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**Regional Governments and Coastal Zone Management in
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REGIONAL GOVERNMENTS AND COASTAL ZONE MANAGEMENT IN LOUISIANA*

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INTRODUCTION

Coastal zone management and land use planning have been at the forefront of Louisiana's political activities for the past several years. Developed under the auspices of the grant provisions of the 1972 federal Coastal Zone Management Act (CZMA)¹ which encouraged the creation of a comprehensive land and water use program suitable to Louisiana's unique environmental and political needs, the State and Local Coastal Resources Management Act² (Act 361) was signed into law in 1978. Recent legislative attempts to enact such a program³ have proven, however, to be a battleground for conflicting philosophies over the distribution of powers between

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1. Coastal Zone Management Act of 1972, § 302(h), 16 U.S.C. § 1451(h) (1976). For a discussion of the background of the federal coastal zone management program, see text at notes 9-27, *infra*.

2. 1978 La. Acts, No. 361, § 1, *adding* La. R.S. 49:213.1 to .21.

3. Louisiana's first legislation dealing with coastal zone management was Act. 35 of 1971 which created the Louisiana Advisory Commission on Coastal and Marine Resources and charged it with the responsibility of (1) identifying important environmental, social, and natural resource issues affecting the state's coastal areas, and (2) preparing a coastal zone management plan. Legislation was introduced in 1974 to implement the recommendations of the Advisory Commission and establish the Louisiana Coastal Commission as the leading coastal zone management agency in Louisiana. These bills failed to get out of committee. See La. H.B. 442 & 496, La. S.B. 210 & 746, 37th Reg. Sess. (1974). Coastal zone management bills were again introduced in 1976, and all were unsuccessful except for a bill creating the Louisiana Coastal Commission and directing it to develop a coastal zone management program. See La. H.B. 1315 & 1512, 2d Reg. Sess. (1976). In 1977, Act 705 failed to get approval from the federal Office of Coastal Zone Management.

the state and its local governmental subdivisions in the context of land use and environmental protection. Several factors have become identifiable as sources of this conflict: (1) the underlying policies of the 1972 federal CZMA, with its emphasis on having states "exercise their full authority over the lands and waters in the coastal zone"⁴ and its recognition of the inability of local governments to achieve the Act's goals⁵ on a far-reaching basis; (2) the tradition in Louisiana for the exercise of zoning and land use regulatory authority to be confined, for the most part, to municipal levels of government;⁶ and (3) the move away from state legislative interference in the structure, organization, and distribution of powers of local home rule governments which found its expression in article VI of the 1974 Louisiana constitution.⁷ These factors, along with Louisiana's peculiar coastal geography⁸ which lends itself admirably to categories based upon natural ecosystems and areas of common environmental concern that often overlap established political boundaries, raise the possibility of regional governmental units as vehicles for implementation of Louisiana's coastal zone management program.

This article will examine the legal and political problems inherent in the formation and execution of regional or multi-parish coastal zone management organizations in Louisiana.

FEDERAL CZMA OF 1972

Coastal zone management is the federal government's response to the fact that competing legitimate interests with a need for water or access to it, such as recreation, fishing, port development, industry, and oil and gas development, have made rapid, substantial, irreversible alterations in the ecology of the nation's estuarine and coastal environments. Over fifty percent of the population of the United States lives within fifty miles of the coastline, and it has

4. Coastal Zone Management Act of 1972, § 302(h), 16 U.S.C. § 1451(h) (1976).

5. *Id.*, § 303, 16 U.S.C. § 1452 (1976).

6. The statutory authority under which municipalities may adopt land use regulations is Revised Statutes 33:4721-890. These laws are still in effect under the 1974 Louisiana constitution in accordance with article XIV, section 18.

7. See Kean, *Local Government and Home Rule*, 21 LOY. L. REV. 63, 64 (1975). Mr. Kean was a delegate to the 1973 Louisiana Constitutional Convention.

8. Although Louisiana's generalized shoreline is approximately 370 miles long, the tidal shoreline is more than 7,200 miles long. In addition, these coastal areas lie within the deltaic perimeters of the Mississippi River and other continental rivers and streams, thereby rendering the several estuarine environments subject to relatively rapid change and alteration. As a consequence of these geographic phenomena, Louisiana's coastal zone is ordered about several natural systems, many of which are comprehended by more than one local government subdivision.

been estimated that by the year 2000, eighty percent of our population may live in that same area.⁹ Such a population increase will swell the demand for recreation, such as swimming, sports fishing, and pleasure boating, while at the same time creating a demand for new industry, jobs, and housing. Similarly, the fact that seventy percent of United States commercial fishing takes place in coastal waters and that estuarine and marsh lands provide the nutrients, spawning grounds, and nursery areas for most commercial fisheries¹⁰ must be balanced against the need for expanded offshore oil and gas operations and deepwater port facilities to accommodate large oil tankers.

Against this background of diverse and sometimes mutually exclusive demands for finite geographical resources, the 89th Congress created the National Council on Marine Resources and Engineering Development in 1966.¹¹ In response to the Council's recommendation calling for federal coastal zone management legislation, bills were introduced in the 91st Congress by Congressmen Magnuson,¹² Boggs,¹³ and Tydings;¹⁴ and these and other efforts culminated in the passage of the Coastal Zone Management Act of 1972,¹⁵ signed into law by the President on October 27, 1972.

The purpose of the federal Coastal Zone Management Act is to encourage and assist the states to exercise their responsibilities in the coastal zone¹⁶ through the development and implementation of management plans which will give full consideration to the ecological, cultural, historic, and aesthetic values of the coastal zone as well as the needs for economic development.¹⁷ To facilitate this goal, the Act empowers the Secretary of Commerce to make grants to coastal states for the development of management programs.¹⁸ No state is required to participate in the federal coastal zone manage-

9. See S. REP. NO. 753, 92d Cong., 2d Sess., reprinted in [1972] U.S. CODE CONG. & AD. NEWS 4776.

10. See Keynote Address by Juanita M. Kreps, Secretary of Commerce, to the Symposium on Technical, Environmental, Socioeconomic and Regulatory Aspects of Coastal Zone Management (March 15, 1978), reprinted in 4 AMERICAN SOCIETY OF CIVIL ENGINEERS, COASTAL ZONE '78 at 2493 (1978).

