

By: Estes

S.B. No. 1354

Substitute the following for S.B. No. 1354:

By: Bonnen

C.S.S.B. No. 1354

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the protection of water quality in watersheds
3 threatened by quarry activities; establishing a pilot program in a
4 certain portion of the Brazos River watershed; providing penalties.

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

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

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

14 (c) The legislature recognizes that:

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

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

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

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

1 sale from natural 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 lessee who is responsible for overall function and
7 operation of a quarry required to apply for and hold a permit
8 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 watercourse,
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 quarrying in a water quality protection
16 area designated by commission rule. This subchapter does not apply
17 to the construction or operation of a municipal solid waste
18 facility regardless of whether the facility includes a pit or
19 quarry that is associated with past quarrying.

20 (b) For the period of September 1, 2005, to September 1,
21 2025, the commission shall apply this subchapter only as a pilot
22 program in the John Graves Scenic Riverway.

23 (c) This subchapter does not apply to:

24 (1) a quarry or associated processing plant that since
25 on or before January 1, 1994, has been in regular operation in the
26 John Graves Scenic Riverway without cessation of operation for more
27 than 30 consecutive days and under the same ownership;

1 (2) the construction or modification of associated
2 equipment located on a quarry site or associated processing plant
3 site described by Subdivision (1) or on contiguous property;

4 (3) an expansion of a quarry described by Subdivision
5 (1) to contiguous property, except that an expansion of the quarry
6 may not result in quarrying operations being closer than 200 feet
7 from the cut bank of the Brazos River; or

8 (4) an activity, facility, or operation regulated
9 under Chapter 134, Natural Resources Code.

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

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

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

16 (b) The commission shall require a responsible party to
17 obtain a general permit under Section 26.040 for any quarry that is
18 located in a water quality protection area and located a distance of
19 more than one mile from any water body.

20 (c) Subject to Subsection (d), the commission shall
21 prohibit the construction or operation of any new quarry, or the
22 expansion of an existing quarry, located within 1,500 feet of a
23 water body located in a water quality protection area for which a
24 person files an application for a permit or permit amendment after
25 September 1, 2005.

26 (d) Notwithstanding Subsection (c), the commission may
27 issue or amend a permit to authorize the construction or operation

1 of a quarry located between 200 and 1,500 feet of a water body on
2 finding that:

3 (1) the responsible party can satisfy performance
4 criteria established by commission rule and incorporated into the
5 permit to address:

6 (A) slope gradients that minimize the potential
7 for erosion, slides, sloughing of quarry walls, overburden piles,
8 and banks into the water body and related water quality
9 considerations;

10 (B) whether operations could result in
11 significant damage to important historic and cultural values and
12 ecological systems;

13 (C) whether operations could affect renewable
14 resource lands, including aquifers and aquifer recharge areas, in
15 which the operations could result in a substantial loss or
16 reduction of long-range productivity of a water supply or of food or
17 fiber products; and

18 (D) whether operations could affect natural
19 hazard land, including areas subject to frequent flooding and areas
20 of unstable geology, in which the operations could substantially
21 endanger life and property;

22 (2) the responsible party has provided a plan for the
23 control of surface water drainage and water accumulation to
24 prevent:

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

26 (B) damage to:

27 (i) fish, wildlife, or fish or wildlife

1 habitat; or

2 (ii) public or private property;

3 (3) the responsible party has provided a plan for
4 reclamation of the quarry that is consistent with best management
5 standards and practices adopted by the commission for quarry
6 reclamation, which may include backfilling, soil stabilization and
7 compacting, grading, erosion control measures, and appropriate
8 revegetation; and

9 (4) the responsible party has provided evidence that,
10 to the extent possible, quarrying will be conducted using the best
11 available technology to:

12 (A) minimize disturbance and adverse effects of
13 the quarry operation on fish, wildlife, and related environmental
14 resources; and

15 (B) enhance fish, wildlife, and related
16 environmental resources where practicable.

17 (e) The commission by rule shall establish effluent or other
18 water quality requirements, including requirements for financial
19 responsibility, adequate to protect the water resources in a water
20 quality protection area for inclusion in any authorization,
21 including an individual or general permit, issued under this
22 section by the commission.

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

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

5 (2) evidence of sufficiently funded bonding or proof
6 of financial resources to mitigate, remediate, and correct any
7 potential future effects on a water body of an unauthorized
8 discharge to a water body.

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

12 (1) maintaining evidence of financial responsibility
13 for restoration of a water body affected by an unauthorized
14 discharge from a permitted quarry; or

15 (2) taking corrective action and compensating for
16 water quality effects caused by an unauthorized discharge resulting
17 from quarrying.

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

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

26 (1) visual inspections of the riverway; and

27 (2) testing of water samples drawn from the Brazos

1 River and its tributaries in the riverway.

2 (b) The visual inspections and the drawing of water samples
3 must be conducted at least once in a winter month and at least once
4 in a summer month. The visual inspections must be conducted both
5 from the surface of the John Graves Scenic Riverway and from an
6 aircraft flying over the riverway.

