2) Shall prevent or preclude any state or local governmental entity or any other person from pursuing any remedy otherwise authorized pursuant to C.C.P. Art. 3861 et seq. or any administrative remedy otherwise authorized by law arising from or related to a state or federal permit issued in the coastal area pursuant to R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408.

Provides that where litigation asserting a right or cause of action as set forth in R.S. 49:214.36.1(A) has been filed as of the effective date of proposed law, the state or local governmental entity which has filed such litigation shall provide written notice via certified



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**ORIGINAL**  
SB NO. 531

mail, return receipt requested, to the three agencies identified in R.S. 49:214.36.1(A) within thirty days of the effective date of proposed law. Upon motion of the DNR secretary, the CPRA executive director, or the attorney general, the moving parties shall be made parties and shall be substituted for the person who brought the suit. However, if none of the foregoing moves to be made party to the suit and substituted for the person who brought the suit within 90 days of issuance of such notice, the court on its own motion or on the motion of any party or interested person shall dismiss the litigation without prejudice as to any state or local governmental entity.

Provides that where litigation asserting a right or cause of action as set forth in R.S. 49:214.36.1(B) has been filed as of the effective date of proposed law, the court on its own motion or on the motion of any party or interested person shall dismiss the litigation without prejudice as to any state or local governmental entity.

States that it is the intent of the legislature that the provisions of R.S. 49:214.36.1(A) are procedural and interpretive in nature and intended to clarify existing law, and that they shall be applicable to all claims existing or actions pending on its effective date and all claims arising or actions filed on and after its effective date. Provides that it is further the intent of the legislature to clarify that attempted enforcement of the claims described in R.S. 49:214.36.1(A) by any person other than those entities named therein is and has always been contrary to the public policy of this state and ultra vires.

States that it is the intent of the legislature that the provisions of R.S. 49:214.36.1(B) shall be applicable to all claims existing or actions pending on its effective date and all claims arising or actions filed on and after its effective date, as authorized by Article XII, Section 10(C) of the La. Constitution. Provides that it is further the intent of the legislature to declare that the claims described in R.S. 49:214.36.1(B) are and have always been contrary to the public policy of this state.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 49:214.36.1)

## LOUISIANA STATE SENATE

### Committee Members

Senator Ben W. Nevers  
*Chairman*  
Senator Dan Claitor  
*Vice Chair*  
Senator Conrad Appel  
Senator Jack Donahue  
Senator Daniel R. Martiny  
Senator Edwin R. Murray  
Senator Rick Ward, III



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### Committee Staff

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### Committee on JUDICIARY A

#### NOTICE OF MEETING

April 29, 2014

9:00 a.m

John J. Hainkel, Jr. Room

#### A G E N D A

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF MINUTES ( April 22, 2014 )
- IV. LEGISLATION TO BE CONSIDERED

<b>SB 233</b>	<b>BROOME</b>	<b>HOUSING</b> Provides relative to the Louisiana Equal Housing Opportunity Act. (8/1/14)
<b>SB 382</b>	<b>LAFLEUR</b>	<b>PRIVILEGES/LIENS</b> Provides with respect to privileges for health care providers. (8/1/14)
<b>SB 531</b>	<b>ALLAIN</b>	<b>FEES/LICENSES/PERMITS</b> Provides relative to the authority of certain state and local government entities to bring causes of action arising from or related to certain permits issued in the coastal area. (gov sig)





<b>SB 562</b>	<b>WALSWORTH</b>	<b>CIVIL PROCEDURE</b> Provides disclosure procedures for asbestos and silica claims.
<b>SB 589</b>	<b>WALSWORTH</b>	<b>CHILDREN</b> Extends the termination date of the Children's Cabinet. (gov sig)
<b>SB 607</b>	<b>GALLOT</b>	<b>DIVORCE</b> Provides relative to the effect of a divorce or pending divorce on the designation by an individual of the individual's spouse or former spouse as beneficiary in certain agreements upon the death of the individual.
<b>HB 9</b>	<b>EDWARDS</b>	<b>INSURANCE/AUTOMOBILE</b> Provides for liability for damages caused by an excluded driver.
<b>HB 11</b>	<b>EDWARDS</b>	<b>HOLIDAYS</b> Designates the seventh day of August as "Purple Heart Recognition Day".
<b>HB 102</b>	<b>FOIL</b>	<b>CIVIL/PROCEDURE</b> Provides relative to the title of proceedings for continuing tutorships.
<b>HB 123</b>	<b>SEABAUGH</b>	<b>CIVIL/MOTIONS</b> Provides relative to service of motions for summary judgment.
<b>HB 187</b>	<b>LOPINTO</b>	<b>CHILDREN</b> Provides for surrogacy regulation in Louisiana.
<b>HB 478</b>	<b>MILLER</b>	<b>PROPERTY/EXPROPRIATION</b> Provides relative to procedures in certain expropriation proceedings.
<b>HB 599</b>	<b>ABRAMSON</b>	<b>CIVIL/MOTIONS</b> Provides relative to motions for summary judgment.
<b>HB 607</b>	<b>ABRAMSON</b>	<b>CIVIL/PROCEDURE</b> Provides for continuous revision of the Code of Civil Procedure.
<b>HB 619</b>	<b>ABRAMSON</b>	<b>CIVIL/PROCEDURE</b> Provides relative to the Uniform Interstate Deposition and Discovery Act.
<b>HB 620</b>	<b>ABRAMSON</b>	<b>TRUSTS</b> Provides relative to the delegation of authority of a trustee.

<b>HB 622</b>	<b>ABRAMSON</b>	<b>CHILDREN/TUTORSHIP</b>	Provides relative to tutorship proceedings.
<b>HB 882</b>	<b>CHAMPAGNE</b>	<b>CLERKS OF COURT</b>	Provides relative to legal holidays in Iberia Parish.
<b>HB 940</b>	<b>ABRAMSON</b>	<b>ADMINISTRATIVE PROCEDURE</b>	Provides relative to nuisance ordinances in the city of New Orleans.

V. CONSIDERATION OF ANY OTHER MATTERS THAT MAY COME BEFORE THE COMMITTEE

VI. ADJOURNMENT

THIS NOTICE CONTAINS A TENTATIVE AGENDA AND MAY BE REVISED PRIOR TO THE MEETING. REVISED NOTICES CAN BE CHECKED ON THE WALL OUTSIDE THE COMMITTEE ROOM IN WHICH THE MEETING IS TO BE HELD, ON THE BULLETIN BOARDS OUTSIDE THE HOUSE AND SENATE CHAMBERS (MEMORIAL HALLS), AT THE BILL ROOM IN THE BASEMENT, OR BY CALLING THE PULS LINE 342-2456.

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Senator Ben W. Nevers, Chairman

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## FINAL DISPOSITION OF SENATE BILLS

### 2014 Regular Session

The following notations are used to indicate final dispositions:

ACT AND THE ASSIGNED NUMBER	The bill became law.
BY SUBSTITUTE (Substitute Bill #)	Bill reported from committee by substitute.
CALENDAR/HOUSE, SENATE	Died on House or Senate calendar
COMMITTEE/HOUSE, SENATE	Died in House or Senate committee
CONFERENCE COMMITTEE	Conference committee failed to report.
CONFERENCE REPORT/HOUSE, SENATE	Failed to act on conference committee report.
INDEF. POSTPONED/HOUSE, SENATE	Indefinitely postponed in House or Senate
VETOED	Vetoed by the governor.
VOTE-FINAL PASSAGE/HOUSE, SENATE	Failed to pass 3rd reading in House/Senate
WITHDRAWN	The bill was withdrawn.

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Bill No.	Final Disposition
Bill No.	Final Disposition
1	344
COMMITTEE/HOUSE	ACT 577
2	345
ACT 851	COMMITTEE/SENATE

<b>3</b> COMMITTEE/SENATE	<b>346</b> COMMITTEE/SENATE
<b>4</b> COMMITTEE/HOUSE	<b>347</b> COMMITTEE/SENATE
<b>5</b> WITHDRAWN	<b>348</b> COMMITTEE/SENATE
<b>6</b> COMMITTEE/HOUSE	<b>349</b> WITHDRAWN
<b>7</b> ACT 131	<b>350</b> WITHDRAWN
<b>8</b> COMMITTEE/SENATE	<b>351</b> ACT 139
<b>9</b> COMMITTEE/SENATE	<b>352</b> COMMITTEE/SENATE
<b>10</b> COMMITTEE/SENATE	<b>353</b> ACT 705
<b>11</b> COMMITTEE/HOUSE	<b>354</b> CALENDAR/SENATE
<b>12</b> ACT 278	<b>355</b> CALENDAR/SENATE
<b>13</b> ACT 571	<b>356</b> COMMITTEE/HOUSE
<b>14</b> ACT 478	<b>357</b> COMMITTEE/SENATE
<b>15</b> COMMITTEE/SENATE	<b>358</b> ACT 749
<b>16</b> ACT 101	<b>359</b> ACT 750
<b>17</b> COMMITTEE/SENATE	<b>360</b> ACT 751
<b>18</b> ACT 102	<b>361</b> ACT 603
<b>19</b> ACT 103	<b>362</b> ACT 125
<b>20</b> ACT 727	<b>363</b> ACT 304

21 ACT 104	364 COMMITTEE/SENATE
22 COMMITTEE/SENATE	365 COMMITTEE/SENATE
23 COMMITTEE/SENATE	366 ACT 752
24 ACT 679	367 COMMITTEE/SENATE
25 ACT 680	368 ACT 860
26 COMMITTEE/SENATE	369 ACT 389
27 COMMITTEE/SENATE	370 COMMITTEE/SENATE
28 ACT 681	371 WITHDRAWN
29 COMMITTEE/SENATE	372 ACT 489
30 ACT 852	373 COMMITTEE/HOUSE
31 ACT 728	374 COMMITTEE/SENATE
32 ACT 105	375 COMMITTEE/SENATE
33 WITHDRAWN	376 COMMITTEE/SENATE
34 WITHDRAWN	377 ACT 753
35 WITHDRAWN	378 COMMITTEE/SENATE
36 ACT 729	379 COMMITTEE/SENATE
37 ACT 363	380 COMMITTEE/SENATE
38 ACT 593	381 COMMITTEE/SENATE

39 ACT 279	382 COMMITTEE/HOUSE
40 ACT 730	383 ACT 126
41 WITHDRAWN	384 ACT 463
42 COMMITTEE/SENATE	385 COMMITTEE/HOUSE
43 ACT 444	386 ACT 706
44 WITHDRAWN	387 ACT 707
45 ACT 364	388 ACT 140
46 COMMITTEE/SENATE	389 COMMITTEE/SENATE
47 COMMITTEE/SENATE	390 COMMITTEE/SENATE
48 ACT 365	391 COMMITTEE/SENATE
49 ACT 366	392 COMMITTEE/SENATE
50 COMMITTEE/SENATE	393 COMMITTEE/SENATE
51 ACT 106	394 ACT 754
52 ACT 367	395 ACT 755
53 ACT 731	396 COMMITTEE/SENATE
54 ACT 479	397 COMMITTEE/SENATE
55 ACT 280	398 ACT 604
56 ACT 480	399 ACT 127

57 ACT 445	400 COMMITTEE/SENATE
58 ACT 107	401 ACT 490
59 ACT 132	402 ACT 390
60 ACT 594	403 ACT 491
61 ACT 853	404 COMMITTEE/SENATE
62 ACT 732	405 COMMITTEE/SENATE
63 ACT 682	406 COMMITTEE/SENATE
64 ACT 595	407 COMMITTEE/SENATE
65 COMMITTEE/SENATE	408 COMMITTEE/SENATE
66 ACT 572	409 ACT 708
67 WITHDRAWN	410 ACT 391
68 COMMITTEE/SENATE	411 COMMITTEE/SENATE
69 CALENDAR/SENATE	412 ACT 756
70 CALENDAR/SENATE	413 ACT 578
71 ACT 481	414 COMMITTEE/SENATE
72 ACT 133	415 COMMITTEE/SENATE
73 COMMITTEE/SENATE	416 COMMITTEE/SENATE
74 WITHDRAWN	417 ACT 464