11. Marine Resources and Engineering Development Act of 1966, § 3, Pub. L. No. 89-454, 80 Stat. 204. The Council was terminated on April 30, 1971. See 33 U.S.C. § 1102 codification note (1976).

12. S. 2802, 91st Cong., 1st Sess., 115 CONG. REC. 22,996 (1969).

13. S. 3183, 91st Cong., 1st Sess., 115 CONG. REC. 35,733 (1969).

14. S. 3460, 91st Cong., 2d Sess., 116 CONG. REC. 3497 (1970).

15. Pub. L. No. 92-583, 86 Stat. 1280 (codified at 16 U.S.C. §§ 1451-64 (1976), as amended by Pub. L. No. 95-372, 92 Stat. 629).

16. Coastal Zone Management Act of 1972, § 302(h), 16 U.S.C. § 1451(h) (1976).

17. *Id.*, § 303, 16 U.S.C. § 1452 (1976).

18. *Id.*, § 305, 16 U.S.C. § 1454(a) (1976).

ment program,¹⁹ but those who do must identify the boundaries of the coastal zone,²⁰ define what shall constitute permissible land and water uses within the coastal zone,²¹ and inventory and designate areas of particular concern within the coastal zone.²² Furthermore, the state must identify the means by which it proposes to exert control over land and water uses,²³ identify broad guidelines on priority of uses in particular areas,²⁴ and describe an organizational structure proposed to implement the management program.²⁵ Upon federal approval of this state program, the Office of Coastal Zone Management may make annual grants for up to eighty percent of the cost of administering the state's management program.²⁶

Recognizing the at least theoretical primacy of the coastal states, the Coastal Zone Management Act of 1972 permits the states substantial latitude in deciding how the goals of coastal zone management are to be met. It is clear that Congress recognized that estuaries, bays, and other ecological or geological units were no respecters of political boundaries, for references to regional agen-

19. Incentives to participate are provided. The Deep Water Port Act of 1974, 33 U.S.C. §§ 1501-24 (1976), for example, conditions the issuance of a deepwater port license upon the adjacent coastal states making reasonable progress towards the development of an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972. *Id.*, § 4(b)(10), 33 U.S.C. § 1503(c) (1976).

Eligibility for federal financial assistance under the Coastal Energy Impact program of the Coastal Zone Management Act of 1972 is also conditioned upon the coastal state having a management program that is approved under section 306, receiving a grant under sections 305(c) or (d), or, in the judgment of the Secretary of Commerce, making satisfactory progress towards the development of a management program consistent with the policies of the Act. Coastal Zone Management Act of 1972, § 307(a) 16 U.S.C. § 1456(a) (1976).

In the early stages of coastal zone management program development, section 307 of the Act, known as the consistency provision, was often cited as a major incentive for state participation. In brief, this section provides that after final approval of a state's management program, any federal agency which undertakes a development project in the coastal zone of the state must insure that the project is, to the maximum extent practicable, consistent with the approved state management program. Also, any applicant for a required federal license or permit to conduct an activity affecting land or water uses in the coastal zone of a state with an approved management program, must provide certification that the proposed activity complies with the state's program. Experience and frequently confusing and rewritten implementing regulations indicate that the consistency provisions will not provide any major transfer of decision-making power from the federal government to the states. *See generally* 15 C.F.R. §§ 930.1 to .145 (1978).

20. Coastal Zone Management Act of 1972, 305(b)(1), 16 U.S.C. § 1454(b)(1) (1976).

21. *Id.*, § 305(b)(2), 16 U.S.C. § 1454(b)(2) (1976).

22. *Id.*, § 305(b)(3), 16 U.S.C. § 1454(b)(3) (1976).

23. *Id.*, § 305(b)(4), 16 U.S.C. § 1454(b)(4) (1976).

24. *Id.*, § 305(b)(5), 16 U.S.C. § 1454(b)(5) (1976).

25. *Id.*, § 305(b)(6), 16 U.S.C. § 1454(b)(6) (1976).

26. *Id.*, § 306, 16 U.S.C. § 1455 (1976).

cies and interstate coordination were frequently and favorably mentioned.²⁷

THE LOUISIANA CONSTITUTIONAL AND STATUTORY STRUCTURE FOR
REGIONAL
COASTAL ZONE MANAGEMENT ORGANIZATIONS

Two major issues of Louisiana constitutional and statutory law are presented by the possibility of regional coastal zone management organizations: (1) the identification of the governmental entity or entities which have the authority to create and empower such organizations and (2) the extent to which such organizations can be endowed with the ability to enact and enforce land use regulations.

The Constitutional Source for Creation of Regional Entities in Louisiana

State constitutional theory rests on the foundation that the basic powers of government (*i.e.*, the "police" powers) are vested in the state subject only to those limitations imposed by the state's constitution or by the federal Constitution. The federal Constitution is a grant by the states of certain enumerated powers to the federal government and serves as a control on state and local government activities in those areas of federal supremacy or those areas protected by constitutional rights such as due process of law.²⁸ In contrast to federal constitutional structure, which permits federal actions only in those areas specifically or implicitly authorized by the federal Constitution, the state may exercise any power not prohibited by the state or federal constitutions.²⁹

Article III, section 1 of the Louisiana Constitution of 1974 states: "The legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives." This language, which echoes that found in the Louisiana Constitution of 1921,³⁰ has been interpreted to mean that the state legislature may enact any law it sees fit which is neither expressly nor impliedly restricted by the state or federal constitutions in any area coextensive with the state's police powers.³¹ The police powers of the state are considered

27. See, *e.g.*, *id.*, §§ 303, 305 & 309, 16 U.S.C. §§ 1452, 1454 & 1456(b) (1976).

28. Board of Elem. and Secondary Educ. v. Nix, 347 So. 2d 147 (La. 1977); Hainkel v. Henry, 313 So. 2d 577 (La. 1975); *In re Gulf Oxygen*, 297 So. 2d 663 (La. 1974).

