

LOUISIANA COASTAL LAW

Coastal zone
management
in Louisiana

Office of Sea Grant Development * LSU Law Center * Editor: Marc J. Hershman * (504) 388-5931

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LAWS OF THE 1975 LEGISLATURE

Louisiana's 144 legislators confronted a gumbo-like assortment of coastal resource problems in its pre-election year session which ended July 14th. In lighter moments the lawmakers debated the proper spelling of "crawfish" and the propriety of making that critter the official state fish. Generally legislators explored more serious coastal-related matters, many of which are highlighted in this special LCL issue. (Requests for copies of any act cited may be directed to us. We'll try our best to fill your order.)

COASTAL MANAGEMENT

As in the 1974 session (see LCL #18) coastal management bills received attention, but none of the four bills introduced (SB 148, Knowles; HB 794, Breaux; HB 585, LeBleu; and HB 1028, Scogin) left committee. Lawmakers believed the bills premature, several commenting that the legislature should await the comprehensive coastal management program being formulated by the State Planning Office, with assistance from Sea Grant, Wildlife and Fisheries, and the Coastal Commission. Paul Templet, coordinator of the Planning Office's Coastal Resources Program, tells us he hopes to have a bill ready for the committee by the beginning of 1976.

ENERGY DEVELOPMENT

The Louisiana Geothermal and Geopressure Research and Development Act, pushed by Representative Clyde F. Bel of New Orleans, was foremost among energy related legislation to emerge (Act 735). The act recognizes the probability of "uniquely large reservoirs of super heated, highly pressurized water which may also be saturated with natural gas in solution" and that these reservoirs are a potential commercial source of steam, hot water, and natural gas. A study of possible legal consequences which may result from utilizing these reservoirs is required by the act.

Tax collection is the thrust of Act 383 which provides that prescription, the period of time in which the state must act to enforce payment of past taxes, does not begin to run on tideland taxes until all litigation between the United States and the state concerning areas in dispute have been finally resolved. Moreover, the act specifically provides taxes shall not begin to run on any partial or piecemeal resolution or settlement between the U.S. and the state.

REORGANIZATION OF STATE AGENCIES

Act 720, the governmental reorganization act, divides state government into no more than twenty departments and subordinates the remaining agencies below the twenty primary departments. Originally the Wildlife and Fisheries Commission was absent from the top twenty, a position which would have deprived the WLFC of control over its budget and personnel. Burton Angell, WLFC Director argued persuasively before the House Natural Resources Committee for his department's independence. "Give me control over a man's money and personnel and I'll bring him to his knees," said Angell. Finally the lawmakers were convinced and the WLFC joined the ranks of the twenty premier agencies. The reorganization does not have to come into effect until December 31, 1977 and will be reviewed by the legislature again next year.

NAVIGATION AND BOATING

Barge collisions with the Lake Pontchartrain Causeway has prompted measures aimed at regulating traffic on the lake. Act 121 prohibits a captain and/or helmsman of any vessel towing or pushing barges on Lake Pontchartrain from working for more than twelve hours in any twenty-four hour period except in an emergency. Fines for the first offense range up to \$500; a second violation can draw a \$1000 penalty. SB 2 which sought to prevent barge traffic under the causeway on nights with poor visibility failed to pass.

All boats propelled mechanically must now be registered under Act 321. With this measure the state now complies with the Federal Boat Safety Act of 1971. The act also removes the exemption which existed previously for all engines under 10 horsepower. (Question: Did you ever wonder why so many boatmotor manufacturers made motors with 9.9 h.p. or 9.7 h.p.? Now you know. Since such motors were under 10 horsepower, no registration and license fees were needed.)

A ship mortgage law (Act 368), allows the builder or purchaser of a ship over 50 tons in size to use the ship as security for the loan of money to help pay for the ship's construction.

LAKE PONTCHARTRAIN

A "Lake Pontchartrain Control Commission" was proposed in SB 468, which envisioned the development of a comprehensive water-use and shoreland management system for the lake area. However, SCR 117, which creates a joint legislative committee to study Lake Pontchartrain, emerged as a compromise measure when SB 468 ran into legislative difficulty and was withdrawn.

The boundaries of Jefferson, St. Tammany, St. Charles, St. John and Tangipahoa Parishes in Lake Pontchartrain, sought to be delineated in HB 616, died in committee.

FALSE RIVER

The boundaries separating private from state ownership in False River, an ox-bow lake fifteen miles northwest of Baton Rouge, has long been a source of litigation and confusion. Act 285 provides that the title of owners adjacent to False River extends to a line fifteen feet above mean sea level. The land below this line belongs to the state. This line will be useful as a point of reference to settle future boundary disputes.

ATCHAFALAYA BASIN

A permanent wildlife and recreation area was established in portions of Atchafalaya Bay, East Cote Blanche Bay, West Cote Blanche Bay and Vermilion Bay by Act 228. Additionally, a study into the feasibility of constructing a dike between Atchafalaya Bay and East Cote Blanche Bay to offset siltation is authorized.

