

By: Estes

S.B. No. 1354

A BILL TO BE ENTITLED

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AN ACT

relating to the protection of water quality in watersheds threatened by quarry activities; establishing a pilot program in a certain portion of the Brazos River watershed; providing penalties.

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

SECTION 1. (a) The legislature recognizes that the beds, bottoms, and banks of navigable rivers and streams are precious and irreplaceable economic and recreational state resources that deserve protection.

(b) The legislature recognizes that the quantity and quality of water flowing in the navigable rivers and streams are precious and irreplaceable economic and recreational state resources that deserve protection.

(c) The legislature recognizes that:

(1) other valuable resources capable of being mined or quarried, including certain aggregate materials, exist in the proximity of the beds, bottoms, and banks of navigable rivers and streams in areas of the state;

(2) the right to develop those resources by mining and quarrying them is a right granted to individuals owning the property; and

(3) development of those resources by mining and quarrying is an important economic activity.

(d) The protection of the right to exploit those resources

1 through mining and quarrying activities affecting the beds,
2 bottoms, and banks of navigable rivers and streams, including the
3 quantity and quality of the water flowing in them, in certain
4 regions of the state, should not come at the cost of:

5 (1) uncontrolled damage to the beds, bottoms, and
6 banks of navigable rivers and streams, including the quantity and
7 quality of the water flowing in them; or

8 (2) infringement on private property rights of
9 landowners adjacent to the affected navigable rivers and streams.

10 (e) The legislature finds that a unique portion of the
11 Brazos River watershed between Possum Kingdom Reservoir in Palo
12 Pinto County and Parker County, Texas, to be known as the "John
13 Graves Scenic Riverway," merits protection from ongoing mining and
14 quarrying activities in the proximity of the beds, bottoms, and
15 banks of the river that significantly impair the quantity and
16 quality of the water flowing in the river.

17 SECTION 2. Chapter 26, Water Code, is amended by adding
18 Subchapter M to read as follows:

19 SUBCHAPTER M. WATER QUALITY PROTECTION AREAS

20 Sec. 26.551. DEFINITIONS. In this subchapter:

21 (1) "Aggregates" means any commonly recognized
22 construction material originating from a quarry or pit by the
23 disturbance of the surface, including dirt, soil, rock asphalt,
24 granite, gravel, gypsum, marble, sand, stone, caliche, limestone,
25 dolomite, rock, riprap, or other nonmineral substance. The term
26 does not include clay or shale mined for use in manufacturing
27 structural clay products.

1 (2) "John Graves Scenic Riverway" means that portion
2 of the Brazos River basin, and its contributing watershed, located
3 downstream of the Morris Shepard Dam on the Possum Kingdom
4 Reservoir in Palo Pinto County, Texas, and extending to the county
5 line between Parker and Hood Counties, Texas.

6 (3) "Operator" means any person engaged in or
7 responsible for the physical operation and control of a quarry.

8 (4) "Overburden" means all materials displaced in an
9 aggregates extraction operation that are not, or reasonably would
10 not be expected to be, removed from the affected area.

11 (5) "Owner" means any person having title, wholly or
12 partly, to the land on which a quarry exists or has existed.

13 (6) "Pit" means an open excavation from which
14 aggregates have been or are being extracted with a depth of five
15 feet or more below the adjacent and natural ground level.

16 (7) "Quarry" means the site from which aggregates are
17 being or have been removed or extracted from the earth to form a
18 pit, including the entire excavation, stripped areas, haulage
19 ramps, and the immediately adjacent land on which the plant
20 processing the raw materials is located. The term does not include
21 any land owned or leased by the responsible party not being
22 currently used in the production of aggregates or an excavation to
23 mine clay or shale for use in manufacturing structural clay
24 products.

25 (8) "Quarrying" means the current and ongoing surface
26 excavation and development without shafts, drafts, or tunnels, with
27 or without slopes, for the extraction of aggregates from natural

1 deposits occurring in the earth.

2 (9) "Refuse" means all waste material directly
3 connected with the production, cleaning, or preparation of
4 aggregates that have been produced by quarrying.

5 (10) "Responsible party" means the owner, operator,
6 lessor, or owner of lessee who is responsible for the overall
7 function and operation of a quarry required to apply for and hold a
8 permit pursuant to this subchapter.

