

By: Ritter

H.B. No. 3624

Substitute the following for H.B. No. 3624:

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C.S.H.B. No. 3624

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the protection of coastal resources; providing for  
3 administrative penalties.

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

5 SECTION 1. Section 33.604(b), Natural Resources Code, is  
6 amended to read as follows:

7 (b) The account consists of:

8 (1) all money appropriated for the purposes of this  
9 subchapter;

10 (2) grants to this state from the United States for the  
11 purposes of this subchapter; ~~and~~

12 (3) all money received by this state from the sale of  
13 dredged material; and

14 (4) penalties or costs collected under Section 61.0184  
15 or 63.1814.

16 SECTION 2. Section 33.605(b), Natural Resources Code, is  
17 amended to read as follows:

18 (b) The commissioner must approve an expenditure from the  
19 account. In determining whether to approve an expenditure for a  
20 study or project, the commissioner shall consider:

21 (1) the amount of money in the account;

22 (2) the feasibility and cost-effectiveness of the  
23 study or project;

24 (3) the locations of other existing or proposed

1 erosion response projects;

2 (4) the needs in other critical coastal erosion areas;

3 (5) the effect of the study or project on public or  
4 private property; and

5 (6) if the site to be studied or project to be  
6 conducted will be located within the jurisdiction of a local  
7 government subject to Chapter 61 or 63:

8 (A) [7] whether the local government is  
9 adequately administering those chapters; and

10 (B) the building set-back line established by the  
11 local government under Section 33.607.

12 SECTION 3. The heading to Section 33.607, Natural Resources  
13 Code, is amended to read as follows:

14 Sec. 33.607. COASTAL EROSION PUBLIC AWARENESS AND  
15 EDUCATION; LOCAL GOVERNMENT PLANNING AND REGULATION.

16 SECTION 4. Section 33.607, Natural Resources Code, is  
17 amended by amending Subsection (e) and adding Subsections (f), (g),  
18 and (h) to read as follows:

19 (e) A local government subject to Chapter 61 or 63 may [~~is~~  
20 ~~encouraged to~~] use historical erosion data to prepare a plan for  
21 reducing public expenditures for erosion and storm damage losses to  
22 public and private property, including public beaches, by  
23 establishing and implementing a building set-back line that will  
24 accommodate a shoreline retreat. The local government shall hold a  
25 public educational meeting on the plan before proposing to  
26 implement it through the plans, orders, or ordinances provided by  
27 Chapters 61 and 63.

1       (f) A plan for reducing public expenditures for erosion and  
2 storm damage losses to public and private property that includes  
3 the establishment and implementation of a building set-back line  
4 under this section may:

5           (1) preserve and enhance the public's right of access  
6 to and use of the public beach;

7           (2) preserve critical sand dunes for natural storm  
8 protection and conservation purposes;

9           (3) establish a building set-back line no further  
10 landward than the dune protection line established by the local  
11 government under Chapter 63;

12           (4) provide for the prohibition of new construction  
13 seaward of the building set-back line; and

14           (5) provide for the acquisition of fee title to or a  
15 lesser interest in property seaward of the building set-back line.

16       (g) The commissioner may adopt rules for the establishment  
17 and implementation of a building set-back line under this section.

18       (h) Chapter 2007, Government Code, does not apply to a rule  
19 or local government order or ordinance authorized by this section.

20       SECTION 5. Section 33.651(4), Natural Resources Code, is  
21 amended to read as follows:

22           (4) "Coastal improvement project" means a project to  
23 improve access to a public beach by:

24                   (A) acquiring fee title to property or a right of  
25 public access to a public beach;

26                   (B) constructing or maintaining public roads,  
27 parking, or other facilities in aid of public access to or use of a

1 public beach; ~~[or]~~

2 (C) requiring a landowner, as prescribed by land  
3 office rules, to restore land affected by coastal erosion to its  
4 original boundaries; or

5 (D) implementing a building set-back line  
6 established under Section 33.607.

7 SECTION 6. Section 33.656, Natural Resources Code, is  
8 amended to read as follows:

9 Sec. 33.656. PROJECTS THAT QUALIFY FOR FUNDING. To qualify  
10 for funding under this subchapter, a project must:

11 (1) be sponsored by a coastal county;

12 (2) be located within the sponsoring coastal county  
13 along or adjacent to the shore of the Gulf of Mexico, an inland bay,  
14 or a connecting channel between the Gulf of Mexico and an inland  
15 bay;

16 (3) be accessible by public roads or a common carrier  
17 ferry;

18 (4) be identified and approved for funding by a  
19 coastal county and the land office; and

20 (5) require more than \$5 million to complete, as  
21 estimated by the land office, unless the project implements a  
22 building set-back line established under Section 33.607.

23 SECTION 7. Section 33.659(a), Natural Resources Code, is  
24 amended to read as follows:

25 (a) In addition to all other powers that a coastal county  
26 has under general law, a coastal county has the rights, powers,  
27 privileges, authority, and functions that are necessary or

1 convenient to:

2 (1) the designing, engineering, acquiring,  
3 constructing, improving, maintaining, extending, repairing,  
4 replacing, monitoring, removing, administering, and financing of a  
5 qualified project located in a coastal county; ~~and~~

6 (2) the funding of a reserve or other fund relating to  
7 bonds; and

8 (3) the establishment and implementation of a building  
9 set-back line under Section 33.607.

