

By: Janek

S.B. No. 1044

A BILL TO BE ENTITLED

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AN ACT

relating to efforts by coastal counties 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. Chapter 33, Natural Resources Code, is amended  
8 by adding Subchapter I to read as follows:

9 SUBCHAPTER I. COASTAL PROTECTION AND IMPROVEMENT

10 Sec. 33.651. DEFINITIONS. In this subchapter:

11 (1) "Bond" means any type of interest-bearing  
12 obligation, including a bond, note, bond anticipation note,  
13 certificate of participation, lease, contract, or other evidence of  
14 indebtedness issued by a coastal county to pay the project costs of  
15 a qualified project.

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

18 (3) "Coastal erosion" has the meaning assigned by  
19 Section 33.601.

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

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

24 (B) constructing or maintaining public roads,  
25 parking, or other facilities in aid of public access to or use of a  
26 public beach.

27 (5) "Coastal protection project" means a project to

1 address or mitigate coastal erosion.

2 (6) "Coastal protection and improvement fund" means  
3 the coastal protection and improvement fund created under Section  
4 33.653.

5 (7) "County coastal protection and improvement fund"  
6 means a county coastal protection and improvement fund created by a  
7 coastal county under Section 33.655.

8 (8) "Project cost" means a cost or expense incurred in  
9 relation to a qualified project, including the cost of:

10 (A) designing, engineering, acquiring,  
11 constructing, maintaining, improving, extending, repairing,  
12 replacing, monitoring, removing, or administering a qualified  
13 project; or

14 (B) financing a qualified project, including the  
15 cost of issuing bonds and the payment of principal, interest, and  
16 redemption price.

17 (9) "Public beach" has the meaning assigned by Section  
18 61.013.

19 (10) "Qualified agreement" means an agreement between  
20 the land office and a coastal county in accordance with Section  
21 33.657.

22 (11) "Qualified payment" means a payment by the  
23 commissioner to a coastal county from the coastal protection and  
24 improvement fund, as provided by this subchapter, that has been  
25 approved in amount and qualification for payment by the land office  
26 and the applicable coastal county.

27 (12) "Qualified project" means a coastal protection or

1 improvement project that qualifies for funding under Section  
2 33.656.

3 Sec. 33.652. APPLICABILITY OF SUBCHAPTER TO CERTAIN  
4 MUNICIPALITIES. The provisions of this subchapter relating to  
5 coastal counties apply to a municipality if all or substantially  
6 all of the gulf beach within a coastal county is located within the  
7 boundaries of the municipality.

8 Sec. 33.653. CREATION OF COASTAL PROTECTION AND IMPROVEMENT  
9 FUND. (a) The coastal protection and improvement fund is created  
10 as a trust fund outside the state treasury to be held by the Texas  
11 Treasury Safekeeping Trust Company and administered by the  
12 commissioner as trustee on behalf of the coastal counties.

13 (b) The comptroller shall deposit money in the fund as  
14 provided by Section 156.2513, Tax Code.

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

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

25 Sec. 33.654. USE OF COASTAL PROTECTION AND IMPROVEMENT  
26 FUND. (a) The coastal protection and improvement fund shall be  
27 used only to:

1           (1) make a qualified payment to a coastal county  
2 sponsoring a qualified project under this subchapter; or

3           (2) make an equalization payment as provided by  
4 Section 33.659.

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

9           (c) The amount and timing of a qualified payment shall be  
10 determined by agreement between the land office and the coastal  
11 county sponsoring the project. The amount of a qualified payment  
12 may not exceed the estimated project costs.

13           (d) The total amount of money a coastal county may receive  
14 as qualified payments in a fiscal year may not exceed the amount  
15 estimated for that county by the comptroller for that fiscal year  
16 under Subsection (e).

17           (e) The comptroller shall estimate the amount of revenue the  
18 comptroller will receive from hotels in each coastal county in a  
19 fiscal year under Chapter 156, Tax Code, and deposit in the coastal  
20 protection and improvement fund as provided by Section 156.2513,  
21 Tax Code. The comptroller shall inform the commissioner of the  
22 amount estimated for each county.