7 Sec. 26.556. UNAUTHORIZED DISCHARGES OF CERTAIN WASTES
8 WITHIN WATER QUALITY PROTECTION AREA; ENFORCEMENT. (a) The
9 commission shall enforce this subchapter and impose administrative
10 and civil penalties for discharges from a quarry in violation of
11 this subchapter. Subject to Subsection (d), the commission shall
12 assess an administrative penalty against a responsible party of a
13 quarry responsible for a discharge in violation of this subchapter
14 or of a permit, rule, or order adopted or issued under this
15 subchapter in an amount of not less than \$2,500 and not more than
16 \$25,000 for each violation of this subchapter or of the permit,
17 rule, or order adopted or issued under this subchapter. Subject to
18 Subsection (d), the commission shall assess an administrative
19 penalty against a person for any other violation of this subchapter
20 or of a permit, rule, or order adopted or issued under this
21 subchapter in an amount of not less than \$100 for each violation of
22 this subchapter or of the permit, rule, or order adopted or issued
23 under this subchapter. Each day a violation continues may be
24 considered a separate violation for purposes of penalty assessment.

25 (b) In determining the amount of the penalty, the commission
26 shall consider:

27 (1) the nature, circumstances, extent, duration, and

1 gravity of the prohibited acts, and the hazard or potential hazard
2 the violation presents to the health, safety, or welfare of the
3 public;

4 (2) the effects of the violation on instream uses,
5 water quality, and fish and wildlife habitats;

6 (3) with respect to the alleged violator:

7 (A) the history and extent of previous
8 violations;

9 (B) the degree of culpability, including whether
10 the violation was attributable to mechanical or electrical failures
11 and whether the violation could have been reasonably anticipated
12 and avoided;

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

16 (D) whether the violator is engaged in a
17 for-profit operation;

18 (E) any economic benefit gained through the
19 violation; and

20 (F) the amount necessary to deter future
21 violations; and

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

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

26 (1) force the temporary or permanent closure of a
27 quarry operated without authorization required under this

1 subchapter;

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

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

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

9 (d) The commission may compromise, modify, or remit, with or
10 without conditions, an administrative penalty imposed under this
11 subchapter. In determining the appropriate amount of a penalty for
12 settlement of an administrative enforcement matter, the commission
13 may consider a respondent's willingness to contribute to
14 supplemental environmental projects that are approved by the
15 commission, giving preference to projects that benefit the
16 community in which the alleged violation occurred and address the
17 remediation, reclamation, or restoration of the water quality and
18 the beds, bottoms, and banks of water bodies in the water quality
19 area adversely affected by unauthorized discharges from quarries or
20 abandoned quarries that threaten water quality and the beds,
21 bottoms, and banks of water bodies in the water quality area. The
22 commission may encourage the cleanup of contaminated property
23 through the use of supplemental environmental projects. The
24 commission may not approve a project that is necessary to bring a
25 respondent into compliance with environmental laws, that is
26 necessary to remediate environmental harm caused by the
27 respondent's alleged violation, or that the respondent has already

1 agreed to perform under a preexisting agreement with a governmental
2 agency.

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

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

10 Sec. 26.557. EMERGENCY ORDERS. The commission may issue a
11 temporary or emergency order under Section 5.509 relating to a
12 discharge of waste or pollutants from a quarry in a water quality
13 protection area.

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

23 Sec. 26.559. RECLAMATION AND RESTORATION FUND ACCOUNT. (a)
24 Penalties and other money received by the commission as a result of
25 an enforcement action taken under this subchapter, and any gift or
26 grant the commission receives for the purposes of this subchapter,
27 shall be deposited into the reclamation and restoration fund

1 account in the general revenue fund. Money in the account may be
2 appropriated only to the commission for the reclamation and
3 restoration of the beds, bottoms, and banks of water bodies
4 affected by the unlawful discharges subject to this subchapter.

5 (b) At least 60 days before spending money from the
6 reclamation and restoration fund account, the commission shall
7 publish notice of its proposed plan and conduct a hearing for the
8 purpose of soliciting public comment, oral or written. The
9 commission shall fully consider all written and oral submissions on
10 the proposed plan.

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

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

18 Sec. 26.560. COOPERATION WITH OTHER STATE AGENCIES. (a)
19 The commission is the principal authority in the state on matters
20 relating to the implementation of this subchapter. All other state
21 agencies engaged in water quality or water pollution control
22 activities in a water quality protection area shall coordinate
23 those activities with the commission.

24 (b) The executive director, with the consent of the
25 commission, may enter into contracts, memoranda of understanding,
26 or other agreements with other state agencies for purposes of
27 developing effluent or other water quality requirements, including

1 requirements for financial responsibility, adequate to protect the
2 water resources in a water quality protection area, in any
3 individual or general permit or other authorization issued under
4 this subchapter.

5 Sec. 26.561. WATER QUALITY PROTECTION AREA REPORTS. (a) On
6 or before December 1, 2006, the commission shall prepare a report
7 describing its implementation of this subchapter and provide copies
8 of the report to the governor, lieutenant governor, and speaker of
9 the house of representatives.

10 (b) Beginning December 1, 2008, and on December 1 of each
11 succeeding even-numbered year, the commission shall deliver a
12 report to the governor, lieutenant governor, and speaker of the
13 house of representatives evaluating the success of its
14 implementation of the water quality protection permitting and
15 enforcement programs developed under this subchapter.

16 Sec. 26.562. EXPIRATION. This subchapter expires September
17 1, 2025.

18 SECTION 3. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect on the 91st day after the last day of the
23 legislative session.