

BILL ANALYSIS

C.S.H.B. 3624

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Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas coast is a fragile, dynamic environment that is constantly changing in reaction to human and natural influences. Many Gulf Coast beaches, in particular, have suffered substantial coastal erosion over the past fifteen years that shows no sign of abating. The extent and location of the worst erosion has led to the difficult problem of structures legally built behind the line of vegetation ending up on the public beach because of erosion and storm events.

The Commissioner of the Texas General Land Office (GLO) is tasked under the Texas Open Beaches Act (OBA), (found in Chapter 61, Natural Resources Code), with protecting the public's common law beach easement, from the line of vegetation seaward to the line of mean low water. The fact that erosion and storm events have caused structures to lie on the public beach has created a situation where the interests of the property owners conflict with the public's right to access and use the beach. The problem of houses ending up on the public beach because of erosion and weather events poses a difficult issue for the commissioner of the GLO. Many, if not all, such houses were built behind the line of vegetation, but the forces of nature moved the beach landward, leaving the houses on the beach. The OBA provides for mandatory disclosure concerning the real risk that coastal property may end up on the beach and be subject to removal. However, many property owners claim that they did not read the disclaimer or did not pay attention to it because it was one of many legal documents provided to them at closing. In order for purchasers of real property near the beach to rationally assess the high risk that the property may end up on the beach, additional disclosures made prior to closing might raise this issue before the mortgage is arranged and the transfer of title is imminent.

The Commissioner of the GLO also enforces the Dune Protection Act (DPA), (found Chapter 63, Natural Resources Code). The DPA authorizes the GLO and coastal local governments to regulate and prohibit activities that would adversely affect dunes and dune vegetation seaward of the local government's established dune protection. The rush to develop areas near the Gulf on barrier islands has challenged the resources of the GLO and local governments to adequately protect dunes and dune vegetation. Vegetated dunes are vital to the protection of landward development from storm surges and flooding during storm events. These dunes absorb much of the force of coastal storms, and thus protect life and property. The tremendous development pressures on the Texas coast are straining the capacity of local governments to properly administer their dune protection, and of the GLO to handle the large volume of permits in a manner consistent with state law. Coastal local governments amend their plans with greater frequency because of the strong interest in development.

The general purpose of C.S.H.B. 3624 is to clarify, amend, and update many of those statutes regarding the state's public beaches in order to properly recognize current conditions, and to give the Commissioner of the GLO additional tools to preserve the public beach easement while recognizing the interests of property owners and to improve enforcement of the DPA while permitting development that restores damage to dunes and dune vegetation.

RULEMAKING AUTHORITY

It is the committee's opinion that SECTION 4 of the bill authorizes the Commissioner of the GLO to adopt rules for the establishment and implementation of a building set-back line under this Section 33.607, Natural Resources Code.

It is the committee's opinion that SECTION 8 of the bill requires the Commissioner of the GLO to promulgate rules regarding expedited review of beach access and use plans under Section 61.015, Natural Resources Code (see addition to Section 61.011(d), Natural Resources Code).

It is the committee's opinion that SECTION 8 of the bill requires the Commissioner of the GLO to promulgate rules in order to determine the line of vegetation (see addition to Section 61.011(d), Natural Resources Code).

It is the committee's opinion that SECTION 8 of the bill requires the Commissioner of the GLO to promulgate rules in order to determine the factors to be used in determining whether a structure on the public beach restricts or impairs the public's access to or use of the beach, or poses an imminent threat to public health and safety (see addition to Section 61.011(d), Natural Resources Code).

It is the committee's opinion that SECTION 8 of the bill requires the Commissioner of the GLO to promulgate rules in order to determine the procedures for determining whether a structure is not insurable property for purposes of Section 2210.004, Insurance Code, because of the factors listed in Section 61.011(h), Natural Resources Code (see addition to Section 61.011(d), Natural Resources Code).

It is the committee's opinion that SECTION 11 of the bill authorizes the Commissioner of the GLO to adopt procedures for a hearing regarding the assessment of penalties or the removal of structures or hazards on the public beach that pose an imminent health and safety threat, or that substantially interfere with public beach access (see addition to Section 61.0184(f), Natural Resources Code).

