

BILL ANALYSIS

C.S.H.B. 2146
By: Hilderbran
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent developments in certain protected freshwater areas of Texas involving the commercial mining of marl, sand, gravel, shell, or mudshell continue to illustrate the inherent tensions that exist between protecting the multifaceted integrity of navigable rivers and streams in those protected freshwater areas and also protecting private property rights and the need for the mining of those sedimentary materials for commercial use. While recognizing the importance of sand and gravel to Texas commerce and the economy, interested parties contend that such mining operations within defined protected freshwater areas need certain reasonable statutory restrictions in order to prevent adverse effects on the overburdened freshwater resources of this state, on the Texas tourist industry, on the value of the land along the rivers and streams in the affected areas, and on navigation and the natural course of navigable rivers and streams, as well as to prevent damage or degradation of vegetation, fish, wildlife, wildlife habitat, water quality, and other natural resources, and the potential increase of downstream nonpoint source pollution.

C.S.H.B. 2146 seeks to impose certain reasonable restrictions on mining in a manner that adequately balances and protects private property rights and the needs of that particular mining industry as well as the continued integrity of certain protected freshwater areas of this state.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Provides for the legislative intent of this Act.

SECTION 2. Amends Chapter 86, Parks and Wildlife Code, by adding Section 86.0021 to read as follows:

Sec. 86.0021. COMMERCIAL MINING IN CERTAIN PROTECTED FRESHWATER AREAS RESTRICTED. Provides that, notwithstanding any other provision of this chapter or a rule adopted under this chapter, the commission may not grant a permit, or one or more contemporaneous permits covering adjacent locations, to take more than 1,000 cubic yards of marl, sand, gravel, shell, or mudshell from a protected freshwater area, as that term is defined by Section 90.001, unless:

(1) the area covered by the permit is located east of Interstate 35 or outside the Edwards Plateau, which for purposes of this section is composed of Bandera, Bexar, Blanco, Burnet, Comal, Crockett, Edwards, Gillespie, Hays, Irion, Kendall, Kerr, Kimble, Lampasas, Llano, Mason, McCulloch, Medina, Menard, Reagan, Real, San Saba, Schleicher, Sterling, Sutton, Travis, Uvalde, Val Verde, and Williamson Counties; or

(2) the marl, sand, gravel, shell, or mudshell will not be sold.

SECTION 3. Provides that Section 86.0021, Parks and Wildlife Code, as amended by this Act, applies only to a permit granted by the Parks and Wildlife Commission under Chapter 86, Parks and Wildlife Code, on or after the effective date of this Act. Provides that a permit granted by

the commission before that date is governed by the law in effect on the date the permit was granted, and the former law is continued in effect for that purpose.

SECTION 4. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house; otherwise, this Act takes effect September 1, 2013.

COMPARISON OF ORIGINAL TO SUBSTITUTE

While C.S.H.B. 2146 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. (a) The Legislature finds that to help facilitate the statewide and regional goals of making efficient and responsible use of the state's water and other natural resources, the addition of Section 86.0021, Parks and wildlife Code, under Section 2 of this Act, is needed to assist in protecting the integrity of navigable rivers and streams in protected freshwater areas within the Edwards Plateau, as described by that section, while also protecting private property rights and addressing the need for the mining of sand, gravel, and other sedimentary materials for commercial use in this state. The Legislature finds that the Edwards Plateau is of significant statewide importance because, among many other attributes and features:

(1) it is biologically diverse and contains the headwaters of many significant rivers and streams that form the basis for varied ecosystems and are therefore essential to fishing, hunting, swimming, boating, and other recreational and tourist activities enjoyed by Texans throughout the state and by visitors from around the nation and other countries;

(2) it is the only area that contains and sustains the official state fish of Texas, the Guadalupe bass, is an area in which almost half of the Texas white-tailed deer population is found, and is important to the fishing, hunting, boating, and other recreational communities of Texas and of areas outside this state, and is therefore important to the state's economy;

(3) its ranching and agricultural industries, which are water intensive, are of both state and national renown and importance; and

(4) all of the attributes and features of the area listed in this subsection and in Subsection (b) of this section are important to the state's economic, social, ecological, and environmental well-being, and therefore make the preservation of the area's rivers and streams in the most pristine condition possible an essential state priority.

