

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Eiland

H.B. No. 3459

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

(4) imposition of beach access, user, or parking fees 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.

# ADOPTED

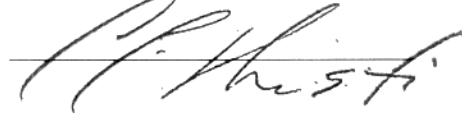
MAY 21 2013

  
Secretary of the Senate

By: Eiland Taylor

H.B. No. 3459

Substitute the following for \_\_\_B. No. \_\_\_\_\_:

By: 

C.S. \_\_\_B. No. \_\_\_\_\_

## A BILL TO BE ENTITLED

1

### AN ACT

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 61.001, Natural Resources Code, is  
6 amended by adding Subdivision (7-a) to read as follows:

7 (7-a) "Meteorological event" means atmospheric  
8 conditions or phenomena resulting in avulsion, erosion, accretion,  
9 or other impacts to the shoreline that alter the location of the  
10 line of vegetation.

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

13 (d) The commissioner shall promulgate rules, consistent  
14 with the policies established in this section, on the following  
15 matters only:

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

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

23 (3) local government prohibitions of vehicular  
24 traffic on public beaches, provision of off-beach parking, the use

1 on a public beach of a golf cart, as defined by Section 502.001,  
2 Transportation Code, for the transportation of a person with a  
3 physical disability, and other minimum measures needed to mitigate  
4 for any adverse effect on public access and dune areas;

5 (4) imposition of beach access, user, or parking fees  
6 and reasonable exercises of the police power by local governments  
7 with respect to public beaches;

8 (5) contents and certification of beach access and use  
9 plans and standards for local government review of construction on  
10 land adjacent to and landward of public beaches, including  
11 procedures for expedited review of beach access and use plans under  
12 Section 61.015;

13 (6) construction on land adjacent to and landward of  
14 public beaches and lying in the area either up to the first public  
15 road generally parallel to the beach or to any closer public road  
16 not parallel to the beach, or to within 1,000 feet of mean high  
17 tide, whichever is greater, that affects or may affect public  
18 access to and use of public beaches;

19 (7) the temporary suspension under Section 61.0185 of  
20 enforcement of the prohibition against encroachments on and  
21 interferences with the public beach easement and the ability of a  
22 property owner to make repairs to a house while a suspension is in  
23 effect;

24 (8) the determination of the line of vegetation or  
25 natural line of vegetation;

26 (9) the factors to be considered in determining  
27 whether a structure, improvement, obstruction, barrier, or hazard



1 on the public beach:

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

4 (B) substantially interferes with the free and  
5 unrestricted right of the public to enter or leave the public beach  
6 or traverse any part of the public beach; ~~and~~

7 (10) the procedures for determining whether a  
8 structure is not insurable property for purposes of Section  
9 2210.004, Insurance Code, because of the factors listed in  
10 Subsection (h) of that section; and

11 (11) the temporary suspension under Section 61.0171 of  
12 the determination of the "line of vegetation" or the "natural line  
13 of vegetation."

14 SECTION 3. Section 61.016, Natural Resources Code, is  
15 amended by adding Subsection (d) to read as follows:

16 (d) The "line of vegetation" is dynamic and may move  
17 landward or seaward due to the forces of erosion or natural  
18 accretion. For the purposes of determining the public beach  
19 easement, if the "line of vegetation" is obliterated due to a  
20 meteorological event, the landward boundary of the area subject to  
21 the public easement shall be the line established by order under  
22 Section 61.0171(a) or as determined by the commissioner under  
23 Section 61.0171(f).

24 SECTION 4. Section 61.017(a), Natural Resources Code, is  
25 amended to read as follows:

26 (a) The "line of vegetation" is not affected by the  
27 occasional sprigs of salt grass on mounds and dunes or seaward from

1 them or [~~and~~] by artificial fill, the addition or removal of turf,  
2 beach nourishment projects or artificial placement of dredged or  
3 fill material, whether conducted by public or private entities, or  
4 [~~by~~] other artificial changes in the natural vegetation of the  
5 area.

6 SECTION 5. Subchapter B, Chapter 61, Natural Resources  
7 Code, is amended by adding Section 61.0171 to read as follows:

8 Sec. 61.0171. TEMPORARY SUSPENSION OF LINE OF VEGETATION  
9 DETERMINATION. (a) The commissioner may, by order, suspend action  
10 on conducting a line of vegetation determination for a period of up  
11 to three years from the date the order is issued if the commissioner  
12 determines that the line of vegetation was obliterated as a result  
13 of a meteorological event. For the duration of the order, the  
14 public beach shall extend to a line 200 feet inland from the line of  
15 mean low tide as established by a licensed state land surveyor.