9 (11) "Water quality protection area" means a
10 contributing watershed of a river the water quality of which is
11 threatened by quarrying activities.

12 (12) "Water body" means any navigable water course,
13 river, stream, or lake within the water quality protection area.

14 Sec. 26.552. APPLICABILITY; PILOT PROGRAM. (a) This
15 subchapter applies only to a water quality protection area
16 designated by commission rule and to quarrying in the area.

17 (b) For the period of September 1, 2005, to September 1,
18 2025, the commission shall apply this subchapter as a pilot program
19 only in the John Graves Scenic Riverway.

20 Sec. 26.553. REGULATION OF QUARRIES WITHIN WATER QUALITY
21 PROTECTION AREA. (a) The commission shall require a responsible
22 party to obtain an individual permit for any discharges from a
23 quarry located in a water quality protection area that is located:

24 (1) within a 100-year floodplain of any water body; or

25 (2) within one mile of any water body.

26 (b) The commission shall require a responsible party to
27 obtain a general permit under Section 26.040 for any quarry that is

1 located in a water quality protection area and located a distance of
2 more than one mile from any water body.

3 (c) Subject to Subsection (d), the commission shall
4 prohibit the construction or operation of any new quarry, or the
5 expansion of an existing quarry, located within 1,500 feet of a
6 water body located in a water quality protection area for which a
7 person files an application for a permit or permit amendment after
8 September 1, 2005.

9 (d) Notwithstanding Subsection (c), the commission may
10 issue or amend a permit to authorize the construction or operation
11 of a quarry located between 200 and 1,500 feet of a water body on
12 finding that:

13 (1) the responsible party can satisfy performance
14 criteria established by commission rule and incorporated into the
15 permit to address:

16 (A) slope gradients that minimize the potential
17 for erosion, slides, sloughing of quarry walls, overburden piles,
18 and banks into the water body and related water quality
19 considerations;

20 (B) whether operations could result in
21 significant damage to important historic and cultural values and
22 ecological systems;

23 (C) whether operations could affect renewable
24 resource lands, including aquifers and aquifer recharge areas, in
25 which the operations could result in a substantial loss or
26 reduction of long-range productivity of a water supply or of food or
27 fiber products; and

1 (D) whether operations could affect natural
2 hazard land, including areas subject to frequent flooding and areas
3 of unstable geology, in which the operations could substantially
4 endanger life and property;

5 (2) the responsible party has provided a plan for the
6 control of surface water drainage and water accumulation to
7 prevent:

8 (A) erosion, siltation, or runoff; and

9 (B) damage to:

10 (i) fish, wildlife, or fish or wildlife
11 habitat; or

12 (ii) public or private property;

13 (3) the responsible party has provided a plan for
14 reclamation of the quarry that is consistent with best management
15 standards and practices adopted by the commission for quarry
16 reclamation, which may include backfilling, soil stabilization and
17 compacting, grading, erosion control measures, and appropriate
18 revegetation; and

19 (4) the responsible party has provided evidence that,
20 to the extent possible, quarrying will be conducted using the best
21 available technology to:

22 (A) minimize disturbance and adverse effects of
23 the quarry operation on fish, wildlife, and related environmental
24 resources; and

25 (B) enhance fish, wildlife, and related
26 environmental resources where practicable.

27 (e) The commission by rule shall establish effluent or other

1 water quality requirements, including requirements for financial
2 responsibility, adequate to protect the water resources in a water
3 quality protection area for inclusion in any authorization,
4 including an individual or general permit, issued under this
5 section by the commission.

6 (f) In addition to any other requirements established by
7 commission rule adopted under Subsection (e), the responsible party
8 for a quarry located in a water quality protection area required to
9 obtain an individual or general permit shall include with an
10 application filed with the commission under this section:

11 (1) a proposed plan of action for how the responsible
12 party will restore the receiving water body to background
13 conditions in the event of an unauthorized discharge that affects
14 the water body; and

15 (2) evidence of sufficiently funded bonding or proof
16 of financial resources to mitigate, remediate, and correct any
17 potential future effects on a water body of an unauthorized
18 discharge to a water body.

