

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 25, 2013

Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

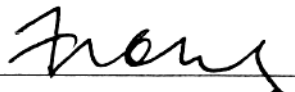
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3459 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



Sen. Taylor



Rep. Eiland



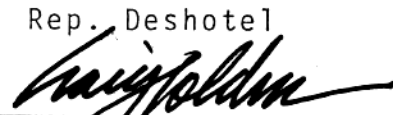
Sen. Fraser



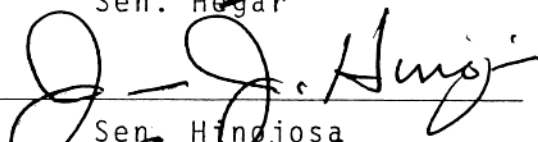
Rep. Deshotel



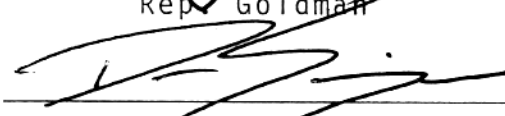
Sen. Hegar



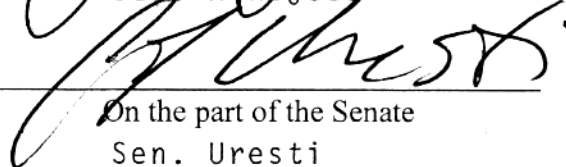
Rep. Goldman



Sen. Hinojosa



Rep. Springer



On the part of the Senate

Sen. Uresti



On the part of the House

Rep. Walle

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3459

A BILL TO BE ENTITLED

AN ACT

relating to access to and protection of certain coastal areas.

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

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. 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,

1 Transportation Code, for the transportation of a person with a
2 physical disability, and other minimum measures needed to mitigate
3 for any adverse effect on public access and dune areas;

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (a) The "line of vegetation" is not affected by the
26 occasional sprigs of salt grass on mounds and dunes or seaward from
27 them or ~~and~~ by artificial fill, the addition or removal of turf,

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

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

7 Sec. 61.0171. TEMPORARY SUSPENSION OF LINE OF VEGETATION

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

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

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

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

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

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

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

26 (2) a private cause of action for:

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

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

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

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

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

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

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

27 SECTION 6. Section 61.0185(a), Natural Resources Code, is

1 amended to read as follows:

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

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

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

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

14 SECTION 7. The legislature finds that:

15 (1) the Galveston-Houston region and the region's
16 economic and strategic infrastructure are at risk due to exposure
17 to potential catastrophic storm surge;

18 (2) to protect the Galveston-Houston region's five
19 million residents and the region's economic and strategic
20 infrastructure, various federal, state, and local entities, led by
21 Texas A&M University at Galveston, are studying and developing
22 conceptual designs for a coastal barrier to protect the region from
23 hurricane-induced storm surge;

24 (3) as currently envisioned, a project referred to as
25 the "Ike Dike" would extend the protection afforded by the
26 Galveston Seawall along the rest of Galveston Island and along the
27 Bolivar Peninsula by creating a 17-foot-high revetment (sand

1 covered dune with hardened cores) near the beach or by raising
2 coastal highways;

3 (4) the addition of floodgates at Bolivar Roads, at
4 the entrance to the Houston, Texas City, and Galveston Ship
5 Channels, and at San Luis Pass would complete a coastal spine that
6 would provide a barrier against all gulf surges into Galveston Bay;

7 (5) a research team is being led by Texas A&M
8 University at Galveston through its Center for Texas Beaches and
9 Shores using strong partnerships with the U.S. Department of
10 Homeland Security Coastal Hazards Center of Excellence at Jackson
11 State University, the Netherlands' Delft University of Technology's
12 Department of Hydraulic Engineering, and the University of Houston
13 C. T. Bauer College of Business's Institute for Regional
14 Forecasting;

15 (6) the General Land Office is a sponsor of and
16 nonfederal partner for a United States Army Corps of Engineers
17 study of the upper Texas coast to develop a list of specific
18 recommended projects that may become eligible for federal
19 appropriations;

20 (7) the United States Army Corps of Engineers study,
21 which encompasses Brazoria, Galveston, Harris, Chambers,
22 Jefferson, and Orange Counties, includes the coastal barrier/"Ike
23 Dike" concept; and

24 (8) as a result of the studies and recommendations
25 described by this section, the legislature may need to enact or
26 amend state law to accommodate the building of a coastal barrier to
27 protect the region from hurricane-induced storm surge.