23           Sec. 33.655. COUNTY COASTAL PROTECTION AND IMPROVEMENT  
24 FUND. (a) Each coastal county shall create a county coastal  
25 protection and improvement fund.

26           (b) Each coastal county shall deposit any qualified payment  
27 or equalization payment under Section 33.659 that it receives into

1 its county coastal protection and improvement fund and shall use  
2 the money in the fund only to pay the project costs of a qualified  
3 project as provided by this subchapter.

4 Sec. 33.656. PROJECTS THAT QUALIFY FOR FUNDING. (a) To  
5 qualify for funding under this subchapter, a project must:

6 (1) be sponsored by a coastal county;

7 (2) be located within the sponsoring coastal county  
8 along or adjacent to the shore of the Gulf of Mexico, an inland bay,  
9 or a connecting channel between the Gulf of Mexico and an inland  
10 bay;

11 (3) be accessible by public roads or a common carrier  
12 ferry;

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

15 (5) except as provided by Subsection (b), require more  
16 than \$5 million to complete, as estimated by the land office.

17 (b) Subsection (a)(5) does not apply to a project financed  
18 by equalization payments.

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

23 (b) An agreement may provide that the commissioner will pay  
24 to the coastal county an agreed amount from the coastal protection  
25 and improvement fund over a term of years to be used by the coastal  
26 county for a project that qualifies for funding under this  
27 subchapter.

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

6       (b) To the extent that the aggregate of qualified payments  
7 by the commissioner to a coastal county in a fiscal year exceeds the  
8 project costs of qualified projects undertaken by the county during  
9 that year, the commissioner shall recover the amount of the  
10 overpayment by:

11       (1) requiring the county to remit the amount of the  
12 overpayment to the commissioner for deposit in the coastal  
13 protection and improvement fund; or

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

16       (c) If a coastal county that received an overpayment is not  
17 due additional qualified payments the following year, the county  
18 shall promptly remit the amount of the overpayment to the  
19 commissioner for deposit in the coastal protection and improvement  
20 fund.

21       (d) Notwithstanding Subsection (b), the commissioner may  
22 not take a credit against qualified payments due a coastal county  
23 the following year if the county needs the full amount of the  
24 qualified payment that year to:

25       (1) pay the principal or interest on, or the  
26 redemption price of, bonds issued to finance a qualified project;  
27 or

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

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

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

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

12          Sec. 33.659. EQUALIZATION PAYMENT. If in a fiscal year the  
13 amount of revenue from hotel occupancy taxes imposed under Chapter  
14 156, Tax Code, and received by the comptroller from hotels located  
15 in a coastal county is more than the average revenue from those  
16 taxes from all coastal counties, the qualified payments to that  
17 county in that fiscal year shall be 95 percent of the amount that  
18 the county would otherwise be entitled to receive under this  
19 subchapter. The remaining five percent of the amount that the  
20 county would otherwise be entitled to receive shall be divided  
21 among the coastal counties from which less-than-average hotel  
22 occupancy tax revenue was received by the comptroller for that  
23 fiscal year, in inverse proportion to the amount of hotel occupancy  
24 taxes received from hotels in each of those counties. The  
25 comptroller shall compute the average of the revenue from hotel  
26 occupancy taxes received from hotels located in coastal counties  
27 and the amount received from each coastal county and shall inform



1 the commissioner of those amounts.

2 Sec. 33.660. GENERAL POWERS OF COASTAL COUNTIES. (a) In  
3 addition to all other powers that a coastal county has under general  
4 law, a coastal county has the rights, powers, privileges,  
5 authority, and functions that are necessary or convenient to:

6 (1) the designing, engineering, acquiring,  
7 constructing, improving, maintaining, extending, repairing,  
8 replacing, monitoring, removing, administering, and financing of a  
9 qualified project located in a coastal county; and

10 (2) the funding of a reserve or other fund relating to  
11 bonds.

