

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1690  
By: Bernsen  
Natural Resources  
4/22/1999  
Committee Report (Substituted)

### **DIGEST**

Currently, coastal erosion affects the Texas coastlines. C.S.S.B. 1690 creates a Coastal Erosion Response account whereby a permanent source of funding will be created to address the coastal erosion problems.

### **PURPOSE**

As proposed, C.S.S.B. 1690 regulates coastal erosion.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the commissioner of the General Land Office in SECTION 2 (Section 33.602(c), Natural Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Sets forth certain findings regarding public beaches and bays.

SECTION 2. Amends Sections 33.136(a)-(e), Natural Resources Code, to prohibit a person from undertaking an action on or immediately landward of a public beach or submerged land, including state mineral lands, relating to erosion response that will cause or contribute to the shoreline alteration before the person has filed a certain survey and has obtained any required lease or other instrument from the commissioner of the General Land Office (commissioner) or School Land Board, as applicable. Provides that on the filing of the survey, the shoreline depicted on the survey is a fixed line for the purpose of locating a shoreline boundary subject to movement, rather than erosion, landward of that line. Sets forth the statement that the survey must contain. Requires the commissioner to provide notice of approval of a survey in certain publications. Requires a person who claims title to permanent school fund land as a result of accretion, reliction, or avulsion in the coastal zone on or after September 1, 1999, rather than on a public beach on a certain area, to take certain action in order to prove certain conditions exist. Provides that an upland owner who, because of erosion response activity undertaken by the commissioner still holds certain rights.

SECTION 3. Amends Section 33.203(10), Natural Resources Code, to define "critical erosion area."

SECTION 4. Amends Chapter 33H, Natural Resources Code, as follows:

#### **SUBCHAPTER H. COASTAL EROSION**

Sec. 33.601. DEFINITIONS. Defines "account," "beach nourishment," "coastal erosion," "critical coastal erosion are," "erosion response project," "hard structure," "institution of higher education," "local government," "project cooperation agreement," "public beach," "qualified project partner," and "shared project cost."

Sec. 33.602. COASTAL EROSION DUTIES AND AUTHORITY. Requires the( land office) to implement a certain program, rather than act as the lead agency for the coordination of coastal erosion duties. Requires the commissioner to publish and periodically update a coastal erosion response plan. Requires the commissioner to develop the plan and provide for public input on the plan. Requires the plan to prioritize coastal erosion response studies and projects so certain actions are taken. Authorizes the commissioner to adopt rules necessary to implement this subsection. Deletes text regarding certain recommendations and guidelines.

Sec. 33.603. New heading: COASTAL EROSION STUDIES AND PROJECTS. Requires the land office to undertake coastal erosion studies and response projects if the land office receives legislative appropriations or other funding for that purpose. Requires the land office to work with other government agencies or other qualified project partners in undertaking those studies and projects, if reasonable and appropriate. Requires the studies to address certain issues. Requires an agreement between the commissioner and a qualified project partner to undertake a coastal erosion response study or project to take certain action. Provides that this chapter does not authorize the construction or funding of a hard structure on or landward of a public beach.

Sec. 33.604. COASTAL EROSION RESPONSE ACCOUNT. Provides that the coastal erosion response account is an account in the general revenue fund that may be appropriated only to the commissioner and used only for the purpose of implementing this subchapter. Sets forth the items of which the account consists, including all money received by this state from the sale of dredged material.

Sec. 33.605. USES OF ACCOUNT. Authorizes money in the account to be used for any action authorized by this subchapter. Requires the commissioner to approve an expenditure from the account. Requires the commissioner to consider certain conditions, in determining whether to approve an expenditure for a study or project.

Sec. 33.606. GRANTS AND GIFTS. Redesignated from Section 33.603.

Sec. 33.607. COASTAL EROSION PUBLIC AWARENESS AND EDUCATION. Requires the commissioner, in consultation with the Bureau of Economic Geology of The University of Texas at Austin and coastal and county and municipal governments, to monitor historical erosion rates at each location along the shore of the Gulf of Mexico. Requires the commissioner to make historical erosion data accessible, through the Internet and otherwise, to the public and persons receiving the notice required under Section 61.025. Encourages a local government subject to Chapter 61 or 63 to use historical erosion data to prepare a plan for reducing public expenditures for erosion and storm damage losses to public and private property, including public beaches, by establishing and implementing a building set-back line that will accommodate a shoreline retreat. Requires the local government to hold a public educational meeting on the plan before proposing to implement it through the plans, orders, or ordinances provided by Chapter 61 and 63. Deletes text regarding reporting back to the legislature with recommendations.

Sec. 33.608. REPORT TO LEGISLATURE. Requires the commissioner, each biennium, to submit to the legislature a report listing certain information.

Sec. 33.609. LANDOWNER CONSENT. Prohibits the commissioner from undertaking a coastal erosion response project on certain property without taking certain actions first. Provides that if the commissioner cannot determine the identity of or locate a property owner, consent is considered to have been given if certain action is taken.