1 SECTION 8. (a) The legislature shall establish a joint
2 interim committee to conduct a study of:

3 (1) the effectiveness of the implementation of the
4 changes in law made by this Act to Chapter 61, Natural Resources
5 Code; and

6 (2) the feasibility and desirability of:

7 (A) creating and maintaining a coastal barrier
8 system in this state that includes a series of gates and barriers to
9 prevent storm surge damage to gulf beaches or coastal ports,
10 industry, or property; and

11 (B) authorizing coastal property owners to grant
12 easements to governmental entities to construct and maintain
13 stabilized dunes in connection with or separately from the system.

14 (b) The committee is composed of:

15 (1) the members of the standing committee of the
16 senate that has primary jurisdiction over natural resources;

17 (2) the members of the standing committee of the house
18 of representatives that has primary jurisdiction over land and
19 resource management;

20 (3) two members of the senate appointed by the
21 lieutenant governor, each of whom represents a district in a county
22 that borders the Gulf of Mexico; and

23 (4) two members of the house of representatives
24 appointed by the speaker of the house of representatives, each of
25 whom represents a district in a county that borders the Gulf of
26 Mexico.

27 (c) The lieutenant governor and the speaker of the house of

1 representatives shall jointly designate a chair or, alternatively,
2 designate two co-chairs from among the committee membership.

3 (d) The committee may adopt rules necessary to carry out the
4 committee's duties under this section.

5 (e) Not later than December 1, 2014, the committee shall
6 report to the governor and the legislature the findings of the study
7 and any recommendations developed by the committee under this
8 section.

9 SECTION 9. This Act takes effect September 1, 2013.

House Bill 3459
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
No equivalent provision.	SECTION 1. Section 61.001, Natural Resources Code, is amended by adding Subdivision (7-a) to read as follows: <u>(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.</u>	SECTION 1. Same as Senate version.
SECTION 1. Section 61.011(d), Natural Resources Code, is amended.	SECTION 2. Same as House version.	SECTION 2. Same as House version.
SECTION 2. Section 61.016, Natural Resources Code, is amended by adding Subsection (d) to read as follows: <u>(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).</u>	SECTION 3. Section 61.016, Natural Resources Code, is amended by adding Subsection (d) to read as follows: <u>(d) The "line of vegetation" is dynamic and may move landward <i>or seaward</i> due to the forces of erosion <i>or natural accretion</i>. 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).</u>	SECTION 3. Same as Senate version.
SECTION 3. Section 61.017(a), Natural Resources Code, is amended.	SECTION 4. Same as House version.	SECTION 4. Same as House version.
SECTION 4. Subchapter B, Chapter 61, Natural Resources Code, is amended by adding Section 61.0171.	SECTION 5. Same as House version.	SECTION 5. Same as House version.
Sec. 61.0171. TEMPORARY SUSPENSION OF LINE OF VEGETATION DETERMINATION.	Sec. 61.0171. Same as House version.	Sec. 61.0171. Same as House version.

House Bill 3459
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

(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.

(b)-(f)

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

(h)

SECTION 5. Section 61.0185(a), Natural Resources Code, is amended.

No equivalent provision.

SENATE VERSION (CS)

(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.***

(b)-(f) Same as House version.

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

(h) Same as House version.

SECTION 6. Same as House version.

Same as House version.

CONFERENCE

(a) Same as Senate version.

(b)-(f) Same as House version.

(g) Same as Senate version.

(h) Same as House version.

SECTION 6. Same as House version.