75 ACT 573	418 VETOED
76 WITHDRAWN	419 COMMITTEE/SENATE
77 COMMITTEE/SENATE	420 COMMITTEE/SENATE
78 COMMITTEE/SENATE	421 WITHDRAWN
79 CALENDAR/SENATE	422 ACT 392
80 COMMITTEE/SENATE	423 CALENDAR/SENATE
81 COMMITTEE/SENATE	424 WITHDRAWN
82 ACT 108	425 ACT 861
83 WITHDRAWN	426 CALENDAR/SENATE
84 CALENDAR/SENATE	427 WITHDRAWN
85 ACT 134	428 COMMITTEE/SENATE
86 COMMITTEE/SENATE	429 COMMITTEE/SENATE
87 ACT 368	430 ACT 393
88 ACT 446	431 COMMITTEE/SENATE
89 ACT 281	432 ACT 492
90 CALENDAR/SENATE	433 ACT 128
91 ACT 574	434 CALENDAR/SENATE
92 COMMITTEE/SENATE	435 ACT 757



93 ACT 109	436 ACT 129
94 COMMITTEE/SENATE	437 BY SUBSTITUTE (SB683)
95 COMMITTEE/SENATE	438 COMMITTEE/SENATE
96 COMMITTEE/SENATE	439 COMMITTEE/SENATE
97 ACT 369	440 COMMITTEE/SENATE
98 ACT 733	441 ACT 709
99 ACT 135	442 ACT 465
100 WITHDRAWN	443 COMMITTEE/HOUSE
101 ACT 282	444 WITHDRAWN
102 WITHDRAWN	445 ACT 466
103 ACT 370	446 ACT 710
104 ACT 447	447 ACT 862
105 ACT 448	448 WITHDRAWN
106 ACT 283	449 COMMITTEE/SENATE
107 BY SUBSTITUTE (SB682)	450 COMMITTEE/SENATE
108 ACT 854	451 WITHDRAWN
109 COMMITTEE/SENATE	452 WITHDRAWN
110 ACT 734	453 COMMITTEE/SENATE

111 ACT 596	454 COMMITTEE/SENATE
112 ACT 575	455 COMMITTEE/SENATE
113 COMMITTEE/SENATE	456 ACT 863
114 COMMITTEE/SENATE	457 COMMITTEE/SENATE
115 COMMITTEE/SENATE	458 COMMITTEE/SENATE
116 ACT 449	459 ACT 711
117 COMMITTEE/SENATE	460 ACT 467
118 ACT 735	461 ACT 758
119 ACT 110	462 ACT 394
120 COMMITTEE/SENATE	463 COMMITTEE/SENATE
121 ACT 736	464 WITHDRAWN
122 CONFERENCE COMMITTEE REPORT	465 ACT 579
123 COMMITTEE/SENATE	466 COMMITTEE/SENATE
124 WITHDRAWN	467 COMMITTEE/SENATE
125 ACT 450	468 ACT 759
126 ACT 737	469 ACT 544
127 COMMITTEE/SENATE	470 ACT 760
128 ACT 136	471 WITHDRAWN

129 ACT 1	472 ACT 305
130 CALENDAR/SENATE	473 ACT 306
131 ACT 284	474 COMMITTEE/SENATE
132 ACT 683	475 COMMITTEE/SENATE
133 ACT 738	476 ACT 307
134 ACT 739	477 ACT 468
135 ACT 855	478 ACT 308
136 WITHDRAWN	479 COMMITTEE/SENATE
137 COMMITTEE/SENATE	480 ACT 864
138 ACT 451	481 ACT 712
139 ACT 111	482 ACT 761
140 ACT 597	483 CONFERENCE COMMITTEE
141 ACT 285	484 COMMITTEE/SENATE
142 ACT 371	485 WITHDRAWN
143 VETOED	486 COMMITTEE/SENATE
144 COMMITTEE/SENATE	487 COMMITTEE/SENATE
145 COMMITTEE/SENATE	488 COMMITTEE/SENATE
146 COMMITTEE/SENATE	489 ACT 713

147 ACT 112	490 COMMITTEE/SENATE
148 ACT 372	491 COMMITTEE/SENATE
149 ACT 452	492 CALENDAR/SENATE
150 COMMITTEE/SENATE	493 COMMITTEE/SENATE
151 COMMITTEE/SENATE	494 COMMITTEE/SENATE
152 ACT 373	495 WITHDRAWN
153 COMMITTEE/SENATE	496 ACT 865
154 ACT 286	497 COMMITTEE/SENATE
155 ACT 740	498 ACT 493
156 COMMITTEE/SENATE	499 CALENDAR/SENATE
157 ACT 137	500 ACT 762
158 COMMITTEE/SENATE	501 COMMITTEE/SENATE
159 COMMITTEE/SENATE	502 ACT 714
160 COMMITTEE/SENATE	503 ACT 494
161 ACT 684	504 COMMITTEE/SENATE
162 COMMITTEE/SENATE	505 CALENDAR/SENATE
163 COMMITTEE/SENATE	506 CONFERENCE COMMITTEE REPORT
164 COMMITTEE/SENATE	507 ACT 866

165 ACT 453	508 WITHDRAWN
166 COMMITTEE/SENATE	509 WITHDRAWN
167 ACT 856	510 ACT 309
168 ACT 113	511 ACT 469
169 ACT 374	512 CALENDAR/SENATE
170 ACT 287	513 ACT 580
171 COMMITTEE/SENATE	514 ACT 581
172 ACT 741	515 COMMITTEE/SENATE
173 WITHDRAWN	516 ACT 867
174 ACT 288	517 COMMITTEE/SENATE
175 COMMITTEE/SENATE	518 COMMITTEE/HOUSE
176 WITHDRAWN	519 COMMITTEE/SENATE
177 ACT 454	520 CALENDAR/SENATE
178 ACT 20	521 COMMITTEE/SENATE
179 ACT 482	522 ACT 715
180 ACT 598	523 ACT 395
181 ACT 114	524 ACT 868
182 COMMITTEE/SENATE	525 ACT 310

183 ACT 742	526 COMMITTEE/SENATE
184 ACT 576	527 ACT 470
185 ACT 685	528 ACT 471
186 ACT 686	529 WITHDRAWN
187 ACT 289	530 CALENDAR/SENATE
188 COMMITTEE/SENATE	531 COMMITTEE/SENATE
189 ACT 290	532 ACT 716
190 COMMITTEE/SENATE	533 ACT 717
191 ACT 483	534 COMMITTEE/SENATE
192 ACT 291	535 COMMITTEE/HOUSE
193 COMMITTEE/SENATE	536 BY SUBSTITUTE (SB685)
194 ACT 484	537 ACT 311
195 COMMITTEE/SENATE	538 ACT 312
196 COMMITTEE/SENATE	539 ACT 582
197 COMMITTEE/SENATE	540 COMMITTEE/SENATE
198 ACT 375	541 COMMITTEE/SENATE
199 ACT 687	542 ACT 130
200 COMMITTEE/SENATE	543 VETOED

201 COMMITTEE/SENATE	544 ACT 763
202 COMMITTEE/SENATE	545 ACT 396
203 ACT 376	546 COMMITTEE/SENATE
204 ACT 688	547 COMMITTEE/HOUSE
205 COMMITTEE/SENATE	548 COMMITTEE/SENATE
206 ACT 377	549 ACT 869
207 ACT 689	550 COMMITTEE/SENATE
208 ACT 690	551 COMMITTEE/SENATE
209 ACT 691	552 BY SUBSTITUTE (SB680)
210 COMMITTEE/SENATE	553 COMMITTEE/HOUSE
211 COMMITTEE/SENATE	554 ACT 718
212 ACT 378	555 COMMITTEE/SENATE
213 CALENDAR/SENATE	556 ACT 472
214 COMMITTEE/HOUSE	557 ACT 313
215 COMMITTEE/SENATE	558 COMMITTEE/SENATE
216 VOTE - FINAL PASSAGE/HOUSE	559 COMMITTEE/SENATE
217 CALENDAR/HOUSE	560 CONFERENCE COMMITTEE

218 COMMITTEE/SENATE	561 COMMITTEE/SENATE
219 COMMITTEE/SENATE	562 COMMITTEE/SENATE
220 ACT 692	563 WITHDRAWN
221 CALENDAR/SENATE	564 ACT 583
222 ACT 379	565 COMMITTEE/SENATE
223 COMMITTEE/SENATE	566 ACT 584
224 ACT 693	567 ACT 314
225 COMMITTEE/SENATE	568 CALENDAR/SENATE
226 COMMITTEE/SENATE	569 WITHDRAWN
227 COMMITTEE/SENATE	570 ACT 473
228 ACT 380	571 COMMITTEE/HOUSE
229 ACT 599	572 ACT 585
230 COMMITTEE/SENATE	573 ACT 719
231 COMMITTEE/SENATE	574 COMMITTEE/SENATE
232 ACT 381	575 ACT 764
233 VOTE - FINAL PASSAGE/HOUSE	576 COMMITTEE/SENATE
234 ACT 382	577 COMMITTEE/SENATE
235 ACT 694	578 ACT 586



236 COMMITTEE/SENATE	579 COMMITTEE/SENATE
237 WITHDRAWN	580 ACT 720
238 WITHDRAWN	581 COMMITTEE/SENATE
239 ACT 292	582 ACT 765
240 ACT 600	583 ACT 495
241 ACT 293	584 CALENDAR/SENATE
242 CONFERENCE COMMITTEE	585 ACT 766
243 ACT 115	586 ACT 721
244 ACT 695	587 ACT 767
245 ACT 696	588 CONFERENCE COMMITTEE REPORT
246 ACT 294	589 ACT 496
247 ACT 116	590 ACT 474
248 ACT 383	591 CONFERENCE COMMITTEE
249 WITHDRAWN	592 ACT 722
250 ACT 697	593 ACT 768
251 ACT 295	594 ACT 497
252 ACT 296	595 COMMITTEE/SENATE

253 ACT 455	596 COMMITTEE/SENATE
254 ACT 117	597 COMMITTEE/SENATE
255 ACT 297	598 ACT 498
256 COMMITTEE/SENATE	599 ACT 587
257 COMMITTEE/SENATE	600 ACT 769
258 ACT 456	601 ACT 605
259 COMMITTEE/SENATE	602 BY SUBSTITUTE (SB684)
260 ACT 118	603 ACT 588
261 ACT 485	604 COMMITTEE/HOUSE
262 ACT 457	605 ACT 770
263 BY SUBSTITUTE (SB575)	606 ACT 606
264 COMMITTEE/SENATE	607 COMMITTEE/HOUSE
265 ACT 119	608 ACT 723
266 ACT 298	609 COMMITTEE/SENATE
267 COMMITTEE/SENATE	610 ACT 475
268 ACT 384	611 COMMITTEE/SENATE
269 ACT 743	612 COMMITTEE/SENATE
270 ACT 744	613 ACT 771

271 CALENDAR/HOUSE	614 ACT 724
272 ACT 857	615 COMMITTEE/SENATE
273 COMMITTEE/SENATE	616 COMMITTEE/SENATE
274 ACT 745	617 ACT 499
275 COMMITTEE/SENATE	618 ACT 397
276 ACT 299	619 CALENDAR/SENATE
277 ACT 385	620 ACT 500
278 WITHDRAWN	621 COMMITTEE/SENATE
279 ACT 120	622 ACT 772
280 ACT 698	623 COMMITTEE/SENATE
281 ACT 121	624 ACT 501
282 ACT 858	625 COMMITTEE/SENATE
283 COMMITTEE/SENATE	626 COMMITTEE/SENATE
284 COMMITTEE/SENATE	627 COMMITTEE/HOUSE
285 COMMITTEE/SENATE	628 CALENDAR/SENATE
286 COMMITTEE/SENATE	629 COMMITTEE/SENATE
287 ACT 122	630 CALENDAR/HOUSE
288 ACT 123	631 COMMITTEE/SENATE

