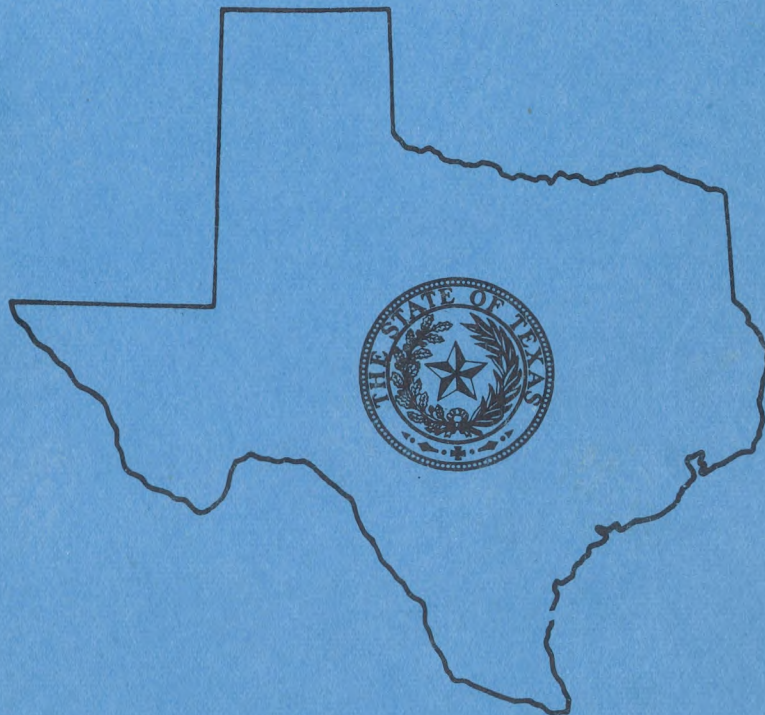


STATE-OWNED SUBMERGED LANDS AND ISLANDS

An Examination of Laws and
Administrative Practices Relating Thereto

A REPORT TO THE 56th LEGISLATURE



TEXAS LEGISLATIVE COUNCIL

AUSTIN, TEXAS

DECEMBER, 1958

NUMBER 55-6

University of Texas at Arlington Library
Arlington, Texas

UT ARLINGTON LIBRARIES



3 1334 01028 8690

HD
184
T4
A53
1958 a.
c.2

~~CANCELLED~~

LIBRARY
UNIVERSITY OF TEXAS AT ARLINGTON

DATE DUE

~~CANCELLED~~

\$1.00 CHARGE FOR LOSS OF IBM CARD

STATE-OWNED SUBMERGED LANDS
AND ISLANDS

An Examination of Laws and
Administrative Practices Relating Thereto

Texas Legislative Council
Austin, Texas
December, 1958

6820397

TEXAS LEGISLATIVE COUNCIL

of the

55th Legislature of Texas

Lieutenant Governor Ben Ramsey, Chairman
Speaker Waggoner Carr, Vice-Chairman

SENATORS

Neveille H. Colson
Grady Hazlewood
Abraham Kazen, Jr.
George Moffett
Bruce Reagan

REPRESENTATIVES

Stanley Boysen*
R. H. Cory
Robert Hughes
Alonzo W. Jamison, Jr.
Don Kennard
Tony Koriath
Menton J. Murray
Harold B. Parish
Wesley Roberts
A. R. Schwartz

* Appointed to fill place of
Representative James M.
Cotten, who was appointed
to the Legislative Budget
Board.

TEXAS LEGISLATIVE COUNCIL

Professional Staff

Executive Director	- - - - -	C. Read Granberry
Assistant to the Director (Editor and Research Coordinator)	- - - - -	Dr. Earl B. Braly
Assistant Director for Legal Affairs	- - - - -	William B. Wilmot
Assistant Director for Fiscal Affairs (Office Budget Control Supervisor)	- - - - -	John T. Potter
Research Associates	- - - - -	Floy Johnson Francis A. Miskell Julia Faye Neel
Research Assistant	- - - - -	Howard A. Colvin
Administrative Secretary and Publications Assistant	- - - - -	Marybell Dismuke
Administrative Assistant and Bookkeeper	- - - - -	Sybil Farmer

CONTENTS

Transmittal Letter to the Members of the 56th Legislature
from the Chairman of the Texas Legislative Council

Report of the Study Committee on Submerged Areas

Letter of Transmittal from the Executive Director of the
Texas Legislative Council

Basic Research Report on State-owned Submerged Lands
and Islands

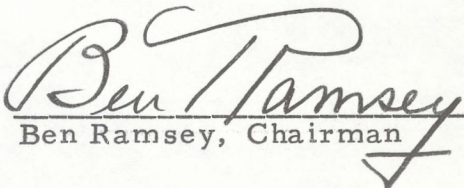
TO THE MEMBERS OF THE 56TH LEGISLATURE:

The Texas Legislative Council was requested by H.S.R. No. 441, adopted by the House of Representatives of the 55th Legislature, "to study the policy of the State of Texas with respect to submerged areas and to make recommendations to the 56th Legislature."

The basic research report, State-owned Submerged Lands and Islands, and the report of the Legislative Council's Study Committee on Submerged Areas are transmitted herewith.

On December 19, 1958, the Council adopted the recommendations contained in the report of the Study Committee and they are presented at this time for your consideration.

Respectfully submitted,


Ben Ramsey, Chairman

REPORT OF STUDY COMMITTEE
TO THE
TEXAS LEGISLATIVE COUNCIL

December 19, 1959

Lietutenant Governor Ben Ramsey, Chairman
Speaker Waggoner Carr, Vice-Chairman
Members of the Texas Legislative Council

Senator Colson and Gentlemen:

We, the undersigned, your Study Committee on Submerged Areas, hereby report and recommend as follows:

1. This study was undertaken in response to H.S.R. No. 441 of the 55th Legislature. The resolution cited the lack of statutory authority (except in certain narrowly defined areas) for any agency of the State government to supervise, control, lease, or sell the State-owned submerged areas and islands on the Texas Gulf Coast.

2. The basic research report is submitted herewith.

3. We are pleased to report that each of the State agencies listed in the resolution -- the Attorney General's Office, the Game and Fish Commission, and especially the General Land Office -- has given full cooperation in connection with this study.

4. Your Study Committee held several meetings in Austin with the State officials concerned, and on June 6, 1958, a public hearing was conducted at Corpus Christi in which several members of the Legislature, municipal officers, county judges, navigation district officials, property owners, sportsmen, and other citizens from the Gulf Coast and inland areas participated.

5. Your Study Committee finds as follows:

a. The absence of authority in any executive agency of the State government to negotiate and consummate arrangements for the sale, lease, or other disposition of submerged areas and islands has

(1) retarded the over-all development of these State-owned lands which are potentially so important to the economy of Texas,

(2) deprived the State of much-needed revenue,

(3) specifically worked hardships upon littoral property owners, business concerns interested in the industrial development of coastal areas, and those desirous of

developing home sites and recreational facilities, and

(4) resulted in either stalemate or unauthorized developments.

Evidence of the public interest in these matters is to be found in the reports of the Land Commissioner over a period of years and a great volume of recent requests on file with the General Land Office for permits to do various things which, regardless of their merits, cannot be authorized.

b. The lack of specific authority for any agency to act in the capacity of official representative of the State to negotiate with the Federal government concerning matters affecting the islands, submerged lands, and coastal waterways, or which arise in other areas of mutual concern along the Gulf Coast, has sometimes resulted in the State's interests not being fully identified and consequently protected.

c. State officials and citizens generally who were interviewed or submitted their comments in writing appear to be unanimous in their opinion that action should be taken by the Legislature to fill this long-standing vacuum -- a statutory gap which becomes more acute with the passage of time.

6. Your Study Committee respectfully presents the following recommendations:

a. That the Council recommend to the Legislature the passage of an act conferring upon the School Land Board -- since it already has related responsibilities -- certain powers and duties respecting the management, control, and disposition of the surface estate in certain State-owned submerged lands and islands.

It is the opinion of your Study Committee that such an act should stipulate that all beaches on the open Gulf of Mexico shall be considered as held in trust by the State for the use, benefit, and enjoyment of the general public and that no exclusive right to these beaches should be granted to any private interest unless specifically authorized by the Legislature. (The actual landward boundaries of State-owned shore areas will remain in doubt until the full effect of the recent decision of the Supreme Court in Luttes v. State can be determined.)

Your Study Committee further believes that the coastal counties should have a voice in the amount and character of development of sub-

merged lands and islands within their borders, but that final decisions relative to leases and sales must necessarily rest with a State agency.

The suggested act, attached, has been designed to accomplish these purposes and is specifically recommended.

b. That the Council recommend to the Legislature the appropriation of sufficient funds to expand the staff of the General Land Office to assist the School Land Board in the performance of these additional duties.

c. That the Council recommend to the Legislature the passage of

(1) an Act regulating the construction or maintenance of buildings, fences, walls, ditches, and other obstructions on or near the shores of the Gulf of Mexico and the arms thereof which obstruct access to and along public-owned beach and shore areas, and

(2) such additional legislation as may be necessary, by reason of the recent Supreme Court ruling in Luttes v. State, to assure that the general public shall have the continued use, benefit and enjoyment of the shores and beaches along the Texas Gulf Coast.

Respectfully submitted,

/s/ Bruce Reagan
Bruce Reagan, Chairman

/s/ R. H. Cory
R. H. Cory

/s/ Menton J. Murray
Menton J. Murray

/s/ Harold B. Parish
Harold B. Parish

A. R. Schwartz

HOUSE SIMPLE RESOLUTION

requesting the Texas Legislative Council to study the policy of the State of Texas with respect to submerged areas and to make recommendations to the Fifty-sixth Legislature.

