

BILL ANALYSIS

Senate Research Center
86R19960 JXC-D

H.B. 2942
By: Guillen; Pacheco (Flores)
Property Tax
5/15/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the recharge area just south of San Antonio, sand is being mined and processed for oil and gas well fracking propellant and concrete construction. This is a very important resource for our country's economy. The surface sand is removed down to the argillic horizon, about six feet on average, and an excellent new soil can be formed. This new soil can be reclaimed to be much more productive for agriculture, wildlife, and rain recharge. However, when the sand is removed and left without reclamation, the recharge ability is completely eliminated.

H.B. 2942 seeks to address this issue by enforcing reclamation in this critical area, eliminating the five year rollback penalty, allowing construction of ponds to catch rain runoff, and enforcing the use of other aquifers for oil/gas water wells.

H.B. 2942 omits the language requiring the Railroad Commission of Texas to regulate sand mining operations, and instead creating an incentive for sand mining operations to take part in the reclamation process by allowing those operations to retain any ad valorem agriculture tax exemptions previously established. This incentive would be verified by the Texas Commission on Environmental Quality, which already provides permitting for these operations.

H.B. 2942 amends current law relating to the eligibility of land to continue to be appraised for ad valorem tax purposes as qualified open-space land if the land is temporarily used for sand mining operations, and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Section 23.526, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 23, Tax Code, by adding Section 23.526, as follows:

Sec. 23.526. TEMPORARY CESSATION OF AGRICULTURAL USE FOR SAND MINING OPERATION. (a) Defines "commission" as the Texas Commission on Environmental Quality (TCEQ), defines "executive director" as the executive director of TCEQ (executive director), and defines "marketable material," "sand mining operation," and "unmarketable material" for purposes of this section.

(b) Provides that this section applies only to a sand mining operation that overlies the Carrizo Aquifer and is located within:

- (1) 30 miles of the boundary of a municipality with a population of more than 500,000; or
- (2) one mile of a building in use as a single-family or multifamily residence.

(c) Requires the measurement of distance for purposes of Subsection (b) to be taken from the point on the sand mining operation that is nearest to the municipal boundary or residence toward the point on the municipal boundary or residence that is nearest to the sand mining operation.

(d) Provides that the eligibility of land for appraisal under this subchapter (Appraisal of Agricultural Land) does not end because the land ceases to be devoted principally to agricultural use to the degree of intensity generally accepted in the area if:

(1) the owner of the land intends that the use of the land in that manner and to that degree of intensity be resumed;

(2) the land is used for a sand mining operation; and

(3) the land is reclaimed according to the standard best practices adopted under this section not later than the first anniversary of the date sand mining operations began on the land.

(e) Requires the owner of land to which this section applies to notify the appraisal office in writing not later than the 30th day after the date sand mining operations begin on the land that the owner intends to ensure that the requirements of Subsection (d) are met.

(f) Requires TCEQ by rule to adopt standard best practices for reclamation of land used for a sand mining operation to be used for the purposes of this section. Requires the standards to:

(1) provide for the protection of surface water, groundwater, agricultural land, wildlife habitat, and wetlands;

(2) require reclamation to:

(A) occur concurrently with sand mining operations by managing the movement of marketable and unmarketable material encountered during the operations; and

(B) incorporate best practices adopted by the Natural Resources Conservation Service of the United States Department of Agriculture;

(3) include post-mining reclamation grade standards;

(4) establish slope stabilization requirements, including by grading perpendicular to the gradient;

(5) require unmarketable material from the land to be stockpiled on the land and used as backfill for site restoration;

(6) prohibit the inclusion of material not excavated from the land in the backfill used for site restoration;

(7) prohibit the stockpiling of unmarketable material at a horizontal to vertical slope greater than a three to one ratio;

(8) require surface soil removed during sand mining operations to be used as the uppermost layer of the final reclamation grade;

(9) require a reclaimed area to be left for successive vegetation growth after final reclamation grade standard best practices have been satisfied; and

(10) encourage the construction of ponds to catch runoff in locations that are outside critical runoff zones for rivers.

(g) Requires TCEQ to establish a process to allow an owner of land who submits a notice under Subsection (e) to obtain from the executive director a letter determining whether the land that is the subject of the notice was reclaimed according to the standard best practices adopted under this section in the time frame required under Subsection (d). Requires the owner to apply to the executive director for the determination not later than the 90th day after the first anniversary of the date sand mining operations began on the land.

(h) Requires the executive director to:

(1) send notice by regular mail or by electronic means to the chief appraiser of the appraisal district for the county in which the land is located that the owner has applied for a determination letter for the land;

(2) issue a letter to the owner stating the executive director's determination of whether the land has been reclaimed according to the standard best practices adopted under this section in the time frame required under Subsection (d); and

(3) send a copy of the determination letter by regular mail or by electronic means to the chief appraiser of the appraisal district for the county in which the land is located.

(i) Authorizes the owner seeking the determination or the chief appraiser, not later than the 20th day after the date of receipt of the letter issued by the executive director, to appeal the executive director's determination to TCEQ. Requires TCEQ to consider the appeal at the next regularly scheduled meeting of TCEQ for which adequate notice may be given. Provides that the owner seeking the determination and the chief appraiser may testify at the meeting. Authorizes TCEQ to remand the matter to the executive director for a new determination or deny the appeal and affirm the executive director's determination. Authorizes the executive director, on issuance of a new determination, to issue a letter to the owner seeking the determination and provide a copy to the chief appraiser as provided by Subsection (h). Authorizes a new determination of the executive director to be appealed to TCEQ in the manner provided by this subsection. Provides that a proceeding under this subsection is not a contested case for purposes of Chapter 2001 (Administrative Procedure), Government Code.

(j) Requires the executive director to issue a determination letter required by Subsection (h) to the owner seeking the determination, and TCEQ to take final action on the initial appeal under Subsection (i) if an appeal is made, not later than the first anniversary of the date the executive director receives the request from the owner for the determination.

(k) Authorizes TCEQ to charge an owner seeking a determination letter under this section a fee not to exceed its administrative costs for making the determination and issuing the letter required by this section.

(l) Requires the chief appraiser to accept a final determination by the executive director as conclusive evidence that land was reclaimed according to the standard best practices adopted under this section in the time frame required under Subsection (d).

SECTION 2. (a) Provides that this section applies only to land on which a sand mining operation began before the effective date of this Act.

(b) Provides that, notwithstanding Section 23.526(e), Tax Code, as added by this Act, the eligibility of the land for appraisal under Subchapter D (Appraisal of Agricultural Land), Chapter 23, Tax Code, does not end because the land ceases to be devoted principally to agricultural use to the degree of intensity generally accepted in the area if:

(1) the owner of the land provides the notice required by Section 23.526(e), Tax Code, as added by this Act, not later than the 90th day after the effective date of this Act; and

(2) the chief appraiser of the appraisal district in which the land is located has not, as of the effective date of this Act, made a determination under Section 23.55 (Change of Use of Land), Tax Code, that a change in use of the land has occurred.

SECTION 3. Effective date: upon passage or September 1, 2019.