

AN ACT

relating to efforts to mitigate coastal erosion and improve public access to public beaches; authorizing the issuance of bonds by coastal counties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) Texas has the third-longest coastline in the United States;

(2) Texas beaches and bays are extremely popular as visitor destinations, making beach tourism a multi-billion-dollar industry in the state;

(3) improved public access to and use of the public beaches is needed to realize the full potential of these valued natural resources;

(4) Texas must address long-term solutions to beachfront erosion along developed areas adjacent to beaches and inland bays of the Texas coast;

(5) Texas beaches suffer from the highest rate of erosion in the country;

(6) many structures in Galveston and Brazoria Counties are at risk due to erosion over the next 30 years;

(7) public infrastructure as well as residential dwellings that generate significant portions of the local property tax base are threatened by erosion rates of up to 10 feet a year or

1 greater; and

2 (8) public works, such as dams and flood-control
3 projects on inland waterways and jetties, sea walls, and dykes
4 along the coast, and subsidence caused by the withdrawal of water
5 are significant causes of erosion, leading to the need for public
6 assistance as an aid in mitigation.

7 SECTION 2. Subsection (a), Section 33.605, Natural
8 Resources Code, is amended to read as follows:

9 (a) Money in the account may be used for any action
10 authorized by this subchapter, except for a restoration project
11 authorized by Section 33.613.

12 SECTION 3. Subchapter H, Chapter 33, Natural Resources
13 Code, is amended by adding Section 33.613 to read as follows:

14 Sec. 33.613. PROPERTY RIGHTS; RESTORATION BY BEACHFRONT
15 OWNER OF PRIVATE PROPERTY AFFECTED BY COASTAL EROSION. (a) This
16 section applies to land that:

17 (1) on December 31, 1955, was privately owned and not
18 submerged or owned by the School Land Board; and

19 (2) fronts on a bay and not the Gulf of Mexico.

20 (b) In accordance with land office rules, the owner of
21 property immediately landward of a public beach or submerged land,
22 including state mineral lands, that has been affected by coastal
23 erosion shall restore the affected land to its original boundaries
24 as evidenced in a residential subdivision plat for residential lots
25 of one acre or less filed in the real property records of each
26 county in which the affected land is located. The owner shall use
27 only private resources and money for restoration authorized by this

1 section. After restoration the owner owns the restored land in fee
2 simple, subject to:

3 (1) the common law rights of the public in public
4 beaches as affirmed by Subchapter B, Chapter 61; and

5 (2) the rights of a public school land lessee holding a
6 lease on the property on September 1, 2005.

7 (c) In accordance with land office rules, the owner shall
8 build bulkheads on the restored land to prevent further erosion of
9 the restored land.

10 (d) The land office shall adopt reasonable rules to govern
11 the restoration of land under this section, including rules that:

12 (1) prescribe the type and quality of materials that
13 may be used to backfill or build a bulkhead;

14 (2) require maintenance of backfill and bulkheads;

15 (3) authorize land office maintenance or removal of
16 abandoned or dilapidated structures;

17 (4) require consideration of any adverse effects on
18 adjacent property owners; and

19 (5) establish penalties for the violation of this
20 section or rules adopted under this section.

21 (e) State money may not be used to restore land under this
22 section.

23 SECTION 4. Chapter 33, Natural Resources Code, is amended
24 by adding Subchapter I to read as follows:

25 SUBCHAPTER I. COASTAL PROTECTION AND IMPROVEMENT

26 Sec. 33.651. DEFINITIONS. In this subchapter:

27 (1) "Bond" means any type of interest-bearing

1 obligation, including a bond, note, bond anticipation note,
2 certificate of participation, lease, contract, or other evidence of
3 indebtedness issued by a coastal county to pay the project costs of
4 a qualified project.

5 (2) "Coastal county" means a county that borders on
6 the Gulf of Mexico.

7 (3) "Coastal erosion" has the meaning assigned by
8 Section 33.601.

9 (4) "Coastal improvement project" means a project to
10 improve access to a public beach by:

11 (A) acquiring fee title to property or a right of
12 public access to a public beach;

13 (B) constructing or maintaining public roads,
14 parking, or other facilities in aid of public access to or use of a
15 public beach; or

16 (C) requiring a landowner, as prescribed by land
17 office rules, to restore land affected by coastal erosion to its
18 original boundaries.

19 (5) "Coastal protection project" means a project to
20 address or mitigate coastal erosion.

21 (6) "Coastal protection and improvement fund" means
22 the coastal protection and improvement fund created under Section
23 33.653.

24 (7) "County coastal protection and improvement fund"
25 means a county coastal protection and improvement fund created by a
26 coastal county under Section 33.655.

27 (8) "Project cost" means a cost or expense incurred in

1 relation to a qualified project, including the cost of:

2 (A) designing, engineering, acquiring,
3 constructing, maintaining, improving, extending, repairing,
4 replacing, monitoring, removing, or administering a qualified
5 project; or

6 (B) financing a qualified project, including the
7 cost of issuing bonds and the payment of principal, interest, and
8 redemption price.

