

SUBJECT: Limiting dredge disposal in Laguna Madre

COMMITTEE: Transportation — committee substitute recommended

VOTE: 8 ayes — Krusee, Phillips, Hamric, Garza, Harper-Brown, Hill, Laney,
Mercer

0 nays

1 absent — Edwards

WITNESSES: *(On committee substitute:)*

For — Greg Binion, Kirby Inland Marine; John Crutchfield; Les Sutton,
Texas Waterway Operators; Raymond Butler, Gulf Intracoastal Canal
Association

Against — None

(On original version:)

On — Jim Randall, Texas Department of Transportation

BACKGROUND: The Gulf Coast Intracoastal Waterway (GCIW) is an 1,100-mile-long network of bays, channels, and canals stretching from Brownsville to northwest Florida. The GCIW provides toll-free sheltered passage for leisure boats and commercial shipping, primarily barges that transport oil and oil products and various bulk materials. The Texas portion of the GCIW extends 425 miles from the Sabine River to the Brownsville Ship Channel. Texas barge traffic through the GCIW averaged almost 65 million tons of cargo per year from 1992 to 1998, according to the U.S. Army Corps of Engineers (CoE). Because of sediment buildup, the GCIW is dredged periodically under the CoE's supervision to maintain navigability. About 8 million cubic yards of "dredge spoil" are removed annually from the Texas coastline. This material includes rough sand, often used to replenish beaches and prevent coastal erosion.

The Laguna Madre is a narrow body of shallow water separating Padre Island from the South Texas mainland. Stretching 117 miles from Corpus Christi to Brownsville, the Laguna Madre comprises the southernmost leg of the GCIW

and encompasses 609 square miles of estuarine and coastal marine systems, including the boundary of Padre Island National Seashore. The state owns parts of the Laguna Madre that are managed by the General Land Office (GLO) and Texas Parks and Wildlife Department (TPWD). The King Ranch, Audubon Society, and other private entities also own large sections of land in the region, which includes environmentally sensitive areas that provide habitat for migratory birds and endangered species as well as shrimp and commercial and sport fish. Federal law prohibits depositing any dredge spoil, including beach-quality sand, at the Padre Island National Seashore.

In 1983, the Department of Highways and Public Transportation (now the Texas Department of Transportation, or TxDOT) agreed to provide land and easements for dredging disposal at no cost to the federal government.

In 1994, representatives of environmental, conservation, and sporting groups, port authorities, and other entities filed *National Audubon Society v. U.S. Corps of Engineers* in federal district court, challenging dredging operations in the Laguna Madre. The stipulated settlement reached in 1995 required a fully funded study of CoE dredging policies and an update of the 1975 environmental impact statement. In 1995, the 74th Legislature designated the Texas Transportation Commission (TTC) as the lead agency for part of the state's role as the GCIW's nonfederal sponsor. The TTC, along with other state and local agencies, works with the CoE to keep the GCIW open for navigation by shallow-draft vessels, prevent the waste of publicly and privately owned natural resources, preserve the environment, and protect wildlife and fisheries (Transportation Code, sec. 51.003).

In undertaking the study, TxDOT and the CoE created the Interagency Coordination Team (ICT), chaired by the CoE. Other members include the U.S. Environmental Protection Agency, Fish and Wildlife Service, and National Marine Fisheries Service; GLO; TPWD; the Texas Commission on Environmental Quality; and the Texas Water Development Board. Two entities have advisory roles: the Corpus Christi Bay National Estuary Program and the Padre Island National Seashore.

Since 1995, the ICT has funded about 35 studies costing about \$4.5 million to determine how best to dispose of dredge spoil. In October 2002, the ICT issued a draft plan for managing dredged material in Laguna Madre.

The four broad disposal categories are on land (upland), open water (bays and spoil islands), deep ocean (deeper parts of the Gulf of Mexico), and beneficial uses (beaches, barrier islands, and wildlife habitat). The TTC is authorized to acquire land for dredging disposal by gift, purchase, or condemnation (Transportation Code, sec. 51.005).

HB 2684 by Kuempel, enacted by the 77th Legislature in 2001, prohibits the TTC from acquiring property before September 1, 2005, for dredge disposal from the Laguna Madre if the property was subject to a habitat conservation plan in effect as of October 1, 1997. The act also required the House Land and Resource Management Committee to conduct an interim study and report on placement and use options for material dredged from the GCIW.

DIGEST:

CSHB 1231 would amend portions of the Transportation Code dealing with the TTC's acquisition of property by condemnation for dredge spoil disposal.

