

1-1 By: Fraser S.B. No. 785  
1-2 (In the Senate - Filed February 28, 2005; March 10, 2005,  
1-3 read first time and referred to Committee on Natural Resources;  
1-4 April 20, 2005, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 20, 2005,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 785 By: Fraser

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the regulation of quarries; providing penalties.  
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-12 SECTION 1. The heading to Subtitle C, Title 5, Health and  
1-13 Safety Code, is amended to read as follows:  
1-14 SUBTITLE C. AIR AND ENVIRONMENTAL QUALITY  
1-15 SECTION 2. Subtitle C, Title 5, Health and Safety Code, is  
1-16 amended by adding Chapter 390 to read as follows:  
1-17 CHAPTER 390. QUARRY PERMIT  
1-18 Sec. 390.001. DEFINITIONS. In this chapter:  
1-19 (1) "Aggregates" includes any commonly recognized  
1-20 construction material originating from a quarry or pit by the  
1-21 disturbance of the surface, including dirt, soil, rock asphalt,  
1-22 clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche,  
1-23 limestone, dolomite, rock, riprap, or other nonmineral substance.  
1-24 (2) "Air quality permit" means a permit or other  
1-25 authorization to emit air contaminants under Chapter 382 and  
1-26 includes an authorization under a permit by rule.  
1-27 (3) "Commission" means the Texas Commission on  
1-28 Environmental Quality.  
1-29 (4) "Operator" means any person proposing the creation  
1-30 of a quarry or engaged in and responsible for the physical operation  
1-31 and control of a quarry.  
1-32 (5) "Pit" means a commercial open excavation not less  
1-33 than five feet below the adjacent and natural ground level from  
1-34 which aggregates have been or are being extracted.  
1-35 (6) "Quarry" means the site where aggregates are being  
1-36 or have been removed or extracted from the earth to form the pit,  
1-37 including the entire excavation, stripped areas, and haulage ramps  
1-38 and land adjacent to those areas on which the plant processing the  
1-39 raw materials is located. The term does not include land owned or  
1-40 leased by the operator that is not used in the production of  
1-41 aggregates.  
1-42 Sec. 390.002. APPLICABILITY. This chapter applies only to  
1-43 a quarry that begins operation on or after September 1, 2005, and  
1-44 does not apply to a quarry or pit in operation before that date.  
1-45 Sec. 390.003. PERMITS REQUIRED. An operator may not create  
1-46 or begin operating a quarry unless the operator has obtained:  
1-47 (1) a quarry permit under this chapter from the  
1-48 commission; and  
1-49 (2) an air quality permit for any rock crusher to be  
1-50 operated at the quarry.  
1-51 Sec. 390.004. APPLICATION PROCEDURE. (a) An application  
1-52 for a quarry permit must include:  
1-53 (1) a site plan that contains:  
1-54 (A) a site map detailing the proposed permit  
1-55 area;  
1-56 (B) the location and identity of all affected and  
1-57 unaffected areas;  
1-58 (C) a description of the location of the quarry,  
1-59 including the distance and direction from the nearest:  
1-60 (i) stream and groundwater source;  
1-61 (ii) state and county road;  
1-62 (iii) intersection;  
1-63 (iv) dwelling;

