

1-1 By: Estes S.B. No. 1354  
1-2 (In the Senate - Filed March 10, 2005; March 21, 2005, read  
1-3 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 9, Nays 0; April 20, 2005,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1354 By: Estes

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

1-10 relating to the protection of water quality in watersheds  
1-11 threatened by quarry activities; establishing a pilot program in a  
1-12 certain portion of the Brazos River watershed; providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. (a) The legislature recognizes that the beds,  
1-15 bottoms, and banks of navigable rivers and streams are precious and  
1-16 irreplaceable economic and recreational state resources that  
1-17 deserve protection.

1-18 (b) The legislature recognizes that the quantity and  
1-19 quality of water flowing in the navigable rivers and streams are  
1-20 precious and irreplaceable economic and recreational state  
1-21 resources that deserve protection.

1-22 (c) The legislature recognizes that:

1-23 (1) other valuable resources capable of being mined or  
1-24 quarried, including certain aggregate materials, exist in the  
1-25 proximity of the beds, bottoms, and banks of navigable rivers and  
1-26 streams in areas of the state;

1-27 (2) the right to develop those resources by mining and  
1-28 quarrying them is a right granted to individuals owning the  
1-29 property; and

1-30 (3) development of those resources by mining and  
1-31 quarrying is an important economic activity.

1-32 (d) The protection of the right to exploit those resources  
1-33 through mining and quarrying activities affecting the beds,  
1-34 bottoms, and banks of navigable rivers and streams, including the  
1-35 quantity and quality of the water flowing in them, in certain  
1-36 regions of the state, should not come at the cost of:

1-37 (1) uncontrolled damage to the beds, bottoms, and  
1-38 banks of navigable rivers and streams, including the quantity and  
1-39 quality of the water flowing in them; or

1-40 (2) infringement on private property rights of  
1-41 landowners adjacent to the affected navigable rivers and streams.

1-42 (e) The legislature finds that a unique portion of the  
1-43 Brazos River watershed between Possum Kingdom Reservoir in Palo  
1-44 Pinto County and Parker County, Texas, to be known as the "John  
1-45 Graves Scenic Riverway," merits protection from ongoing mining and  
1-46 quarrying activities in the proximity of the beds, bottoms, and  
1-47 banks of the river that significantly impair the quantity and  
1-48 quality of the water flowing in the river.

1-49 SECTION 2. Chapter 26, Water Code, is amended by adding  
1-50 Subchapter M to read as follows:

1-51 SUBCHAPTER M. WATER QUALITY PROTECTION AREAS

1-52 Sec. 26.551. DEFINITIONS. In this subchapter:

1-53 (1) "Aggregates" means any commonly recognized  
1-54 construction material originating from a quarry or pit by the  
1-55 disturbance of the surface, including dirt, soil, rock asphalt,  
1-56 granite, gravel, gypsum, marble, sand, stone, caliche, limestone,  
1-57 dolomite, rock, riprap, or other nonmineral substance. The term  
1-58 does not include clay or shale mined for use in manufacturing  
1-59 structural clay products.

1-60 (2) "John Graves Scenic Riverway" means that portion  
1-61 of the Brazos River basin, and its contributing watershed, located  
1-62 downstream of the Morris Shepard Dam on the Possum Kingdom  
1-63 Reservoir in Palo Pinto County, Texas, and extending to the county

