

BILL ANALYSIS

C.S.H.B. 325
By: Dutton
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the Open Beaches Act was passed half a century ago after a certain court case called into question the public's access to Texas beaches. The interested parties further contend that the act has provided an enforcement mechanism for the public's common law right to access and use Texas beaches and that the act enforces a reasoned balance between private property rights and the public's right to free and unrestricted use of the beach. The interested parties recognize distinctions marked by tidal and vegetation lines between the wet beach, which is held in public trust, and the dry beach, which may be privately owned with certain restrictions. The interested parties note that, because the low tide, high tide, and vegetation line are transient and constantly moving due to tidal conditions and natural erosion, the wet beach and dry beach are likewise transient, as the public beachfront access easement was recognized in the state for many years.

The interested parties note that a recent Texas Supreme Court decision conversely held that, while the public beachfront access easement might be dynamic, it does not move by acts of nature onto a new parcel of land and that instead, when land and the attached easement are removed by natural forces, a new easement must be established to encumber the newly created dry beach bordering the ocean. The interested parties note that the dissenting justices contended that, given the history of Texas coastal property ownership, easements that allow the public access to the beach must roll with the changing coastline in order to protect the public's right of use. C.S.H.B. 325 seeks to address and clarify these issues by amending the applicable law relating to the boundaries of public beaches.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 325 amends the Natural Resources Code to make the doctrine of avulsion inapplicable to the determination of the boundary of a public beach or a beach, as both are defined under statutory provisions governing the use and maintenance of public beaches; to the determination of the boundary of the area to which the public has a right of ingress and egress; and to the determination of the boundary of a certain beach area subject to public use. The bill makes conforming changes to the Health and Safety Code, Parks and Wildlife Code, and Transportation Code.

EFFECTIVE DATE

The date on which the constitutional amendment establishing the boundaries of public beaches takes effect, if approved by the voters.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 325 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 61.001(8), Natural Resources Code, is amended to read as follows:

(8) "Public beach" means any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, as the line of vegetation may shift over time as a result of avulsive events or other forces of nature ~~[to which the public has acquired the right of use or easement to or over the area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom. This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code].~~

SECTION 2. Section 61.011(a), Natural Resources Code, is amended to read as follows:

(a) It is declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico and[, or if the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous right in the public, the public shall have the free and unrestricted right of ingress and egress to] the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, as the line of vegetation may shift over time as a result of avulsive events or other forces of nature.

SECTION 3. Section 61.012, Natural

HOUSE COMMITTEE SUBSTITUTE

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SECTION 2. Section 61.011(a), Natural Resources Code, is amended to read as follows:

(a) It is declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or if the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous right in the public, the public shall have the free and unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico. The doctrine of avulsion does not apply to the determination of the boundary of the area to which the public has a right of ingress and egress.

SECTION 3. Section 61.012, Natural

Resources Code, is amended to read as follows:

Sec. 61.012. DEFINITION. In this subchapter, "beach" means state-owned beaches to which the public has the right of ingress and egress bordering on the seaward shore of the Gulf of Mexico ~~and [or]~~ any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, as the line of vegetation may shift over time as a result of avulsive events or other forces of nature ~~[if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public].~~

SECTION 4. Sections 61.013(a) and (c), Natural Resources Code, are amended to read as follows:

(a) ~~It is an offense against the public policy of this state for any person to create, erect, or construct any obstruction, barrier, or restraint that will interfere with the free and unrestricted right of the public, individually and collectively, lawfully and legally to enter or to leave any public beach or to use any public beach [or any larger area abutting on or contiguous to a public beach if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public].~~

(c) For purposes of this section, "public beach" shall mean:

(1) any beach bordering on the Gulf of Mexico that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, as the line of vegetation may shift over time as a result of avulsive events or other natural forces; and

(2) ~~[or]~~ such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. ~~[This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code.]~~

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SECTION 4. Section 61.013(c), Natural Resources Code, is amended to read as follows:

(c) For purposes of this section, "public beach" shall mean any beach bordering on the Gulf of Mexico that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, ~~or~~ such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code. The doctrine of avulsion does not apply to the determination of the boundary of a public beach.

