

- SUBJECT:** Placing burden of proof on party seeking public beach easement
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Leach, Davis, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith
- 0 nays
- 1 absent — Dutton
- WITNESSES:** For — Marie Robb, City of Galveston District Six; J David Breemer, Pacific Legal Foundation; (*Registered, but did not testify:* Sally Bakko, City of Galveston)
- Against — None
- On — (*Registered, but did not testify:* David Land, Texas General Land Office)
- BACKGROUND:** Under Natural Resources Code sec. 61.020, in a suit or administrative proceeding regarding access to public beaches, a showing that the area in question is located in the area from mean low tide to the line of vegetation is prima facie evidence that the line of the littoral owner does not include the right to prevent the public from using the area and that there is a common law right or easement in favor of the public for ingress and egress to the sea. The determination of the location of the line of vegetation by the commissioner of the General Land Office would constitute prima facie evidence of the landward boundary of the area subject to the easement until a court adjudication established otherwise.
- Some have suggested that there should be a burden of proof on the party seeking to establish that there is a common law right or easement in favor of the public for ingress or egress to the sea.
- DIGEST:** HB 4172 would place the burden of proof on the party seeking to establish

that an area was subject to a public beach easement or that the title of the littoral owner did not include the right to prevent the public from using the area for ingress and egress to the sea.

The bill would remove provisions establishing that a showing that the area was located from mean low tide to the line of vegetation was prima facie evidence of an easement and that the determination of the line constituted prima facie evidence of the landward boundary of the area until a court adjudication established otherwise.

The bill would take effect September 1, 2021, and apply only to a suit or administrative proceeding filed on or after that date.