WHEREAS, The Commissioner of the General Land Office has received, within the past few months, numerous requests and applications for leases on islands and land covered by the ebb and flow of the tide, commonly known as submerged areas; and

WHEREAS, A great many problems have arisen with regard to the leasing or other disposition of such submerged areas, particularly with regard to the sale and lease of such land, the uses to which such land may be put and the amount of land which may be purchased or leased; and

WHEREAS, There exists no statutory authority for the supervision, control, leasing or other disposition of such submerged areas except by sale to Navigation Districts or deepwater corporations and leasing for mineral development; and

WHEREAS, There is great interest in the recreational and commercial development of the Texas Coastal area at the present time, necessitating further consideration and analysis of State policy with respect to the sale or lease of such lands, with the objective of redefining the policy of the State with regard to the sale, lease and use of such submerged areas; and

WHEREAS, Solution of these problems in a manner satisfactory to the people of Texas will require additional statutory authority to the Commissioner of the General Land Office, such statutory authority to include the definition of State policy with regard to the submerged area and the basis upon which sales and leases of such lands may be made, and the uses to be permitted thereunder, and the authority of the Commissioner of the General Land Office in regulating and controlling same; and

WHEREAS, a comprehensive study of this problem should be made, together with recommendations for legislative action, in order that the Legislature may act intelligently in the solution of this problem; now, therefore, be it

RESOLVED by the House of Representatives of the State of Texas, That the Texas Legislative Council be and it is hereby requested to make a study of the problems involved in the administration, disposition and control

of submerged areas and submit to both Houses of the Fifty-sixth Legislature a written report of its findings and recommendations; and, be it further

RESOLVED, That the Texas Legislative Council be and it is hereby requested to recommend to the Fifty-sixth Legislature such additional laws as in its judgment are necessary (1) to define properly the policy of the State of Texas with regard to these submerged areas, (2) to outline in detail the authority and responsibility of the General Land Office in administering, selling, leasing, and controlling such submerged areas, and (3) to define the limitations and restrictions, if any, to be imposed upon the use of such submerged areas by persons, firms or corporations buying, leasing or using same under authority of such Act and under the rules and regulations promulgated by the General Land Office pursuant thereto; and, be it further

RESOLVED, That the Texas Legislative Council be and it is hereby requested to make such study in co-operation with the Governor, Commissioner of the General Land Office, Attorney General, the Game and Fish Commission and other interested State agencies, and all of such officials and agencies be and they are hereby requested to co-operate with the Texas Legislative Council in the making of said study and in the promulgation of such recommendations to the Fifty-sixth Legislature.

B. No. _____

By _____

A BILL

To Be Entitled

AN ACT relating to the management, control, use and disposition of the surface estate in certain state-owned submerged lands and islands located within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of the State of Texas; declaring the provisions and applications of the Act to be severable; repealing laws or parts of laws in conflict; and declaring an emergency.

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

Section 1. Purpose. The purpose of this Act is to confer upon the School Land Board certain powers and duties relating to the management, control, and disposition of the surface estate in state-owned islands, salt water lakes, bays, inlets or marshes within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of the State of Texas subject to the limitation that all beaches on the open Gulf of Mexico shall be considered as held in trust by the State for the use, benefit, and enjoyment of the general public and no exclusive right therein shall be granted to any private interest unless specifically authorized by act of the Legislature.

Sec. 2. Definitions. As used in this Act, unless the context clearly requires otherwise;

(a) "Board" means the School Land Board,

(b) "Commissioner" means the Commissioner of the General Land Office,

(c) "Island" means any body of land completely surrounded by water located in a salt water lake, bay, inlet, or other inland body of water within the tide water limits of this State and shall include man-made islands resulting from dredging or other operations in such waters,

(d) "Submerged lands" means any land extending from the shore line marking the boundary between the land of the state and littoral owners, to the low water mark on any salt water lake, bay, inlet, or other inland water within tidewater limits, and any land lying beneath such bodies of water but shall not include beaches on the open Gulf of Mexico or lands within the jurisdiction of the State of Texas which lie beneath the open waters of the Gulf of Mexico,

(e) "Person" means any individual, firm, partnership, association, corporation (public or private), or political subdivision of this State.

Sec. 3. Administration. The School Land Board created by House Bill No. 9 of the Forty-sixth Legislature is hereby designated the executive agency of the State charged with the administration and enforcement of the provisions of this Act. There shall be established a Coastal Areas Management Division within the General Land Office to assist the Board in the discharge of its responsibilities and duties under this Act and the Commissioner is authorized to employ such personnel as may be necessary for the Board to perform effectively such functions.

Sec. 4. Board's authority to sell or lease. (a) Subject to the limitations contained in paragraphs (b), (c), (d), (e) and (f) of this section, the Board may sell or lease the surface estate in state-owned islands and submerged lands, as defined in Section 2, upon such terms and conditions and for such prices and rentals as it sees fit, provided the Board determines such sale or lease is not contrary to the public interest.

(b) The Board shall not sell or lease the surface estate in any state-owned island or submerged lands unless the Commissioners Court of the county in which such land is situated or the governing body of an incorporated city or town, in event such lands are within the limits of a city or town, has filed with the Board pursuant to Section 5 of this Act, a recommendation that the particular land be made available for sale or lease.

(c) No state-owned submerged land as herein defined, lying between the shore line and a line one hundred and fifty (150) feet out in the water from the low water mark, shall be sold or leased to any person other than the littoral owner of the adjoining upland. A littoral owner may not purchase or lease submerged land extending beyond such one hundred and fifty (150) foot limit and submerged lands between the one hundred and fifty (150) foot limit and one thousand (1,000) foot mark shall not be sold or leased but shall remain open water.

(d) All mineral rights, together with the right to explore for, produce and market same shall be reserved to the State.

(e) The purchase price or rental payment for any land sold or leased pursuant to this Act shall represent the reasonable market value for such land as determined by the Board.

(f) Every grant or lease executed pursuant to this Act shall provide that the estate shall automatically terminate in the event the use for which the land was granted or leased ceases or the land is diverted to materially different uses.

Sec. 5. Procedure before Commissioners Court. (a) Any person

desiring to purchase or lease the surface estate in any state-owned island or submerged land shall make application in writing to the Commissioners Court of the county in which such land is located, or, if located within the limits of a city or town, to the governing body thereof, requesting such court or governing body to recommend to the School Land Board that the land in question be made available for sale or lease by the State. The application, in such form as prescribed by the School Land Board, shall particularly describe by field notes the land sought to be purchased or leased and shall set forth a proposed plan of development showing (1) the nature and extent of any improvements to be made on such land, (2) the purpose for which the land is to be used, (3) the estimated time within which the development of the land is to be completed, and (4) such additional information as may be considered necessary by the Board.

(b) Upon receiving the application, the Commissioners Court or governing body, in the case of a city or town, shall give notice thereof by publication in a newspaper published and distributed in the county in which the land is located not less than once a week for three consecutive weeks, and by mailing copies of such notice by registered mail to each littoral owner of upland lying within one thousand (1,000) feet of the island or submerged land proposed to be sold or leased, addressed to such owner as his name and address appear upon the latest county tax assessment rolls, in order that any person having objections to the sale or lease may have the opportunity of filing same in writing with the Commissioners Court or governing body. The applicant shall pay to the Commissioners Court or governing body a fee in an amount determined by it as necessary to defray the costs of processing the application. If no objections are filed within thirty (30) days after the date of the first publication of the aforesaid notice, the Commissioners Court or governing body shall forthwith determine whether or not the application shall be approved and a recommendation made to the Board that such land be made available for sale or lease by the State. If the court or governing body approves the application, it shall make its recommendation to the Board in the same manner and form as provided in paragraph (c).

(c) If objections are filed, the Commissioners Court or governing body, after giving notice in the same manner as provided above, shall hold a public hearing at which all interested parties may express their approval or opposition to the proposed sale or lease. Notice of such hearing shall also be sent to the Board which shall have a representative present at the hearing. If the Commissioners Court or governing body determines on the basis of the testimony presented at the public hearing, and other information obtained through its own investigations, that it would not be against the public interest for the land under consideration to be sold or leased by the State, it shall make its recommendations accordingly to the School Land Board. Such recommendation shall be supported by a finding of facts in such form as prescribed by the Board and shall be accompanied by a copy of the application filed by the person desiring to purchase or lease the state-owned land. The Commissioners Court or governing body may make any recommendations with respect to

price, rentals, or limitations on acreage for such consideration as the Board may deem proper.

(d) Upon receipt of the recommendations from the Commissioners Court or governing body, and after due consideration of all facts presented, the Board, if it appears that the sale or lease of such lands for the purposes set forth in the application of the person desiring to purchase or lease would not interfere with the lawful rights of littoral owners or the conservation of natural resources, or would not unreasonably obstruct navigation, or would not for any other reason be against the public interest, may issue an order to be entered in its minutes declaring the land available for sale or lease for such purposes. The Board may have its own appraisers set a reasonable market value on the land or it may request the Commissioners Court or governing body to have an independent appraisal made of said land. The Court or governing body upon receipt of the request shall arrange to have the appraisal made at once and shall transmit the report thereon to the Board for such consideration as the Board may deem proper. In the event the land is "submerged land" as defined herein, the Board may proceed with negotiations for the sale or lease of the property with the person filing the application under paragraph (a) of this Section. If agreement is reached between the Board and applicant as to terms of the sale or lease of such submerged lands such facts shall be entered on the minutes of the Board. In the event the land declared available for sale or lease by the Board is an island or portion thereof, the Board shall insert an advertisement in at least four (4) daily newspapers published daily in the State of Texas, in at least three (3) issues of each, the last insertion of which shall be at least thirty (30) days in advance of the date set for opening bids, giving notice that the land described in the notice will be offered for sale or lease for the purpose therein defined on a certain date upon sealed bids. The Board may reject any one or more or all bids, but unless the Board elects to reject any and all bids, it shall accept the best bid submitted. All grants or leases of submerged lands or islands shall be executed by the Commissioner of the General Land Office in accordance with the minutes as approved by the Board.

Sec. 6. County Submerged Lands Board authorized. (a) The Commissioners Court of any county within the boundaries of which are located state-owned islands or submerged lands, may, if it considers such action desirable, by resolution delegate to a County Submerged Lands Board, as hereinafter provided for, all of the powers, responsibilities and duties conferred upon the Commissioners Court by this Act, and such Board, when constituted, is hereby vested with all such powers, responsibilities and duties.

(b) Upon the adoption of the aforesaid resolution the County Judge shall appoint seven (7) persons, residents of the County, as members of the County Submerged Lands Board whose term of office shall be two (2) years. In the event of a vacancy on such Board the County Judge shall fill the vacancy by appointment for the unexpired term. No member of any of his immediate family may be an officer or employee of the county or an officer or employee of any city or political subdivision of the state located in said county.

