

2018 Regular Session

SENATE BILL NO. 190

BY SENATOR BISHOP (On Recommendation of the Louisiana State Law Institute)

PLANNING/ZONING. Provides a private right of action for zoning violations. (gov sig)

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AN ACT

To amend and reenact R.S. 33:4728 and 4780.48, relative to the enforcement of building and zoning regulations; to provide for a private right of action; to provide for notice; to provide for a prescriptive period; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 33:4728 and 4780.48 are hereby amended and reenacted to read as follows:

§4728. Enforcement of building and zoning regulations; penalty for violations

A. ~~In case~~ **If** any building or structure is erected, structurally altered, or maintained, or any building, structure or land is used in violation of R.S. 33:4721 through ~~R.S. 33:4729~~ or of any ordinance or other regulation made under authority conferred thereby, **in addition to other remedies,** the proper local authorities of the municipality, ~~in addition to other remedies~~ **or any owner or lessee of immovable property situated within twelve hundred feet of the land on which the building, structure, or use in question is located who is adversely affected by the violation,** may institute any appropriate action or proceedings to prevent such unlawful erection, structural alteration, maintenance, or use, to restrain, correct, or abate such

1 violation, to prevent the occupancy of the building, structure, or land, or to prevent
2 any illegal act, conduct, business, or use in or about such premises.

3 **B. If the action or proceeding described in Subsection A of this Section**
4 **is instituted by the municipality:**

5 (1) The regulations shall be enforced by the city architect or other officer
6 authorized to issue building permits, who is empowered to cause any building,
7 structure, place or premises to be inspected and examined, to order in writing the
8 remedying of any condition found to exist therein in violation of any provision of the
9 regulations made under authority of R.S. 33:4721 through ~~R.S. 33:4729~~.

10 (2) The owner or general agent of a building or premises where a violation
11 of any regulation has been committed or exists, or the lessee or tenant of an entire
12 building or entire premises where the violation has been committed or exists, or the
13 owner, general agent, lessee or tenant of any part of the building or premises in
14 which the violation has been committed or exists, or the general agent, architect,
15 builder, contractor, or any other person who commits, takes part in, or who assists
16 in any violation or who maintains any building or premises in which any violation
17 exists shall be fined not less than ten dollars and not more than twenty-five dollars
18 or be imprisoned for not more than thirty days for each day that the violation
19 continues.

20 **C. If the action or proceeding described in Subsection A of this Section**
21 **is instituted by an owner or lessee:**

22 (1) **Written notice shall be given to the appropriate municipal officer,**
23 **and if brought by a lessee to the owner of the leased property, at least thirty**
24 **days prior to instituting the action or proceeding. The notice shall include a**
25 **description of the violation and a statement of the owner or lessee's intent to**
26 **institute an appropriate action or proceeding in accordance with Subsection A**
27 **of this Section.**

28 (2) **The action or proceeding shall be subject to a liberative prescription**
29 **of two years from the first act constituting the commission of the violation, or**

1 **in the case of a violation of a use regulation, within two years from a noticeable**
2 **violation.**

3 * * *

4 §4780.48. Enforcement of building and zoning regulations; penalty for violations

5 **A. In case If** any building or structure is erected, structurally altered, or
6 maintained, or any building, structure, or land is used in violation of this Subpart or
7 of any ordinance or other regulation made under authority conferred by this Subpart,
8 **in addition to other remedies,** the proper local authorities of the parish, ~~in addition~~
9 ~~to other remedies~~ **or any owner or lessee of immovable property situated within**
10 **twelve hundred feet of the land on which the building, structure, or use in**
11 **question is located who is adversely affected by the violation,** may institute any
12 appropriate action or proceedings to prevent such unlawful erection, structural
13 alteration, maintenance, or use; to restrain, correct, or abate such violation; to
14 prevent the occupancy of the building, structure, or land; or to prevent any illegal act,
15 conduct, business, or use in or about such premises.

16 **B. If the action or proceeding described in Subsection A of this Section**
17 **is instituted by the parish:**

18 **(1)** The regulations shall be enforced by the officer authorized to issue
19 building permits, who is empowered to cause any building, structure, place, or
20 premises to be inspected and examined and to order in writing the remedying of any
21 condition found to exist therein in violation of any provision of the regulations made
22 under authority of this Subpart.

23 **(2)** The owner or general agent of a building or premises where a violation
24 of any regulation has been committed or exists, the lessee ~~or tenant~~ of an entire
25 building or entire premises where the violation has been committed or exists, the
26 owner, general agent, **or** lessee, ~~or tenant~~ of any part of the building or premises in
27 which the violation has been committed or exists, the general agent, architect,
28 builder, contractor, or any other person who commits, takes part in, or who assists
29 in any violation or who maintains any building or premises in which any violation

1 exists shall be fined not less than ten dollars and not more than twenty-five dollars
2 or be imprisoned for not more than thirty days for each day that the violation
3 continues.

4 **C. If the action or proceeding described in Subsection A of this Section**
5 **is instituted by an owner or lessee:**

6 **(1) Written notice shall be given to the appropriate parish officer, and**
7 **if brought by a lessee to the owner of the leased property, at least thirty days**
8 **prior to instituting the action or proceeding. The notice shall include a**
9 **description of the violation and a statement of the owner or lessee's intent to**
10 **institute an appropriate action or proceeding in accordance with Subsection A**
11 **of this Section.**

12 **(2) The action or proceeding shall be subject to a liberative prescription**
13 **of two years from the first act constituting the commission of the violation, or**
14 **in the case of a violation of a use regulation, within two years from a noticeable**
15 **violation.**

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

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Michael Bell.

SB 190 Original DIGEST 2018 Regular Session Bishop

Present law authorizes local municipalities and parishes to institute an action to prevent unlawful building, structure, or land use.

Present law provides for the enforcement by the municipality or the parish and for a fine of not less than \$10 and not more than \$25 dollars or imprisonment for not more than 30 days for each day a violation continues.

Proposed law retains present law and authorizes any adversely affected owner or lessee of nearby immovable property to institute an action to prevent unlawful building, structure, or land use.

Proposed law requires the owner or lessee to give written notice to the municipality or parish describing the violation and stating the intention to bring an action.

Proposed law provides for a two-year liberative prescriptive period for the private right of action.

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

(Amends R.S. 33:4728 and 4780.48)