

## BILL ANALYSIS

Senate Research Center  
81R18055 SKB-D

S.C.R. 59  
By: Jackson, Mike  
Jurisprudence  
4/21/2009  
As Filed

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

MBP Corp. alleges that in May 1990, the Board of Trustees of the Galveston Wharves (board) entered into a lease and development agreement with The Woodlands Corporation. In January 1993, The Woodlands Corporation assigned all of its rights, title, and interest in the lease to Strand Harborside Joint Venture, a Texas joint venture of The Woodlands Corporation and MBP Corp.

In January 1994, The Woodlands Corporation assigned all of its interest in the joint venture to MBP Corp., effectively dissolving the joint venture, and leaving MBP Corp. as the successor in interest to the lease. Under the terms of the lease, MBP Corp., as successor in interest to the lease, would develop tourist-related facilities at its own cost within a time frame dictated by the board while paying rent to the board for the property, and on termination of the lease, all developments made by MBP Corp. would be owned by the board. The property affected by the lease includes the rooftop of the Mallory Building, also known as the Galveston Cruise Ship Terminal, and the aerial rights above the Mallory Building.

In 1999 and 2003, the board and MBP Corp. negotiated amendments to the lease agreement to allow the board to make certain alterations to the rooftop of the Mallory Building related to heating, venting, and air-conditioning systems used in the Mallory Building, other alterations, including construction of an enclosed pedestrian walkway, were also permitted. The costs of developing the rooftop of the Mallory Building and the aerial rights above it are a function of the geometry of the roof, and those costs have consistently increased due to alterations made by the board. Over the past 17 years, MBP Corp., its affiliates, and its predecessors in interest have paid more than \$2,550,000 in rent and expended more than \$10,000,000 in constructing improvements on the leased property, which MBP Corp. markets extensively as the Historic Strand Seaport area.

In December 2006, Deputy Port Director Michael J. Mierzwa contacted MBP Corp. on behalf of the board to amend the lease to allow further alterations to the property, including construction of a 140' x 20' disembarkation ramp. MBP Corp. attempted in good faith to negotiate with the board, but the board has declined to agree to MBP Corp.'s proposal for an amendment to the lease agreement and has been unwilling to negotiate alternate terms with MBP Corp. Despite the parties' failure to reach an agreement, the board has proceeded with the alterations to the Mallory Building, constructing "enhanced passenger loading operations," and in so doing has breached the lease. Due to existing set-back requirements, the specific needs for development of the rooftop of the Mallory Building and the aerial rights above it, and the board's past and probable future violations of the lease, MBP Corp. is unable to design a development that could be constructed on the rooftop of the Mallory Building.

On April 30, 2007, MBP Corp. issued a formal notice to the board advising the board that further construction and alterations to the Mallory Building rooftop constituted a default under the lease. Despite breach of the lease, MBP Corp. would like to expand and improve its Historic Strand Seaport development and continue its role in the area's tourism industry, to the benefit of the people of Galveston. By entering into the lease with MBP Corp., the board waived its immunity from suit. Under the terms of the lease, MBP Corp. is authorized to resort to the courts for certain performance of the lease agreements and is entitled to reasonable attorney's fees. MBP Corp. will suffer irreparable damage unless the board is ordered by the courts to restore the Mallory Building rooftop to its condition before the construction of the board's unauthorized alteration for enhanced passenger loading operations, to dismantle the alterations constructed on the rooftop without MBP Corp.'s agreement, and to refrain from making any future alterations to

the rooftop and interfering with MBP Corp.'s rights in the air space above the rooftop except as authorized under the lease agreement as amended.

**RESOLVED**

That the 81st Legislature grants MBP Corp. permission to sue the State of Texas and Board of Trustees of the Galveston Wharves subject to Chapter 107 (Permission to Sue the State), Civil Practice and Remedies Code.

That the Chairman of the Board of Trustees of the Galveston Wharves be served process as provided by Section 107.002(a)(3) (relating to the requirement of service of citation and other required process to be made on the attorney general and on a person named in the resolution as a representative of the affected state agency), Civil Practice and Remedies Code.