

**SUBJECT:** Requiring notice to the state of a claim against the School Land Board

**COMMITTEE:** Land and Resource Management — favorable, with amendment

**VOTE:** 5 ayes — Mowery, J. Jones, Hochberg, Howard, Noriega

1 nay — Haggerty

3 absent — Pickett, Goolsby, Guillen

**WITNESSES:** For — Jerry Patterson, Texas General Land Office

Against — None

On — *(Registered, but did not testify:)* Ingrid K. Hansen, Texas General Land Office

**BACKGROUND:** Natural Resources Code, ch. 33 governs the management of coastal public land. Sec. 33.171 allows a littoral owner whose rights may be affected by an action of the School Land Board to bring suit for a declaratory judgment against the state in a district court in Travis County. A littoral owner is the owner of any public or private upland bordered by or contiguous to coastal public land.

The Texas Tort Claims Act (Civil Practice and Remedies Code, sec. 101.101) requires a claimant to notify a governmental unit of a claim against it within six months after the day that the incident giving rise to the claim occurred. The notice must describe the incident, the damage or injury claimed, and the time and place of the incident. The notice requirements do not apply if the governmental unit has actual notice that a death has occurred, that the claimant has received an injury, or that the claimant's property has been damaged.

**DIGEST:** HB 1283, as amended, would entitle the state to receive notice of a claim against the School Land Board within 180 days after the date of the board action that gave rise to the claim. The notice would have to describe reasonably the board action that affected the littoral owner's rights and the

time and place of the board's action. The notice also would have to describe the nature of the claim, specifying how the board's action affected the title to or boundary of coastal public land to the detriment of the littoral owner, how the board's action affected interest in land sought or granted under Natural Resources code, ch. 33, or how the board violated the statute or a rule adopted by the board.

The notice requirement would be a prerequisite to bringing a suit for declaratory judgment against the state, regardless of actual notice, express or implied, to the board or the state.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

HB 1283 would require notice to the state of a claim against the School Land Board in the same manner as the Texas Tort Claims Act requires notice to all governmental entities. Requiring advance notice of a claim would enable the board to negotiate with the owner and to settle the dispute without the need for expensive, drawn-out litigation. Because current law allows an owner of littoral property to bring a suit for declaratory judgment without notice, the board has a distinct disadvantage in relation to other state entities, and HB 1283 would correct this oversight.

The bill would not infringe on the rights of littoral owners to bring suit against the state. It would not eliminate owners' opportunity to sue but simply would require them to notify the state of their intent to sue. Owners receive ample notice of any board action that might affect them. The board posts its meetings ahead of time in compliance with the Open Meetings Act, notifies any potentially affected property owner by certified mail before a meeting, and provides notice in public newspapers if publications are available in the area where affected owners reside. Furthermore, board staff has a policy of staying in close contact with property owners, contacting them well in advance of any decision that might affect them. A period of 180 days would give such owners, who already would have been well informed of the board's action, a reasonable amount of time to notify the state.

**OPPONENTS  
SAY:**

HB 1283 unfairly would limit littoral owners' right to bring suit against the state. In effect, the bill would place a six-month statute of limitations on such suits, after which the owners' claims would be barred. This limitation would

be particularly unjust in a case where the owner received no notice of the board's action. The bill would bar suit even if the board or the state received actual notice of the owner's claim in a manner other than the overly restrictive manner that the bill would prescribe.

NOTES:

The committee amendment would replace the word "incident" in the filed version of HB 1288 with the phrase "action of the board" to conform with other language in the bill.

The companion bill, SB 640 by West, passed the Senate by 31-0 on April 16. A related bill, HB 1106 by Turner, would create a legal presumption that GLO archives, including maps and surveys, accurately depict the littoral boundaries of state property, was reported favorably, without amendment, by the House Land and Resource Management Committee and was set on the House general calendar for April 22.