

BILL ANALYSIS

C.S.H.B. 2623
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Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Federal Aviation Administration (FAA) has the power to authorize certain launch operations from a private site, such as the proposed vertical launch site in the Boca Chica area near Brownsville, Texas. Interested parties assert that the development of such launch sites provides a significant and direct economic impact on the surrounding communities by providing jobs and other economic opportunities. The parties note that, for safety reasons, areas within a certain radius of a launch site must be closed before a launch, potentially including areas of state-owned beaches. Current law provides for restricted access to certain areas, including beaches, to preserve safety, health, and the public welfare and to hold certain events. C.S.H.B. 2623 seeks to provide for the protection of the public health, safety, and welfare on dates when an FAA-approved launch is to take place.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of the General Land Office (GLO) in SECTION 2 of this bill and to the GLO in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 2623 amends the Natural Resources Code to establish provisions relating to the closing of beaches for space flight activities applicable only to a county bordering on the Gulf of Mexico or its tidewater limits that contains a launch site the construction and operation of which have been approved in a record of decision issued by the Federal Aviation Administration (FAA) following the preparation of an environmental impact statement by the FAA. The bill requires a person planning to conduct a launch in such a county to submit to the commissioners court proposed primary and backup launch dates for the launch. The bill authorizes the commissioners court by order to temporarily close a beach in reasonable proximity to the launch site or access points to the beach in the county on a primary or backup launch date in order to protect the public health, safety, and welfare, except that the bill requires approval of the General Land Office (GLO) before the commissioners court may close a beach or access points to the beach on the Saturday or Sunday before Memorial Day, Memorial Day, July 4, Labor Day, or a Saturday or Sunday between Memorial Day and Labor Day. The bill requires the commissioners court to comply with the county's beach access and use plan and dune protection plan when closing a beach or access point. The bill authorizes the GLO to approve or deny a beach or access point closure request for a primary launch date on any of the specified dates, enter into a memorandum of agreement with the commissioners court of an applicable county to govern beach and access point closures for space flight activities, and adopt rules to govern such beach and access point closures.

C.S.H.B. 2623 requires the commissioner of the GLO to promulgate rules, consistent with state policies relating to public beach access, on the closure of beaches for space flight activities.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2623 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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The heading to Section 240.902, Local Government Code, is amended to read as follows:

No equivalent provision.

Sec. 240.902. CLOSING OF GULF BEACHES FOR NONPROFIT EVENTS.

SECTION 2. Subchapter Z, Chapter 240, Local Government Code, is amended by adding Section 240.903 to read as follows:

SECTION 1. Section 61.001, Natural Resources Code, is amended by adding Subdivision (4-a) to read as follows:

Sec. 240.903. CLOSING OF GULF BEACHES FOR SPACE FLIGHT ACTIVITIES. (a) In this section:

(1) "Beach" has the meaning assigned by Section 61.012, Natural Resources Code.

(4-a) "Launch" and "space flight activities" have the meanings assigned by Section 100A.001, Civil Practice and Remedies Code.

(2) "Launch" and "space flight activities" have the meanings assigned by Section 100A.001, Civil Practice and Remedies Code.

(b) This section applies only to a county bordering on the Gulf of Mexico or its tidewater limits in which the Federal Aviation Administration has approved a launch site for space flight activities.

SECTION 3. Subchapter D, Chapter 61, Natural Resources Code, is amended by adding Section 61.132 to read as follows:

Sec. 61.132. CLOSING OF BEACHES FOR SPACE FLIGHT ACTIVITIES. (a)

This section applies only to a county bordering on the Gulf of Mexico or its tidewater limits that contains a launch site the construction and operation of which have been approved in a record of decision issued by the Federal Aviation Administration following the preparation of an environmental impact statement by that administration.

(c) A person may not conduct a launch unless:

(b) A person planning to conduct a launch in a county to which this section applies must submit to the commissioners court proposed primary and backup launch dates for the launch.

(1) the person submits to the commissioners court a written request to approve a proposed primary and backup launch date for the launch and provides a copy of the request to the General Land Office;

(A) not later than the 14th day before the proposed primary launch date if the

proposed primary launch date is not on a day described by Subsection (d); or
(B) not later than the 28th day before the proposed primary launch date if the proposed primary launch date is on a day described by Subsection (d);
(2) the commissioners court approves a primary and backup launch date for the launch; and
(3) the launch takes place on the approved primary or backup launch date.