29. Board of Elem. and Secondary Educ. v. Nix, 347 So. 2d at 153; Hainkel v. Henry, 313 So. 2d at 579; *In re Gulf Oxygen*, 297 So. 2d at 665.

30. LA. CONST. of 1921, art. III, § 1.

31. Mississippi River Fuel Corp. v. Cocreham, 382 F.2d 929 (5th Cir. 1967), *cert. denied*, 390 U.S. 1014 (1968); State *ex rel.* Guste v. Legislative Budget Comm., 347 So. 2d 160 (La. 1977); Swift v. State, 342 So. 2d 191 (La. 1977).

inherent in every sovereign and may be exercised by the legislature to secure the general comfort, health, welfare, and prosperity of the people of the state.³² Because the constitutional grant of legislative powers is plenary, Louisiana courts have repeatedly upheld the principle that, in order to expedite its governmental duties, the state legislature may assign certain of its powers and functions to other governing bodies such as municipalities, parishes, and administrative boards, whose formation and contours of power are shaped in accordance with constitutional or legislative will.³³ Consequently, the ability to create and empower subunits of government is exclusively a state legislative function unless that power has been limited by the state constitution or has been constitutionally or statutorily delegated to another entity.

In forming political subdivisions, the state legislature is prohibited from irrevocably delegating all of its power to other governmental units by article VI, section 9(B) of the constitution: "Notwithstanding any provision of this Article, the police powers of the state shall never be abridged."³⁴ The placement of this statement in the article concerning local government and the all-encompassing nature of the language imply that the state will maintain its preeminence over the exercise of any delegated powers by local governmental units.³⁵

Article VI of the constitution directly addresses the legislature's power to form governmental subdivisions. Specifically, section 19 of that article provides for state legislative creation of special governmental districts:

Subject to and not inconsistent with this constitution, the legislature by general law or by local or special law may create

32. LA. CONST. art. I, § 1, provides:

All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.

See *City of Lake Charles v. Wallace*, 247 La. 285, 170 So. 2d 654 (1964); Hershman & Mistic, *Coastal Zone Management and State-Local Relations Under the Louisiana Constitution of 1974*, 22 LOY. L. REV. 273, 277 (1976).

33. E.g., *Plebst v. Barnwell Drilling Co.*, 243 La. 874, 148 So. 2d 584 (1963).

34. The source of this provision is article XIX, section 18 of the Louisiana Constitution of 1921.

35. For the proposition that neither the legislature nor the people through an exclusive grant to another entity can irrevocably bargain away the police powers of the state by contract or otherwise, see *State ex rel. Porterie v. Walmsley*, 183 La. 139, 162 So. 826 (La.), *appeal dismissed*, 296 U.S. 540 (1935). See also Hershman & Mistic, *supra* note 32, at 279.

or authorize the creation of special districts, boards, agencies, commissions, and authorities of every type, define their powers and grant to the special districts, boards, agencies, commissions, and authorities so created rights, powers, and authorities as it deems proper, including, but not limited to, the power of taxation, the power to incur debt and issue bonds.

Because of the existence and reservation of the plenary powers in the state found in article VI, section 9(B), this section does not connote any new grant of authority to the state legislature, but rather confirms the legislature's power to assign any function it deems proper to a particular class of governmental subunits. A regional or multi-parish organization which has as its purpose implementation of Louisiana's coastal zone management program would certainly come within the purview of section 19. But the restrictive language of section 19, making the legislature's power "subject to and not inconsistent with this constitution," mandates an examination of other constitutional provisions to determine whether the legislative authority has been circumscribed in some manner.

As indicated by the transcripts of the 1973 Louisiana Constitutional Convention, article VI of the Louisiana Constitution of 1974 represents an attempt to readjust the previous relationship and allocation of powers between the state and local governments³⁶ and is a source for possible constitutional limitations on the inherent powers of the state legislature to act in certain areas. Under article XIV of the Louisiana Constitution of 1921 and its judicial interpretations, local governments were considered mere creatures of the legislature subject to legislative interference and supremacy in not only their exercise of delegated substantive powers but, in some instances, also in their internal organizational affairs; thereby often emasculating constitutional and statutory grants of home rule powers.³⁷ Article VI, section 6 of the Louisiana Constitution of 1974 fortifies the autonomy of local home rule governments by prohibiting, without qualification, legislative intrusion into the "structure and organization or the particular distribution and redistribution of the powers and functions of any local governmental subdivision which operates under a home rule charter." This language im-

36. See generally 17 STATE OF LOUISIANA CONSTITUTIONAL CONVENTION OF 1973 VERBATIM TRANSCRIPTS, Sept. 22, 1973, at 1-48 [hereinafter cited as VERBATIM TRANSCRIPTS]; see also Kean, *supra* note 7, at 64.

