

**SUBJECT:** Presumption of state land record accuracy

**COMMITTEE:** Land and Resource Management — favorable, without amendment

**VOTE:** 7 ayes — Mowery, J. Jones, Goolsby, Haggerty, Hochberg, Howard, Noriega

0 nays

2 absent — Guillen, Pickett

**WITNESSES:** For — Jerry Patterson, Texas General Land Office; (*Registered, but did not testify:*) Patrick Smith, Texas Society of Professional Surveyors

Against — None

On — (*Registered, but did not testify:*) Ingrid Hansen and C.B. Thomson, Texas General Land Office

**BACKGROUND:** Under Natural Resources Code, sec. 11.041, the state permanent school fund has rights to littoral property, including the arms, beds, and shores of the Gulf of Mexico, and minerals in areas belonging to the state within tidewater limits including islands, lakes, bays, and the seabed. The state must manage these properties for the fund as provided by law.

In 2002, the Texas Supreme Court decided in *Kenedy v. Dewhurst*, 90 S.W.3d 268, that a private party with land rights extending to the gulf shore owned 35,000 acres thought previously to belong to the state. This land covered oil and gas deposits the state had been extracting for the benefit of the permanent school fund. The Supreme Court ruled that shoreline boundaries of civil law grants (from Spain in 1804 and Mexico in 1834) must be determined by mean daily high tide water levels. A lower court originally had ruled for the state by relying on original, archived surveys and cases stating that original surveys expressed the intent of the grantor as the best indication of a property's boundaries.

Natural Resources Code, sec. 31.052 appoints the General Land Office (GLO) commissioner custodian of books, accounts, records, papers, maps, and original documents relating to land titles designated as archives by law.

**DIGEST:**

HB 1106 would amend the Civil Practices and Remedies Code to create a legal presumption that GLO archives, including maps and surveys, accurately depict the littoral boundaries of state property. The presumption would apply to surveys conducted by a licensed state or county surveyor. A party could overcome the presumption only by showing clear and convincing evidence that the archives were erroneous.

The 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, 2003.

**SUPPORTERS  
SAY:**

HB 1106 would help clarify property rights near shorelines by instituting a reasonable rule of evidence while minimizing conflict between private parties and the state. The bill would lessen litigation as a result. Parties could presume the accuracy of the original and subsequent surveys archived by the GLO because they trace back to civil law land grants and were created by disinterested public servants.

The presumption in favor of state surveys would discourage private parties from suing the state over land ownership. Disputes over the value of certain coastal land have cost the state in losses from litigation — including a possible \$100 million loss to the permanent school fund from the *Kenedy* decision — that the state could avoid under HB 1106. In addition, the bill would eliminate confusion arising from the *Kenedy* opinion's implication that a littoral boundary must be determined only by tide levels instead of original and subsequent surveys.

HB 1106 would not extinguish a person's right to sue the state for land rights in littoral areas. It would require only that a challenger presented clear and convincing evidence to rebut state archive evidence. This requirement has precedent in civil law concerning paternity and elsewhere.

**OPPONENTS  
SAY:**

This bill would confuse the question of littoral property ownership and treat unfairly a person wishing to challenge the state over property rights. It would

disturb a clear rule stated by *Kenedy* for determining shoreline property. More litigation, not less, could result.

HB 1106 would favor the state and could obstruct justice. Courts should weigh evenly the surveys and evidence of littoral boundaries presented by all parties. Nothing indicates that the state's documentation would prove more authentic or accurate than that of a private party. The economic hardship suffered currently by the state and the permanent school fund should not result in biased evidentiary rules written to help the state defend itself in court.

NOTES: The companion bill, SB 641 by West, passed the Senate by 29-0 on April 14 and was reported favorably, without amendment, by the House Land and Resource Management Committee on April 23, making it eligible to be considered in lieu of HB 1106.