289 ACT 458	632 WITHDRAWN
290 ACT 486	633 ACT 476
291 ACT 315	634 COMMITTEE/SENATE
292 ACT 316	635 ACT 725
293 ACT 386	636 VOTE - FINAL PASSAGE/HOUSE
294 ACT 859	637 ACT 773
295 COMMITTEE/SENATE	638 COMMITTEE/SENATE
296 ACT 124	639 ACT 589
297 ACT 746	640 COMMITTEE/SENATE
298 COMMITTEE/SENATE	641 WITHDRAWN
299 CONFERENCE COMMITTEE REPORT	642 ACT 774
300 COMMITTEE/SENATE	643 COMMITTEE/SENATE
301 CALENDAR/SENATE	644 COMMITTEE/SENATE
302 ACT 601	645 CALENDAR/SENATE
303 ACT 747	646 COMMITTEE/SENATE
304 COMMITTEE/SENATE	647 WITHDRAWN
305 ACT 387	648 ACT 775

306 COMMITTEE/SENATE	649 COMMITTEE/HOUSE
307 ACT 388	650 ACT 726
308 COMMITTEE/SENATE	651 ACT 776
309 ACT 459	652 WITHDRAWN
310 ACT 460	653 COMMITTEE/SENATE
311 COMMITTEE/SENATE	654 ACT 777
312 ACT 699	655 ACT 778
313 ACT 300	656 ACT 779
314 COMMITTEE/SENATE	657 ACT 780
315 ACT 700	658 COMMITTEE/SENATE
316 ACT 487	659 COMMITTEE/SENATE
317 ACT 301	660 BY SUBSTITUTE (SB681)
318 VETOED	661 ACT 781
319 ACT 461	662 ACT 477
320 ACT 748	663 COMMITTEE/SENATE
321 ACT 701	664 ACT 590
322 ACT 702	665 CALENDAR/SENATE
323 COMMITTEE/SENATE	666 COMMITTEE/HOUSE

<b>324</b> COMMITTEE/SENATE	<b>667</b> ACT 400
<b>325</b> COMMITTEE/SENATE	<b>668</b> COMMITTEE/SENATE
<b>326</b> ACT 138	<b>669</b> COMMITTEE/SENATE
<b>327</b> ACT 302	<b>670</b> COMMITTEE/SENATE
<b>328</b> COMMITTEE/SENATE	<b>671</b> WITHDRAWN
<b>329</b> COMMITTEE/SENATE	<b>672</b> CALENDAR/SENATE
<b>330</b> COMMITTEE/HOUSE	<b>673</b> COMMITTEE/SENATE
<b>331</b> ACT 703	<b>674</b> CALENDAR/HOUSE
<b>332</b> COMMITTEE/HOUSE	<b>675</b> ACT 591
<b>333</b> ACT 602	<b>676</b> COMMITTEE/SENATE
<b>334</b> CALENDAR/SENATE	<b>677</b> COMMITTEE/SENATE
<b>335</b> COMMITTEE/SENATE	<b>678</b> COMMITTEE/SENATE
<b>336</b> VOTE - FINAL PASSAGE/HOUSE	<b>679</b> COMMITTEE/SENATE
<b>337</b> ACT 462	<b>680</b> ACT 782
<b>338</b> ACT 704	<b>681</b> ACT 592
<b>339</b> COMMITTEE/SENATE	<b>682</b> ACT 783
<b>340</b> CALENDAR/SENATE	<b>683</b> CONFERENCE COMMITTEE

**341**  
ACT 488

**684**  
ACT 784

**342**  
ACT 303

**685**  
COMMITTEE/HOUSE

**343**  
COMMITTEE/SENATE

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P.O. Box 94062 (900 North Third Street) Baton Rouge, Louisiana 70804-9062

SLS 14RS-829

ORIGINAL

Regular Session, 2014

SENATE BILL NO. 469

BY SENATOR ADLEY

COASTAL RESOURCES. Provides relative to the enforcement of the coastal management program. (gov sig)

AN ACT

To amend and reenact R.S. 49:214.36(D), (J), (K), (L), (M), and (N) and to enact R.S. 49:214.36(O), relative to the coastal zone management program; to provide relative to the initiation or continuation of enforcement actions under the coastal zone management program by local governmental subdivision; to provide for a process for initiation or continuation of such actions; to provide for the disposition of funds collected by such actions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 49:214.36(D), (J), (K), (L), (M), and (N) are hereby amended and reenacted and R.S. 49:214.36(O) is hereby enacted to read as follows:

§214.36. Enforcement; injunction; penalties and fines

\* \* \*

D. The secretary, through the attorney general, ~~an appropriate district attorney;~~ or a local government governmental subdivision with an approved program may bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the coastal zone for which a coastal use permit has not been issued when required or which are not in accordance with the terms and



SLS 14RS-829

ORIGINAL  
SB NO. 469

1 conditions of a coastal use permit.

2 \* \* \*

3 J. Prior to a local governmental subdivision initiating or continuing any  
 4 previously initiated judicial action to enforce any provisions of this Subpart, or  
 5 rules, regulations, or permits issued pursuant thereto, including any judicial  
 6 actions to impose civil liability, assess damages, order the payment of  
 7 restoration damages, require actual restoration or impose sanctions, a notice of  
 8 violation describing with specificity any alleged violation and the actions  
 9 required to achieve compliance, shall be served upon the secretary and the  
 10 person alleged to be in violation of this Subpart, or rules, regulations or permits  
 11 issued pursuant thereto. Upon receipt of the notice of violation, the person  
 12 alleged to be in violation of this Subpart, or regulations or permits issued  
 13 pursuant thereto, shall have sixty days to submit a response to the secretary and  
 14 the local governmental subdivision. A judicial action by the local governmental  
 15 subdivision to enforce any provisions of this Subpart, or rules, regulations or  
 16 permits issued pursuant thereto, shall not be initiated nor allowed to continue  
 17 until the secretary conducts an investigation, and upon the conclusion of such  
 18 investigation, but not later than one hundred twenty days after issuance of the  
 19 notice of violation, the secretary determines in writing that all of the following  
 20 are true:

21 (1) A violation of this Subpart, or rules, regulations or permits, as set  
 22 forth in the notice of violation, has occurred.

23 (2) The violation is under the territorial jurisdiction of the local  
 24 governmental subdivision initiating the enforcement action as provided by its  
 25 approved local program.

26 (3) The proposed enforcement action by the local governmental  
 27 subdivision is consistent with this Subpart, including the coastal management  
 28 program authorized herein.

29 (4) The proposed enforcement action is consistent with the state's master

SLS 14RS-829

**ORIGINAL**  
SB NO. 469

1           plan for integrated coastal protection.

2                   **(5) The proposed enforcement action is reasonable and appropriate**  
3                   **under the circumstances.**

4                   ~~+~~ **K.** The monies collected by the state **and local governmental**  
5                   **subdivisions** under the provisions of this Section shall 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.

15                  (c) Twenty-five percent of the monies collected shall be placed in the  
16                  Wetlands Conservation and Restoration Fund established in Article 7, Section 10.2  
17                  of the Louisiana Constitution.

18                  (2) The monies collected by the secretary **or a local governmental**  
19                  **subdivision** for violations relating to a use of local concern shall be placed in ~~local~~  
20                  government mitigation banks established in accordance with R.S. 49:214.41 and the  
21                  rules and regulations adopted thereunder. ~~Each local government's mitigation bank~~  
22                  ~~shall be credited one hundred percent of the monies collected for violations relating~~  
23                  ~~to a use of local concern occurring within its geographic borders, except that for~~  
24                  ~~violations occurring within the geographic borders of two or more local governments~~  
25                  ~~the monies shall be divided on a pro rata basis and deposited accordingly in the local~~  
26                  ~~government's mitigation banks. In the event there is no local government mitigation~~  
27                  ~~bank in the parish in which the adverse impact is located, the monies shall be~~  
28                  ~~deposited in the Wetlands Conservation and Restoration Fund established in Article~~  
29                  ~~7, Section 10.2 of the Louisiana Constitution;~~ **the Coastal Resources Trust Fund,**

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1 **as provided in R.S. 49:214.41**, and can only be used for mitigation projects within  
 2 the geographic borders of that local ~~government~~ **governmental subdivision**.

3 ~~K. L.~~ In determining whether to assess, pursuant to Subsection I of this  
 4 Section, costs or penalties, and the amounts of such assessments, the secretary shall  
 5 consider the following factors:

6 (1) The monetary benefits realized by the violator due to the noncompliance.

7 (2) The history of previous violations or repeated noncompliance for the last  
 8 five years.

9 (3) The nature and gravity of the violation, including the adverse impact on  
 10 the coastal zone.

11 (4) The degree of culpability, recalcitrance, defiance, or indifference of the  
 12 violator to the laws, regulations, or orders of the secretary or regulations of the local  
 13 government.

14 (5) The cost to the department or state of bringing and prosecuting an  
 15 enforcement action against the violator.

16 (6) Whether the person charged has failed to mitigate or to make a  
 17 reasonable attempt to mitigate the damages caused by his noncompliance or  
 18 violation.

19 ~~L. M.~~ No penalties or costs shall be assessed without the person charged  
 20 being given notice and an opportunity for an adjudicatory hearing, pursuant to the  
 21 Administrative Procedure Act. The secretary shall appoint an independent hearings  
 22 officer. The person charged may waive the adjudicatory hearing upon payment of  
 23 the amount demanded by the secretary, and will be liable for all costs associated with  
 24 the adjudicatory hearing.

25 ~~M. N.~~ Nothing in this Section, shall prohibit any local political subdivision,  
 26 without a local coastal use permit program approved as provided for in R.S.  
 27 49:214.30 from enforcing any ordinance or regulation relating to wetlands protection  
 28 or restoration.

29 ~~N. O.~~(1) In addition to the other enforcement actions authorized by the

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1 provisions of this Section, for each incident resulting in an administrative penalty  
 2 being assessed, the secretary shall issue an after-the-fact coastal use permit or permit  
 3 modification specifying terms and conditions that must be adhered to for the  
 4 unauthorized activity to remain in place. In determining the terms and conditions to  
 5 be placed on the after-the-fact permit, the secretary shall consider the following  
 6 factors:

7 (a) The degree to which the activity complies, or fails to comply, with the  
 8 coastal use guidelines.

9 (b) The need for compensatory mitigation to be carried out when the activity  
 10 altered wetlands of the coastal zone.

11 (c) The need for partial restoration of the site if the coastal use could be  
 12 carried out with lesser impact to coastal waters or wetlands.

13 (d) The need for restoration of the site upon abandonment or completion of  
 14 the coastal use.

15 (2) Prior to issuing a final after-the-fact permit, the secretary shall provide  
 16 to the person conducting the activity and to the owner of the property on which the  
 17 activity occurred, a draft after-the-fact coastal use permit. The secretary shall also  
 18 cause the draft after-the-fact coastal use permit to be published one time in the  
 19 official state journal and allow the public time to offer comments on the proposed  
 20 after-the-fact coastal use permit to the secretary. All comments must be received by  
 21 the secretary within fifteen calendar days following the date of publication in the  
 22 state journal. The secretary shall fully consider all comments received and issue a  
 23 final after-the-fact coastal use permit five days following the end of the public  
 24 comment period.

25 Section 2. This Act shall become effective upon signature by the governor or, if not  
 26 signed by the governor, upon expiration of the time for bills to become law without signature  
 27 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 28 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 29 effective on the day following such approval.

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**ORIGINAL**  
SB NO. 469

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry J. Guillot.

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## DIGEST

Adley (SB 469)

Present law creates a coastal zone management program in the Dept. of Natural Resources. Provides generally for the development of a state program aimed at protecting, developing, and managing the coastal zone of the state. The program defines the coastal zone and delineates the types of uses approved for the coastal zone. Further provides for the development of state and local coastal management plans.

Coastal use permits issued by the DNR are used to control the development and activities in the coastal zone. Present law provides for enforcement of the coastal use permits (CUP) and the activities permitted under the CUPs.