37. See, e.g., Pyle v. City of Shreveport, 215 La. 257, 40 So. 2d 235 (1949); New Orleans Firefighters Ass'n Local 632 v. City of New Orleans, 230 So. 2d 326 (La. App. 4th Cir.), cert. denied, 232 So. 2d 78 (La. 1970); City of Natchitoches v. State, 221 So. 2d 534 (La. App. 3d Cir. 1969); Penny v. Bowden, 199 So. 2d 345 (La. App. 3d Cir. 1967).

parts a conceptual dichotomy between (1) the substance of local government powers and functions and (2) the structure, organization, distribution or redistribution of those powers and functions. Although these concepts are often difficult to distinguish in the context of specific problems,³⁸ it is clear that the intent of this provision is to preserve legislative control over at least what powers and functions are to be exercised by local home rule governments, and perhaps even the manner in which those powers are exercised, but to divest the legislature of its supervision over internal arrangement and organization.³⁹

Although article VI, section 6 has not been tested in the courts, it is unlikely that any future delineation will be construed as a restriction of the legislature's power under article VI, section 19 to create special regional districts. Such regional organizations would be separate jurisdictional entities deriving their powers directly

38. In *City of Baton Rouge v. Mahnken*, 260 La. 1002, 257 So. 2d 690 (1972), for example, the defendant argued that a state statute authorizing city prosecutors to prosecute DWI (Driving While Intoxicated) cases was an impermissible redistribution of home rule powers prohibited by the charter provisions of the consolidated governments of the City of Baton Rouge and East Baton Rouge Parish. The power to prosecute DWI cases had been reserved by the city-parish to the district attorney. The court found that the statute conferred a new power by general law upon the city prosecutors and was, therefore, not a power redistribution.

In *Patterson v. City of Baton Rouge*, 309 So. 2d 306 (La. 1975), the supreme court, although upholding the first circuit decision on other grounds, found a state statute which prohibited an employer from forcing employees to contribute towards workmen's compensation benefits payable by the employer to be a general law; therefore, the statute was held to be applicable to the City of Baton Rouge in spite of its home rule charter which guaranteed the local government autonomy over structures and organization.

La Fleur v. City of Baton Rouge, 124 So. 2d 374 (La. App. 1st Cir. 1960), interpreted the structure and organization guarantee in Baton Rouge's charter as taking precedence over a state law setting minimum wages for firemen. The wage scale for city employees was held to be an "incidental aspect" of the governmental operation of the city and not an exercise of substantive police power which would be preempted by any conflicting exercise of the state's reserved police powers in article XIX, section 13 of the 1921 constitution. See also *Letellier v. Jefferson Parish*, 254 La. 1067, 229 So. 2d 101 (1969).

39. According to the transcripts of the Louisiana Constitutional Convention of 1973, article VI, section 6, is a codification of the *La Fleur* rule. VERBATIM TRANSCRIPTS, *supra* note 36, Sept. 26, 1973, at 62. See also *Bartels v. Roussel*, 303 So. 2d 833 (La. App. 1st Cir. 1974). The first circuit in *Bartels* stated:

[T]he authority vested in the City-Parish [Baton Rouge] does not divest the state of authority to control the powers and duties of the governmental agency. The authority primarily conferred upon the City-Parish is that of control over the structure, organization, distribution of powers and internal arrangement of the powers and functions vested in the City-Parish Government by the state constitution.

Id. at 837.

from the state legislature. The internal structure of a local home rule government consequently would not be affected by the creation or existence of a regional entity regardless of its purpose, although it is possible that both a state-created regional unit and a local government might both have the authority to exercise identical substantive powers and functions in a given subject area. In those circumstances, it would appear that any conflict would be resolved in favor of state preemption due to the effect of the state's reservation of police powers contained in article VI, section 9(B).⁴⁰

Another constitutional source for the creation of a regional type of coastal zone management organization can be found in article VI, section 20 of the 1974 constitution which states: "Except as otherwise provided by law, a political subdivision may exercise and perform any authorized power and function, including financing, jointly or in cooperation with one or more political subdivisions, either within or without the state or with the United States or its agencies."⁴¹

As will be discussed below, there are several problems with this type of organization in the specific context of land use and coastal zone management for the different classifications of local governmental subdivisions, but in particular for parish governments.⁴² In addition to these difficulties, however, the concept of intergovernmental cooperation would not appear to authorize local governments to form separate jurisdictional entities with regulatory powers over the whole unit unless sanctioned by the state.⁴³ A constitutional and

40. See notes 33-34, *supra*, and accompanying text.

41. A political subdivision is defined by article VI, section 44(2) of the 1974 Louisiana constitution as "a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions."

42. See text at notes 50-73, *infra*.

43. LA. R.S. 33:1324 (1950 & Supp. 1978) provides:

Any parish, municipality or political subdivision of the state, or any combination thereof, may make agreements between or among themselves to engage jointly in the construction, acquisition or improvement of any public project or improvement, the promotion and maintenance of any undertaking or the exercise of any power, provided that at least one of the participants to the agreement is authorized under a provision of general or special law to perform such activity or exercise such power as may be necessary for completion of the undertaking. Such arrangements may provide for the joint use of funds, facilities, personnel or property or any combination thereof necessary to accomplish the purposes of the agreement, and such agreements may include but are not limited to activities concerning:

- (1) Police, fire and health protection.
- (2) Public utility services, such as water, electricity, gas, roads, bridges, causeways, tunnels, ferries and other highway facilities, and public transportation.

statutory delegation of the police powers is a specific grant only to the affected governmental entity, and a local government does not have the ability to enforce regulations outside its boundaries nor the power to assign its intergovernmental authority to another entity.⁴⁴ Consequently, a voluntarily associated regional organization consisting of several local governmental units would be limited to an agreement whereby each unit's regulations are enforced in much the same manner as countries agree to enforce treaties.

(3) Sewers, drains and garbage and other refuse collection and disposal.

(4) The construction or acquisition or improvement, and operation, repair and maintenance of public projects or improvements, whether or not rentals or other charges are fixed and collected for the use thereof, including but not being limited to roads, bridges, tunnels, causeways, ferries and other highway facilities, water systems, electric systems, sewer systems, drainage systems, incinerators and garbage collections and disposal systems, and public transportation systems.

(5) Recreational and educational facilities, such as playgrounds, recreation centers, parks and libraries.

(6) Flood control, drainage, and reclamation projects.

(7) Purchase of materials, supplies and equipment for use in the maintenance of governmental services authorized under this part or under any other general or special law.

(8) The construction, operation and maintenance of canals, ship channels, or portions of canals or ship channels, or a branch of a canal or ship channel, to be constructed, widened, deepened or improved by or under the authority of the United States for the purpose of transportation, including the giving of assurances by the said agencies to the United States of America to hold and save the United States of America free from any and all damages or claims of whatever nature or kind due to the construction, maintenance and operation of said canals or ship channels by the United States of America.

