

By: Ritter

H.B. No. 3624

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 33.605(b), Natural Resources Code, is amended to read as follows:

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

(1) the amount of money in the account;

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

(3) the locations of other existing or proposed erosion response projects;

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

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

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

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

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

SECTION 2. The heading to Section 33.607, Natural Resources Code, is amended to read as follows:

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

SECTION 3. Section 33.607, Natural Resources Code, is amended by amending Subsection (e) and adding Subsections (f), (g), and (h) to read as follows:

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

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

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

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

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

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

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

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

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

9 SECTION 4. Section 33.651(4), Natural Resources Code, is
10 amended to read as follows:

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

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

15 (B) constructing or maintaining public roads,
16 parking, or other facilities in aid of public access to or use of a
17 public beach; ~~[or]~~

18 (C) requiring a landowner, as prescribed by land
19 office rules, to restore land affected by coastal erosion to its
20 original boundaries; or

21 (D) implementing a building set-back line
22 established under Section 33.607.

23 SECTION 5. Section 33.656, Natural Resources Code, is
24 amended to read as follows:

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

27 (1) be sponsored by a coastal county;

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

5 (3) be accessible by public roads or a common carrier
6 ferry;

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

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

12 SECTION 6. Section 33.659(a), Natural Resources Code, is
13 amended to read as follows:

14 (a) In addition to all other powers that a coastal county
15 has under general law, a coastal county has the rights, powers,
16 privileges, authority, and functions that are necessary or
17 convenient to:

18 (1) the designing, engineering, acquiring,
19 constructing, improving, maintaining, extending, repairing,
20 replacing, monitoring, removing, administering, and financing of a
21 qualified project located in a coastal county; ~~and~~

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

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

26 SECTION 7. Section 61.011(d), Natural Resources Code, is
27 amended to read as follows:

1 (d) The commissioner shall promulgate rules, consistent
2 with the policies established in this section, on the following
3 matters only:

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

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

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

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

18 (5) contents and certification of beach access and use
19 plans and standards for local government review of construction on
20 land adjacent to and landward of public beaches, including
21 procedures for expedited review of beach access and use plans under
22 Section 61.015;

23 (6) construction on land adjacent to and landward of
24 public beaches and lying in the area either up to the first public
25 road generally parallel to the beach or to any closer public road
26 not parallel to the beach, or to within 1,000 feet of mean high
27 tide, whichever is greater, that affects or may affect public

1 access to and use of public beaches; ~~and~~

2 (7) the temporary suspension under Section 61.0185 of
3 enforcement of the prohibition against encroachments on and
4 interferences with the public beach easement and the ability of a
5 property owner to make repairs to a house while a suspension is in
6 effect;

7 (8) the determination of the line of vegetation or
8 natural line of vegetation;

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

12 (A) constitutes an imminent hazard to safety,
13 health, or public welfare; or

14 (B) substantially interferes with the free and
15 unrestricted right of the public to enter or leave the public beach
16 or traverse any part of the public beach; and

17 (10) the procedures for determining whether a
18 structure is not insurable property for purposes of Section
19 2210.004, Insurance Code, because of the factors listed in
20 Subsection (h) of that section.

21 SECTION 8. Sections 61.015(b) and (c), Natural Resources
22 Code, are amended to read as follows:

23 (b) Local governments shall submit proposed beach access
24 and use plans to the commissioner for certification as to
25 compliance with such policies and rules. The commissioner shall act
26 on a local government's proposed beach access and use plan within 90
27 ~~60~~ days of submission by either approving the plan or denying

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

8 (c) A littoral owner proposing construction adjacent to and
 9 landward of a public beach in the area described in Section
 10 61.011(d)(6) shall submit a development plan to the appropriate
 11 local government. The local government shall forward a [the]
 12 development plan for small-scale construction activity that
 13 includes 5,000 square feet or less or habitable structures two
 14 stories or less in height to the commissioner no less than 10
 15 working days prior to acting on the development plan. The local
 16 government shall forward a development plan for large-scale
 17 construction activity that includes more than 5,000 square feet or
 18 habitable structures more than two stories in height to the
 19 commissioner no less than 30 working days prior to acting on the
 20 development plan. The commissioner may submit comments on the
 21 proposed construction to the local government.

22 SECTION 9. Sections 61.018(b) and (c), Natural Resources
 23 Code, are amended to read as follows:

24 (b) In the same suit, the attorney general, the
 25 commissioner, county attorney, district attorney, or criminal
 26 district attorney may recover penalties and the costs of removing
 27 any improvement, obstruction, barrier, or other encroachment if it

1 is removed by public authorities pursuant to an order of the court
2 or a removal order issued by the commissioner as provided by Section
3 61.0183.

4 (c) A person who violates this chapter or a removal order
5 issued by the commissioner as provided by Section 61.0183 is liable
6 for a civil penalty of not less than \$50 nor more than \$2,000
7 [~~\$1,000~~]. Each day the violation occurs or continues is a separate
8 violation.

9 SECTION 10. Subchapter B, Chapter 61, Natural Resources
10 Code, is amended by adding Sections 61.0181, 61.0182, 61.0183, and
11 61.0184 to read as follows:

12 Sec. 61.0181. ADMINISTRATIVE PENALTY. The commission may
13 assess an administrative penalty against a person who violates this
14 chapter or a rule adopted under this chapter in the amount provided
15 by Section 61.018(c) for a civil penalty. In determining the amount
16 of the penalty, the commissioner shall consider:

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

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

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

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

24 and

25 (5) any other matter that justice requires.

26 Sec. 61.0182. ENFORCEMENT PROVISIONS CUMULATIVE. This
27 subchapter is cumulative of all other applicable penalties,

1 remedies, and enforcement and liability provisions.

2 Sec. 61.0183. REMOVAL OF CERTAIN STRUCTURES, IMPROVEMENTS,
3 OBSTRUCTIONS, BARRIERS, AND HAZARDS ON PUBLIC BEACH. (a) The
4 commissioner may order the removal of a structure, improvement,
5 obstruction, barrier, or hazard from a public beach if the
6 commissioner finds the structure, improvement, obstruction,
7 barrier, or hazard to be on the public beach as defined by Section
8 61.013(c) and:

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

13 (2) the structure, improvement, obstruction, or
14 barrier constitutes an imminent hazard to safety, health, or public
15 welfare.

16 (b) The decision to remove a structure, improvement,
17 obstruction, barrier, or hazard under this section is discretionary
18 with the commissioner. This section does not impose a duty on the
19 state to remove a structure, improvement, obstruction, barrier, or
20 hazard or to remedy or warn of a hazardous condition on the public
21 beach.

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

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

27 (a) The commissioner shall make a determination that a structure is

1 located on the public beach, assess an administrative penalty, and
2 pursue the removal of a structure, improvement, obstruction,
3 barrier, or hazard from a public beach in accordance with this
4 section.

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

12 (1) the commissioner finds that a specific structure
13 is located on the public beach as determined under this chapter,
14 and:

15 (A) constitutes an imminent hazard to safety,
16 health, or public welfare; or

17 (B) substantially interferes with the free and
18 unrestricted right of the public to enter or leave the public beach
19 or traverse any part of the public beach;

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

23 (3) the person who is constructing, maintains,
24 controls, owns, or possesses the structure, improvement,
25 obstruction, barrier, or hazard located on the public beach may
26 submit, not later than the 60th day after the date on which the
27 notice is served, written request for a hearing to contest the

1 determination.

2 (c) Before the commissioner may order the removal of a
3 structure, improvement, obstruction, barrier, or hazard under
4 Section 61.0183 or impose an administrative penalty under Section
5 61.0181, the commissioner must provide written notice to the person
6 who is constructing, maintains, controls, owns, or possesses the
7 structure, improvement, obstruction, barrier, or hazard. The
8 notice must:

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

11 (2) state that the person who is constructing,
12 maintains, controls, owns, or possesses the structure,
13 improvement, obstruction, barrier, or hazard is required to remove
14 the structure, improvement, obstruction, barrier, or hazard:

15 (A) not later than the 60th day after the date on
16 which the notice is served, if the structure, improvement,
17 obstruction, barrier, or hazard is obstructing access to or use of
18 the public beach; or

19 (B) within a reasonable time specified by the
20 commissioner if the structure, improvement, obstruction, barrier,
21 or hazard is an imminent and unreasonable threat to public health,
22 safety, or welfare;

23 (3) state that failure to remove the structure,
24 improvement, obstruction, barrier, or hazard may result in
25 liability for a civil penalty under Section 61.018(c), removal by
26 the commissioner and liability for the costs of removal, or any
27 combination of those remedies; and

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

6 (d) A person is considered to be the person who owns,
7 maintains, controls, or possesses an improvement, obstruction,
8 barrier, or other encroachment on the public beach for purposes of
9 this section if the person is the person who most recently owned,
10 maintained, controlled, or possessed the improvement, obstruction,
11 barrier, or other encroachment on the public beach.

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

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

15 (2) if personal service cannot be obtained or the
16 address of the person responsible is unknown, by posting a copy of
17 the notice on the structure, improvement, obstruction, barrier, or
18 hazard and by publishing notice in a newspaper with general
19 circulation in the county in which the structure, improvement,
20 obstruction, barrier, or hazard is located at least two times
21 within 10 consecutive days.

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

24 (g) The commissioner must grant a hearing before an
25 administrative law judge employed by the State Office of
26 Administrative Hearings if a hearing is requested. A person who
27 does not request a hearing within 60 days after the date on which

the notice is served waives all rights to judicial review of the commissioner's findings or orders and shall immediately remove the structure, improvement, obstruction, barrier, or hazard and pay any penalty assessed. If a hearing is held, the commissioner may issue a final order approving the proposal for decision submitted by the administrative law judge concerning a determination regarding whether a structure is not insurable property for purposes of Section 2210.004, Insurance Code, because of the factors listed in Subsection (h) of that section or concerning removal of the structure, improvement, obstruction, barrier, or hazard and payment of a penalty. The commissioner may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative judge in accordance with Section 2001.058, Government Code.

(h) The trial courts of this state shall give preference to an appeal from a final order of the commissioner under this section as provided by Section 23.101(a), Government Code.

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

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

(2) request that the attorney general institute civil proceedings to collect the penalties, costs of removal, and other

1 fees and expenses remaining unpaid; or

2 (3) use any combination of the remedies prescribed by
3 this subsection, or other remedies authorized by law, to collect
4 the unpaid penalties, costs of removal, and other fees and expenses
5 assessed because of the structure, improvement, obstruction,
6 barrier, or hazard on the public beach and its removal by the
7 commissioner.

8 SECTION 11. Section 61.020, Natural Resources Code, is
9 amended to read as follows:

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

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

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

20 (b) The determination of the location of the line of
21 vegetation by the commissioner as provided by Sections 61.016 and
22 61.017 constitutes prima facie evidence of the landward boundary of
23 the area subject to the public easement until a court adjudication
24 establishes the line in another place.

25 SECTION 12. Section 61.025, Natural Resources Code, is
26 amended to read as follows:

27 Sec. 61.025. DISCLOSURE TO PURCHASER OF PROPERTY. (a) A

1 person who sells or conveys an interest, other than a mineral,
2 leasehold, or security interest, in real property located seaward
3 of the Gulf Intracoastal Waterway to its southernmost point and
4 then seaward of the longitudinal line also known as 97 degrees, 12',
5 19" which runs southerly to the international boundary from the
6 intersection of the centerline of the Gulf Intracoastal Waterway
7 and the Brownsville Ship Channel must include in any executory
8 contract for conveyance a [~~the following~~] statement in
9 substantially the following form:

10 CONCERNING THE PROPERTY AT _____

11 DISCLOSURE NOTICE CONCERNING LEGAL AND ECONOMIC RISKS

12 OF PURCHASING COASTAL REAL PROPERTY NEAR A BEACH

13 WARNING: THE FOLLOWING NOTICE OF POTENTIAL RISKS OF ECONOMIC
14 LOSS TO YOU AS THE PURCHASER OF COASTAL REAL PROPERTY IS REQUIRED BY
15 STATE LAW.

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

18 • BY PURCHASING THIS PROPERTY, YOU MAY BE ASSUMING
19 ECONOMIC RISKS OVER AND ABOVE THE RISKS INVOLVED IN PURCHASING
20 INLAND REAL PROPERTY.

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

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

27 • THE COSTS OF REMOVING A STRUCTURE FROM THE PUBLIC BEACH

1 AND ANY OTHER ECONOMIC LOSS INCURRED BECAUSE OF A REMOVAL ORDER
2 WOULD BE SOLELY YOUR RESPONSIBILITY.

3 The real property described in this contract is located
4 seaward of the Gulf Intracoastal Waterway to its southernmost point
5 and then seaward of the longitudinal line also known as 97 degrees,
6 12', 19" which runs southerly to the international boundary from
7 the intersection of the centerline of the Gulf Intracoastal
8 Waterway and the Brownsville Ship Channel. If the property is in
9 close proximity to a beach fronting the Gulf of Mexico, the
10 purchaser is hereby advised that the public has acquired a right of
11 use or easement to or over the area of any public beach by
12 prescription, dedication, or presumption, or has retained a right
13 by virtue of continuous right in the public since time immemorial,
14 as recognized in law and custom.