Present law specifies that the secretary, the attorney general, an appropriate district attorney, or a local government may bring injunctive, declaratory, or other actions to ensure that only permitted activities may be conducted in the coastal zone. Proposed law specifies that the secretary through the attorney general and a local governmental subdivision may bring such actions.

Proposed law also requires that prior to initiating or continuing an action to enforce the coastal management laws or rules, a local governmental subdivision must serve notice of a violation, including specific information about the alleged violation, to the DNR secretary and the person alleged to be in violation. The person alleged to be in violation must respond to the secretary and the local governmental subdivision within 60 days. No action may be initiated or continued by the local governmental subdivision until the secretary conducts an investigation into the allegations, which investigation must be concluded within 120 days after the issuance of the notice of violation, and finds that a violation has occurred, the violator is under the territorial jurisdiction of the local governmental subdivision desiring to bring action, the enforcement action is consistent with the coastal management program and the state's master plan for integrated coastal protection, and the enforcement action is reasonable and appropriate.

Present law provides for monies collected pursuant to enforcement actions taken by the department to be placed in local government mitigation banks of the parish where the violation took place or the Wetlands Conservation and Restoration Fund if there is no local governmental mitigation bank and used only for mitigation projects within the geographic boundaries of the local government where the violation took place.

Proposed law provides for the funds to be deposited to the Coastal Resources Trust Fund to be used only for mitigation projects within the geographic boundaries of the local governmental subdivision where the violation took place.

Effective upon signature by governor or lapse of time for gubernatorial action.

(R.S. 49:214.36(D), (J), (K), (L), (M), and (N); adds R.S. 49:214.36(O))

## LOUISIANA STATE SENATE

### Committee Members

Senator Gerald Long  
*Chairman*  
Senator Rick Ward, III  
*Vice Chair*  
Senator Jean-Paul "JP" Morrell  
Senator Norbert N. "Norby"  
Chabert  
Senator R. L. Bret Allain, II  
Senator Dan W. "Blade" Morrish  
Senator Lee "Jody" Amedee



P. O. Box 94183  
Baton Rouge, LA 70804  
Telephone: (225) 342-9703

### Committee Staff

McHenry Lee  
Analyst

Yvette Guilbeau  
Secretary

### Committee on NATURAL RESOURCES

NOTICE OF MEETING  
May 1, 2014  
Upon Adjournment  
Room A-B

### A G E N D A

I. CALL TO ORDER

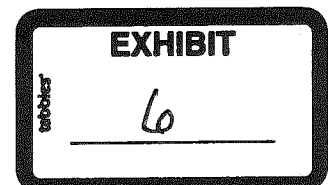
II. ROLL CALL

III. APPROVAL OF MINUTES

April 9, 2014 and April 24, 2014

IV. LEGISLATION TO BE CONSIDERED

<b>SCR 100</b>	<b>CROWE</b>	<b>WILDLIFE RESOURCES</b> Creates the Lower Pearl River Basin Ecosystem Study Commission.
<b>SB 184</b>	<b>MILLS</b>	<b>PUBLIC LANDS</b> Authorizes the commissioner of administration to convey or lease certain lands in St. Martin Parish. (gov sig)
<b>SB 469</b>	<b>ADLEY</b>	<b>COASTAL RESOURCES</b> Provides relative to the enforcement of the coastal management program. (gov sig)
<b>HCR 10</b>	<b>CONNICK</b>	<b>COASTAL RESOURCES</b> Approves the 2014-2015 annual plan for integrated coastal protection and restoration



<b>HCR 49</b>	<b>CHAMPAGNE</b>	<b>COASTAL RESOURCES</b> Urges and requests the Coastal Protection and Restoration Authority to create a body of coastal parishes to aid in compliance with the RESTORE Act
<b>HCR 50</b>	<b>CHAMPAGNE</b>	<b>COASTAL RESOURCES</b> Memorializes congress to provide for certain aspects of the RESTORE Act
<b>HB 311</b>	<b>ST. GERMAIN</b>	<b>PUBLIC LANDS/STATE</b> Removes lands located in the Atchafalaya Basin from certain state lease requirements
<b>HB 416</b>	<b>LAMBERT</b>	<b>FISHING</b> Assigns to the Wildlife and Fisheries Commission management responsibility for sustainability of freshwater and saltwater fisheries
<b>HB 523</b>	<b>LAMBERT</b>	<b>FISHING/RECREATIONAL</b> Provides for possession limits for certain species of bass caught in saltwater areas of the state
<b>HB 782</b>	<b>THOMPSON, J</b>	<b>WATER/RESOURCES</b> Deposits proceeds collected by the state from the use or withdrawal of surface water into the Aquatic Plant Control Fund for aquatic weed control and eradication
<b>HB 1071</b>	<b>CHANEY</b>	<b>HUNTING/LICENSES</b> Reduces the time required to qualify as a resident for hunting and fishing licenses
<b>HB 1085</b>	<b>SCHEXNAYDER</b>	<b>PROPERTY/PUBLIC</b> Provides for the lease of certain state property in Iberville Parish

V. CONSIDERATION OF ANY OTHER MATTERS THAT MAY COME BEFORE THE COMMITTEE

VI. ADJOURNMENT

THIS NOTICE CONTAINS A TENTATIVE AGENDA AND MAY BE REVISED PRIOR TO THE MEETING. REVISED NOTICES CAN BE CHECKED ON THE WALL OUTSIDE THE COMMITTEE ROOM IN WHICH THE MEETING IS TO BE HELD, ON THE BULLETIN BOARDS OUTSIDE THE HOUSE AND SENATE CHAMBERS (MEMORIAL HALLS), AT THE BILL ROOM IN THE BASEMENT, OR BY CALLING THE PULS LINE 342-2456.

---

Gerald Long

SCASB469 WILEYJW 3412

## SENATE COMMITTEE AMENDMENTS

Amendments proposed by Senate Committee on Natural Resources to Original Senate Bill No. 469 by Senator Adley

1 AMENDMENT NO. 1

2 Change the lead author from Adley to Allain.

3 AMENDMENT NO. 2

4 On page 1, line 2, delete ", (J), (K), (L), (M), and (N)"

5 AMENDMENT NO. 3

6 On page 1, delete lines 5 through 7, and insert "management program; to prohibit certain  
7 state or local governmental entities from initiating certain causes of action; to provide for  
8 the uses of certain monies received by any state or local governmental entity; to allow any  
9 person or state or local governmental entity to enforce certain rights or administrative  
10 remedies; to provide terms, conditions, and requirements; and to provide for related matters."

11 AMENDMENT NO. 4

12 On page 1, line 9, delete ", (J), (K), (L), (M), and (N) are" and insert "is"

13 AMENDMENT NO. 514 On page 1, line 13, delete "through"15 AMENDMENT NO. 6

16 On page 1, line 14, after "attorney," delete the remainder of the line and insert "**a district**  
17 **attorney for a local government without an approved program**, or a local government  
18 with an approved"

19 AMENDMENT NO. 7

20 On page 2, delete lines 3 through 29 and delete pages 3 and 4 and insert the following:

21 **"O.(1) Except as provided in this Subpart, no state or local governmental**  
22 **entity shall have, nor may pursue, any right or cause of action arising from any**  
23 **activity subject to permitting under R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33**  
24 **U.S.C. 408 in the coastal area as defined by R.S. 49:214.24, or arising from or**  
25 **related to any use as defined by R.S. 49:214.23(13), regardless of the date such**  
26 **use or activity occurred.**

27 **(2) Any monies received by any state or local governmental entity arising**  
28 **from or related to a state or federal permit issued pursuant to R.S. 49:214.21 et**  
29 **seq., 33 U.S.C. 1344 or 33 U.S.C. 408, a violation thereof, or enforcement**  
30 **thereof, or for damages or other relief arising from or related to any of the**  
31 **foregoing, or for damages or other relief arising from or related to any use as**  
32 **defined by R.S. 49:214.23(13) shall be used for integrated coastal protection,**  
33 **including coastal restoration, hurricane protection and improving the resiliency**  
34 **of the coastal area.**

35 **(3) Nothing in this Section shall constitute a waiver of sovereign**  
36 **immunity under the Eleventh Amendment of the United States Constitution.**

37 **(4) Nothing in this Section shall prevent or preclude any person or any**  
38 **state or local governmental entity from enforcing contractual rights or from**  
39 **pursuing any administrative remedy otherwise authorized by law arising from**

EXHIBIT

7



SCASB469 WILEYJW 3412

1 or related to a state or federal permit issued in the coastal area pursuant to R.S.  
2 49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408.  
3 (5) Nothing in this Subsection shall alter the rights of any governmental  
4 entity for claims related to sixteenth section school lands."

5 AMENDMENT NO. 8

6 On page 5, delete lines 1 through 24

SLS 14RS-829

**ENGROSSED**

Regular Session, 2014

SENATE BILL NO. 469

BY SENATORS ALLAIN AND ADLEY

COASTAL RESOURCES. Provides relative to the enforcement of the State and Local Coastal Resources Management Act of 1978. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 49:214.36(D) and to enact R.S. 49:214.36(O), relative to the

3 coastal zone management program; to provide relative to the initiation or

4 continuation of enforcement actions under the coastal zone management program;

5 to prohibit certain state or local governmental entities from initiating certain causes

6 of action; to provide for the uses of certain monies received by any state or local

7 governmental entity; to allow any person or state or local governmental entity to

8 enforce certain rights or administrative remedies; to provide terms, conditions, and

9 requirements; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 49:214.36(D) is hereby amended and reenacted and R.S.

12 49:214.36(O) is hereby enacted to read as follows:

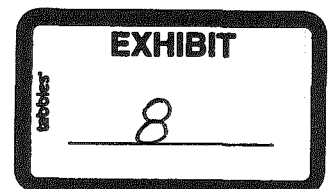
13 §214.36. Enforcement; injunction; penalties and fines

14 \* \* \*

15 D. The secretary, the attorney general, ~~an appropriate district attorney, or a~~

16 ~~local government with an approved~~ **a district attorney for a local government**

17 **without an approved program.** or a local government with an approved program



SLS 14RS-829

**ENGROSSED**  
SB NO. 469

1 may bring such injunctive, declaratory, or other actions as are necessary to ensure  
 2 that no uses are made of the coastal zone for which a coastal use permit has not been  
 3 issued when required or which are not in accordance with the terms and conditions  
 4 of a coastal use permit.

\* \* \*

6 O.(1) Except as provided in this Subpart, no state or local governmental  
 7 entity shall have, nor may pursue, any right or cause of action arising from any  
 8 activity subject to permitting under R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33  
 9 U.S.C. 408 in the coastal area as defined by R.S. 49:214.24, or arising from or  
 10 related to any use as defined by R.S. 49:214.23(13), regardless of the date such  
 11 use or activity occurred.

12 (2) Any monies received by any state or local governmental entity arising  
 13 from or related to a state or federal permit issued pursuant to R.S. 49:214.21 et  
 14 seq., 33 U.S.C. 1344 or 33 U.S.C. 408, a violation thereof, or enforcement  
 15 thereof, or for damages or other relief arising from or related to any of the  
 16 foregoing, or for damages or other relief arising from or related to any use as  
 17 defined by R.S. 49:214.23(13) shall be used for integrated coastal protection,  
 18 including coastal restoration, hurricane protection and improving the resiliency  
 19 of the coastal area.

20 (3) Nothing in this Section shall constitute a waiver of sovereign  
 21 immunity under the Eleventh Amendment of the United States Constitution.

22 (4) Nothing in this Section shall prevent or preclude any person or any  
 23 state or local governmental entity from enforcing contractual rights or from  
 24 pursuing any administrative remedy otherwise authorized by law arising from  
 25 or related to a state or federal permit issued in the coastal area pursuant to R.S.  
 26 49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408.

27 (5) Nothing in this Subsection shall alter the rights of any governmental  
 28 entity for claims related to sixteenth section school lands.

