

- SUBJECT:** Amending the Texas Constitution to include the Open Beaches Act
- COMMITTEE:** Land and Resource Management — favorable, without amendment
- VOTE:** 6 ayes — Bonnen, Alvarado, Hamilton, Homer, Paxton, Thibaut
0 nays
3 absent — Farrar, Bolton, Orr
- WITNESSES:** For — Garry Mauro; (*Registered, but did not testify*, A.R. “Babe” Schwartz)
Against — None
- BACKGROUND:** Natural Resources Code, sec. 61.011 establishes an “open beaches” policy under which the public must have “free and unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.” In effect, the vegetation line marks the property line for private property owners along Texas beaches. The attorney general must enforce the open beaches law strictly to prevent encroachments against public access to beaches.
- The line of vegetation can shift because of erosion, storms, or construction of seawalls and other manmade barriers. Natural Resources Code, sec. 61.016 defines how beach boundaries may be determined in areas with no marked line of vegetation. Sec. 61.017 defines the line of vegetation in several circumstances, including along the Galveston Seawall.
- DIGEST:** HJR 102 would amend the Texas Constitution by adding Art. 1, sec. 33 to establish the public’s unrestricted right to access public beaches. This right would be dedicated as a permanent public easement. The resolution would define a public beach as a state-owned beach bordering on the seaward shore of the Gulf of Mexico, extending from the mean low tide to the landward boundary of state-owned submerged land, and from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, to which the public had acquired a right of use or easement.

The Legislature could enact laws to protect the right of public access to the beach and to protect the easement from interference and encroachments. The constitutional provision would not create a private right of enforcement.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2009. The ballot proposal would read: "The constitutional amendment to protect the right of the public, individually and collectively, to access and use the public beaches bordering the seaward shore of the Gulf of Mexico."

**SUPPORTERS
SAY:**

HJR 102 would strengthen the 1959 Open Beaches Act by enshrining it in the Texas Constitution. Beaches have been protected as public property since the beginning of modern society, and developers should not be able to build properties along the beach and restrict the public's right to access. People from all walks of life should have unfettered access to beaches. HJR 102 would strengthen the existing protections of the easements the public has used to access the beach.

The proposed constitutional amendment would protect the public's right to access the beach in the wake of a recent waive of lawsuits. For example, a federal appeals court recently asked the Texas Supreme Court to rule on the removal of homes that are now located on public beaches as a result of coastal erosion and Hurricane Ike. This constitutional amendment would not hinder the ability of the Legislature to address issues relating to natural events in the future, but would make clear the intent of Texas law to keep the beaches public.

Property owners who build or purchase homes on Texas beaches already know that they risk having their property shift into the public easement. Earnest money contracts, deeds, and title policies all contain provisions alerting owners of the risk of natural events moving the line of vegetation and causing their property to be located on a public beach. Building a home on the beach always has been a risky proposition as natural occurrences cause the mean low tide and vegetation lines to constantly move back and forth.

**OPPONENTS
SAY:**

HJR 102 would lock into the Constitution a statute that has allowed the state to require property owners whose houses are now located on public land following Hurricane Ike to remove their homes from the public beach. In the past, the state has assumed a public easement on property

located on public beaches under the Open Beaches Act without compensating property owners when the vegetation line shifts. Many homes along the Texas Gulf Coast had been around for generations before Ike's winds and storm surge moved the line of vegetation, leaving their homes and other structures on the public beach. The Open Beaches Act already provides too much authority to the state to restrict the right of private landowners to enjoy their property, and placing this authority in the Constitution would only compound the problem by making the law much more difficult to change in the future.