

1-1 By: Eiland (Senate Sponsor - Taylor) H.B. No. 3459
 1-2 (In the Senate - Received from the House May 8, 2013;
 1-3 May 14, 2013, read first time and referred to Committee on Natural
 1-4 Resources; May 17, 2013, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 7, Nays 1;
 1-6 May 17, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10		X		
1-11			X	
1-12			X	
1-13	X			
1-14	X			
1-15			X	
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR H.B. No. 3459 By: Uresti

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the determination of the boundaries of, and the
 1-24 enforcement of the law governing access to, public beaches.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 61.001, Natural Resources Code, is
 1-27 amended by adding Subdivision (7-a) to read as follows:

1-28 (7-a) "Meteorological event" means atmospheric
 1-29 conditions or phenomena resulting in avulsion, erosion, accretion,
 1-30 or other impacts to the shoreline that alter the location of the
 1-31 line of vegetation.

1-32 SECTION 2. Section 61.011(d), Natural Resources Code, is
 1-33 amended to read as follows:

1-34 (d) The commissioner shall promulgate rules, consistent
 1-35 with the policies established in this section, on the following
 1-36 matters only:

1-37 (1) acquisition by local governments or other
 1-38 appropriate entities or public dedication of access ways sufficient
 1-39 to provide adequate public ingress and egress to and from the beach
 1-40 within the area described in Subdivision (6);

1-41 (2) protection of the public easement from erosion or
 1-42 reduction caused by development or other activities on adjacent
 1-43 land and beach cleanup and maintenance;

1-44 (3) local government prohibitions of vehicular
 1-45 traffic on public beaches, provision of off-beach parking, the use
 1-46 on a public beach of a golf cart, as defined by Section 502.001,
 1-47 Transportation Code, for the transportation of a person with a
 1-48 physical disability, and other minimum measures needed to mitigate
 1-49 for any adverse effect on public access and dune areas;

1-50 (4) imposition of beach access, user, or parking fees
 1-51 and reasonable exercises of the police power by local governments
 1-52 with respect to public beaches;

1-53 (5) contents and certification of beach access and use
 1-54 plans and standards for local government review of construction on
 1-55 land adjacent to and landward of public beaches, including
 1-56 procedures for expedited review of beach access and use plans under
 1-57 Section 61.015;

1-58 (6) construction on land adjacent to and landward of
 1-59 public beaches and lying in the area either up to the first public
 1-60 road generally parallel to the beach or to any closer public road

2-1 not parallel to the beach, or to within 1,000 feet of mean high
2-2 tide, whichever is greater, that affects or may affect public
2-3 access to and use of public beaches;

2-4 (7) the temporary suspension under Section 61.0185 of
2-5 enforcement of the prohibition against encroachments on and
2-6 interferences with the public beach easement and the ability of a
2-7 property owner to make repairs to a house while a suspension is in
2-8 effect;

2-9 (8) the determination of the line of vegetation or
2-10 natural line of vegetation;

2-11 (9) the factors to be considered in determining
2-12 whether a structure, improvement, obstruction, barrier, or hazard
2-13 on the public beach:

2-14 (A) constitutes an imminent hazard to safety,
2-15 health, or public welfare; or

2-16 (B) substantially interferes with the free and
2-17 unrestricted right of the public to enter or leave the public beach
2-18 or traverse any part of the public beach; ~~and~~

2-19 (10) the procedures for determining whether a
2-20 structure is not insurable property for purposes of Section
2-21 2210.004, Insurance Code, because of the factors listed in
2-22 Subsection (h) of that section; and

2-23 (11) the temporary suspension under Section 61.0171 of
2-24 the determination of the "line of vegetation" or the "natural line
2-25 of vegetation."

2-26 SECTION 3. Section 61.016, Natural Resources Code, is
2-27 amended by adding Subsection (d) to read as follows:

2-28 (d) The "line of vegetation" is dynamic and may move
2-29 landward or seaward due to the forces of erosion or natural
2-30 accretion. For the purposes of determining the public beach
2-31 easement, if the "line of vegetation" is obliterated due to a
2-32 meteorological event, the landward boundary of the area subject to
2-33 the public easement shall be the line established by order under
2-34 Section 61.0171(a) or as determined by the commissioner under
2-35 Section 61.0171(f).

