

SENATE AMENDMENTS

2nd Printing

By: Guillen, Pacheco

H.B. No. 1544

A BILL TO BE ENTITLED

AN ACT

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; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 23, Tax Code, is amended by adding Section 23.527 to read as follows:

Sec. 23.527. TEMPORARY CESSATION OF AGRICULTURAL USE FOR SAND MINING OPERATION. (a) In this section:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Executive director" means the executive director of the commission.

(3) "Marketable material" means sand mined and processed for sale.

(4) "Sand mining operation" means an aggregate production operation registered under Chapter 28A, Water Code, at which sand is removed or extracted.

(5) "Unmarketable material" means material excavated or mined other than marketable material and includes surface soil, unmarketable sand, and overburden and interburden encountered during mining and processing operations.

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

1 (1) 30 miles of the boundary of a municipality with a
2 population of more than 500,000; or

3 (2) one mile of a building in use as a single-family or
4 multifamily residence.

5 (c) The measurement of distance for purposes of Subsection
6 (b) shall be taken from the point on the sand mining operation that
7 is nearest to the municipal boundary or residence toward the point
8 on the municipal boundary or residence that is nearest to the sand
9 mining operation.

10 (d) The eligibility of land for appraisal under this
11 subchapter does not end because the land ceases to be devoted
12 principally to agricultural use to the degree of intensity
13 generally accepted in the area if:

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

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

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

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

25 (f) The commission by rule shall adopt standard best
26 practices for reclamation of land used for a sand mining operation
27 to be used for the purposes of this section. The standards must:

- 1 (1) provide for the protection of surface water,
2 groundwater, agricultural land, wildlife habitat, and wetlands;
3 (2) require reclamation to:
4 (A) occur concurrently with sand mining
5 operations by managing the movement of marketable and unmarketable
6 material encountered during the operations; and
7 (B) incorporate best practices adopted by the
8 Natural Resources Conservation Service of the United States
9 Department of Agriculture;
10 (3) include post-mining reclamation grade standards;
11 (4) establish slope stabilization requirements,
12 including by grading perpendicular to the gradient;
13 (5) require unmarketable material from the land to be
14 stockpiled on the land and used as backfill for site restoration;
15 (6) prohibit the inclusion of material not excavated
16 from the land in the backfill used for site restoration;
17 (7) prohibit the stockpiling of unmarketable material
18 at a horizontal to vertical slope greater than a 3 to 1 ratio;
19 (8) require surface soil removed during sand mining
20 operations to be used as the uppermost layer of the final
21 reclamation grade;
22 (9) require a reclaimed area to be left for successive
23 vegetation growth after final reclamation grade standard best
24 practices have been satisfied; and
25 (10) encourage the construction of ponds to catch
26 runoff in locations that are outside critical runoff zones for
27 rivers.

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

10 (h) The executive director shall:

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

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

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

22 (i) Not later than the 20th day after the date of receipt of
23 the letter issued by the executive director, the owner seeking the
24 determination or the chief appraiser may appeal the executive
25 director's determination to the commission. The commission shall
26 consider the appeal at the next regularly scheduled meeting of the
27 commission for which adequate notice may be given. The owner

1 seeking the determination and the chief appraiser may testify at
2 the meeting. The commission may remand the matter to the executive
3 director for a new determination or deny the appeal and affirm the
4 executive director's determination. On issuance of a new
5 determination, the executive director shall issue a letter to the
6 owner seeking the determination and provide a copy to the chief
7 appraiser as provided by Subsection (h). A new determination of the
8 executive director may be appealed to the commission in the manner
9 provided by this subsection. A proceeding under this subsection is
10 not a contested case for purposes of Chapter 2001, Government Code.

11 (j) The executive director shall issue a determination
12 letter required by Subsection (h) to the owner seeking the
13 determination, and the commission shall take final action on the
14 initial appeal under Subsection (i) if an appeal is made, not later
15 than the first anniversary of the date the executive director
16 receives the request from the owner for the determination.