10 SECTION 8. Section 61.011(d), Natural Resources Code, is  
11 amended to read as follows:

12 (d) The commissioner shall promulgate rules, consistent  
13 with the policies established in this section, on the following  
14 matters only:

15 (1) acquisition by local governments or other  
16 appropriate entities or public dedication of access ways sufficient  
17 to provide adequate public ingress and egress to and from the beach  
18 within the area described in Subdivision (6);

19 (2) protection of the public easement from erosion or  
20 reduction caused by development or other activities on adjacent  
21 land and beach cleanup and maintenance;

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

26 (4) imposition of beach access, user, or parking fees  
27 and reasonable exercises of the police power by local governments

1 with respect to public beaches;

2 (5) contents and certification of beach access and use  
3 plans and standards for local government review of construction on  
4 land adjacent to and landward of public beaches, including  
5 procedures for expedited review of beach access and use plans under  
6 Section 61.015;

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

13 (7) the temporary suspension under Section 61.0185 of  
14 enforcement of the prohibition against encroachments on and  
15 interferences with the public beach easement and the ability of a  
16 property owner to make repairs to a house while a suspension is in  
17 effect;

18 (8) the determination of the line of vegetation or  
19 natural line of vegetation;

20 (9) the factors to be considered in determining  
21 whether a structure, improvement, obstruction, barrier, or hazard  
22 on the public beach:

23 (A) constitutes an imminent hazard to safety,  
24 health, or public welfare; or

25 (B) substantially interferes with the free and  
26 unrestricted right of the public to enter or leave the public beach  
27 or traverse any part of the public beach; and

1           (10) the procedures for determining whether a  
2 structure is not insurable property for purposes of Section  
3 2210.004, Insurance Code, because of the factors listed in  
4 Subsection (h) of that section.

5           SECTION 9. Sections 61.015(b) and (c), Natural Resources  
6 Code, are amended to read as follows:

7           (b) Local governments shall submit proposed beach access  
8 and use plans to the commissioner for certification as to  
9 compliance with such policies and rules. The commissioner shall act  
10 on a local government's proposed beach access and use plan within 90  
11 ~~[60]~~ days of submission by either approving the plan or denying  
12 certification. In the event of denial, the commissioner shall send  
13 the proposed plan back to the originating local government with a  
14 statement of specific objections and the reasons for denial, along  
15 with suggested modifications. On receipt, the local government  
16 shall revise and resubmit the plan. The commissioner's  
17 certification of local government plans shall be by adoption into  
18 the rules under Section 61.011.

19           (c) A littoral owner proposing construction adjacent to and  
20 landward of a public beach in the area described in Section  
21 61.011(d)(6) shall submit a development plan to the appropriate  
22 local government. The local government shall forward a [the]  
23 development plan for small-scale construction activity that  
24 includes 5,000 square feet or less or habitable structures two  
25 stories or less in height to the commissioner no less than 10  
26 working days prior to acting on the development plan. The local  
27 government shall forward a development plan for large-scale

1 construction activity that includes more than 5,000 square feet or  
2 habitable structures more than two stories in height to the  
3 commissioner no less than 30 working days prior to acting on the  
4 development plan. The commissioner may submit comments on the  
5 proposed construction to the local government.

6 SECTION 10. Sections 61.018(b) and (c), Natural Resources  
7 Code, are amended to read as follows:

8 (b) In the same suit, the attorney general, the  
9 commissioner, county attorney, district attorney, or criminal  
10 district attorney may recover penalties and the costs of removing  
11 any improvement, obstruction, barrier, or other encroachment if it  
12 is removed by public authorities pursuant to an order of the court  
13 or a removal order issued by the commissioner as provided by Section  
14 61.0183.

15 (c) A person who violates this chapter or a removal order  
16 issued by the commissioner as provided by Section 61.0183 is liable  
17 for a civil penalty of not less than \$50 nor more than \$2,000  
18 [~~\$1,000~~]. Each day the violation occurs or continues is a separate  
19 violation.

20 SECTION 11. Subchapter B, Chapter 61, Natural Resources  
21 Code, is amended by adding Sections 61.0181, 61.0182, 61.0183, and  
22 61.0184 to read as follows:

23 Sec. 61.0181. ADMINISTRATIVE PENALTY. The commissioner may  
24 assess an administrative penalty against a person who violates this  
25 chapter or a rule adopted under this chapter in the amount provided  
26 by Section 61.018(c) for a civil penalty. In determining the amount  
27 of the penalty, the commissioner shall consider:



1           (1) the seriousness of the violation, including the  
2 nature, circumstances, extent, and gravity of the violation and the  
3 hazard or damage caused thereby;

4           (2) the degree of cooperation and quality of response;

5           (3) the degree of culpability and history of previous  
6 violations by the person subject to the penalty;

7           (4) the amount necessary to deter future violations;  
8 and

9           (5) any other matter that justice requires.

10           Sec. 61.0182. ENFORCEMENT PROVISIONS CUMULATIVE. This  
11 subchapter is cumulative of all other applicable penalties,  
12 remedies, and enforcement and liability provisions.

13           Sec. 61.0183. REMOVAL OF CERTAIN STRUCTURES, IMPROVEMENTS,  
14 OBSTRUCTIONS, BARRIERS, AND HAZARDS ON PUBLIC BEACH. (a) The  
15 commissioner may order the removal of a structure, improvement,  
16 obstruction, barrier, or hazard from a public beach if the  
17 commissioner finds the structure, improvement, obstruction,  
18 barrier, or hazard to be on the public beach as defined by Section  
19 61.013(c) and:

20           (1) the structure, improvement, obstruction, barrier,  
21 or hazard was constructed or placed on the beach in a manner that is  
22 inconsistent with the local government's beach access and use plan;

23 or

24           (2) the structure, improvement, obstruction, or  
25 barrier constitutes an imminent hazard to safety, health, or public  
26 welfare.

