

- SUBJECT:** Revising certain provisions governing open beaches
- COMMITTEE:** Land and Resource Management — favorable, without amendment
- VOTE:** 7 ayes — Deshotel, Walle, Frank, Goldman, Herrero, Parker, Springer
1 nay — Simpson
1 absent — Paddie
- WITNESSES:** For — Jerry Patterson, General Land Office (*Registered, but did not testify*: Tom Tagliabue, City of Corpus Christi)
Against — Bill Peacock and Vikrant Reddy, Texas Public Policy Foundation
On — Marcus Brakewood and Ellis Pickett, Surfrider Foundation; David Land, General Land Office; AR “Babe” Schwartz (*Registered, but did not testify*: Jax Claiborn and Morris, Surfrider Foundation)
- BACKGROUND:** The Texas Open Beaches Act, Natural Resources Code, ch. 61, grants the public free and unrestricted right to access state-owned beaches and a right to use any public beach or larger area extending from the line of mean low tide to the line of vegetation bordering the Gulf of Mexico. The “line of vegetation” is defined as the seaward boundary of natural vegetation that spreads continuously inland. The act applies to all beaches to which the public has acquired a right of use or an easement under principles of Texas common law.
- DIGEST:** HB 3459 would allow the land commissioner to issue an order to suspend action on conducting a “line of vegetation” determination for a period of up to three years upon determining that the line of vegetation was obliterated as a result of a meteorological event. For the duration of the order, the public beach would extend to a line 200 feet inland from the line of mean low tide.
Issuing an order to suspend would be purely at the discretion of the land commissioner and would not create a private cause of action for issuing or failing to issue the order.

Under HB 3459, the land commissioner could promulgate rules on the temporary suspension of a determination of the “line of vegetation.” An order to suspend would have to be posted on the GLO’s website, published in the Texas Register, and filed in the real property records of the associated county. The order would not be subject to provisions waiving sovereign immunity for the taking of private property by a political subdivision. A statute of limitations would not apply to an order for suspensions.

Following the expiration of an order to suspend, the land commissioner would make a determination regarding the line of vegetation, taking into consideration the effect of the meteorological event on the location of the public beach easement.

The line of vegetation would constitute the landward boundary of the area subject to public easement until the line of vegetation moved landward due to a subsequent meteorological event, erosion, or public use, or until a final court adjudication establishes the line in another place.

The bill would add language stating that the “line of vegetation” was dynamic and could move landward due to the forces of erosion. For the purposes of determining the public beach easement, if the “line of vegetation” was obliterated due to a meteorological event, the landward boundary of the area subject to the public easement would be the line established by the commissioner under a line of vegetation determination.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 3459 would strike a balance between protecting private property rights and the public’s right to access a beach following catastrophic weather events, such as hurricanes.

The bill is necessary to address what is something of a legal limbo resulting from a Texas Supreme Court decision, *Severance v. Patterson*, which found that erosion that suddenly changed the location of the dry beach, such as that caused by an aversive event (storms or hurricanes), did not move the established public easement from its original location. Under the *Severance* decision, it is not entirely clear what role the land commissioner should assume for determining the boundaries of a public beach in the long term after erosion caused by a major weather event.

HB 3459 would create a process whereby the land commissioner could suspend the designation of a new line of vegetation for three years. Providing a three-year window after a major storm would provide the time necessary to see how public access to the beach — the area between mean low tide and the line of vegetation — was affected by the hurricane in the long-term. The bill would extend to the interim period before the commissioner made a line of vegetation determination a provision currently in statute that defines public access as the area that is 200 feet landward from mean low tide.

Charges that the bill could result in an unconstitutional taking are misplaced. If a hurricane were to cause significant changes to a coastline that, three years after the incident, resulted in a public easement extending further onto private property, then that extension would not be attributable to the state but rather to vagaries of mother nature.

**OPPONENTS
SAY:**

HB 3459 could result in an unconstitutional taking of private property. The Texas Constitution prohibits a person's property from being taken, damaged, or destroyed for a public use without adequate compensation. HB 3459 would tilt the current legal balance against the property owner in the case of a major weather event, such as a hurricane, that obliterated the line of vegetation. In allowing a delayed designation of a line of vegetation, the bill would allow the land commissioner to arbitrarily redraw a public easement over formerly private land, effectively taking the land for a public purpose without due compensation.

There are perfectly sufficient means in current law to accommodate any changes in a public beach that resulted from a hurricane. State and local governments can take private land for a public beach through eminent domain, provided they offer due compensation for the taking. Provisions in HB 3459 essentially would skirt this requirement and effectively allow the state to acquire private land for free.