

- SUBJECT:** Qualifying certain land used for sand mining as open-space land
- COMMITTEE:** Energy Resources — committee substitute recommended
- VOTE:** 10 ayes — Paddie, Herrero, Bailes, Craddick, Darby, Geren, Gutierrez, Harris, Perez, Rosenthal
- 0 nays
- 1 absent — Anchia
- WITNESSES:** For — Joseph Neal; (*Registered, but did not testify:* Beth Cubriel, Black Mountain Sand; Cyrus Reed, Lone Star Chapter Sierra Club)
- Against — (*Registered, but did not testify:* Brice Ferguson, Cactus Water Services, LLC)
- On — (*Registered, but did not testify:* Joseph Parks and Alexander Schoch, Railroad Commission of Texas)
- BACKGROUND:** Under Tax Code sec. 23.52, the appraised value of qualified open-space land for property tax purposes is determined on the basis of the category of the land, using accepted income capitalization methods. The value determined by this appraisal may not exceed the market value as determined by other appraisal methods.
- Interested parties have suggested incentivizing the adoption of standards governing reclamation of land used for certain sand mining operations.
- DIGEST:** CSHB 2942 would establish that the eligibility of land for appraisal as qualified open-space land for property tax purposes would not end because the land ceased to be devoted principally to agricultural use if:
- the landowner intended that the use of land be resumed;
  - the land was used for a sand mining operation; and
  - the land was reclaimed according to certain standard best practices

no later than one year after the sand mining operation began.

The bill would apply only to a sand mining operation overlying the Carrizo Aquifer and located within:

- 30 miles of a city with a population over 500,000; or
- one mile of a single-family or multifamily residence.

The landowner would have to notify the appraisal office in writing no later than 30 days after sand mining operations began that the owner intended to ensure that the requirements for eligibility were met.

The bill would require the Texas Commission on Environmental Quality (TCEQ) by rule to adopt standard best practices for reclamation of land used for sand mining operations. The standards would have to:

- provide for the protection of surface water, groundwater, agricultural land, wildlife habitat, and wetlands;
- require reclamation to occur concurrently with sand mining operations and incorporate certain federal agency best practices;
- include post-mining reclamation grade standards and slope stabilization requirements;
- require unmarketable excavated material to be used as backfill for site restorations; and
- meet other criteria listed in the bill.

TCEQ would have to establish a process to allow a landowner who submitted a notice to an appraisal office to obtain a determination from the executive director of TCEQ on whether the land was reclaimed according to best practices. The owner would have to apply to the director for that determination no later than 90 days after the first anniversary of the date mining operations began.

The bill would require the executive director to send notice to the chief appraiser that the owner had applied for a determination, issue a letter to the owner stating the determination, and send a copy of the determination

letter to the chief appraiser.

No later than 20 days after receiving a determination, the owner could appeal it to TCEQ, which would consider the appeal at the next regularly scheduled meeting. The landowner and chief appraiser could testify at the meeting, and TCEQ could remand the matter to the director for a new determination or deny the appeal.

A proceeding to appeal a determination of the executive director would not be a contested case for purposes of certain laws regarding administrative procedure.

TCEQ could charge an owner seeking a determination letter a fee that did not exceed the administrative costs for the determination and issuance of the letter.

The chief appraiser would have to accept a final determination by the executive director as conclusive evidence that land was reclaimed according to standard best practices.

The bill would apply only to land on which sand mining operations began before the effective date of the bill. The eligibility of land for appraisal as qualified open-space land would not end if the owner provided the required notice within 90 days of the effective date and the chief appraiser had not made a determination that a change in land use had occurred as of the effective date.

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, 2019.