29 Section 2. This Act shall become effective upon signature by the governor or, if not

SLS 14RS-829

**ENGROSSED**  
SB NO. 469

- 1 signed by the governor, upon expiration of the time for bills to become law without signature  
 2 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 3 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 4 effective on the day following such approval.

---

The original instrument was prepared by Jerry J. Guillot. The following digest, which does not constitute a part of the legislative instrument, was prepared by J. W. Wiley.

---

## DIGEST

Allain (SB 469)

Present law creates a coastal zone management program in the Dept. of Natural Resources. Provides generally for the development of a state program aimed at protecting, developing, and managing the coastal zone of the state. The program defines the coastal zone and delineates the types of uses approved for the coastal zone. Further provides for the development of state and local coastal management plans.

Coastal use permits issued by the DNR are used to control the development and activities in the coastal zone. Present law provides for enforcement of the coastal use permits (CUP) and the activities permitted under the CUPs.

Present law specifies that the secretary, the attorney general, an appropriate district attorney, or a local government may bring injunctive, declaratory, or other actions to ensure that only permitted activities may be conducted in the coastal zone. Proposed law specifies that the secretary through the attorney general and a local governmental subdivision may bring such actions.

Proposed law changes "an appropriate district attorney" to "a district attorney for a local government without an approved program".

Proposed law provides that except as provided in present law, no state or local governmental entity may have, nor may pursue, any right or cause of action arising from any activity subject to permitting under present law or certain federal statutes in the coastal area, or arising from or related to any use as defined by present law, regardless of the date such use or activity occurred.

Proposed law requires any monies received by any state or local governmental entity arising from or related to a certain state or federal permit, 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 provides that nothing in the present law and proposed law will constitute a waiver of sovereign immunity under the 11th Amendment of the United States Constitution.

Proposed law provides that nothing in the present law and proposed law will prevent or preclude any person or any state or local governmental entity from enforcing contractual rights or from pursuing any administrative remedy otherwise authorized by law arising from or related to certain state or federal permit issued in the coastal area.

Proposed law provides that nothing in proposed law will alter the rights of any governmental entity for claims related to 16th school lands.

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**ENGROSSED**  
SB NO. 469

Effective upon signature by governor or lapse of time for gubernatorial action.

(Amends R.S. 49:214.36(D); adds R.S. 49:214.36(O))

Summary of Amendments Adopted by Senate

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

1. Changes "an appropriate district attorney" to "a district attorney for a local government without an approved program".
2. Removes certain provisions of proposed law.
3. Prohibits certain state or local governmental entities from initiating certain causes of action arising from certain activities subject to permitting.
4. Provides for the uses of certain monies.
5. Provides that sovereign immunity is not waived.
6. Retains certain rights or remedies of persons or state or local governmental entities.
7. Retains rights related to 16<sup>th</sup> section school lands.

SFASB469 THOMASC 3865

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SENATE FLOOR AMENDMENTS

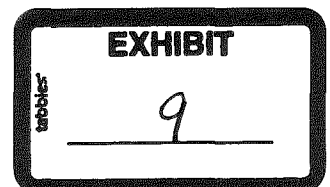
Amendments proposed by Senator Allain to Engrossed Senate Bill No. 469 by Senator Allain

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1 AMENDMENT NO. 1

2 On page 2, delete lines 27 and 28 and insert the following:

3 **"(5) Nothing in this Section shall alter the rights of any governmental entity,**  
4 **except a local or regional flood protection authority, for claims related to sixteenth**  
5 **section school lands or claims for damage to property owned or leased by such**  
6 **governmental entity."**



HCASB469 375 5638

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**HOUSE COMMITTEE AMENDMENTS**

Amendments proposed by House Committee on Natural Resources and Environment to  
Reengrossed Senate Bill No. 469 by Senator Allain

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1 AMENDMENT NO. 1

2 On page 1, line 2, after "To" delete "amend and reenact R.S. 49:214.36(D) and to"

3 AMENDMENT NO. 2

4 On page 1, line 11, after "Section 1. R.S." delete the remainder of the line

5 AMENDMENT NO. 3

6 On page 1, delete line 14 through 17 in their entirety and on page 2, delete lines 1 through  
7 4 in their entirety

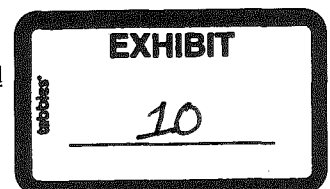
8 AMENDMENT NO. 4

9 On page 3, between line 1 and 2, insert the following:

10 "Section 2. The provisions of this Act shall be applicable to all claims  
11 existing or actions pending on the Act's effective date and all claims arising or  
12 actions filed on or after that date."

13 AMENDMENT NO. 5

14 On page 3, at the beginning of line 2, change "Section 2." to "Section 3."



Regular Session, 2014

**ACT No. 544**ENROLLED

SENATE BILL NO. 469

BY SENATORS ALLAIN AND ADLEY

1 AN ACT

2 To enact R.S. 49:214.36(O), relative to the coastal zone management program; to provide  
 3 relative to the initiation or continuation of enforcement actions under the coastal  
 4 zone management program; to prohibit certain state or local governmental entities  
 5 from initiating certain causes of action; to provide for the uses of certain monies  
 6 received by any state or local governmental entity; to allow any person or state or  
 7 local governmental entity to enforce certain rights or administrative remedies; to  
 8 provide terms, conditions, and requirements; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

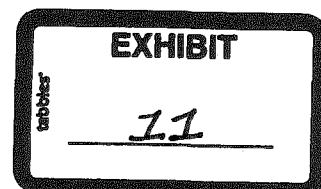
10 Section 1. R.S. 49:214.36(O) is hereby enacted to read as follows:

11 §214.36. Enforcement; injunction; penalties and fines

12 \* \* \*

13 O.(1) Except as provided in this Subpart, no state or local governmental  
 14 entity shall have, nor may pursue, any right or cause of action arising from any  
 15 activity subject to permitting under R.S. 49:214.21 et seq., 33 U.S.C. 1344 or 33  
 16 U.S.C. 408 in the coastal area as defined by R.S. 49:214.2, or arising from or  
 17 related to any use as defined by R.S. 49:214.23(13), regardless of the date such  
 18 use or activity occurred.

19 (2) Any monies received by any state or local governmental entity arising  
 20 from or related to a state or federal permit issued pursuant to R.S. 49:214.21 et  
 21 seq., 33 U.S.C. 1344 or 33 U.S.C. 408, a violation thereof, or enforcement  
 22 thereof, or for damages or other relief arising from or related to any of the  
 23 foregoing, or for damages or other relief arising from or related to any use as  
 24 defined by R.S. 49:214.23(13) shall be used for integrated coastal protection,  
 25 including coastal restoration, hurricane protection, and improving the resiliency  
 26 of the coastal area.

27 (3) Nothing in this Section shall constitute a waiver of sovereign



SB NO. 469

ENROLLED

1 immunity under the Eleventh Amendment of the United States Constitution.

2 (4) Nothing in this Section shall prevent or preclude any person or any  
3 state or local governmental entity from enforcing contractual rights or from  
4 pursuing any administrative remedy otherwise authorized by law arising from  
5 or related to a state or federal permit issued in the coastal area pursuant to R.S.  
6 49:214.21 et seq., 33 U.S.C. 1344 or 33 U.S.C. 408.

7 (5) Nothing in this Section shall alter the rights of any governmental  
8 entity, except a local or regional flood protection authority, for claims related  
9 to sixteenth section school lands or claims for damage to property owned or  
10 leased by such governmental entity.

11 Section 2. The provisions of this Act shall be applicable to all claims existing or  
12 actions pending on the Act's effective date and all claims arising or actions filed on or after  
13 that date.

14 Section 3. This Act shall become effective upon signature by the governor or, if not  
15 signed by the governor, upon expiration of the time for bills to become law without signature  
16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
17 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
18 effective on the day following such approval.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

DUPLICATE

SUPREME COURT OF LOUISIANA

03 C 3521

DOCKET NO. 2003-C-3521

ALBERT J. AVENAL, JR., ET AL.,

Plaintiffs-Respondents

VERSUS

THE STATE OF LOUISIANA and  
THE DEPARTMENT OF NATURAL RESOURCES

Defendants-Petitioners

CIVIL ACTION

ON WRIT OF CERTIORARI AND/OR REVIEW TO THE  
COURT OF APPEAL, FOURTH CIRCUIT, NO. 2001-CA-0843

MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF  
IN SUPPORT OF THE PETITIONERS

Respectfully submitted,

Gene Lafitte, Lead Counsel (Bar #8091)  
S. Gene Fendler (Bar #5510)  
H.S. Bartlett (Bar #26795)  
Liskow & Lewis  
One Shell Square, 50th Floor  
701 Poydras Street  
New Orleans, LA 70139-5099

Attorneys for Amici Curiae, The Business Council  
of New Orleans and the River Region, Inc.,  
Jefferson Business Council, Louisiana Association  
of Business and Industry, Chamber of Greater Baton  
Rouge, and Greater Shreveport Chamber of  
Commerce

DELIVERED BY HAND R.B.

SUPREME COURT  
OF LOUISIANA

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EXHIBIT

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MAY IT PLEASE THE COURT:

Pursuant to Supreme Court Rule VII, § 12, the Business Council of New Orleans and the River Region, Inc. (“BCNO”), the Jefferson Business Council (“JBC”), the Louisiana Association of Business and Industry (“LABI”), the Chamber of Greater Baton Rouge (“the Baton Rouge Chamber”), and the Greater Shreveport Chamber of Commerce (“the Shreveport Chamber”) (collectively, “Business Amici”) respectfully request leave of Court to file an amici curiae brief in support of the Petitioners, the State of Louisiana and the Department of Natural Resources (collectively, “the State”), in this matter.

#### **I. Introduction**

BCNO and JBC are composed of the senior executives of many of the most significant businesses operating in Orleans and Jefferson Parishes and the surrounding region. They cover a broad range of concerns from banking to healthcare and from shipping and manufacturing to restaurants and construction. The purpose of BCNO and JBC is to promote the economic welfare of the Greater New Orleans region and to help foster an environment conducive to business operation. The Baton Rouge and Shreveport Chambers consist of leaders from a similarly broad range of businesses in East-Central and Northwestern Louisiana, respectively. The Baton Rouge and Shreveport Chambers strive to represent the economic development interests common to their members. LABI is the largest business-advocacy group in Louisiana. Its membership includes more than 3,500 businesses and 117 local chambers and trade associations. More than eighty percent of LABI’s members are small businesses, with seventy-five or fewer employees. LABI’s mission is to foster a climate of economic growth by representing the general interests of the business community in legislative, regulatory, and judicial processes.

The Business Amici support the State in this proceeding because of their interest in promoting a stable legal environment in which businesses can operate in fairness and with the degree of economic predictability necessary for rational business decisionmaking. Specifically, the Business Amici have four primary “substantial, legitimate interests that will likely be affected by the outcome” of this case<sup>1</sup>: (1) an interest in managing leases and property ownership within a

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<sup>1</sup> La. S. Ct. R. VII, § 12(3).

regime where property damage awards are allocated properly between the parties to a lease; (2) an interest in operating within a stable litigation environment where calculation of property damages is subject to a rational and predictable interplay between use of fair market valuation and restoration cost valuation; (3) an interest in managing assets in a state with a uniform distinction between property “taking” and property “damage”; and (4) an interest in operating within a litigation environment wherein property damage may not be subject to calculations based on “general” or speculative proof. Underlying all of these specific interests, the Business Amici are interested in doing business in a state that can afford to undertake its public trust duties and take actions to safeguard the property and infrastructure upon which business depends from the disastrous effects of coastal erosion.

