

SUBJECT: Expanding the land commissioner's authority to protect coastal resources

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Mowery, Orr, R. Cook, Y. Davis, Pickett, Ritter

0 nays

3 absent — Zerwas, Callegari, Geren

WITNESSES: For — Jerry Patterson, General Land Office

Against — Russell M Clinton; Merry Porter

On — Eddie R. Fisher and Jane Sarosdy, General Land Office; A.R.
"Babe" Schwartz

BACKGROUND: Under Natural Resources Code, ch. 61, the line of vegetation generally is the seaward boundary of natural vegetation that spreads continuously inland and is used to help determine the area of public beach. The chapter provides for instances in which there is no clearly marked line of vegetation. The commissioner of the General Land Office is empowered to promulgate rules related to a number of activities associated with beach preservation and maintenance.

Sec. 61.013 prohibits any person from creating, erecting, or constructing any obstruction, barrier, or restraint that interferes with the free and unrestricted right of the public to enter or to leave any public beach or any larger area abutting a public beach. A person is prohibited from engaging in or allowing any construction landward in a manner that adversely affects access to and use of the public beach.

Natural Resource Code, ch. 63, provides for the protection of dunes through the designation of dune protection lines. A commissioner's court is empowered to designate such lines and may form agreements with municipalities regarding the boundaries and enforcement of protections for dune areas. The commissioner can identify critical dune areas within 1,000 feet of mean high tide that are essential to the protection of state-

owned land, public beaches, and submerged land and may promulgate rules for their protection.

DIGEST:

CSHB 3624 would modify processes for open beaches, windstorm insurance, dune protection, the establishment and maintenance of building setback lines on and near beach land, the designation of vegetation lines, required disclosure for buyers of beach property, and the development permit review processes.

The bill would allow the land commissioner to order the removal of a structure, improvement, obstruction, barrier, or hazard upon the determination that the structure was located on a public beach and existed in a manner inconsistent with the local government's beach access and use plan, or constituted an immediate hazard to safety, health, or public welfare. Such a determination would not imply an obligation to remove any structure.

The commissioner would notify the Texas Windstorm Insurance Agency of any structures illegally located on a public beach and would provide owners with written notice of their right to a hearing regarding such structures, which would be rendered uninsurable through state assistance programs. The notice would provide basic information about the structure, outline procedures for removal in the absence of corrective action, and notify a subject owner of the right to request a hearing with the State Office of Administrative Hearings. The commissioner could sell salvageable parts of the structure to offset any outstanding costs owed through the course of the hearing process.

The bill would change procedures associated with local dune plans by requiring the commissioner to certify a county or municipal dune plan no later than the 90th day after its initial submission. A rejected dune plan would be subject to resubmission. The commissioner would be able to order restoration for the damage, destruction, or removal of a sand dune or the destruction of any vegetation seaward of a dune protection line. The bill would extend to dune restoration orders the same process it would implement for insurance declarations. Permit review times for development occurring in dune areas would be graduated based on the square footage of the development proposal.

CSHB 3624 would add provisions for reducing public expenditures for storm damage losses, including the establishment and implementation of a building setback line. A setback plan could:

- preserve and enhance the public's right of access to and use of the public beach;
- preserve critical sand dunes for natural storm protection and conservation purposes;
- establish a building setback line no further landward than the dune protection line established by the local government;
- provide for the prohibition of new construction seaward of the building setback line; and
- provide for the acquisition or lesser claims of interest in property seaward of the building setback line.

CSHB 3624 would allow the commissioner discretion in determining the location of the line of vegetation, and such a determination would constitute presumptive evidence of the landward boundary of the area subject to the public easement. An initial vegetation line determination by the commissioner could be relocated through court adjudication. The commissioner would be granted more flexibility in the determination and amount of penalties to be assessed on noncompliant properties. Land located in or near a dune area would be subject to a seller's disclosure notice.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 3624 would provide the land commissioner necessary leverage and rulemaking authority to address threats to the natural integrity and public accessibility of the coast. Many Texas beaches remain in relatively pristine condition, free from development that chokes off public access and severely aggravates coastal erosion. Increasing development pressures and worsening environmental impacts associated with existing development amplify the need for proactive measures to protect beaches and dunes from further, irreversible damage. Preserving the natural integrity and public accessibility of beaches results in a benefit to all Texans, including property owners near the coast.

The bill would give the commissioner the rulemaking authority necessary to preserve public beaches and dune areas. It would allow the commissioner to take actions resulting in the removal of various

obstructions and other hazards that hinder access to beaches and compromise their public value, such as fences constructed seaward of vegetation lines. The bill would not enhance these authorities so much as it would clarify and set precise standards for their execution. The rights of property owners would be preserved and clarified, and property owners subject to penalties or removal would be entitled to explicit written notice, ample time to correct any infraction, hearings, and appeal options. Disclosure standards would be strengthened to ensure that new owners were able to make sound decisions about the privileges and obligations that come with owning property near a beach.

The bill would establish practices improving the joint ability of the commissioner and local governmental entities to preserve and manage beach and dune land. Local setback lines could be established to regulate development for the purposes of storm protection and preservation of public access. The commissioner could order the restoration of damaged and destroyed sand dunes in areas within locally designated sand dune lines.

**OPPONENTS
SAY:**

CSHB 3624 would delegate additional discretionary powers to the land commissioner to make decisions that adversely impact property owners near beaches. The bill would allow for expanded actions against property owners for factors, such as erosion, that are beyond their control and in some cases are even the inadvertent result of state engineering policies. The bill contains inadequate provisions to ensure that property owners would receive just compensation for effectively taken property and would offer them little recourse that did not involve unacceptable attorney's fees and prolonged legal battles.

The additional discretion the bill would give the commissioner for the designation of vegetation lines could increase the number of properties seaward of the line and for all intents and purposes act as a taking in disguise. The bill would provide no corresponding guarantee that the discretion it granted would be applied with circumspection or would be subject to public input. The powers granted by the bill are substantially overbroad and could perpetuate abuses against long-time beach property owners that would receive scant protections against the far-reaching powers of the state.

NOTES: The companion bill, SB 1789 by Jackson, was reported favorably as substituted by the Senate Subcommittee on Agriculture, Rural Affairs and Coastal Resources on April 18.