



**LOUISIANA STATE LAW INSTITUTE**  
PAUL M. HEBERT LAW CENTER, ROOM W 127  
UNIVERSITY STATION  
BATON ROUGE, LA 70803-1016

OFFICE OF  
THE DIRECTOR  
(225) 578-0200  
FAX: (225) 578-0211  
EMAIL: LAWINSTITUTE@LSLI.ORG

March 8, 2018

Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

Representative Taylor Barras  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

**RE: SENATE CONCURRENT RESOLUTION NO. 13 OF THE 2016 REGULAR  
SESSION**

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature relative to private enforcement of zoning regulations.

Sincerely,

A handwritten signature in blue ink that reads "William E. Crawford".

William E. Crawford  
Director

WEC/puc

Enclosure

cc: Senator Wesley Bishop

email cc: David R. Poynter Legislative Research Library  
[drplibrary@legis.la.us](mailto:drplibrary@legis.la.us)  
Secretary of State, Mr. Tom Schedler  
[admin@sos.louisiana.gov](mailto:admin@sos.louisiana.gov)

**LOUISIANA STATE LAW INSTITUTE  
COMMON INTEREST OWNERSHIP REGIMES COMMITTEE**

**REPORT TO THE LEGISLATURE  
IN RESPONSE TO SCR NO. 13 OF THE 2016 REGULAR SESSION**

**Relative to the private enforcement of zoning regulations**

Prepared for the  
Louisiana Legislature on

**March 8, 2018**

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE  
COMMON INTEREST OWNERSHIP REGIMES COMMITTEE**

Richard Becker, Lafayette

Calvin Brasseaux, Covington

Diane Crochet, Baton Rouge

Dian Tooley-Knoblett, New Orleans

Melissa T. Lonegrass, Baton Rouge

John Lovett, New Orleans

Glenn Morris, Baton Rouge

Randy Opotowsky, New Orleans

Peter S. Title, New Orleans

Randy Roussel, Baton Rouge

J. Randall Trahan, Baton Rouge

Jeffrey Weiss, Shreveport

Special Advisor: Jerry N. Jones, Baton Rouge

\* \* \* \* \*

Christopher K. Odinet, Reporter

Jessica G. Braun, Staff Attorney

SENATE CONCURRENT RESOLUTION NO. 13

BY SENATOR BISHOP

A CONCURRENT RESOLUTION

To request the Louisiana State Law Institute to study the feasibility of revising state law to specifically authorize a right of action and legal standing for private associations to seek injunctive relief for a zoning violation when a municipality fails or refuses to do so and a person is harmed thereby, and also to study whether present penalties for zoning violations should be revised to be comparable with those in other states.

WHEREAS, due to recent court decisions there appears uncertainty in Louisiana law regarding the right of action and standing of a private association to seek injunctive relief for a zoning violation when a municipality fails or refuses to do so and a person is harmed thereby; and

WHEREAS, there appears further uncertainty as to whether present penalties for zoning violations in Louisiana are comparable with penalties for similar violations in other states; and

WHEREAS, such uncertainty should be resolved in order that persons and entities in our state will have a clear understanding of their rights and duties under state law.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study the feasibility of revising state law to specifically authorize a right of action and legal standing for private associations to seek injunctive relief for a zoning violation when a municipality fails or refuses to do so and a person is harmed thereby, and also to study whether present penalties for zoning violations should be revised to be comparable with those in other states.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit a written report of its findings, together with any recommendations in the form of proposed legislation, to the Legislature of Louisiana no later than February 1, 2017.

**SCR NO. 13**

**ENROLLED**

**BE IT FURTHER RESOLVED** that a copy of this Resolution be transmitted to the  
**Director of the Louisiana State Law Institute.**

---

**PRESIDENT OF THE SENATE**

---

**SPEAKER OF THE HOUSE OF REPRESENTATIVES**

March 8, 2018

To: Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

Representative Taylor Barras  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE  
IN RESPONSE TO SCR NO. 13 OF THE 2016 REGULAR SESSION**

Senate Concurrent Resolution No. 13 of the 2016 Regular Session requested the Louisiana State Law Institute to study and make recommendations regarding the authorization of a private right of action and legal standing for private associations to seek injunctive relief for a zoning violation when a municipality fails or refuses to do so and a person is harmed thereby, as well as to study whether present penalties for zoning violations should be revised to be comparable with those in other states. To that end, the Law Institute assigned this project to the Common Interest Ownership Regimes Committee, which is comprised of lawyers and law professors with expertise in these areas.