A member shall receive no compensation for his services but shall be entitled to receive all necessary expenses incurred in the discharge of his duties; such expenses to come from funds appropriated for the purpose by the Commissioners Court. Four members of the Submerged Lands Board shall constitute a quorum for the purpose of conducting the business of such Board, and action may be taken upon the majority vote of the members present. Such Board shall select from among its members a chairman and vice-chairman, and it may employ such officers, agents and employees as it may require and shall determine their qualifications, duties and compensation to be paid out of funds appropriated for the purpose by the Commissioners Court.

Sec. 7. Rules and Regulations. The School Land Board is hereby authorized to promulgate such rules and regulations as it considers necessary in the administration and enforcement of this Act.

Sec. 8. Designation of School Land Board as Representative of State. The School Land Board is hereby designated as the official representative of the State to negotiate with the Federal Government concerning any matter affecting the islands and submerged lands of the State, which arises out of the exercise by the Federal Government of any authority it may have over navigable waters under the Constitution of the United States.

Sec. 9. Study and Reports. The Board shall conduct a continuing study of the problems affecting state-owned islands and submerged lands and shall make a report to the Legislature not later than the first of December preceding each Regular Session, setting forth the result of its study together with any recommendations for legislative action which it considers necessary.

Sec. 10. Public Free School Fund Credit. All monies received by the School Land Board under the provisions of this Act shall be deposited in the State Treasury to the credit of the Permanent Free School Fund.

Sec. 11. This Act shall become effective July 1, 1961.

Sec. 12. Severability Clause. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 13. Repealer. All laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict only. It is expressly provided, however, that it is not intended that this Act shall repeal or modify the provisions of Chapter 3, Title 67, Revised Civil Statutes of Texas, as amended, as it relates to the powers and duties of the Game and Fish Commission with respect to all matters pertaining to the sale, taking, carrying away, or disturbing of marl, sand or gravel of commercial value, and all gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation as provided in said Chapter 3.

Sec. 14. Emergency Clause. The importance of this legislation to the people of Texas creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended.

RESEARCH REPORT

AND

LETTER OF TRANSMITTAL FROM THE EXECUTIVE DIRECTOR

Honorable Ben Ramsey, Chairman
Honorable Waggoner Carr, Vice-chairman
Members of the Texas Legislative Council

Gentlemen:

Herewith are transmitted for your consideration the basic research report and the report of the Study Committee on Submerged Areas. The official Study Committee report will be presented to the Council at its meeting on December 19, 1958.

The request for the Council to undertake this study was made by the House of Representatives of the 55th Legislature in H. S. R. No. 441. Specifically, the Council was asked "to make a study of the problems involved in the administration, disposition, and control of submerged areas and to submit to both Houses of the 56th Legislature a written report of its findings and recommendations."

State officials and agencies cited in the resolution -- the Governor of Texas, the Commissioner of the General Land Office, and the Game and Fish Commission -- rendered excellent cooperation to the Study Committee and the staff in the course of this work. The Attorney General also supplied valuable assistance.

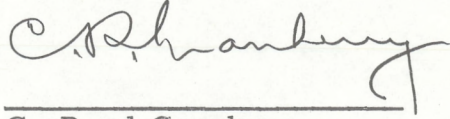
It is a pleasure to mention at this time the particular help of: Land Commissioners J. Earl Rudder and Bill Allcorn; the late Mr. Dennis A. Wallace, former Chief Clerk of the General Land Office, and his successor, Mr. A. T. Mullins; Mr. Jack Giberson, Director of the Legal Division, General Land Office; Dr. Gordon McNutt, Secretary of the School Land Board; Mr. H. D. Dodgen, Executive Secretary of the Game and Fish Commission, and Mr. James H. Rogers and Mr. J. Arthur Sandlin, Assistant Attorneys General.

The Study Committee held an open meeting at Corpus Christi on June 6, 1958, at which valuable statements bearing upon submerged land problems were presented. Persons appearing on the agenda included: Representative L. DeWitt Hale, author of H. S. R. No. 441; Dr. W. Armstrong Price, Consulting Geologist and Oceanographer; Mr. M. Harvey Weil, representing the Corpus Christi Chamber of Commerce and the Nueces County Navigation District, and several county, municipal, and Navigation District officials, property owners, sportsmen, and other interested citizens.

Legislative Council staff work on this project was done by Mr. William B. Wilmot, Assistant Director for Legal Affairs, and Dr. Earl B. Braly, Assistant to the Director. We hope this report will be of service

to members of the 56th Legislature and to others who are interested in the tremendous economic and recreational future of the Texas Gulf Coast area.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "C. Read Granberry". The signature is written in dark ink and is positioned above a horizontal line.

C. Read Granberry
Executive Director

TABLE OF CONTENTS

SUMMARY

CHAPTER I:	A Brief Background Sketch of Texas' Problems Concerning Submerged Areas and Tidelands	1
CHAPTER II:	Description of Submerged Areas on the Texas Gulf Coast	6
CHAPTER III:	State Policy with Respect to Submerged Areas	13
CHAPTER IV:	The Need for Legislative Action	25
APPENDIX A:	Statement of the Texas Game and Fish Commission	
APPENDIX B:	Statement of Dr. W. Armstrong Price, Consulting Geologist and Oceanographer, Corpus Christi	

SUMMARY

Tidelands

In Texas, the phrase "submerged areas" usually has connotations of the dispute between this State and the Federal government over ownership of the oil-producing tidelands which lie between the shore and three miles or three leagues from the shore line. This study is not primarily concerned with the tidelands controversy which led to a famous United States Supreme Court decision in 1947, was partially settled by the Submerged Lands Act of 1953, and continues in the Supreme Court of the United States to this day. The present report is focused chiefly upon the submerged lands which have potential uses other than mineral development; the problems involved in the administration, control, and disposition of these areas form the basis of this study.

Description of Submerged Areas

There are 4,145,674 acres of submerged land owned by the State of Texas in the zone extending from privately-owned property to the three-league limit historically claimed as the seaward boundary. Of this total, 2,608,774 acres lie within the marginal sea area reaching three leagues out from the low-water mark along the shore of the open Gulf. The remaining 1,536,900 acres are made up of beach areas, the islands in coastal waters, and the lands beneath the bays, inlets, and other inland waters. Only a small part of the total acreage consists of lands that are above water all or part of the time, and 63 per cent of the land which is being discussed here lies offshore under the waters of the Gulf of Mexico.

Lands in the submerged areas are considered according to four categories:

1. The beaches and other lands lying between the high-tide and low-water marks which are subject to the daily ebb and flow of the tides. The question of how wide or narrow these beaches (traditionally reserved for the use and benefit of the general public) may be is still pending in the case of Luttes v. State in the Supreme Court of Texas.
2. Numerous islands, large and small, natural and man-made, dot the Texas Gulf Coast. The sandy islands beaches fronting the Gulf are attractive recreational sites. Much of the best island property now is privately owned -- as a result of various legislative measures enacted over more than a hundred years -- but a 90-mile stretch of Padre Island is under consideration by the Federal government for use as a National Park. Eighty-one smaller islands, with 21,802

acres, are located in the several counties along the coast. Some of these islands possess high latent value as recreational, residential, commercial and industrial property.

3. The land underneath the bays, inlets, lagoons, and other bodies of water could be used in their present condition for the erection of wharves and piers, or, by means of dredging and filling, they could be adapted for commercial, industrial, or residential developments. Navigation Districts now have control of much of this type of property.
4. The land between the low-water mark on the open Gulf and the outer boundaries of the State is at present regarded mostly as an oil and gas exploration area.

State Policy

For more than 50 years, Texas Land Commissioners have been requesting legislative clarification which would give to some agency of the executive department sufficient authority to sell and lease the submerged areas; the outer zone, which is of interest chiefly because of deposits of oil, gas, and other minerals, is regulated by a workable body of law, but the other submerged areas which are desirable for commercial, industrial, and recreational uses are not adequately covered by statutes. Existing laws and pertinent court decisions are reviewed in this report.

Need for Legislative Action

The need for additional statutory provisions under which an agency of the State could manage the submerged areas is apparent from six points of view: (1) riparian or littoral property owners, (2) coastal county and city governments, (3) Navigation Districts, (4) commercial and recreational needs, (5) Federal-State relations, and (6) the recurring question of State administrative authority. This report mentions various possible solutions, including: creation of a new agency, establishment of a new division in the General Land Office, and the formation of local coastal authorities.

CHAPTER I

A BRIEF BACKGROUND SKETCH OF TEXAS' PROBLEMS CONCERNING SUBMERGED AREAS AND TIDELANDS

This study has its origin in H. S. R. No. 441, passed by the House of Representatives of the 55th Legislature.¹ The resolution requests that the Texas Legislative Council study the problems involved in the administration, disposition, and control of the State-owned submerged areas along the Texas Gulf coast and recommend to the Legislature such additional laws as are considered necessary to accomplish the following purposes:

- (1) define properly the policy of the State with regard to its submerged areas,
- (2) detail the authority and responsibility of the General Land Office in administering, selling, leasing, and controlling such lands, and
- (3) define any limitations and restrictions that should be imposed upon the use of the submerged areas by anyone permitted by law to acquire an interest therein.

It appears obvious from a reading of the resolution that its sponsors believed existing policy with respect to State-owned submerged lands to be inadequate for meeting present-day problems and that legislation is needed to provide authority for the Commissioner of the General Land Office to sell or lease these lands and to regulate and administer them.

Submerged Areas Defined

The resolution asking the Council to make this study uses the term "submerged areas" in referring to the State-owned lands which are the subject of inquiry. Broadly constructed, this designation would include not only the actual shore areas which are washed by the daily ebb and flow of the tides and the lands beneath the inland waters (consisting of bays, inlets, lagoons, and similar bodies of water) but also the lands in the open Gulf beneath the marginal sea² which in recent years have become commonly -- though some-

¹House Journal, 55th Leg., Reg. Sess., 1957, pp. 2441, 2966.

²The term "marginal sea" as used generally throughout this report means that part of the sea which lies between low-water mark and the seaward historical boundary of the littoral state, which in the case of most coastal states is determined by measuring outward three nautical miles from low water mark or from the seaward limit of a bay, inlet or other inland water. In the case of Texas, the historical boundary is generally considered to be situated three leagues or approximately ten and one-half miles from shore.

what inaccurately -- known as the tidelands.³ In addition, islands, both natural and man-made, might be included as submerged areas.