SECTION 5. Section 61.014(a), Natural Resources Code, is amended to read as follows:

(a) As used in this section, "public beach" means the area extending from the line of mean low tide of the Gulf of Mexico to the line of vegetation bordering on the Gulf of Mexico, as the line of vegetation may shift over time as a result of avulsive events or other natural forces, or to a line 200 feet inland from the line of mean low tide, whichever is nearer the line of mean low tide~~[, if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public].~~

SECTION 6. Section 61.025(a), Natural Resources Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a person who sells or conveys an interest, other than a mineral, leasehold, or security interest, in real property located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel must include in any executory contract for conveyance a statement in substantially the following form:

CONCERNING THE PROPERTY AT

DISCLOSURE NOTICE CONCERNING
LEGAL AND ECONOMIC RISKS
OF PURCHASING COASTAL REAL
PROPERTY NEAR A BEACH

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

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

* BY PURCHASING THIS PROPERTY,
YOU MAY BE ASSUMING ECONOMIC
RISKS OVER AND ABOVE THE RISKS

SECTION 5. Section 61.014(a), Natural Resources Code, is amended to read as follows:

(a) As used in this section, "public beach" means the area extending from the line of mean low tide of the Gulf of Mexico to the line of vegetation bordering on the Gulf of Mexico, or to a line 200 feet inland from the line of mean low tide, whichever is nearer the line of mean low tide, if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public. The doctrine of avulsion does not apply to the determination of the boundary of a public beach.

No equivalent provision.

INVOLVED IN PURCHASING INLAND REAL PROPERTY.

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

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

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

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

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

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

State law prohibits any obstruction, barrier, restraint, or interference with the use of the public easement, including the placement of

structures seaward of the landward boundary of the easement. OWNERS OF STRUCTURES ERECTED SEAWARD OF THE VEGETATION LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD OF THE VEGETATION LINE AS A RESULT OF PROCESSES SUCH AS SHORELINE EROSION ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO REMOVE THE STRUCTURES.

The purchaser is hereby notified that the purchaser should:

- (1) determine the rate of shoreline erosion in the vicinity of the real property; and
- (2) seek the advice of an attorney or other qualified person before executing this contract or instrument of conveyance as to the relevance of these statutes and facts to the value of the property the purchaser is hereby purchasing or contracting to purchase.

SECTION 7. Section 61.062, Natural Resources Code, is amended to read as follows:

Sec. 61.062. PUBLIC POLICY. It is the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico ~~[if the public has acquired a right of use or easement to or over the area by prescription, dedication, or continuous use]~~. This creates a responsibility for the state, in its position as trustee for the public, to assist local governments in the cleaning of beach areas which are subject to the access rights of the public as defined in Subchapter B of this chapter.

SECTION 8. Section 61.161, Natural Resources Code, is amended to read as follows:

Sec. 61.161. PUBLIC POLICY. It is the public policy of this state that the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, and any larger area extending from the line of mean low

SECTION 6. Section 61.062, Natural Resources Code, is amended to read as follows:

Sec. 61.062. PUBLIC POLICY. It is the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or continuous use. This creates a responsibility for the state, in its position as trustee for the public, to assist local governments in the cleaning of beach areas which are subject to the access rights of the public as defined in Subchapter B of this chapter. The doctrine of avulsion does not apply to the determination of the boundary of the area to which the public has a right of ingress and egress.

SECTION 7. Section 61.161, Natural Resources Code, is amended to read as follows:

Sec. 61.161. PUBLIC POLICY. It is the public policy of this state that the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, and any larger area extending from the line of mean low

tide to the line of vegetation bordering on the Gulf of Mexico, ~~as the line of vegetation may shift over time as a result of avulsive events or other natural forces [if the public has acquired a right of use or easement to or over the area by the prescription or dedication or has retained a right by virtue of continuous right in the public]~~, shall be used primarily for recreational purposes, and any use which substantially interferes with the enjoyment of the beach area by the public shall constitute an offense against the public policy of the state. Nothing in this subchapter prevents any agency, department, political subdivision, or municipal corporation of this state from exercising its lawful authority under any law of this state to regulate safety conditions on any beach area subject to public use.