9 (9) "Public beach" has the meaning assigned by Section
10 61.013.

11 (10) "Qualified agreement" means an agreement between
12 the land office and a coastal county in accordance with Section
13 33.657.

14 (11) "Qualified payment" means a payment by the
15 commissioner to a coastal county from the coastal protection and
16 improvement fund, as provided by this subchapter, that has been
17 approved in amount and qualification for payment by the land office
18 and the applicable coastal county.

19 (12) "Qualified project" means a coastal protection or
20 improvement project that qualifies for funding under Section
21 33.656.

22 Sec. 33.652. APPLICABILITY OF SUBCHAPTER TO CERTAIN
23 MUNICIPALITIES. The provisions of this subchapter relating to
24 coastal counties apply to a municipality if all or substantially
25 all of the gulf beach within a coastal county is located within the
26 boundaries of the municipality.

27 Sec. 33.653. CREATION OF COASTAL PROTECTION AND IMPROVEMENT

1 FUND. (a) The coastal protection and improvement fund is created
2 as a trust fund outside the state treasury to be held by the Texas
3 Treasury Safekeeping Trust Company and administered by the
4 commissioner as trustee on behalf of the coastal counties.

5 (b) The fund consists of:

6 (1) gifts and grants; and

7 (2) appropriations of money to the fund by the
8 legislature.

9 (c) The commissioner shall allocate five percent of the
10 amount deposited in the fund to the land office to be used only to
11 pay the cost of administering any coastal protection and
12 improvement efforts undertaken under this subchapter and to support
13 a coastal monitoring program by The University of Texas Bureau of
14 Economic Geology and the sea turtle and shore monitoring programs
15 of Texas A&M University at Galveston.

16 (d) The commissioner shall allocate 95 percent of the amount
17 deposited in the fund for use by the coastal counties as provided by
18 this subchapter.

19 Sec. 33.654. USE OF COASTAL PROTECTION AND IMPROVEMENT

20 FUND. (a) The coastal protection and improvement fund shall be
21 used only to make a qualified payment to a coastal county sponsoring
22 a qualified project under this subchapter.

23 (b) The commissioner may make a qualified payment from the
24 fund to a coastal county only if and to the extent that the coastal
25 county is sponsoring a project that qualifies for funding as
26 certified by the coastal county and the land office.

27 (c) The amount and timing of a qualified payment shall be

1 determined by agreement between the land office and the coastal
2 county sponsoring the project. The amount of a qualified payment
3 may not exceed the estimated project costs.

4 Sec. 33.655. COUNTY COASTAL PROTECTION AND IMPROVEMENT
5 FUND. (a) Each coastal county shall create a county coastal
6 protection and improvement fund.

7 (b) Each coastal county shall deposit any qualified payment
8 that it receives into its county coastal protection and improvement
9 fund and shall use the money in the fund only to pay the project
10 costs of a qualified project as provided by this subchapter.

11 Sec. 33.656. PROJECTS THAT QUALIFY FOR FUNDING. To qualify
12 for funding under this subchapter, a project must:

13 (1) be sponsored by a coastal county;

14 (2) be located within the sponsoring coastal county
15 along or adjacent to the shore of the Gulf of Mexico, an inland bay,
16 or a connecting channel between the Gulf of Mexico and an inland
17 bay;

18 (3) be accessible by public roads or a common carrier
19 ferry;

20 (4) be identified and approved for funding by a
21 coastal county and the land office; and

22 (5) require more than \$5 million to complete, as
23 estimated by the land office.

24 Sec. 33.657. QUALIFIED AGREEMENT. (a) The land office and
25 a coastal county may enter into one or more agreements relating to a
26 qualified project and the payment of the associated project costs.
27 An agreement is governed by this subchapter.

1 (b) An agreement may provide that the commissioner will pay
2 to the coastal county an agreed amount from the coastal protection
3 and improvement fund over a term of years to be used by the coastal
4 county for a project that qualifies for funding under this
5 subchapter.

6 Sec. 33.658. QUALIFIED PAYMENT. (a) The commissioner
7 shall make qualified payments to a coastal county based on the land
8 office's estimate of the expected project costs of any qualified
9 projects undertaken by that county in the fiscal year in which the
10 payment is made.

11 (b) To the extent that the aggregate of qualified payments
12 by the commissioner to a coastal county in a fiscal year exceeds the
13 project costs of qualified projects undertaken by the county during
14 that year, the commissioner shall recover the amount of the
15 overpayment by:

16 (1) requiring the county to remit the amount of the
17 overpayment to the commissioner for deposit in the coastal
18 protection and improvement fund; or

19 (2) taking a credit against qualified payments due
20 that county the following year or years.

21 (c) If a coastal county that received an overpayment is not
22 due additional qualified payments the following year, the county
23 shall promptly remit the amount of the overpayment to the
24 commissioner for deposit in the coastal protection and improvement
25 fund.