There is ample language in the resolution, however, to support the conclusion reached by the Legislative Council's Study Committee: that the Legislature, in asking for the study, was primarily interested in the State-owned submerged areas and islands which have potential use and value in the commercial, industrial, recreational, and residential development of the Texas coast. The lands beneath the marginal sea, except possibly those immediately adjacent to the shore, are of value chiefly as potential sites of oil and gas production. The existing statutes regulating the leasing of tidelands for oil and gas exploration and production are detailed and generally held to be adequate. Consequently, the Study Committee directed the Legislative Council staff to devote its attention primarily to a consideration of the present State policy concerning the submerged lands and islands which appear to have feasible uses other than mineral development and to an examination of the problems involved in the administration, disposition, and control of these areas.

The Tidelands Controversy

Although, under the above interpretation of the resolution, much of the land constituting the tidelands might be considered outside the scope of the study, it is probable that a brief review of the holdings of the United States Supreme Court in the tidelands cases and the resulting Submerged Lands Act⁴ passed by Congress will provide background information helpful in understanding some of the problems considered in detail later in this report.⁵ It also will serve to distinguish between the problems usually connoted by the term tidelands and those under specific consideration here.

The Supreme Court of the United States in June, 1947, handed down its decision in the case of United States v. California,⁶ which involved conflicting claims of the Federal government and California to the submerged lands of the marginal sea along the coast of that State. The court held that: "California is not the owner of the three-mile marginal belt along its coast, and that the Federal government rather than the State has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil." Three years later, in cases

³Technically, the term "tidelands" properly refers only to the land between the lines of ordinary high and low tides, covered and uncovered by the ebb and flow thereof.

⁴Public Law 31, Ch. 65, 83rd Cong., 1st Sess.

⁵Ernest R. Bartley, The Tidelands Oil Controversy: A Legal and Historical Analysis (Austin, University of Texas Press, 1953).

⁶332 U. S. 19.

involving similar disputes as to the title of submerged lands along the coasts of Texas and Louisiana, the Supreme Court adhered to the principle of Federal paramount rights enunciated in the California case.⁷

It is not surprising that, following the decisions in these cases, a strong move got under way in Congress to restore to the states control over the marginal seas out to their historic boundaries. This movement culminated in the enactment by Congress of the Submerged Lands Act, which the President signed into law on May 22, 1953. Coastal states had for a century and a half prior to the tidelands decisions exercised almost complete control over these areas, subject only to the powers delegated specifically to the Federal government by the Constitution. The states had regulated fishing and fisheries,⁸ made grants or leases of such lands to private individuals and corporations, and even executed leases to the Federal government itself. Cases were filed and prosecuted in court involving State interests in these lands,⁹ and laws were passed defining the extent of these interests.¹⁰

The purposes for which the lands had been leased or granted were varied. They included, among others: the development of port and harbor facilities; ship channels; land reclamation projects; the construction of breakwaters, wharves, and docks, and the exploration for and production of oil, gas, and other minerals. In short, from the time the original Colonies declared and won their independence from England, the lands and waters of the marginal sea had been considered and dealt with by the littoral states as their property. The first 13 states based their claim upon the theory that each State succeeded to the title of the Crown in the tidewaters within its territorial limits, which extended three miles seaward from low-water mark. States which later joined the Union based their claims to coastal waters on the theory that they were admitted on an equal footing with the original states and, further, that an essential element of State sovereignty thus protected was the right of a State to be secure in its ownership of the lands beneath its navigable waters.

Texas' claim to the tidelands was considered to be even stronger than those of the former Colonies because it was, in fact, an independent nation from 1836 to 1845. When Texas joined the Union, it did so pursuant to a

⁷United States v. Texas, 339 U. S. 707; United States v. Louisiana, 339 U. S. 699.

⁸Tex. Civ. Stat. (Vernon), Art. 4026, declares "the products of the waters and bottoms" of "all that part of the Gulf of Mexico within the jurisdiction of the State" to be the property of the State of Texas.

⁹See Galveston v. Menard, 23 Tex. 319, in which the Supreme Court of Texas ruled that a grant of land in Galveston Bay below the low-water mark made while Texas was a Republic was a valid grant.

¹⁰See Tex. Civ. Stat. (Vernon), Arts. 4026, 5416, and 5415a.

Joint Resolution¹¹ which expressly provided that it should retain all of the vacant and unappropriated lands within its territorial limits and also must continue to be responsible for its public debt. Four months after annexation, the Texas Legislature on April 29, 1846, by Joint Resolution,¹² in effect reaffirmed its jurisdiction over the marginal sea area. The Legislature declared that the exclusive right to the jurisdiction over the lands included in the limits of the late Republic of Texas¹³ was vested in and belonged to the State, excepting only such jurisdiction as was vested in the United States by the Constitution or by the provisions of annexation.

The principal objective accomplished by the Submerged Lands Act of 1953 was to vest in the states title to the lands beneath the navigable waters within their respective boundaries and to declare their right to "manage, administer, lease, develop, and use" these lands and the natural resources thereof in accordance with State law. The term, "lands beneath navigable waters," as applied to tidal water, was defined in the Act to mean:¹⁴

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles.

Also included within the meaning of the term, "lands beneath navigable waters," were "all filled in, made, or reclaimed lands" which were formerly lands beneath navigable waters.

It is interesting to note that, in defining "lands beneath navigable waters," the landward limits were set at the line of mean high tide, which is the line

¹¹U.S.Stat. 797.

¹²Gammel's Laws of Texas 1461.

¹³The coastal boundary of the Republic had been defined by an Act of the Congress of the Republic as "beginning at the mouth of the Sabine river and running west along the Gulf of Mexico three leagues from the land to the mouth of the Rio Grande." See Gammel's Laws of Texas 1193 (December 19, 1936).

¹⁴Sec. 2.(a)(2), Public Law 31, Ch. 65, 83rd Cong., 1st Sess. "Coastline" is defined as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." See Sec. 2(c).

recently announced by the Supreme Court of Texas¹⁵ as marking the boundary between State-owned submerged land and privately-owned lands adjacent to the shore. Since a motion for rehearing is pending, however, the decision is subject to change. The line of mean high tide is accepted in most states as establishing the limits of the shore.

It should also be noted that Congress unquestionably recognized in the Submerged Lands Act the possibility that the boundaries of some states bordering on the Gulf of Mexico might extend seaward more than three geographical miles if such boundaries were in existence at the time when these states entered the Union.¹⁶ A limit is set in the Act, in that the terms "boundaries" or "lands beneath navigable waters" cannot be construed as extending from the coastline more than three marine leagues¹⁷ into the Gulf of Mexico.¹⁸

¹⁵Luttes v. State, not yet reported in South Western Reporter; see The Texas Supreme Court Journal, Vol. 1, No. 38, pp. 478-497, and Vol. 2, No. 11, pp. 105-111.

¹⁶See Secs. 4, 2(a)(2) and 2(b), Public Law 31.

¹⁷One marine league is equal to 3.45 statute miles.

¹⁸Sec. 2(b), Public Law 31.

CHAPTER II

DESCRIPTION OF SUBMERGED AREAS ON THE TEXAS GULF COAST

According to figures compiled by the General Land Office, there are 4, 145, 674 acres of land owned by the State of Texas within the coastal belt bounded on the landward side by the property of littoral owners and on the seaward side by a line paralleling the coast three marine leagues out from the low-water mark. Of this total, 2, 608, 774 acres lie within the marginal sea area extending from the low-water mark along the shore of the open Gulf out to the three-league limit. The remaining 1, 536, 900 acres comprise the beach areas, the islands in coastal waters, and lands beneath the bays, inlets and other inland waters. Only a relatively small portion of the total acreage consists of lands that are above water all or part of the time, and approximately 63 per cent of the land in question lies offshore under the waters of the Gulf of Mexico.

For the purpose of this study, lands in the submerged areas have been divided into several categories based upon topography and potential economic utilization. The first of these groups consists of the beaches and other lands lying between the high-tide and low-water marks. These narrow strips of land, subject to the daily ebb and flow of the tides, vary considerably in width and physical characteristics as well as in the probable uses to which they could be put.

Along the coast fronting on the open Gulf are miles and miles of sandy beaches ideal for surf bathing and other recreational pursuits. Although there are numerous beaches on the bays, much of the land area which borders the inland waters consist of mud flats and marsh lands which are not suitable for bathing or other recreational purposes. Generally speaking, any practical utilization of the beach and foreshore areas by private interests would seem to be necessarily linked with the development and use of the adjoining uplands.

The line of mean high tide marks the shore line or the boundary between State-owned submerged lands and the property of littoral owners of the uplands, under Common Law. For many years, it was generally considered that a different rule for determining this boundary applied in cases when the upland estate was founded on a Civil Law grant as distinguished from a Common Law grant.¹ A recent decision of the Texas Supreme Court would seem, however,

¹This belief was based upon language appearing in Texas Supreme Court decisions indicating that under Civil Law the rule was that private ownership of land along the coast stops at the line of the highest tide in winter (City of Galveston v. Menard, 23 Tex. 349; Galveston City Surf Bathing Company v. Heidenheimer, 63 Tex. 559; Heard v. Town of Refugio, 129 Tex. 349) or the highest tide of the whole year (State v. Balli, 144 Tex. 295).

to have settled the question in favor of the adoption of a uniform rule. In Luttes v. State,² the court held that, irrespective of whether a Common Law or Civil Law grant were involved, the line of "mean high tide" would mark the boundary between private and State-owned lands. A second motion for re-hearing was pending in this case following opinions rendered on June 18, 1958, and December 10, 1958, leaving the possibility open that the court might change its earlier ruling.

Another case of State-owned land included in the submerged area designation consists of the islands (both natural and man-made) located in the inland waters and along the coast in the open Gulf. Much of the land constituting the large islands which parallel the coast of the Texas mainland has been granted to private interests and is no longer owned by the State except for the shore areas lying between high-tide and low-water marks. These sandy island beaches fronting on the blue waters of the Gulf of Mexico are among the finest anywhere and are becoming increasingly popular as a recreation place not only for Texans but for visitors from other states as well. Padre Island, the largest of these, was the subject of a Mexican grant in 1829 and ownership of much of the land on the other large islands has passed out of State control by virtue of special legislation enacted down through the years.³

Considerable interest has developed in the past few years concerning the possible designation of Padre Island as a National Park. In 1955, a sea-shore recreation area survey conducted by the National Park Service recognized the value of the island -- the largest remaining unexploited coast line in the nation -- for park purposes. A bill was introduced in the 85th Congress⁴ to authorize the Secretary of the Interior to acquire by gift, purchase, transfer, or otherwise the land for such a park, provided the Texas Legislature approved such action.

