

2022 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 114

BY REPRESENTATIVE LACOMBE

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study provisions of law, recent certain court rulings, and the feasibility of codifying certain prevailing appellate and supreme court cases that have interpreted R.S. 38:113, and to report its findings and recommendations, along with specific proposed legislation, to the legislature.

WHEREAS, R.S. 38:113 provides for the control of drainage channels and outfall canals in levee and drainage districts; and

WHEREAS, numerous court cases have referred to such control over drainage channels and outfall canals as a "legal servitude"; and

WHEREAS, in recent cases, courts have held that R.S. 38:113 grants levee and drainage districts a legal servitude over drainage channels or outfall canals within its district, provided certain requirements are met; and

WHEREAS, recently, courts have additionally held that within the exercise of the legal servitude that R.S. 38:113 authorizes, the provision does not authorize the taking or damaging of property without just compensation or due process.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study provisions of law, recent court rulings, and the feasibility of codifying certain prevailing appellate and supreme court cases that have interpreted R.S. 38:113, and to report its findings and recommendations, along with specific proposed legislation, to the legislature.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall study and consider Louisiana Attorney General Opinion No. 07-0085 (Apr. 24, 2007) and Louisiana Attorney General Opinion No. 14-0113 (Sept. 12, 2014), in addition to court cases including, but not limited to, the following:

- (1) Terrebonne Par. Police Jury v. Matherne, 405 So. 2d 314, 317 (La. 1981).

(2) Whipp v. Bayou Plaquemine Brule Drainage Bd., 476 So. 2d 1042, 1044-45 (La. App. 3 Cir. 1985).

(3) Berard v. St. Martin Par. Gov't, 2013-114 (La. App. 3 Cir. 6/15/13), 115 So. 3d 761. (La. Ct. App. 2013).

(4) Lavergne v. Lawtell Gravity Drainage Dist. No. 11, 562 So. 2d 1013, 1015-16 (La. App. 3 Cir. 1990).

(5) Ortego v. First Am. Title Ins. Co., 569 So. 2d 101 (La. App. 4 Cir. 1990).

(6) Simmons v. Bd. of Comm'rs of Bossier Levee Dist., 624 So. 2d 935 (La. App. 2 Cir. 1993).

(7) Savoy v. Bayou Plaquemine & Wickoff Gravity Drainage Dist., 2009-0686 (La. App. 3 Cir. 12/9/09), 25 So. 3d 986, 988-89.

(8) Daray v. St. Tammany Par., 2008-2135 (La. App. 1 Cir. 10-9-09), *writ denied*, 2009-2312 (La. 12/18/09), 23 So. 3d 945, 2009 WL 3255174.

(9) Carbo v. City of Slidell, 2001-0170 (La. App. 1 Cir. 1/8/03), 844 So. 2d 1, 12, *writ denied*, 2003-0392 (La. 4/25/03), 844 So. 2d 1.

(10) Williams v. City of Baton Rouge, 98-1981 (La. 4/13/99), 731 So. 2d 240, 248.

(11) Justice v. Bourgeois, 288 So. 2d 106, 109 (La. App. 4 Cir. 1974).

(12) Grayson v. Commissioners of Bossier Levee Dist., 229 So. 2d 139, 144 (La. App. 2 Cir. 1969).

(13) West v. Hornsby, 2020-0871 (La. App. 1 Cir. 2/25/21).

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit a written report of its findings and recommendations, along with specific proposed legislation, to the president of the Senate and the speaker of the House of Representatives on or before January 1, 2023.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE