

BILL ANALYSIS

C.S.S.B. 1354
By: Estes
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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 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 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, sedimentation, bank erosion and damage to fish and game habitat.

C.S.S.B. 1354 addresses a 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 reclamation and restoration plans while providing financial assurances to mitigate damages from unauthorized discharges.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 of this bill.

ANALYSIS

C.S.S.B. 1354 sets forth legislative acknowledgments concerning the water quality in watersheds threatened by quarry activities.

The bill amends the Water Code to add a subchapter entitled "Water Quality Protection Areas". The bill provides that these provisions apply only to a water protection area designated by TCEQ rule and to quarrying in the area. The bill requires the TCEQ to apply these provisions as a pilot program only in the John Graves Scenic Riverway from September 1, 2005 until September 1, 2025. The bill defines the John Graves Scenic Riverway as the portion of the Brazos River Basin, and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County and extending to the county line between Parker and Hood Counties.

The bill requires a responsible party to obtain a permit for any discharges from a quarry located in a water quality protection area that is located within a 100 year floodplain or within one mile of any water body. The bill requires a responsible party to obtain a general permit for any quarry that is located in a water quality protection area and located more than one mile from any water body. The bill prohibits 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 protection area. The bill allows the TCEQ to issue or amend a permit for a quarry located between 200 and 1,500 feet of a water body upon satisfying certain conditions. The bill sets forth requirements for these permits and the application. The bill sets forth provisions relating to the financial responsibility for discharges of certain wastes within a water quality protection area. The bill sets forth provisions relating to the enforcement for unauthorized discharges includes a penalty of between

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\$2,500 and \$25,000 for each violation by a responsible party and not less than \$100 for each violation by a person. The bill authorizes the TCEQ to issue a temporary or emergency order relating to a discharge of waste or pollutants from a quarry in a water quality protection area. The bill allows TCEQ to recover costs for unauthorized discharges within a water quality protection area.

The bill sets forth provisions relating to the inspection of and sampling of water in the John Graves Scenic Riverway.

The bill creates a reclamation and restoration fund account consisting of penalties and other money received as a result of enforcement action under these provisions. Money in this fund may only be appropriated to the TCEQ for reclamation and restoration of beds, bottoms, and banks of water bodies affected by unlawful discharges under these provisions. The bill sets forth provisions relating to the disposition of these funds, including an opportunity for public comment. The bill sets forth provisions relating to cooperation with other state agencies. The bill sets forth provisions relating to water quality protection area reports.

The bill provides that the provisions of the added subchapter do not apply to the construction or operation of a municipal solid waste facility regardless of whether the facility includes a pit or quarry that is associated with past quarrying. The bill provides that the added subchapter does not apply to a quarry that since January 1, 1994 has been in regular operation in the John Graves Scenic Riverway without cessation of operation for more than 30 consecutive days. The bill provides that the entire subchapter expires on September 1, 2025.

EFFECTIVE DATE

If this Act does not receive the necessary vote for immediate effect, this Act takes effect 91 days after the last day of the legislative session.

COMPARISON OF SUBSTITUTE TO ORIGINAL

The substitute amends the definition of "quarry" and "quarrying" to specify extraction for commercial sale. The substitute provides that the provisions of the added subchapter do not apply to the construction or operation of a municipal solid waste facility regardless of whether the facility includes a pit or quarry that is associated with past quarrying. The substitute provides that the provisions of the added subchapter do not apply to an activity, facility, or operation regulated under the Texas Surface Coal Mining and Reclamation Act. The substitute provides that the added subchapter does not apply to a quarry that since January 1, 1994 has been in regular operation in the John Graves Scenic Riverway without cessation of operation for more than 30 consecutive days. The substitute provides that the entire subchapter expires on September 1, 2025.

The bill amends the definition of "responsible party" to include a "lessee" rather than an "owner of lessee".