

By: Eiland

H.B. No. 1457

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the authorization of the imposition of a temporary  
3 prohibition on enforcement of the law governing access to public  
4 beaches following a meteorological event.

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

6 SECTION 1. Section 61.011, Natural Resources Code, is  
7 amended by amending Subsections (c) and (d) and adding Subsection  
8 (f) to read as follows:

9 (c) The commissioner [~~attorney general~~] shall strictly and  
10 vigorously enforce the prohibition against encroachments on and  
11 interferences with the public beach easement. [~~The attorney  
12 general shall develop and publicize an enforcement policy to  
13 prevent and remove any encroachments and interferences on the  
14 public beach. The land office may assist the attorney general in  
15 enforcing this subchapter.~~]

16 (d) The commissioner shall promulgate rules, consistent  
17 with the policies established in this section, on the following  
18 matters only:

19 (1) acquisition by local governments or other  
20 appropriate entities or public dedication of access ways sufficient  
21 to provide adequate public ingress and egress to and from the beach  
22 within the area described in Subdivision (6) [~~of this subsection~~];

23 (2) protection of the public easement from erosion or  
24 reduction caused by development or other activities on adjacent

1 land and beach cleanup and maintenance;

2 (3) local government prohibitions of vehicular  
3 traffic on public beaches, provision of off-beach parking, and  
4 other minimum measures needed to mitigate for any adverse effect on  
5 public access and dune areas;

6 (4) imposition of beach access, user, or parking fees  
7 and reasonable exercises of the police power by local governments  
8 with respect to public beaches;

9 (5) contents and certification of beach access and use  
10 plans and standards for local government review of construction on  
11 land adjacent to and landward of public beaches; ~~and~~

12 (6) construction on land adjacent to and landward of  
13 public beaches and lying in the area either up to the first public  
14 road generally parallel to the beach or to any closer public road  
15 not parallel to the beach, or to within 1,000 feet of mean high  
16 tide, whichever is greater, that affects or may affect public  
17 access to and use of public beaches; and

18 (7) the temporary suspension under Section 61.0185 of  
19 enforcement of the prohibition against encroachments on and  
20 interferences with the public beach easement and the ability of a  
21 property owner to make repairs to a structure while a suspension is  
22 in effect.

23 (f) Chapter 2007, Government Code, does not apply to rules  
24 adopted under Subsection (d)(7).

25 SECTION 2. Sections 61.015(b)-(d), Natural Resources Code,  
26 are amended to read as follows:

27 (b) Local governments shall submit proposed beach access

1 and use plans to the commissioner for certification as to  
2 compliance with such policies and rules [~~and to the attorney~~  
3 ~~general for review and comment~~]. The commissioner shall act on a  
4 local government's proposed beach access and use plan within 60  
5 days of submission by either approving the plan or denying  
6 certification. In the event of denial, the commissioner shall send  
7 the proposed plan back to the originating local government with a  
8 statement of specific objections and the reasons for denial, along  
9 with suggested modifications. On receipt, the local government  
10 shall revise and resubmit the plan. The commissioner's  
11 certification of local government plans shall be by adoption into  
12 the rules under Section 61.011 [~~of this code~~].

13 (c) A littoral owner proposing construction adjacent to and  
14 landward of a public beach in the area described in Section  
15 61.011(d)(6) [~~of this code~~] shall submit a development plan to the  
16 appropriate local government. The local government shall forward  
17 the development plan to the commissioner [~~and the attorney general~~]  
18 no less than 10 working days prior to acting on the development  
19 plan. The commissioner [~~or the attorney general~~] may submit  
20 comments on the proposed construction to the local government.

21 (d) The local government shall review the proposed  
22 development plan and the commissioner's [~~and attorney general's~~]  
23 comments and other information the local government may consider  
24 useful to determine consistency with the local government's beach  
25 access and use plan.

26 SECTION 3. Sections 61.018(a) and (d), Natural Resources  
27 Code, are amended to read as follows:

1           (a) Any county attorney, district attorney, or criminal  
2 district attorney, or the [The] attorney general~~[, individually or]~~  
3 at the request of the commissioner, ~~[or any county attorney,~~  
4 ~~district attorney, or criminal district attorney]~~ shall file in a  
5 district court of Travis County, or in the county in which the  
6 property is located, a suit to obtain either a temporary or  
7 permanent court order or injunction, either prohibitory or  
8 mandatory, to remove or prevent any improvement, maintenance,  
9 obstruction, barrier, or other encroachment on a public beach, or  
10 to prohibit any unlawful restraint on the public's right of access  
11 to and use of a public beach or other activity that violates this  
12 chapter.

13           (d) Any county attorney, or the [The] attorney general~~[,~~  
14 ~~either individually or]~~ at the request of the commissioner ~~[or any~~  
15 ~~county attorney]~~, may bring a suit for a declaratory judgment to try  
16 any issue affecting the public's right of access to or use of the  
17 public beach.

