

House Bill 3459
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

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 with respect to public beaches;

(5) contents and certification of beach access and use plans and standards for local government review of construction on land adjacent to and landward of public beaches, including

SENATE VERSION (CS)

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

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

SECTION 2. Same as House version.

CONFERENCE

House Bill 3459
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

procedures for expedited review of beach access and use plans under Section 61.015;

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

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

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

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

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

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

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

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

SECTION 2. Section 61.016, Natural Resources Code, is

SENATE VERSION (CS)

SECTION 3. Section 61.016, Natural Resources Code, is

CONFERENCE

House Bill 3459
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

amended by adding Subsection (d) to read as follows:

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

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

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

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

Sec. 61.0171. TEMPORARY SUSPENSION OF LINE OF VEGETATION DETERMINATION. (a) The commissioner may, by order, 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. For the duration of the order, the public beach shall extend to a line 200 feet inland from the line of mean low tide.

SENATE VERSION (CS)

amended by adding Subsection (d) to read as follows:

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

SECTION 4. Same as House version.

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

Sec. 61.0171. TEMPORARY SUSPENSION OF LINE OF VEGETATION DETERMINATION. (a) The commissioner may, by order, 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. For the duration of the order, the public beach shall extend to a line 200 feet inland from the line of mean low tide as established by a licensed state land surveyor.

CONFERENCE

House Bill 3459
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

- (b) An order issued under this section shall be:
(1) posted on the land office's Internet website;
(2) published by the land office as a miscellaneous document in the Texas Register; and
(3) filed for record by the land office in the real property records of the county in which the area of beach subject to the order is located.
- (c) Issuance of an order under this section is purely within the discretion of the commissioner. This section does not create:
(1) a duty on the part of the commissioner to issue an order related to the line of vegetation; or
(2) a private cause of action for:
(A) issuance of an order under this section; or
(B) failure to issue an order under this section.
- (d) Chapter 2007, Government Code, does not apply to an order issued under this section.
- (e) If the commissioner issues an order under this section, a limitations period established by statute, under common law, or in equity that may be asserted or claimed in any action under this chapter is suspended and does not run against this state, the public, or private land owners for the period the order is in effect.
- (f) Following the expiration of an order issued under this section, the commissioner shall make a determination regarding the line of vegetation in accordance with Sections 61.016 and 61.017 and taking into consideration the effect of the meteorological event on the location of the public beach easement.
- (g) The commissioner may consult with the Bureau of Economic Geology of The University of Texas at Austin and consider other relevant factors when making a determination under Subsection (f) regarding the annual erosion rate for the

SENATE VERSION (CS)

- (b) An order issued under this section shall be:
(1) posted on the land office's Internet website;
(2) published by the land office as a miscellaneous document in the Texas Register; and
(3) filed for record by the land office in the real property records of the county in which the area of beach subject to the order is located.
- (c) Issuance of an order under this section is purely within the discretion of the commissioner. This section does not create:
(1) a duty on the part of the commissioner to issue an order related to the line of vegetation; or
(2) a private cause of action for:
(A) issuance of an order under this section; or
(B) failure to issue an order under this section.
- (d) Chapter 2007, Government Code, does not apply to an order issued under this section.
- (e) If the commissioner issues an order under this section, a limitations period established by statute, under common law, or in equity that may be asserted or claimed in any action under this chapter is suspended and does not run against this state, the public, or private land owners for the period the order is in effect.
- (f) Following the expiration of an order issued under this section, the commissioner shall make a determination regarding the line of vegetation in accordance with Sections 61.016 and 61.017 and taking into consideration the effect of the meteorological event on the location of the public beach easement.
- (g) The commissioner may consult with the Bureau of Economic Geology of The University of Texas at Austin or a licensed state land surveyor and consider other relevant factors when making a determination under Subsection (f)

CONFERENCE

House Bill 3459
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

area of beach subject to the order issued under this section.

(h) The line of vegetation, as determined by the commissioner under Subsection (f), shall 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.

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

(a) The commissioner by order may suspend for a period of three [~~two~~] years from the date the order is issued the submission of a request that the attorney general file a suit under Section 61.018(a) 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 determines that:

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

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

SENATE VERSION (CS)

regarding the annual erosion rate for the area of beach subject to the order issued under this section.

(h) The line of vegetation, as determined by the commissioner under Subsection (f), shall 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.

SECTION 6. Same as House version.

SECTION 7. Same as House version.

CONFERENCE