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AN ACT

relating to the applicability and enforcement of the law governing access to public beaches.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

(c) The commissioner ~~[attorney general]~~ shall strictly and vigorously enforce the prohibition against encroachments on and interferences with the public beach easement. ~~[The attorney general shall develop and publicize an enforcement policy to prevent and remove any encroachments and interferences on the public beach. The land office may assist the attorney general in enforcing this subchapter.]~~

(d) The commissioner shall promulgate rules, consistent with the policies established in this section, on the following matters only:

- (1) acquisition by local governments or other appropriate entities or public dedication of access ways sufficient to provide adequate public ingress and egress to and from the beach within the area described in Subdivision (6) ~~[of this subsection]~~;
- (2) protection of the public easement from erosion or reduction caused by development or other activities on adjacent land and beach cleanup and maintenance;

1 (3) local government prohibitions of vehicular
2 traffic on public beaches, provision of off-beach parking, and
3 other minimum measures needed to mitigate for any adverse effect on
4 public access and dune areas;

5 (4) imposition of beach access, user, or parking fees
6 and reasonable exercises of the police power by local governments
7 with respect to public beaches;

8 (5) contents and certification of beach access and use
9 plans and standards for local government review of construction on
10 land adjacent to and landward of public beaches; [~~and~~]

11 (6) construction on land adjacent to and landward of
12 public beaches and lying in the area either up to the first public
13 road generally parallel to the beach or to any closer public road
14 not parallel to the beach, or to within 1,000 feet of mean high
15 tide, whichever is greater, that affects or may affect public
16 access to and use of public beaches; and

17 (7) the temporary suspension under Section 61.0185 of
18 enforcement of the prohibition against encroachments on and
19 interferences with the public beach easement and the ability of a
20 property owner to make repairs to a house while a suspension is in
21 effect.

22 (f) Chapter 2007, Government Code, does not apply to rules
23 adopted under Subsection (d)(7).

24 SECTION 2. Sections 61.015(b)-(d), Natural Resources Code,
25 are amended to read as follows:

26 (b) Local governments shall submit proposed beach access
27 and use plans to the commissioner for certification as to

1 compliance with such policies and rules [~~and to the attorney~~
2 ~~general for review and comment~~]. The commissioner shall act on a
3 local government's proposed beach access and use plan within 60
4 days of submission by either approving the plan or denying
5 certification. In the event of denial, the commissioner shall send
6 the proposed plan back to the originating local government with a
7 statement of specific objections and the reasons for denial, along
8 with suggested modifications. On receipt, the local government
9 shall revise and resubmit the plan. The commissioner's
10 certification of local government plans shall be by adoption into
11 the rules under Section 61.011 [~~of this code~~].

12 (c) A littoral owner proposing construction adjacent to and
13 landward of a public beach in the area described in Section
14 61.011(d)(6) [~~of this code~~] shall submit a development plan to the
15 appropriate local government. The local government shall forward
16 the development plan to the commissioner [~~and the attorney general~~]
17 no less than 10 working days prior to acting on the development
18 plan. The commissioner [~~or the attorney general~~] may submit
19 comments on the proposed construction to the local government.

20 (d) The local government shall review the proposed
21 development plan and the commissioner's [~~and attorney general's~~]
22 comments and other information the local government may consider
23 useful to determine consistency with the local government's beach
24 access and use plan.

25 SECTION 3. Sections 61.018(a) and (d), Natural Resources
26 Code, are amended to read as follows:

27 (a) Any county attorney, district attorney, or criminal

1 district attorney, or the [The] attorney general~~[, individually or]~~
2 at the request of the commissioner, ~~[or any county attorney,~~
3 ~~district attorney, or criminal district attorney]~~ shall file in a
4 district court of Travis County, or in the county in which the
5 property is located, a suit to obtain either a temporary or
6 permanent court order or injunction, either prohibitory or
7 mandatory, to remove or prevent any improvement, maintenance,
8 obstruction, barrier, or other encroachment on a public beach, or
9 to prohibit any unlawful restraint on the public's right of access
10 to and use of a public beach or other activity that violates this
11 chapter.