15 The extreme seaward boundary of natural vegetation that
16 spreads continuously inland customarily marks the landward
17 boundary of the public easement. If there is no clearly marked
18 natural vegetation line, the landward boundary of the easement is
19 as provided by Sections 61.016 and 61.017, Natural Resources Code.

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

24 State law prohibits any obstruction, barrier, restraint, or
25 interference with the use of the public easement, including the
26 placement of structures seaward of the landward boundary of the
27 easement. OWNERS OF STRUCTURES ERECTED SEAWARD OF THE VEGETATION

1 LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD
2 OF THE VEGETATION LINE AS A RESULT OF [~~NATURAL~~] PROCESSES SUCH AS
3 SHORELINE EROSION ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO
4 REMOVE THE STRUCTURES.

5 The purchaser is hereby notified that the purchaser should:

6 (1) determine the rate of shoreline erosion in the
7 vicinity of the real property; and

8 (2) seek the advice of an attorney or other qualified
9 person before executing this contract or instrument of conveyance
10 as to the relevance of these statutes and facts to the value of the
11 property the purchaser is hereby purchasing or contracting to
12 purchase.

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

17 (c) Failure to provide the written notice to the purchaser
18 on or before the 10th calendar day before the effective date of any
19 conveyance or executory contract or to include the statement in an
20 executory contract for conveyance renders the conveyance or
21 executory contract voidable and shall be grounds for the purchaser
22 to terminate such contract, and upon termination any earnest money
23 shall be returned to the party making the deposit.

24 (d) Failure to provide this statement on or before the 10th
25 calendar day before the effective date of any [~~prior to closing,~~
26 ~~either in the~~] executory contract for conveyance or to include the
27 statement in an executory contract for conveyance [~~or in a separate~~

1 ~~written statement,~~] shall constitute a deceptive act under Section
2 17.46, Business & Commerce Code.

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

7 SECTION 13. Section 63.002, Natural Resources Code, is
8 amended by adding Subdivision (6) to read as follows:

9 (6) "Restoration" means the repair or replacement of
10 dunes or dune vegetation.

11 SECTION 14. Section 63.054(c), Natural Resources Code, is
12 amended to read as follows:

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

1 section in accordance with rules adopted under Section 63.121
2 [comments].

3 SECTION 15. Section 63.056(a), Natural Resources Code, is
4 amended to read as follows:

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

21 SECTION 16. Section 63.121, Natural Resources Code, is
22 amended to read as follows:

23 Sec. 63.121. IDENTIFICATION OF CRITICAL DUNE AREAS;
24 RULES. (a) The commissioner, in his role as trustee of the public
25 land of this state, shall identify the critical dune areas within
26 1,000 feet of mean high tide that are essential to the protection of
27 state-owned land, public beaches, and submerged land.

1 (b) The commissioner shall promulgate rules for:

2 (1) the identification and protection of critical dune
3 areas; and

4 (2) the certification of procedures and requirements
5 governing the review and approval of dune permits by a county or
6 municipality.

7 SECTION 17. Section 63.181(b), Natural Resources Code, is
8 amended to read as follows:

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

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

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

20 SECTION 18. Subchapter G, Chapter 63, Natural Resources
21 Code, is amended by adding Sections 63.1811, 63.1812, 63.1813, and
22 63.1814 to read as follows:

23 Sec. 63.1811. ADMINISTRATIVE PENALTY. The commissioner may
24 assess an administrative penalty for a violation of Section 63.091
25 or any rule, permit, or order issued under this chapter in the
26 amount established by Section 63.181(b) for a civil penalty. In
27 determining the amount of the penalty, the commissioner shall

1 consider:

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

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

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

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

9 and

10 (5) any other matter that justice requires.

11 Sec. 63.1812. ENFORCEMENT PROVISIONS CUMULATIVE. This
12 subchapter is cumulative of all other applicable penalties,
13 remedies, and enforcement and liability provisions.

