

BILL ANALYSIS

Senate Research Center

S.B. 1354
By: Estes
Natural Resources
5/31/2005
Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, no existing law regulates discharges from quarry operations along a specific stretch of the Brazos River. Non-permitted rock mining operations along the Brazos River and its tributaries in Palo Pinto and Parker counties have adversely changed the ecology of the river and impacted the quality of the surface water.

The Texas Commission on Environmental Quality (TCEQ) performed an interim statewide study on this and similar issues and found that the worst problems of this type are concentrated along this 115-mile section of the Brazos River. The problem occurs when limestone, sandstone and other aggregates are mined from the hills and bluffs along the river, thus exposing the earth beneath. During heavy rains, the water washes the exposed soil into the river, resulting in unnatural islands, excessive sedimentation, bank erosion, and damage to fish and game habitat.

S.B. 1354 addresses a local problem caused by unregulated rock mining operations along a short section of the Brazos River in Palo Pinto and Parker counties. C.S.S.B. 1354 establishes specific permitting and enforcement programs for this special stretch of the Brazos River by developing a pilot permitting program requiring individual or general permits for quarries, depending on their proximity to the river. It requires quarry operators to submit reasonable and responsible reclamation and restoration plans while providing financial assurances to mitigate damages from unauthorized discharges.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (Sections 26.553 and 26.554, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth legislative acknowledgements regarding specific issues concerning the water quality in watersheds threatened by quarry activities.

SECTION 2. Amends Chapter 26, Water Code, by adding Subchapter M, as follows:

SUBCHAPTER M. WATER QUALITY PROTECTION AREAS

Sec. 26.551. DEFINITIONS. Defines "aggregates," "John Graves Scenic Riverway," "operator," "overburden," "owner," "pit," "quarry," "quarrying," "refuse," "responsible party," "water quality protection area," and "water body."

Sec. 26.552. APPLICABILITY; PILOT PROGRAM. (a) Provides that this subchapter applies only to a water quality protection area designated by Texas Commission on Environmental Quality (TCEQ) rule and to quarrying in the area. Provides that this subchapter does not apply to municipal solid waste facilities under certain circumstances.

(b) Requires TCEQ, for the period of September 1, 2005, to September 1, 2025, to apply this subchapter as a pilot program only in the John Graves Scenic Riverway.

(c) Provides that this subchapter does not apply under specific circumstances.

Sec. 26.553. REGULATION OF QUARRIES WITHIN WATER QUALITY PROTECTION AREA. (a) Requires TCEQ to require a responsible party to obtain an individual permit for any discharges from a quarry located in a water quality protection area with specific characteristics.

(b) Requires TCEQ to require a responsible party to obtain a general permit under Section 26.040 (General Permits) for any quarry that is located in a water quality protection area and located a distance of more than one mile from any water body.

(c) Requires TCEQ, subject to Subsection (d), to prohibit the construction or operation of any new quarry, or the expansion of an existing quarry, located within 1,500 feet of a water body located in a water quality protection area for which a person files an application for a permit or permit amendment after September 1, 2005.

(d) Authorizes TCEQ, notwithstanding Subsection (c), to issue or amend a permit to authorize the construction or operation of a quarry located between 200 and 1,500 feet of a water body based on the responsible party fulfilling specific requirements.

(e) Requires TCEQ, by rule, to establish effluent or other water quality requirements, including requirements for financial responsibility, adequate to protect the water resources in a water quality protection area for inclusion in any authorization, including an individual or general permit, issued under this section by TCEQ.

(f) Requires the responsible party for a quarry located in a water quality protection area required to obtain an individual or general permit, in addition to any other requirements established by TCEQ rule adopted under Subsection (e), to include specific information regarding a proposed plan of action and evidence of sufficiently funded bonding or proof of financial resources with an application filed with TCEQ under this section.

Sec. 26.554. FINANCIAL RESPONSIBILITY FOR DISCHARGES OF CERTAIN WASTES WITHIN WATER QUALITY PROTECTION AREA. (a) Requires TCEQ, by rule, to adopt requirements for maintaining evidence of financial responsibility for restoration of a water body affected by an unauthorized discharge from a permitted quarry or taking corrective action and compensating for water quality effects caused by an unauthorized discharge resulting from quarrying.

(b) Provides that a responsible party commits a violation upon operating a permitted quarry knowing that financial responsibility required by a permit does not exist.

Sec. 26.555. INSPECTIONS OF AND SAMPLING OF WATER IN JOHN GRAVES SCENIC RIVERWAY. (a) Requires TCEQ, the Brazos River Authority, and the Parks and Wildlife Department to coordinate efforts to conduct certain inspections each calendar year in order to detect potential violations of this subchapter in the John Graves Scenic Riverway.

(b) Requires the visual inspections and the drawing of water samples to be conducted at least once in a winter month and at least once in a summer month. Requires the visual inspections to be conducted both from the surface of the John Graves Scenic Riverway and from an aircraft flying over the riverway.