27           (b) The decision to remove a structure, improvement,

1 obstruction, barrier, or hazard under this section is discretionary  
2 with the commissioner. This section does not impose a duty on the  
3 state to remove a structure, improvement, obstruction, barrier, or  
4 hazard or to remedy or warn of a hazardous condition on the public  
5 beach.

6 (c) The commissioner may contract for the removal and  
7 disposal of a structure, improvement, obstruction, barrier, or  
8 hazard under this section and may pay the costs of removal from  
9 money appropriated by the legislature.

10 Sec. 61.0184. NOTICE REQUIREMENTS; ORDERS AND HEARINGS.

11 (a) The commissioner shall make a determination that a structure is  
12 located on the public beach, assess an administrative penalty, and  
13 pursue the removal of a structure, improvement, obstruction,  
14 barrier, or hazard from a public beach in accordance with this  
15 section.

16 (b) Before the commissioner may notify the Texas Windstorm  
17 Insurance Association as provided by Section 2210.004, Insurance  
18 Code, regarding the status of property, the commissioner must give  
19 written notice and an opportunity for a hearing to a person who is  
20 constructing, maintains, controls, owns, or possesses the  
21 structure, improvement, obstruction, barrier, or hazard on the  
22 public beach. The notice must state that:

23 (1) the commissioner finds that a specific structure  
24 is located on the public beach as determined under this chapter,  
25 and:

26 (A) constitutes an imminent hazard to safety,  
27 health, or public welfare; or

1           (B) substantially interferes with the free and  
2 unrestricted right of the public to enter or leave the public beach  
3 or traverse any part of the public beach;

4           (2) the commissioner intends to notify the Texas  
5 Windstorm Insurance Association of a determination in accordance  
6 with Section 2210.004, Insurance Code; and

7           (3) the person who is constructing, maintains,  
8 controls, owns, or possesses the structure, improvement,  
9 obstruction, barrier, or hazard located on the public beach may  
10 submit, not later than the 60th day after the date on which the  
11 notice is served, written request for a hearing to contest the  
12 determination.

13           (c) Before the commissioner may order the removal of a  
14 structure, improvement, obstruction, barrier, or hazard under  
15 Section 61.0183 or impose an administrative penalty under Section  
16 61.0181, the commissioner must provide written notice to the person  
17 who is constructing, maintains, controls, owns, or possesses the  
18 structure, improvement, obstruction, barrier, or hazard. The  
19 notice must:

20           (1) describe the specific structure, improvement,  
21 obstruction, barrier, or hazard that violates this subchapter;

22           (2) state that the person who is constructing,  
23 maintains, controls, owns, or possesses the structure,  
24 improvement, obstruction, barrier, or hazard is required to remove  
25 the structure, improvement, obstruction, barrier, or hazard:

26           (A) not later than the 60th day after the date on  
27 which the notice is served, if the structure, improvement,

1 obstruction, barrier, or hazard is obstructing access to or use of  
2 the public beach; or

3 (B) within a reasonable time specified by the  
4 commissioner if the structure, improvement, obstruction, barrier,  
5 or hazard is an imminent and unreasonable threat to public health,  
6 safety, or welfare;

7 (3) state that failure to remove the structure,  
8 improvement, obstruction, barrier, or hazard may result in  
9 liability for a civil penalty under Section 61.018(c), removal by  
10 the commissioner and liability for the costs of removal, or any  
11 combination of those remedies; and

12 (4) state that the person who is constructing,  
13 maintains, controls, owns, or possesses the structure,  
14 improvement, obstruction, barrier, or hazard may submit, not later  
15 than the 60th day after the date on which the notice is served,  
16 written request for a hearing.

17 (d) A person is considered to be the person who owns,  
18 maintains, controls, or possesses an improvement, obstruction,  
19 barrier, or other encroachment on the public beach for purposes of  
20 this section if the person is the person who most recently owned,  
21 maintained, controlled, or possessed the improvement, obstruction,  
22 barrier, or other encroachment on the public beach.

23 (e) The notice required by Subsection (b) must be given:

24 (1) by service in person, by registered or certified  
25 mail, return receipt requested, or by priority mail; or

26 (2) if personal service cannot be obtained or the  
27 address of the person responsible is unknown, by posting a copy of

1 the notice on the structure, improvement, obstruction, barrier, or  
2 hazard and by publishing notice in a newspaper with general  
3 circulation in the county in which the structure, improvement,  
4 obstruction, barrier, or hazard is located at least two times  
5 within 10 consecutive days.

6 (f) The commissioner by rule may adopt procedures for a  
7 hearing under this section.

8 (g) The commissioner must grant a hearing before an  
9 administrative law judge employed by the State Office of  
10 Administrative Hearings if a hearing is requested. A person who  
11 does not request a hearing within 60 days after the date on which  
12 the notice is served waives all rights to judicial review of the  
13 commissioner's findings or orders and shall immediately remove the  
14 structure, improvement, obstruction, barrier, or hazard and pay any  
15 penalty assessed. If a hearing is held, the commissioner may issue  
16 a final order approving the proposal for decision submitted by the  
17 administrative law judge concerning a determination regarding  
18 whether a structure is not insurable property for purposes of  
19 Section 2210.004, Insurance Code, because of the factors listed in  
20 Subsection (h) of that section or concerning removal of the  
21 structure, improvement, obstruction, barrier, or hazard and  
22 payment of a penalty. The commissioner may change a finding of fact  
23 or conclusion of law made by the administrative law judge or may  
24 vacate or modify an order issued by the administrative judge in  
25 accordance with Section 2001.058, Government Code.

26 (h) A person may seek judicial review of a final order of the  
27 commissioner under this section in a Travis County district court

1 under the substantial evidence rule as provided by Subchapter G,  
2 Chapter 2001, Government Code. The trial courts of this state shall  
3 give preference to an appeal of a final order of the commissioner  
4 under this section in the same manner as provided by Section  
5 23.101(a), Government Code, for an appeal of a final order of the  
6 commissioner under Section 51.3021 of this code.

7 (i) If the person who is constructing, maintains, controls,  
8 owns, or possesses the structure, improvement, obstruction,  
9 barrier, or hazard does not pay assessed penalties, removal costs,  
10 and other assessed fees and expenses on or before the 60th day after  
11 the date of entry of a final order assessing the penalties, costs,  
12 and expenses, the commissioner may:

13 (1) sell salvageable parts of the structure,  
14 improvement, obstruction, barrier, or hazard to offset those costs;

15 (2) request that the attorney general institute civil  
16 proceedings to collect the penalties, costs of removal, and other  
17 fees and expenses remaining unpaid; or

18 (3) use any combination of the remedies prescribed by  
19 this subsection, or other remedies authorized by law, to collect  
20 the unpaid penalties, costs of removal, and other fees and expenses  
21 assessed because of the structure, improvement, obstruction,  
22 barrier, or hazard on the public beach and its removal by the  
23 commissioner.

24 (j) Penalties or costs collected under this section shall be  
25 deposited in the coastal erosion response account as established  
26 under Section 33.604.

27 SECTION 12. Section 61.020, Natural Resources Code, is

1 amended to read as follows:

2           Sec. 61.020. PRIMA FACIE EVIDENCE. (a) In a suit or  
3 administrative proceeding brought or defended under this  
4 subchapter or whose determination is affected by this subchapter, a  
5 showing that the area in question is located in the area from mean  
6 low tide to the line of vegetation is prima facie evidence that:

7           (1) the title of the littoral owner does not include  
8 the right to prevent the public from using the area for ingress and  
9 egress to the sea; and

10           (2) there is imposed on the area a common law right or  
11 easement in favor of the public for ingress and egress to the sea.

12           (b) The determination of the location of the line of  
13 vegetation by the commissioner as provided by Sections 61.016 and  
14 61.017 constitutes prima facie evidence of the landward boundary of  
15 the area subject to the public easement until a court adjudication  
16 establishes the line in another place.

17           SECTION 13. Section 61.025, Natural Resources Code, is  
18 amended to read as follows:

19           Sec. 61.025. DISCLOSURE TO PURCHASER OF PROPERTY. (a) A  
20 person who sells or conveys an interest, other than a mineral,  
21 leasehold, or security interest, in real property located seaward  
22 of the Gulf Intracoastal Waterway to its southernmost point and  
23 then seaward of the longitudinal line also known as 97 degrees, 12',  
24 19" which runs southerly to the international boundary from the  
25 intersection of the centerline of the Gulf Intracoastal Waterway  
26 and the Brownsville Ship Channel must include in any executory  
27 contract for conveyance a [~~the following~~] statement in

1 substantially the following form:

2 CONCERNING THE PROPERTY AT \_\_\_\_\_

3 DISCLOSURE NOTICE CONCERNING LEGAL AND ECONOMIC RISKS

4 OF PURCHASING COASTAL REAL PROPERTY NEAR A BEACH

5 WARNING: THE FOLLOWING NOTICE OF POTENTIAL RISKS OF ECONOMIC  
6 LOSS TO YOU AS THE PURCHASER OF COASTAL REAL PROPERTY IS REQUIRED BY  
7 STATE LAW.

8 • READ THIS NOTICE CAREFULLY. DO NOT SIGN THIS CONTRACT  
9 UNTIL YOU FULLY UNDERSTAND THE RISKS YOU ARE ASSUMING.

10 • BY PURCHASING THIS PROPERTY, YOU MAY BE ASSUMING  
11 ECONOMIC RISKS OVER AND ABOVE THE RISKS INVOLVED IN PURCHASING  
12 INLAND REAL PROPERTY.

13 • IF YOU OWN A STRUCTURE LOCATED ON COASTAL REAL PROPERTY  
14 NEAR A GULF COAST BEACH, IT MAY COME TO BE LOCATED ON THE PUBLIC  
15 BEACH BECAUSE OF COASTAL EROSION AND STORM EVENTS.

16 • AS THE OWNER OF A STRUCTURE LOCATED ON THE PUBLIC BEACH,  
17 YOU COULD BE SUED BY THE STATE OF TEXAS AND ORDERED TO REMOVE THE  
18 STRUCTURE.

19 • THE COSTS OF REMOVING A STRUCTURE FROM THE PUBLIC BEACH  
20 AND ANY OTHER ECONOMIC LOSS INCURRED BECAUSE OF A REMOVAL ORDER  
21 WOULD BE SOLELY YOUR RESPONSIBILITY.

22 The real property described in this contract is located  
23 seaward of the Gulf Intracoastal Waterway to its southernmost point  
24 and then seaward of the longitudinal line also known as 97 degrees,  
25 12', 19" which runs southerly to the international boundary from  
26 the intersection of the centerline of the Gulf Intracoastal  
27 Waterway and the Brownsville Ship Channel. If the property is in



1 close proximity to a beach fronting the Gulf of Mexico, the  
2 purchaser is hereby advised that the public has acquired a right of  
3 use or easement to or over the area of any public beach by  
4 prescription, dedication, or presumption, or has retained a right  
5 by virtue of continuous right in the public since time immemorial,  
6 as recognized in law and custom.