(9) The reassessment or reappraisal of property subject to ad valorem taxation in a parish with a population in excess of four hundred thousand, in which event each party to said agreement is hereby authorized to contribute any portion of its funds as are deemed necessary to accomplish said activity, notwithstanding any previous law or parts of law in conflict herewith.

44. *Ware v. Cannon*, 248 So. 2d 19 (La. App. 1st Cir. 1971). The inability of local governments to exercise their powers outside of their respective political boundaries is supported by the reasoning in *State ex rel. Porterie v. Walmsley*, 183 La. 139, 162 So. 826 (1935). In that case, the supreme court established a test for determining what would not be considered ordinary governmental functions of a municipal government and, consequently, not within the realm of activities which could be undertaken by a home rule charter government. The court distinguished those matters of purely local concern from those with greater statewide significance, finding the grant of home rule powers under the 1921 constitution extending only to the former. *Id.* at 191-208, 162 So. at 842-46. A regional or multi-parish type of organization is, by its very nature, a matter of greater-than-local government authority unless sanctioned by the state legislature or the constitution. The sanction of article VI, section 20 is for intergovernmental cooperation only and does not appear to license the joint creation of a larger-than-local jurisdictional entity with powers extending over the whole.

*The Legal Authority for Control of Land Use in Louisiana**The State*

The authority for land use control and coastal zone management in Louisiana is derived from the 1974 constitutional provisions found in article I, section 1 and article VI, section 9(B), confirming and reserving the police powers within the state government; article III, section 1, putting the authority to enact laws in furtherance of those powers in the hands of the state legislature; and article IX, section 1, the natural resources article, which states: "The natural resources of the state, including air and water, and 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. The legislature shall enact laws to implement this policy."

In accordance with judicial interpretations of both the federal and state constitutions, the exercise of the state's general powers to enact land use legislation is constrained by the demands of due process: the state legislation must have a valid public purpose,⁴⁵ be reasonably related to that public purpose,⁴⁶ and not be so arbitrary or unreasonable as to amount to a "taking" of the property involved without just compensation.⁴⁷ Subject only to those limitations,⁴⁸ the state may enact any land use regulation it deems proper and may delegate its authority to implement and exercise its land use powers to other subunits of government such as regional organizations, special districts, administrative bodies, or local subdivisions.⁴⁹

Local Governments

Article VI, section 17 of the 1974 Louisiana constitution is a direct grant of land use authority to all local government subdivisions:

Subject to uniform procedures established by law, a local governmental subdivision may (1) adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose; (2) create commissions and districts to im-

45. *Berman v. Parker*, 348 U.S. 26 (1954); *Meyers v. Baton Rouge*, 185 So. 2d 278 (La. App. 1st Cir. 1966).

46. *Goldblatt v. Hempstead*, 369 U.S. 590 (1962); *Sears, Roebuck and Co. v. New Orleans*, 238 La. 936, 117 So. 2d 64 (1960).

47. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922); *State ex rel. Civello v. New Orleans*, 154 La. 271, 97 So. 440 (1923).

48. *Walmsley v. O'Hara*, 182 La. 213, 161 So. 587 (1935).

49. *Plebst v. Barnwell Drilling Co.*, 243 La. 874, 148 So. 2d 584 (1963).

plement those regulations; (3) review decisions of any such commission; and (4) adopt standards for use, construction, demolition, and modification of areas and structures. Existing constitutional authority for historic preservation commissions is retained.⁵⁰

Although section 17's delegation of land use powers to local governments appears to be made expressly dependent upon the legislative establishment of some type of uniform procedures, the questions of whether enabling legislation need be enacted before any or all local governments can exercise the authority granted by section 17 and of the nature and substance of the legislation which would satisfy the uniform procedures language have not as yet been litigated. As there is no consensus on the meaning of this section or its relationship to other constitutional provisions, it is important to examine the possible interpretations of section 17 and the effect which these interpretations might have on regional coastal zone management.

Since the meaning of section 17 is in dispute, it may first prove helpful to establish the general rules by which the courts interpret the Louisiana constitution. The construction, operation, and enforcement of the constitution and any of its components are governed by the general rules of statutory construction which dictate that, when a particular provision of law is unclear, it will be given effect to the greatest extent possible after consideration of its position in the document, its relationship and potential conflict with other provisions, and its source, history, and development or changes in application.⁵¹ A constitutional interpretation should give effect to the purpose indicated by a fair construction of the language employed as such language is understood in its most natural and popular context by the people who adopted it.⁵² Where, however, specific constitutional language admits of doubt or is inconsistent with other provisions, it should be read in such a way so that no provision is rendered nugatory.⁵³

According to the transcripts of the 1973 Louisiana Constitutional Convention, section 17's uniform procedure language was intended to allow, but not to require, the state legislature to establish due process protections for local land use control which, once

50. (Emphasis added.) Article VI, section 17 replaces article XIV, section 29 of the Louisiana Constitution of 1921 which empowered municipalities to zone.