19 Sec. 26.554. FINANCIAL RESPONSIBILITY FOR DISCHARGES OF
20 CERTAIN WASTES WITHIN WATER QUALITY PROTECTION AREA. (a) The
21 commission by rule shall adopt requirements for:

22 (1) maintaining evidence of financial responsibility
23 for restoration of a water body affected by an unauthorized
24 discharge from a permitted quarry; or

25 (2) taking corrective action and compensating for
26 water quality effects caused by an unauthorized discharge resulting
27 from quarrying.

1 (b) A responsible party commits a violation if the
2 responsible party operates a permitted quarry knowing that
3 financial responsibility required by a permit does not exist.

4 Sec. 26.555. INSPECTIONS OF AND SAMPLING OF WATER IN JOHN
5 GRAVES SCENIC RIVERWAY. (a) To detect potential violations of
6 this subchapter in the John Graves Scenic Riverway, the commission,
7 the Brazos River Authority, and the Parks and Wildlife Department
8 shall coordinate efforts to conduct each calendar year:

9 (1) visual inspections of the riverway; and

10 (2) testing of water samples drawn from the Brazos
11 River and its tributaries in the riverway.

12 (b) The visual inspections and the drawing of water samples
13 must be conducted at least once in a winter month and at least once
14 in a summer month. The visual inspections must be conducted both
15 from the surface of the John Graves Scenic Riverway and from an
16 aircraft flying over the riverway.

17 Sec. 26.556. UNAUTHORIZED DISCHARGES OF CERTAIN WASTES
18 WITHIN WATER QUALITY PROTECTION AREA; ENFORCEMENT. (a) The
19 commission shall enforce this subchapter and impose administrative
20 and civil penalties for discharges from a quarry in violation of
21 this subchapter. Subject to Subsection (d), the commission shall
22 assess an administrative penalty against a responsible party of a
23 quarry responsible for a discharge in violation of this subchapter
24 or of a permit, rule, or order adopted or issued under this
25 subchapter in an amount of not less than \$2,500 and not more than
26 \$25,000 for each violation of this subchapter or of the permit,
27 rule, or order adopted or issued under this subchapter. Subject to

1 Subsection (d), the commission shall assess an administrative
2 penalty against a person for any other violation of this subchapter
3 or of a permit, rule, or order adopted or issued under this
4 subchapter in an amount of not less than \$100 for each violation of
5 this subchapter or of the permit, rule, or order adopted or issued
6 under this subchapter. Each day a violation continues may be
7 considered a separate violation for purposes of penalty assessment.

8 (b) In determining the amount of the penalty, the commission
9 shall consider:

10 (1) the nature, circumstances, extent, duration, and
11 gravity of the prohibited acts, and the hazard or potential hazard
12 the violation presents to the health, safety, or welfare of the
13 public;

14 (2) the effects of the violation on instream uses,
15 water quality, and fish and wildlife habitat;

16 (3) with respect to the alleged violator:

17 (A) the history and extent of previous
18 violations;

19 (B) the degree of culpability, including whether
20 the violation was attributable to mechanical or electrical failures
21 and whether the violation could have been reasonably anticipated
22 and avoided;

23 (C) demonstrated good faith, including actions
24 taken by the alleged violator to rectify the cause of the violation
25 and to compensate affected persons;

26 (D) whether the violator is engaged in a
27 for-profit operation;

1 (E) any economic benefit gained through the
2 violation; and

3 (F) the amount necessary to deter future
4 violations; and

5 (4) any other matters that justice may require.

6 (c) In addition to the administrative penalties and other
7 available remedies or causes of action, the commission may seek
8 injunctive relief in the district courts of Travis County to:

9 (1) force the temporary or permanent closure of a
10 quarry operated without authorization required under this
11 subchapter;

12 (2) force the temporary or permanent closure of a
13 permitted quarry under this subchapter for which acceptable
14 evidence of financial responsibility is not maintained;

15 (3) force the temporary or permanent closure of any
16 quarry responsible for an unauthorized discharge; or

17 (4) force corrective action by the responsible party
18 of a quarry responsible for an unauthorized discharge.