Aside from the major islands just mentioned, there are a great many small natural islands located in the bays, inlets, and arms of the Gulf of Mexico within tidewater limits which remain the property of the State. A recent survey made by the General Land Office disclosed that there are 81 of these islands with a total area of approximately 21,802 acres. The islands

²Case not yet reported in South Western Reporter; see The Texas Supreme Court Journal, Vol. 1, No. 38, pp. 478-497, and Vol. 2, No. 11, pp. 105-111.

³For example, see 1 Gammel's Laws of Texas 1130 (December 9, 1836) concerning sale of the east end of Galveston Island to one Michael B. Menard for \$50,000.

⁴Senate Bill 4064; it was referred on June 27, 1958, to the Committee on Interior and Insular Affairs, and did not pass before adjournment of the 85th Congress.

constituting a little more than half of this acreage lie in Calhoun and Kennedy Counties, and the remainder are located in eight other coastal counties. A tabulation of the size, number, and location of these islands is presented on the following pages. It should be noted that the land owned by the State on the large islands fronting on the open Gulf is not included in these computations; also omitted are spoil banks resulting from dredging operations.

STATE-OWNED ISLANDS

Cameron County

Los Bancos de en Medio Island on East side -	
South part Laguna Madre	65 Acres
Horse Island	675 Acres
Rattle Snake Island	50 Acres
Yuca Island	45 Acres
Green Island - (L. 41669)	50 Acres
McGilvery Island	50 Acres
El Morro	17 Acres
Three Island - (L. 41669)	155 Acres
#1 one mile SW of main 3 Is.	20 Acres
#2 two and one half miles SW of main 3 Is.	35 Acres
#3 three miles SW of main 3 Is.	12 Acres
9 small Islands, close to Padre Island	70 Acres
North point island	25 Acres
LaPunta Larga	8 Acres
One Island	30 Acres
Los Tanques	20 Acres
Group East - Los Bancos de en Medio	<u>330 Acres</u>
Total	1657 Acres

Willacy County

Deer Island	75 Acres
Josephine Island #1 to 6	310 Acres
A, B, C, D, E, Islands (South of Josephine)	165 Acres
Group of Islands North of Josephine	150 Acres
Group of Islands A, B, and C, North of Port	
Mansfield on West Side Laguna Madre	300 Acres
1 Island East of Port Mansfield close to Padre Island	<u>160 Acres</u>
Total	1160 Acres

Kennedy County

Group of Islands A to G close to Padre Island	1870 Acres
Group #1 on West side Laguna Madre	210 Acres

State - Owned Islands - Continued.

Kennedy County - continued

Group #2 on West side Laguna Madre	110 Acres
Mesquite Rincon Island	2628 Acres
Southeast Point Island	112 Acres
Banderia Point Island	380 Acres
Group #3	140 Acres
Group #4	120 Acres
El Toro	227 Acres
Cuba Island	17 Acres
Potrero Cortado on West side Laguna Madre	<u>350 Acres</u>
Total	6164 Acres

Kleberg County

South Bird Island	55 Acres
North Bird Island	30 Acres
Group #1	330 Acres
Group #2	<u>380 Acres</u>
Total	795 Acres

Nueces County

Crane Island	8 Acres
Hog Island	60 Acres
Harbor Island (See Map 9A)	1192 Acres
Lydia Ann Island (Leased to National Audubon Society)	170 Acres
Ransom Island (Leased to City of Aransas Pass)	971 Acres
Unnamed Island A-(one mile N. of Ransom Island)	<u>60 Acres</u>
Total	2461 Acres

Aransas County

Mud Island (Aransas Bay)	485 Acres
Tally Island (Red Fish Bay)	200 Acres
Taylor Island	350 Acres
Goose Island (Aransas Bay)	110 Acres
Dunham Island	30 Acres
Roddy Island	77 Acres
Ayers Island	80 Acres
Second Chain of Islands (Leased to National Audubon Society)	20 Acres
5 unnamed Islands (Aransas Bay)	40 Acres
Deadman Island	25 Acres
Rattlesnake Island	<u>145 Acres</u>
Total	1562 Acres

State-Owned Islands - Continued.

Calhoun County

2 Islands SE of 2nd chain of Islands	170 Acres
Grass Island #1 (Espiritus Santo Bay)	190 Acres
Long Island	255 Acres
First chain of Islands (San Antonio - Espiritus Santo Bay)	25 Acres
Steamboat Pass Island	150 Acres
Vanderveer Island (Espiritus Santo Bay)	418 Acres
Grass Island #2 (Espiritus Santo Bay)	310 Acres
Farwell Island (Espiritus Santo Bay)	25 Acres
Dewberry Island (Espiritus Santo Bay)	980 Acres
Blackberry Island (Espiritus Santo Bay)	540 Acres
Bayucos Island	1152 Acres
Turnstake Island (San Antonio Bay)	20 Acres
2 Islands (East of Rattlesnake Island on N. of Mes. Bay)	255 Acres
Pelican Island (Pass Cavallo)	142 Acres
Spoilbank #1 (West of Long and Dewberry Islands)	<u>1264 Acres</u>

Total 5896 Acres

Matagorda County

Dressing Point Island	<u>40 Acres</u>
-----------------------	-----------------

Total 40 Acres

Brazoria County

Mud Island	1100 Acres
Bird Island (See Drum, Oyster and Bastrop Bay Map)	100 Acres
Titlum Tatlum Island (Moody's Island)	365 Acres
San Luis Island	<u>250 Acres</u>

Total 1815 Acres

Galveston County

Snake Island (S. F. 14149)	141 Acres
Shell Island (Moses Lake and Dickson Bay)	4 Acres
Island near April Fool Point	5 Acres
West Pass (NE of Eagle Point)	90 Acres
Vingtune (Trinity Bay)	5 Acres
Island West of Smith Point	<u>7 Acres</u>

Total 252 Acres

81 ISLANDS ----- TOTAL 21,802 ACRES

Many of these islands have considerable value as sites for commercial or industrial installations or residential developments; they represent a potential source of revenue for the State.⁵ There are also a substantial number of islands, spoil banks, and other dry land areas which have been built up from the submerged areas by artificial means. It is well established that such accretions resulting from the action of man rather than from natural forces remain the property of the State.⁶ These land areas also possess latent value for commercial, industrial, recreational, and residential purposes.

A third category of submerged area consists of lands underneath bays, inlets, lagoons, and similar bodies of water lying within the tidewater limits. The surface estate in this type of submerged land at certain points would be valuable as sites for such improvements as wharves and piers. In many places it might be economically feasible to reclaim these lands adjacent to the shores by means of dredging and filling operations and thus create dry land areas which could be used for commercial, industrial, or residential developments.⁷ In the past, Navigation Districts have frequently acquired this kind of submerged land from the State and have created valuable industrial and commercial locations on spoil banks resulting from ship channel and harbor dredging activities. Under present law, Navigation Districts are authorized to purchase "any lands and flats belonging to said State, covered or partly covered by the waters of any of the bays or other arms of the sea, . . . with the right to dredge out or to fill in and reclaim said lands or otherwise improve the same; and the Commissioner of the General Land Office is hereby authorized and directed to sell the same, . . . at the price of one dollar (\$1.00) per acre."⁸ This law has been interpreted as precluding any discretionary action whatsoever by the Land Commissioner with respect to granting patents applied for by a Navigation District if he finds that the District has been created according to law.

The remaining class of submerged land is that lying between the low-

⁵The General Land Office receives numerous inquiries from private interests concerning the availability of these islands for sale or lease.

⁶Loreno v. Crawford Packing Company, 175 S. W. 2d 410; Landry v. Robinson, 219 S. W. 819; City of Galveston v. Mann, 143 S. W. 2d 1028; Crary v. Port Arthur Channel-Dock Company, 47 S. W. 967.

⁷In Florida, a considerable amount of extremely valuable land has been reclaimed. Bulkheads are constructed out in the water and then dredging operations are carried out. Soil taken from beneath the water is deposited back of the bulkhead lines.

⁸Tex. Civ. Stat. (Vernon), Art. 8225. This statute also provides that: "If the Commissioner, . . . is satisfied that the applicant is a Navigation District created as hereinbefore provided, a patent shall then be issued to such Navigation District."

water mark on the coast fronting on the open Gulf and the outward historic boundaries of the State. Whether that boundary will ultimately be established at three marine leagues, as contended by the State of Texas, or three miles, in accord with the claim of the Federal government, is now open to question; several pertinent questions are now pending in cases before the United States Supreme Court. As stated earlier, this study is not primarily concerned with this variety of submerged land, since its importance stems mainly from its oil and gas deposits; existing Texas statutes are believed to be generally adequate for the tidelands.

CHAPTER III

STATE POLICY WITH RESPECT TO SUBMERGED AREAS

The resolution calling upon the Legislative Council to make the present study points to the need for a re-examination of "the policy of the State of Texas with regard to . . . submerged areas."¹ The growing interest in the recreational and commercial development of the Texas coastal area -- as evidenced by the numerous inquiries received by the General Land Office concerning the sale or lease of submerged lands and by the present lack of statutory authority for any State agency to sell or lease these lands, except in certain restricted instances -- is cited in the resolution as emphasizing the need for a reappraisal of present State policy.

What, then, has been the State's policy in the past with respect to the management and utilization of its submerged areas? What factors have been instrumental in shaping that policy? The answers to these questions must necessarily be found in the laws enacted by the Legislature and in court decisions relating to these lands.

Prior to reviewing this body of law, it may be helpful to repeat the citation in H. S. R. No. 441 of the virtual absence of "statutory authority for the supervision, control, leasing or other disposition of such submerged areas" and to note that this legal deficiency has been a matter of concern to State officials and private citizens for more than half a century.

