

By: Fraser

S.B. No. 785

Substitute the following for S.B. No. 785:

By: Homer

C.S.S.B. No. 785

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of quarries; providing penalties.

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

SECTION 1. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.067 to read as follows:

Sec. 382.067. LIMITATIONS ON CERTAIN ROCK CRUSHERS. (a)  
This section applies only to a rock crusher:

(1) for which:

(A) an application for a permit under Section 382.0518 was received by the commission on or before July 1, 2003;  
and

(B) a permit under Section 382.0518 was not issued before September 1, 2005; and

(2) that is located over an aquifer designated as a sole source aquifer under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

(b) A person may not operate a rock crusher under a permit under Section 382.0518 that is located less than one mile from a building used as a single or multifamily residence, school, or place of worship at the time the application for a permit to operate the crusher was filed with the commission. The measurement of distance for purposes of this section shall be taken from the point on the rock crusher that is nearest to the residence, school, or place of worship toward the point on the residence, school, or place

1 of worship that is nearest the rock crusher.

2 (c) The commission may not authorize a person to operate a  
3 rock crusher under a permit by rule.

4 SECTION 2. The heading to Subtitle C, Title 5, Health and  
5 Safety Code, is amended to read as follows:

6 SUBTITLE C. AIR AND ENVIRONMENTAL QUALITY

7 SECTION 3. Subtitle C, Title 5, Health and Safety Code, is  
8 amended by adding Chapter 390 to read as follows:

9 CHAPTER 390. QUARRY PERMIT

10 Sec. 390.001. DEFINITIONS. In this chapter:

11 (1) "Aggregates" includes any commonly recognized  
12 construction material originating from a quarry or pit by the  
13 disturbance of the surface, including dirt, soil, rock asphalt,  
14 clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche,  
15 limestone, dolomite, rock, riprap, or other nonmineral substance.

16 (2) "Commission" means the Texas Commission on  
17 Environmental Quality.

18 (3) "Operator" means any person proposing the creation  
19 of a quarry or engaged in and responsible for the physical operation  
20 and control of a quarry.

21 (4) "Pit" means an open excavation not less than five  
22 feet below the adjacent and natural ground level from which  
23 aggregates have been or are being extracted for commercial sale.

24 (5) "Quarry" means the site where aggregates are being  
25 or have been removed or extracted for commercial sale from the earth  
26 to form the pit, including the entire excavation, stripped areas,  
27 and haulage ramps and land adjacent to those areas on which the

1 plant processing the raw materials is located. The term does not  
2 include:

3 (A) land owned or leased by the operator that is  
4 not used in the production of aggregates; or

5 (B) a mining or reclamation activity regulated  
6 under Chapter 134, Natural Resources Code.

7 Sec. 390.002. APPLICABILITY. This chapter applies to a  
8 quarry only if the quarry operation includes a rock crusher:

9 (1) for which:

10 (A) an application for a permit under Section  
11 382.0518 was received by the commission on or before July 1, 2003;  
12 and

13 (B) a permit under Section 382.0518 was not  
14 issued before September 1, 2005; and

15 (2) that is located over an aquifer designated as a  
16 sole source aquifer under the federal Safe Drinking Water Act (42  
17 U.S.C. Section 300f et seq.).

18 Sec. 390.003. PERMIT REQUIRED. An operator may not create  
19 or begin operating a quarry unless the operator has obtained a  
20 quarry permit under this chapter from the commission.

21 Sec. 390.004. APPLICATION PROCEDURE. (a) An application  
22 for a quarry permit must include:

23 (1) a site plan that contains:

24 (A) a site map detailing the proposed permit  
25 area;

26 (B) the location and identity of all affected and  
27 unaffected areas;

1                    (C) a description of the location of the quarry,  
2 including the distance and direction from the nearest:

3                    (i) stream and groundwater source;  
4                    (ii) state and county road;  
5                    (iii) intersection;  
6                    (iv) dwelling;  
7                    (v) school;  
8                    (vi) place of worship; and  
9                    (vii) commercial or institutional building  
10 that is neither owned nor leased by the operator;

11                   (D) the ingress and egress routes for materials  
12 to be transported on public roadways;

13                   (E) a general description of the anticipated  
14 stages in which the quarry will be mined;

15                   (F) subject to Subsection (e), a report from an  
16 independent hydrologist, professional geoscientist, or  
17 professional engineer retained by the operator on the groundwater  
18 or surface water in the quarried area, including any  
19 recommendations by the hydrologist, geoscientist, or engineer to  
20 prevent a detrimental effect on the groundwater and surface water;  
21 and

22                   (G) if a report is required under Paragraph (F),  
23 a description of how the operator will address the recommendations  
24 made in the hydrologist's report;

25                   (2) if blasting will be conducted in the quarry, a  
26 blasting plan that contains:

27                   (A) a description of the blasting equipment and

1 procedures to be used at the site; and

2 (B) a description of the procedures and plans for  
3 the recording and retention of blasting records for each blast that  
4 is to be conducted at the site; and

5 (3) proof that the operator holds a permit under  
6 Section 382.0518 for the rock crusher located at the quarry.