7 The extreme seaward boundary of natural vegetation that  
8 spreads continuously inland customarily marks the landward  
9 boundary of the public easement. If there is no clearly marked  
10 natural vegetation line, the landward boundary of the easement is  
11 as provided by Sections 61.016 and 61.017, Natural Resources Code.

12 Much of the Gulf of Mexico coastline is eroding at rates of  
13 more than five feet per year. Erosion rates for all Texas Gulf  
14 property subject to the open beaches act are available from the  
15 Texas General Land Office.

16 State law prohibits any obstruction, barrier, restraint, or  
17 interference with the use of the public easement, including the  
18 placement of structures seaward of the landward boundary of the  
19 easement. OWNERS OF STRUCTURES ERECTED SEAWARD OF THE VEGETATION  
20 LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD  
21 OF THE VEGETATION LINE AS A RESULT OF [~~NATURAL~~] PROCESSES SUCH AS  
22 SHORELINE EROSION ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO  
23 REMOVE THE STRUCTURES.

24 The purchaser is hereby notified that the purchaser should:

25 (1) determine the rate of shoreline erosion in the  
26 vicinity of the real property; and

27 (2) seek the advice of an attorney or other qualified

1 person before executing this contract or instrument of conveyance  
2 as to the relevance of these statutes and facts to the value of the  
3 property the purchaser is hereby purchasing or contracting to  
4 purchase.

5 (b) If there is no executory contract for conveyance, the  
6 statement must be delivered to, and receipt thereof acknowledged  
7 by, the purchaser not later than 10 calendar days prior to closing  
8 the transaction.

9 (c) Failure to include this written [~~the~~] statement in an  
10 executory contract for conveyance or, if there is not an executory  
11 contract for conveyance, failure to deliver this written statement  
12 to the purchaser on or before the 10th calendar day before the date  
13 of closing, renders the conveyance or executory contract voidable  
14 and shall be grounds for the purchaser to terminate such contract,  
15 and upon termination any earnest money shall be returned to the  
16 party making the deposit.

17 (d) Failure to provide this written statement prior to  
18 closing, either in the executory contract for conveyance or in a  
19 separate written statement on or before the 10th calendar day  
20 before the date of closing, shall constitute a deceptive act under  
21 Section 17.46, Business & Commerce Code.

22 (e) This section, or the failure of a person to give or  
23 receive the notice in the manner required by this section, does not  
24 diminish or modify the beach access and use rights of the public  
25 acquired through statute or under common law.

26 SECTION 14. Section 63.002, Natural Resources Code, is  
27 amended by adding Subdivision (6) to read as follows:

1           (6) "Restoration" means the repair or replacement of  
2 dunes or dune vegetation.

3           SECTION 15. Section 63.054(c), Natural Resources Code, is  
4 amended to read as follows:

5           (c) Each county or municipality administering this chapter  
6 shall establish procedures and requirements governing the review  
7 and approval of dune permits, and these procedures and requirements  
8 shall be submitted to the commissioner for certification to  
9 determine whether the procedures and requirements are in compliance  
10 with rules and policies adopted under Section 63.121. The  
11 commissioner shall act on a county or municipality's proposed dune  
12 protection plan not later than the 90th day after the date the plan  
13 is submitted by approving the plan or denying certification. If  
14 certification is denied, the commissioner shall return the proposed  
15 plan to the originating local government with a statement of  
16 specific objections and the reasons for denial, along with  
17 suggested modifications. On receipt, the county or municipality  
18 shall revise and resubmit the plan. The commissioner must certify a  
19 county or municipality's procedures and requirements under this  
20 section in accordance with rules adopted under Section 63.121  
21 [comments].

22           SECTION 16. Section 63.056(a), Natural Resources Code, is  
23 amended to read as follows:

24           (a) After receiving an application for a permit to perform  
25 any of the acts prohibited in Section 63.091 in connection with  
26 small-scale construction activity that includes 5,000 square feet  
27 or less or habitable structures two stories in height or less [~~of~~

1 ~~this code]~~, the commissioners court or the governing body of the  
2 municipality shall notify the commissioner by sending, not less  
3 than 10 working days before the date of the public hearing on the  
4 application, notice of the hearing and a copy of the application.  
5 After receiving an application for a permit to perform any of the  
6 acts prohibited in Section 63.091 in connection with large-scale  
7 construction activity that includes more than 5,000 square feet or  
8 habitable structures more than two stories in height, the  
9 commissioners court or the governing body of the municipality shall  
10 notify the commissioner by sending, not less than 30 working days  
11 before the date of the public hearing on the application, notice of  
12 the hearing and a copy of the application.

13 SECTION 17. Section 63.121, Natural Resources Code, is  
14 amended to read as follows:

15 Sec. 63.121. IDENTIFICATION OF CRITICAL DUNE AREAS;  
16 RULES. (a) The commissioner, in his role as trustee of the public  
17 land of this state, shall identify the critical dune areas within  
18 1,000 feet of mean high tide that are essential to the protection of  
19 state-owned land, public beaches, and submerged land.

20 (b) The commissioner shall promulgate rules for:

21 (1) the identification and protection of critical dune  
22 areas; and

23 (2) the certification of procedures and requirements  
24 governing the review and approval of dune permits by a county or  
25 municipality.

26 SECTION 18. Section 63.181(b), Natural Resources Code, is  
27 amended to read as follows:

1 (b) A person who violates this chapter or any rule, permit,  
2 or order under this chapter is liable for a civil penalty of not  
3 less than \$50 nor more than \$2,000 [~~\$1,000~~]. Each day that a  
4 violation occurs or continues constitutes a separate offense. A  
5 violation of Section 63.091 is considered to be a continuing  
6 violation from the date of the initial unauthorized conduct until  
7 the earlier of:

8 (1) the date on which a proper permit is issued  
9 authorizing the conduct; or

10 (2) the date on which restoration of dunes or dune  
11 vegetation damaged by the violation is completed.