The Committee spent considerable time conducting research, discussing the approaches of other states, and considering whether it would be in the best interest of the public for private individuals, including private associations, to have the ability to enforce zoning restrictions against other private persons. In March of 2018, the Committee proposed, and the Council ultimately approved, the creation of such a private right of action, and the Law Institute submitted these recommendations to the legislature as Senate Bill No. 190 of the 2018 Regular Session. The proposed revisions as approved by the Council are appended to this report.

2018 Regular Session

SENATE BILL NO.

BY SENATOR

(On Recommendation of the Louisiana State Law Institute)

PLANNING/ZONING: Provides a private right of action for zoning violations

1 AN ACT

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

5 Be it enacted by the Legislature of Louisiana:

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

7 §4728. Enforcement of building and zoning regulations; penalty for violations

8 A. If ~~In case~~ any building or structure is erected, structurally altered, or maintained,  
9 ~~or any building, structure or land is used in violation of R.S. 33:4721 through R.S. 33:4729~~  
10 ~~or of any ordinance or other regulation made under authority conferred thereby, in addition~~  
11 ~~to other remedies, the proper local authorities of the municipality, ~~in addition to other~~~~  
12 ~~remedies; or any owner, usufructuary, holder of a right of habitation, or lessee of~~  
13 ~~immovable property situated within twelve hundred feet of the land on which the building,~~  
14 ~~structure, or use in question is located who is adversely affected by the violation, may~~  
15 institute any appropriate action or proceedings to prevent such unlawful erection, structural

1 alteration, maintenance, or use; to restrain, correct, or abate such violation; to prevent the  
2 occupancy of the building, structure, or land; or to prevent any illegal act, conduct,  
3 business, or use in or about such premises.

4 B. If the action or proceeding described in Subsection A of this Section is instituted  
5 by an owner, usufructuary, holder of a right of habitation, or lessee:

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

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

14 C. If enforcement of R.S. 33:4721 through 4729 or of any ordinance or other  
15 regulation made under authority conferred thereby is sought by the municipality:

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

21 (2) The owner or general agent of a building or premises where a violation of any  
22 regulation has been committed or exists, or the lessee ~~or tenant~~ of an entire building or



1 entire premises where the violation has been committed or exists, or the owner, general  
2 agent, ~~or lessee or tenant~~ of any part of the building or premises in which the violation has  
3 been committed or exists, or the general agent, architect, builder, contractor, or any other  
4 person who commits, takes part in, or who assists in any violation or who maintains any  
5 building or premises in which any violation exists shall be fined not less than ten dollars  
6 and not more than twenty-five dollars or be imprisoned for not more than thirty days for  
7 each day that the violation continues.

8 \* \* \*

9 §4780.48. Enforcement of building and zoning regulations; penalty for violations

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

21 B. If the action or proceeding described in Subsection A of this Section is instituted  
22 by an owner, usufructuary, holder of a right of habitation, or lessee:

1           (1) Written notice shall be given to the appropriate parish officer, and if brought  
2           by a lessee to the owner of the leased property, at least thirty days prior to instituting the  
3           action or proceeding. The notice shall include a description of the violation and a statement  
4           of the intent to institute an action or proceeding in accordance with Subsection A of this  
5           Section.

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

9           C. If enforcement of this Subpart or of any ordinance or other regulation made  
10          under authority conferred by this Subpart is sought by the parish:

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

16          (2) The owner or general agent of a building or premises where a violation of any  
17          regulation has been committed or exists, the lessee ~~or tenant~~ of an entire building or entire  
18          premises where the violation has been committed or exists, the owner, general agent, or  
19          lessee, ~~or tenant~~ of any part of the building or premises in which the violation has been  
20          committed or exists, the general agent, architect, builder, contractor, or any other person  
21          who commits, takes part in, or who assists in any violation or who maintains any building  
22          or premises in which any violation exists shall be fined not less than ten dollars and not

1 more than twenty-five dollars or be imprisoned for not more than thirty days for each day  
2 that the violation continues.

---

## DIGEST

The digest printed below was prepared by the Louisiana State Law Institute. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

---

SB \_\_\_\_\_

2018 Regular Session

Author

**Abstract:** Provides for a private right of action to seek the enforcement of building and zoning regulations.

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 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, usufructuary, holder of a right of habitation, or lessee of nearby immovable property to institute an action to prevent unlawful building, structure, or land use.

Proposed law requires the owner, usufructuary, holder of a right of habitation, 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.

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