2-1 (v) school;  
 2-2 (vi) place of worship; and  
 2-3 (vii) commercial or institutional building  
 2-4 that is neither owned nor leased by the operator;  
 2-5 (D) the ingress and egress routes for materials  
 2-6 to be transported on public roadways;  
 2-7 (E) a general description of the anticipated  
 2-8 stages in which the quarry will be mined;  
 2-9 (F) subject to Subsection (e), a report from an  
 2-10 independent hydrologist, professional geoscientist, or  
 2-11 professional engineer retained by the operator on the groundwater  
 2-12 or surface water in the quarried area, including any  
 2-13 recommendations by the hydrologist, geoscientist, or engineer to  
 2-14 prevent a detrimental effect on the groundwater and surface water;  
 2-15 and  
 2-16 (G) if a report is required under Paragraph (F),  
 2-17 a description of how the operator will address the recommendations  
 2-18 made in the hydrologist's report;  
 2-19 (2) if blasting will be conducted in the quarry, a  
 2-20 blasting plan that contains:  
 2-21 (A) a description of the blasting equipment and  
 2-22 procedures to be used at the site; and  
 2-23 (B) a description of the procedures and plans for  
 2-24 the recording and retention of blasting records for each blast that  
 2-25 is to be conducted at the site; and  
 2-26 (3) proof that the operator has registered for or  
 2-27 submitted an application for, as applicable, an air quality permit  
 2-28 for any rock crusher constructed or proposed to be constructed at  
 2-29 the quarry.  
 2-30 (b) A quarry permit application fee of \$1,000 must accompany  
 2-31 the application.  
 2-32 (c) If the commission denies an application, not later than  
 2-33 the 60th day after the date the commission received the  
 2-34 application, the commission shall notify the applicant in writing  
 2-35 of the commission's decision, specifying any defects in the  
 2-36 application. An applicant denied a permit under this subsection  
 2-37 may submit a modified application.  
 2-38 (d) A proceeding to consider a quarry permit application or  
 2-39 to issue a quarry permit is not a contested case for purposes of  
 2-40 Chapter 2001, Government Code.  
 2-41 (e) An application for a permit under this section for a  
 2-42 quarry that does not have groundwater or surface water in the  
 2-43 quarried area is not required to include a report under Subsection  
 2-44 (a)(1)(F) or a description of how the operator will address  
 2-45 recommendations under Subsection (a)(1)(G).  
 2-46 Sec. 390.005. PERMIT EXPIRATION AFTER NONUSE. A permit  
 2-47 issued to create or begin operating a quarry expires on the fifth  
 2-48 anniversary of the date that the permit was issued if quarry  
 2-49 operations have not begun at the permit area before that date.  
 2-50 Sec. 390.006. PERMIT AMENDMENT. (a) A quarry operator  
 2-51 must obtain a permit amendment:  
 2-52 (1) before a quarry may be expanded to an adjacent  
 2-53 tract of land; or  
 2-54 (2) if emissions from a rock crusher associated with  
 2-55 the quarry increase beyond a de minimis level, as determined by the  
 2-56 commission.  
 2-57 (b) An applicant for a permit amendment must submit an  
 2-58 application that contains the information required by Section  
 2-59 390.004.  
 2-60 Sec. 390.007. NOTICE TO CERTAIN OFFICIALS. On receipt of an  
 2-61 application for a quarry permit, the commission shall send notice  
 2-62 of the application to:  
 2-63 (1) each state senator and state representative who  
 2-64 represents the area in which the quarry will be located; and  
 2-65 (2) the county judge and county commissioners of each  
 2-66 county in which the quarry will be located.  
 2-67 Sec. 390.008. TRAFFIC SAFETY. The operator of a quarry  
 2-68 shall adhere to all Texas Department of Transportation rules  
 2-69 relating to the safe movement of normal highway traffic, including

3-1 those rules governing the construction and maintenance of private,  
 3-2 public, and commercial access driveways.

3-3 Sec. 390.009. BLASTING RECORD. (a) If blasting is  
 3-4 conducted in a quarry, the operator of the quarry shall maintain a  
 3-5 blasting record that includes the following information:

3-6 (1) the exact location, time, and date of the  
 3-7 detonation;

3-8 (2) the weather conditions during the blast;

3-9 (3) the seismograph or vibration monitor reading,  
 3-10 including the exact location of the seismograph or vibration  
 3-11 monitor and its distance from the blast; and

3-12 (4) the name of the person taking the seismograph or  
 3-13 vibration monitor reading.

3-14 (b) The operator shall maintain the blasting records of a  
 3-15 detonation, including the seismograph or vibration monitor  
 3-16 readings, for not less than two years after the date of the  
 3-17 detonation.

3-18 (c) The operator shall maintain the blasting records at the  
 3-19 quarry site.

3-20 (d) The operator shall make the blasting records available  
 3-21 for inspection by the commission.