17 (k) The commission may charge an owner seeking a
18 determination letter under this section a fee not to exceed its
19 administrative costs for making the determination and issuing the
20 letter required by this section.

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

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

27 (b) Notwithstanding Section 23.527(e), Tax Code, as added

1 by this Act, the eligibility of the land for appraisal under
2 Subchapter D, Chapter 23, Tax Code, does not end because the land
3 ceases to be devoted principally to agricultural use to the degree
4 of intensity generally accepted in the area if:

5 (1) the owner of the land provides the notice required
6 by Section 23.527(e), Tax Code, as added by this Act, not later than
7 the 90th day after the effective date of this Act; and

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

12 SECTION 3. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2021.

ADOPTED

MAY 14 2021

Lately Saw
Secretary of the Senate

By: *Zaffini*

H.B. No. 1544

Substitute the following for ___B. No. _____:

By: *[Signature]*

C.S. ___B. No. _____

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AN ACT

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(4) "Sand mining operation" means an aggregate production operation registered under Chapter 28A, Water Code, at which sand is removed or extracted.

(5) "Unmarketable material" means material excavated or mined other than marketable material and includes surface soil, unmarketable sand, and overburden and interburden encountered during mining and processing operations.

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

1 (1) 30 miles of the boundary of a municipality with a
2 population of more than 500,000; or

3 (2) one mile of a building in use as a single-family or
4 multifamily residence.

5 (c) The measurement of distance for purposes of Subsection
6 (b) shall be taken from the point on the sand mining operation that
7 is nearest to the municipal boundary or residence toward the point
8 on the municipal boundary or residence that is nearest to the sand
9 mining operation.

10 (d) The eligibility of land for appraisal under this
11 subchapter does not end because the land ceases to be devoted
12 principally to agricultural use to the degree of intensity
13 generally accepted in the area if:

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

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

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

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

25 (f) The commission by rule shall adopt standard best
26 practices for reclamation of land used for a sand mining operation
27 to be used for the purposes of this section. The standards must:

1 (1) provide for the protection of surface water,
2 groundwater, agricultural land, wildlife habitat, and wetlands;
3 (2) require reclamation to:
4 (A) occur concurrently with sand mining
5 operations by managing the movement of marketable and unmarketable
6 material encountered during the operations; and
7 (B) incorporate best practices adopted by the
8 Natural Resources Conservation Service of the United States
9 Department of Agriculture;
10 (3) include post-mining reclamation grade standards;
11 (4) establish slope stabilization requirements,
12 including by grading perpendicular to the gradient;
13 (5) require unmarketable material from the land to be
14 stockpiled on the land and used as backfill for site restoration;
15 (6) prohibit the inclusion of material not excavated
16 from the land in the backfill used for site restoration;
17 (7) prohibit the stockpiling of unmarketable material
18 at a horizontal to vertical slope greater than a 3 to 1 ratio;
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20 operations to be used as the uppermost layer of the final
21 reclamation grade;
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23 vegetation growth after final reclamation grade standard best
24 practices have been satisfied; and
25 (10) encourage the construction of ponds to catch
26 runoff in locations that are outside critical runoff zones for
27 rivers.

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

10 (h) The executive director shall:

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

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

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

22 (i) Not later than the 20th day after the date of receipt of
23 the letter issued by the executive director, the owner seeking the
24 determination or the chief appraiser may appeal the executive
25 director's determination to the commission. The commission shall
26 consider the appeal at the next regularly scheduled meeting of the
27 commission for which adequate notice may be given. The owner

1 seeking the determination and the chief appraiser may testify at
2 the meeting. The commission may remand the matter to the executive
3 director for a new determination or deny the appeal and affirm the
4 executive director's determination. On issuance of a new
5 determination, the executive director shall issue a letter to the
6 owner seeking the determination and provide a copy to the chief
7 appraiser as provided by Subsection (h). A new determination of the
8 executive director may be appealed to the commission in the manner
9 provided by this subsection. A proceeding under this subsection is
10 not a contested case for purposes of Chapter 2001, Government Code.