Sec. 26.556. UNAUTHORIZED DISCHARGES OF CERTAIN WASTES WITHIN WATER QUALITY PROTECTION AREA; ENFORCEMENT. (a) Requires TCEQ to enforce this subchapter and impose administrative and civil penalties for discharges from a quarry in violation of this subchapter. Requires TCEQ, subject to Subsection (d), to assess an administrative penalty against a responsible party of a quarry responsible for a

discharge in violation of this subchapter or of a permit, rule, or order adopted under this subchapter in an amount of not less than \$2,500 and not more than \$25,000 for each violation of this subchapter or of the permit, rule, or order adopted or issued under this subchapter. Requires TCEQ, subject to Subsection (d), to assess an administrative penalty against a person for any other violation of this subchapter or of a permit, rule, or order adopted or issued under this subchapter in an amount of not less than \$100 for each violation of this subchapter or of the permit, rule, or order adopted or issued under this subchapter. Provides that each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(b) Requires TCEQ, in determining the amount of the penalty, to consider specific issues concerning the nature, circumstances, extent, duration, and gravity of the prohibited acts, and the hazard or potential hazard the violation presents to the health, safety, or welfare of the public, the effects of the violation on instream uses, water quality, and fish and wildlife habitat, specific issues regarding the alleged violator and any other matters that justice may require.

(c) Authorizes TCEQ, in addition to the administrative penalties and other available remedies or causes of action, to seek injunctive relief in the district courts of Travis County to take specific measures concerning the forced closure of a quarry, either temporary or permanent.

(d) Authorizes TCEQ to compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. Authorizes TCEQ, in determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, to consider a respondent's willingness to contribute to supplemental environmental projects that are approved by TCEQ, giving preference to projects that benefit the community in which the alleged violation occurred and address specific issues regarding water quality. Authorizes TCEQ to encourage the cleanup of contaminated property through the use of supplemental environmental projects. Prohibits TCEQ from approving a project that is necessary to bring a respondent into compliance with environmental laws, that is necessary to remediate environmental harm caused by the respondent's alleged violation, or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency.

(e) Provides that a violation of this subchapter also constitutes an offense that may be prosecuted and punished under Section 7.147 (Unauthorized Discharge).

(f) Provides that nothing in this subchapter affects the right of any person that has a justiciable interest to pursue an available common law or statutory remedy to enforce a right, to prevent or seek redress or compensation for the violation of a right, or otherwise to redress an injury.

Sec. 26.557. EMERGENCY ORDERS. Authorizes TCEQ to issue a temporary or emergency order under Section 5.509 (Temporary or Emergency Order Relating to Discharge of Waste or Pollutants) relating to a discharge of waste or pollutants from a quarry in a water quality protection area.

Sec. 26.558. RECOVERY OF COSTS FOR UNAUTHORIZED DISCHARGES WITHIN WATER QUALITY PROTECTION AREA. Provides that if TCEQ has incurred any costs in undertaking a corrective or enforcement action with respect to an unauthorized discharge from a quarry under this subchapter, including a reclamation or restoration action, the responsible party is liable to the state for all reasonable costs of the corrective or enforcement action, including court costs and reasonable attorney's fees, and for any punitive damages that may be assessed by the court.

Sec. 26.559. RECLAMATION AND RESTORATION FUND ACCOUNT. (a) Requires penalties and other money received by TCEQ as a result of an enforcement action taken under this subchapter, and any gift or grant TCEQ receives for the purposes of this subchapter to be deposited into the reclamation and restoration fund account

(account) in the general revenue fund. Authorizes money in the account to be appropriated only to TCEQ for the reclamation and restoration of the beds, bottoms, and banks of water bodies affected by the unlawful discharges subject to this subchapter.

(b) Requires TCEQ, at least 60 days before spending money from the account, to publish notice of its proposed plan and conduct a hearing for the purpose of soliciting public comment, oral or written. Requires TCEQ to fully consider all written and oral submissions on the proposed plan.

(c) Requires the notice to be published in the Texas Register and in a newspaper of general circulation in the county where the violation resulting in the payment of the penalties or other money occurred, at least 30 days before the date of the public hearing.

(d) Requires interest and other income earned on money in the account to be credited to the account. Provides that the account is exempt from the application of Section 403.095 (Use of Dedicated Revenue), Government Code.

Sec. 26.560. COOPERATION WITH OTHER STATE AGENCIES. (a) Provides that TCEQ is the principal authority in the state on matters relating to the implementation of this subchapter. Requires all other state agencies engaged in water quality or water pollution control activities in a water quality protection area to coordinate those activities with TCEQ.

(b) Authorizes the executive director of TCEQ, with the consent of TCEQ, to enter into contracts, memoranda of understanding, or other agreements with other state agencies for purposes of developing effluent or other water quality requirements, including requirements for financial responsibility, adequate to protect the water resources in a water quality protection area, in any individual or general permit or other authorization issued under this subchapter.

Sec. 26.561. WATER QUALITY PROTECTION AREA REPORTS. (a) Requires TCEQ, on or before December 1, 2006, to prepare a report describing its implementation of this subchapter and provide copies of the report to specific members of the legislature.

(b) Requires TCEQ, beginning December 1, 2008, and on December 1 of each succeeding even-numbered year, to deliver a report to the specific members of the legislature, evaluating the success of its implementation of the water quality protection permitting and enforcement programs developed under this subchapter.

Sec. 26.562. EXPIRATION. Provides that this subchapter expires September 1, 2005.

SECTION 3. Effective date: upon passage or the 91st day after adjournment.