

By: Estes

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;  
4 providing a penalty.

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" includes:

22 (A) any commonly recognized construction  
23 material originating from a quarry or pit by the disturbance of the  
24 surface; and

25 (B) dirt, soil, rock asphalt, clay, granite,  
26 gravel, gypsum, marble, sand, shale, stone, caliche, limestone,  
27 dolomite, rock, riprap, or other nonmineral substance.

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.

23           (8) "Quarrying" means the current and ongoing surface  
24 excavation and development without shafts, drafts, or tunnels, with  
25 or without slopes, for the extraction of aggregates from natural  
26 deposits occurring in the earth.

27           (9) "Refuse" means all waste material directly

1 connected with the production, cleaning, or preparation of  
2 aggregates that have been produced by quarrying.

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

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

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

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

15 (b) For the period of September 1, 2005, to September 1,  
16 2025, the commission shall apply this subchapter as a pilot program  
17 only in the John Graves Scenic Riverway.

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

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

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

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

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

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

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

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

18                   (B) whether operations could result in  
19 significant damage to important historic, cultural, scientific,  
20 and aesthetic values and natural systems;

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

26                   (D) whether operations could affect natural  
27 hazard land, including areas subject to frequent flooding and areas

1 of unstable geology, in which the operations could substantially  
2 endanger life and property;

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

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

7 (B) damage to:

8 (i) fish, wildlife, or fish or wildlife  
9 habitat; or

10 (ii) public or private property;

11 (3) the responsible party has provided a plan for  
12 backfilling, soil stabilization and compacting, grading, and  
13 appropriate revegetation; and

14 (4) the responsible party has provided evidence that,  
15 to the extent possible, quarrying will be conducted using the best  
16 available technology to:

17 (A) minimize disturbance and adverse effects of  
18 the quarry operation on fish, wildlife, and related environmental  
19 resources; and

20 (B) enhance fish, wildlife, and related  
21 environmental resources where practicable.

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

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

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

10           (2) evidence of sufficiently funded bonding or proof  
11 of financial resources to mitigate, remediate, and correct any  
12 potential future effects on a water body of an unauthorized  
13 discharge to a water body.

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

17           (1) maintaining evidence of financial responsibility  
18 for restoration of a water body affected by an unauthorized  
19 discharge from a permitted quarry; or

20           (2) taking corrective action and compensating for  
21 water quality effects caused by an unauthorized discharge resulting  
22 from quarrying.

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

26       Sec. 26.555. UNAUTHORIZED DISCHARGES OF CERTAIN WASTES  
27 WITHIN WATER QUALITY PROTECTION AREA; ENFORCEMENT. (a) The

1 commission shall enforce this subchapter and impose administrative  
2 and civil penalties for discharges from a quarry in violation of  
3 this subchapter. Subject to Subsection (d), if a person violates  
4 this subchapter or a permit, rule, or order adopted under this  
5 subchapter, the commission shall assess an administrative penalty  
6 against the person in an amount of not less than \$2,500 and not more  
7 than \$25,000 for each violation of this subchapter or of the permit,  
8 rule, or order adopted under this subchapter. Each day a violation  
9 continues may be considered a separate violation for purposes of  
10 penalty assessment.

11 (b) In determining the amount of the penalty, the commission  
12 shall consider:

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

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

19 (3) with respect to the alleged violator:

20 (A) the history and extent of previous  
21 violations;

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

26 (C) demonstrated good faith, including actions  
27 taken by the alleged violator to rectify the cause of the violation



1 and to compensate affected persons;

2 (D) whether the violator is engaged in a  
3 for-profit operation;

4 (E) any economic benefit gained through the  
5 violation; and

6 (F) the amount necessary to deter future  
7 violations; and

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

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

12 (1) force the temporary or permanent closure of a  
13 quarry operated without authorization required under this  
14 subchapter;

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

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

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

22 (d) The commission may compromise, modify, or remit, with or  
23 without conditions, an administrative penalty imposed under this  
24 subchapter. In determining the appropriate amount of a penalty for  
25 settlement of an administrative enforcement matter, the commission  
26 may consider a respondent's willingness to contribute to  
27 supplemental environmental projects that are approved by the

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

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

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

23 Sec. 26.556. EMERGENCY ORDERS. The commission may issue a  
24 temporary or emergency order under Section 5.509 relating to a  
25 discharge of waste or pollutants from a quarry in a water quality  
26 protection area.

27 Sec. 26.557. RECOVERY OF COSTS FOR UNAUTHORIZED DISCHARGES

1 WITHIN WATER QUALITY PROTECTION AREA. If the commission has  
2 incurred any costs in undertaking a corrective or enforcement  
3 action with respect to an unauthorized discharge from a quarry  
4 under this subchapter, including a reclamation or restoration  
5 action, the responsible party is liable to the state for all  
6 reasonable costs of the corrective or enforcement action, including  
7 court costs and reasonable attorney's fees, and for any punitive  
8 damages that may be assessed by the court.

9 Sec. 26.558. RECLAMATION AND RESTORATION FUND ACCOUNT. (a)  
10 Penalties and other money received by the commission as a result of  
11 an enforcement action taken under this subchapter, and any gift or  
12 grant the commission receives for the purposes of this subchapter  
13 shall be deposited into the reclamation and restoration fund  
14 account in the general revenue fund. Money in the account may be  
15 appropriated only to the commission for the reclamation and  
16 restoration of the beds, bottoms, and banks of water bodies  
17 affected by the unlawful discharges subject to this subchapter.

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

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

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

4       Sec. 26.559. COOPERATION WITH OTHER STATE AGENCIES. (a)  
5 The commission is the principal authority in the state on matters  
6 relating to the implementation of this subchapter. All other state  
7 agencies engaged in water quality or water pollution control  
8 activities in a water quality protection area shall coordinate  
9 those activities with the commission.

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

18       Sec. 26.560. WATER QUALITY PROTECTION AREA REPORTS. (a) On  
19 or before December 1, 2006, the commission shall prepare a report  
20 describing its implementation of this subchapter and provide copies  
21 of the report to the governor, lieutenant governor, and speaker of  
22 the house of representatives.

23       (b) Beginning December 1, 2008, and on December 1 of each  
24 succeeding even-numbered year, the commission shall deliver a  
25 report to the governor, lieutenant governor, and speaker of the  
26 house of representatives evaluating the success of its  
27 implementation of the water quality protection permitting and

1 enforcement programs developed under this subchapter.

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