## II. Interests of the Amici

### A. Interest in Proper Allocation of Restoration Damages

Stripped to its essence, the decision of the Court of Appeal in this case has upheld a jury verdict and judgment awarding to a lessee the costs to restore the lessor’s property. While many cases have examined a *lessee’s responsibility* to the lessor to either restore the lessor’s property or pay fair market value when the lessee’s activities have damaged the lessor’s property,<sup>2</sup> what the Court of Appeal has sanctioned is the inverse – putting the responsibility on the *lessor* to pay the lessee the cost of restoring the lessor’s property. Indeed, here, the lessee would be awarded the costs of restoring the lessor’s property, but without any responsibility for doing so. This type of damage allocation has already been prohibited by this Court in *Inabnett v. Exxon Corp.*, wherein the Court held that the damage to an oyster lessee’s leasehold interest by a third party could not be remedied by awarding the lessee the cost to restore the lessor’s (*i.e.*, the State’s) property. 93-0681 (La. 09/06/94), 642 So. 2d 1243, 1256; *see also* La. Civ. Code art. 2697.

If the Court of Appeal’s decision is allowed to stand, then businesses in the state will be subject to an irrational and inconsistent regime of damages allocation, where lessees are the beneficiaries of fortuitous windfalls.

<sup>2</sup> Cf. *Corbello v. Iowa Prod.*, 2002-0826 (La. 02/25/03), 850 So. 2d 686, 694-95 (assessing restoration costs against the lessee for damage to lessor’s property, based on contractual obligation); *Magnolia Coal Term. v. Phillips Oil Co.*, 576 So. 2d 475, 477 (La. 1991); *Ashby v. IMC Expl. Co.*, 506 So. 2d 1193, 1196-97 (La. 1987).

**B. Interest in Rational Interplay Between Fair Market Valuation and Reliance on Restoration Costs**

Not only does the Court of Appeal's decision allocate damages to a lessee in an unprecedented fashion, but its resort to restoration costs as the basis for damages contravenes the direction of this Court that the preferred valuation method should rely on the fair market value of the property interest at stake. *See Roman Catholic Church v. La. Gas Serv. Co.*, 618 So. 2d 874 (La. 1993); *see also Inabnett*, 642 So. 2d at 1256. The Fourth Circuit's decision ignores this Court's holding in *Roman Catholic Church* that the fair market value of the property interest at stake – which here should only involve an examination of the fair market value of the *leasehold interest* – should be used unless a particular showing of personal interest in restoration has been made and it can be shown that restoration costs are not disproportionate to fair market value.

The Fourth Circuit decision fails to account for fair market value of the leasehold interest or to compare that interest to the value of restoration. In doing so, the decision creates a new category of cases where restoration damages far in excess of market value of the leasehold interests may be awarded. The Business Amici have an intense interest in ensuring that businesses' operations are not subject to such an irrational and shifting liability structure.

**C. Interest in Uniform Takings Analysis**

Moreover, the Court of Appeal's decision throws the state's takings law into disarray by finding that this case involves more than mere property damage in the first place. The decision contradicts an extensive body of Louisiana law distinguishing damage to property from a taking of property,<sup>3</sup> and applies the longer prescriptive period for "takings" to the plaintiffs' claims, which otherwise would have prescribed under the two-year period applicable to property damage. In doing so, the decision has created an environment in which businesses no longer have certainty over their property rights in numerous contexts.

**D. Interest in Requiring More Than Speculative Proof in Property Damage or Takings Cases**

Many members of the Business Amici are authorized to engage in expropriation actions under state law,<sup>4</sup> and all of the members of the Business Amici may themselves be subject to

<sup>3</sup> *See Sanchez v. Bd. of Zoning Adjustments*, 488 So. 2d 1277 (La. App. 4<sup>th</sup> Cir. 1986); *Lakeshore Harbor Condo. Dev. v. New Orleans*, 603 So. 2d 192 (La. App. 4<sup>th</sup> Cir. 1993); and *Tubbs v. Shreveport*, 584 So. 2d 380 (La. App. 2<sup>nd</sup> Cir. 1991).

<sup>4</sup> *See, e.g.*, La. R.S. § 30:554.

takings or expropriations by the state or to suits brought for property damages. In such cases generally, this Court has held that speculative proof is not acceptable. *See Exxon Corp. v. Hill*, 00-2535 (La. 05/15/01), 788 So. 2d 1154, 1160; *State v. Ross Continental Motor Lodge, Inc.*, 328 So. 2d 883, 886 (La. 1976). In this case, each plaintiff's property was impacted, if at all, by the Caernarvon Freshwater Diversion Structure ("CFDS") in differing manner and degree, depending on its proximity to the CFDS and the development, if any, of oyster beds on the leased water-bottoms. The Court of Appeal upheld a uniform per-acre damages award for all class members, however, based only on general and speculative proof of damage. By doing so, the decision undermines a predictable and rational scheme, relied on by Business Amici, for awarding property damages strictly on the basis of non-speculative proof.

### III. Conclusion

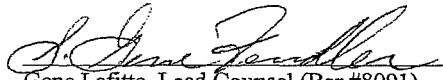
Underlying each of these interests in stability and predictability of legal environment, the Business Amici have an interest in assisting this Court to ensure that the State is able to fulfill its public trust obligation to protect the coastal resources of this state.<sup>5</sup> The CFDS is one aspect of a coastal protection and restoration strategy that safeguards the property and infrastructure relied on by members of the business community in numerous ways,<sup>6</sup> and which relies heavily on careful use of existing funds and continued funding by the federal government. If the Court of Appeal's decision is allowed to stand, its convulsion of existing legal standards will result in depletion of coastal restoration funds to satisfy a class award with no legal basis. In addition, this legally unjustified award will deter the federal government from providing future coastal restoration funding for fear of merely lining the pockets of opportunistic plaintiffs who operate

<sup>5</sup> *See* La. Const. Art. IX, § 1; *Save Ourselves, Inc. v. La. Envtl. Control Comm'n*, 452 So. 2d 1152, 1157 (La. 1984).

<sup>6</sup> *See* Louisiana Coastal Wetlands Conservation and Restoration Task Force and the Wetlands Conservation and Restoration Authority, *Coast 2050: Toward a Sustainable Coastal Louisiana* 51-78 (1998).

within an unpredictable legal environment.<sup>7</sup> Business Amici believe that this Court, by applying the proper legal standards that are missing from the Court of Appeal's decision, may help the State avoid such a result.

Respectfully submitted,



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<sup>7</sup> See Robert L. Rogers, *Turning River Water Into Gold: Why Oyster Harvesters Should Not be Permitted to Cash in on Changes in Salinity Caused by the Caernarvon Water Diversion Project*, 22 Va. Env'tl. L.J. 53, 64-65 (2003).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing pleading has been served upon all counsel of record by placing same in the United States mail, properly addressed and postage prepaid, this 12th day of March, 2004.

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SUPREME COURT OF LOUISIANA

DUPLICATE

03 C 3521

DOCKET NO. 2003-C-3521

ALBERT J. AVENAL, JR., ET AL.,

Plaintiffs-Respondents

VERSUS

THE STATE OF LOUISIANA and  
THE DEPARTMENT OF NATURAL RESOURCES

Defendants-Petitioners

CIVIL ACTION

ON WRIT OF CERTIORARI AND/OR REVIEW TO THE COURT OF  
APPEAL, FOURTH CIRCUIT, NO. 2001-CA-0843

BRIEF OF AMICI CURIAE, THE BUSINESS COUNCIL OF NEW  
ORLEANS AND THE RIVER REGION, INC., JEFFERSON BUSINESS  
COUNCIL, LOUISIANA ASSOCIATION OF BUSINESS AND  
INDUSTRY, CHAMBER OF GREATER BATON ROUGE, AND  
GREATER SHREVEPORT CHAMBER OF COMMERCE IN SUPPORT OF  
PETITIONERS

Respectfully submitted,

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MAY IT PLEASE THE COURT:

In pursuit of the significant, legitimate interests stated in the accompanying Motion for Leave to File an Amici Curiae Brief, The Business Council of New Orleans and the River Region, Inc. ("BCNO"), Jefferson Business Council ("JBC"), Louisiana Association of Business and Industry ("LABI"), Chamber of Greater Baton Rouge, and Greater Shreveport Chamber of Commerce (collectively, "the Business Amici") urge this Court to reverse the decision of the Fourth Circuit Court of Appeal. At every level of that decision, the Court of Appeal has contravened this Court's teachings, turning Louisiana property law on its head and undermining the stable litigation environment upon which members of the business community rely. The decision contradicts law governing the relationship between lessors and lessees, providing for proper fair market valuation of property damages, distinguishing between takings and property damage, and providing for the requisite standard of proof of property damage and value. Moreover, this destabilization of the law will impede the State's constitutionally mandated duty to restore the state's wetlands, causing a material injustice to the Business Amici's economic development interests and significant adversity to the public interest.

**I. The Court Of Appeal's Decision Undermines Numerous Basic Louisiana Property Law Principles Upon Which The Business Amici Rely.**

**A. The Court Of Appeal's Decision Misallocates Restoration Damages To The Lessees.**

Lost in the intricate factual scenario of this case, entangled in the discussions of salinity levels, land loss, and cultch currency matrices, is the basic, bare-boned fact that this decision allows a lessee to receive as damages the cost to restore the lessor's property. Generally, this turns the law of restoration damages inside-out. Specifically, the leasehold interest of an oyster lessee has already been found by this Court to not include an interest in restoration of the state lessor's water bottoms.

In decisions of this state's courts concerning the propriety of restoration damages as awarded among lessors and lessees, the issue has overwhelmingly been whether a lessee causing damage to a lessor's property owes restoration costs to the lessor. *See, e.g., Corbello v. Iowa Prod.*, 2002-0826 (La. 02/25/03), 850 So. 2d 686, 694-95 (assessing restoration costs against the lessee for damage to lessor's property, based on contractual obligation); *Magnolia Coal Term. v. Phillips Oil Co.*, 576 So. 2d 475, 477 (La. 1991); *Ashby v. IMC Expl. Co.*, 506 So. 2d 1193,

1196-97 (La. 1987). By attempting to make decisions that relate to damages awarded to a lessor fit a claim brought by a lessee, the Court of Appeal's decision is adrift in novel legal waters, with no basis in law or the decisions that have preceded it.

Because this Court has recognized that restoration damages – as distinguished from fair market value-based damages – occasionally may be appropriate where the property owner has a particular personal interest in restoration of the property,<sup>8</sup> the oyster lessees may argue that their leasehold interest here is of such a personal nature that the long-standing applicability of restoration damages to lessors should now be extended to the lessees. This Court, however, has already expressly addressed an oyster lessee's personal interest in restoration of state water-bottoms and has rejected this argument outright:

The *Roman Catholic Church* case involved a claim by the owner (*not the lessee*) of damaged property to recover the full cost of restoration, although the cost of restoration exceeded the fair market value of the property. . . .

*Here, any real and actual interest in restoring the property was in the owner and not the lessee who had little or no "personal" reason for restoring the property to its original condition.*

This is not to say that Exxon's dredging did not cause plaintiff damages to his leasehold interest, in addition to the loss of seed oysters and loss of anticipated income from production from those oysters. The value of plaintiff's leasehold interest may have been reduced by destruction of or damage to the water bottoms, and plaintiff has a real and actual interest in that recovery. However, that item of damages is measured in this case by the value of the leasehold interest before and after the dredging, and not by the cost of totally rebuilding the water bottoms to their former condition.

*Inabnett v. Exxon Corp.*, 93-0681 (La. 09/06/94), 642 So. 2d 1243, 1256 (emphases added).<sup>9</sup>

Therefore, this Court has already barricaded the entry to the new legal path down which the Fourth Circuit seeks to tread. It is clear that an award of damages to a lessee, specifically in the oyster lease context, should be a rational and predictable product of the damage to the

<sup>8</sup> *Roman Catholic Church v. La. Gas Serv. Co.*, 618 So. 2d 874, 879-80 (La. 1993).

<sup>9</sup> See also La. Civ. Code art. 2697 ("If, during the lease, the thing [be] totally destroyed by an unforeseen [sic] event, or it be taken for a purpose of public utility, the lease is at an end. If it be only destroyed in part, the lessee may either demand a diminution of the price, or a revocation of the lease. In neither case has he any claim for damages."); *Holland v. State DOTD*, 554 So. 2d 727, 730 (La. Ct. App. 2d Cir. 1989) ("[Article 2697], governing the relationship between the lessor and the lessee, bars the lessee's damage claim *against the lessor* . . . , but does not bar the lessee's claim against the condemnor for the constitutionally mandated 'just compensation' for the taking.") (emphasis added).

lessee's leasehold interest, not to the lessor's property underlying the lease. The Court of Appeal's decision undermines this regime, and therefore should be reversed by this Court.