3-22 Sec. 390.010. CIVIL PENALTY; INJUNCTION. (a)  
 3-23 Notwithstanding Section 7.102, Water Code, an operator who violates  
 3-24 this chapter is liable to the state for a civil penalty in the  
 3-25 amount of \$1,000 for each violation. Each day a violation continues  
 3-26 is a separate violation.

3-27 (b) At the request of the commission, the attorney general  
 3-28 shall bring suit for injunctive relief to restrain a continuing  
 3-29 violation of this chapter or to recover a civil penalty as provided  
 3-30 by Subsection (a) or for both injunctive relief and recovery of a  
 3-31 civil penalty.

3-32 SECTION 3. Section 725.003, Transportation Code, is amended  
 3-33 by amending Subsection (c) and adding Subsection (d) to read as  
 3-34 follows:

3-35 (c) Except as provided by Subsection (d), an [An] offense  
 3-36 under this section is a misdemeanor punishable by a fine of:

3-37 (1) not less than \$25 or more than \$200 for a first  
 3-38 conviction; and

3-39 (2) not less than \$200 or more than \$500 for a second  
 3-40 or subsequent conviction.

3-41 (d) An offense involving the violation of Section  
 3-42 725.021(e) is a misdemeanor punishable by a fine of not less than  
 3-43 \$25 or more than \$500.

3-44 SECTION 4. Section 725.021, Transportation Code, is amended  
 3-45 by amending Subsection (c) and adding Subsection (e) to read as  
 3-46 follows:

3-47 (c) Except as provided by Subsection (e), the [The] load  
 3-48 shall be covered and the covering firmly secured at the front and  
 3-49 back, unless the load:

3-50 (1) is completely enclosed by the load-carrying  
 3-51 compartment; or

3-52 (2) does not blow or spill over the top of the  
 3-53 load-carrying compartment.

3-54 (e) If the vehicle is a commercial motor vehicle  
 3-55 transporting aggregates from a quarry or pit, as those terms are  
 3-56 defined by Section 390.001, Health and Safety Code, the load shall  
 3-57 be covered and the covering firmly secured at the front and back or  
 3-58 shall be completely enclosed by the load-carrying compartment. For  
 3-59 purposes of this section, "commercial motor vehicle" means a motor  
 3-60 vehicle, trailer, or semitrailer used primarily in the business of  
 3-61 transporting property.

3-62 SECTION 5. Subsection (a), Section 5.013, Water Code, is  
 3-63 amended to read as follows:

3-64 (a) The commission has general jurisdiction over:

3-65 (1) water and water rights including the issuance of  
 3-66 water rights permits, water rights adjudication, cancellation of  
 3-67 water rights, and enforcement of water rights;

3-68 (2) continuing supervision over districts created  
 3-69 under Article III, Sections 52(b)(1) and (2), and Article XVI,

4-1 Section 59, of the Texas Constitution;

4-2 (3) the state's water quality program including  
4-3 issuance of permits, enforcement of water quality rules, standards,  
4-4 orders, and permits, and water quality planning;

4-5 (4) the determination of the feasibility of certain  
4-6 federal projects;

4-7 (5) the adoption and enforcement of rules and  
4-8 performance of other acts relating to the safe construction,  
4-9 maintenance, and removal of dams;

4-10 (6) conduct of the state's hazardous spill prevention  
4-11 and control program;

4-12 (7) the administration of the state's program relating  
4-13 to inactive hazardous substance, pollutant, and contaminant  
4-14 disposal facilities;

4-15 (8) the administration of a portion of the state's  
4-16 injection well program;

4-17 (9) the administration of the state's programs  
4-18 involving underground water and water wells and drilled and mined  
4-19 shafts;

4-20 (10) the state's responsibilities relating to regional  
4-21 waste disposal;

4-22 (11) the responsibilities assigned to the commission  
4-23 by Chapters 361, 363, 382, 390, and 401, Health and Safety Code;

4-24 (12) the administration of the national flood  
4-25 insurance program;

4-26 (13) administration of the state's water rate program  
4-27 under Chapter 13 of this code; and

4-28 (14) any other areas assigned to the commission by  
4-29 this code and other laws of this state.