Comments of Early Land Commissioners

Land Commissioner W. L. McGaughey, in his annual report for 1892-1894, observed that the coastal region of Texas had prospects which could "scarcely be imagined" and that fortunes were "being amassed here on small holdings."² One of his successors, Commissioner John J. Terrell, reported³ in 1908 that the Texas Legislature had authorized "the sale of public domain

¹H. S. R. No. 441, House Journal, 55th Leg., Reg. Sess., 1957, pp. 2441, 2966.

²Report of the Commissioner of the General Land Office, State of Texas, September 1, 1892, to August 31, 1894 (Austin, Ben C. Jones & Co., 1894), p. 4.

³Biennial Report of the Commissioner of the General Land Office, Beginning September 1, 1906, and Ending August 31, 1908 (Austin, Von Boeckmann-Jones Company, 1908), p. 8. Commissioner Terrell made the eloquent declaration in the same report that: "If the public wants the land for homes they should have it," since "one good home for one child is worth more than many ranches with a thousand cows upon every hill and in every valley."

on Mustang Island," and that \$10,764.25 had been realized from the sale of 523.5 acres, but that "the statute was either so clumsily drawn or was so jumbled in its passage that its provisions are not clear nor was there any direction given as to what should be done with the proceeds."

For more than a decade, Commissioner J. T. Robison voiced the recommendation⁴

that a statute be enacted providing for determining the line on the coast, or tide-water, that marks the limit of private ownership in the soil on the mainland, and the beginning of the public's property on the Gulf or tide-water side. I suggest that the line known as mean high tide, as unaffected by extraordinary influences, would probably be the most equitable. If such authority were conferred on some one it would seem those who should be unwilling to abide by a line so fixed relative to such one's mainland survey should be authorized to sue the State in the District Court at the seat of Government within twelve months from the date such line was established, and a failure to do so should be conclusive of all rights in respect thereto.

It would not be undue emphasis laid upon this subject if it were said to be of tremendous importance. On account of the failure of the Legislature and other agencies of the State to act favorably upon matters which I have heretofore drawn to their attention, human endeavor, aided by the forces of nature, has already so operated in a certain locality as to destroy physical conditions established by nature which were evidence necessary to establish the line of demarkation between public and private property rights. That tardiness or non-action has, in my opinion, already cost the public in one locality on the coast two or more million dollars. It should be stated in this connection that it has never been my desire that the legal rights of an individual should be destroyed. It would be wrong to do so. A government can not afford to treat a citizen wrong. Nor do I think the legal rights of the public should ever be given or conceded to an individual or municipality except upon a sufficient consideration. That would be a wrong against the public. No individual should have a special privilege in property that

⁴Report of the Commissioner of the General Land Office, 1918-1920 (Austin, A. C. Baldwin and Sons, 1920), pp. 22 f.

belongs to the public. My effort is to ascertain where the right and justice properly belong and then endeavor to maintain that status.

Mr. Robison reported in 1910 that, after a trip to the Gulf area, he reached the conclusion⁵

that a sound public policy would be promoted if the islands of any consequence were leased for the purpose only of permitting persons to erect such shipping or fishing piers, club and boathouses, etc., thereon as would not interfere with navigation nor free movement of commerce. These improvements might encourage the fish and oyster industry, and also possibly offer some protection to others in time of squalls, etc. But such leases should not be made so as to create a monopoly of the islands. Some islands have been leased for a term of five years at from \$2 to \$4 per acre per annum. No leases are made until after publicity and opportunity for competitive offers. The highest offer was accepted in each instance. So far no complaint has reached this Department. Since commerce is tending toward our coast more and more each year, the probabilities are the possession of the islands will become more important. Islands should not be sold but held for such purposes as the progress of the future may demand. The leasing of islands is referred to as a "policy" because it is doubtful if the statute authorizes the lease. If those in authority want a different policy they may call the Legislature's attention to the matter.

He noted in 1912 that:⁶

The deposit of spoil from dredging at several points on the coast will require legislative expression. This spoil consists of sand, shell, marl, etc., and has been and is now being deposited so as to form

⁵ Biennial Report of the Commissioner of the General Land Office, State of Texas, Beginning September 1, 1908, and Ending August 31, 1910 (Austin, Von Boeckmann-Jones Company, 1910), p. 16.

⁶ Biennial Report of the Commissioner of the General Land Office, State of Texas, Beginning September 1, 1910, and Ending August 31, 1912 (Austin, Von Boeckmann-Jones Company, 1912), p. 24.

new islands or add to reefs and small islands, and perhaps in some instances connect a privately owned island and one or more other islands which belong to the State. In such cases that element in human nature which creates the desire for gain will lead to the assertion of ownership either by right of creation or accretion. This creation and accretion by spoil deposit is in its infancy. If the policy of the State should now be written into the statutes, many vexatious controversies might be avoided in later years. The State should assert its ownership over such formation. It is destined to become very important as the development of our coast progresses.

Court Decisions Relating to Submerged Lands

It has long been held by the courts of this State that bays, inlets, and other waters of the Gulf coast subject to the ebb and flow of the tides are "navigable waters" and that the lands covered by them belong to the State and constitute public property held in trust for the use and benefit of all of the people.⁷ It is also well established in Texas that the lands under navigable waters have been withdrawn (by virtue of the trust imposed upon the State with respect to its title to them) from the operation of the statutes conferring upon the Land Commissioner the authority to sell or lease public school lands. Such lands therefore can be granted or sold only upon the express authorization of the sovereign.⁸ This does not mean that the Legislature cannot authorize the Land Commissioner or some other executive to grant, lease, or sell this property. In fact, a number of statutes have been enacted granting such powers to executive officers or agencies.⁹

The Texas Supreme Court has held that the Legislature not only has the power to make or authorize the making of a sale or grant of submerged lands but that it also may authorize an individual or a group of persons to

⁷Loreno v. Crawford Packing Company, 175 S. W. 2d 410; City of Galveston v. Mann, 143 S. W. 2d 1028; Landry v. Robinson, 219 S. W. 819; City of Galveston v. Menard, 23 Tex. 349; Crary v. Port Arthur Channel-Dock Company, 47 S. W. 967.

⁸See cases cited above in footnote 7, and De Meritt v. Robinson, 116 S. W. 796; Hymes v. Packard, 45 S. W. 562; Diversion Lake Club v. Heath, 86 S. W. 2d 441; Rosborough v. Picton, 34 S. W. 791; Heard v. Town of Refugio, 103 S. W. 2d 728.

⁹For example, Tex. Civ. Stat. (Vernon), Art. 8225 authorizes the Commissioner of the General Land Office to sell submerged lands to Navigation Districts; Arts. 1483 et seq. authorize the Land Commissioner to sell lands to deep-water corporations; Art. 5421C-3 authorizes the School Land Board and the Land Commissioner to execute oil and gas leases.

take exclusive possession of such lands and erect improvements thereon.¹⁰ In the case of Loreno v. Crawford Packing Company,¹¹ the court made the following statement with respect to the State's policy in distinguishing between ordinary public lands and those covered by navigable waters:

The reason for this distinction between ordinary public lands and those covered by navigable waters is obvious. It has always been the policy of the State to dispose of ordinary public lands to settlers, and under usual circumstances it may be presumed that the State has parted with title; but navigable waters and streams are reserved to the State for the use of the public generally, and no one should have an exclusive right to the enjoyment of such property, unless and until the Legislature has granted such right. Therefore it has been the policy of the State to retain title to lands covered by navigable waters, and the presumption is there has not been any act of the State divesting itself of title.

In this case, the court quoted at length from the early Supreme Court decision in the case of City of Galveston v. Menard,¹² which explained the reasons behind the State's policy on submerged land and the power of the Legislature to dispose of it:

From the very nature of the property, which the government possesses in its navigable water, and bays, and bayshores, it can ordinarily be best appropriated, by devoting it to public use; and by not granting away exclusive right to it to any one. Because every one can use it, and derive advantage from it, and no injury is done to each other in its enjoyment. It often happens, however, that the public use and enjoyment of this species of property may be promoted and increased by allowing portions of it to become private property; as for wharves, docks, and the like, in harbors and ports. If the government could not exercise this right, in severing this common property, and appropriating portions of it to private use, it would not only curtail the ordinary powers, which every nation has for self-development, but it would presuppose a deficiency, in the sovereign power, to control or dispose of what belongs to it. . . . The legislatures of the several states may grant it, if

¹⁰Loreno v. Crawford Packing Company, 175 S. W. 2d 410.

¹¹Ibid.

¹²23 Tex. 349.

not previously appropriated by grant, prescription, or otherwise; provided, the exercise of an exclusive right, thus granted, does not infringe upon the rights of the government of the United States in its power to regulate commerce with foreign nations and among the several states.

These pronouncements of the Texas Supreme Court describe the basic concepts which have shaped the past and present policy of the State with respect to its submerged lands. Briefly stated, the policy is: that State-owned submerged areas should be held for the use and benefit of all of the people, and that private rights in these lands should be limited, to be granted only upon specific authorization of the Legislature.

Authority of the Executive Department over Submerged Lands

To what extent has the Legislature seen fit to grant, or authorize executive officers or agencies to grant, such lands to private parties, thus denying or restricting their use by the general public? Mention already has been made of the fact that, down through the years, the Legislature has, by the enactment of special laws, granted to private interests much of the land constituting the larger offshore islands. In addition, many similar legislative actions have been taken to sell or cede other State-owned submerged lands, or interests therein, to cities, counties, and Navigation Districts, as well as to private interests.

Besides the special laws referred to above, the Legislature has from time to time, by general law, delegated to the General Land Office or to other executive agencies the authority to sell or lease submerged lands or to grant some interest in them to certain types of purchasers or lessees for designated purposes. The most important of these statutes currently in effect authorize the Land Commissioner: (1) to sell submerged lands to Navigation Districts¹³ and to deep-water corporations,¹⁴ (2) to lease submerged areas for the production of oil and gas, coal, lignite, sulphur, salt, and potash;¹⁵ (3) to grant prospecting permits and to lease submerged areas for uranium and other minerals (excepting those just listed under the second category);¹⁶ (4) to grant easements across submerged areas for rights of way for telephone,

¹³Tex. Civ. Stat. (Vernon), Art. 8225.

¹⁴Tex. Civ. Stat. (Vernon), Art. 1483 et seq.

¹⁵Tex. Civ. Stat. (Vernon), Art. 5421C, Sec. 8. The Land Commissioner's authority to execute such leases is subject to certain powers resting in the School Land Board.

