

By: Middleton

H.B. No. 3263

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 61.016, Natural Resources Code, is  
6 amended by adding Subsection (d) to read as follows:

7 (d) The "line of vegetation" is dynamic and may move  
8 landward or seaward due to the forces of erosion or natural  
9 accretion. For the purposes of determining the public beach  
10 easement, if the state has acquired a public easement, and if the  
11 "line of vegetation" is obliterated due to a meteorological event,  
12 the landward boundary of the area subject to the public easement  
13 shall be the line established by order under Section 61.0171(a) [~~or~~  
14 ~~as determined by the commissioner under Section 61.0171(f)~~].

15 SECTION 2. Section 61.017(a), Natural Resources Code, is  
16 amended to read as follows:

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

23 SECTION 3. Section 61.0171, Natural Resources Code, is  
24 amended to read as follows:

1           Sec. 61.0171. TEMPORARY SUSPENSION OF LINE OF VEGETATION  
2 DETERMINATION. (a) The commissioner shall [~~may~~], by order,  
3 suspend action on conducting a line of vegetation determination for  
4 a period of up to three years from the date the order is issued if  
5 the commissioner determines that the line of vegetation was  
6 obliterated as a result of a meteorological event. For the duration  
7 of the order, the public beach easement shall extend to a line 200  
8 feet inland from the line of mean low tide as established by a  
9 licensed state land surveyor or as determined by law, whichever is  
10 further seaward.

11           ~~[(b) An order issued under this section shall be:~~  
12                     ~~(1) posted on the land office's Internet website;~~  
13                     ~~(2) published by the land office as a miscellaneous~~  
14 ~~document in the Texas Register; and~~  
15                     ~~(3) filed for record by the land office in the real~~  
16 ~~property records of the county in which the area of beach subject to~~  
17 ~~the order is located.~~

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

20                     ~~(1) a duty on the part of the commissioner to issue an~~  
21 ~~order related to the line of vegetation; or~~

22                     ~~(2) a private cause of action for:~~  
23                             ~~(A) issuance of an order under this section; or~~  
24                             ~~(B) failure to issue an order under this section.~~

25           ~~(d) Chapter 2007, Government Code, does not apply to an~~  
26 ~~order issued under this section.]~~

27           (b) [~~(e)~~] Upon the issuance of [~~If the commissioner issues~~]

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

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

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

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

23 SECTION 4. Subchapter A, Chapter 63, Natural Resources  
24 Code, is amended by adding Section 63.004 to read as follows:

25 Sec. 63.004 DUNE PROJECT EASEMENT. (a) For the purposes of  
26 this section, "dune project" means a state, county, or municipal  
27 project to construct and maintain a vegetated stabilized dune on a

1 beach for storm surge protection against meteorological events and  
2 other events causing avulsion.

3 (b) A person who owns property that borders the line of mean  
4 high tide or mean higher tide, as applicable, that establishes the  
5 boundary of state-owned submerged land may grant an easement on the  
6 property or a portion of the property to this state, a county, or a  
7 municipality for the purpose of allowing the governmental entity to  
8 construct and maintain a dune project in the easement.

9 (c) A person who grants a dune project easement under  
10 Subsection (b) must include with the easement a survey locating:

11 (1) the line of mean high tide or mean higher high  
12 tide, as applicable;

13 (2) the seaward and landward boundaries of the dune  
14 project; and

15 (3) each state, county, or municipal easement on the  
16 property that is the subject of the dune project easement that was  
17 recorded before the granting of the dune project easement.

18 (d) The granting of a dune project easement under Subsection  
19 (b) does not:

20 (1) create a burden on or right of access to the  
21 grantor's property that is not specifically provided for in the  
22 easement; or

23 (2) restrict the grantor's right to use the beach or  
24 the land subject to the easement, provided that the grantor's use of  
25 the beach or the land subject to the easement does not:

26 (A) unreasonably interfere with public  
27 recreational use of land subject to an easement for recreational

1 use or construction or maintenance of a dune project in the dune  
2 project easement; or

3 (B) violate a state, county, or municipal law.

4 (e) The terms of a dune project easement granted under  
5 Subsection (b) may provide that the seaward boundary of the  
6 easement may be affected by gradual changes or avulsion in the line  
7 of mean high tide or mean higher high tide, as applicable.

8 (f) A dune project easement granted under Subsection (b)  
9 automatically terminates if the governmental entity granted the  
10 easement:

11 (1) does not commence construction of a dune project  
12 in the easement within a reasonable period of time, not to exceed  
13 six months, or fails to maintain the dune project after completion  
14 of the project; or

15 (2) does not substantially repair or replace a  
16 completed dune project within twenty-four months after the project  
17 is damaged or destroyed by meteorological events and other events  
18 causing avulsion.

19 (g) A person may not grant a dune project easement under  
20 Subsection (b) unless the person dedicates a portion of the  
21 easement to the public for use as a recreational easement. The  
22 recreational easement must border the boundary of the public beach.  
23 The recreational easement must authorize users of the easement to  
24 conduct recreational activities traditionally associated with  
25 enjoying gulf beaches on the easement that comply with state,  
26 county, and municipal laws, including fishing, boat launching,  
27 picnicking, hiking, running, studying nature, bird-watching,

1 engaging in water sports, bicycling, and dog walking.

2 (h) A person who grants a recreational easement under  
3 Subsection (g) does not by granting the easement:

4 (1) assure the public that the premises are safe for  
5 recreational purposes;

6 (2) have a duty to the public to exercise a greater  
7 degree of care than the grantor would owe to a trespasser on the  
8 property; or

9 (3) assume responsibility or incur liability for an  
10 injury to a public user of the easement caused by an act of another  
11 public user of the easement.

12 (i) Subsection (h) does not limit the liability of a person  
13 who grants a recreational easement and has been grossly negligent  
14 or has acted with malicious intent or bad faith.

15 (j) A recreational easement granted under Subsection (g)  
16 automatically terminates if the associated dune project easement  
17 terminates.

18 (k) A governmental entity that is granted an easement under  
19 this section shall execute a recordable release of the easement and  
20 deliver the release to the owner of the property on which the  
21 easement is located if the easement is terminated. The  
22 governmental entity is not required to remove the dune project if  
23 the easement is terminated.

24 (l) A dune project under this section is not subject to the  
25 provisions of Section 61.011(d) with respect to determination of  
26 the line of vegetation or natural line of vegetation for the  
27 duration of the dune project.

1           SECTION 5. The change in law made by this Act applies only  
2 to an easement granted on or after the effective date of this Act.  
3 An easement granted before the effective date of this Act is  
4 governed by the law in effect on the date the easement was granted,  
5 and the former law is continued in effect for that purpose.

6           SECTION 6. This Act takes effect immediately if it receives  
7 a vote of two-thirds of all the members elected to each house, as  
8 provided by Section 39, Article III, Texas Constitution. If this  
9 Act does not receive the vote necessary for immediate effect, this  
10 Act takes effect September 1, 2021.