Several streams have been added to the natural and scenic rivers system, thus protecting them from channelization and other alteration: Bayou Dupree (from the Lake Borgne Canal to Terre Beau Bayou), Lake Borgne Canal (from the Forty Arpent Canal to Bayou Dupree), Bashman Bayou (from its origin to Bayou Dupree), Terre Beau Bayou (from Bayou Dupree to New Canal), Pirogue Bayou (from Bayou Villere to Lake Borgne), all under Act 655. The part of Holmes Bayou in St. Tammany Parish was also included (Act 213).

The Creole Nature Trail, winding along several designated highways from Sulphur, in Calcasieu Parish, to Holly Beach in Cameron Parish, and then to McNeese State University in Lake Charles, was established (Act 2).

HUNTING AND FISHING

Recreation may have received an important boost this session. Act 615 encourages landowners to make land and waters available to the public for recreation by limiting their liability should someone be injured while hunting, fishing, trapping, swimming, boating, camping, etc. on private property. There are two exceptions: liability remains if landowners operate a commercial recreational facility or if landowners are guilty of a willful or malicious failure to warn against a dangerous condition on the land. (Note: Recreation, an area of growing interest in Louisiana, is the topic of LCL's next report.)

Several other hunting and fishing laws reached the governor's desk: Act 249 creates a wholesale seafood transport license; Act 247 outlaws the hunting of quadrupeds or birds from a land vehicle or aircraft; Act 245 establishes a uniform non-resident sport hunting fee; Act 248 prohibits the importation of certain noxious plants; Act 811 provides numerous tax exemptions for owner/operators of Louisiana commercial fishing vessels; Act 255 requires a closer regulation of fur dealers; Act 194 provides for unrestricted renewal periods for oyster leases; and Act 186 provides that fishing licenses shall be issued on a fiscal year basis beginning July 1st and expiring the following June 30th.

POLLUTION CONTROL

The Pesticide Control Act (Act 221) requires the state chemist to analyze pesticides and to report his findings to the Commissioner of Agriculture. The Commissioner can allow or forbid the sale of a pesticide depending upon whether its chemical composition will perform as claimed on the label, its labeling complies with legal standards, and its use will not cause unreasonable adverse effects on the environment. Additionally those pesticides that require special knowledge or expertise when used must be classified as restricted.

In air pollution control, the emission data gathered by the state's Air Control Commission is no longer considered confidential (Act 188).

Numerous unsuccessful bills introduced were: HB 1281-83, aimed at increasing fines for polluters; HB 225-27, aimed at giving corporate tax exemptions for the purchase of pollution abatement equipment; and HB 1378, which attempted to regulate noise pollution on the Mississippi River.

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Ownership and control of waterbodies and waterbottoms, matters of great concern in a state containing over one-seventh of the nation's wetlands, have been the subject of several recent Louisiana court decisions. Here are aspects of three of the more important:

The public may be denied the use of private man-made canals for hunting and fishing, even though the canals are navigable (i.e., can be used for commerce), and connect to public waterways. The Louisiana Appeals Court held in National Audobon Society v. White (October 1974) that a man-made canal, built and maintained for twenty-eight years with private funds, posted with no trespass signs, and previously used by the public only with written permission of the owner is the private property of the owner. This decision may have significant effects in South Louisiana where the marshes are criss-crossed with thousands of such canals and where recreational hunting and fishing are often linked to the use of them.

Whether a body of water is a stream or a lake is a critical issue in Louisiana property law. If it is a lake any accretion, or new land built up on the shore, belongs to the state. However, if it is a river or stream any such accretions belong to the private landowner of the adjacent bank or uplands. In Louisiana's Atchafalaya Basin, where timber and mineral interests make the swamp lands very valuable, ownership of close to 100,000 acres of newly formed "accretion lands" depend on the lake v. stream determination. In Placid Oil v. State of Louisiana (Jun. 1974), the Louisiana Supreme Court reversed previous cases and found that the presence of "current" in water body did not alone make it a stream. The Court believed many factors should be considered in addition to current: the size of the waterbody, especially its width as compared to streams entering into it; depth; banks; channels and the historical designation of the body in official maps and documents. This decision assured the state ownership of tens of thousands of acres of newly formed lands in the Atchafalaya Basin.

The beds of navigable waterbodies are the property of the state, held in trust for the people, and strong public policy requires that previous attempts by the state to convey the beds to others were invalid. This was the decision of the Louisiana Supreme Court in Gulf Oil Corporation v. State Mineral Board (July 1975), where the Court overturned its own prior decisions by a 4-3 vote. According to the Court, navigable waterbottoms are insusceptible of private ownership and any past attempt to convey them to individuals was invalid. This ruling is sure to be the catalyst for further litigation since the state had regularly granted title to areas of the state, including waterbottoms, during the late 19th and early 20th Centuries.

SEA GRANT LEGAL PROGRAM
56 LAW CENTER, L.S.U.
BATON ROUGE, LOUISIANA 70803
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