51. See, e.g., *Barnett v. Develle*, 289 So. 2d 129 (La. 1974).

52. See, e.g., *id.*; *In re Bankston*, 306 So. 2d 863 (La App. 1st Cir. 1974).

53. See, e.g., *Central Louisiana Elec. Co. v. Louisiana Public Serv. Comm'n*, 251 La. 532, 205 So. 2d 389 (1967).

established, would mandate conformance by all local governments in enacting and applying land use regulations.⁵⁴ It is probable that such an interpretation was thought necessary by convention delegates in order to circumvent article VI, section 6's prohibition against legislative interference in the structural autonomy of home rule governments.⁵⁵ It is suggested, however, that a somewhat amorphous but viable distinction could be drawn between the protected authority granted to home rule governments over their "structure and organization" and the manner or process (as opposed to the internal arrangement) by which local governments can implement and exercise the substantive powers delegated to them, the latter not being outside the reach of state legislative control under article VI, section 9(B). State procedures for due process protections as a manner for local governments to implement and exercise their land use powers would, therefore, under this analysis, not be a legislative action prohibited by article VI, section 6. In addition, all exercises of land use authority by any level of government must in any event meet both the state and federal constitutional standards for due process whether or not any uniform procedures are required to be legislatively established.⁵⁶ Thus, an interpretation of section 17's uniform procedure language which would allow but not compel the state legislature to act in a manner already permitted and which would insure that which is automatically guaranteed is not likely to prevail under the rules of constitutional construction.⁵⁷

In a recent opinion,⁵⁸ the Louisiana Attorney General has construed the "subject to uniform procedures" language as *requiring* "legislation which sets forth a *process* to be utilized by the local governments in adopting [land use] regulations."⁵⁹ An examination of the Louisiana Revised Statutes reveals statutory provisions which

54. Mr. Deshotels, delegate to the convention and author of the "Subject to Uniform Procedures" language, explained at the convention floor: "But this is simply so the legislature *can* pass a statute saying that you have to have so many hearings, you have to have so many advertisements, and these things have to be public before you can zone, or before you can restrict land use." 14 VERBATIM TRANSCRIPTS, *supra* note 36, Oct. 2, 1973, at 61 (emphasis added).

55. *Id.*

56. *Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir.), *cert. denied*, 426 U.S. 905 (1975).

57. *State ex rel. Fernandez v. Feucht*, 182 La. 134, 161 So. 179 (1935); *In re Coon*, 141 So. 2d 112 (La. App. 1st Cir. 1962).

58. 1977 LA. OP. ATTY GEN. 1269 (Oct. 14, 1977).

59. *Id.* (Emphasis added.) *Accord*, *Kean*, *supra* note 7, at 75. In support of the Attorney General's conclusion, see also *Moosa v. Abdalla*, 248 La 344, 178 So. 2d 273 (1965), for the proposition that when the language of a constitutional provision is incomplete in itself and implies some supplemental action on the part of the legislature, it is not self-executing.

are sufficient to meet the Attorney General's definition of uniform procedures for all municipalities⁶⁰ and which, although adopted prior to 1974, remain in effect under article XIV, section 18⁶¹ of the new constitution. However, even though there are several pre-1974 constitutional and statutory provisions granting to certain parish governments land use or zoning *authority*⁶² which might still be effective under the new constitution, there presently exists no legislation connoting uniform land use procedures for any Louisiana parish with the possible exceptions of Louisiana Act 361 of 1978, the Louisiana coastal zone management program, and the Louisiana Parish Planning Commission statute.⁶³ Under this interpretation, then, a

60. LA. R.S. 33:4721-890 (1950).

61. LA. CONST. art XIV, § 18, provides:

(A) Laws in force on the effective date of this constitution, which were constitutional when enacted and are not in conflict with this constitution, shall remain in effect until altered or repealed or until they expire by their own limitations.

(B) Laws which are in conflict with this constitution shall cease upon its effective date.

62. Parish land use authority, prior to the 1974 constitution, was exercised under the following provisions of article XIV of the 1921 Louisiana constitution: section 29(a) (Jefferson Parish); section 29(b) (East Baton Rouge Parish); section 29(c) (Calcasieu and West Baton Rouge Parishes); section 29(d) (Rapides and Bossier Parishes); section 29(e) (St. Tammany, St. Bernard, and Caddo Parishes). Statutory provisions include: LA. R.S. 33:4877 (1950), *as amended by* 1972 La. Acts, No. 632, § 1 (parishes with a population of over 23,000 and with no municipality can zone); LA. R.S. 33:1236(38)(d) (1950), *as amended by* 1973 La. Acts, No. 141, § 1 (allows parish zoning in order to qualify for National Flood Insurance Act, 42 U.S.C. §§ 4001-28 (1976)).

63. LA. R.S. 33:101-20 (1950). The distinctions between zoning and planning, although both subparts of the concept of land use, are somewhat difficult to circumscribe. The powers of a parish planning commission are set out as follows:

A parish planning commission shall make and adopt a master plan for the physical development of the unincorporated territory of a parish.

.....

Such plan, with the accompanying maps, plats, charts, and descriptive matter shall show a commission's recommendations for the development of the parish or municipality, as the case may be, including, among other things, the general location, character, and extent of railroads, highways, streets, viaducts, subways, bus, street car and other transportation routes, bridges, waterways, lakes, water fronts, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds, and open spaces; the general location of public buildings, schools, and other public property; the general character, extent and layout of public housing and of the replanning of blighted districts and slum areas; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, communication, power, transportation and other purposes; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities, or terminals; as well as, in the case of a parish planning commission, a *zoning plan for the con-*

regional coastal zone management association voluntarily created by several parishes under article VI, section 20 of the 1974 constitution would possess no other regulatory controls in their individual jurisdictions over land use than that permitted under the provisions and limitations of these legislative enactments.⁶⁴

The State and Local Coastal Resources Management Act of 1978 (Act 361) establishes a permitting system for the control of certain activities within the coastal zone of Louisiana. The types of activities intended to be controlled by the Act are divided into uses of

trol of the height, area, bulk, location, and use of the buildings and premises in urban areas or areas suitable for urbanization outside municipal limits.

LA. R.S. 33:106 (1950) (emphasis added). Parish planning commissions are also given authority for the approval of subdivisions in the unincorporated areas of the parish in accordance with sections 111-16. According to section 112, subdivision regulations may provide for:

the proper arrangement and width of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, vehicular parking, utilities, access of fire-fighting apparatus, recreation, light and air, and for the avoidance of congestion of population, including minimum width and area of lots . . . [and] may include provisions as to the extent to which roads, streets, and other ways shall be graded and improved and to which water and sewer and other utility mains, piping, or other facilities shall be installed as a condition precedent to the approval of the plat.

