

**SUBJECT:** Open beaches exception for shore protection structure

**COMMITTEE:** Land and Resource Management — committee substitute recommended

**VOTE:** 5 ayes — Mowery, Harper-Brown, R. Cook, Escobar, Miller  
0 nays  
4 absent — Blake, Leibowitz, Orr, Pickett

**SENATE VOTE:** On final passage, April 21 — 29-1 (Williams)

**WITNESSES:** (*On House companion bill, HB 1603:*)  
For — Jerry Patterson, General Land Office  
Against — A.R. Schwartz

**BACKGROUND:** The Open Beaches Act, in Natural Resources Code, sec 61.011, guarantees free access to state-owned beaches, saying:  
  
"It is declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or if the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous right in the public, the public shall have the free and unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico."  
  
Under Natural Resources Code, ch. 61, the line of vegetation generally is the seaward boundary of natural vegetation that spreads continuously inland and is used to help determine the area of public beach.

**DIGEST:** CSSB 740 would allow a political subdivision to construct a shore protection structure that:

- was designed to protect public infrastructure, including a state

highway or bridge;

- was located along a natural inlet to the Gulf of Mexico; and
- did not extend beyond 4,500 feet along the shoreline.

The commissioner of the General Land Office could specify requirements for the design and location of the structure.

The line of vegetation would be along the seaward side of the shore protection structure for the distance of that structure.

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, 2005.

**SUPPORTERS  
SAY:**

CSSB 740 addresses a problem unique to the community of Treasure Island, located in Brazoria County on the only naturally occurring tidal inlet between West Galveston Bay and the Gulf of Mexico. This area has experienced irreparable erosion, and experts agree that measures to re-nourish the beach would not halt the degradation. Only a protective structure could protect the Treasure Island shore. These 4,500 feet of coast line are not fit for public enjoyment. Along with the coast line's continual erosive state, its water currents are exceptionally dangerous and unsuitable for swimming and recreation.

The bill would authorize the General Land Office (GLO) to approve a structure that would best protect the shoreline. If funds became available, the Treasure Island Municipal District and Brazoria County could work with the GLO to determine the best course of action. The bill would authorize the GLO to remove the make-shift structures currently on the shore and replace them with a more suitable structure.

This bill is narrowly constructed to affect about 4,500 feet of beach frontage near the San Luis Pass. The shore's degradation has been poorly attended to in the past, but the Treasure Island Municipal District and local residents have made efforts to stop the erosion. In January 2000, the Treasure Island MUD and property owners built a geotextile tube, which is made from high-strength woven polypropylene and polyester fabrics, to provide shoreline protection. The tube failed within a year, and since then residents have made other make-shift attempts to stop the erosion by stacking rocks and boulders along the shore. Unfortunately, these structures have caught and collected unwanted debris, limiting access to

the beach. In effect, the residents have created a poor situation for themselves and the shoreline. The county, through a local Beach Access Plan, should address any violations to public access. The bill would not pre-empt local authority to intervene.

The bill would not give private property owners rights to remain on the public beach. The shore line has receded so that three unoccupied homes are now partly submerged into the Gulf of Mexico. The homes are unoccupied, and the GLO has filed suit to remove them because submerged lands belong to the state.

The area also needs additional protection to preserve vital infrastructure, the San Luis Pass Bridge and Bluewater Highway. The area's strong currents and erosion, along with added debris from the erosion structures, pose a threat to bridge and roadway safety.

OPPONENTS  
SAY:

By exempting 4,500 feet of coastline from the public access and environmental protections provided by the Texas Open Beaches Act, the bill would set a dangerous precedent. The line of vegetation should not be moved from the landward to the seaward side. Under law, the line of vegetation should be allowed to move as dictated by natural occurrences. By setting the line, the bill would carve private property out of public lands and deny public beach access.

In the past, the Treasure Island residents and the Treasure Island MUD have illegally undertaken erosion projects and denied public access to the beach. The Treasure Island neighborhood is an illogical development considering its location. Since the 1990s, erosion has reduced the public beach adjacent to the development, but area residents have violated the Texas Open Beaches Act and restricted access to the remaining public beach. They have posted signs saying "No Vehicular Beach Access" and "Tenant & Permit Holders Only - All Others Will Be Towed Away."

The bill would override the Open Beaches Act. The erosion projects, the failed geotextile tube, and the stacks of rocks and boulders, undertaken without permit, also have limited public access. Debris and rebarb, which contribute to an unsightly and unsafe beach, have collected around the tube and stacks of rocks. The bill, instead of ending these violations to the Open Beaches Act, would set a legal precedent for creating exceptions to it. Other residential property owners would find justification in privatizing beaches and creating safety hazards.

Unless the GLO is willing to spend up to \$10 million per mile to build a sea wall like the one in Galveston, any other structure it would design would not stop the erosion. In fact, it would accelerate the erosion by increasing a scouring effect, the result of abrasion. If a structure constricted an opening through which water flowed, the constriction could increase the velocity of the water and any debris it carried, which in turn could "scour" away soils.

More erosion controls are not needed to protect the engineering integrity of the San Luis Bridge. Two recent inspections performed by TXDOT, an underwater bridge inspection in April of 2003 and a routine inspection in February of 2004, reported the bridge safe for all legal traffic.

**NOTES:**

The substitute specifies that the shoreline structure would have to be designed to protect public infrastructure and be located on a natural inlet that did not extend more than 4,500 feet along the shoreline.

The House companion bill, HB 1603 by Bonnen, was set for the General State Calendar on April 28, but was recommitted to the Land and Resource Management Committee on April 26 and was again reported favorably without amendment. It was set on the General State Calendar, and on May 12 a point of order was sustained against the bill.