Sec. 33.610. REMOVAL OF SUBMERGED LAND FROM APPRAISAL AND TAX ROLLS. Authorizes the commissioner to notify in writing the appraisal district that appraised the land for ad valorem tax purposes and each taxing unity that imposes taxes on the land, if the commissioner determines that land has become submerged by erosion subsidence and as a result is dedicated to the permanent school fund. Requires the notice to include a legal description of the land. Requires certain action to be taken on receipt of notice under Subsection (a).

Sec. 33.611. IMMUNITY. Provides that this state, the commissioner, and land office staff are immune from suit for damages and from liability for an act or omission related to certain actions. Provides that the immunity granted by this section does not apply to an act or omission that is intentional, wilfully or wantonly negligent, or committed with conscious indifference or reckless disregard for the safety of others.

Sec. 33.612. JUDICIAL REVIEW. Provides that review of rights affected by an action of this state, the commissioner, or land office staff under this subchapter is under the substantial evidence rule. Requires a person seeking review, in order to prevail, to prove that the action complained of was arbitrary, capricious, or otherwise not in accordance with law. Provides that the venue for an action relating to this subchapter is in Travis County.

SECTION 5. Amends Section 40.151(a) and (b), Natural Resources Code, to provide that the purpose of this subchapter is to provide immediately available funds for response to all unauthorized discharges for erosion response projects. Provides that the coastal protection fund is established in the state treasury to be used by the commissioner as a nonlapsing revolving fund only for carrying out the purposes of this chapter and of Chapter 33H.

SECTION 6. Amends Section 40.152(a), Natural Resources Code, to provide that money in the fund may be disbursed for certain purposes, including an amount not to exceed the interest accruing to the fund annually, erosion response projects under Chapter 33H.

SECTION 7. Amends Section 40.153, Natural Resources Code, to provide that this section does not apply to sums expended under Section 40.152(a)(10).

SECTION 8. Amends Section 40.161, Natural Resources Code, to provide that this section does not apply to a sum expended under Section 40.152(a)(10).

SECTION 9. Amends Section 61.025(a), Natural Resources Code, to provide that the purchaser is hereby notified that the purchaser should determine the rate of shoreline erosion in the vicinity of the real property.

SECTION 10. Effective date: September 1, 1999.  
Makes application of this Act prospective.

SECTION 12. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

#### SECTION 1.

Adds new SECTION 1 regarding public beaches and bay. Redesignates existing SECTIONS accordingly.

#### SECTION 2.

Amends Section 33.136, Natural Resources Code, to prohibit a person from undertaking an action on or immediately landward of a public beach or submerged land, including state mineral lands, rather than in a coastal zone. Deletes text regarding lease, easement, or other instrument issued by the commissioner of board in connection with the erosion response activity.

#### SECTION 3.

Amends Section 33.203, Natural Resources Code, to redefine “critical erosion area,” rather than “critical coastal erosion area.”

#### SECTION 4.

Amends Section 33.601, Natural Resources Code, to redefine “hard structure.”

Amends Section 33.603, Natural Resources Code, to provide that this chapter does not authorize the funding of a hard structure on or landward of a public beach.

Amends Section 33.604, Natural Resources Code, to set forth the items of which the account consists, including all money received by this state from the sale of dredged material. Deletes text requiring the comptroller to notify each entity otherwise obligated to impose the fees described by Section (b)(3) that the entity may not impose the fees during that state fiscal biennium, if the legislature appropriates at least \$15 million for the purpose of this subchapter for a state fiscal biennium.

Amends Section 33.611, Natural Resources Code, to provide that the immunity granted by this section does not apply to certain acts or omissions.

#### SECTION 5.

Adds new SECTION 5 to amend Section 40.151(a) and (b), Natural Resources Code, to provide that the purpose of this subchapter is to provide immediately available funds for response to all unauthorized discharges for erosion response projects. Provides that the coastal protection fund is established in the state treasury to be used by the commissioner as a nonlapsing revolving fund only for carrying out the purposes of this chapter and of Chapter 33H. Deletes proposed changes to Section 61.025(a), regarding the rate of shoreline erosion in the vicinity of the real property.

#### SECTION 6.

Amends Section 40.152(a), Natural Resources Code, to provide that money in the fund may be disbursed for certain purposes, including an amount not to exceed the interest accruing to the fund annually, erosion response projects under Chapter 33H. Deletes proposed Section 118.011(e), Local Government Code, regarding collection of fees.

#### SECTION 7.

Amends Section 40.153, Natural Resources Code, to provide that this section does not apply to sums expended under Section 40.152(a)(10). Deletes proposed Section 118.017, Natural Resources Code, regarding coastal erosion response fee.

#### SECTION 8.

Amends Section 40.161, Natural Resources Code, to provide that this section does not apply to a sum expanded under Section 40.152(a)(10). Deletes text regarding a coastal erosion response account fee.

#### SECTION 9.

Amends Section 61.0125, Natural Resources Code, to provide that the purchaser is hereby notified that the purchaser should determine the rate of shoreline erosion in the vicinity of the real property. Deletes text regarding remittance of fees and charges.

#### SECTION 10.

Deletes proposed changes to Section 522.029(h) and (i), Transportation Code, the coastal erosion response account fee. Redesignates existing SECTIONS accordingly.