

1-1 By: Eiland (Senate Sponsor - Janek) H.B. No. 1457  
1-2 (In the Senate - Received from the House May 12, 2003;  
1-3 May 13, 2003, read first time and referred to Committee on Natural  
1-4 Resources; May 22, 2003, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 10, Nays 0;  
1-6 May 22, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1457 By: Jackson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the applicability and enforcement of the law governing  
1-11 access to public beaches.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 61.011, Natural Resources Code, is  
1-14 amended by amending Subsections (c) and (d) and adding Subsection  
1-15 (f) to read as follows:

1-16 (c) The commissioner ~~[attorney general]~~ shall strictly and  
1-17 vigorously enforce the prohibition against encroachments on and  
1-18 interferences with the public beach easement. ~~[The attorney  
1-19 general shall develop and publicize an enforcement policy to  
1-20 prevent and remove any encroachments and interferences on the  
1-21 public beach. The land office may assist the attorney general in  
1-22 enforcing this subchapter.]~~

1-23 (d) The commissioner shall promulgate rules, consistent  
1-24 with the policies established in this section, on the following  
1-25 matters only:

1-26 (1) acquisition by local governments or other  
1-27 appropriate entities or public dedication of access ways sufficient  
1-28 to provide adequate public ingress and egress to and from the beach  
1-29 within the area described in Subdivision (6) ~~[of this subsection];~~

1-30 (2) protection of the public easement from erosion or  
1-31 reduction caused by development or other activities on adjacent  
1-32 land and beach cleanup and maintenance;

1-33 (3) local government prohibitions of vehicular  
1-34 traffic on public beaches, provision of off-beach parking, and  
1-35 other minimum measures needed to mitigate for any adverse effect on  
1-36 public access and dune areas;

1-37 (4) imposition of beach access, user, or parking fees  
1-38 and reasonable exercises of the police power by local governments  
1-39 with respect to public beaches;

1-40 (5) contents and certification of beach access and use  
1-41 plans and standards for local government review of construction on  
1-42 land adjacent to and landward of public beaches; ~~[and]~~

1-43 (6) construction on land adjacent to and landward of  
1-44 public beaches and lying in the area either up to the first public  
1-45 road generally parallel to the beach or to any closer public road  
1-46 not parallel to the beach, or to within 1,000 feet of mean high  
1-47 tide, whichever is greater, that affects or may affect public  
1-48 access to and use of public beaches; and

1-49 (7) the temporary suspension under Section 61.0185 of  
1-50 enforcement of the prohibition against encroachments on and  
1-51 interferences with the public beach easement and the ability of a  
1-52 property owner to make repairs to a house while a suspension is in  
1-53 effect.

1-54 (f) Chapter 2007, Government Code, does not apply to rules  
1-55 adopted under Subsection (d)(7).

1-56 SECTION 2. Sections 61.015(b)-(d), Natural Resources Code,  
1-57 are amended to read as follows:

1-58 (b) Local governments shall submit proposed beach access  
1-59 and use plans to the commissioner for certification as to  
1-60 compliance with such policies and rules ~~[and to the attorney  
1-61 general for review and comment]~~. The commissioner shall act on a  
1-62 local government's proposed beach access and use plan within 60  
1-63 days of submission by either approving the plan or denying

2-1 certification. In the event of denial, the commissioner shall send  
2-2 the proposed plan back to the originating local government with a  
2-3 statement of specific objections and the reasons for denial, along  
2-4 with suggested modifications. On receipt, the local government  
2-5 shall revise and resubmit the plan. The commissioner's  
2-6 certification of local government plans shall be by adoption into  
2-7 the rules under Section 61.011 [~~of this code~~].

2-8 (c) A littoral owner proposing construction adjacent to and  
2-9 landward of a public beach in the area described in Section  
2-10 61.011(d)(6) [~~of this code~~] shall submit a development plan to the  
2-11 appropriate local government. The local government shall forward  
2-12 the development plan to the commissioner [~~and the attorney general~~]  
2-13 no less than 10 working days prior to acting on the development  
2-14 plan. The commissioner [~~or the attorney general~~] may submit  
2-15 comments on the proposed construction to the local government.

2-16 (d) The local government shall review the proposed  
2-17 development plan and the commissioner's [~~and attorney general's~~]  
2-18 comments and other information the local government may consider  
2-19 useful to determine consistency with the local government's beach  
2-20 access and use plan.