18           SECTION 4. Subchapter B, Chapter 61, Natural Resources  
19 Code, is amended by adding Section 61.0185 to read as follows:

20           Sec. 61.0185. TEMPORARY SUSPENSION OF SUBMISSION OF  
21 REQUESTS THAT ATTORNEY GENERAL FILE SUIT. (a) The commissioner by  
22 order may suspend for a period of two years from the date the order  
23 is issued the submission of a request that the attorney general file  
24 a suit under Section 61.018(a) to obtain a temporary or permanent  
25 court order or injunction, either prohibitory or mandatory, to  
26 remove a dwelling or other improvement from a public beach if the  
27 commissioner determines that:

1           (1) the line of vegetation establishing the boundary  
2 of the public beach has moved as a result of a meteorological event;

3           (2) the dwelling or other improvement was located  
4 landward of the natural line of vegetation before the  
5 meteorological event;

6           (3) the dwelling or other improvement does not present  
7 an imminent threat to public health and safety; and

8           (4) based on evidence supplied by the Bureau of  
9 Economic Geology of The University of Texas at Austin, the public  
10 beach and the line of vegetation have a reasonable chance of  
11 recovering sufficiently to place the structure landward of the line  
12 of vegetation.

13           (b) The commissioner shall notify the attorney general and  
14 each pertinent county attorney, district attorney, or criminal  
15 district attorney of the issuance of an order under this section.

16           (c) A county attorney, district attorney, or criminal  
17 district attorney may not file suit under Section 61.018(a) to  
18 obtain a temporary or permanent court order or injunction, either  
19 prohibitory or mandatory, to remove a dwelling or other improvement  
20 from a public beach while the dwelling or other improvement is  
21 subject to an order issued under this section.

22           (d) While an order issued under this section is in effect, a  
23 local government may:

24           (1) issue a certificate or permit authorizing repair  
25 of a structure subject to the order if the local government  
26 determines that the repair complies with rules adopted by the  
27 commissioner under Section 61.011(d)(7); and

1           (2) allow utilities to be reconnected to a structure  
2 subject to the order.

3           (e) Issuance of an order under this section is purely within  
4 the discretion of the commissioner. This section does not create:

5           (1) a duty on the part of the commissioner to issue an  
6 order related to all or part of a dwelling or other improvement,  
7 regardless of any determination made; or

8           (2) a private cause of action for:

9                   (A) issuance of an order under this section; or

10                   (B) failure to issue an order under this section.

11           (f) Chapter 2007, Government Code, does not apply to an  
12 order issued under this section.

13           (g) This section does not apply to a dwelling or other  
14 improvement that the commissioner determines to be more than 50  
15 percent destroyed as a result of a meteorological event.

16           SECTION 5. Section 61.022(c), Natural Resources Code, is  
17 amended to read as follows:

18           (c) A local government proposing to adopt or amend such  
19 vehicular traffic regulations, except those for public safety, or  
20 fees shall submit a plan detailing the proposed action to the  
21 [~~attorney general and the~~] commissioner for review. The  
22 commissioner shall certify whether the proposed action is  
23 consistent or inconsistent with such policies and rules.  
24 Certifications of consistency shall be by adoption into the rules  
25 promulgated under Section 61.011 [~~of this code~~].

26           SECTION 6. Section 61.026(b), Natural Resources Code, is  
27 amended to read as follows:

1 (b) The land office [~~or the attorney general's office~~] may  
2 develop and distribute public information about the requirements of  
3 this chapter, the importance of natural beach and dune systems, and  
4 the necessity for preserving them. Such information may include  
5 public service announcements made under the direction of the land  
6 office.

7 SECTION 7. Section 63.054(c), Natural Resources Code, is  
8 amended to read as follows:

9 (c) Each county or municipality administering this chapter  
10 shall establish procedures and requirements governing the review  
11 and approval of dune permits, and these procedures and requirements  
12 shall be submitted to the commissioner [~~and attorney general~~] for  
13 [~~their~~] comments.

14 SECTION 8. Section 63.181(a), Natural Resources Code, is  
15 amended to read as follows:

16 (a) Any county attorney, district attorney, or criminal  
17 district attorney, or the [~~The~~] attorney general [~~, individually or~~]  
18 at the request of the commissioner, [~~or any county attorney,~~  
19 ~~district attorney, or criminal district attorney~~] shall file in a  
20 district court of Travis County or in the county in which the  
21 violation occurred a suit to obtain either a temporary or permanent  
22 court order or injunction to prohibit and remedy any violation of  
23 this chapter or any rule, permit, or order under this chapter and to  
24 collect damages to natural resources injured by the violation and  
25 to recover civil penalties.

26 SECTION 9. Section 61.011(e), Natural Resources Code, is  
27 repealed.

1           SECTION 10. (a) This Act takes effect immediately if it  
2 receives a vote of two-thirds of all the members elected to each  
3 house, as provided by Section 39, Article III, Texas Constitution.  
4 If this Act does not receive the vote necessary for immediate  
5 effect, this Act takes effect September 1, 2003.

6           (b) Section 61.0185, Natural Resources Code, as added by  
7 this Act, applies to a meteorological event that occurs on or after  
8 the effective date of this Act.