(d) The commissioners court may not approve a primary launch date consisting of any of the following days without the approval of the General Land Office:

- (1) the Saturday or Sunday preceding Memorial Day;
- (2) Memorial Day;
- (3) July 4;
- (4) Labor Day;
- (5) a Saturday after Memorial Day but before Labor Day; or
- (6) a Sunday after Memorial Day but before Labor Day.

(e) The commissioners court shall submit a written request to approve a primary launch date on a day described by Subsection (d) to the General Land Office not later than the 14th day before the proposed primary launch date. The request must include a justification for conducting the launch on the specified date.

(f) The General Land Office shall approve a request submitted under Subsection (e) if the office determines that there is a reasonable justification for conducting the launch on the specified date. Grounds for making such a determination include:

- (1) technical requirements;
- (2) significant adverse business consequences of not conducting the launch on the specified date; or
- (3) regulatory requirements.

(g) The General Land Office must approve or deny a request submitted under Subsection (e) not later than the third day after the date the office receives the request. If the General Land Office does not respond to the request on or before the third day after the date the office receives the request, the office is considered to have approved the request.

(h) The commissioners court may approve a

(d) The commissioners court may not close a beach or access points to the beach on a primary launch date consisting of any of the following days without the approval of the land office:

- (1) the Saturday or Sunday preceding Memorial Day;
- (2) Memorial Day;
- (3) July 4;
- (4) Labor Day; or
- (5) a Saturday or Sunday that is after Memorial Day but before Labor Day.

backup launch date of any day without the approval of the General Land Office.

(i) To protect the public health, safety, and welfare, the commissioners court by order may temporarily close a beach in reasonable proximity to the launch site or access points to the beach in the county on a primary or backup launch date approved under this section.

(j) The commissioners court must comply with the county's beach access and use plan adopted and certified under Section 61.015, Natural Resources Code, and dune protection plan adopted and certified under Chapter 63, Natural Resources Code, when closing a beach or access point under this section.

(k) The commissioners court may enter into a memorandum of understanding with the General Land Office as necessary to comply with the requirements of this section.

No equivalent provision.

(c) To protect the public health, safety, and welfare, the commissioners court by order may temporarily close a beach in reasonable proximity to the launch site or access points to the beach in the county on a primary or backup launch date, subject to Subsection (d).

(e) The commissioners court must comply with the county's beach access and use plan adopted and certified under Section 61.015 and dune protection plan adopted and certified under Chapter 63 when closing a beach or access point under this section.

(f) The land office may:

(1) approve or deny a beach or access point closure request under Subsection (d);

(2) enter into a memorandum of agreement with the commissioners court of a county to which this section applies to govern beach and access point closures made under this section; and

(3) adopt rules to govern beach and access point closures made under this section.

SECTION 2. Section 61.011(d), Natural Resources Code, is amended to read as follows:

(d) The commissioner shall promulgate rules, consistent with the policies established in this section, on the following matters only:

(1) acquisition by local governments or other appropriate entities or public dedication of access ways sufficient to provide adequate public ingress and egress to and from the beach within the area described in Subdivision (6);

(2) protection of the public easement from erosion or reduction caused by development or other activities on adjacent land and beach cleanup and maintenance;

(3) local government prohibitions of vehicular traffic on public beaches, provision of off-beach parking, the use on a public beach of a golf cart, as defined by Section 502.001, Transportation Code, for the transportation of a person with a physical disability, and other minimum measures needed to mitigate for any adverse effect on public access and dune areas;

(4) imposition of beach access, user, or

parking fees and reasonable exercises of the police power by local governments with respect to public beaches;

(5) contents and certification of beach access and use plans and standards for local government review of construction on land adjacent to and landward of public beaches, including procedures for expedited review of beach access and use plans under Section 61.015;

(6) construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public access to and use of public beaches;

(7) the temporary suspension under Section 61.0185 of enforcement of the prohibition against encroachments on and interferences with the public beach easement and the ability of a property owner to make repairs to a house while a suspension is in effect;

(8) the determination of the line of vegetation or natural line of vegetation;

(9) the factors to be considered in determining whether a structure, improvement, obstruction, barrier, or hazard on the public beach:

(A) constitutes an imminent hazard to safety, health, or public welfare; or

(B) substantially interferes with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach; ~~and~~

(10) the procedures for determining whether a structure is not insurable property for purposes of Section 2210.004, Insurance Code, because of the factors listed in Subsection (h) of that section; and

(11) the closure of beaches for space flight activities.

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 4. Same as introduced version.