

BILL ANALYSIS

Senate Research Center
83R8400 JAM-F

H.B. 3459
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Natural Resources
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under the Open Beaches Act (Act), the beachfront line of vegetation (LOV) marks the landward boundary of the public use easement. Traditionally, if the LOV moved landward due to erosion or a storm, the public use easement was deemed to have migrated with the LOV. The recent Texas Supreme Court decision in *Severance v. Patterson*, however, held that when “avulsive events such as storms or hurricanes” dramatically move the LOV landward, the boundaries of the easement do not move with it. In other words, the public easement may be lost to the advancing ocean.

In light of this new and ambiguous category of “avulsive events,” H.B. 3459 amends the Act to bring clarity and structure to LOV determinations that follow the obliteration of the LOV by a meteorological event. Specifically, the bill gives the commissioner of the General Land Office the express authority to suspend LOV determinations for up to three years, which will allow time for the vegetation to recover and will provide for a more accurate assessment of a meteorological event’s impacts on the LOV and public easement.

H.B. 3459 amends current law relating to the determination of the boundaries of, and the enforcement of the law governing access to, public beaches.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of the General Land Office is modified in SECTION 1 (Section 61.011, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 61.011(d), Natural Resources Code, to require the commissioner of the General Land Office (commissioner) (GLO) to promulgate rules, consistent with the policies established in this section, on certain matters only, including the temporary suspension under Section 61.0171 of the determination of the "line of vegetation" or the "natural line of vegetation," and to make nonsubstantive changes.

SECTION 2. Amends Section 61.016, Natural Resources Code, by adding Subsection (d), as follows:

(d) Provides that the "line of vegetation" is dynamic and may move landward due to the forces of erosion. Requires that the landward boundary of the area subject to the public easement, for the purposes of determining the public beach easement, if the "line of vegetation" is obliterated due to a meteorological event, to be the line established by order under Section 61.0171(a) or as determined by the commissioner under Section 61.0171(f).

SECTION 3. Amends Section 61.017(a), Natural Resources Code, to provide that the "line of vegetation" is not affected by the occasional sprigs of salt grass on mounds and dunes or seaward from them or by artificial fill, the addition or removal of turf, beach nourishment projects or artificial placement of dredged or fill material, whether conducted by public or private entities, or other artificial changes in the natural vegetation of the area, and to make nonsubstantive changes.

SECTION 4. Amends Subchapter B, Chapter 61, Natural Resources Code, by adding Section 61.0171, as follows:

Sec. 61.0171. TEMPORARY SUSPENSION OF LINE OF VEGETATION DETERMINATION. (a) Authorizes the commissioner to, by order, suspend action on conducting a line of vegetation determination for a period of up to three years from the date the order is issued if the commissioner determines that the line of vegetation was obliterated as a result of a meteorological event. Requires the public beach, for the duration of the order, to extend to a line 200 feet inland from the line of mean low tide.

(b) Requires that an order issued under this section be:

(1) posted on GLO's Internet website;

(2) published by GLO as a miscellaneous document in the Texas Register; and

(3) filed for record by GLO in the real property records of the county in which the area of beach subject to the order is located.

(c) Provides that issuance of an order under this section is purely within the discretion of the commissioner. Provides that this section does not create:

(1) a duty on the part of the commissioner to issue an order related to the line of vegetation; or

(2) a private cause of action for issuance of an order under this section, or failure to issue an order under this section.

(d) Provides that Chapter 2007 (Governmental Action Affecting Private Property Rights), Government Code, does not apply to an order issued under this section.

(e) Provides that a limitations period established by statute, under common law, or in equity that is authorized to be asserted or claimed in any action under this chapter, if the commissioner issues an order under this section, is suspended and does not run against this state, the public, or private land owners for the period the order is in effect.

(f) Requires the commissioner, following the expiration of an order issued under this section, to make a determination regarding the line of vegetation in accordance with Sections 61.016 (Boundaries for Areas With No Marked Vegetation Line) and 61.017 (Line of Vegetation Unaffected By Certain Conditions) and taking into consideration the effect of the meteorological event on the location of the public beach easement.

(g) Authorizes the commissioner to consult with the Bureau of Economic Geology of The University of Texas at Austin and consider other relevant factors when making a determination under Subsection (f) regarding the annual erosion rate for the area of beach subject to the order issued under this section.

(h) Requires that the line of vegetation, as determined by the commissioner under Subsection (f), constitute the landward boundary of the area subject to public easement until the line of vegetation moves landward due to a subsequent meteorological event, erosion, or public use, or until a final court adjudication establishes the line in another place.

SECTION 5. Amends Section 61.0185(a), Natural Resources Code, to authorize the commissioner by order to suspend for a period of three years, rather than two years, from the date the order is issued the submission of a request that the attorney general file a suit under Section 61.018(a) (relating to requiring certain persons to file a suit to obtain certain orders or

injunctions for certain purposes) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach if the commissioner determines certain information.

SECTION 6. Effective date: September 1, 2013.