

- SUBJECT:** Coastal Erosion Planning and Response Act
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 9 ayes — Walker, Crabb, Bosse, F. Brown, Hardcastle, Howard, Krusee, Mowery, B. Turner
- 0 nays
- WITNESSES:** For — Marty Baker, Pirates Beach Property Owners Association and Texas Beach and Shore Association; Al E. Birdwell, Bermuda Beach Property Owners Association; Roy Davis, Beach Preservation Association; John Howard, Ruth Howard, and Eddie G. Oehlers, Gilchrist Community Association; Dearl W. Lance, Corpus Christi Beach Association and Texas Shore and Beach Association; Sidney S. McClendon III, Texas Beach and Shore Association; Jerry Mohn, West Galveston Island Property Owners Association; Russell Clinton; Merry Porter
- Against — None
- On — David Dewhurst, General Land Office
- BACKGROUND:** The General Land Office (GLO) coordinates Texas' coastal erosion avoidance, remediation, and planning programs. The land commissioner may request, solicit, apply for, and receive gifts, grants, and donations to carry out GLO's duties. GLO administers the Coastal Management Program to coordinate the activities of state and federal agencies that have coastal jurisdictions.
- DIGEST:** CSHB 2560 would overhaul Natural Resources Code, chapter 33, subchapter H, related to the state's coastal erosion duties and authority.
- The bill's preamble states that public beaches and bays are the economic backbone of cities and counties on the Texas Gulf Coast; that erosion due to natural and manmade forces threatens vital assets and natural resources along the coast; and that a coastal erosion response program, partially funded by the hotel occupancy tax, would protect these assets and resources.

Coastal erosion response plan. CSHB 2560 would require the land commissioner to publish and update periodically a coastal erosion response plan developed in coordination with state and federal agencies, local governments, and public input. The plan would prioritize coastal erosion response studies to balance the benefits of such projects throughout the coast, based on the severity of erosion occurring. The plan also would have to attempt to achieve efficient economies of scale and to maximize the use of federal and local funds. The land commissioner could adopt rules necessary to implement the plan. GLO would have to implement coastal erosion avoidance, remediation, and planning, rather than coordinate it.

Coastal erosion response account. CSHB 2560 would create a coastal erosion response account in general revenue to finance studies and programs under the coastal erosion response plan. The fund would consist of state general revenue and federal grants appropriated for the coastal erosion response plan, as well as all money received by the state from the sale of dredged materials.

The land commissioner would have to approve expenditures from the account on the basis of the following considerations:

- the amount of money in the account;
- the feasibility and cost-effectiveness of the study or project;
- the locations of other existing or proposed projects;
- the needs in other critical coastal erosion areas;
- the effect of the study or project on public or private property; and
- the adequacy of a local government's administration of public beaches or dunes, if the site or project would be located within that government's jurisdiction.

Coastal erosion studies and projects. GLO would have to undertake erosion studies and projects if the office received legislative appropriations or other funding for such studies and projects. If the GLO undertook a study or project with another entity, that entity would have to pay at least 25 percent of the project cost before or following completion of the project. The bill would specify that this statute did not authorize the construction or funding of hard structures on or near public beaches.

The bill would add the following subjects to the current list of subjects that such studies and projects would have to address:

- economic and natural-resource benefits of erosion projects;
- nourishment or restoration of beaches, bay shores, and marshes with sediments other than the material from navigation or dredging projects;
- hard structures on bay shorelines;
- storm damage mitigation, post-storm damage assessment, and debris removal from public beaches; and
- other studies and projects deemed necessary by the land commissioner.

The bill would remove the following subjects from the list of required subjects for studies and projects:

- beach nourishment projects as a means of flood control;
- decreasing the deficiency in the sand budget;
- the feasibility of retrofitting existing impoundment structures to allow sediment bypassing; and
- decreasing and eliminating human-induced subsidence by limiting groundwater withdrawals and maintaining adequate pressure in hydrocarbon reservoirs.

The bill would prohibit persons from undertaking erosion response activities on or immediately landward of public beach or submerged land without filing a coastal boundary survey and obtaining any necessary leases or other instruments from the land commissioner, unless the activities were confined to land owned by a municipality or navigation district.

Historical erosion data. The land commissioner would have to make historical erosion data available, through the Internet and otherwise, to the public and to individuals who received notice from a property seller that private structures seaward of the vegetation line were subject to removal by the state. Local governments with public beaches or dunes would be encouraged to use historical data to prepare a plan for reducing public expenditures for erosion and storm-damage losses to public and private property by establishing building setback lines. Local governments would have to hold public meetings on plans for building setback lines before implementing such measures.

Report to Legislature. The land commissioner would have to submit a report to the Legislature each biennium listing:

- each critical erosion area;
- each proposed erosion response study or project and its estimated cost;
- each study or project funded during the preceding biennium and the economic and natural-resource benefits derived from these studies and projects;
- the financial status of the coastal erosion response account; and
- an estimate of the cost of implementing studies and projects during the succeeding biennium.

Landowner consent. The land commissioner could not undertake coastal erosion response projects on private property or on Permanent School Fund land without the written consent of the school land board or on private property without the landowner's written consent, unless the private land had been encumbered by municipalities under the Open Beaches Act. If a property owner could not be located or identified, the commissioner could determine that consent had been given if the commissioner published a notice of the project at least once a week for two consecutive weeks in the newspaper of largest circulation in the county and did not hear an objection from the property owner on or before the 20th day after the final notice was published.