11 (j) The executive director shall issue a determination
12 letter required by Subsection (h) to the owner seeking the
13 determination, and the commission shall take final action on the
14 initial appeal under Subsection (i) if an appeal is made, not later
15 than the first anniversary of the date the executive director
16 receives the request from the owner for the determination.

17 (k) The commission may charge an owner seeking a
18 determination letter under this section a fee not to exceed its
19 administrative costs for making the determination and issuing the
20 letter required by this section.

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

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

27 (b) Notwithstanding Section 23.527(e), Tax Code, as added

1 by this Act, the eligibility of the land for appraisal under
2 Subchapter D, Chapter 23, Tax Code, does not end because the land
3 ceases to be devoted principally to agricultural use to the degree
4 of intensity generally accepted in the area if:

5 (1) the owner of the land provides the notice required
6 by Section 23.527(e), Tax Code, as added by this Act, not later than
7 the 90th day after the effective date of this Act; and

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

12 SECTION 3. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2021.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 14, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1544 by Guillen (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; authorizing a fee.), **As Passed 2nd House**

The bill would have an indeterminate fiscal impact to the state because the amount of fees collected for determination letters and the value and number of acres that would qualify for continued special open space appraisal under the specific parameters of the bill are unknown.

Additionally, enactment of the bill would provide that the eligibility of land for special open space appraisal does not end because the land is used for a sand mining operation for a limited time. As a result, taxable property values could be reduced and the related costs to the Foundation School Fund could be increased through the operation of the school finance formulas.

The bill would amend Subchapter D, Chapter 23 of the Tax Code, regarding appraisal of agricultural land, to add a new section 23.527 that would provide that the eligibility of land for special open space appraisal 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 landowner intends to resume the agricultural use of the land to that degree of intensity;
2. the land is used for a sand mining operation; and
3. the land is reclaimed according to the standard best practices as provided by this bill.

The landowner would be required to notify the appraisal office in writing not later than the 30th day after the date sand mining operations begin that the owner intends to ensure that the above requirements are met. The Texas Commission on Environmental Quality (TCEQ) would be required to establish a process to allow a landowner who submits notification to the appraisal office to obtain a letter of determination from the executive director stating whether the land was reclaimed according to the best practices adopted by TCEQ. TCEQ could charge a fee for the determination letter in an amount not exceeding their administrative cost.

The bill would only apply to sand mining operations that overlie the Carrizo-Wilcox Aquifer, and are located either within 30 miles of a municipality with a population of more than 500,000 or within one mile of a residential building.

TCEQ would be authorized to collect fees not exceeding their administrative cost for determination letters for site reclamation permits. Because the fee amount is unknown, the state fiscal impact associated with these fees cannot be determined.

Special open space appraisal of agricultural land results in an appraised value that is significantly lower than the land's market value. Consequently, the bill's provisions that would keep land used in sand mining qualified for special appraisal that would otherwise be appraised at its higher market value would create a cost to local taxing units and to the state through the school funding formulas. The value and number of acres that would qualify for continued special open space appraisal under the specific parameters of the bill are unknown. Therefore, the cost cannot be estimated.

This bill would take effect immediately upon enactment, assuming it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2021.

Local Government Impact

Enactment of the bill would provide that the eligibility of land for special open space appraisal does not end because the land is used for a sand mining operation for a limited time. As a result, taxable property values and the related ad valorem tax revenue for units of local government could be reduced. The value and number of acres that would qualify for continued special open space appraisal under the specific parameters of the bill are unknown. Therefore, the cost cannot be estimated.

Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office, 455 Railroad Commission, 582 Commission on Environmental Quality

LBB Staff: JMc, LBO, KK, SD, BRI, AJL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 11, 2021

TO: Honorable Jane Nelson, Chair, Senate Committee on Finance

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1544 by Guillen (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; authorizing a fee.), **Committee Report 2nd House, Substituted**

The bill would have an indeterminate fiscal impact to the state because the amount of fees collected for determination letters and the value and number of acres that would qualify for continued special open space appraisal under the specific parameters of the bill are unknown.

