

LOUISIANA REVISED STATUTES

TITLE 38

PUBLIC CONTRACTS, WORKS & IMPROVEMENTS

SECTION 301

CONSTRUCTION AND MAINTENANCE OF LEVEES AND DRAINAGE; CARE AND INSPECTION OF LEVEES; MEASURE OF COMPENSATION; RIGHT OF ENTRY; BICYCLE PATHS AND WALKWAYS

LA R.S. 38: 301

A.(1) The levee boards and levee and drainage boards of this state may construct and maintain levees, drainage, and levee drainage, and do all other things incidental thereto.

(2) The levee boards and levee and drainage boards may do all drainage work incidental to or made necessary by the construction of the levee system in this or adjoining states.

However, any construction project undertaken shall be in accordance with the provisions of R.S. 38:2211 et seq.

(3) Along the main line levees of the Mississippi River in Ascension, East Baton Rouge, Iberville, Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John, and West Baton Rouge parishes, levee boards and levee and drainage boards may construct bicycle paths and walkways along the top of the levees. The legal servitude granted to a levee board and a levee and drainage board pursuant to law shall include the construction of bicycle paths and walkways along the top of levees as provided in this Section.

(4) Levee boards or levee and drainage boards, or the governing authority where a levee district does not exist, may allow the public to utilize for recreational purposes as long as the structural integrity of the levee or flood control structure is not compromised, levees under the jurisdiction of the board, or by the governing authority where a levee district does not exist, and may construct or permit bicycle paths and walkways.

B. Except as provided in R.S. 38:330.2(I), the care and inspection of levees shall devolve on resident commissioners, assisted by such inspectors and watchmen as may be appointed pursuant to regulations, which the boards are hereby authorized to adopt. Each resident commissioner and any inspector or watchman who may be appointed shall attend once during his term of office an educational training program conducted by the Department of Transportation and Development.

C.(1)(a) All lands, exclusive of batture, and improvements hereafter actually taken, used, damaged, or destroyed for levee or levee drainage purposes shall be paid for at fair market value to the full extent of the loss.

(b)(i) The owner shall be given written notice of the appropriating resolution by the levee board within ten days of the date of its passage.

(ii) The Terrebonne Levee and Conservation District shall provide the notice required by this Subparagraph by certified mail sent to the last record property owner as reflected in the parish assessment rolls at the address recorded in the assessment rolls. This notice shall be complete upon mailing. Notice of adoption of the appropriation resolution shall also be published in the official journal of the Terrebonne Levee and Conservation District within ten days after its adoption.

(iii) The South Lafourche Levee District shall provide the notice required by this Subparagraph by certified mail sent to the last record property owner as reflected in the parish assessment rolls at the address recorded in the assessment rolls. This notice shall be complete upon mailing. Notice of adoption of the appropriation resolution shall also be published in the official journal of the South Lafourche Levee District within ten days after its adoption.

(c) Payment by the federal, state, or local government, under existing or prior law, for the loss of lands or improvements used, damaged, or destroyed for levee or levee drainage purposes shall constitute payment in full for the exercise of a permanent levee servitude as provided by law over the lands and improvements when taken, used, damaged, or destroyed. No additional payment shall be due the owner for future work performed on, or the future taking, use, damage, or destruction of, the same lands or improvements over which the permanent servitude is taken and for which any compensation has been paid, for levee or levee drainage purposes.

(d) The term "same lands or improvements" shall include, but not be limited to, the levee servitude right of way, borrow areas, and areas determined to have been depreciated in value from the former use, drainage, or destruction for levee or levee drainage purposes.

(e) Repealed by Acts 2010, No. 853, §1.

(f) It shall be the duty of the appropriating agency to specify and delineate at the time of the appropriating resolution, whether areas taken shall be burdened with a permanent levee servitude or a temporary servitude for levee construction purposes.

(g) "Use" shall be deemed to occur at the time the levee board formally adopts its resolution specifically describing an area to be utilized for levees and levee drainage purposes through the exercise or acquisition of a permanent levee servitude or a temporary servitude provided that actual use of the property commences within two years of the adoption of the resolution. Notice by certified mail shall be given to the owner within five days of the adoption of the resolution.

(h) The measure of compensation for lands and improvements taken or destroyed for levee and levee drainage purposes by way of a permanent levee servitude shall be the fair market value of the property taken or destroyed before the proposed use of the property or construction of the levee facilities, without allowing any change in value caused by the construction of the levee facilities. The measure of damages, if any, to the remaining property of the owner by reason of the use or destruction of a portion of the property is determined on a basis of immediately before and immediately after the use or destruction of the property for levee drainage construction, taking into consideration the effects of the completion of the project in the manner proposed or planned.