2-21 SECTION 3. Sections 61.018(a) and (d), Natural Resources  
2-22 Code, are amended to read as follows:

2-23 (a) Any county attorney, district attorney, or criminal  
2-24 district attorney, or the [The] attorney general[, individually or]  
2-25 at the request of the commissioner, [~~or any county attorney,~~  
2-26 ~~district attorney, or criminal district attorney~~] shall file in a  
2-27 district court of Travis County, or in the county in which the  
2-28 property is located, a suit to obtain either a temporary or  
2-29 permanent court order or injunction, either prohibitory or  
2-30 mandatory, to remove or prevent any improvement, maintenance,  
2-31 obstruction, barrier, or other encroachment on a public beach, or  
2-32 to prohibit any unlawful restraint on the public's right of access  
2-33 to and use of a public beach or other activity that violates this  
2-34 chapter.

2-35 (d) Any county attorney, or the [The] attorney general[,  
2-36 either individually or] at the request of the commissioner [~~or any~~  
2-37 ~~county attorney~~], may bring a suit for a declaratory judgment to try  
2-38 any issue affecting the public's right of access to or use of the  
2-39 public beach.

2-40 SECTION 4. Subchapter B, Chapter 61, Natural Resources  
2-41 Code, is amended by adding Section 61.0185 to read as follows:

2-42 Sec. 61.0185. TEMPORARY SUSPENSION OF SUBMISSION OF  
2-43 REQUESTS THAT ATTORNEY GENERAL FILE SUIT. (a) The commissioner by  
2-44 order may suspend for a period of two years from the date the order  
2-45 is issued the submission of a request that the attorney general file  
2-46 a suit under Section 61.018(a) to obtain a temporary or permanent  
2-47 court order or injunction, either prohibitory or mandatory, to  
2-48 remove a house from a public beach if the commissioner determines  
2-49 that:

- 2-50 (1) the line of vegetation establishing the boundary  
2-51 of the public beach has moved as a result of a meteorological event;
- 2-52 (2) the house was located landward of the natural line  
2-53 of vegetation before the meteorological event; and
- 2-54 (3) the house does not present an imminent threat to  
2-55 public health and safety.

2-56 (b) The commissioner shall make a determination under  
2-57 Subsection (a) regarding the line of vegetation in accordance with  
2-58 Sections 61.016 and 61.017.

2-59 (c) The commissioner shall consult with the Bureau of  
2-60 Economic Geology of The University of Texas at Austin when making a  
2-61 determination under Subsection (a) regarding:

- 2-62 (1) the line of vegetation; or
- 2-63 (2) the effect of a meteorological event on the  
2-64 location of the public beach easement.

2-65 (d) This section does not apply to a house that the  
2-66 commissioner determines to be:

- 2-67 (1) located in whole or in part below mean high tide;  
2-68 or
- 2-69 (2) more than 50 percent destroyed as a result of a