4-30 SECTION 6. Subchapter L, Chapter 5, Water Code, is amended  
4-31 by adding Section 5.517 to read as follows:

4-32 Sec. 5.517. EMERGENCY ORDER CONCERNING OPERATION OF QUARRY  
4-33 WITHOUT PERMIT. (a) Except as provided by Subsection (b), the  
4-34 commission shall issue an emergency order under this subchapter  
4-35 suspending operations of a quarry or other facility that:

4-36 (1) produces aggregates, as that term is defined by  
4-37 Section 390.001, Health and Safety Code;

4-38 (2) is required to obtain a permit under Chapter 26,  
4-39 Water Code; and

4-40 (3) is operating without the necessary permit.

4-41 (b) The commission is not required to impose the penalty  
4-42 under Subsection (a) if the operator submits to the commission  
4-43 information demonstrating that the quarry operator relied in good  
4-44 faith on the opinion of a professional engineer or licensed  
4-45 attorney that a permit under Chapter 26, Water Code, was not  
4-46 required at the facility.

4-47 SECTION 7. Section 7.052, Water Code, is amended by adding  
4-48 Subsections (b-1) and (b-2) and amending Subsection (d) to read as  
4-49 follows:

4-50 (b-1) Except as provided by Subsection (b-2), the amount of  
4-51 the penalty for operating a quarry or other facility that produces  
4-52 aggregates, as those terms are defined by Section 390.001, Health  
4-53 and Safety Code, that is required to obtain a permit under Chapter  
4-54 26, Water Code, and that is operating without the required permit is  
4-55 \$10,000. Each day that a continuing violation occurs is a separate  
4-56 violation.

4-57 (b-2) The amount of the penalty under Subsection (b-1) is  
4-58 not less than \$1,000 or more than \$10,000 if the operator submits to  
4-59 the commission information demonstrating that the quarry operator  
4-60 relied in good faith on the opinion of a professional engineer or  
4-61 licensed attorney that a permit under Chapter 26, Water Code, was  
4-62 not required at the facility.

4-63 (d) Except as provided by Subsections [~~Subsection~~] (b) and  
4-64 (b-1), each day that a continuing violation occurs may be  
4-65 considered a separate violation. The commission may authorize an  
4-66 installment payment schedule for an administrative penalty  
4-67 assessed under this subchapter, except for an administrative  
4-68 penalty assessed under Section 7.057 or assessed after a hearing  
4-69 under Section 7.058.

5-1 SECTION 8. (a) The changes in law made by Sections 725.003  
5-2 and 725.021, Transportation Code, as amended by this Act, apply  
5-3 only to an offense committed on or after the effective date of this  
5-4 Act. For purposes of this section, an offense is committed before  
5-5 the effective date of this Act if any element of the offense occurs  
5-6 before that date.

5-7 (b) An offense committed before the effective date of this  
5-8 Act is governed by the law in effect when the offense was committed,  
5-9 and the former law is continued in effect for that purpose.

5-10 SECTION 9. The changes in law made by Section 5.517, Water  
5-11 Code, as added by this Act, and Section 7.052, Water Code, as  
5-12 amended by this Act, apply only to a violation that occurs on or  
5-13 after the effective date of this Act. A violation that occurs  
5-14 before that date is governed by the law in effect at the time the  
5-15 violation occurred, and the former law is continued in effect for  
5-16 that purpose.

5-17 SECTION 10. (a) The Texas Commission on Environmental  
5-18 Quality shall be prepared to accept applications for permits under  
5-19 Chapter 390, Health and Safety Code, as added by this Act, not later  
5-20 than March 1, 2006.

5-21 (b) A person is not required to hold a permit to create or  
5-22 operate a quarry under Chapter 390, Health and Safety Code, as added  
5-23 by this Act, before June 1, 2006.

5-24 SECTION 11. This Act takes effect September 1, 2005.

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