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

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

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

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

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

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

27 (2) a private cause of action for:

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

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

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

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

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

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

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

1 SECTION 6. Section 61.0185(a), Natural Resources Code, is  
2 amended to read as follows:

3 (a) The commissioner by order may suspend for a period of  
4 three [~~two~~] years from the date the order is issued the submission  
5 of a request that the attorney general file a suit under Section  
6 61.018(a) to obtain a temporary or permanent court order or  
7 injunction, either prohibitory or mandatory, to remove a house from  
8 a public beach if the commissioner determines that:

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

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

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

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

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 21, 2013**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3459** by Eiland (Relating to the determination of the boundaries of, and the enforcement of the law governing access to, public beaches.), **As Passed 2nd House**

|   |
|---|
| <b>No significant fiscal implication to the State is anticipated.</b> |
|---|

The bill would amend portions of the Natural Resources Code to allow the Land Commissioner of the General Land Office (GLO) to temporarily suspend determinations of the line of vegetation when a meteorological event, as defined, obliterates the line. The line of vegetation, which helps establish the extent of the public beach, would be set temporarily at 200 feet landward from the line of mean low-tide.

Under the bill, the Land Commissioner can temporarily suspend the line of vegetation for a period of up to three years. Any suspension would be posted and published as appropriate. Ultimately, a final determination of the line of vegetation could be determined by court order. GLO indicates any costs to implement bill provisions could reasonably be absorbed within the agency's existing resources. The Environmental Protection Division of the Office of the Attorney General does not anticipate that the bill will increase the caseload or the complexity of Open Beaches cases.

The bill would take effect September 1, 2013.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 305 General Land Office and Veterans' Land Board, 802 Parks and Wildlife Department, 302 Office of the Attorney General

**LBB Staff:** UP, SD, SZ, TB

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 17, 2013**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3459** by Eiland (Relating to the determination of the boundaries of, and the enforcement of the law governing access to, public beaches.), **Committee Report 2nd House, Substituted**

|   |
|---|
| <b>No significant fiscal implication to the State is anticipated.</b> |
|---|

The bill would amend portions of the Natural Resources Code to allow the Land Commissioner of the General Land Office (GLO) to temporarily suspend determinations of the line of vegetation when a meteorological event, as defined, obliterates the line. The line of vegetation, which helps establish the extent of the public beach, would be set temporarily at 200 feet landward from the line of mean low-tide.

Under the bill, the Land Commissioner can temporarily suspend the line of vegetation for a period of up to three years. Any suspension would be posted and published as appropriate. Ultimately, a final determination of the line of vegetation could be determined by court order. GLO indicates any costs to implement bill provisions could reasonably be absorbed within the agency's existing resources. The Environmental Protection Division of the Office of the Attorney General does not anticipate that the bill will increase the caseload or the complexity of Open Beaches cases.

The bill would take effect September 1, 2013.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 305 General Land Office and Veterans' Land Board, 802 Parks and Wildlife Department, 302 Office of the Attorney General

**LBB Staff:** UP, SZ, TB

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 15, 2013**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3459** by Eiland (Relating to the determination of the boundaries of, and the enforcement of the law governing access to, public beaches.), **As Engrossed**

|  |
|--|
| <p><b>No significant fiscal implication to the State is anticipated.</b></p> |
|--|

The bill would amend portions of the Natural Resources Code to allow the Land Commissioner of the General Land Office (GLO) to temporarily suspend determinations of the line of vegetation when a storm event obliterates the line. The line of vegetation, which helps establish the extent of the public beach, would be set temporarily at 200 feet landward from the line of mean low-tide.

Under the bill, the Land Commissioner can temporarily suspend the line of vegetation for a period of up to three years. Any suspension would be posted and published as appropriate. Ultimately, a final determination of the line of vegetation could be determined by court order. GLO indicates any costs to implement bill provisions could reasonably be absorbed within the agency's existing resources. The Environmental Protection Division of the Office of the Attorney General does not anticipate that the bill will increase the caseload or the complexity of Open Beaches cases.

The bill would take effect September 1, 2013.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 305 General Land Office and Veterans' Land Board, 802 Parks and Wildlife Department

**LBB Staff:** UP, SZ, TB

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**March 30, 2013**

**TO:** Honorable Joe Deshotel, Chair, House Committee on Land & Resource Management

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3459** by Eiland (Relating to the determination of the boundaries of, and the enforcement of the law governing access to, public beaches.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend portions of the Natural Resources Code to allow the Land Commissioner of the General Land Office (GLO) to temporarily suspend determinations of the line of vegetation when a storm event obliterates the line. The line of vegetation, which helps establish the extent of the public beach, would be set temporarily at 200 feet landward from the line of mean low-tide.

Under the bill, the Land Commissioner can temporarily suspend the line of vegetation for a period of up to three years. Any suspension would be posted and published as appropriate. Ultimately, a final determination of the line of vegetation could be determined by court order. GLO indicates any costs to implement bill provisions could reasonably be absorbed within the agency's existing resources. The Environmental Protection Division of the Office of the Attorney General does not anticipate that the bill will increase the caseload or the complexity of Open Beaches cases.

The bill would take effect September 1, 2013.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 305 General Land Office and Veterans' Land Board, 802 Parks and Wildlife Department

**LBB Staff:** UP, SZ, TB