2-36 SECTION 4. Section 61.017(a), Natural Resources Code, is
2-37 amended to read as follows:

2-38 (a) The "line of vegetation" is not affected by the
2-39 occasional sprigs of salt grass on mounds and dunes or seaward from
2-40 them or ~~and~~ by artificial fill, the addition or removal of turf,
2-41 beach nourishment projects or artificial placement of dredged or
2-42 fill material, whether conducted by public or private entities, or
2-43 ~~by~~ other artificial changes in the natural vegetation of the
2-44 area.

2-45 SECTION 5. Subchapter B, Chapter 61, Natural Resources
2-46 Code, is amended by adding Section 61.0171 to read as follows:

2-47 Sec. 61.0171. TEMPORARY SUSPENSION OF LINE OF VEGETATION
2-48 DETERMINATION. (a) The commissioner may, by order, suspend action
2-49 on conducting a line of vegetation determination for a period of up
2-50 to three years from the date the order is issued if the commissioner
2-51 determines that the line of vegetation was obliterated as a result
2-52 of a meteorological event. For the duration of the order, the
2-53 public beach shall extend to a line 200 feet inland from the line of
2-54 mean low tide as established by a licensed state land surveyor.

2-55 (b) An order issued under this section shall be:

2-56 (1) posted on the land office's Internet website;

2-57 (2) published by the land office as a miscellaneous
2-58 document in the Texas Register; and

2-59 (3) filed for record by the land office in the real
2-60 property records of the county in which the area of beach subject to
2-61 the order is located.

2-62 (c) Issuance of an order under this section is purely within
2-63 the discretion of the commissioner. This section does not create:

2-64 (1) a duty on the part of the commissioner to issue an
2-65 order related to the line of vegetation; or

2-66 (2) a private cause of action for:

2-67 (A) issuance of an order under this section; or

2-68 (B) failure to issue an order under this section.

2-69 (d) Chapter 2007, Government Code, does not apply to an

3-1 order issued under this section.
3-2 (e) If the commissioner issues an order under this section,
3-3 a limitations period established by statute, under common law, or
3-4 in equity that may be asserted or claimed in any action under this
3-5 chapter is suspended and does not run against this state, the
3-6 public, or private land owners for the period the order is in
3-7 effect.

3-8 (f) Following the expiration of an order issued under this
3-9 section, the commissioner shall make a determination regarding the
3-10 line of vegetation in accordance with Sections 61.016 and 61.017
3-11 and taking into consideration the effect of the meteorological
3-12 event on the location of the public beach easement.

3-13 (g) The commissioner may consult with the Bureau of Economic
3-14 Geology of The University of Texas at Austin or a licensed state
3-15 land surveyor and consider other relevant factors when making a
3-16 determination under Subsection (f) regarding the annual erosion
3-17 rate for the area of beach subject to the order issued under this
3-18 section.

3-19 (h) The line of vegetation, as determined by the
3-20 commissioner under Subsection (f), shall constitute the landward
3-21 boundary of the area subject to public easement until the line of
3-22 vegetation moves landward due to a subsequent meteorological event,
3-23 erosion, or public use, or until a final court adjudication
3-24 establishes the line in another place.

3-25 SECTION 6. Section 61.0185(a), Natural Resources Code, is
3-26 amended to read as follows:

3-27 (a) The commissioner by order may suspend for a period of
3-28 three [two] years from the date the order is issued the submission
3-29 of a request that the attorney general file a suit under Section
3-30 61.018(a) to obtain a temporary or permanent court order or
3-31 injunction, either prohibitory or mandatory, to remove a house from
3-32 a public beach if the commissioner determines that:

- 3-33 (1) the line of vegetation establishing the boundary
- 3-34 of the public beach has moved as a result of a meteorological event;
- 3-35 (2) the house was located landward of the natural line
- 3-36 of vegetation before the meteorological event; and
- 3-37 (3) the house does not present an imminent threat to
- 3-38 public health and safety.

3-39 SECTION 7. This Act takes effect September 1, 2013.

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