

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 2819  
By: Ritter (Jackson, Mike)  
Natural Resources  
5/15/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the School Land Board (board) and the Commissioner of the General Land Office (GLO) (commissioner) are authorized to manage the state-owned coastal and submerged lands dedicated to the Permanent School Fund under Sections 4 and 5, Article VII, Texas Constitution. These lands consist of millions of acres, including the Gulf Coast beaches and bays, and submerged lands extending 10.3 miles out from the shoreline. The board and GLO are authorized to authorize the use of these state lands for a variety of private and commercial purposes, including conservation and ecological projects, public and private piers, docks, channels, and wharves, oil and gas exploration and production, pipeline and roadway rights of way, commercial development, and sustainable energy development.

The passage of the Coastal Public Lands Management Act of 1973 consolidated the coastal management authority and the related powers, duties, and responsibilities of the commissioner and the board into Chapter 33, Natural Resources Code. Since that time, the processes and procedures necessary to accomplish the goals of this authority have evolved as the public's need and desire to conduct activities on these lands has developed.

The drafters of the original statute and the subsequent amendments did not foresee the various requests that are required to be processed and evaluated each year by GLO and the board. These requests often present situations that do not fit squarely into one of the categories of uses specifically addressed by the current statute. There is some inconsistency between provisions that appear to be on the same subject, creating confusion during implementation. There are also provisions and requirements related to some of the uses set out in the statute that are no longer necessary or applicable.

C.S.H.B. 2819 authorizes the board to evaluate applications to use coastal public lands and issue the appropriate authorization for uses that are determined to be in the best interest of the state. This bill also updates and clarifies provisions in Chapter 33, Natural Resources Code, relating to the management and protection of coastal public land and other coastal resources.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of the General Land Office in SECTION 6 (Section 33.607, Natural Resources Code), SECTION 13 (Section 61.0184, Natural Resources Code), and SECTION 20 (Section 63.1814, Natural Resources Code) of this bill.

Rulemaking authority previously granted to the commissioner of the General Land Office is modified in SECTION 10 (Section 61.011, Natural Resources Code) and SECTION 18 (Section 63.121, Natural Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 33.002, 33.012, 33.063, and 33.102, Natural Resources Code, as follows:

Sec. 33.002. PURPOSE. Provides that the purpose of this chapter (Management of Coastal Public Land) is to implement the policies stated in Section 33.001 by delegating to the School Land Board (board), assisted by the appropriate staff of the land office, rather than the planning division and other staff of the land office, certain responsibilities

and duties with respect to the management of the surface estate in coastal public land. Makes a nonsubstantive change.

Sec. 33.012. LAND OFFICE TO ASSIST BOARD. Makes a conforming change.

Sec. 33.063. FEES. Authorizes the board to prescribe reasonable filing fees and fees for granting other interests in or rights to use coastal public land.

Sec. 33.102. CONTENTS OF APPLICATION. Requires the application to acquire rights in coastal public lands to include any information the board considers necessary to process the application, including information necessary to evaluate the purpose for which the land is to be used. Deletes existing text providing certain information that is required to be included in the application to acquire rights in coastal public land.

SECTION 2. Amends Section 33.103(a), Natural Resources Code, to authorize the board to grant any other interest in coastal public land for any purpose if the board determines that the grant is in the best interest of the state, subject to Section 33.001(g) (regarding alienating the surface estate in coastal public land).

SECTION 3. Amends Sections 33.104 and 33.105, Natural Resources Code, as follows:

Sec. 33.104. New heading: DETERMINATION OF TERMS OF GRANT; CONSUMMATION OF TRANSACTION. Provides that the board, if the School Land Board (board) approves the application, rather than if it is granted, is required to determine the terms, rather than reasonable term, conditions, and consideration for the grant of an interest in or right to use coastal public land, and that the board is authorized to consummate the transaction. Deletes existing text requiring the board to circulate an application for review and comment to the member agencies of the Interagency Natural Resources Council or its successor upon receiving the application. Deletes existing text requiring the board to determine whether the proposed application should be granted not less than 30 days nor more than 90 days after the application is received.

Sec. 33.105. New heading: PERSONS TO WHOM INTEREST IN LAND MAY BE GRANTED. Authorizes the board to grant, rather than lease, to any person, rather than only to certain entities, an interest in coastal public land if the board determines that the grant is in the best interest of the state.

SECTION 4. Amends Sections 33.604 and 33.605, Natural Resources Code, as follows:

Sec. 33.604. COASTAL EROSION RESPONSE ACCOUNT. (a) Provides that the coastal erosion response account (account) is an account in the general revenue fund that may be appropriated only to the commissioner of the General Land Office (commissioner) and used only for the purpose of implementing this subchapter and administration of the coastal management program provided in Subchapter F.

(b) Provides that the account consists of penalties or costs collected under Section 61.0184 or 63.1814, in addition to certain other monies previously set forth in this subsection.

(c) Provides that the account is exempt from the application of Section 403.095 (Use of Dedicated Revenue), Government Code.

Sec. 33.605. USES OF ACCOUNT. (a) Provides that money in the account may be used for the administration of the coastal management program in Subchapter F, rather than except for a restoration project authorized by Section 33.613.

(b) Requires the commissioner, in determining whether to approve an expenditure for a study or project, to consider the building set-back line established by the local government under Section 33.607 if the site to be studied or project to be conducted will be located within the jurisdiction of a local

government subject to Chapter 61 (Use and Maintenance of Public Beaches) or Chapter 63 (Dunes). Makes nonsubstantive changes.

SECTION 5. Amends the heading to Section 33.607, Natural Resources Code, to read as follows:

Sec. 33.607. COASTAL EROSION PUBLIC AWARENESS AND EDUCATION;  
LOCAL GOVERNMENT PLANNING AND REGULATION.

SECTION 6. Amends Section 33.607, Natural Resources Code, by amending Subsection (e) and adding Subsections (f), (g), and (h), as follows:

(e) Authorizes, rather than 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.

(f) Authorizes a plan for reducing public expenditures for erosion and storm damage losses to public and private property that includes the establishment and implementation of a building set-back line under this section to include certain actions and provisions.

(g) Authorizes the commissioner to adopt rules for the establishment and implementation of a building set-back line under this section.

(h) Provides that Chapter 2007 (Governmental Action Affecting Private Property Rights), Government Code, does not apply to a rule or government order or ordinance authorized by this section.

SECTION 7. Amends Section 33.651(4), Natural Resources Code, to redefine "coastal improvement project."

SECTION 8. Amends Section 33.656, Natural Resources Code, to require a project, to qualify for funding under this subchapter, to require more than \$5 million to complete, as estimated by the General Land Office, unless it implements a building set-back line established under Section 33.607, in addition to certain other requirements previously set forth in this section.

SECTION 9. Amends Section 33.659(a), Natural Resources Code, to provide that a coastal county has the rights, powers, privileges, authority, and functions that are necessary or convenient to the establishment and implementation of a building set-back line under Section 33.607, in addition to certain other provisions.

SECTION 10. Amends Section 61.011(d), Natural Resources Code, to include certain additional matters on which the commissioner is required to promulgate rules, consistent with the policies established in this section.

SECTION 11. Amends Sections 61.015(b) and (c), Natural Resources Code, as follows:

(b) Requires the commissioner to act on a local government's proposed beach access and use plan within 90, rather than 60, days of submission by either approving the plan or denying certification.

(c) Requires the local government to forward a development plan for small-scale construction activity that includes 5,000 square feet or less or habitable structures two stories or less in height to the commissioner no less than 10 working days prior to acting on the development plan. Requires the local government to forward a development plan for large-scale construction activity that includes more than 5,000 square feet or habitable structures more than two stories in height to the commissioner no less than 30 working days prior to acting on the development plan.

SECTION 12. Amends Sections 61.018(b) and (c), Natural Resources Code, as follows:

(b) Authorizes the attorney general, the commissioner, county attorney, district attorney, or criminal district attorney, in the same suit, to recover penalties and the costs of removing any improvement, obstruction, barrier, or other encroachment if it is removed by public authorities pursuant to a removal order issued by the commissioner as provided by Section 61.0183.

(c) Provides that a person who violates this chapter or a removal order issued by the commissioner as provided by Section 61.0183 is liable for a civil penalty of not less than \$50 nor more than \$2,000, rather than \$1,000.

SECTION 13. Amends Subchapter B, Chapter 61, Natural Resources Code, by adding Sections 61.0181-61.0184, as follows:

Sec. 61.0181. ADMINISTRATIVE PENALTY. Authorizes the commissioner to assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter in the amount provided by Section 61.018(c) for a civil penalty. Requires the commissioner to consider certain factors in determining the amount of the penalty.

Sec. 61.0182. ENFORCEMENT PROVISIONS CUMULATIVE. Establishes that this subchapter is cumulative of all other applicable penalties, remedies, and enforcement and liability provisions.

Sec. 61.0183. REMOVAL OF CERTAIN STRUCTURES, IMPROVEMENTS, OBSTRUCTIONS, BARRIERS, AND HAZARDS ON PUBLIC BEACH. (a) Authorizes the commissioner to order the removal of a structure, improvement, obstruction, barrier, or hazard from a public beach under certain circumstances.

(b) Provides that the decision to remove a structure, improvement, obstruction, barrier, or hazard under this section is discretionary with the commissioner. Provides that this section does not impose a duty on the state to remove a structure, improvement, obstruction, barrier, or hazard or to remedy or warn of a hazardous condition on the public beach.

(c) Authorizes the commissioner to contract for the removal and disposal of a structure, improvement, obstruction, barrier, or hazard under this section and to pay the costs of removal from money appropriated by the legislature.

Sec. 61.0184. NOTICE REQUIREMENTS; ORDERS AND HEARINGS. (a) Requires the commissioner to make a determination that a structure is located on the public beach, assess an administrative penalty, and pursue the removal of a structure, improvement, obstruction, barrier, or hazard from a public beach in accordance with this section.

(b) Requires the commissioner, before the commissioner is authorized to notify the Texas Windstorm Insurance Association (association) as provided by Section 2210.004 (Definition of Insurable Property), Insurance Code, regarding the status of property, to give written notice and an opportunity for a hearing to a person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard on the public beach. Requires the notice to state certain information.

(c) Requires the commissioner, before the commissioner is authorized to order the removal of a structure, improvement, obstruction, barrier, or hazard under Section 61.0183 or impose an administrative penalty under Section 61.0181, to provide written notice to the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard on the public beach. Requires the notice to state certain information.

(d) Provides that a person is considered to be the person who owns, maintains, controls, or possesses an improvement, obstruction, barrier, or other

encroachment on the public beach for purposes of this section if the person is the person who most recently owned, maintained, controlled, or possessed the improvement, obstruction, barrier, or other encroachment on the public beach.

(e) Requires the notice required by Subsection (b) to be given by service in person, by registered or certified mail, return receipt requested, or by priority mail; or if personal service cannot be obtained or the address of the person responsible is unknown, by posting a copy of the notice on the structure, improvement, obstruction, barrier, or hazard and by publishing notice in a newspaper with general circulation in the county in which the structure, improvement, obstruction, barrier, or hazard is located at least two times within 10 consecutive days.

(f) Authorizes the commissioner by rule to adopt procedures for a hearing under this section.

(g) Requires the commissioner to grant a hearing before an administrative law judge employed by the State Office of Administrative Hearings (SOAH) if a hearing is requested. Provides that a person who does not request a hearing within 30 days after the date on which the notice is served waives all rights to judicial review of the commissioner's findings or orders and is required to immediately remove the structure, improvement, obstruction, barrier, or hazard and pay any penalty assessed. Authorizes the commissioner, if a hearing is held, to issue a final order approving the proposal for decision submitted by the administrative law judge concerning a determination regarding whether a structure is not insurable property for purposes of Section 2210.004, Insurance Code, because of the factors listed in Subsection (h) of that section or concerning removal of the structure, improvement, obstruction, barrier, or hazard and payment of a penalty. Authorizes the commissioner to change a finding of fact or conclusion of law made by the administrative law judge or vacate or modify an order issued by the administrative judge in accordance with Section 2001.058 (Hearing Conducted by State Office of Administrative Hearings), Government Code.

(h) Authorizes a person to seek judicial review of a final order of the commissioner under this section in a Travis County district court under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code. Requires the trial courts of this state to give preference to an appeal from a final order of the commissioner under this section as provided by Section 23.101(a) (regarding primary priorities), Government Code, for an appeal of a final order of the commissioner under Section 51.3021 (Removal of Facility or Structure by Commissioner) of this code.

(i) Authorizes the commissioner to take certain actions if the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard does not pay assessed penalties, removal costs, and other assessed fees and expenses on or before the 30th day after the date of entry of a final order assessing the penalties, costs, and expenses.

(j) Requires penalties or costs collected under this section to be deposited in the account as established under Section 33.604.

(k) Sets forth certain provisions relating to the notice, a hearing, and the amount of administrative penalties that may be assessed that apply, notwithstanding any other provision of this subchapter (Access to Public Beaches), if a structure that is the subject of an order for removal under Section 61.0183 or an administrative penalty under Section 61.0181 has been used as a permanent, temporary, or occasional residential dwelling by at least one person at any time during the year before the date on which the order is issued or penalty assessed.

SECTION 14. Amends Sections 61.020 and 61.025, Natural Resources Code, as follows:

Sec. 61.020. PRIMA FACIE EVIDENCE. (a) Creates this subsection from existing text. Provides that a showing that the area in question is located in the area from mean low tide to the line of vegetation is certain prima facie evidence in an administrative proceeding brought or defended under this subchapter or whose determination is affected by this subchapter.

(b) Provides that the determination of the location of the line of vegetation by the commissioner as provided by Section 61.016 (Boundaries for Areas With No Marked Vegetation Line) and Section 61.017 (Line of Vegetation Unaffected by Certain Conditions) constitutes prima facie evidence of the landward boundary of the area subject to the public easement until a court adjudication establishes the line in another place.

Sec. 61.025. DISCLOSURE TO PURCHASER OF PROPERTY. (a) Provides a specific statement that is required to be substantially followed and included in any executory contract for conveyance for a person who sells or conveys an interest, other than a mineral, leasehold, or security interest, in real property located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel.

(b) Requires the statement, if there is no executory contract for conveyance, to be delivered to, and receipt thereof acknowledged by, the purchaser not later than 10 calendar days prior to closing the transaction.

(c) Requires the failure to comply with Subsection (a) or (b), rather than the failure to include the statement in an executory contract for conveyance, to be grounds for the purchaser to terminate the contract or agreement to convey, and requires any earnest money to be returned to the party making the deposit upon termination.

(d) Provides that seller commits a deceptive act under Section 17.46 (Deceptive Trade Practices Unlawful), Business & Commerce Code, if the seller fails to comply with Subsection (a) or (b), as applicable. Deletes existing text requiring the failure to provide this statement prior to closing, either in the executory contract for conveyance or in a separate written statement, to constitute such an act.

(e) Makes a nonsubstantive change.

SECTION 15. Amends Section 63.002, Natural Resources Code, by adding Subdivision (6), to define "restoration."

SECTION 16. Amends Section 63.054(c), Natural Resources Code, as follows:

(c) Requires each county or municipality administering this chapter to establish procedures and requirements governing the review and approval of dune permits and submit them to the commissioner for certification, rather than for comments, to determine whether the procedures and requirements are in compliance with rules and policies adopted under Section 63.121. Requires the commissioner to act on a county or municipality's proposed dune protection plan not later than the 90th day after the date the plan is submitted by approving the plan or denying certification. Requires the commissioner to return the proposed plan to the originating local government with certain information if certification is denied. Requires the county or municipality to revise and resubmit the plan on receipt. Requires the commissioner to certify a county or municipality's procedures and requirements under this section in accordance with rules adopted under Section 63.121.

SECTION 17. Amends Section 63.056(a), Natural Resources Code, as follows:

(a) Requires the commissioners court or the governing body of the municipality, after receiving an application for a permit to perform any of the acts prohibited in Section 63.091 (Conduct Prohibited) in connection with small-scale construction activity that includes 5,000 square feet or less or habitable structures two stories in height or less, to notify the commissioner by sending, not less than 10 working days before the date of the public hearing on the application, notice of the hearing and a copy of the application. Requires the commissioners court or the governing body of the municipality, after receiving an application for a permit to perform any of the acts prohibited in Section 63.091 in connection with large-scale construction activity that includes more than 5,000 square feet or habitable structures more than two stories in height, to notify the commissioner by sending, not less than 30 working days before the date of the public hearing on the application, notice of the hearing and a copy of the application.

SECTION 18. Amends Section 63.121, Natural Resources Code, as follows:

Sec. 63.121. New heading: IDENTIFICATION OF CRITICAL DUNE AREAS; RULES. (a) Creates this subsection from existing text.

(b) Requires the commissioner to promulgate rules for the certification of procedures and requirements governing the review and approval of dune permits by a county or municipality.

SECTION 19. Amends Section 63.181(b), Natural Resources Code, as follows:

(b) Provides that a person who violates this chapter or any rule, permit, or order under this chapter is liable for a civil penalty of not less than \$50 nor more than \$2,000, rather than \$1,000. Provides that a violation of Section 63.091 is considered to be a continuing violation from a certain date.

SECTION 20. Amends Subchapter G, Chapter 63, Natural Resources Code, by adding Sections 63.1811, 63.1812, 63.1813, and 63.1814, as follows:

Sec. 63.1811. ADMINISTRATIVE PENALTY. Authorizes the commissioner to assess an administrative penalty for a violation of Section 63.091 or any rule, permit, or order issued under this chapter in the amount established by Section 63.181(b) for a civil penalty. Requires the commissioner, in determining the amount of the penalty, to consider certain factors.

