

By: Dutton

H.B. No. 325

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the boundaries of and the nature of the state's interest
3 in public beaches.

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

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

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

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

20 (a) It is declared and affirmed to be the public policy of
21 this state that the public, individually and collectively, shall
22 have the free and unrestricted right of ingress and egress to and
23 from the state-owned beaches bordering on the seaward shore of the
24 Gulf of Mexico and [~~or if the public has acquired a right of use or~~

1 ~~easement to or over an area by prescription, dedication, or has~~
2 ~~retained a right by virtue of continuous right in the public, the~~
3 ~~public shall have the free and unrestricted right of ingress and~~
4 ~~egress to] the larger area extending from the line of mean low tide~~
5 ~~to the line of vegetation bordering on the Gulf of Mexico, as the~~
6 line of vegetation may shift over time as a result of avulsive
7 events or other forces of nature.

8 SECTION 3. Section 61.012, Natural Resources Code, is
9 amended to read as follows:

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

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

21 (a) It is an offense against the public policy of this state
22 for any person to create, erect, or construct any obstruction,
23 barrier, or restraint that will interfere with the free and
24 unrestricted right of the public, individually and collectively,
25 lawfully and legally to enter or to leave any public beach or to use
26 any public beach ~~[or any larger area abutting on or contiguous to a~~
27 ~~public beach if the public has acquired a right of use or easement~~

1 ~~to or over the area by prescription, dedication, or has retained a~~
2 ~~right by virtue of continuous right in the public].~~

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

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

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

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

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

27 SECTION 6. Section 61.025(a), Natural Resources Code, is

1 amended to read as follows:

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

11 CONCERNING THE PROPERTY AT _____

12 DISCLOSURE NOTICE CONCERNING LEGAL AND ECONOMIC RISKS

13 OF PURCHASING COASTAL REAL PROPERTY NEAR A BEACH

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

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

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

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

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

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

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

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

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

25 State law prohibits any obstruction, barrier, restraint, or
26 interference with the use of the public easement, including the
27 placement of structures seaward of the landward boundary of the

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

6 The purchaser is hereby notified that the purchaser should:

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

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

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

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

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

1 Sec. 61.161. PUBLIC POLICY. It is the public policy of this
2 state that the state-owned beaches bordering on the seaward shore
3 of the Gulf of Mexico, and any larger area extending from the line
4 of mean low tide to the line of vegetation bordering on the Gulf of
5 Mexico, as the line of vegetation may shift over time as a result of
6 avulsive events or other natural forces [~~if the public has acquired~~
7 ~~a right of use or easement to or over the area by the prescription or~~
8 ~~dedication or has retained a right by virtue of continuous right in~~
9 ~~the public~~], shall be used primarily for recreational purposes, and
10 any use which substantially interferes with the enjoyment of the
11 beach area by the public shall constitute an offense against the
12 public policy of the state. Nothing in this subchapter prevents any
13 agency, department, political subdivision, or municipal
14 corporation of this state from exercising its lawful authority
15 under any law of this state to regulate safety conditions on any
16 beach area subject to public use.

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

19 (a) The legislature finds that the operation and
20 maintenance of business establishments at fixed or permanent
21 locations on the public beaches of this state bordering on the
22 seaward shore of the Gulf of Mexico constitute a potential public
23 health hazard and a substantial interference with the free and
24 unrestricted rights of ingress and egress of the public, both
25 individually and collectively, to and from the state-owned beaches
26 bordering on the seaward shore of the Gulf of Mexico and [~~or~~] any
27 larger area extending from the line of mean low tide to the line of

1 vegetation bordering on the Gulf of Mexico, as the line of
2 vegetation may shift over time as a result of avulsive events or
3 other natural forces [~~if the public has acquired a right of use or~~
4 ~~easement to or over the area by prescription, dedication, or has~~
5 ~~retained a right by virtue of continuous right in the public~~].

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

8 (b) In this section, "beach" means an area:

9 (1) in which the public has acquired a right of use or
10 an easement and that borders on the seaward shore of the Gulf of
11 Mexico; or

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

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

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

1 charged.

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

4 (b) In this section, "beach" means:

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

10 (2) [~~or~~] the larger contiguous area to which the
11 public has acquired a right of use or easement to or over by
12 prescription, dedication, or estoppel, or has retained a right by
13 virtue of continuous right in the public since time immemorial as
14 recognized by law or custom.

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

17 SECTION 14. This Act takes effect on the date on which the
18 constitutional amendment proposed by the 83rd Legislature, Regular
19 Session, 2013, establishing the boundaries of public beaches and
20 declaring that the state holds public beaches in trust for the use
21 of the public takes effect. If that amendment is not approved by
22 the voters, this Act has no effect.