SECTION 7. The legislature finds that:
(1) the Galveston-Houston region and the region's economic and strategic infrastructure are at risk due to exposure to potential catastrophic storm surge;
(2) to protect the Galveston-Houston region's five million residents and the region's economic and strategic

House Bill 3459
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

infrastructure, various federal, state, and local entities, led by Texas A&M University at Galveston, are studying and developing conceptual designs for a coastal barrier to protect the region from hurricane-induced storm surge;

(3) as currently envisioned, a project referred to as the "Ike Dike" would extend the protection afforded by the Galveston Seawall along the rest of Galveston Island and along the Bolivar Peninsula by creating a 17-foot-high revetment (sand covered dune with hardened cores) near the beach or by raising coastal highways;

(4) the addition of floodgates at Bolivar Roads, at the entrance to the Houston, Texas City, and Galveston Ship Channels, and at San Luis Pass would complete a coastal spine that would provide a barrier against all gulf surges into Galveston Bay;

(5) a research team is being led by Texas A&M University at Galveston through its Center for Texas Beaches and Shores using strong partnerships with the U.S. Department of Homeland Security Coastal Hazards Center of Excellence at Jackson State University, the Netherlands' Delft University of Technology's Department of Hydraulic Engineering, and the University of Houston C. T. Bauer College of Business's Institute for Regional Forecasting;

(6) the General Land Office is a sponsor of and nonfederal partner for a United States Army Corps of Engineers study of the upper Texas coast to develop a list of specific recommended projects that may become eligible for federal appropriations;

(7) the United States Army Corps of Engineers study, which encompasses Brazoria, Galveston, Harris, Chambers, Jefferson, and Orange Counties, includes the coastal barrier/"Ike Dike" concept; and

House Bill 3459
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

(8) as a result of the studies and recommendations described by this section, the legislature may need to enact or amend state law to accommodate the building of a coastal barrier to protect the region from hurricane-induced storm surge.

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

No equivalent provision.

Same as House version.

SECTION 8. (a) The legislature shall establish a joint interim committee to conduct a study of:

(1) the effectiveness of the implementation of the changes in law made by this Act to Chapter 61, Natural Resources Code; and

(2) the feasibility and desirability of:

(A) creating and maintaining a coastal barrier system in this state that includes a series of gates and barriers to prevent storm surge damage to gulf beaches or coastal ports, industry, or property; and

(B) authorizing coastal property owners to grant easements to governmental entities to construct and maintain stabilized dunes in connection with or separately from the system.

(b) The committee is composed of:

(1) the members of the standing committee of the senate that has primary jurisdiction over natural resources;

(2) the members of the standing committee of the house of representatives that has primary jurisdiction over land and resource management;

(3) two members of the senate appointed by the lieutenant governor, each of whom represents a district in a county that borders the Gulf of Mexico; and

(4) two members of the house of representatives appointed by

House Bill 3459
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

the speaker of the house of representatives, each of whom represents a district in a county that borders the Gulf of Mexico.

(c) The lieutenant governor and the speaker of the house of representatives shall jointly designate a chair or, alternatively, designate two co-chairs from among the committee membership.

(d) The committee may adopt rules necessary to carry out the committee's duties under this section.

(e) Not later than December 1, 2014, the committee shall report to the governor and the legislature the findings of the study and any recommendations developed by the committee under this section.

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

SECTION 6. Effective date.

SECTION 7. Same as House version.

SECTION 9. Same as House version.

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 25, 2013

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3459 by Eiland (Relating to access to and protection of certain coastal areas.),
Conference Committee Report

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 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. The Land Commission could consult with the Bureau of Economic Geology of The University of Texas at Austin. 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 would also identify whether federal funding were available for projects to protect the upper Texas Coast. 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. This analysis anticipates UT Austin could handle any additional duties relating to assisting GLO within existing resources.

Finally, the bill provides that the legislature conduct a joint interim study relating to the construction of a coastal barrier in the Houston-Galveston region, with a report due no later than December 1, 2014. This portion of bill provisions is not anticipated to represent any significant fiscal implication to the state.

The bill would take effect September 1, 2013.

Local Government Impact

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

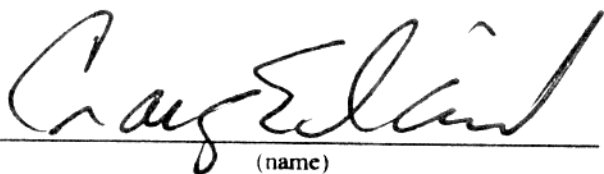
Source Agencies: 305 General Land Office and Veterans' Land Board, 802 Parks and Wildlife Department, 302 Office of the Attorney General

LBB Staff: UP, SZ, TB, SD

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 3459 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



(name)

5/25/13
(date)