¹⁶Tex. Civ. Stat. (Vernon), Art. 5421C-7.

telegraph, electric transmission, and power lines, for oil, gas, and sulphur pipelines, and for irrigation canals and water pipelines;¹⁷ (5) to grant easements or leases for electric substations, pumping stations, loading racks, and tank farms to be located on State lands, ¹⁸ and (6) to issue permits for geological, geophysical and other surveys and investigations of unleased areas within tidewater limits, ¹⁹

The School Land Board is given by statute certain duties and responsibilities in connection with the leasing of the mineral estate in submerged areas, including the setting of dates for leasing and the determination of the prices at which the lands shall be leased, ²⁰ The Board is further vested by statute with the responsibility for granting easements or surface leases of submerged lands to the Federal government for defense purposes, ²¹

Other Statutes Relating to Submerged Areas

The statutes which have been cited are the principal general laws placing responsibilities and duties in the executive department of the government with respect to the granting of interests in State-owned submerged areas. Since this study is primarily concerned with the surface estate in these lands, the laws pertaining to the leasing of the mineral estate need not be discussed here. There are other laws which should be mentioned, however, since they relate to the acquisition of interests in submerged lands belonging to the State. They fall generally into three classes: (1) those authorizing counties and cities to construct and maintain public improvements, (2) those allowing counties, cities, and certain political subdivisions of the State to engage in public works, and (3) those granting easements or rights of way over State lands to certain quasi-public corporations.

As indicated, one class of laws authorizes cities and counties to construct and maintain certain types of public improvements; the right to use the necessary public lands for such purposes is granted by this type of statute. Article 11 (Sections 7 and 8) of the Texas Constitution authorizes counties and cities bordering on the Gulf of Mexico to levy and collect taxes for the construction of seawalls, breakwaters, or works for sanitary purposes and empowers the Legislature to aid in such improvement by donating portions of the public domain for such purposes. Pursuant to this constitutional grant of power, the Legislature has, by statute, ²² authorized various counties and

¹⁷Tex. Civ. Stat. (Vernon), Art. 6020a.

¹⁸Ibid.

¹⁹Tex. Civ. Stat. (Vernon), Art. 5382b.

²⁰Tex. Civ. Stat. (Vernon), Arts. 5421C-3 and 5421C-5.

²¹Tex. Civ. Stat. (Vernon), Art. 5421C-4.

²²Tex. Civ. Stat. (Vernon), Art. 6830 et seq.

cities to construct and maintain seawalls, breakwaters, levees, dikes, floodways, and drainways and has granted them the right to use and control for such purposes as much of the land and sea bottom below high tide as may be considered necessary by the county commissioners court or the governing body of the city.²³

The second group of laws consists of statutes authorizing counties, cities, and certain political subdivisions of the State to engage in specified public works and granting them the power of eminent domain to acquire both private and public property. For example, any city located within a Navigation District containing a deep-water port has been empowered to issue revenue bonds for certain enumerated purposes, including:²⁴ (1) the construction, maintenance, and operation of toll bridges over -- or tunnels under -- any stream or inlet or arm of the Gulf of Mexico or port channel in order to connect streets or thoroughfares within or leading to the city; (2) the acquisition, reclamation, reconstruction, elevation, or filling of any submerged lands or lowlands along the city water front; (3) the construction of seawalls, breakwaters, and shore protections, and (4) the construction, reconstruction, maintenance, operation, and dredging of any channel or boat basin in connection with a port. Each city covered in this Act has been expressly given the right of eminent domain "for the purpose of enabling such city to acquire the fee simple title, easement, or right of way to, over, and through any and all lands, water, or lands under water, private or public. . . necessary in the constructing and maintaining. . . of the improvements herein authorized."²⁵

The third classification of laws is made up of statutes which grant easements or rights of way over State submerged areas or other State lands to certain private corporations which are quasi-public in character. Included among such corporations are those created to construct and operate toll roads,²⁶ causeways across salt water bays, inlets, or arms of the Gulf of Mexico,²⁷ channels and docks,²⁸ and railroads.²⁹

It should be noted that the three groups of laws which have been described have a common characteristic -- the purpose or use for which the interest in State lands was granted was one which would serve or benefit the public generally rather than exclusively private interests. It seems fair to

²³Another example of this type of statute is Tex. Civ. Stat. (Vernon), Art. 6795b-1, which grants easements and rights of way for causeways, bridges, and tunnels in Gulf coast counties having 50,000 or more population.

²⁴Tex. Civ. Stat. (Vernon), Art. 1187b, Sec. 1.

²⁵Ibid., Sec. 9.

²⁶Tex. Civ. Stat. (Vernon), Arts. 1448 et seq.

²⁷Tex. Civ. Stat. (Vernon), Arts. 1466 et seq.

²⁸Tex. Civ. Stat. (Vernon), Arts. 1478 et seq.

²⁹Tex. Civ. Stat. (Vernon), Arts. 6317 and 6339.

state that all of these laws have promoted the construction of public works and have, indeed, been in the public interest and have contributed to the economic progress and development of the State of Texas.

Submerged Areas Dedicated to the Permanent School Fund

The permanent school fund as established by the Texas Constitution³⁰ did not include land under navigable waters, such as streams, bays, inlets, and other waters along the coast subject to the ebb and flow of the tides of the Gulf of Mexico. The Constitution also excluded from the permanent school fund the islands along the Gulf within tidewater limits.³¹ The Supreme Court of Texas as recently as 1943 held,³² in accord with earlier decisions,³³ that the land included in lakes, bays, and islands along the Gulf within tidewater limits are exempt from the unappropriated public domain set aside for public school purposes and that they are held in trust by the State for the use and benefit of all of the people. Accordingly, the Land Commissioner could not sell or lease such tracts as public school land.

Although the submerged areas involved in this study were not attached to the permanent school fund by the Constitution, the Legislature has from time to time dedicated (by statute) certain portions of or interests in such lands to the fund. It is interesting to note, however, that, under terms of the Permanent School Fund Settlement Act of 1900,³⁴ lands included in "lakes, bays, and islands on the Gulf of Mexico" were specifically excepted from the unappropriated domain which was set apart and granted to the school fund for the purpose of adjusting and finally settling the controversy between proponents of the fund and advocates of other State interests which grew out of the division of the public domain.

In 1919, the Legislature passed an Act³⁵ authorizing the Land Commissioner to lease for oil and gas: the unsurveyed public free school land; islands, salt water lakes, bays, inlets, marshes, and reefs owned by the State within tidewater limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas. This Act provided that the permanent school fund should be credited with royalty and other payments received from the unsurveyed school lands and with two-thirds of the amount received from the submerged area lands. Provision was made for the remaining one-third to be

³⁰Tex. Const., Art. VII, Sec. 2.

³¹City of Galveston v. Mann, 143 S. W. 2d 1028; Crary v. Port Arthur Channel and Dock Company, 47 S. W. 967.

³²Loreno v. Crawford Packing Company, 175 S. W. 2d 410.

³³See footnotes 7 and 8 above.

³⁴Acts 26th Leg., 1st Called Sess., 1900, Ch. 11, p. 29.

³⁵Acts 36th Leg., 1st Called Sess., 1919, Ch. 19, p. 51.

credited to the general revenue fund. In 1931, the law was changed³⁶ to provide that all royalties on minerals produced and all lease payments and rentals should be credited to the permanent school fund, thus abolishing the provisions noted above that one-third of the money from submerged lands be credited to general revenue. This Act also provided for the leasing of any State lands for the mining of gold, silver, platinum, cinnabar, and other metallic minerals and specified that payments received as royalties or rentals from such operations should be credited to the account of the permanent school fund.

In 1939, the Legislature created the School Land Board³⁷ and delegated to it broad powers of control and disposition of permanent school fund lands, asylum lands, and the mineral estate in all areas within tidewater limits (islands, lakes, bays, and the bed of the sea) belonging to the State. This Act also set apart and dedicated to the permanent school fund such mineral rights.

In 1941, the Legislature enacted a law³⁸ declaring the State's sovereignty along its seacoast and fixing its seaward boundary along a line 24 marine miles out and parallel to the three-mile limit. By amendment in 1947,³⁹ the boundary was extended farther seaward to the edge of the continental shelf. The 1941 Act, in addition to declaring the State's full and complete ownership of "the waters of the Gulf of Mexico, and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms, either at low or high tide, within the boundaries of Texas," also declared that "all of said lands are set apart and granted to the Permanent Public Free School Fund of the State, and shall be held for the benefit of the Public Free School Fund of this State according to the provisions of law governing the same."

By virtue of the laws just noted, both the mineral and surface estates in the submerged areas belonging to the State of Texas (except islands) have been set apart and granted to the permanent school fund. Consequently, any revenue that might be derived from the lease or sale of submerged lands (again excepting islands) would have to be paid into that fund.

Authority of the United States over Navigable Waters

The commerce clause of the United States Constitution vests in the Federal government far-reaching control over the navigable waters of all states and over the artificial canals connecting them with each other.⁴⁰ It is unlawful to construct in navigable waters any bridge, causeway, dam, or

³⁶Acts 42nd Leg., Reg. Sess., 1931, Ch. 271, p. 452.

³⁷Acts 46th Leg., Reg. Sess., 1939, Ch. 3, p. 465.

³⁸Acts 47th Leg., Reg. Sess., 1941, Ch. 286, p. 454.

³⁹Acts 50th Leg., Reg. Sess., 1947, Ch. 253, p. 451.

⁴⁰Bingham Bros. v. Port Arthur Canal and Dock Company, 126 S. W. 324.

like structure until the consent of Congress has been obtained and until plans have been approved by the Chief of Engineers and the Secretary of War,⁴¹ It is also illegal "to excavate or fill in or in any manner alter or modify the course, location, condition, or capacity of any port, roadstead, haven. . . or inclosure. . . or of the channel of any navigable water unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same."⁴²

Although the general rule is that states have control over the navigable waters located wholly within their borders -- and may enact reasonable legislation adapted to the local needs of interstate and foreign commerce in the absence of conflicting Federal laws -- the State authority may be superseded at any time by assumption of control by Congress.⁴³ Thus, whenever navigable waters entirely within a State connect with similar waters "so as to form a waterway to other states or foreign nations," they cannot be "obstructed or impeded so as to impair, defeat, or place any burden upon a right to their navigation granted by Congress."⁴⁴

In addition to the powers held by virtue of the constitutional authority "to regulate commerce," the Federal government, through its eminent domain capacity, may acquire lands for public purposes when so authorized by Congress.⁴⁵ It has been held⁴⁶ that the mere fact that land included in a Federal reservoir project is owned by a State does not constitute a barrier to the condemnation of land by the United States under its superior power of eminent domain. This is true even though a State's tax revenue may be curtailed, its natural boundaries may be affected, or its water development and conservation programs may be obstructed.