SECTION 9. Section 61.162(a), Natural Resources Code, is amended to read as follows:

(a) The legislature finds that the operation and maintenance of business establishments at fixed or permanent locations on the public beaches of this state bordering on the seaward shore of the Gulf of Mexico constitute a potential public health hazard and a substantial interference with the free and unrestricted rights of ingress and egress of the public, both individually and collectively, to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico ~~and [or]~~ any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, ~~as the line of vegetation may shift over time as a result of avulsive events or other natural forces [if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public]~~.

SECTION 10. Section 365.033(b), Health and Safety Code, is amended to read as follows:

(b) In this section, "beach" means an area: (1) in which the public has acquired a right of use or an easement and that borders on the seaward shore of the Gulf of Mexico; or

tide to the line of vegetation bordering on the Gulf of Mexico, if the public has acquired a right of use or easement to or over the area by the prescription or dedication or has retained a right by virtue of continuous right in the public, shall be used primarily for recreational purposes, and any use which substantially interferes with the enjoyment of the beach area by the public shall constitute an offense against the public policy of the state. The doctrine of avulsion does not apply to the determination of the boundary of the beach area subject to public use. Nothing in this subchapter prevents any agency, department, political subdivision, or municipal corporation of this state from exercising its lawful authority under any law of this state to regulate safety conditions on any beach area subject to public use.

SECTION 8. Section 61.162(a), Natural Resources Code, is amended to read as follows:

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SECTION 9. Section 365.033(b), Health and Safety Code, is amended to read as follows:

(b) In this section, "beach" means an area in which the public has acquired a right of use or an easement and that borders on the seaward shore of the Gulf of Mexico or

(2) that extends from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, as the line of vegetation may shift over time as a result of avulsive events or other natural forces.

SECTION 11. Section 21.111(c), Parks and Wildlife Code, is amended to read as follows:

(c) If any state park site includes a public beach on the seaward shore of the Gulf of Mexico, extending from the line of mean low tide to the line of vegetation, as the line of vegetation may shift over time as a result of avulsive events or other natural forces ~~[over which the public has acquired a right of use or easement to or over the area by prescription or dedication or has retained a right by virtue of continuous right in the public]~~, no entrance or gate fee may be charged to persons desiring to enter or to leave the public beach area, so long as the persons do not enter any other portion of the park for which an entrance or gate fee is charged.

SECTION 12. Section 729.001(b), Transportation Code, is amended to read as follows:

(b) In this section, "beach" means:
(1) a beach bordering on the Gulf of Mexico that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, as the line of vegetation may shift over time as a result of avulsive events or other natural forces; and
(2) ~~[or]~~ the larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom.

SECTION 13. Section 61.021(a), Natural Resources Code, is repealed.

SECTION 14. This Act takes effect on the date on which the constitutional amendment proposed by the 83rd Legislature, Regular

extends from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico. The doctrine of avulsion does not apply to the determination of the boundary of a beach.

SECTION 10. Section 21.111(c), Parks and Wildlife Code, is amended to read as follows:

(c) If any state park site includes a public beach as defined by Section 61.001, Natural Resources Code ~~[on the seaward shore of the Gulf of Mexico, extending from the line of mean low tide to the line of vegetation, over which the public has acquired a right of use or easement to or over the area by prescription or dedication or has retained a right by virtue of continuous right in the public]~~, no entrance or gate fee may be charged to persons desiring to enter or to leave the public beach area, so long as the persons do not enter any other portion of the park for which an entrance or gate fee is charged.

SECTION 11. Section 729.001(b), Transportation Code, is amended to read as follows:

(b) In this section, "public beach" has the meaning assigned by Section 61.008, Natural Resources Code ~~[means a beach bordering on the Gulf of Mexico that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or the larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom].~~

No equivalent provision.

SECTION 12. Substantially same as original version.

Session, 2013, establishing the boundaries of public beaches and declaring that the state holds public beaches in trust for the use of the public takes effect. If that amendment is not approved by the voters, this Act has no effect.