**B. The Court Of Appeal's Decision Improperly Elevates Restoration Cost Over Fair Market Value.**

Moreover, the Court of Appeal should not have even reached the point of calculating restoration costs to allocate to the lessee over the lessor, because Louisiana courts have generally provided a predictable calculation methodology centered on fair market valuation of the affected property. In *Roman Catholic Church*, this Court explained,

As a general rule of thumb, when a person sustains property damage due to the fault of another, he is entitled to recover damages including the cost of restoration that has been or may be reasonably incurred, or, at his election, the difference between the value of the property before and after the harm. *If, however, the cost of restoring the property in its original condition is disproportionate to the value of the property or economically wasteful, unless there is a reason personal to the owner for restoring the original condition or there is a reason to believe that the plaintiff will, in fact, make the repairs, damages are measured only by the difference between the value of the property before and after the harm.*

618 So. 2d at 879-80 (emphasis added). Accordingly, this Court has acknowledged a legal presumption in favor of fair market value that can be rebutted in favor of restoration costs only upon a finding that restoration costs either (1) are not disproportionate to market value, (2) will address a reason personal to the owner, or (3) will, in fact, result in restoration.

None of these findings were made by either the district court or the Court of Appeal in this case. The restoration cost, calculated at \$21,345 per acre, was never compared against a fair market value of the leasehold interest to determine if it was "disproportionate." Indeed, there is no indication in the record that a comparison of fair market values before and after the operation of the CFDS was established. As discussed above, this Court has already rejected the premise that oyster lessees have the requisite personal interest to receive restoration costs for the state's water-bottoms. *Inabnett*, 642 So. 2d at 1256. And there has been no reason provided to believe that the amount awarded will actually be used to cover all of the leased water-bottoms with six inches of cultch.<sup>10</sup>

<sup>10</sup> Moreover, the damages upheld by the court could not be to "restor[e] the original condition," as allowed by *Roman Catholic Church*, because it was never established that the original condition was six inches of cultch covering every square inch of every acre of every lease (the basis for calculation of the \$21,345 per acre figure).

The Court of Appeal's decision creates a new category of takings/property damage cases where the market value of the property interest and the change in market value are irrelevant, and where damages may be calculated on a restoration basis under circumstances where it is inconceivable that the damages awarded will be used for restoration. In *Inabnett*, this Court specifically rejected such a restoration-based approach in the specific context of oyster lease damage. In *Inabnett*, the actions of a third party caused actual damage to the water-bottom leased by the oyster lessee, by dredging up an oyster reef and depositing spoils onto other oysters. The underlying activities in *Inabnett* created outright physical damage to the leased property, such that restoration of the water-bottoms was necessary, unlike this case where the damage primarily complained of is alteration of salinity levels. Nevertheless, when faced with the question of whether the lessee should receive compensation sufficient to restore the oyster reefs on the water bottoms to their original condition, the *Inabnett* Court reasoned that restoration damages were inappropriate. 642 So. 2d at 1256.

*Inabnett* followed *Roman Catholic Church* by applying the presumption favoring market value of the leasehold interest rather than restoration damages. Yet the Court of Appeal, without analysis, sought to distinguish *Inabnett* merely by stating that it involved third-party tort rather than a taking by the lessor; this distinction is without a difference, however, as it does not address this Court's analysis in *Inabnett* that the oyster lessees are not entitled to receive damages for the cost to restore the state's water-bottoms. The oyster lessees in this case do not have the right to restoration damages based on their leasehold interests, and they have no greater property rights than the oyster lessees in *Inabnett*. Such disregard for this Court's teaching upsets the environment in which all property owners operate.

**C. The Court Of Appeal's Decision Obliterates The Distinction Between Takings And Property Damage.**

As explained above, the Business Amici believe that the Court of Appeal's decision would destabilize a settled legal environment by (1) allocating restoration-based damages to a lessee, and (2) using restoration costs as the basis for award, when fair market valuation has not been fully examined under the precepts of *Roman Catholic Church*. Equally destabilizing, however, is the Court of Appeal's decision that the oyster lessees' claims may be brought in the first place. While oyster lessees arguably may raise a claim that their leasehold interests were



damaged by the operation of the CFDS, here this claim – as a claim for property damage – would have prescribed because it was raised two and a half years after the CFDS was operational. La. R.S. § 9:5624 (“When private property is damaged for public purposes any and all actions for such damages are prescribed by the prescription of two years, which shall begin to run after the completion and acceptance of the public works.”). To get around this prescriptive period, the district court and the majority opinion at the Court of Appeal held that the operation of the CFDS did not merely damage the oyster lessees’ property, but actually resulted in a taking of that leasehold interest, which would have triggered a three-year prescriptive period within which the lessees’ suit would have been timely. *See* La. R.S. § 13:5111(A) (“Actions for compensation for property taken by the state, a parish, municipality, or other political subdivision or any one of their respective agencies shall prescribe three years from the date of such taking.”). To apply the longer prescriptive period applicable to takings, the Court of Appeal erred when it chose to disregard a cohesive body of Louisiana law regarding the delineation between “takings” and “damages.”

The Louisiana Constitution provides the foundation for the separate treatment of “taking” of property and “damage” to property by government action. *See* La. Const. Art. I, § 4 (“Property shall not be taken *or* damaged by the state . . . except for public purposes and with just compensation paid to the owner”) (emphasis added); *see also Columbia Gulf Trans. Co. v. Hoyt*, 215 So. 2d 114, 120 (La. 1968) (explaining difference between taking and damage); *Soma Enters. v. State*, 521 So. 2d 829, 831 (La. App. 2d Cir. 1988) (same). As Justice Tobias carefully analyzed in his dissenting opinion in this case, a large body of jurisprudence has developed around the distinction between property taking and property damage. *See Avenal v. State*, 2001-CA-0843 (La. App. 4<sup>th</sup> Cir. 10/15/03), Tobias, J., dissenting, at 47-53.

The cases examined by Judge Tobias show that several factors are important to distinguishing “takings,” as separate from mere damage. The first factor that is present in these cases is the physical invasion of the property.<sup>11</sup> For example, in *Huckabay v. Red River Waterway Commission*, the Second Circuit found that a taking of a leasehold interest had

<sup>11</sup> *Huckabay v. Red River Waterway Comm’n*, 27,113 (La. App. 2d Cir. 10/12/95), 663 So. 2d 414 (constructing dam on property leased by plaintiff for farming purposes); *Naquin v. DOTD*, 604 So. 2d 62 (La. App. 1<sup>st</sup> Cir. 1992) (construction of a road across land leased by plaintiffs for growing sugar cane).

occurred when the Waterway Commission physically invaded the property subject to the lease in the course of surveying and preparing to construct a dam on the property, destroying many of the improvements placed on the land by the lessees, and rendering futile the lessees' efforts to continue their cattle farming operation. 27,113 (La. App. 2d Cir. 10/12/95), 663 So. 2d 414, 418-20.<sup>12</sup> Similarly, factors that may indicate a taking has occurred include (1) that a public use on the property completely and permanently prevents a private lessee from using the property for the intended purposes,<sup>13</sup> and (2) that a public use adjacent to the property causes an actual physical disturbance of that property.<sup>14</sup> In such cases, the courts held that the state had actually acquired the property interest of the plaintiffs, thereby resulting in a taking.

Where the public use interfered with access to property, however, without being an actual physical invasion or effective confiscation of the property rights at issue, even where ascertainable financial loss resulted, this Court has found no taking to have occurred. *See Constance v. State*, 626 So. 2d 1151, 1158 (La. 1993). In *Constance*, a store owner sought takings damages because the construction of an interstate highway off-ramp, which caused access problems during construction and then permanently re-routed traffic such that access to his store was less convenient, "resulted in substantial loss of sales to the business as well as a permanent devaluation of his property." 626 So. 2d at 1154. The Court found no taking to have occurred because (1) the inconvenience and decreased access did not amount to a taking of the property interest, and (2) the same damage complained of by the store owner was generally visited upon all residents of the area and was therefore not compensable. *Id.* at 1158. *See also State v. Chambers Invest. Co.*, 595 So. 2d 598, 606 (La. 1992) (finding that a delay in the ability to develop land did not amount to a taking).

<sup>12</sup> Importantly, the *Huckabay* court was careful to examine the award to the lessee to ensure that only those property interests that coincided with the leasehold interest were included in the damages. 663 So. 2d at 421-22 (reversing portion of damages award attributable to business losses in part because there was no unique quality of the underlying property the taking of which prevented the lessees from continuing their cattle operation elsewhere). The lessees were not awarded restoration cost damages or any manner of damages related to the value of the property subject to the lease.

<sup>13</sup> *See Huckabay, supra; Naquin, supra.*

<sup>14</sup> *See Simmons v. Bd. of Commissioners of the Bossier Levee Dist.*, 624 So. 2d 935 (La. App. 2d Cir. 1993) (drainage improvement project in adjacent bayou caused failure of river bank and loss of land and trees from plaintiffs' lots).

The Court of Appeal's decision here muddies this coherent distinction between "taking" and "damage" by finding a "taking" to have occurred even though the State did not dispossess the lessees of their leasehold interest in the chance to harvest oysters and the public use was constructed on land remote from the leased water bottoms. As documented in Judge Tobias's dissent, the record shows that the oyster lessees were not actually permanently deprived of their leasehold interest, as would be required for a taking under *Huckabay*, because they have still been able to cultivate and harvest oysters in commercial quantities from the leases. Also, this case does not meet the *Huckabay* element of the public use being *on the property* claimed to have been taken. Indeed, this case is far more similar to *Constance* than the takings cases, because the uniform amount awarded assumes that all lessees in the class were similarly damaged by the operation of the CFDS. As the *Constance* Court held, such generally experienced impacts as a result of a public use fail to show the type of particularized damage that rises to the level of compensable taking. 626 So. 2d at 1158.

Moreover, the property interest of the oyster lessees – future opportunity to cultivate or harvest oysters – is not one that can be "taken" under the "distinct investment-backed expectations" test derived initially under federal takings analysis and subsequently incorporated into both Louisiana jurisprudence. See *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978). Under this test, a property owner cannot be compensated for loss due to a public use where a reasonable inquiry at the time the property interest was acquired would have revealed to the property owner that such public use and loss was likely. *Id.* Looking to this standard, the Federal Circuit rejected the claims brought by the plaintiffs here against the United States Army Corps of Engineers, finding that any interest that the plaintiffs had in a particular salinity-range for oyster production, in light of the decades of public discussion of diversion projects and their consequences on salinity regimes, was not an interest supported by distinct investment-backed expectations and could not be "taken." *Avenal v. United States*, 100 F.3d 933, 937 (Fed. Cir. 1996) ("Assuming, as we must, that these plaintiffs did not invest in their leases until the 1970s, these plaintiffs, in the words of *Penn Central*, cannot have had reasonable investment-backed expectations that their oyster leases would give them rights protected from the planned freshwater diversion projects of the state and federal governments."). In fact, not only should the lessees have known of the long-percolating plans for implementation of

freshwater diversion when they acquired their lease rights, but at the time of lease renewal of many of the leases, the potential impact was made clear to – and the risk assumed by – the oyster lessees when they accepted the indemnity provision added to the leases in the late 1980s.

The Court of Appeal's decision completely rejects the *Penn Central* test as inapplicable to Louisiana law, even though that very court and other Louisiana appellate courts have held the "distinct investment-backed expectations" analysis to be an appropriate test of whether a taking has occurred under Louisiana law. *See Sanchez v. Bd. of Zoning Adjustments*, 488 So. 2d 1277, 1280 & n.1 (La. App. 4<sup>th</sup> Cir. 1986); *see also Lakeshore Harbor Condominium Dev. v. New Orleans*, 603 So. 2d 192, 196 (La. App. 4<sup>th</sup> Cir. 1993); *Tubbs v. Shreveport*, 584 So. 2d 380, 1991 La. App. LEXIS 3607, \*6-7 (La. App. 2<sup>nd</sup> Cir. 1991).