Taxation of submerged land. If a section of land had become submerged by erosion or subsidence and thus had become dedicated to the Permanent School Fund, the land commissioner could notify the appraisal district and local taxing authorities. The notice would have to include a legal description of the land. Appraisal districts and taxing authorities would have to remove the eroded or subsided land from their rolls.

Immunity. The state, the land commissioner, and GLO staff would be immune from damages and liability for acts or omissions related to coastal erosion response activities, including the approval, disapproval, funding, performance, or failure to fulfill the intended purpose of such activities. The immunity would not apply to actions that were intentionally negligent toward or recklessly disregarded the safety of others.

Judicial review. A person seeking judicial review of rights affected by an action of the state under this bill would have to prove that the action was arbitrary, capricious, or otherwise illegal under the substantial evidence rule. Travis County would be the venue for judicial review.

CSHB 2560 would allow funds from the coastal protection fund for oil-spill prevention and response to be used also for coastal erosion plans, studies, and projects under subchapter H as amended by the bill. The land commissioner would not have to seek reimbursement for funds spent for coastal erosion purposes.

The bill would make numerous conforming changes to the language of chapter 33 of the Natural Resource Code.

The bill would take effect September 1, 1999. The provisions for landowner consent and immunity under the bill would apply only to erosion response activities undertaken on or after that date.

**SUPPORTERS
SAY:**

Erosion is damaging public and private land and property along the entire length of the Texas Gulf Coast. Two-thirds of the 367 miles of public beach on the Gulf Coast is suffering from erosion, which causes damage to roads, infrastructure, private homes and businesses, and wildlife habitat. The problem is especially severe on islands with significant human settlement, such as Galveston Island and South Padre Island. CSHB 2560 would significantly improve the ability of GLO and other state and local agencies to prevent and control coastal erosion along the Gulf Coast.

The state conducts very few coastal erosion control activities and has no plan to coordinate these activities. Current erosion-related activities are performed haphazardly by a number of agencies with no permanent source of funding for such activities. CSHB 2560 would strengthen GLO's authority to coordinate and implement erosion-related activities and would provide dedicated funding for erosion prevention and control.

The state is not eligible for federal matching funds for erosion prevention or control because it does not have a program to receive the funds. Other coastal states with response plans have received millions of dollars in federal matching funds for erosion control. This bill would enable Texas to improve

the quality and quantity of its erosion response activities through the use of federal funds.

Erosion control is an important economic development tool. Beach preservation activities undertaken by cities along the Gulf Coast have led to increased tourism revenues. Beaches are the second largest tourist attraction in the state. An erosion control program would benefit state residents who use Gulf Coast beaches and the residents of coastal communities who rely on tourism revenue to maintain the local tax base.

The state is losing roads, utility poles, and other public infrastructure to coastal erosion at an alarming rate. The cost of replacing public infrastructure lost to erosion would exceed greatly the cost of preventative protection measures under a coastal erosion response plan. CSHB 2560 would improve efforts to protect existing infrastructure to avoid or minimize costly replacement measures in the future.

Coastal erosion response programs benefit all Texas residents, not just private citizens, and should be funded through general revenue. Public beaches are available to all state residents and should be preserved using state funds derived from taxpayers across the state. Dams and other factors outside coastal regions affect the amount of erosion on the Gulf Coast, highlighting the need for the participation of all residents in erosion-related activities.

OPPONENTS
SAY:

The state should not spend general revenue to fund coastal erosion programs. Not all citizens use public beaches on the Gulf Coast. Revenue for funding coastal erosion programs should be raised from individuals and organizations that benefit the most from such programs, including private property owners and local governments along the coast.

NOTES:

The committee substitute removed language from the original bill that would have allowed counties located on the Gulf Coast to collect a \$5 fee for every filing and recording of real property in the county and a fee of 75 cents for every issuance or renewal of a driver's license fee in the county.

The substitute added language specifying that state officials would not be immune for actions that were intentionally negligent toward or recklessly disregard the safety of others. It also added language that would eliminate the

need for a lease from GLO for erosion-related activities if the activities were confined to land owned by a municipality or navigation district.

The companion bill, SB 1690 by Bernsen, passed the Senate as amended on April 28 and was reported favorably, as amended, by the House Land and Resource Management Committee on May 3.

The House-passed version of HB 1 by Junell, the general appropriations bill for fiscal 2000-01, includes in Article 7 under the General Land Office a rider that would established a trustee program for coastal erosion control, contingent on enactment of HB 2560. It would appropriate \$10.5 million in fiscal 2000 and \$12.5 million in fiscal 2001 to the trustee program. Sources for the appropriation would include \$5.2 million in general revenue each fiscal year, up to \$1.2 million each fiscal year from interest earned on state deposits and treasury investments deposited in the Coastal Protection Account, \$1.1 million each fiscal year from transfers from the general revenue fund deposited in the Coastal Erosion Response Account, and \$3 million in federal funds in fiscal 2000 and \$5 million in fiscal 2001.

SB 1339 by Patterson, a substantially similar bill, passed the Senate by voice vote during the 1997 regular session but died in the House on a point of order against all bills on the calendar.