12 (d) Any county attorney, or the [The] attorney general~~[,~~
13 ~~either individually or]~~ at the request of the commissioner ~~[or any~~
14 ~~county attorney]~~, may bring a suit for a declaratory judgment to try
15 any issue affecting the public's right of access to or use of the
16 public beach.

17 SECTION 4. Subchapter B, Chapter 61, Natural Resources
18 Code, is amended by adding Section 61.0185 to read as follows:

19 Sec. 61.0185. TEMPORARY SUSPENSION OF SUBMISSION OF
20 REQUESTS THAT ATTORNEY GENERAL FILE SUIT. (a) The commissioner by
21 order may suspend for a period of two years from the date the order
22 is issued the submission of a request that the attorney general file
23 a suit under Section 61.018(a) to obtain a temporary or permanent
24 court order or injunction, either prohibitory or mandatory, to
25 remove a house from a public beach if the commissioner determines
26 that:

27 (1) the line of vegetation establishing the boundary

1 of the public beach has moved as a result of a meteorological event;

2 (2) the house was located landward of the natural line
3 of vegetation before the meteorological event; and

4 (3) the house does not present an imminent threat to
5 public health and safety.

6 (b) The commissioner shall make a determination under
7 Subsection (a) regarding the line of vegetation in accordance with
8 Sections 61.016 and 61.017.

9 (c) The commissioner shall consult with the Bureau of
10 Economic Geology of The University of Texas at Austin when making a
11 determination under Subsection (a) regarding:

12 (1) the line of vegetation; or

13 (2) the effect of a meteorological event on the
14 location of the public beach easement.

15 (d) This section does not apply to a house that the
16 commissioner determines to be:

17 (1) located in whole or in part below mean high tide;

18 or

19 (2) more than 50 percent destroyed as a result of a
20 meteorological event.

21 (e) An order issued under this section shall be:

22 (1) posted on the land office's Internet website;

23 (2) published by the land office as a miscellaneous
24 document in the Texas Register; and

25 (3) filed for record by the land office in the real
26 property records of the county in which the house is located.

27 (f) The commissioner shall notify the attorney general and

1 each pertinent county attorney, district attorney, or criminal
2 district attorney of the issuance of an order under this section.

3 (g) A county attorney, district attorney, or criminal
4 district attorney may not file suit under Section 61.018(a) to
5 obtain a temporary or permanent court order or injunction, either
6 prohibitory or mandatory, to remove a house from a public beach
7 while the house is subject to an order issued under this section.

8 (h) While an order issued under this section is in effect, a
9 local government may:

10 (1) issue a certificate or permit authorizing repair
11 of a house subject to the order if the local government determines
12 that the repair:

13 (A) is solely to make the house habitable;

14 (B) complies with rules adopted by the
15 commissioner under Section 61.011(d)(7); and

16 (C) does not increase the footprint of the house
17 or involve the use of concrete, Fibercrete, or other impervious
18 materials seaward of the line of vegetation; and

19 (2) allow utilities to be reconnected to a house
20 subject to the order.

21 (i) Issuance of an order under this section is purely within
22 the discretion of the commissioner. This section does not create:

23 (1) a duty on the part of the commissioner to issue an
24 order related to all or part of a house, regardless of any
25 determination made; or

26 (2) a private cause of action for:

27 (A) issuance of an order under this section; or

1 (B) failure to issue an order under this section.

2 (j) Chapter 2007, Government Code, does not apply to an
3 order issued under this section.

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

10 (l) Expenses incurred while an order issued under this
11 section is in effect by the owner of a house in an effort to repair
12 or otherwise make the house habitable may not be claimed as damages
13 in any litigation with this state or a local government that may be
14 filed to enforce this chapter.