2-1 line between Parker and Hood Counties, Texas.  
 2-2 (3) "Operator" means any person engaged in or  
 2-3 responsible for the physical operation and control of a quarry.  
 2-4 (4) "Overburden" means all materials displaced in an  
 2-5 aggregates extraction operation that are not, or reasonably would  
 2-6 not be expected to be, removed from the affected area.  
 2-7 (5) "Owner" means any person having title, wholly or  
 2-8 partly, to the land on which a quarry exists or has existed.  
 2-9 (6) "Pit" means an open excavation from which  
 2-10 aggregates have been or are being extracted with a depth of five  
 2-11 feet or more below the adjacent and natural ground level.  
 2-12 (7) "Quarry" means the site from which aggregates are  
 2-13 being or have been removed or extracted from the earth to form a  
 2-14 pit, including the entire excavation, stripped areas, haulage  
 2-15 ramps, and the immediately adjacent land on which the plant  
 2-16 processing the raw materials is located. The term does not include  
 2-17 any land owned or leased by the responsible party not being  
 2-18 currently used in the production of aggregates or an excavation to  
 2-19 mine clay or shale for use in manufacturing structural clay  
 2-20 products.  
 2-21 (8) "Quarrying" means the current and ongoing surface  
 2-22 excavation and development without shafts, drafts, or tunnels, with  
 2-23 or without slopes, for the extraction of aggregates from natural  
 2-24 deposits occurring in the earth.  
 2-25 (9) "Refuse" means all waste material directly  
 2-26 connected with the production, cleaning, or preparation of  
 2-27 aggregates that have been produced by quarrying.  
 2-28 (10) "Responsible party" means the owner, operator,  
 2-29 lessor, or owner of lessee who is responsible for the overall  
 2-30 function and operation of a quarry required to apply for and hold a  
 2-31 permit pursuant to this subchapter.  
 2-32 (11) "Water quality protection area" means a  
 2-33 contributing watershed of a river the water quality of which is  
 2-34 threatened by quarrying activities.  
 2-35 (12) "Water body" means any navigable water course,  
 2-36 river, stream, or lake within the water quality protection area.  
 2-37 Sec. 26.552. APPLICABILITY; PILOT PROGRAM. (a) This  
 2-38 subchapter applies only to a water quality protection area  
 2-39 designated by commission rule and to quarrying in the area.  
 2-40 (b) For the period of September 1, 2005, to September 1,  
 2-41 2025, the commission shall apply this subchapter as a pilot program  
 2-42 only in the John Graves Scenic Riverway.  
 2-43 Sec. 26.553. REGULATION OF QUARRIES WITHIN WATER QUALITY  
 2-44 PROTECTION AREA. (a) The commission shall require a responsible  
 2-45 party to obtain an individual permit for any discharges from a  
 2-46 quarry located in a water quality protection area that is located:  
 2-47 (1) within a 100-year floodplain of any water body; or  
 2-48 (2) within one mile of any water body.  
 2-49 (b) The commission shall require a responsible party to  
 2-50 obtain a general permit under Section 26.040 for any quarry that is  
 2-51 located in a water quality protection area and located a distance of  
 2-52 more than one mile from any water body.  
 2-53 (c) Subject to Subsection (d), the commission shall  
 2-54 prohibit the construction or operation of any new quarry, or the  
 2-55 expansion of an existing quarry, located within 1,500 feet of a  
 2-56 water body located in a water quality protection area for which a  
 2-57 person files an application for a permit or permit amendment after  
 2-58 September 1, 2005.  
 2-59 (d) Notwithstanding Subsection (c), the commission may  
 2-60 issue or amend a permit to authorize the construction or operation  
 2-61 of a quarry located between 200 and 1,500 feet of a water body on  
 2-62 finding that:  
 2-63 (1) the responsible party can satisfy performance  
 2-64 criteria established by commission rule and incorporated into the  
 2-65 permit to address:  
 2-66 (A) slope gradients that minimize the potential  
 2-67 for erosion, slides, sloughing of quarry walls, overburden piles,  
 2-68 and banks into the water body and related water quality  
 2-69 considerations;

3-1 (B) whether operations could result in  
3-2 significant damage to important historic and cultural values and  
3-3 ecological systems;

3-4 (C) whether operations could affect renewable  
3-5 resource lands, including aquifers and aquifer recharge areas, in  
3-6 which the operations could result in a substantial loss or  
3-7 reduction of long-range productivity of a water supply or of food or  
3-8 fiber products; and

3-9 (D) whether operations could affect natural  
3-10 hazard land, including areas subject to frequent flooding and areas  
3-11 of unstable geology, in which the operations could substantially  
3-12 endanger life and property;

3-13 (2) the responsible party has provided a plan for the  
3-14 control of surface water drainage and water accumulation to  
3-15 prevent:

3-16 (A) erosion, siltation, or runoff; and

3-17 (B) damage to:

