

- SUBJECT:** Revising the School Land Board's authority to manage certain coastal land
- COMMITTEE:** Land and Resource Management — favorable, without amendment
- VOTE:** 6 ayes — Mowery, Orr, Callegari, Y. Davis, Geren, Ritter
0 nays
3 absent — Zerwas, R. Cook, Pickett
- WITNESSES:** For — None
Against — None
On — Robert Hewgley, Texas General Land Office. (*Registered, but did not testify*: Ellis Pickett, Surfrider Foundation Texas Chapter)
- BACKGROUND:** Natural Resources Code, ch. 33 provides for the management of coastal public land and entrusts the administration, implementation, and enforcement of related provisions to the School Land Board (SLB).
- Sec. 33.001(g) states that the surface estate in coastal public land shall not be alienated except by the granting of leaseholds and lesser interests and by exchanges of coastal public land for littoral property as provided in the chapter.
- Sec. 33.103 permits the SLB to grant interests in coastal public land for the purpose of:
- public use leases;
 - easements for purposes associated with ownership of property adjacent to coastal public land or for the operation of a facility operated by an existing channel and dock corporation;
 - permitting a limited continued use of previously unauthorized structures on coastal public land not associated with ownership of property adjacent public coastal land; and
 - granting channel easements to the holder of any surface or mineral interest in coastal public land for purposes necessary or appropriate for the use of those interests.

Sec. 33.105 allows the SLB to lease coastal public land to:

- the Texas Parks and Wildlife Department (TPWD) for recreational use or for the management of estuarine preserves;
- any city or county for recreational purposes, or any nonprofit, tax-exempt environmental organization approved by the SLB for the purpose of managing a wildlife refuge; and
- any scientific or educational organization or institution for conducting scientific research.

Secs. 33.102 and 33.104 establish requirements for applications to acquire rights in coastal public land. Applications must contain an adequate legal description of the land, a statement of the rights sought and intended uses, a description of any improvements to be made, and any additional materials the SLB deems necessary. The SLB is instructed to determine whether the proposed application should be granted within 30 to 90 days after it is received.

Sec. 33.613 permits property owners adjacent to eroded beach land to restore the affected land to its original boundaries, provided that the land was privately held on December 31, 1955. The owner may use only private resources and money for the authorized restoration. After restoration, the owner is entitled to fee simple ownership of the restored land, subject to common law public rights, constraints imposed by existing lessees, and the construction of bulkheads to prevent further erosion.

In March 2006, in response to a request submitted by Texas Land Commissioner Jerry Patterson, Atty. Gen. Greg Abbott issued an opinion (GA-0407) regarding the constitutionality of sec. 33.613. The attorney general determined that by authorizing a restoration program that effectively conveyed fee simple ownership without providing for the necessary compensation to the Permanent School Fund, sec. 33.613 violated Art. 7, sec. 4 of the Texas Constitution.

DIGEST:

HB 2819 would authorize the School Land Board (SLB) to grant interests in coastal public land for any purpose it determined to be in the best interests of the state, subject to the current requirement that the surface estate not be alienated except by leaseholds or lesser interests or exchanges for littoral property. The SLB could impose appropriate fees, depending on the type of application submitted. The bill also would permit the SLB to determine what information was necessary for processing an

application and would eliminate the time frame for making a determination on an application.

Provisions permitting private property owners to gain fee simple ownership to adjacent public eroded land through restoration projects would be eliminated, and the bill would repeal statutes that:

- direct funds from grants of surface interests whose initial term is 20 years or greater to be deposited to the credit of the Permanent School Fund (PSF); and
- prohibit contract or franchise agreements including commercial activity within 300 feet of privately owned adjacent property without the property owner's written consent.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 2819 would make minor but important changes necessary to update and improve the management of coastal public land. The bill would permit the SLB to be more flexible and responsive in its land management practices and would support modernized, efficient application processes. Improved administrative guidelines ultimately would result in better access to and maintenance of valuable public coastal resources.

Currently, the SLB is constrained in granting leases and easements on coastal public land. The Board may grant leases for public purposes and to specific organizations, such as TPWD, municipalities, and other non-profit, scientific, or educational organizations. However, many legitimate requests for the use of coastal public land are not covered by the tightly conscribed authority currently provided. HB 2819 would enable the SLB to develop less burdensome procedures for granting various temporary uses on this land.

Empowering the SLB to grant access to a broader range of interests and eliminating the narrow restrictions on which organizations qualify would give the SLB the flexibility to accommodate the various groups that enjoy access to coastal public land. The SLB could make necessary judgments on a case-by-case basis and more carefully tailor administrative processes and necessary fees to fit the type of use requested. A weekend festival on public land, for instance, would not have to go through the intensive lease

procedures designed for more permanent and higher-intensity uses.

HB 2819 would update statutory provisions and conform them with the purpose and intent of law governing the management of state school surface land. Ch. 51 of the Natural Resources Code already names the land commissioner and the SLB the guardians of state school land and gives them sole authority to manage this land in the best interest of the fund. The bill would extend this authority to the granting of easements and other temporary access agreements concerning coastal public land.

The bill would allow the SLB to customize application requirements for the type of lease or interest sought and would eliminate several provisions with negligible public value yet significant administrative costs. Granting more flexibility to determine necessary application contents would remove the burden of collecting and reviewing information that might not be germane to a specific use.

Statutory language authorizing the restoration of private property deemed unconstitutional by the Attorney General would be eliminated.

OPPONENTS
SAY:

HB 2819 would delegate additional powers to the SLB to make decisions on behalf of the state and thereby expand their already broad grant of discretionary authority over public land. The bill would grant additional authority to the SLB with respect to granting easements and access agreements on coastal public land. Current constraints on the types of people and organizations eligible for interests in public land would be eliminated, but the bill would provide no corresponding guarantee that the discretion it would grant would be applied with circumspection or would be subject to public input.

The SLB includes one elected and two appointed officials. Because the majority of the Board is appointed and not elected, there are limits to its public accountability in making decisions regarding the use and administration of coastal public land. Expanding the board's authority to issue interests in this land would remove legislative controls over use of the land and assign it to an institution the majority of which is not directly accountable to the public through popular elections.

NOTES:

The companion bill, SB 751 by Jackson, is pending in the Senate Natural Resources Subcommittee on Agriculture, Rural Affairs and Coastal Resources.

A related bill, HB 2894 by Garcia, would grant adjacent owners a preference right to purchase land restored as part of Natural Resources Code, sec. 33.613. The bill would grant an owner the first chance to purchase restored land for the market value of the land before the restoration. The bill is pending in the House Land and Resource Management Committee.