Additionally, enactment of the bill would provide that the eligibility of land for special open space appraisal does not end because the land is used for a sand mining operation for a limited time. As a result, taxable property values could be reduced and the related costs to the Foundation School Fund could be increased through the operation of the school finance formulas.

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3. the land is reclaimed according to the standard best practices as provided by this bill.

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The bill would only apply to sand mining operations that overlie the Carrizo-Wilcox Aquifer, and are located either within 30 miles of a municipality with a population of more than 500,000 or within one mile of a residential building.

TCEQ would be authorized to collect fees not exceeding their administrative cost for determination letters for site reclamation permits. Because the fee amount is unknown, the state fiscal impact associated with these fees cannot be determined.

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This bill would take effect immediately upon enactment, assuming it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2021.

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Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office, 455 Railroad Commission, 582 Commission on Environmental Quality

LBB Staff: JMc, KK, SD, BRI, AJL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 23, 2021

TO: Honorable Jane Nelson, Chair, Senate Committee on Finance

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1544 by Guillen (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; authorizing a fee.), **As Engrossed**

The bill would have an indeterminate fiscal impact to the state because the amount of fees collected for determination letters and the value and number of acres that would qualify for continued special open space appraisal under the specific parameters of the bill are unknown.

Additionally, enactment of the bill would provide that the eligibility of land for special open space appraisal does not end because the land is used for a sand mining operation for a limited time. As a result, taxable property values could be reduced and the related costs to the Foundation School Fund could be increased through the operation of the school finance formulas.

The bill would not make any appropriation but could provided the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would amend the Tax Code related to the eligibility of land to continue to be appraised for ad valorem tax purposes if the land is temporarily used for sand mining operations. The bill would apply to sand mining operations that overlie the Carrizo Aquifer and is located within 30 miles of a municipality boundary with a population of more than 500,000 or one mile of a building in use as a residence. The bill would require the Commission on Environmental Quality to 1) adopt rules stating the standard best practices for reclamation of land used for sand mining, 2) establish a process to allow a land owner to obtain a letter determining whether land was reclaimed according to standard best practices, 3) notify appraisal districts that a land owner has applied for a determination letter, and 4) issue a determination letter to the requesting landowner and affected appraisal district. The Commission on Environmental Quality would, under the provisions of the bill, be authorized to charge a fee to landowners seeking a determination letter. The fee could not exceed the administrative costs associated with making the determination and issuing the determination letter.

According to the Comptroller of Public Accounts, the amount of requests for letters of determination and associated fee revenue for making determinations and issuing determination letters cannot be determined. Additionally, it is assumed that any fee revenue would be deposited to the credit of General Revenue.

The Commission on Environmental Quality indicated that any costs associated with implementing the provisions of the bill could be absorbed within the agency's existing resources.

According to the Comptroller of Public Accounts, special open space appraisal of agricultural land results in an appraised value that is significantly lower than the land's market value. Consequently, the bill's provisions that would keep land used in sand mining qualified for special appraisal that would otherwise be appraised at its higher market value would create a cost to local taxing units and to the state through the school funding formulas. The value and number of acres that would qualify for continued special open space appraisal under the specific parameters of the bill are unknown. Consequently, the cost cannot be estimated.

The bill would take effect immediately with a two-thirds vote, otherwise on September 1, 2021.

Local Government Impact

Any local or governmental entities operating sand mining operations in areas defined in the bill would be subject to the requirements and associated costs resulting from this bill. Although these costs cannot be determined, it is assumed these costs would not be significant.

Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office, 455 Railroad Commission, 582 Commission on Environmental Quality

LBB Staff: JMc, KK, AJL, SD, BRI

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

March 22, 2021

TO: Honorable Tracy O. King, Chair, House Committee on Natural Resources

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB1544** by Guillen (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; authorizing a fee.), **As Introduced**

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