3-18 (i) fish, wildlife, or fish or wildlife  
3-19 habitat; or

3-20 (ii) public or private property;

3-21 (3) the responsible party has provided a plan for  
3-22 reclamation of the quarry that is consistent with best management  
3-23 standards and practices adopted by the commission for quarry  
3-24 reclamation, which may include backfilling, soil stabilization and  
3-25 compacting, grading, erosion control measures, and appropriate  
3-26 revegetation; and

3-27 (4) the responsible party has provided evidence that,  
3-28 to the extent possible, quarrying will be conducted using the best  
3-29 available technology to:

3-30 (A) minimize disturbance and adverse effects of  
3-31 the quarry operation on fish, wildlife, and related environmental  
3-32 resources; and

3-33 (B) enhance fish, wildlife, and related  
3-34 environmental resources where practicable.

3-35 (e) The commission by rule shall establish effluent or other  
3-36 water quality requirements, including requirements for financial  
3-37 responsibility, adequate to protect the water resources in a water  
3-38 quality protection area for inclusion in any authorization,  
3-39 including an individual or general permit, issued under this  
3-40 section by the commission.

3-41 (f) In addition to any other requirements established by  
3-42 commission rule adopted under Subsection (e), the responsible party  
3-43 for a quarry located in a water quality protection area required to  
3-44 obtain an individual or general permit shall include with an  
3-45 application filed with the commission under this section:

3-46 (1) a proposed plan of action for how the responsible  
3-47 party will restore the receiving water body to background  
3-48 conditions in the event of an unauthorized discharge that affects  
3-49 the water body; and

3-50 (2) evidence of sufficiently funded bonding or proof  
3-51 of financial resources to mitigate, remediate, and correct any  
3-52 potential future effects on a water body of an unauthorized  
3-53 discharge to a water body.

3-54 Sec. 26.554. FINANCIAL RESPONSIBILITY FOR DISCHARGES OF  
3-55 CERTAIN WASTES WITHIN WATER QUALITY PROTECTION AREA. (a) The  
3-56 commission by rule shall adopt requirements for:

3-57 (1) maintaining evidence of financial responsibility  
3-58 for restoration of a water body affected by an unauthorized  
3-59 discharge from a permitted quarry; or

3-60 (2) taking corrective action and compensating for  
3-61 water quality effects caused by an unauthorized discharge resulting  
3-62 from quarrying.

3-63 (b) A responsible party commits a violation if the  
3-64 responsible party operates a permitted quarry knowing that  
3-65 financial responsibility required by a permit does not exist.

3-66 Sec. 26.555. INSPECTIONS OF AND SAMPLING OF WATER IN JOHN  
3-67 GRAVES SCENIC RIVERWAY. (a) To detect potential violations of  
3-68 this subchapter in the John Graves Scenic Riverway, the commission,  
3-69 the Brazos River Authority, and the Parks and Wildlife Department

4-1 shall coordinate efforts to conduct each calendar year:

4-2 (1) visual inspections of the riverway; and

4-3 (2) testing of water samples drawn from the Brazos  
 4-4 River and its tributaries in the riverway.

4-5 (b) The visual inspections and the drawing of water samples  
 4-6 must be conducted at least once in a winter month and at least once  
 4-7 in a summer month. The visual inspections must be conducted both  
 4-8 from the surface of the John Graves Scenic Riverway and from an  
 4-9 aircraft flying over the riverway.

4-10 Sec. 26.556. UNAUTHORIZED DISCHARGES OF CERTAIN WASTES  
 4-11 WITHIN WATER QUALITY PROTECTION AREA; ENFORCEMENT. (a) The  
 4-12 commission shall enforce this subchapter and impose administrative  
 4-13 and civil penalties for discharges from a quarry in violation of  
 4-14 this subchapter. Subject to Subsection (d), the commission shall  
 4-15 assess an administrative penalty against a responsible party of a  
 4-16 quarry responsible for a discharge in violation of this subchapter  
 4-17 or of a permit, rule, or order adopted or issued under this  
 4-18 subchapter in an amount of not less than \$2,500 and not more than  
 4-19 \$25,000 for each violation of this subchapter or of the permit,  
 4-20 rule, or order adopted or issued under this subchapter. Subject to  
 4-21 Subsection (d), the commission shall assess an administrative  
 4-22 penalty against a person for any other violation of this subchapter  
 4-23 or of a permit, rule, or order adopted or issued under this  
 4-24 subchapter in an amount of not less than \$100 for each violation of  
 4-25 this subchapter or of the permit, rule, or order adopted or issued  
 4-26 under this subchapter. Each day a violation continues may be  
 4-27 considered a separate violation for purposes of penalty assessment.