The TTC could not condemn property in five of the six sections (reaches) of the GCIW, as defined in the ICT's draft plan, except under two concurrent conditions: no state or federal land was available for dredging disposal and failure to acquire property would result in closing any Texas segment of the GCIW. TxDOT could condemn land for dredging disposal only in accordance with the draft plan. The bill also would authorize the TTC to contract with landowners to use land as a disposal site.

TxDOT would have to seek legislative approval for any substantive changes to dredging disposal management once the CoE published the final plan.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 1231 represents a well-crafted compromise among interested parties regarding the issue of private property condemnation for state acquisition of GCIW dredge spoil disposal sites in the Laguna Madre. While no perfect solution exists for this ongoing problem, the bill's approach would strike a balance among property rights, economic interests, environmental concerns, and governmental regulation.

Rather than "one size fits all," CSHB 1231 would incorporate the ICT draft plan allowing flexibility in determining which disposal methods are most

appropriate for the various designated sections (reaches) of the Laguna Madre. This makes sense because not all areas have the same sediment problems. Nevertheless, the bill would minimize land-based disposal by making it more difficult, though not impossible, for TxDOT to condemn private property by placing restrictions on all but one section, Reach 3. That section, a landlocked manmade land cut, is suitable only for upland disposal. That method likely will not be used elsewhere in the Laguna Madre for years because a great deal of state and federal land still is available. Closing the GCIW because of an inability to acquire land otherwise is an unlikely prospect, but that provision would protect both the barge industry, so important to South Texas, and the Lower Rio Grande Valley, as well as coastal landowners. Express contracting authority also would give TxDOT and landowners another option for disposal.

Linking TxDOT's condemnation policy to the draft plan would ensure that the understanding reached by the many entities and stakeholders involved in the study process will not be diluted or circumvented by bureaucratic fiat.

Although economic analyses vary, removing the open-bay disposal provisions would alleviate any concern about potential costs to the state. It also would satisfy the CoE's need to use the least expensive methodology. Eliminating a potential barge fee would ensure the continued viability of barge traffic by keeping overhead low. This would benefit Texas consumers and would help improve air quality by reducing the number of large, long-haul trucks on Texas' already congested roadways.

Dredging has not been proven harmful to fish or wildlife habitats. In fact, commercial fishing continues to improve despite periodic dredging.

**OPPONENTS
SAY:**

CSHB 1231 would neither reduce nor reverse the harmful practice of condemning scarce private property in the Laguna Madre to dispose of dredge spoil. The salt content in Laguna Madre sediments is greater than that of the ocean. The state should declare a moratorium on new upland disposal sites in favor of other methods less damaging to this region, so much of which depends on agricultural productivity.

Barge traffic and dredging in the Laguna Madre should be severely restricted or prohibited. The area is too environmentally sensitive, and barge

transportation does not generate enough economic activity to warrant damage to commercial and sport fish and game habitats. Studies touting the economic significance of barge traffic to this region are flawed. Fishing, shrimping, ecotourism, and recreational activities are equally important elements of the local economy. The Legislature should recognize the potential and encourage the growth of these industries, rather than that of one small industry.

OTHER
OPPONENTS
SAY:

The filed version of HB 1231 embodied a better approach to dealing with this controversy effectively. The committee substitute would not raise the bar high enough to protect scarce private property or Laguna Madre's fragile ecosystem.

The two conditions placed on condemnation would be too easy for TxDOT and the CoE to overcome. Neither restriction would reduce significantly the amount or frequency of dredge spoil disposal on private property or sensitive areas.

The substitute should have retained the prohibition against upland disposal in favor of deep-ocean disposal and the seasonal restrictions on dredging, as the House Land and Resource Management Committee recommended in its interim report. Although deep-ocean disposal may be more expensive, it is more cost-effective over time and a more permanent solution. Otherwise, CoE will continue dredging the same sediments in perpetuity.

The bill should have retained the barge fee provision as the industry's fair share of the cost of doing business and to help pay for deep-ocean disposal. CSHB 1231 would require state and federal taxpayers to subsidize barge companies that are enjoying free use of a waterway that their vessels pollute.

NOTES:

The committee substitute would narrow the definition of what land along the GCIW could not be used to dispose of dredge spoil and would include two exceptions. The substitute would specify that TxDOT must comply with the ICT's October 2002 draft plan in condemning property for dredging disposal and must seek legislative approval for any substantive changes to disposal management once the CoE publishes the plan. As filed, HB 1231 contained a section setting conditions for open-bay disposal and authorizing the TTC to set a tonnage-based fee for barges using the GCIW.

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The companion bill, SB 1402 by Lucio, has been referred to the Senate Natural Resources Committee.