The Municipal Zoning Enabling Act, LA. R.S. 33:4721-890 (1950), allows municipalities to:

regulate and restrict the height, number of stories, and size of structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of the buildings, structures, and land for trade, industry, residence, or other purposes; provided that zoning ordinances enacted by the governing authority of municipalities or the acts of the zoning commission, board of adjustment as herein provided for, or zoning administrator shall be subject to judicial review on the grounds of abuse of discretion, unreasonable exercise of the police powers, an excessive use of the power herein granted, or the denial of the right of due process, provided, further, that the right of judicial review of a zoning ordinance shall not be limited by the foregoing.

LA. R.S. 33:4721 (1950 & Supp. 1977).

Thus, the concept of zoning or land use management appears to be the natural result or execution of the planning process and connotes a more stringent type of land use control and regulatory authority by the empowered governmental unit than does planning. See, e.g., *Mills v. City of Baton Rouge*, 210 La. 830, 28 So. 2d 447 (1946). Under this definition, planning commissions established under the provisions of Revised Statutes 33:101-20 would be allowed to exercise limited zoning regulatory authority although it remains arguable whether the statute is sufficient to meet the "uniform procedures" requirement of article VI, section 17 of the 1974 constitution.

64. Revised Statutes 33:131-40 provide for the establishment of regional planning commissions, but such commissions were given no land use regulatory authority except under the provisions of section 137(B) which allows municipalities or parishes within regional planning areas to designate the regional commission as the municipal or parish commission making it subject to the requirements of Revised Statutes 33:101-20.

state concern and uses of local concern.⁶⁵ Uses of state concern are defined as "[t]hose uses which directly and significantly affect coastal waters and which are in need of coastal management and which have *impact of greater than local significance or which significantly affect interests of regional, state, or national concern.*"⁶⁶ The state agency empowered to administer the permitting program for uses of state concern is the Coastal Management Section in the Louisiana Department of Transportation and Development. Uses of local concern are defined as "[t]hose uses which directly and significantly affect coastal waters and are in need of coastal management but are not uses of state concern and which should be regulated primarily at the local level if the local government has an approved program."⁶⁷ Thus, even though Act 361 sets up uniform procedures⁶⁸ for parish governments in their exercise of coastal zone management authority which might be sufficient under article VI, section 17, such local governments would not be permitted to form a voluntary regional organization under article VI, section 20 of the 1974 Louisiana constitution for the purpose of exercising their collective land use powers over activities of local concern in the coastal zone. The very nature of regionalism or any activity with an impact in an area which crosses over local government boundaries is defined in Act 361 as a "use of state concern" and consequently is outside the realm of local government jurisdiction.

Another perspective on section 17 is revealed by trying to reconcile the necessity for state establishment of uniform procedures in order for local governments to exercise their land use authority with article VI, section 4's retention in pre-1974 home rule charter governments of those powers, functions, and duties in effect when the new constitution was adopted. Consequently, pre-1974 home rule parish governments which were also constitutionally or statutorily endowed with land use authority before the adoption of the new constitution⁶⁹ may argue that their land use powers cannot be made "subject to uniform procedures established by law" if

65. Local government is defined as the "governmental body having general jurisdiction and operating at the parish level." LA. R.S. 49:213.3(5) (Supp. 1978).

66. LA. R.S. 49:213.5(A)(1) (Supp. 1978) (emphasis added).

67. LA. R.S. 49:213.5(A)(2) (Supp. 1978).

68. LA. R.S. 49:213.9 (Supp. 1978).

69. For a thorough discussion of article VI, section 4's guarantee to existing home rule charter governments, see Hershman & Mistic, *supra* note 32, at 280-90. According to the Louisiana Secretary of State, there were four Louisiana parishes which operated under a home rule charter prior to the adoption of the 1974 constitution: East Baton Rouge, Orleans, Jefferson, and Plaquemines. Of these four parishes, only East Baton Rouge and Jefferson had been granted land use authority. See note 62, *supra*.

enabling legislation is required by section 17. However, article VI, section 4 explicitly states that the pre-existing home rule powers are retained "except as inconsistent with this constitution." The lack of uniform land use procedures for parishes may therefore make any attempt to pre-1974 home rule parishes to exercise their retained land use powers inconsistent with the 1974 constitution, in particular article VI, section 17.⁷⁰

Whatever resolution is made of the enabling legislation issue, it is certain that the constitutional land use powers granted to local governments by section 17 is not an exclusive delegation to those governments which would preempt state action in the area. This interpretation of section 17 was strongly advocated by local government supporters during the legislative debates over Louisiana's coastal zone management program. But, as was previously discussed,⁷¹ such a construction of section 17 is unlikely in view of section 9(B)'s reservation of the police powers in the state to guarantee state substantive control over any conflicting exercise of the delegated powers by local governments.

It would thus appear that the move toward a strengthening of local government powers under the new constitution, at least in the land use area, may have been thwarted by the ambiguous language of section 17 and its problematic relationship to other constitutional and statutory provisions. The complications engendered by this section make it doubtful whether parish governments have the necessary authority in the land use area to be able to voluntarily combine into regional units under article VI, section 20.⁷² In addition, such an intergovernmental regional organization also might not comply with the policies and standards set by the federal Coastal Zone Management Act which requires that the managing agency of any state or local coastal zone management program have the authority to "administer land and water use regulations, to control development in order to insure compliance with the management program, and to resolve conflicts among competing uses."⁷³ Act 361 of 1978

70. This conclusion is in conflict with Hershman and Mistic, who note: "Because of the uniform procedures requirement of Section 17, it may be necessary for the Legislature to enact an enabling statute in order for *parishes not previously authorized to zone parishwide under the 1921 Constitution* to be able to pass zoning and land use ordinances." Hershman & Mistic, *supra* note 32, at 296 (emphasis added) (footnote omitted).