15 SECTION 5. Sections 61.022(a) and (c), Natural Resources
16 Code, are amended to read as follows:

17 (a) The provisions of this subchapter do not prevent any of
18 the following governmental entities [~~agency, department,~~
19 ~~institution, subdivision, or instrumentality of this state or of~~
20 ~~the federal government~~] from erecting or maintaining any groin,
21 seawall, barrier, pass, channel, jetty, or other structure as an
22 aid to navigation, protection of the shore, fishing, safety, or
23 other lawful purpose authorized by the constitution or laws of this
24 state or the United States:

25 (1) an agency, department, institution, subdivision,
26 or instrumentality of the federal government;

27 (2) an agency, department, institution, or

1 instrumentality of this state;

2 (3) a county;

3 (4) a municipality; or

4 (5) a subdivision of this state, other than a county or
5 municipality, acting in partnership with the county or municipality
6 in which the structure is located.

7 (c) A local government proposing to adopt or amend such
8 vehicular traffic regulations, except those for public safety, or
9 fees shall submit a plan detailing the proposed action to the
10 [~~attorney general and the~~] commissioner for review. The
11 commissioner shall certify whether the proposed action is
12 consistent or inconsistent with such policies and rules.
13 Certifications of consistency shall be by adoption into the rules
14 promulgated under Section 61.011 [~~of this code~~].

15 SECTION 6. Section 61.026(b), Natural Resources Code, is
16 amended to read as follows:

17 (b) The land office [~~or the attorney general's office~~] may
18 develop and distribute public information about the requirements of
19 this chapter, the importance of natural beach and dune systems, and
20 the necessity for preserving them. Such information may include
21 public service announcements made under the direction of the land
22 office.

23 SECTION 7. Section 63.054(c), Natural Resources Code, is
24 amended to read as follows:

25 (c) Each county or municipality administering this chapter
26 shall establish procedures and requirements governing the review
27 and approval of dune permits, and these procedures and requirements

1 shall be submitted to the commissioner [~~and attorney general~~] for
2 [~~their~~] comments.

3 SECTION 8. Section 63.181(a), Natural Resources Code, is
4 amended to read as follows:

5 (a) Any county attorney, district attorney, or criminal
6 district attorney, or the [The] attorney general [~~, individually or~~]
7 at the request of the commissioner, [~~or any county attorney,~~
8 ~~district attorney, or criminal district attorney~~] shall file in a
9 district court of Travis County or in the county in which the
10 violation occurred a suit to obtain either a temporary or permanent
11 court order or injunction to prohibit and remedy any violation of
12 this chapter or any rule, permit, or order under this chapter and to
13 collect damages to natural resources injured by the violation and
14 to recover civil penalties.

15 SECTION 9. Section 61.011(e), Natural Resources Code, is
16 repealed.

17 SECTION 10. (a) This Act takes effect immediately if it
18 receives a vote of two-thirds of all the members elected to each
19 house, as provided by Section 39, Article III, Texas Constitution.
20 If this Act does not receive the vote necessary for immediate
21 effect, this Act takes effect September 1, 2003.

22 (b) Section 61.0185, Natural Resources Code, as added by
23 this Act, applies to a meteorological event occurring before, on,
24 or after the effective date of this Act.

David Dewhurst

President of the Senate

Jim Caddick

Speaker of the House

I certify that H.B. No. 1457 was passed by the House on May 10, 2003, by the following vote: Yeas 137, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1457 on May 31, 2003, by the following vote: Yeas 149, Nays 0, 1 present, not voting.

Robert Haney
Chief Clerk of the House

I certify that H.B. No. 1457 was passed by the Senate, with amendments, on May 27, 2003, by the following vote: Yeas 31, Nays 0.

Patsy Law
Secretary of the Senate

APPROVED: 18 JUN '03
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8:30 AM O'CLOCK

JUN 18 2003
Ann Shea
Secretary of State