14 Sec. 63.1813. MITIGATION FOR DAMAGE, DESTRUCTION, OR
15 REMOVAL OF DUNE OR DUNE VEGETATION WITHOUT PERMIT. (a) The
16 commissioner may order restoration for the damage, destruction, or
17 removal of a sand dune or a portion of a sand dune or the killing,
18 destruction, or removal of any vegetation growing on a sand dune
19 seaward of the dune protection line or within a critical dune area
20 in violation of this chapter or any rule, permit, or order issued
21 under this chapter.

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

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

Sec. 63.1814. NOTICE REQUIREMENTS; ORDERS AND HEARINGS.

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

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

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

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

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

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

1 (c) A person is considered to be engaging in or to have
2 engaged in conduct that violates Section 63.091 or any rule,
3 permit, or order issued under this chapter for purposes of this
4 section if the person is the person who most recently owned,
5 maintained, controlled, or possessed the real property on which the
6 conduct occurred.

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

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

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

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

18 (f) The commissioner must grant a hearing before an
19 administrative law judge employed by the State Office of
20 Administrative Hearings if a hearing is requested. A person who
21 does not request a hearing within 60 days after the date on which
22 the notice is served waives all rights to judicial review of the
23 commissioner's findings or orders and shall immediately initiate
24 mitigation and pay any penalty assessed. If a hearing is held, the
25 commissioner may issue a final order approving the proposal for
26 decision submitted by the administrative law judge concerning
27 mitigation and payment of a penalty. The commissioner may change a

1 finding of fact or conclusion of law made by the administrative law
2 judge, or may vacate or modify an order issued by the administrative
3 law judge in accordance with Section 2001.058, Government Code.

4 (g) The trial courts of this state shall give preference to
5 an appeal from a final order of the commissioner under this section
6 as provided by Section 23.101(a), Government Code.

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

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

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

21 SECTION 19. 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,

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

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

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

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

SECTION 20. Section 5.008(b), Property Code, is amended to read as follows:

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

SELLER'S DISCLOSURE NOTICE

CONCERNING THE PROPERTY AT _____
(Street Address and City)

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

Seller ___ is ___ is not occupying the Property.

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

1. The Property has the items checked below:

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

<input type="checkbox"/> Range	<input type="checkbox"/> Oven	<input type="checkbox"/> Microwave
<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Trash Compactor	<input type="checkbox"/> Disposal
<input type="checkbox"/> Washer/Dryer	<input type="checkbox"/> Window	<input type="checkbox"/> Rain Gutters
<input type="checkbox"/> Hookups	<input type="checkbox"/> Screens	
<input type="checkbox"/> Security	<input type="checkbox"/> Fire Detection	<input type="checkbox"/> Intercom
<input type="checkbox"/> System	<input type="checkbox"/> Equipment	<input type="checkbox"/> System
<input type="checkbox"/> TV Antenna	<input type="checkbox"/> Cable TV	<input type="checkbox"/> Satellite
	<input type="checkbox"/> Wiring	<input type="checkbox"/> Dish
<input type="checkbox"/> Ceiling Fan(s)	<input type="checkbox"/> Attic Fan(s)	<input type="checkbox"/> Exhaust
		<input type="checkbox"/> Fan(s)
<input type="checkbox"/> Central A/C	<input type="checkbox"/> Central Heating	<input type="checkbox"/> Wall/Window Air
		<input type="checkbox"/> Conditioning
<input type="checkbox"/> Plumbing System	<input type="checkbox"/> Septic System	<input type="checkbox"/> Public Sewer
		<input type="checkbox"/> System
<input type="checkbox"/> Patio/Decking	<input type="checkbox"/> Outdoor Grill	<input type="checkbox"/> Fences
<input type="checkbox"/> Pool	<input type="checkbox"/> Sauna	<input type="checkbox"/> Spa
		<input type="checkbox"/> Hot Tub
<input type="checkbox"/> Pool Equipment	<input type="checkbox"/> Pool Heater	<input type="checkbox"/> Automatic Lawn
		<input type="checkbox"/> Sprinkler
		<input type="checkbox"/> System
<input type="checkbox"/> Fireplace(s) &		<input type="checkbox"/> Fireplace(s) &
<input type="checkbox"/> Chimney		<input type="checkbox"/> Chimney
<input type="checkbox"/> (Woodburning)		<input type="checkbox"/> (Mock)
<input type="checkbox"/> Gas Lines		<input type="checkbox"/> Gas Fixtures
<input type="checkbox"/> (Nat./LP)		
Garage: <input type="checkbox"/> Attached	<input type="checkbox"/> Not Attached	<input type="checkbox"/> Carport
Garage Door Opener(s):	<input type="checkbox"/> Electronic	<input type="checkbox"/> Control(s)
Water Heater:	<input type="checkbox"/> Gas	<input type="checkbox"/> Electric
Water Supply: <input type="checkbox"/> City	<input type="checkbox"/> Well <input type="checkbox"/> MUD	<input type="checkbox"/> Co-op
Roof Type: _____		Age: _____(approx)