71. See notes 34-35, *supra*, and accompanying text.

72. Article VI, section 20 allows political subdivisions to combine to exercise only *authorized* powers and functions. Without enabling legislation under article VI, section 17, parishes are probably without land use authority at the present time.

73. 16 U.S.C. § 1455(d)(1) (1976).

also would not allow for the possibility of an intergovernmental regional vehicle as a means of implementing local government authority under Louisiana's coastal zone management program.

CONCLUSION

Because it is questionable whether parish governments are presently capable of exercising the land use authority delegated to them in article VI, section 17 of the Louisiana Constitution of 1974 and because Louisiana Act 361 of 1978, through its definition of coastal uses of state concern, would not permit parish governments to form voluntary regional organizations under article VI, section 20 as a means of implementing the state's coastal zone management program, the possibilities for regional coastal zone management units in Louisiana will most likely be restricted to those organizations created, empowered, and sanctioned by the state legislature. The state establishment of regional coastal zone management organizations, although consistent with contemporary federal land use policy that encourages state governments to recapture some of the control over land use traditionally delegated to local governmental subdivisions,⁷⁴ will, as a political matter in Louisiana, meet with strong opposition from local government supporters. The most vocal opponents to any state activity in the area will, of course, be that local government faction of the 1973 Constitutional Convention which has, in the years since the enactment of the new constitution, found its efforts at strengthening local government powers and autonomy frustrated. The passage of Louisiana's coastal zone management program, which culminated several years of a bitterly fought struggle between state and local factions in the Louisiana legislature, may result in some hesitancy on the part of the victors to impetuously test their recent success. On the other hand, it is often difficult to discern, much less to predict or explain, the mood of the Louisiana legislature. As an example, an attempt in the 1978 session to enact land use enabling legislation for all parish governments in accordance with article VI, section 17,⁷⁵ was defeated by the state senate as a result of twenty-five parishes amending themselves out of the proposed act.

If the political problems are overcome and the legislature decides that the regional mechanism could be an efficient way of managing Louisiana's coastal areas, it might prove helpful to examine the regional land use experiences of other states.⁷⁶ It would

74. 16 U.S.C. § 1451(h) (1976).

75. La S.B. 869, 4th Reg. Sess. (1978).

76. For example, New York's Adirondack Park Agency has control over use of land in an area of 9,000 square miles of park, less than half of which is state owned.

be necessary for the Louisiana legislature to identify first the various classifications of land use problems which are appropriate for handling on a regional basis and the type of regional organization which would be suitable in each instance. According to the recent literature,⁷⁷ the criteria for determining the desirability for regional land use control in other states is the identification of either those areas of critical state concern without regard to jurisdictional spillover or those areas which are affected with a state interest because a particular resource is situated in more than one political government.⁷⁸ The first category can be further broken down into a least three subparts: (1) particular types of resources, uses, or land areas which are in need of specialized management such as all wetlands, floodplains, shorelines, historic areas, etc.; (2) those land use activities that even though localized to one jurisdiction may have a greater than local impact such as industrial or power developments, airports and marine terminals, shopping centers, etc.; and (3) specific types of environmental or land use problems with greater than local impact such as air or water pollution or urban sprawl. The category encompassing jurisdictional spillovers would include such areas in Louisiana as Lake Pontchartrain or the Atchafalaya Basin.

In regard to the question of whether a state agency or an

N.Y. PARKS & REC. LAW §§ 3.03 to .21 (McKinney 1972). The Hackensack Meadowlands Development Commission in New Jersey has control over land use in an area encompassing fourteen separate governments. N.J. STAT. ANN. §§ 13:17-5 to -6 (West 1968). The Bay Conservation and Development Commission in San Francisco controls development and land use within 100 feet of the Bay. CAL. GOV'T CODE §§ 66600-53 (Deering 1965). The Delaware Coastal Zone Act controls the establishment of new heavy industry along the entire coast of the state. DEL. CODE ANN. tit. 7, § 7004 (1977). Florida's Environmental Land and Water Management Act of 1972 authorizes the state land planning agency to designate areas of critical state concern in which local land development regulations must follow state guidelines. FLA. STAT. ANN. § 380.05 (West 1976). Vermont's District Environmental Commissions must approve site developments exceeding ten acres to meet with the standards of the state's land use plan. VT. STAT. ANN. tit. 10, §§ 6001-91 (1969). The Twin Cities Metropolitan Council can suspend plans that are inconsistent with a metropolitan development guide for the Minneapolis-St. Paul area. MINN. STAT. ANN. §§ 473.146 to .245 (1975).

77. See, e.g., F. BOSSILMAN & D. COLLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* (1971); R. HEALY, *LAND USE AND THE STATES* (1976); MODEL LAND DEVELOPMENT CODE art. 7 & comments (1975); NATURAL RESOURCES DEFENSE COUNCIL, INC., *LAND USE CONTROLS IN THE UNITED STATES: A HANDBOOK ON THE LEGAL RIGHTS OF CITIZENS* (1977).

78. Although these categories are somewhat arbitrary in the sense that they often overlap and are not easily distinguishable, the implication is that there are certain classifications of land use problems which may be common to several local governmental subdivisions that could be dealt with more effectively on a regional basis rather than by each local government individually or by a state agency without consideration of local government needs.

organization composed of representatives from the affected local governments in a particular region would be the most appropriate entity in any given instance to administer a regional program, that decision is primarily a political one which is dependent upon an assessment in each situation of the need for overriding state control or consistency. In addition, it will also be requisite to establish the legal authority or power of any affected local government to determine whether it can act in a pertinent area before a combined local government regional unit would be a possibility. In Louisiana, therefore, should the legislature choose to allow local parish governments to form regional units for implementing the coastal zone management program, it probably will be necessary for it either to enact land use enabling legislation as is most likely mandated by article VI, section 17, in order to amend Louisiana's new coastal zone management program or to sanction each local government combination on a legislatively fragmented basis. Otherwise, any regional land use unit in Louisiana will be required to be a state agency.