(i) The compensation for a permanent levee servitude defined herein shall apply to all lands, exclusive of batture, and improvements appropriated, taken, used, damaged, or destroyed for levee purposes after the effective date of this Act.

(j) Nothing contained in this Subsection shall apply to batture or to property the control of which is vested in the state or any political subdivision for the purpose of commerce.

(2)(a) The compensation due under the provisions of this Subsection shall be paid to the owner within one year after the actual taking, use, damage, or destruction of the property in accordance with the provisions of this Section.

(b) Immediately after the actual taking, use, damage, or destruction of the property, the levee board shall make an estimate of the compensation due under the provisions of this Section, and shall make an estimate of the revenues available to the levee board from all sources from which to make the payment of the compensation; however, the estimate of revenues shall not take into account any taxes levied after the time of the actual taking, use, damage or destruction of the property, except such taxes as may be levied pursuant to authorization and approval by the voters in the district. If revenues available to the levee board are sufficient to pay the compensation due to the owner, the levee board shall pay the owner within one year of the actual taking, use, damage, or destruction of the property.

(c) The amount of compensation due to the owner shall be paid from funds appropriated by the legislature by the office of public works of the Department of Transportation and Development. The levee board shall immediately notify the office of public works of the estimate of the amount of compensation due to the owner, the amount of revenues available to the board, and the amount of insufficient revenues. Upon such notification, the office of public works shall make its own estimate of the monies available to the levee board, and the amount of compensation to the owner. If the estimates of the levee board and the office of public works differ, the estimates of the office of public works shall be controlling.

(d) As used in this Paragraph, the term "levee board" shall not apply to the governing authority of a levee district which has been merged or consolidated into a local government pursuant to the provisions of Article VI, Section 16 of the Constitution of Louisiana.

(e) The owner shall be compensated as provided in this Section only when and if, in its discretion, the legislature, the levee board, or the federal government, appropriates the funds therefor.

(f) Reasonable attorneys' fees may be awarded by the court if the amount of the compensation found to be due by the state, the levee board, or the federal government is less than the amount of compensation awarded in any judgment seeking additional compensation. The attorneys' fees shall not exceed twenty-five percent of the difference between the award and the amount found to be due by the state, the levee board, or the federal government.

(g)(i) Payment by the Terrebonne Levee and Conservation District of its estimated compensation, if any, as required by this Section shall be made by certified mail to the last record property owner as reflected in the parish assessment rolls at the address recorded therein.

(ii) All claims regarding compensation to be paid by the Terrebonne Levee and Conservation District for property appropriated for levee or levee drainage purposes or matters incidental thereto, which shall be limited to the fair market value of the property, shall be filed in the Thirty-Second Judicial District Court of Terrebonne Parish within one hundred eighty days after the district mails payment of its estimated compensation to the property owner.

Notwithstanding the provisions of Code of Civil Procedure Article 1201(C), service of the citation shall be requested to be made immediately upon the district.

(h)(i) Payment by the South Lafourche Levee District of its estimated compensation, if any, as required by this Section shall be made by certified mail to the last record property owner as reflected in the parish assessment rolls at the address recorded therein.

(ii) All claims regarding compensation to be paid by the South Lafourche Levee District for property appropriated for levee or levee drainage purposes or matters incidental thereto,

which shall be limited to the fair market value of the property, shall be filed in the Seventeenth Judicial District Court of Lafourche Parish within one hundred eighty days after the district mails payment of its estimated compensation to the property owner. Notwithstanding the provisions of Code of Civil Procedure Article 1201(C), service of the citation shall be requested to be made immediately upon the district.

(3)(a) Any owner or co-owner of property appropriated by the Terrebonne Levee and Conservation District for levee or levee drainage purposes or for matters incidental thereto may, within sixty days after the adoption of the resolution appropriating the property, contest the validity of the appropriation as it pertains to the owner's or co-owner's respective ownership interests in the property by filing in the Thirty-Second Judicial District Court of Terrebonne Parish a verified petition contesting the appropriation. Notwithstanding the provisions of Code of Civil Procedure Article 1201(C), service of the citation shall be requested to be made immediately upon the district. Failure of any owner or co-owner to contest the appropriation within sixty days after adoption of the appropriation resolution constitutes a loss of all rights or claims of that owner or co-owner of property appropriated for levee or levee drainage purpose or for matters incidental thereto to challenge or contest the appropriation, except for claims for compensation filed in accordance with Subparagraph (2)(g) of this Subsection. The filing of a petition pursuant to this Paragraph shall not interrupt or suspend the sixty-day time period within which any other owner or co-owner of property appropriated for levee or levee drainage purpose or matters incidental thereto must file a petition challenging or contesting the appropriation.

Notwithstanding the provisions of Code of Civil Procedure Articles 591 through 597, no class action may be brought or maintained to contest the appropriation by the Terrebonne Levee and Conservation District of property for levee or levee drainage purposes or matters incidental thereto.

(b) In the event that a petition contesting the validity of the appropriation is filed within sixty days of adoption of the resolution, the Terrebonne Levee and Conservation District may proceed to expropriate petitioner's ownership interest in said property pursuant to R.S. 38:351 et seq., without incurring any obligations, damages, or liability other than the obligation to pay fair market value of the taken property.

(4)(a) Any owner or co-owner of property appropriated by the South Lafourche Levee District for levee or levee drainage purposes or for matters incidental thereto may, within sixty days after the adoption of the resolution appropriating the property, contest the validity of the appropriation as it pertains to the owner's or co-owner's respective ownership interests in the property by filing in the Seventeenth Judicial District Court of Lafourche Parish a verified petition contesting the appropriation. Notwithstanding the provisions of Code of Civil Procedure Article 1201(C), service of the citation shall be requested to be made immediately upon the district. Failure of any owner or co-owner to contest the appropriation within sixty days after adoption of the appropriation resolution constitutes a loss of all rights or claims of that owner or co-owner of property appropriated for levee or levee drainage purposes or for matters incidental thereto to challenge or contest the appropriation, except for claims for compensation filed in accordance with Subparagraph (2)(h) of this Subsection. The filing of a petition pursuant to this Paragraph shall not interrupt or suspend the sixty-day time period within which any other owner or co-owner of property appropriated for levee or levee drainage purposes or matters incidental thereto must file a petition challenging or contesting the appropriation. Notwithstanding the provisions of Code of Civil Procedure Articles 591 through 597, no class action may be brought

or maintained to contest the appropriation by the South Lafourche Levee District of property for levee or levee drainage purposes or matters incidental thereto.

(b) In the event that a petition contesting the validity of the appropriation is filed within sixty days of adoption of the resolution, the South Lafourche Levee District may proceed to expropriate petitioner's ownership interest in said property pursuant to R.S. 38:351 et seq., without incurring any obligations, damages, or liability other than the obligation to pay fair market value of the taken property.

D. Levee boards and levee and drainage boards and their authorized agents and employees shall also have the power to enter upon any lands, waters, and premises in the state for the purpose of making such surveys, soundings, drillings, and examinations as they may deem necessary or convenient for carrying out the purposes of this Chapter, which entry shall not be deemed a civil or criminal trespass nor a temporary construction servitude, nor shall it be deemed an entry under any eminent domain proceedings which may be then pending, provided that prior written notice of five days to resident owners and fifteen days to nonresident owners be given to the last record property owner as reflected in the parish assessment rolls. Written notice shall consist in mailing the notice by certified mail to the last known address of the owner as shown in the current assessment records. The levee boards and/or levee and drainage board shall indemnify the property owner for any loss or injury resultant from entry upon the property and shall make reimbursement for any actual damages resulting to lands, waters, and premises as a result of these activities.

E.(1) Neither a levee board nor a levee and drainage board nor a governing authority where a levee district does not exist, or their employees, that constructs or permits a bicycle path or walkway or allows the use for recreational purposes, levees as provided in Subsection A of this Section, nor the owner, operator, or lessee of property utilized for levee and levee drainage purposes nor the state shall be liable for any personal injury, property damage, or other loss which occurs while a person enters onto such property for recreational purposes, unless the injury, damage, or loss was caused by the deliberate and wanton act or gross negligence of the state, the levee district, or the governing authority, or the owner, operator, or lessee of property utilized for levee or levee drainage purposes, or any officer, employee, or agent thereof.

(2) Nothing contained in this Section shall prevent or restrict a landowner, operator, lessee, or adjacent landowners from the normal, reasonable, and foreseeable use of levee property upon which a bicycle path or walkway is constructed.

(3) Nothing contained in this Section shall be construed to prevent any landowner from seeking compensation under existing law for use of such landowner's property pursuant to this Section.

(4) Nothing contained in this Section shall be construed to require the removal or modification of any existing structure or pipeline lawfully placed upon or crossing a levee in order to construct a bicycle path or walkway.

F. Nothing in this Section shall be interpreted to either encourage or require a levee district or a levee and drainage district to allow the public to utilize for recreational purposes levees under the jurisdiction of the board or governing authority nor shall the provisions of this Section be interpreted to encourage or require a levee district or levee and drainage district to construct, or allow to be constructed, bicycle paths or walkways on the levees.