12 SECTION 19. Subchapter G, Chapter 63, Natural Resources  
13 Code, is amended by adding Sections 63.1811, 63.1812, 63.1813, and  
14 63.1814 to read as follows:

15 Sec. 63.1811. ADMINISTRATIVE PENALTY. The commissioner may  
16 assess an administrative penalty for a violation of Section 63.091  
17 or any rule, permit, or order issued under this chapter in the  
18 amount established by Section 63.181(b) for a civil penalty. In  
19 determining the amount of the penalty, the commissioner shall  
20 consider:

21 (1) the seriousness of the violation, including the  
22 nature, circumstances, extent, and gravity of the violation and the  
23 hazard or damage caused thereby;

24 (2) the degree of cooperation and quality of response;

25 (3) the degree of culpability and history of previous  
26 violations by the person subject to the penalty;

27 (4) the amount necessary to deter future violations;

1 and

2 (5) any other matter that justice requires.

3 Sec. 63.1812. ENFORCEMENT PROVISIONS CUMULATIVE. This  
4 subchapter is cumulative of all other applicable penalties,  
5 remedies, and enforcement and liability provisions.

6 Sec. 63.1813. MITIGATION FOR DAMAGE, DESTRUCTION, OR  
7 REMOVAL OF DUNE OR DUNE VEGETATION WITHOUT PERMIT. (a) The  
8 commissioner may order restoration for the damage, destruction, or  
9 removal of a sand dune or a portion of a sand dune or the killing,  
10 destruction, or removal of any vegetation growing on a sand dune  
11 seaward of the dune protection line or within a critical dune area  
12 in violation of this chapter or any rule, permit, or order issued  
13 under this chapter.

14 (b) The decision to require restoration under this section  
15 is discretionary with the commissioner. This section does not  
16 impose a duty on the state to order restoration.

17 (c) The commissioner may contract for the restoration  
18 required under this section and may pay the costs of restoration  
19 from money appropriated by the legislature.

20 Sec. 63.1814. NOTICE REQUIREMENTS; ORDERS AND HEARINGS.

21 (a) The commissioner shall assess an administrative penalty and  
22 pursue restoration in accordance with this section.

23 (b) Before the commissioner may order restoration under  
24 Section 63.1813 or assess an administrative penalty under Section  
25 63.1811, the commissioner must give written notice to a person who  
26 is taking or has taken actions that violate Section 63.091 or any  
27 rule, permit, or order issued under this chapter. The notice must

1 state:

2 (1) the specific conduct that violates Section 63.091  
3 or any rule, permit, or order issued under this chapter;

4 (2) that the person who is engaged in or has been  
5 engaged in the conduct that violates Section 63.091 or any rule,  
6 permit, or order issued under this chapter must perform restoration  
7 for the damage caused by the violation not later than the 60th day  
8 after the date on which the notice is served;

9 (3) that failure to perform restoration for the damage  
10 caused by the violation in accordance with the commissioner's order  
11 may result in liability for a civil penalty under Section 63.181(b)  
12 in an amount specified, restoration contracted or undertaken by the  
13 commissioner and liability for the costs of restoration, or any  
14 combination of those remedies; and

15 (4) that the person who is engaging in or has engaged  
16 in conduct that violates Section 63.091 or any rule, permit, or  
17 order issued under this chapter may submit, not later than the 60th  
18 day after the date on which the notice is served, a written request  
19 for a hearing.

20 (c) A person is considered to be engaging in or to have  
21 engaged in conduct that violates Section 63.091 or any rule,  
22 permit, or order issued under this chapter for purposes of this  
23 section if the person is the person who most recently owned,  
24 maintained, controlled, or possessed the real property on which the  
25 conduct occurred.

26 (d) The notice required by Subsection (b) must be given:

27 (1) by service in person, by registered or certified

1 mail, return receipt requested, or by priority mail; or

2 (2) if personal service cannot be obtained or the  
3 address of the person responsible is unknown, by posting a copy of  
4 the written notice at the site where the conduct was engaged in and  
5 by publishing notice in a newspaper with general circulation in the  
6 county in which the site is located at least two times within 10  
7 consecutive days.

8 (e) The commissioner by rule may adopt procedures for a  
9 hearing under this section.

10 (f) The commissioner must grant a hearing before an  
11 administrative law judge employed by the State Office of  
12 Administrative Hearings if a hearing is requested. A person who  
13 does not request a hearing within 60 days after the date on which  
14 the notice is served waives all rights to judicial review of the  
15 commissioner's findings or orders and shall immediately initiate  
16 mitigation and pay any penalty assessed. If a hearing is held, the  
17 commissioner may issue a final order approving the proposal for  
18 decision submitted by the administrative law judge concerning  
19 mitigation and payment of a penalty. The commissioner may change a  
20 finding of fact or conclusion of law made by the administrative law  
21 judge, or may vacate or modify an order issued by the administrative  
22 law judge in accordance with Section 2001.058, Government Code.

23 (g) A person may seek judicial review of a final order of the  
24 commissioner under this section in a Travis County district court  
25 under the substantial evidence rule as provided by Subchapter G,  
26 Chapter 2001, Government Code. The trial courts of this state shall  
27 give preference to an appeal of a final order of the commissioner



1 under this section in the same manner as provided by Section  
2 23.101(a), Government Code, for an appeal of a final order of the  
3 commissioner under Section 51.3021 of this code.