3-1 meteorological event.  
 3-2 (e) An order issued under this section shall be:  
 3-3 (1) posted on the land office's Internet website;  
 3-4 (2) published by the land office as a miscellaneous  
 3-5 document in the Texas Register; and  
 3-6 (3) filed for record by the land office in the real  
 3-7 property records of the county in which the house is located.  
 3-8 (f) The commissioner shall notify the attorney general and  
 3-9 each pertinent county attorney, district attorney, or criminal  
 3-10 district attorney of the issuance of an order under this section.  
 3-11 (g) A county attorney, district attorney, or criminal  
 3-12 district attorney may not file suit under Section 61.018(a) to  
 3-13 obtain a temporary or permanent court order or injunction, either  
 3-14 prohibitory or mandatory, to remove a house from a public beach  
 3-15 while the house is subject to an order issued under this section.  
 3-16 (h) While an order issued under this section is in effect, a  
 3-17 local government may:  
 3-18 (1) issue a certificate or permit authorizing repair  
 3-19 of a house subject to the order if the local government determines  
 3-20 that the repair:  
 3-21 (A) is solely to make the house habitable;  
 3-22 (B) complies with rules adopted by the  
 3-23 commissioner under Section 61.011(d)(7); and  
 3-24 (C) does not increase the footprint of the house  
 3-25 or involve the use of concrete, Fibercrete, or other impervious  
 3-26 materials seaward of the line of vegetation; and  
 3-27 (2) allow utilities to be reconnected to a house  
 3-28 subject to the order.  
 3-29 (i) Issuance of an order under this section is purely within  
 3-30 the discretion of the commissioner. This section does not create:  
 3-31 (1) a duty on the part of the commissioner to issue an  
 3-32 order related to all or part of a house, regardless of any  
 3-33 determination made; or  
 3-34 (2) a private cause of action for:  
 3-35 (A) issuance of an order under this section; or  
 3-36 (B) failure to issue an order under this section.  
 3-37 (j) Chapter 2007, Government Code, does not apply to an  
 3-38 order issued under this section.  
 3-39 (k) If the commissioner issues an order under this section,  
 3-40 a limitations period established by statute, under common law, or  
 3-41 in equity that may be asserted or claimed in any action under this  
 3-42 chapter is suspended and does not run against this state, the  
 3-43 public, or the owner of the house for the period the order is in  
 3-44 effect.  
 3-45 (l) Expenses incurred while an order issued under this  
 3-46 section is in effect by the owner of a house in an effort to repair  
 3-47 or otherwise make the house habitable may not be claimed as damages  
 3-48 in any litigation with this state or a local government that may be  
 3-49 filed to enforce this chapter.  
 3-50 SECTION 5. Sections 61.022(a) and (c), Natural Resources  
 3-51 Code, are amended to read as follows:  
 3-52 (a) The provisions of this subchapter do not prevent any of  
 3-53 the following governmental entities [~~agency, department,~~  
 3-54 ~~institution, subdivision, or instrumentality of this state or of~~  
 3-55 ~~the federal government~~] from erecting or maintaining any groin,  
 3-56 seawall, barrier, pass, channel, jetty, or other structure as an  
 3-57 aid to navigation, protection of the shore, fishing, safety, or  
 3-58 other lawful purpose authorized by the constitution or laws of this  
 3-59 state or the United States:  
 3-60 (1) an agency, department, institution, subdivision,  
 3-61 or instrumentality of the federal government;  
 3-62 (2) an agency, department, institution, or  
 3-63 instrumentality of this state;  
 3-64 (3) a county;  
 3-65 (4) a municipality; or  
 3-66 (5) a subdivision of this state, other than a county or  
 3-67 municipality, acting in partnership with the county or municipality  
 3-68 in which the structure is located.  
 3-69 (c) A local government proposing to adopt or amend such

4-1 vehicular traffic regulations, except those for public safety, or  
4-2 fees shall submit a plan detailing the proposed action to the  
4-3 ~~[attorney general and the]~~ commissioner for review. The  
4-4 commissioner shall certify whether the proposed action is  
4-5 consistent or inconsistent with such policies and rules.  
4-6 Certifications of consistency shall be by adoption into the rules  
4-7 promulgated under Section 61.011 ~~[of this code]~~.

4-8 SECTION 6. Section 61.026(b), Natural Resources Code, is  
4-9 amended to read as follows:

4-10 (b) The land office ~~[or the attorney general's office]~~ may  
4-11 develop and distribute public information about the requirements of  
4-12 this chapter, the importance of natural beach and dune systems, and  
4-13 the necessity for preserving them. Such information may include  
4-14 public service announcements made under the direction of the land  
4-15 office.

4-16 SECTION 7. Section 63.054(c), Natural Resources Code, is  
4-17 amended to read as follows:

4-18 (c) Each county or municipality administering this chapter  
4-19 shall establish procedures and requirements governing the review  
4-20 and approval of dune permits, and these procedures and requirements  
4-21 shall be submitted to the commissioner ~~[and attorney general]~~ for  
4-22 ~~[their]~~ comments.

4-23 SECTION 8. Section 63.181(a), Natural Resources Code, is  
4-24 amended to read as follows:

4-25 (a) Any county attorney, district attorney, or criminal  
4-26 district attorney, or the [The] attorney general ~~[, individually or]~~  
4-27 ~~at the request of the commissioner, [or any county attorney,~~  
4-28 ~~district attorney, or criminal district attorney]~~ shall file in a  
4-29 district court of Travis County or in the county in which the  
4-30 violation occurred a suit to obtain either a temporary or permanent  
4-31 court order or injunction to prohibit and remedy any violation of  
4-32 this chapter or any rule, permit, or order under this chapter and to  
4-33 collect damages to natural resources injured by the violation and  
4-34 to recover civil penalties.

4-35 SECTION 9. Section 61.011(e), Natural Resources Code, is  
4-36 repealed.

4-37 SECTION 10. (a) This Act takes effect immediately if it  
4-38 receives a vote of two-thirds of all the members elected to each  
4-39 house, as provided by Section 39, Article III, Texas Constitution.  
4-40 If this Act does not receive the vote necessary for immediate  
4-41 effect, this Act takes effect September 1, 2003.

4-42 (b) Section 61.0185, Natural Resources Code, as added by  
4-43 this Act, applies to a meteorological event occurring before, on,  
4-44 or after the effective date of this Act.

4-45 \* \* \* \* \*