

BILL ANALYSIS

H.B. 3459
By: Eiland
Land & Resource Management
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that, unlike many other states, Texas has a history of having the dry or sandy part of the beach open to the public and that, while the state does not necessarily own such property, the public has an easement across the property. The parties contend that this easement has always been considered a rolling easement that takes into account beach erosion. The parties note that a recent court case challenged this notion and that a subsequent court opinion was issued stating that the easement may roll with gradual erosion but that in an avulsive event, during which the beach moves dramatically in a short period, the easement does not roll. The parties further note that the opinion did not state how an event is determined to be avulsive, which, the parties contend, leaves an open question that has to be addressed moving forward.

H.B. 3459 seeks to address these issues by establishing provisions relating to the determination of the boundaries of, and the enforcement of the law governing access to, public beaches.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of the General Land Office in SECTION 1 of this bill.

ANALYSIS

H.B. 3459 amends the Natural Resources Code to authorize the Commissioner of the General Land Office (GLO) by order to suspend action on conducting a line of vegetation determination for a period of up to three years from the date the order is issued if the commissioner determines that the line of vegetation was obliterated as a result of a meteorological event. The bill requires the public beach to extend to a line 200 feet inland from the line of mean low tide for the duration of the order. The bill requires such an order to be posted on the GLO's Internet website, published by the GLO as a miscellaneous document in the Texas Register, and filed for record by the GLO in the real property records of the county in which the area of beach subject to the order is located. The bill establishes that issuance of such an order is purely within the discretion of the commissioner and that the bill's provisions relating to the temporary suspension of a line of vegetation determination do not create a duty on the part of the commissioner to issue an order related to the line of vegetation or create a private cause of action for issuance of such an order or for failure to issue such an order.

H.B. 3459 exempts an order issued under the bill's provisions relating to a temporary suspension of a line of vegetation determination from the Private Real Property Rights Preservation Act. The bill establishes that, if the commissioner issues such an order, a limitations period established by statute, under common law, or in equity that may be asserted or claimed in any action under provisions relating to the use and maintenance of public beaches is suspended and does not run against the state, the public, or private land owners for the period the order is in effect. The bill requires the commissioner, following the expiration of such an order, to make a determination regarding the line of vegetation in accordance with applicable provisions and taking into consideration the effect of the meteorological event on the location of the public

beach easement.

H.B. 3459 authorizes the commissioner to consult with the Bureau of Economic Geology of The University of Texas at Austin and to consider other relevant factors when making such a determination regarding the annual erosion rate for the area of beach subject to the order. The bill requires the line of vegetation, as determined by the commissioner, to constitute the landward boundary of the area subject to public easement until the line of vegetation moves landward due to a subsequent meteorological event, erosion, or public use, or until a final court adjudication establishes the line in another place. The bill requires the commissioner to promulgate rules, consistent with state policies and rules relating to the use and maintenance of public beaches, on the temporary suspension of the determination of the line of vegetation or the natural line of vegetation.

H.B. 3459 establishes that the line of vegetation for an area of public beach in which there is no clearly marked line of vegetation is dynamic and may move landward due to the forces of erosion. The bill, for purposes of determining the public beach easement in such an area, requires the landward boundary of the area subject to the public easement to be the line established by order, or as determined by the commissioner upon expiration of an order, under the bill's provisions relating to the temporary suspension of a line of vegetation determination if the line of vegetation is obliterated due to a meteorological event. The bill clarifies that the line of vegetation of a public beach is not affected by the occasional sprigs of salt grass on mounds and dunes or seaward from them or by artificial fill, the addition or removal of turf, or other artificial changes in the natural vegetation of the area and additionally specifies that the line of vegetation is not affected by beach nourishment projects or artificial placement of dredged or fill material, whether conducted by public or private entities.

H.B. 3459 extends from two to three years the period for which the commissioner by order is authorized to suspend the submission of a request that the attorney general file a suit to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach if the commissioner makes certain determinations.

EFFECTIVE DATE

September 1, 2013.