4-28 (b) In determining the amount of the penalty, the commission  
 4-29 shall consider:

4-30 (1) the nature, circumstances, extent, duration, and  
 4-31 gravity of the prohibited acts, and the hazard or potential hazard  
 4-32 the violation presents to the health, safety, or welfare of the  
 4-33 public;

4-34 (2) the effects of the violation on instream uses,  
 4-35 water quality, and fish and wildlife habitat;

4-36 (3) with respect to the alleged violator:

4-37 (A) the history and extent of previous  
 4-38 violations;

4-39 (B) the degree of culpability, including whether  
 4-40 the violation was attributable to mechanical or electrical failures  
 4-41 and whether the violation could have been reasonably anticipated  
 4-42 and avoided;

4-43 (C) demonstrated good faith, including actions  
 4-44 taken by the alleged violator to rectify the cause of the violation  
 4-45 and to compensate affected persons;

4-46 (D) whether the violator is engaged in a  
 4-47 for-profit operation;

4-48 (E) any economic benefit gained through the  
 4-49 violation; and

4-50 (F) the amount necessary to deter future  
 4-51 violations; and

4-52 (4) any other matters that justice may require.

4-53 (c) In addition to the administrative penalties and other  
 4-54 available remedies or causes of action, the commission may seek  
 4-55 injunctive relief in the district courts of Travis County to:

4-56 (1) force the temporary or permanent closure of a  
 4-57 quarry operated without authorization required under this  
 4-58 subchapter;

4-59 (2) force the temporary or permanent closure of a  
 4-60 permitted quarry under this subchapter for which acceptable  
 4-61 evidence of financial responsibility is not maintained;

4-62 (3) force the temporary or permanent closure of any  
 4-63 quarry responsible for an unauthorized discharge; or

4-64 (4) force corrective action by the responsible party  
 4-65 of a quarry responsible for an unauthorized discharge.

4-66 (d) The commission may compromise, modify, or remit, with or  
 4-67 without conditions, an administrative penalty imposed under this  
 4-68 subchapter. In determining the appropriate amount of a penalty for  
 4-69 settlement of an administrative enforcement matter, the commission

5-1 may consider a respondent's willingness to contribute to  
 5-2 supplemental environmental projects that are approved by the  
 5-3 commission, giving preference to projects that benefit the  
 5-4 community in which the alleged violation occurred and address the  
 5-5 remediation, reclamation, or restoration of the water quality and  
 5-6 the beds, bottoms, and banks of water bodies in the water quality  
 5-7 area adversely affected by unauthorized discharges from quarries or  
 5-8 abandoned quarries that threaten water quality and the beds,  
 5-9 bottoms, and banks of water bodies in the water quality area. The  
 5-10 commission may encourage the cleanup of contaminated property  
 5-11 through the use of supplemental environmental projects. The  
 5-12 commission may not approve a project that is necessary to bring a  
 5-13 respondent into compliance with environmental laws, that is  
 5-14 necessary to remediate environmental harm caused by the  
 5-15 respondent's alleged violation, or that the respondent has already  
 5-16 agreed to perform under a preexisting agreement with a governmental  
 5-17 agency.

5-18 (e) A violation of this subchapter also constitutes an  
 5-19 offense that may be prosecuted and punished under Section 7.147.

5-20 (f) Nothing in this subchapter affects the right of any  
 5-21 person that has a justiciable interest to pursue an available  
 5-22 common law or statutory remedy to enforce a right, to prevent or  
 5-23 seek redress or compensation for the violation of a right, or  
 5-24 otherwise to redress an injury.