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

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

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

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

- | | | | |
|---|--|---|---|
| 1 | <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Ceilings | <input type="checkbox"/> Floors |
| 2 | <input type="checkbox"/> Exterior Walls | <input type="checkbox"/> Doors | <input type="checkbox"/> Windows |
| 3 | <input type="checkbox"/> Roof | <input type="checkbox"/> Foundation/
Slab(s) | <input type="checkbox"/> Basement |
| 4 | | | |
| 5 | <input type="checkbox"/> Walls/Fences | <input type="checkbox"/> Driveways | <input type="checkbox"/> Sidewalks |
| 6 | <input type="checkbox"/> Plumbing/Sewers/
Septics | <input type="checkbox"/> Electrical
Systems | <input type="checkbox"/> Lighting
Fixtures |
| 7 | | | |

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 <input type="checkbox"/> Active Termites | <input type="checkbox"/> Previous Structural |
| 18 (includes | or Roof Repair |
| 19 wood-destroying insects) | |
| 20 <input type="checkbox"/> Termite or Wood Rot | <input type="checkbox"/> Hazardous or Toxic Waste |
| 21 <input type="checkbox"/> Needing Repair | |
| 22 <input type="checkbox"/> Previous Termite Damage | <input type="checkbox"/> Asbestos Components |
| 23 <input type="checkbox"/> Previous Termite | <input type="checkbox"/> Urea formaldehyde |
| 24 <input type="checkbox"/> Treatment | <input type="checkbox"/> Insulation |
| 25 <input type="checkbox"/> Previous Flooding | <input type="checkbox"/> Radon Gas |
| 26 <input type="checkbox"/> Improper Drainage | <input type="checkbox"/> Lead Based Paint |
| 27 <input type="checkbox"/> Water Penetration | <input type="checkbox"/> Aluminum Wiring |
| 28 <input type="checkbox"/> Located in 100-Year | <input type="checkbox"/> Previous Fires |
| 29 <input type="checkbox"/> Floodplain | |
| 30 <input type="checkbox"/> <u>Located in Area Where</u> | |
| 31 <u>Beachfront Construction</u> | |
| 32 <u>Certificate or Dune</u> | |
| 33 <u>Protection Permit for</u> | |
| 34 <u>Repairs or Improvements</u> | |
| 35 <u>Required</u> | |
| 36 <input type="checkbox"/> Present Flood Insurance | <input type="checkbox"/> Unplatted Easements |
| 37 <input type="checkbox"/> Coverage | |
| 38 <input type="checkbox"/> Landfill, Settling, Soil | <input type="checkbox"/> Subsurface |
| 39 <input type="checkbox"/> Movement, Fault Lines | <input type="checkbox"/> Structure or Pits |

40 If the answer to any of the above is yes, explain. (Attach
41 additional sheets if necessary): _____

4. Are you (Seller) aware of any item, equipment, or system in or on the property that is in need of repair? ☐ Yes (if you are aware) ☐ No (if you are not aware). If yes, explain (attach additional sheets as necessary).

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

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

- ☐ Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.
- ☐ Homeowners' Association or maintenance fees or assessments.
- ☐ Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.
- ☐ Any notices of violations of deed restrictions of governmental ordinances affecting the condition or use of the Property.
- ☐ Any lawsuits directly or indirectly affecting the Property.
- ☐ Any condition on the Property which materially affects the physical health or safety of an individual.

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

Date

Signature of Seller

The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

Date

Signature of Purchaser

SECTION 21. Not later than January 1, 2008, the commissioner of the General Land Office shall adopt rules required by Sections 61.011 and 63.121, Natural Resources Code, as amended

H.B. No. 3624

1 by this Act.

2 SECTION 22. This Act takes effect September 1, 2007.