

SUBJECT: TPWD permits to take marl, sand, gravel, shell or mudshell

COMMITTEE: State Recreational Resources — committee substitute recommended

VOTE: 6 ayes — Kuempel, Siebert, Hightower, Horn, Oakley, B. Turner
0 nays
3 absent — Black, Rabuck, Woolley

WITNESSES: For — B.L. Parker, Sand Supply Inc.
Against — None
On — Catherine Livingston, Texas Parks and Wildlife Department

BACKGROUND: Parks and Wildlife Code Chapter 86 authorizes the Parks and Wildlife Commission to manage, control and protect marl and sand of commercial value and all gravel, shell and mudshell located within the tidewater limits and freshwater areas of the state.

DIGEST: CSHB 1823 would add several factors to be considered before applicants could be granted a permit to take marl, sand, gravel, shell, or mudshell. The new considerations would include that wildlife could not be damaged or injured; the hydrology of the river could not be significantly changed or injured; downstream nonpoint source pollution could not be increased; and erosion upstream or downstream could not be accelerated.

Exemptions from the permit process could be established by the commission by rule for activities that do not cost the state a significant amount of money, take an insignificant amount of material, restore or maintain the storage capacity of existing public water supplies, are carried out by public utilities for noncommercial purposes or are public road projects contracted by the Texas Department of Transportation.

The commission could delegate to the director authority to grant uncontested permits relating to this material if the application met all statutory and administrative criteria, no new issues affecting commission

policy were presented, no objection was raised by department staff and no timely written request for hearing was filed or all requests for a hearing had been withdrawn.

The commission could require the performance of scientific studies to determine the cumulative effect of permitted operations in a watershed on natural resources. The commission could reimburse a permit holder for costs incurred up to one-fourth of all royalty fees paid by the permit holder to the commission. Total reimbursements to all participating permit holders could not exceed half the total cost of the study.

Violations of the provisions would be a Class C Parks and Wildlife Code misdemeanor, which is punishable by a fine of \$25 to \$500. In addition, the individual taking marl, sand, gravel or mudshell in violation of the law would be liable for the value of the material taken and subject to a civil penalty of \$100 to \$10,000 for each act of violation and for each day of violation.

If a person has violated, is violating, or is threatening to violate the provisions relating to the illegal taking of material, the director of TPWD could bring suit to restrain the person from continuing and could seek injunctive relief.

CSHB 1823 would take effect September 1, 1995.

NOTES:

HB 1318 by Kuempel, which would grant an exemption from the permitting process for public utilities to take marl, sand, gravel or mud for noncommercial, utility maintenance projects, has passed the House and the Senate and been sent to the governor.