4 (h) If the person who is engaged in or has been engaged in  
5 conduct that violated Section 63.091 or any rule, permit, or order  
6 issued under this chapter does not pay assessed penalties,  
7 mitigation costs, and other assessed fees and expenses on or before  
8 the 60th day after the date of entry of a final order assessing the  
9 penalties, costs, and expenses, the commissioner may:

10 (1) request that the attorney general institute civil  
11 proceedings to collect the penalties, costs of restoration, and  
12 other fees and expenses remaining unpaid; or

13 (2) use any combination of the remedies prescribed by  
14 this section, or other remedies authorized by law, to collect the  
15 unpaid penalties, costs of restoration, and other fees and expenses  
16 assessed because of unauthorized conduct and its mitigation by the  
17 commissioner.

18 (i) Penalties or costs collected under this section shall be  
19 deposited in the coastal erosion response account established under  
20 Section 33.604.

21 SECTION 20. Section 2210.004, Insurance Code, is amended by  
22 amending Subsection (a) and adding Subsection (h) to read as  
23 follows:

24 (a) Except as provided by Subsection (h), for [~~For~~] purposes  
25 of this chapter and subject to this section, "insurable property"  
26 means immovable property at a fixed location in a catastrophe area  
27 or corporeal movable property located in that immovable property,

1 as designated in the plan of operation, that is determined by the  
2 association according to the criteria specified in the plan of  
3 operation to be in an insurable condition against windstorm and  
4 hail or fire and explosion, as appropriate, as determined by normal  
5 underwriting standards.

6 (h) For purposes of this chapter, a structure is not  
7 insurable property if the commissioner of the General Land Office  
8 notifies the association of a determination that the structure is  
9 located on the public beach under procedures established under  
10 Section 61.011, Natural Resources Code, and that the structure:

11 (1) constitutes an imminent hazard to safety, health,  
12 or public welfare; or

13 (2) substantially interferes with the free and  
14 unrestricted right of the public to enter or leave the public beach  
15 or traverse any part of the public beach.

16 SECTION 21. Section 5.008(b), Property Code, is amended to  
17 read as follows:

18 (b) The notice must be executed and must, at a minimum, read  
19 substantially similar to the following:

20 SELLER'S DISCLOSURE NOTICE

21 CONCERNING THE PROPERTY AT \_\_\_\_\_  
22 (Street Address and City)

23 THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF  
24 THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY  
25 SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR  
26 WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT  
27 A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

28 Seller \_\_\_ is \_\_\_ is not occupying the Property.

29 If unoccupied, how long since Seller has occupied the Property?

1

2 1. The Property has the items checked below:

3 Write Yes (Y), No (N), or Unknown (U).

- |    |   |  |  |
|----|---|--|--|
| 4  | <input type="checkbox"/> Range              | <input type="checkbox"/> Oven                              | <input type="checkbox"/> Microwave       |
| 5  | <input type="checkbox"/> Dishwasher         | <input type="checkbox"/> Trash Compactor                   | <input type="checkbox"/> Disposal        |
| 6  | <input type="checkbox"/> Washer/Dryer       | <input type="checkbox"/> Window                            | <input type="checkbox"/> Rain Gutters    |
| 7  | <input type="checkbox"/> Hookups            | <input type="checkbox"/> Screens                           |  |
| 8  | <input type="checkbox"/> Security           | <input type="checkbox"/> Fire Detection                    | <input type="checkbox"/> Intercom        |
| 9  | <input type="checkbox"/> System             | <input type="checkbox"/> Equipment                         | <input type="checkbox"/> System          |
| 10 | <input type="checkbox"/> TV Antenna         | <input type="checkbox"/> Cable TV                          | <input type="checkbox"/> Satellite       |
| 11 |   | <input type="checkbox"/> Wiring                            | <input type="checkbox"/> Dish            |
| 12 | <input type="checkbox"/> Ceiling Fan(s)     | <input type="checkbox"/> Attic Fan(s)                      | <input type="checkbox"/> Exhaust         |
| 13 |   |  | <input type="checkbox"/> Fan(s)          |
| 14 | <input type="checkbox"/> Central A/C        | <input type="checkbox"/> Central Heating                   | <input type="checkbox"/> Wall/Window Air |
| 15 |   |  | <input type="checkbox"/> Conditioning    |
| 16 | <input type="checkbox"/> Plumbing System    | <input type="checkbox"/> Septic System                     | <input type="checkbox"/> Public Sewer    |
| 17 |   |  | <input type="checkbox"/> System          |
| 18 | <input type="checkbox"/> Patio/Decking      | <input type="checkbox"/> Outdoor Grill                     | <input type="checkbox"/> Fences          |
| 19 | <input type="checkbox"/> Pool               | <input type="checkbox"/> Sauna                             | <input type="checkbox"/> Spa             |
| 20 |   |  | <input type="checkbox"/> Hot Tub         |
| 21 | <input type="checkbox"/> Pool Equipment     | <input type="checkbox"/> Pool Heater                       | <input type="checkbox"/> Automatic Lawn  |
| 22 |   |  | <input type="checkbox"/> Sprinkler       |
| 23 |   |  | <input type="checkbox"/> System          |
| 24 | <input type="checkbox"/> Fireplace(s) &     |  | <input type="checkbox"/> Fireplace(s) &  |
| 25 | <input type="checkbox"/> Chimney            |  | <input type="checkbox"/> Chimney         |
| 26 | <input type="checkbox"/> (Woodburning)      |  | <input type="checkbox"/> (Mock)          |
| 27 | <input type="checkbox"/> Gas Lines          |  | <input type="checkbox"/> Gas Fixtures    |
| 28 | <input type="checkbox"/> (Nat./LP)          |  |  |
| 29 | Garage: <input type="checkbox"/> Attached   | <input type="checkbox"/> Not Attached                      | <input type="checkbox"/> Carport         |
| 30 | Garage Door Opener(s):                      | <input type="checkbox"/> Electronic                        | <input type="checkbox"/> Control(s)      |
| 31 | Water Heater:                               | <input type="checkbox"/> Gas                               | <input type="checkbox"/> Electric        |
| 32 | Water Supply: <input type="checkbox"/> City | <input type="checkbox"/> Well <input type="checkbox"/> MUD | <input type="checkbox"/> Co-op           |
| 33 | Roof Type: _____                            |  | Age: _____(approx)                       |

34 Are you (Seller) aware of any of the above items that are not in  
35 working condition, that have known defects, or that are in need of  
36 repair?  Yes  No  Unknown.