12 (b) A coastal county may issue bonds to pay the project  
13 costs of a qualified project. For purposes of this subchapter, a  
14 coastal county is an issuer and a qualified project is an eligible  
15 project within the meaning of Chapter 1371, Government Code, and  
16 the provisions of Chapter 1371, Government Code, are applicable to  
17 bonds issued by a coastal county.

18 (c) A coastal county may:

19 (1) enter into agreements with a public or private  
20 person for the joint ownership, financing, or operation of a  
21 qualified project;

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

26 (3) acquire property under a conditional sales  
27 contract, lease, equipment trust certificate, or other form of

1 contract or trust agreement; and

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

5 Sec. 33.661. AUTHORITY TO CONTRACT. (a) A coastal county  
6 may contract with a state agency, municipality, county, or other  
7 political subdivision of the state or any agency or instrumentality  
8 of the federal government to implement a qualified project under  
9 this subchapter. A contract under this section may:

- 10 (1) be for a period on which the parties agree;  
11 (2) include terms on which the parties agree; and  
12 (3) be payable from taxes, qualified payments, or any  
13 other source of revenue available for that purpose.

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

- 16 (1) the United States;  
17 (2) the State of Texas;  
18 (3) a county, municipality, or other political  
19 subdivision of the state;  
20 (4) a public or private corporation; or  
21 (5) any other person.

22 Sec. 33.662. FUNDS AVAILABLE FOR QUALIFIED PROJECTS.

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

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

4       (c) This subchapter does not preclude a contribution to a  
5 qualified project from any state, federal, private, or other  
6 source.

7       Sec. 33.663. BONDS ELIGIBLE FOR PURCHASE. Bonds issued by a  
8 coastal county under this subchapter may be purchased by the Texas  
9 Water Development Board for purposes authorized by Chapter 17,  
10 Water Code.

11       Sec. 33.664. CONSTRUCTION OF SUBCHAPTER. This subchapter  
12 shall be liberally construed to accomplish the purposes of  
13 mitigation of coastal erosion and improvement of public access to  
14 public beaches.

15       SECTION 3. Subchapter F, Chapter 156, Tax Code, is amended  
16 by adding Section 156.2513 to read as follows:

17       Sec. 156.2513. ALLOCATION OF REVENUE TO CERTAIN COASTAL  
18 COUNTIES. (a) Beginning September 1, 2007, not later than the  
19 last day of the month following a calendar quarter, the comptroller  
20 shall:

21               (1) compute the amount of revenue derived from the  
22 collection of taxes imposed under this chapter at a rate of four  
23 percent and received from hotels located in counties that border on  
24 the Gulf of Mexico; and

25               (2) issue to the coastal protection and improvement  
26 fund created under Section 33.653, Natural Resources Code, a  
27 warrant drawn on the general revenue fund in the amount computed

1 under Subdivision (1).

2 (b) Notwithstanding Subsection (a)(2), for each fiscal year  
3 the comptroller may not issue a warrant in an amount that exceeds  
4 the aggregate of the amounts needed, as estimated by the General  
5 Land Office, for qualified projects, as defined by Section 33.651,  
6 Natural Resources Code, for that fiscal year. Any amount computed  
7 by the comptroller in excess of the aggregate of the amounts needed  
8 for qualified projects shall be deposited in the general revenue  
9 fund.

10 (c) The money deposited in the coastal protection and  
11 improvement fund under this section may be used only as provided by  
12 Subchapter I, Chapter 33, Natural Resources Code.

13 SECTION 4. The Commissioner of the General Land Office  
14 shall make the first distribution of money from the coastal  
15 protection and improvement fund created under Section 33.653,  
16 Natural Resources Code, as added by this Act, on or after January 1,  
17 2008.

18 SECTION 5. This Act takes effect immediately if it receives  
19 a vote of two-thirds of all the members elected to each house, as  
20 provided by Section 39, Article III, Texas Constitution. If this  
21 Act does not receive the vote necessary for immediate effect, this  
22 Act takes effect September 1, 2005.