

- SUBJECT:** Easements used for dune maintenance projects in certain counties
- COMMITTEE:** Land and Resource Management — favorable, without amendment
- VOTE:** 6 ayes — Deshotel, Frank, Goldman, Herrero, Parker, Springer  
3 nays — Walle, Paddie, Simpson
- SENATE VOTE:** On final passage, May 15 — 31-0
- WITNESSES:** For — Marie Robb, City of Galveston; (*Registered, but did not testify:*  
Ben Raimer)
- Against — Jamie Mitchell, Surfrider Foundation; Jerry Patterson, General  
Land Office
- On — (*Registered, but did not testify:* David Land, General Land Office)
- 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 Texas Supreme Court rulings in *Severance vs. Patterson*, 2009, determined that in certain circumstances land that was once generally considered public beach is in fact private property. State and local funds cannot be spent on dune construction and maintenance projects on private property unless the public has legal access to that property.
- DIGEST:** SB 1560 would provide the mechanism for a property owner to grant a static easement to the state or a local government for the purpose of performing a dune project in a county that contained a barrier island and a peninsula, had a population of more than 50,000 and less than 350,000, and bordered a county with more than 4 million people (Galveston County). A dune project would be defined as a project to construct and maintain a vegetated stabilized dune on a beach for the protection against avulsive (dramatic changes in landscape often resulting from storms or floods) or meteorological events.

A person who owned property that bordered state-owned beaches could grant an easement on the property or a portion of the property to the state or a local government for purpose of allowing the governmental entity to construct and maintain a dune project on the easement. The bill would require the public entity to maintain the dune project or the easement would terminate.

The bill would require the person granting the easement to perform surveys and grant recreational easements to ensure public access to the beach. The easement could not decrease the size of the public beach.

A person who granted a recreational easement would be provided certain liability protections but would not be protected from being grossly negligent or to have acted with malicious intent or in bad faith.

An easement granted before the effective date of the bill would be governed by the law that was in effect on the date the easement was granted, and the former law would be continued in effect for that purpose.

This 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, 2013.

**SUPPORTERS  
SAY:**

SB 1560 would authorize landowners to offer static easements to government on private property for the construction of dunes to maintain beaches. It is time to start rebuilding dunes and renourishing beaches on West Galveston Island to protect private property from storm surges. Sand dunes feed the public beaches with sand, and many coastal states nourish beaches from a static line.

**OPPONENTS  
SAY:**

SB 1560 is unnecessary because static easements are already allowed by law. In addition, there is no local consensus for the bill.

Static easements reduce the size of the public beach once storm events occur because they define a permanent line and the beach erodes in front of the easement. Static easements, after storm events and with naturally occurring erosion, limit public access to beaches. Also, dunes constructed on static easements are expensive to maintain because they are not allowed to migrate, as dunes do naturally on barrier islands. Rolling easements are the more appropriate form of easements for West Galveston Island.