

By: Eiland

H.B. No. 3459

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the determination of the boundaries of, and the  
3 enforcement of the law governing access to, public beaches.

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

5 SECTION 1. Section 61.011(d), Natural Resources Code, is  
6 amended to read as follows:

7 (d) The commissioner shall promulgate rules, consistent  
8 with the policies established in this section, on the following  
9 matters only:

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

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

17 (3) local government prohibitions of vehicular  
18 traffic on public beaches, provision of off-beach parking, the use  
19 on a public beach of a golf cart, as defined by Section 502.001,  
20 Transportation Code, for the transportation of a person with a  
21 physical disability, and other minimum measures needed to mitigate  
22 for any adverse effect on public access and dune areas;

23 (4) imposition of beach access, user, or parking fees  
24 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;

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; and

5           (11) the temporary suspension under Section 61.0171 of  
6 the determination of the "line of vegetation" or the "natural line  
7 of vegetation."

8           SECTION 2. Section 61.016, Natural Resources Code, is  
9 amended by adding Subsection (d) to read as follows:

10           (d) The "line of vegetation" is dynamic and may move  
11 landward due to the forces of erosion. For the purposes of  
12 determining the public beach easement, if the "line of vegetation"  
13 is obliterated due to a meteorological event, the landward boundary  
14 of the area subject to the public easement shall be the line  
15 established by order under Section 61.0171(a) or as determined by  
16 the commissioner under Section 61.0171(f).

17           SECTION 3. Section 61.017(a), Natural Resources Code, is  
18 amended to read as follows:

19           (a) The "line of vegetation" is not affected by the  
20 occasional sprigs of salt grass on mounds and dunes or seaward from  
21 them or ~~and~~ by artificial fill, the addition or removal of turf,  
22 beach nourishment projects or artificial placement of dredged or  
23 fill material, whether conducted by public or private entities, or  
24 ~~by~~ other artificial changes in the natural vegetation of the  
25 area.

26           SECTION 4. Subchapter B, Chapter 61, Natural Resources  
27 Code, is amended by adding Section 61.0171 to read as follows:

1       Sec. 61.0171. TEMPORARY SUSPENSION OF LINE OF VEGETATION  
2 DETERMINATION. (a) The commissioner may, by order, suspend action  
3 on conducting a line of vegetation determination for a period of up  
4 to three years from the date the order is issued if the commissioner  
5 determines that the line of vegetation was obliterated as a result  
6 of a meteorological event. For the duration of the order, the  
7 public beach shall extend to a line 200 feet inland from the line of  
8 mean low tide.

9       (b) An order issued under this section shall be:

10           (1) posted on the land office's Internet website;

11           (2) published by the land office as a miscellaneous  
12 document in the Texas Register; and

13           (3) filed for record by the land office in the real  
14 property records of the county in which the area of beach subject to  
15 the order is located.

16       (c) Issuance of an order under this section is purely within  
17 the discretion of the commissioner. This section does not create:

18           (1) a duty on the part of the commissioner to issue an  
19 order related to the line of vegetation; or

20           (2) a private cause of action for:

21                   (A) issuance of an order under this section; or

22                   (B) failure to issue an order under this section.

23       (d) Chapter 2007, Government Code, does not apply to an  
24 order issued under this section.

25       (e) If the commissioner issues an order under this section,  
26 a limitations period established by statute, under common law, or  
27 in equity that may be asserted or claimed in any action under this

1 chapter is suspended and does not run against this state, the  
2 public, or private land owners for the period the order is in  
3 effect.

4 (f) Following the expiration of an order issued under this  
5 section, the commissioner shall make a determination regarding the  
6 line of vegetation in accordance with Sections 61.016 and 61.017  
7 and taking into consideration the effect of the meteorological  
8 event on the location of the public beach easement.

9 (g) The commissioner may consult with the Bureau of Economic  
10 Geology of The University of Texas at Austin and consider other  
11 relevant factors when making a determination under Subsection (f)  
12 regarding the annual erosion rate for the area of beach subject to  
13 the order issued under this section.

14 (h) The line of vegetation, as determined by the  
15 commissioner under Subsection (f), shall constitute the landward  
16 boundary of the area subject to public easement until the line of  
17 vegetation moves landward due to a subsequent meteorological event,  
18 erosion, or public use, or until a final court adjudication  
19 establishes the line in another place.

20 SECTION 5. Section 61.0185(a), Natural Resources Code, is  
21 amended to read as follows:

22 (a) The commissioner by order may suspend for a period of  
23 three [~~two~~] years from the date the order is issued the submission  
24 of a request that the attorney general file a suit under Section  
25 61.018(a) to obtain a temporary or permanent court order or  
26 injunction, either prohibitory or mandatory, to remove a house from  
27 a public beach if the commissioner determines that:

1           (1) the line of vegetation establishing the boundary  
2 of the public beach has moved as a result of a meteorological event;

3           (2) the house was located landward of the natural line  
4 of vegetation before the meteorological event; and

5           (3) the house does not present an imminent threat to  
6 public health and safety.

7           SECTION 6. This Act takes effect September 1, 2013.