26 (d) Notwithstanding Subsection (b), the commissioner may
27 not take a credit against qualified payments due a coastal county

1 the following year if the county needs the full amount of the
2 qualified payment that year to:

3 (1) pay the principal or interest on, or the
4 redemption price of, bonds issued to finance a qualified project;
5 or

6 (2) fund a reserve or other fund required by the
7 documents authorizing the issuance of bonds.

8 (e) The failure of a coastal county to use the full amount of
9 a qualified payment in the fiscal year in which it is received does
10 not prejudice the right of the county to receive money from the
11 coastal protection and improvement fund in future years as may be
12 provided in the county's qualified agreement.

13 (f) A coastal county may not use a qualified payment as a
14 local match for funding under a state program.

15 (g) A coastal county may use a qualified payment as a local
16 match for funding under a federal program.

17 Sec. 33.659. GENERAL POWERS OF COASTAL COUNTIES. (a) In
18 addition to all other powers that a coastal county has under general
19 law, a coastal county has the rights, powers, privileges,
20 authority, and functions that are necessary or convenient to:

21 (1) the designing, engineering, acquiring,
22 constructing, improving, maintaining, extending, repairing,
23 replacing, monitoring, removing, administering, and financing of a
24 qualified project located in a coastal county; and

25 (2) the funding of a reserve or other fund relating to
26 bonds.

27 (b) A coastal county may issue bonds to pay the project

1 costs of a qualified project. For purposes of this subchapter, a
2 coastal county is an issuer and a qualified project is an eligible
3 project within the meaning of Chapter 1371, Government Code, and
4 the provisions of Chapter 1371, Government Code, are applicable to
5 bonds issued by a coastal county.

6 (c) A coastal county may:

7 (1) enter into agreements with a public or private
8 person for the joint ownership, financing, or operation of a
9 qualified project;

10 (2) enter into contracts, leases, and agreements with,
11 and accept grants and loans from, any person to perform all acts
12 necessary for the full exercise of the powers vested in the county
13 on terms and for the term the county determines to be advisable;

14 (3) acquire property under a conditional sales
15 contract, lease, equipment trust certificate, or other form of
16 contract or trust agreement; and

17 (4) do anything necessary, convenient, or desirable to
18 carry out the powers expressly granted or implied by this
19 subchapter.

20 Sec. 33.660. AUTHORITY TO CONTRACT. (a) A coastal county
21 may contract with a state agency, municipality, county, or other
22 political subdivision of the state or any agency or instrumentality
23 of the federal government to implement a qualified project under
24 this subchapter. A contract under this section may:

25 (1) be for a period on which the parties agree;

26 (2) include terms on which the parties agree; and

27 (3) be payable from taxes, qualified payments, or any

1 other source of revenue available for that purpose.

2 (b) A coastal county may enter into a contract, lease, or
3 agreement with or make or accept grants and loans to or from:

4 (1) the United States;

5 (2) the State of Texas;

6 (3) a county, municipality, or other political
7 subdivision of the state;

8 (4) a public or private corporation; or

9 (5) any other person.

10 Sec. 33.661. FUNDS AVAILABLE FOR QUALIFIED PROJECTS.

11 (a) A coastal county may pay the project costs of a qualified
12 project from general or available funds, payments received from the
13 land office, including payments from the coastal protection and
14 improvement fund, contract reserves, ad valorem taxes, sales taxes,
15 the proceeds of bonds, or any combination of those funds.

16 (b) Payments made by the commissioner under this subchapter
17 are in addition to any other funds to which the coastal county may
18 be entitled under any other state law or program.

19 (c) This subchapter does not preclude a contribution to a
20 qualified project from any state, federal, private, or other
21 source.

22 Sec. 33.662. BONDS ELIGIBLE FOR PURCHASE. Bonds issued by a
23 coastal county under this subchapter may be purchased by the Texas
24 Water Development Board for purposes authorized by Chapter 17,
25 Water Code.

26 Sec. 33.663. CONSTRUCTION OF SUBCHAPTER. This subchapter
27 shall be liberally construed to accomplish the purposes of

1 mitigation of coastal erosion and improvement of public access to
2 public beaches.

3 SECTION 5. To the extent money is available, the
4 Commissioner of the General Land Office shall make the first
5 distribution of money from the coastal protection and improvement
6 fund created under Section 33.653, Natural Resources Code, as added
7 by this Act, on or after January 1, 2008.

8 SECTION 6. Not later than December 1, 2005, the General Land
9 Office shall adopt rules for the administration and regulation of
10 the restoration of land affected by coastal erosion as authorized
11 by Section 33.613, Natural Resources Code, as added by this Act.

12 SECTION 7. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1044 passed the Senate on May 3, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 27, 2005, by the following vote: Yeas 29, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1044 passed the House, with amendments, on May 25, 2005, by the following vote: Yeas 141, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor