

BILL ANALYSIS

Senate Research Center
78R13157 SMH-F

C.S.S.B. 554
By: Janek
Natural Resources
5/8/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Current Texas law does not enforce a temporary prohibition to public beaches following a meteorological event. However, some coastal stakeholders have recommended that a moratorium on enforcing the Open Beaches Acts should be established to allow more time for the vegetation to recover and provide beachfront owners with greater certainty following a storm. C.S.S.B. 554 amends the Open Beaches Act to allow the commissioner of the General Land Office to establish a moratorium of two years for referral of structures for enforcement 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. 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 any improvement, obstruction, barrier, or other encroachment from public beach if the commissioner determines that it fails to meet certain requirements.

(b) 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.

(c) Prohibits a county attorney, district attorney, or criminal district attorney from filing suit under Section 61.018(a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove an improvement, obstruction, barrier, or other encroachment from a public beach while the improvement, obstruction, barrier, or other encroachment is subject to an order issued under this section.

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

(e) Provides that the issuance of an order under this section is purely within the discretion of the commissioner. Provides that this does not create a duty on the part of the commissioner to issue an order related to all or part of an improvement, obstruction, barrier, or other encroachment, regardless of an determination made, or a private cause of action for issuance of an order under this section or failure to issue an order under this section.

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

SECTION 5. Amends Section 61.022(c), Natural Resources Code , to make 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: 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.