



**LOUISIANA STATE LAW INSTITUTE**

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December 22, 2022

Representative Clay Schexnayder  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

Senator Patrick Page Cortez  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

**RE: HOUSE CONCURRENT RESOLUTION NO. 114 OF THE 2022 REGULAR  
SESSION**

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits its interim report to the legislature relative to drainage districts.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Holdridge".

Guy Holdridge  
Director

cc: Representative Jeremy LaCombe

email cc: David R. Poynter Legislative Research Library  
[drplibrary@legis.la.gov](mailto:drplibrary@legis.la.gov)

Secretary of State, Mr. R. Kyle Ardoin  
[admin@sos.louisiana.gov](mailto:admin@sos.louisiana.gov)

**LOUISIANA STATE LAW INSTITUTE**

**PROPERTY COMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE  
IN RESPONSE TO HCR NO. 114 OF THE 2022 REGULAR SESSION**

**Prepared for the  
Louisiana Legislature on**

**December 22, 2022**

**Baton Rouge, Louisiana**

**LOUISIANA STATE LAW INSTITUTE**

**PROPERTY COMMITTEE**

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Sally Brown Richardson, Reporter

Jessica G. Braun, Staff Attorney

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

December 22, 2022

To: Representative Clay Schexnayder  
Speaker of the House  
P.O. Box 94062  
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**INTERIM REPORT TO THE LEGISLATURE  
IN RESPONSE TO HCR NO. 114 OF THE 2022 REGULAR SESSION**

House Concurrent Resolution No. 114 of the 2022 Regular Session requested the Law Institute to study the feasibility of codifying certain prevailing appellate and supreme court cases interpreting R.S. 38:113 relative to levee and drainage districts having control over and preserving the efficiency of public drainage channels or outfall canals. Specifically the resolution noted recent cases have held that the law grants levee and drainage districts a legal servitude and the exercise thereof does not authorize the taking or damaging of property without just compensation or due process. The Resolution also asked for the study of two Attorney General Opinions and thirteen supreme court and appellate court cases. To that end, the Institute assigned the resolution to the Property Committee, which is led by Professor Sally B. Richardson.

The Committee received background information from Rep. LaCombe, conducted preliminary research, and discussed the resolution at two recent meetings. The Committee recognizes that the underlying thread in the cited cases is that a private land owner claims that a governmental body has overstepped its authority to control and maintain public drainage channels and outfall canals. The Committee spent time carefully reviewing the *Terrebonne v. Matherne* case and expressed additional concerns related to parish resolutions and the applicability of riparian law. The Committee is carefully balancing the issues and has begun drafting a report in response to the resolution.

A final report will be submitted to the Legislature in early 2023 as soon as the Committee receives full approval of the report from the Law Institute Council.