It is the committee's opinion that SECTION 17 of the bill requires the Commissioner of the GLO to promulgate rules for the certification of procedures and requirements governing the review and approval of dune permits by a county or municipality. (see addition to Section 63.121(b), Natural Resources Code).

It is the committee's opinion that SECTION 19 of the bill authorizes the Commissioner of the GLO to adopt procedures for a hearing regarding the assessment of penalties or restoration of dunes that have been damaged or destroyed (see addition to Section 61.1814(e), Natural Resources Code).

ANALYSIS

This bill provides the Commissioner of the GLO and coastal counties with additional tools to use in preserving and enhancing public beach access and protection of the beach dune system. This bill allows the Commissioner of the GLO to consider the local government's administration of building set-backs in determining whether to fund a Coastal Erosion Response and Planning Act (CEPRA) project. This bill strengthens the authority for local governments to adopt building set-back lines to preserve and enhance the public's right of access to and use of public beaches and to preserve critical sand dunes for natural storm protection and conservation purposes. This bill allows local governments to use funds from the Coastal Protection and Improvement Fund for the implementation of building set-back lines. Makes conforming changes, including the grant of rulemaking authority.

This bill creates a tiered review process under the OBA and the DPA relating to commenting on beachfront construction certificates, dune protection permits and beach access and dune protection plans. This bill includes an administrative procedure under which the GLO could seek administrative penalties and issue orders for removal of structures or hazards located on the public beach that are built or placed on the beach illegally or that pose an imminent threat to health and safety. This bill also creates an administrative procedure under which the GLO could seek administrative penalties and order restoration of damage to dunes or dune vegetation done without a proper permit. The GLO would make the initial determination and notify the owner of the property. The owner would have 60 days to respond and ask for an administrative hearing through the State Office of Administrative Hearings (SOAH). This bill also gives the Commissioner of the GLO the authority to determine the line of vegetation and to issue rules under which the line of vegetation shall be determined. This bill makes that determination prima

facie evidence in a court or administrative proceeding. It also changes the disclosure statement already required to be given to purchasers of coastal real property to make more prominent the risk involved in purchasing property that may end up on the public beach. Makes other conforming changes, including rulemaking authority.

This bill removes the state-subsidized insurance incentive for houses on the beach that are hazards or obstructions. The bill provides that a structure that the Commissioner of the GLO has determined to be on the public beach and is either a threat to public health and safety or an obstruction to beach access and use is not “insurable property” under Chapter 2210, Insurance Code, relating to Texas Windstorm Association (TWIA). This bill also sets forth a procedure, similar to the procedure of administrative penalties for new construction or health and safety hazards, under which the Commissioner of the GLO may determine that a property is on the public beach for purposes of ineligibility for windstorm insurance. Makes other conforming changes.

This bill adds language to the Texas Property Code that requires a seller to disclose to a purchaser, if the seller knows that the property is located seaward of the Gulf Intracoastal Waterway and within 1000 feet of mean high tide. Structures within this area may require a beachfront construction certificate or dune protection permit. The seller’s disclosure would provide information to a potential buyer, who might then explore the full implication of buying a property so close to the beach. Makes other conforming changes.

This bill requires the Commissioner of the GLO to adopt rules authorized or required by this bill not later than January 1, 2008.

This bill provides for an effective date of September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The Committee Substitute provides that appeals for most administrative proceedings go to Travis County district court. The Original bill did not specify Travis County (it only says district court). The Committee Substitute also provides that when an administrative hearing is appealed, it is reviewed under substantial evidence review.

The language requiring the coastal property disclosure be provided to a buyer at least 10 days prior to closing was not clear because other requirements in the statute also required that it be part of the contract, which may be signed greater or fewer than 10 days before closing. The new change in the Committee Substitute requires the disclosure to be part of any written contract, and if there is no written contract, to be provided to the purchaser at least 10 days prior to closing.

The seller’s disclosure is changed in the Committee Substitute to require the seller to indicate if he or she knows if the property is seaward of the Gulf Intracoastal Waterway and if its within 1000 feet of mean high tide. Structures within this area may need a beach front construction certificate or dune protection permit.

The Committee Substitute provides that any penalties collected through the new administrative hearings process or through court cases to go into the Coastal Erosion Response Account for use in the CEPR program.