Accordingly, the Court of Appeal's decision has thrown Louisiana takings law into disarray on three fronts: (1) A taking cannot occur where the public use is neither on the property at issue nor results in permanent and complete disruption of the use of the property interest in a manner particular to an affected party; (2) a public use cannot result in a compensable taking when its alleged impacts are spread generally throughout the vicinity of the public use; and (3) a property interest cannot be taken when it is not supported by reasonable investment-backed expectations. The Business Amici urge that this Court reverse the Court of Appeal's decision and reaffirm these three principles.

**D. The Court Of Appeal's Reliance On Speculative And General Proof Of Damages Contradicts This Court's Decisions Regarding Property Valuation.**

In awarding damages based on the cost to restore the lessor's property to the lessees under the premise that the lessees' property interest was taken, the decision of the Court of Appeal upholds the reliance on speculative proof to support a general and uniform damages award of \$21,345 per acre. This generalized damage calculation conflicts with precedent regarding property valuation, and further upsets the litigation backdrop against which the members of the Business Amici must operate.

None of the "proof" offered by the lessees in this case provided a particular assessment of the amount and type of damage suffered by each lessee. The plaintiffs did not prove they had oyster reefs covering all leases. They did not prove whether any such coverage extended across each whole lease or portions of each lease, or the thickness of any such formations. From these

failures follows the ultimate failure of the plaintiffs to prove the particular damage to each oyster lease that could be attributable to operation of the CFDS. Instead, the plaintiffs provided speculative and inconsistent testimony that three to six inches of cultch would be required to restore leases for full-growth oyster cultivation, derived from a general formula aimed at resolving private claims against third parties who caused actual physical damage to oyster reefs. In apparent reliance on this speculation and this general formula, the jury's award of \$21,345 per acre for the class was based on the cost to construct a six-inch-thick mat of "cultch" on the entirety of every acre of plaintiffs' leases. By upholding this uniform damages award, the Court of Appeal ignored holdings in this Court regarding property valuation.

In *Exxon Corp. v. Hill*, this Court examined the nature of proof that would be acceptable in showing a property's highest and best use for purposes of determining constitutional "just compensation" in an expropriation action, the same standard applicable in property damages actions. 00-2535 (La. 05/15/01), 788 So. 2d 1154. The Court held that such proof may not be speculative in nature. 788 So. 2d at 1162. In an earlier decision, this Court rejected proof of severance damages in an expropriation, noting that the evidence of severance damages was "highly tenuous and speculative." *State v. Ross Continental Motor Lodge, Inc.*, 328 So. 2d 883, 886 (La. 1976).

No reported decisions regarding property value uphold an award based on speculative or general proof.<sup>15</sup> Class action decisions involving property valuation emphasize the importance of relying on particularized proof of each class member's property value in calculating the eventual award. See, e.g., *Crutchfield v. Plaquemines Parish*, 94-1161 (La. App. 4th Cir. 06/29/95), 658 So. 2d 46, 47 (class certification decision acknowledging different property characteristics for which compensation would be sought in expropriation matter); *Eubanks v. Bayou D'Arbonne Lake Watershed Dist.*, 26,309 (La. App. 2d Cir. 01/25/95), 649 So. 2d 120, 122 (reversing class certification because questions of damages and causation requiring individualized proof

<sup>15</sup> Not only does this aspect of the Fourth Circuit's decision conflict with the admonition against speculative evidence in property damage calculation in *Hill* and *Ross*, as discussed above it also conflicts with this Court's holding that damages are not available against the state where the impact of a public use is spread generally amongst those within the vicinity of the public use. See *Constance*, 626 So. 2d at 1156 ("The liability of a public body in such case, however, had been limited to those instances where there is a physical taking or damage to or a special damage peculiar to the particular property *and not general damage sustained by other property similarly located.*") (emphasis added).

predominated); *Pillow v. Bd. of Commissioners*, 369 So. 2d 1172, 1178 (La. Ct. App. 2d Cir. 1979) (reversing class certification in expropriation case, finding that “[d]ifferent results might ensue as to different plaintiffs based on when the property was or will be used, the nature of the use, the location and nature of the property used, origin of title, and other varying factors.”); see also *Banks v. N.Y. Life Ins. Co.*, 98-0551 (La. 07/02/99), 737 So. 2d 1275, 1283.

*Eubanks* is particularly instructive here; in that case, the putative class sued the watershed district for negligently damaging the property owner’s land through its failure to adequately control flooding or warn property owners adjacent to the lake of the potential extent of flooding. 649 So. 2d at 122. In reversing an order certifying the class, the *Eubanks* decision listed a number of particularized considerations to be made in assessing property damages:

[F]or each class member, a factual determination must be made as to the elevation of each particular lot and the location on that lot of the improvements suffering damage. It must also be determined whether the alleged property damage resulted from flooding of areas within the expropriated level and the extent of each class member’s knowledge or reliance on third parties in the placement of the improvements alleged to have been damaged by the flooding, as well as any other factual issues relating to the damages which are specific to each plaintiff.

*Id.*

Similarly, in this case, to assess damages against the State for operation of the CFDS, for each lease issued to a class member there should be a determination of the proximity of the lease to the CFDS, the extent of improvements existing or made to the oyster reef or water bottom of the lease, the change in salinity range for the lease before and after the operation of the CFDS, the change in oyster production for the lease, the degree of sedimentation for the lease attributable to the CFDS, the date of acquisition of the lease, and the knowledge of the lessee of the implementation and potential effects of the CFDS at the time of the acquisition or renewal of the lease. All of this information was omitted, however, in favor of the application of the general award to all lessees based on speculative proof. Accordingly, under the principles in *Hill* and *Ross*, this Court should reverse the Court of Appeal’s decision.

## II. The Consequence Of Undermining Louisiana Property Law Is A Violation Of The State’s Public Trust Duty.

Under the Louisiana Constitution,

The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment

shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.

La. Const. Art. IX, § 1. This Court has held that this public trust duty properly embodies a balance between maintaining environmental values and promoting the public welfare, with consideration being given to both sides of the scale. *Save Ourselves, Inc. v. La. Envtl. Control Comm'n*, 452 So. 2d 1152, 1157 (La. 1984). Coastal restoration projects such as the CFDS exemplify a narrow category of state action that respects both sides of this public trust balance – protecting, replenishing, and conserving the environment while also promoting the health, safety, and welfare of the people. While restoring wetlands lost to saltwater intrusion and erosion satisfies the mandate to protect, replenish, and conserve the state's resources and environment, substantial economic and safety interests also are at stake in restoring Louisiana's coastal landscape. Both sides of this balance will be endangered, however, under the Court of Appeal's convolution of established legal regimes regarding lessee/lessor relations, restoration/market valuation, taking/damage distinctions, and use of speculative and general proof.

The ability of the State to uphold its public trust obligation in the coastal erosion context is of particular importance to the Business Amici. Located throughout the coastal region – onshore, in the marsh, and in the protected waters adjacent to the advancing Gulf of Mexico – is a transportation infrastructure vital to the region's industry and commerce. Activities that rely on this infrastructure include, *inter alia*, fisheries, oil and gas exploration and development, chemical manufacturing, and agriculture. *See* La. Coastal Wetlands Conservation & Restoration Task Force, et al., *Coast 2050: Toward a Sustainable Coastal Louisiana*, 53-54 (1998) (detailing the infrastructure at risk).

Coastal restoration efforts are required to maintain this infrastructure, which serves as a foundation for Louisiana's economic success, for three reasons. First, coastal deterioration will literally pull the ground out from under much of this infrastructure, making it far more vulnerable to hurricanes and leading to costly repairs, replacement, or obsolescence, and to the interruption of statewide business activities dependent on its reliability. *Id.* at 54. Second, as marsh is replaced by open water, the very nature of some of these transportation modes – such as the protected water routes of the intracoastal waterway and other commercial navigation corridors – will be destroyed, while others will be subject to increasing interruption due to unchecked storm



surges during the annual hurricane season. *Id.* at 55-56. These transportation disruptions can be devastating to existing businesses throughout the state, and may convince future businesses to locate elsewhere. Third, land areas now protected from storm surges by the coastal marshes will become increasingly exposed and vulnerable to storms, making those areas inhospitable to commercial activities that have been carried on for decades and for expanded and new ventures that otherwise would locate in those areas.

Additionally, the state's general economic health may be harmed by the destruction of a substantial portion of industry sectors such as fisheries, tourism, and agriculture. For fisheries, the estuarine and freshwater habitats unique to Louisiana's coastal region serve as important nursery areas and primary habitats for many species of fish and mollusks; those same habitats are directly and adversely affected by the saltwater intrusion that accompanies the lack of freshwater flow and the erosion of coastal marsh vegetation. *Id.* at 71-72. In short, "Loss of coastal wetlands in Louisiana has severe implications for the long-term sustainability of fisheries resources." *Id.* at 68. In 1996, commercial fisheries in Louisiana had a total economic impact of \$2.2 billion, with another \$944 million in economic impact from recreational use of the fisheries; an estimated 50,000 to 70,000 jobs statewide are tied to the health of the state's commercial fisheries. *Id.* at 56. Tourism is also directly tied to the existence of the marsh ecosystem, as approximately 800,000 visitors annually are drawn to the state's parks located in the coastal region. *Id.* at 57. Agriculture – specifically citrus farming in Plaquemines and St. Bernard Parishes and rice cultivation in the central and western coastal regions of the state – is also directly affected by saltwater intrusion caused by coastal erosion. *Id.* at 52.

More directly, the members of the Business Amici, particularly members of JBC and BCNO, have a vested interest in maintenance and restoration of wetlands because of the protection provided for property from storm surges during the annual hurricane season. Much of the coastal region lies near or below sea level, and is therefore acutely susceptible to the impacts of tropical systems. *Id.* at 63. In the New Orleans metropolitan area, the fair market value of real estate and property exceeds \$40 billion, much of it related to the businesses of the members of the Business Amici. *Id.* at 63. As wetlands disappear and are replaced by open water, the storm surges that precede tropical systems will proceed unchecked into these asset-rich metropolitan areas, causing billions of dollars in damage. *Id.* at 63-64.

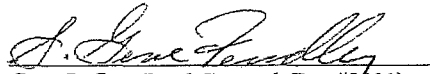


Louisiana's Constitution and laws strongly encourage, arguably to the point of mandate, coastal restoration projects, such as the CFDS, that are aimed at ameliorating these public welfare and safety impacts of coastal erosion and replenishing and protecting the state's resources. Yet the Fourth Circuit's decision clearly impedes the state's exercise of its public trust duty to continue with such projects. Because of the magnitude of this judgment, existing funding for restoration projects will be diverted, and likely exhausted. *See Robert L. Rogers, Turning River Water Into Gold: Why Oyster Harvesters Should Not Be Permitted to Cash in on Changes in Salinity Caused by the Caernarvon Water Diversion Project*, 22 Va. Envtl. L.J. 53 (2003). If the state's legal system may be twisted to divert a windfall of public money to a few private parties without proof of particular damages, the federal government will be deterred from allocating funds for future projects, leaving only the devastating effects of coastal erosion as the state is prevented from fulfilling its public trust duties. *Id.* at 64-65.

### III. CONCLUSION

For the foregoing reasons, as well as those asserted by the Petitioners in this matter, the Business Amici respectfully submit that this Court should reverse the Court of Appeal's decision.

Respectfully submitted,

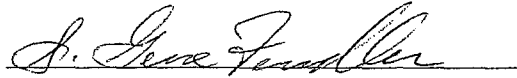


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing pleading has been served upon all counsel of record by placing same in the United States mail, properly addressed and postage prepaid, this 12th day of March, 2004.

A handwritten signature in cursive script, appearing to read "S. Gene Fowler", is written over a horizontal line.