19 (d) The commission may compromise, modify, or remit, with or
20 without conditions, an administrative penalty imposed under this
21 subchapter. In determining the appropriate amount of a penalty for
22 settlement of an administrative enforcement matter, the commission
23 may consider a respondent's willingness to contribute to
24 supplemental environmental projects that are approved by the
25 commission, giving preference to projects that benefit the
26 community in which the alleged violation occurred and address the
27 remediation, reclamation, or restoration of the water quality and

1 the beds, bottoms, and banks of water bodies in the water quality
2 area adversely affected by unauthorized discharges from quarries or
3 abandoned quarries that threaten water quality and the beds,
4 bottoms, and banks of water bodies in the water quality area. The
5 commission may encourage the cleanup of contaminated property
6 through the use of supplemental environmental projects. The
7 commission may not approve a project that is necessary to bring a
8 respondent into compliance with environmental laws, that is
9 necessary to remediate environmental harm caused by the
10 respondent's alleged violation, or that the respondent has already
11 agreed to perform under a preexisting agreement with a governmental
12 agency.

13 (e) A violation of this subchapter also constitutes an
14 offense that may be prosecuted and punished under Section 7.147.

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

20 Sec. 26.557. EMERGENCY ORDERS. The commission may issue a
21 temporary or emergency order under Section 5.509 relating to a
22 discharge of waste or pollutants from a quarry in a water quality
23 protection area.

24 Sec. 26.558. RECOVERY OF COSTS FOR UNAUTHORIZED DISCHARGES
25 WITHIN WATER QUALITY PROTECTION AREA. If the commission has
26 incurred any costs in undertaking a corrective or enforcement
27 action with respect to an unauthorized discharge from a quarry

1 under this subchapter, including a reclamation or restoration
2 action, the responsible party is liable to the state for all
3 reasonable costs of the corrective or enforcement action, including
4 court costs and reasonable attorney's fees, and for any punitive
5 damages that may be assessed by the court.

6 Sec. 26.559. RECLAMATION AND RESTORATION FUND ACCOUNT.

7 (a) Penalties and other money received by the commission as a
8 result of an enforcement action taken under this subchapter and any
9 gift or grant the commission receives for the purposes of this
10 subchapter shall be deposited into the reclamation and restoration
11 fund account in the general revenue fund. Money in the account may
12 be appropriated only to the commission for the reclamation and
13 restoration of the beds, bottoms, and banks of water bodies
14 affected by the unlawful discharges subject to this subchapter.

15 (b) At least 60 days before spending money from the
16 reclamation and restoration fund account, the commission shall
17 publish notice of its proposed plan and conduct a hearing for the
18 purpose of soliciting public comment, oral or written. The
19 commission shall fully consider all written and oral submissions on
20 the proposed plan.

21 (c) At least 30 days before the date of the public hearing,
22 the notice must be published in the Texas Register and in a
23 newspaper of general circulation in the county where the violation
24 resulting in the payment of the penalties or other money occurred.

25 (d) Interest and other income earned on money in the account
26 shall be credited to the account. The account is exempt from the
27 application of Section 403.095, Government Code.

1 Sec. 26.560. COOPERATION WITH OTHER STATE AGENCIES.

2 (a) The commission is the principal authority in the state on
3 matters relating to the implementation of this subchapter. All
4 other state agencies engaged in water quality or water pollution
5 control activities in a water quality protection area shall
6 coordinate those activities with the commission.

7 (b) The executive director, with the consent of the
8 commission, may enter into contracts, memoranda of understanding,
9 or other agreements with other state agencies for purposes of
10 developing effluent or other water quality requirements, including
11 requirements for financial responsibility, adequate to protect the
12 water resources in a water quality protection area, in any
13 individual or general permit or other authorization issued under
14 this subchapter.

15 Sec. 26.561. WATER QUALITY PROTECTION AREA REPORTS.

16 (a) On or before December 1, 2006, the commission shall prepare a
17 report describing its implementation of this subchapter and provide
18 copies of the report to the governor, lieutenant governor, and
19 speaker of the house of representatives.

20 (b) Beginning December 1, 2008, and on December 1 of each
21 succeeding even-numbered year, the commission shall deliver a
22 report to the governor, lieutenant governor, and speaker of the
23 house of representatives evaluating the success of its
24 implementation of the water quality protection permitting and
25 enforcement programs developed under this subchapter.

26 SECTION 3. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect on the 91st day after the last day of the
4 legislative session.