5-25 Sec. 26.557. EMERGENCY ORDERS. The commission may issue a  
 5-26 temporary or emergency order under Section 5.509 relating to a  
 5-27 discharge of waste or pollutants from a quarry in a water quality  
 5-28 protection area.

5-29 Sec. 26.558. RECOVERY OF COSTS FOR UNAUTHORIZED DISCHARGES  
 5-30 WITHIN WATER QUALITY PROTECTION AREA. If the commission has  
 5-31 incurred any costs in undertaking a corrective or enforcement  
 5-32 action with respect to an unauthorized discharge from a quarry  
 5-33 under this subchapter, including a reclamation or restoration  
 5-34 action, the responsible party is liable to the state for all  
 5-35 reasonable costs of the corrective or enforcement action, including  
 5-36 court costs and reasonable attorney's fees, and for any punitive  
 5-37 damages that may be assessed by the court.

5-38 Sec. 26.559. RECLAMATION AND RESTORATION FUND ACCOUNT.  
 5-39 (a) Penalties and other money received by the commission as a  
 5-40 result of an enforcement action taken under this subchapter and any  
 5-41 gift or grant the commission receives for the purposes of this  
 5-42 subchapter shall be deposited into the reclamation and restoration  
 5-43 fund account in the general revenue fund. Money in the account may  
 5-44 be appropriated only to the commission for the reclamation and  
 5-45 restoration of the beds, bottoms, and banks of water bodies  
 5-46 affected by the unlawful discharges subject to this subchapter.

5-47 (b) At least 60 days before spending money from the  
 5-48 reclamation and restoration fund account, the commission shall  
 5-49 publish notice of its proposed plan and conduct a hearing for the  
 5-50 purpose of soliciting public comment, oral or written. The  
 5-51 commission shall fully consider all written and oral submissions on  
 5-52 the proposed plan.

5-53 (c) At least 30 days before the date of the public hearing,  
 5-54 the notice must be published in the Texas Register and in a  
 5-55 newspaper of general circulation in the county where the violation  
 5-56 resulting in the payment of the penalties or other money occurred.

5-57 (d) Interest and other income earned on money in the account  
 5-58 shall be credited to the account. The account is exempt from the  
 5-59 application of Section 403.095, Government Code.

5-60 Sec. 26.560. COOPERATION WITH OTHER STATE AGENCIES.  
 5-61 (a) The commission is the principal authority in the state on  
 5-62 matters relating to the implementation of this subchapter. All  
 5-63 other state agencies engaged in water quality or water pollution  
 5-64 control activities in a water quality protection area shall  
 5-65 coordinate those activities with the commission.

5-66 (b) The executive director, with the consent of the  
 5-67 commission, may enter into contracts, memoranda of understanding,  
 5-68 or other agreements with other state agencies for purposes of  
 5-69 developing effluent or other water quality requirements, including

6-1 requirements for financial responsibility, adequate to protect the  
6-2 water resources in a water quality protection area, in any  
6-3 individual or general permit or other authorization issued under  
6-4 this subchapter.

6-5 Sec. 26.561. WATER QUALITY PROTECTION AREA REPORTS.

6-6 (a) On or before December 1, 2006, the commission shall prepare a  
6-7 report describing its implementation of this subchapter and provide  
6-8 copies of the report to the governor, lieutenant governor, and  
6-9 speaker of the house of representatives.

6-10 (b) Beginning December 1, 2008, and on December 1 of each  
6-11 succeeding even-numbered year, the commission shall deliver a  
6-12 report to the governor, lieutenant governor, and speaker of the  
6-13 house of representatives evaluating the success of its  
6-14 implementation of the water quality protection permitting and  
6-15 enforcement programs developed under this subchapter.

6-16 SECTION 3. This Act takes effect immediately if it receives  
6-17 a vote of two-thirds of all the members elected to each house, as  
6-18 provided by Section 39, Article III, Texas Constitution. If this  
6-19 Act does not receive the vote necessary for immediate effect, this  
6-20 Act takes effect on the 91st day after the last day of the  
6-21 legislative session.

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