

- SUBJECT:** Utility construction exemption from sand and gravel permits
- COMMITTEE:** State Recreational Resources — favorable, without amendment
- VOTE:** 7 ayes — Cook, Alexander, J. Davis, Ellis, Homer, Hope, Ritter
0 nays
2 absent — Kuempel, Crownover
- SENATE VOTE:** On final passage, March 25 — 31-0
- WITNESSES:** (*On House companion bill, HB 1892:*)
For — Shawn Glacken, Association of Electric Companies of Texas

Against — None

On — Paul M. Shinkawa, Texas Parks and Wildlife Department
- BACKGROUND:** When utility lines are installed, they often run across a creek or stream bed. To excavate a stream bed to bury a new utility line, a public utility company must have a permit from the Texas Parks and Wildlife Commission to disturb or take sand and gravel. HB 1318 by Kuempel, enacted by the 74th Legislature in 1995, exempted maintenance projects by public utilities from the permits and fees required for disturbing or taking marl, sand, gravel, shell, and mudshell for noncommercial purposes.
- DIGEST:** SB 707 would require the Parks and Wildlife Commission to exempt a public utility building a new utility line from the permits and fees required for disturbing or taking marl, sand, gravel, shell, and mudshell.

The bill would require public utilities to make every reasonable effort to use the best management practices established by the commission.

The bill would take effect September 1, 1999.

**SUPPORTERS
SAY:**

SB 707 would clarify existing law by specifying that public utility companies not only could perform maintenance but also could build new utility lines while remaining exempt from the permit and fee requirements for disturbing or taking sand, gravel, and other substances.

Under the bill, public utilities would have to follow the best management practices set out by Parks and Wildlife Commission rules. The practices covered by these rules are designed to minimize potential adverse effects on resources and would help preserve an undisturbed look in areas where new utility lines had been laid.

**OPPONENTS
SAY:**

SB 707 is not needed, since the Parks and Wildlife Commission already has the authority to exempt projects that result in insignificant takings or disturbances of sand and gravel.

Exempting utility maintenance projects from permit requirements is understandable because maintenance normally does not disturb sand and gravel significantly in stream and creek beds. Building a new utility line, in contrast, is a major activity that should not be exempt from the permitting process. The commission should examine all such actions and then decide whether to exempt the activity or to require the utility to obtain a permit.

The requirement for a public utility to make “every reasonable effort” to use best management practices is too vague. Public utilities should be required to use best management practices. In the case of utility construction, such practices can help preserve fish and wildlife habitat.

This bill could allow utilities to lay out lines across hundreds of stream beds and not restore the stream beds as they now are required to do, because the high cost of restoration could be considered an unreasonable effort.