(b) The Legislature further finds that creating

reasonable restrictions on the mining operations described by Subsection (a) of this section is of statewide importance and applicability and is necessary to facilitate the prevention of:

- (1) further adverse effects on the overburdened freshwater resources of this state;
- (2) adverse effects on the Texas tourist industry, recreational activities, and other economic assets in the affected areas, including long-standing traditional summer camps and hunting and fishing operations enjoyed by Texans throughout the state and by visitors from around the nation and other countries;
- (3) adverse effects on the value of land along the rivers and streams in the affected areas;
- (4) damage or degradation of water quality, fish and wildlife resources and their habitat, vegetation, and other natural resources;
- (5) adverse effects on navigation, currents affecting navigation, and the natural course of navigable rivers and streams;
- (6) damage, degradation, or erosion of the bed, bottom, or banks of navigable rivers and streams; and
- (7) the potential increase of downstream nonpoint source pollution and damage or degradation of related bays, estuaries, wetlands, and their ecosystems.

SECTION 1. Chapter 86, Parks and Wildlife Code, is amended by adding Section 86.0021 to read as follows:

Sec. 86.0021. NO COMMERCIAL MINING IN CERTAIN PROTECTED FRESHWATER AREAS.

Notwithstanding any other provision of this chapter, the commission may not grant a permit to take more than 1,000 cubic yards of marl, sand, gravel, shell, or mudshell from a protected freshwater area, as that term is defined by Section 90.001, unless:

(1) the area covered by the permit is located east of Interstate 35 or, where Interstate 35W and Interstate 35E run parallel, east of Interstate 35E; or

(2) the marl, sand, gravel, shell, or mudshell will not be sold.

SECTION 2. Formerly SECTION 1 of introduced version. Chapter 86, Parks and Wildlife Code, is amended by adding Section 86.0021 to read as follows:

Sec. 86.0021. COMMERCIAL MINING IN CERTAIN PROTECTED FRESHWATER AREAS RESTRICTED. Notwithstanding any other provision of this chapter or a rule adopted under this chapter, the commission may not grant a permit, or one or more contemporaneous permits covering adjacent locations, to take more than 1,000 cubic yards of marl, sand, gravel, shell, or mudshell from a protected freshwater area, as that term is defined by Section 90.001, unless:

(1) the area covered by the permit is located east of Interstate 35 or outside the Edwards Plateau, which for purposes of this section is composed of Bandera, Bexar, Blanco, Burnet, Comal, Crockett, Edwards, Gillespie, Hays, Irion, Kendall, Kerr, Kimble, Lampasas, Llano, Mason, McCulloch, Medina, Menard, Reagan, Real, San Saba, Schleicher, Sterling, Sutton, Travis, Uvalde, Val Verde, and Williamson Counties; or

(2) the marl, sand, gravel, shell, or mudshell will not be sold.

SECTION 2. The change in law made by this Act applies only to an application for a permit submitted to the Parks and Wildlife Commission under Chapter 86, Parks and Wildlife Code, on or after the effective date of this Act. An application for a permit submitted to the commission before that date is governed by the law in effect on the date the application is submitted and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 3. Formerly SECTION 2 of introduced version. The change in law made by this Act applies only to a permit granted by the Parks and Wildlife Commission under Chapter 86, Parks and Wildlife Code, on or after the effective date of this Act. A permit granted by the commission before that date is governed by the law in effect on the date the permit was granted, and that law is continued in effect for that purpose

SECTION 4. Same as SECTION 3 of introduced version.