37 If yes, then describe. (Attach additional sheets if necessary):

38 \_\_\_\_\_  
39 \_\_\_\_\_

40 2. Are you (Seller) aware of any known defect/malfunctions in any  
41 of the following?

42 Write Yes (Y) if you are aware, write No (N) if you are not aware.

- 1           \_\_\_ Interior Walls           \_\_\_ Ceilings           \_\_\_ Floors
- 2           \_\_\_ Exterior Walls          \_\_\_ Doors           \_\_\_ Windows
- 3           \_\_\_ Roof                       \_\_\_ Foundation/     \_\_\_ Basement
- 4                                    Slab(s)
- 5           \_\_\_ Walls/Fences           \_\_\_ Driveways       \_\_\_ Sidewalks
- 6           \_\_\_ Plumbing/Sewers/     \_\_\_ Electrical      \_\_\_ Lighting
- 7           Septics                Systems            Fixtures

8   \_\_\_ Other Structural Components (Describe): \_\_\_\_\_

9   \_\_\_\_\_

10 \_\_\_\_\_

11 If the answer to any of the above is yes, explain. (Attach

12 additional sheets if necessary): \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 3. Are you (Seller) aware of any of the following conditions?

16 Write Yes (Y) if you are aware, write No (N) if you are not aware.

- 17 \_\_\_ Active Termites               \_\_\_ Previous Structural
- 18     (includes                      or Roof Repair
- 19     wood-destroying insects)
- 20 \_\_\_ Termite or Wood Rot          \_\_\_ Hazardous or Toxic Waste
- 21     Needing Repair
- 22 \_\_\_ Previous Termite Damage      \_\_\_ Asbestos Components
- 23 \_\_\_ Previous Termite            \_\_\_ Urea formaldehyde
- 24     Treatment                    Insulation
- 25 \_\_\_ Previous Flooding            \_\_\_ Radon Gas
- 26 \_\_\_ Improper Drainage            \_\_\_ Lead Based Paint
- 27 \_\_\_ Water Penetration            \_\_\_ Aluminum Wiring
- 28 \_\_\_ Located in 100-Year          \_\_\_ Previous Fires
- 29     Floodplain
- 30 \_\_\_ Present Flood Insurance      \_\_\_ Unplatted Easements
- 31     Coverage
- 32 \_\_\_ Landfill, Settling, Soil     \_\_\_ Subsurface
- 33     Movement, Fault Lines        Structure or Pits

34 If the answer to any of the above is yes, explain. (Attach

35 additional sheets if necessary): \_\_\_\_\_

36 \_\_\_\_\_

37 \_\_\_\_\_

38 4. Are you (Seller) aware of any item, equipment, or system in or

1 on the property that is in need of repair?  Yes (if you are  
2 aware)  No (if you are not aware). If yes, explain (attach  
3 additional sheets as necessary). \_\_\_\_\_

4 5. Are you (Seller) aware of any of the following?

5 Write Yes (Y) if you aware, write No (N) if you are not aware.

6  Room additions, structural modifications, or other  
7 alterations or repairs made without necessary permits or not  
8 in compliance with building codes in effect at that time.

9  Homeowners' Association or maintenance fees or assessments.

10  Any "common area" (facilities such as pools, tennis courts,  
11 walkways, or other areas) co-owned in undivided interest with  
12 others.

13  Any notices of violations of deed restrictions of  
14 governmental ordinances affecting the condition or use of the  
15 Property.

16  Any lawsuits directly or indirectly affecting the Property.

17  Any condition on the Property which materially affects the  
18 physical health or safety of an individual.

19 If the answer to any of the above is yes, explain. (Attach  
20 additional sheets if necessary): \_\_\_\_\_

21 \_\_\_\_\_  
22 \_\_\_\_\_

23 6. Property located in a coastal area that is subject to  
24 Subchapter B, Chapter 61, and Chapter 63, Natural Resources Code,  
25 may require a beachfront construction certificate or dune  
26 protection permit for repairs or improvements.

27 Is the property located seaward of the Gulf Intracoastal Waterway?

28  Yes (if you are aware)  No (if you are not aware).

29 If the answer to the question above is yes, is the property located  
30 within 1,000 feet of mean high tide bordering on the Gulf of Mexico?

31  Yes (if you are aware)  No (if you are not aware).

32 \_\_\_\_\_  
33 Date

\_\_\_\_\_  
Signature of Seller

1 The undersigned purchaser hereby acknowledges receipt of the  
2 foregoing notice.

3 \_\_\_\_\_  
4 Date Signature of Purchaser

5 SECTION 22. Not later than January 1, 2008, the  
6 commissioner of the General Land Office shall adopt rules required  
7 by Sections 61.011 and 63.121, Natural Resources Code, as amended  
8 by this Act.

9 SECTION 23. This Act takes effect September 1, 2007.