The requirement that just compensation be paid for private property taken by eminent domain for a public purpose applies only to the direct appropriation and not to resultant damages.⁴⁷ The power of Congress to regulate commerce constitutes something to which riparian or littoral property is subject; thus, the improvement of a navigable river⁴⁸ which may result in damage to a riparian owner is not interpreted as a taking of property. It has

⁴¹U. S. C., Title 33, Sec. 401. Gulf, C. & S. F. R. Company v. Meadows, 120 S. W. 521.

⁴²U. S. C., Title 33, Sec. 403. U. S. v. Brazoria County Drainage District, 2 Fed. 2nd 861.

⁴³Cooley v. Board of Wardens, 12 How. (53 U. S.) 299 (1851).

⁴⁴Harmon v. Chicago, 147 U. S. 396 (1893).

⁴⁵Chappell v. U. S., 160 U. S. 499 (1896).

⁴⁶Oklahoma v. Guy F. Atkinson Company, 313 U. S. 508 (1941).

⁴⁷Legal Tender Cases, 12 Wall. (79 U. S.) 457 (1871).

⁴⁸U. S. v. Commodore Park, Inc., 324 U. S. 386 (1945).

also been held that where the Federally-authorized dredging of a channel across a bay destroyed oyster beds the government was not obligated to make compensation.⁴⁹

⁴⁹Lewis Blue Point Cultivation Company v. Briggs, 229 U. S. 8 (1913).

CHAPTER IV

THE NEED FOR LEGISLATIVE ACTION

Texas' long and colorful historic legacy does not include specific laws with which to meet all of the mid-twentieth-century problems to be found along that dynamic and ever-changing Gulf shore line stretching from Louisiana to Mexico. This is not because of shortsightedness on the part of early Texans. Within the present decade, their foresight was vindicated when basic documents they prepared at the time of admission to the United States were examined anew and withstood the tests of the tidelands controversy. Less dramatic but constantly increasing pressures of a different kind, related more to a growing economy than to an acquisitive Federal government, are tending to make explicit legislative action necessary to protect the traditional rights of (1) the general public to use the beaches and (2) the private citizen to own, improve, and safeguard his property so long as he does not infringe upon the rights of others.

Various laws and court cases have been delineated in summary fashion in preceding chapters of this report. Examination of the body of law has indicated that no agency of the State government has been vested with sufficient authority to make either routine or policy decisions with regard to the submerged areas on the Texas Gulf coast.

Undoubtedly the experience of Land Commissioner J. T. Robison has been repeated many times; in 1910 he said that a proposal he drafted on this topic was introduced in the Legislature "some sessions ago. . . but its passage was prevented, it was believed, by the interests affected."¹ The Texas Legislative Council Study Committee on Submerged Areas learned in conferences with Land Commissioners J. Earl Rudder and Bill Allcorn that the number of inquiries as well as the economic implications behind them have been steadily increasing within the past few years.

As outlined recently by an official of the General Land Office,² the current problems

all resolve themselves into what should be done
from an administrative or legislative standpoint

¹ Biennial Report of the Commissioner of the General Land Office, State of Texas, Beginning September 1, 1908, and Ending August 31, 1910 (Austin, Von Boeckmann-Jones Company, 1919), p. 16.

² Written statement of Mr. A. T. Mullins, Chief Clerk, General Land Office, presented at public meeting of Legislative Council Study Committee on Submerged Areas, Corpus Christi, June 6, 1958. For a comparable discussion, see Report of the Commissioner of the General Land Office, 1954-1956 (Austin, General Land Office, State of Texas, 1956), pp. 14-17.

as to the disposition of these areas, considering at the same time the rights of the general public. . . I might add that these problems are multiplying rapidly in both number and seriousness, due to the fact that the Texas coast is experiencing a tremendous growth. . . from industrial. . . as well as recreational standpoints.

At a public hearing in Corpus Christi before which this statement and others³ were presented in June, 1958, the Legislative Council Study Committee obtained the reactions of individual citizens, organizations, and business interests to various problems which might be alleviated to some extent by the Legislature. The agenda included statements and questions concerning: riparian land owners; county, city, State, and Federal governments; Navigation Districts; commercial and recreational developments, and the need for State administrative authority.

Guided by such testimony, numerous letters, meetings with officials from all levels of government, and by its own deliberations, the Study Committee divided its inquiries into six topical phases: (1) the rights of riparian or littoral property owners, (2) problems involving county and city governments, (3) questions related to Navigation Districts, (4) commercial and recreational needs, (5) Federal encroachment problems, and (6) questions of State administrative authority. These will be discussed briefly, in turn.

Riparian or Littoral Land Owners

Land owners naturally wish to protect their valuable rights. When they use earth fills, walls, or other barriers designed to stop erosion of their coastal property, they may, by altering boundaries (or inducing "artificial accretion"), encroach upon State-owned lands; this adds further complications to boundary determinations which already involve complex problems. Until recently, a General Land Office official has noted,⁴ "we have always considered that the boundary between riparian and State ownership where the riparian survey is a Common Law grant to be the line of ordinary high tide, while the boundary on a Civil Law or Spanish or Mexican grant is the line of highest tide throughout the year." A case which was pending in

³See statement of Mr. H. D. Dodgen, Executive Secretary, Texas Game and Fish Commission, who later reduced his oral comments at the Corpus Christi meeting to writing; the statement is presented as Appendix A to this report. See also statement of Dr. W. Armstrong Price, consulting geologist and oceanographer, which is reproduced as Appendix B.

⁴Statement of Mr. Mullins, cited above.

late December, 1958, in the Supreme Court of Texas⁵ may make basic changes in the direction of narrowing or virtually eliminating the beaches to which the general public has access. The rule laid down by the court in opinions dated June 18, 1958, and December 10, 1958, appears to be that "mean high tide" rather than the "highest tide of the year" determines the boundary between private and State land, and no distinction may be made henceforth between Civil Law and Common Law grants. Once the legal property lines of private owners are established, they are always subject to future change by natural (as opposed to man-made) accretion and reliction.

All of this leaves the land owner in a quandary as to whether he should invest money to protect his property from washing away, and in so doing possibly leave himself open to the charge of trespassing upon State property. When citizens attempt to bring such problems to the attention of the State government, they find that no agency has authority to provide official guidance.

County and City Governments

Many coastal counties have had, and continue to have, difficulties in fixing the portions of their boundaries which extend into the Gulf of Mexico. City limits also extend into submerged areas in many cases. The respective roles and authority of the county, city, and State governments in reaching agreements on such questions probably need to be specified by law.

Navigation Districts

The present statute pertaining to Navigation Districts⁶ authorizes these special units of local government to handle navigational and related developments in orderly fashion in the public interest. As discussed in Chapters II and III of this report, Navigation Districts have broad authority and, upon payment of one dollar (\$1.00) an acre to the General Land Office, may secure patents to submerged lands. The Land Commissioner lacks discretionary power in such instances; he must grant the patents requested if he determines that the Navigation District has been formed in accordance with existing law. In many cases, the State undoubtedly could obtain considerable revenue from the sale or lease of lands to parties other than Navigation Districts, if authorized by statute to do so.

⁵Luttes v. State, not yet reported in South Western Reporter; see The Texas Supreme Court Journal, Vol. 1, No. 38, pp. 478-497, and Vol. 2, No. 11, pp. 105-111. See also discussions in Chapters I and II of this report.

⁶Tex. Civ. Stat. (Vernon), Art. 8225.

Commercial and Recreational Needs

The commercial and recreational problems which are involved in submerged areas concern all Texas citizens, either directly through participation or indirectly through financial effects upon the State government. The General Land Office has received an increasing flow of inquiries during the post-war years from families and commercial enterprises desiring to build fishing camps, docks, and hunting facilities on islands and spoil bank areas. At present there is no law authorizing the Land Commissioner or any other State official to issue any type of lease in these cases. The Legislative Council Study Committee found that this type of stalemate encourages trespassing, that it frequently lures persons into making investments to improve property to which they cannot obtain lease or title, and that the present situation is likely to become more difficult the longer it is allowed to continue.

Federal Encroachment

The Federal government has restricted large portions of the Corpus Christi Bay area and other parts of the Texas Gulf coast for the use of naval and military aviation. No Texas agency has been designated to present the State's viewpoint in such cases, and this has left the way clear for unilateral action by United States officials, through such means as "declarations of taking." In some instances, the rights of Texas citizens or commercial enterprises are affected; for example, oil exploration is impeded where Federal restrictions have been placed in effect, and this may conceivably result in unnecessarily depriving: (1) individuals or firms of legitimate profits, and (2) the State of potential tax revenues.

Administrative Authority

The Legislative Council Study Committee on Submerged Areas has directed much of its attention toward the type of administrative authority which the Texas Legislature might properly vest in some new or existing agency of the State government to fill the present legal void. At least four alternatives have been considered:

- (1) Establishment of a Submerged Area Commission that would include (ex-officio) appropriate State officials and would be similar in structure and operation to the School Land Board and the Veterans Land Board. The Land Commissioner might serve as Chairman. This new Commission would be empowered to make administrative determinations, execute leases, and generally act as referee between the State or the general public and private or commercial interests or the interests of other levels of government.

(2) Creation of a new division or department in the General Land Office to handle matters regarding submerged areas and coastal problems in general. Through it the Commissioner could develop specific administrative plans and procedures based upon broad legislative policies covering the same operations as described above for a separate Commission. In this connection, the Study Committee noted that the School Land Board might be the appropriate agency in which to establish a new division to manage the coastal areas, in view of the fact that, by tradition, money which the State of Texas receives from such transactions is set aside for the use of public schools.

(3) Formation of local coastal authorities with powers as determined by the Legislature. The State's interest in such authorities would be maintained through supervision by the General Land Office or a separate Commission.

(4) Leaving the situation as it now exists.

HD
184
T4
A53
1958a
c.2