7 (b) A quarry permit application fee of \$1,000 must accompany  
8 the application.

9 (c) If the commission denies an application, not later than  
10 the 60th day after the date the commission received the  
11 application, the commission shall notify the applicant in writing  
12 of the commission's decision, specifying any defects in the  
13 application. An applicant denied a permit under this subsection  
14 may submit a modified application.

15 (d) A proceeding to consider a quarry permit application or  
16 to issue a quarry permit is not a contested case for purposes of  
17 Chapter 2001, Government Code.

18 (e) An application for a permit under this section for a  
19 quarry that does not have groundwater or surface water in the  
20 quarried area is not required to include a report under Subsection  
21 (a)(1)(F) or a description of how the operator will address  
22 recommendations under Subsection (a)(1)(G).

23 Sec. 390.005. PERMIT EXPIRATION AFTER NONUSE. A permit  
24 issued to create or begin operating a quarry expires on the fifth  
25 anniversary of the date that the permit was issued if quarry  
26 operations have not begun at the permit area before that date.

27 Sec. 390.006. PERMIT AMENDMENT. (a) A quarry operator must

1 obtain a permit amendment:

2 (1) before a quarry may be expanded to an adjacent  
3 tract of land; or

4 (2) if emissions from a rock crusher associated with  
5 the quarry increase substantially, as determined by the commission.

6 (b) An applicant for a permit amendment must submit an  
7 application that contains the information required by Section  
8 390.004.

9 Sec. 390.007. NOTICE TO CERTAIN OFFICIALS AND GROUNDWATER  
10 CONSERVATION DISTRICT. On receipt of an application for a quarry  
11 permit, the commission shall send notice of the application to:

12 (1) each state senator and state representative who  
13 represents the area in which the quarry will be located;

14 (2) the county judge and county commissioners of each  
15 county in which the quarry will be located; and

16 (3) each groundwater conservation district in which  
17 the quarry will be located, if applicable.

18 Sec. 390.008. TRAFFIC SAFETY. (a) The operator of a quarry  
19 shall adhere to all Texas Department of Transportation rules  
20 relating to the safe movement of normal highway traffic, including  
21 those rules governing the construction and maintenance of private,  
22 public, and commercial access driveways.

23 (b) A quarry operator shall work with the Texas Department  
24 of Transportation to ensure the construction of any road or  
25 driveway improvement necessary for the safe operation of vehicles  
26 at quarry entrances and exits.

27 Sec. 390.009. BLASTING RECORD. (a) If blasting is

1 conducted in a quarry, the operator of the quarry shall maintain a  
2 blasting record that includes the following information:

3 (1) the exact location, time, and date of the  
4 detonation;

5 (2) the weather conditions during the blast;

6 (3) the seismograph or vibration monitor reading,  
7 including the exact location of the seismograph or vibration  
8 monitor and its distance from the blast; and

9 (4) the name of the person taking the seismograph or  
10 vibration monitor reading.

11 (b) The operator shall maintain the blasting records of a  
12 detonation, including the seismograph or vibration monitor  
13 readings, for not less than two years after the date of the  
14 detonation.

15 (c) The operator shall maintain the blasting records at the  
16 quarry site.

17 (d) The operator shall make the blasting records available  
18 for inspection by the commission.

19 Sec. 390.010. CIVIL PENALTY; INJUNCTION. (a)  
20 Notwithstanding Section 7.102, Water Code, an operator who violates  
21 this chapter is liable to the state for a civil penalty in the  
22 amount of \$1,000 for each violation. Each day a violation continues  
23 is a separate violation.

24 (b) At the request of the commission, the attorney general  
25 shall bring suit for injunctive relief to restrain a continuing  
26 violation of this chapter or to recover a civil penalty as provided  
27 by Subsection (a) or for both injunctive relief and recovery of a

1 civil penalty.

2 SECTION 4. Section 725.003, Transportation Code, is amended  
3 by amending Subsection (c) and adding Subsection (d) to read as  
4 follows:

5 (c) Except as provided by Subsection (d), an ~~[An]~~ offense  
6 under this section is a misdemeanor punishable by a fine of:

7 (1) not less than \$25 or more than \$200 for a first  
8 conviction; and

9 (2) not less than \$200 or more than \$500 for a second  
10 or subsequent conviction.

11 (d) An offense involving the violation of Section  
12 725.021(e) is a misdemeanor punishable by a fine of not less than  
13 \$25 or more than \$500.