Sec. 63.1812. ENFORCEMENT PROVISIONS CUMULATIVE. Provides that this subchapter is cumulative of all other applicable penalties, remedies, and enforcement and liability provisions.

Sec. 63.1813. MITIGATION FOR DAMAGE, DESTRUCTION, OR REMOVAL OF DUNE OR DUNE VEGETATION WITHOUT PERMIT. (a) Authorizes the commissioner to order restoration for the damage, destruction, or removal of a sand dune or a portion of a sand dune or the killing, destruction, or removal of any vegetation growing on a sand dune seaward of the dune protection line or within a critical dune area in violation of this chapter or any rule, permit, or order issued under this chapter.

(b) Provides that the decision to require restoration under this section is discretionary with the commissioner. Provides that this section does not impose a duty on the state to order restoration.

(c) Authorizes the commissioner to contract for the restoration required under this section and pay the costs of restoration from money appropriated by the legislature.

Sec. 63.1814. NOTICE REQUIREMENTS; ORDERS AND HEARINGS. (a) Requires the commissioner to assess an administrative penalty and pursue restoration in accordance with this section.

(b) Requires the commissioner, before the commissioner is authorized to order restoration under Section 63.1813 or assess an administrative penalty under Section 63.1811, to give written notice to a person who is taking or has taken actions that violate Section 63.091 or any rule, permit, or order issued under this chapter. Requires the notice to state certain information.

(c) Provides that a person is considered to be engaging in or to have engaged in conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter for purposes of this section if the person is the person who most recently owned, maintained, controlled, or possessed the real property on which the conduct occurred.

(d) Requires the notice required by Subsection (b) to be given in a certain manner.

(e) Authorizes the commissioner by rule to adopt procedures for a hearing under this section.

(f) Requires the commissioner to grant a hearing before an administrative law judge employed by SOAH if a hearing is requested. Provides that a person who does not request a hearing within 60 days after the date on which the notice is served waives all rights to judicial review of the commissioner's findings or orders and is required to immediately initiate mitigation and pay any penalty assessed. Authorizes the commissioner, if a hearing is held, to issue a final order approving the proposal for decision submitted by the administrative law judge concerning mitigation and payment of a penalty. Authorizes the commissioner to change a finding of fact or conclusion of law made by the administrative law judge, or vacate or modify an order issued by the administrative law judge in accordance with Section 2001.058, Government Code.

(g) Authorizes a person to seek judicial review of a final order of the commissioner under this section in a Travis County district court under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code. Requires the trial courts of this state to give preference to an appeal from a final order of the commissioner under this section as provided by Section 23.101(a), Government Code, for an appeal of a final order of the commissioner under Section 51.3021 of this code.

(h) Authorizes the commissioner to take certain actions if the person who is engaged in or has been engaged in conduct that violated Section 63.091 or any rule, permit, or order issued under this chapter does not pay assessed penalties, mitigation costs, and other assessed fees and expenses on or before the 60th day after the date of entry of a final order assessing the penalties, costs, and expenses.

(i) Requires penalties or costs collected under this section to be deposited in the account established under Section 33.604.

SECTION 21. Amends Section 2210.004, Insurance Code, by amending Subsection (a) and adding Subsection (h), as follows:

(a) Creates an exception as provided by Subsection (h).

(h) Provides that, for purposes of this chapter (Texas Windstorm Insurance Association), a structure is not insurable property if the commissioner notifies the association of a certain determination regarding the structure.

SECTION 22. Amends Section 5.008(b), Property Code, to require a specific section, stating that a certain property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63, Natural Resources Code, respectively) and a beachfront construction certificate or dune protection permit may be required, to be included within the notice required to

be executed and, at a minimum, read substantially similar to a specific form by a seller of residential real property comprising not more than one dwelling unit located in this state, and to be given to the purchaser of the property under this subsection.

SECTION 23. Requires the commissioner to adopt rules required by Sections 61.011 and 63.121, Natural Resources Code, as amended by this Act, not later than January 1, 2008.

SECTION 24. Repealer: Section 33.014 (Disposition of Money for Grants of Certain Interests), Natural Resources Code; Section 33.110(b) (regarding contract and franchise agreements), Natural Resources Code; and Section 33.613 (Property Rights; Restoration by Beachfront Owner of Private Property Affected by Coastal Erosion), Natural Resources Code.

SECTION 25. Effective date: September 1, 2007.