

BILL ANALYSIS

Senate Research Center
78R17242 SMH-F

C.S.H.B. 1457
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Natural Resources
5/21/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

According to some coastal stakeholders a temporary moratorium on enforcing the Open Beaches Acts would allow the vegetation to recover and beachfront owners to repair structures following a storm. C.S.H.B. 1457 amends the Open Beaches Act to allow the commissioner of the General Land Office to establish a moratorium of two years to request the removal of a dwelling or other improvement from beach subject to public access based on the best available information concerning the establishment of a stable beach vegetation line following a tropical storm or hurricane. The bill also sets forth other provisions regarding the enforcement of laws governing dune protection and access to public beaches.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 61.011, Natural Resources Code, by amending Subsections (c) and (d) and adding Subsection (f), as follows:

- (c) Requires the commissioner of the General Land Office (commissioner), rather than the attorney general, to strictly and vigorously enforce the prohibition against encroachments on and interferences with the public beach easement. Deletes text requiring the attorney general to enforce policies against encroachment and interferences on public beach. Deletes text authorizing the land officer to assist the attorney general in enforcing this subchapter.
- (d) Requires the commissioner to promulgate rules, consistent with the policies established in this section, on certain matters. Makes conforming changes.
- (f) Provides that Chapter 2007 (Governmental Action Affecting Private Property Rights), Government Code, does not apply to rules adopted under Subsection (d)(7).

SECTION 2. Amends Sections 61.015(b)-(d), Natural Resources Code, as follows:

- (b) Deletes text requiring the local governments to submit to the attorney general for comment and review beach access and use plans. Makes a conforming change.
- (c) Deletes text requiring the local government to forward a development plan to the attorney general. Deletes text authorizing the attorney general to submit comments on the proposed construction to the local government. Makes a conforming change.
- (d) Makes a conforming change.

SECTION 3. Amends Sections 61.018(a) and (d), Natural Resources Code, as follows:

- (a) Requires any county attorney, district attorney, or criminal district attorney, or the attorney general, at the request of the commissioner, to file in a district court of Travis County, or in the county in which the property is located, a suit to obtain either a

temporary or permanent court order or injunction, either prohibitory or mandatory, to remove or prevent any improvement, maintenance, obstruction, barrier, or other encroachment on a public beach, or to prohibit any unlawful restraint on the public's right to access to and use of public beach or other activity that violates this chapter.

(d) Authorizes any county attorney or the attorney general at the request of the commissioner to bring suit for a declaratory judgment to try any issue affecting the public's right of access to or use of the public beach.

SECTION 4. Amends Subchapter B, Chapter 61, Natural Resources Code, by adding Section 61.0185, as follows:

Sec. 61.0185. TEMPORARY SUSPENSION OF SUBMISSION OF REQUESTS THAT ATTORNEY GENERAL FILE SUIT. (a) Authorizes the commissioner by order to suspend for a period of 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) (Enforcement) 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 that it fails to meet certain requirements.

(b) Requires the commissioner to make a determination under Subsection (a) regarding the line of vegetation in accordance with Sections 61.016 and 61.017.

(c) Requires the commissioner to consult with the Bureau of Economic Geology of The University of Texas at Austin when making a determination under Subsection (a) regarding the line of vegetation or the effect of a meteorological event on the location of the public beach easement.

(d) Provides that this section does not apply to a house that the commissioner determines to be located in whole or in part below mean high tide or more than 50 percent destroyed as a result of a meteorological event.

(e) Requires an order issued under this section to meet certain conditions.

(f) Requires the commissioner to notify the attorney general and each pertinent county attorney, district attorney, or criminal district attorney of the issuance of an order under this section.

(g) Prohibits certain prosecutors from filing suit under Section 61.018(a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach while the house is subject to an order issued under this section.

(h) Authorizes the local government to take certain actions, while an order issued under this section is in effect.

(i) Provides that issuance of an order under this section is purely within the discretion of the commissioner. Provides that this section does not create a certain duty on the part of the commissioner or a certain private cause of action.

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

(k) Provides that if the commissioner issues an order under this section, a limitations period established by statute, under common law, or in equity that may be asserted or claimed in an action under this chapter is suspended and does not run against this state, the public, or the owner of the house for the period the order is in effect.

(l) Prohibits expenses incurred while an order issued under this section is in effect by the owner of a house in an effort to repair or otherwise make the house habitable from being claimed as damages in any litigation with this state or a local government that may be filed to enforce this chapter.

SECTION 5. Amends Sections 61.022(a) and (c), Natural Resources Code , as follows:

(a) Makes nonsubstantive changes.

(c) Makes conforming changes.

SECTION 6. Amends Section 61.026(b), Natural Resources Code, to make a conforming change.

SECTION 7. Amends Section 63.054(c), Natural Resources Code, to make conforming changes.

SECTION 8. Amends Section 63.181(a), Natural Resources Code, to make conforming changes.

SECTION 9. Repealer: Section 61.011(e), Natural Resources Code (regarding policy and rules).

SECTION 10. (a) Effective date: upon passage or September 1, 2003.

(b) Provides that Section 61.085, Natural Resources Code, as added by this Act, applies to a meteorological event that occurs before, on, or after the effective date of this Act.