14 SECTION 5. Section 725.021, Transportation Code, is amended  
15 by amending Subsection (c) and adding Subsection (e) to read as  
16 follows:

17 (c) Except as provided by Subsection (e), the ~~[The]~~ load  
18 shall be covered and the covering firmly secured at the front and  
19 back, unless the load:

20 (1) is completely enclosed by the load-carrying  
21 compartment; or

22 (2) does not blow or spill over the top of the  
23 load-carrying compartment.

24 (e) If the vehicle is a commercial motor vehicle  
25 transporting aggregates from a quarry permitted under Chapter 390,  
26 Health and Safety Code, the load shall be covered and the covering  
27 firmly secured at the front and back or shall be completely enclosed



1 by the load-carrying compartment. For purposes of this section,  
2 "commercial motor vehicle" means a motor vehicle, trailer, or  
3 semitrailer used primarily in the business of transporting  
4 property.

5 SECTION 6. Subsection (a), Section 5.013, Water Code, is  
6 amended to read as follows:

7 (a) The commission has general jurisdiction over:

8 (1) water and water rights including the issuance of  
9 water rights permits, water rights adjudication, cancellation of  
10 water rights, and enforcement of water rights;

11 (2) continuing supervision over districts created  
12 under Article III, Sections 52(b)(1) and (2), and Article XVI,  
13 Section 59, of the Texas Constitution;

14 (3) the state's water quality program including  
15 issuance of permits, enforcement of water quality rules, standards,  
16 orders, and permits, and water quality planning;

17 (4) the determination of the feasibility of certain  
18 federal projects;

19 (5) the adoption and enforcement of rules and  
20 performance of other acts relating to the safe construction,  
21 maintenance, and removal of dams;

22 (6) conduct of the state's hazardous spill prevention  
23 and control program;

24 (7) the administration of the state's program relating  
25 to inactive hazardous substance, pollutant, and contaminant  
26 disposal facilities;

27 (8) the administration of a portion of the state's

1 injection well program;

2 (9) the administration of the state's programs  
3 involving underground water and water wells and drilled and mined  
4 shafts;

5 (10) the state's responsibilities relating to regional  
6 waste disposal;

7 (11) the responsibilities assigned to the commission  
8 by Chapters 361, 363, 382, 390, and 401, Health and Safety Code;

9 (12) the administration of the national flood  
10 insurance program;

11 (13) administration of the state's water rate program  
12 under Chapter 13 of this code; and

13 (14) any other areas assigned to the commission by  
14 this code and other laws of this state.

15 SECTION 7. Subchapter L, Chapter 5, Water Code, is amended  
16 by adding Section 5.517 to read as follows:

17 Sec. 5.517. EMERGENCY ORDER CONCERNING OPERATION OF QUARRY  
18 WITHOUT PERMIT. The commission shall issue an emergency order  
19 under this subchapter suspending operations of a quarry or other  
20 facility that:

21 (1) is required to obtain a permit under Chapter 390,  
22 Health and Safety Code; and

23 (2) is operating without the necessary permit.

24 SECTION 8. Section 7.052, Water Code, is amended by adding  
25 Subsection (b-1) and amending Subsection (d) to read as follows:

26 (b-1) The amount of the penalty for operating a quarry that  
27 is required to obtain a permit under Chapter 390, Health and Safety

1 Code, and that is operating without the required permit is \$10,000.  
2 Each day that a continuing violation occurs is a separate  
3 violation.

4 (d) Except as provided by Subsections [~~Subsection~~] (b) and  
5 (b-1), each day that a continuing violation occurs may be  
6 considered a separate violation. The commission may authorize an  
7 installment payment schedule for an administrative penalty  
8 assessed under this subchapter, except for an administrative  
9 penalty assessed under Section 7.057 or assessed after a hearing  
10 under Section 7.058.

11 SECTION 9. (a) The changes in law made by Sections 725.003  
12 and 725.021, Transportation Code, as amended by this Act, apply  
13 only to an offense committed on or after the effective date of this  
14 Act. For purposes of this section, an offense is committed before  
15 the effective date of this Act if any element of the offense occurs  
16 before that date.

17 (b) An offense committed before the effective date of this  
18 Act is governed by the law in effect when the offense was committed,  
19 and the former law is continued in effect for that purpose.

20 SECTION 10. The changes in law made by Section 5.517, Water  
21 Code, as added by this Act, and Section 7.052, Water Code, as  
22 amended by this Act, apply only to a violation that occurs on or  
23 after the effective date of this Act. A violation that occurs  
24 before that date is governed by the law in effect at the time the  
25 violation occurred, and the former law is continued in effect for  
26 that purpose.

27 SECTION 11. (a) The Texas Commission on Environmental

1   Quality shall be prepared to accept applications for permits under  
2   Chapter 390, Health and Safety Code, as added by this Act, not later  
3   than March 1, 2006.

4           (b)   A person is not required to hold a permit to create or  
5   operate a quarry under Chapter 390, Health and Safety Code, as added  
6   by this Act, before June 1, 2006.

7           SECTION 12.   This Act takes effect September 1, 2005.