

BILL ANALYSIS

C.S.H.B. 571

By: Huberty

Natural Resources

Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Commission on Environmental Quality (TCEQ) is responsible for enforcing a myriad of laws, rules, and regulations that apply to the removal of aggregate materials, such as rock, sand, gravel, and dirt or soil. TCEQ's regulatory authority includes water quality requirements for water used in the mining process, air quality requirements for emissions from rock crushers or other activities at a quarry site, and requirements for cleanup and reporting of spills of petroleum products or solid waste.

Despite TCEQ's efforts, an aggregate production operation can remove materials in remote locations without TCEQ's knowledge and without the proper authorizations designed to protect water and air quality.

C.S.H.B. 571 seeks to address this issue by providing TCEQ with the ability to regulate certain aggregate production operations through registration and inspection.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 571 amends the Water Code to require the responsible party for an aggregate production operation to register the operation with the Texas Commission on Environmental Quality (TCEQ) not later than the 10th business day before the beginning date of extraction activities and to renew the registration annually unless an operator notifies TCEQ in writing that the operations at a particular aggregate production operation have ceased, in which case the bill's provisions are not applicable to that operation.

C.S.H.B. 571 requires TCEQ to conduct an annual physical survey of Texas to identify all active aggregate production operations in the state and to ensure that each active aggregate production operation is registered with TCEQ and authorizes TCEQ to contract with or seek assistance from a governmental entity or other person to conduct the annual survey.

C.S.H.B. 571 requires TCEQ to inspect each active aggregate production operation in Texas at least once every three years for compliance with applicable environmental laws and rules under the jurisdiction of TCEQ, only after providing notice to the responsible party in accordance with commission policy. The bill requires an inspection to be conducted by one or more inspectors trained in the regulatory requirements under the jurisdiction of TCEQ that are applicable to an active aggregate production operation, but provides that each inspector in an inspection conducted by more than one inspector is not required to be trained in every applicable regulatory requirement, specifying that the combined training of the inspectors must include each of the applicable regulatory requirements as listed in the bill. The bill provides that a complaint investigation satisfies the bill's inspection requirement if a potential noncompliance issue not related to the complaint is observed and is not within an area of expertise of the investigator but is referred to TCEQ for further investigation or if the issue is within an area of expertise of the inspector and is appropriately investigated and addressed in the investigation report. The bill requires TCEQ to provide a specific section in its annual enforcement report with information regarding the implementation of the bill's provisions and specifies the information to be included.

C.S.H.B. 571 establishes an annual aggregate production operation registration fee for a person who, under state law, is authorized to operate an aggregate production operation and requires the fee to be payable to TCEQ, deposited in the water resource management account, and used only to implement the bill's provisions. The bill requires TCEQ by rule to set the fee in an amount, not to exceed \$1,000, sufficient to maintain a registry of active aggregate production operations in Texas and to implement the bill's provisions.

C.S.H.B. 571 imposes a penalty of not less than \$5,000 and not more than \$10,000 for each year in which an aggregate production operation operates without being registered under the bill's provisions but prohibits the total penalty from exceeding \$25,000 for an aggregate production operation that is operated in three or more years without being registered.

C.S.H.B. 571 establishes that a responsible party operating an aggregate production operation is first required to register with TCEQ on September 1, 2012. The bill establishes that the three-year period to conduct an inspection of the operation begins September 1, 2015, if, in conjunction with an initial registration, a responsible party submits a notice of intent to conduct an audit for compliance with all applicable TCEQ laws, rules, and regulations under the Texas Environmental, Health, and Safety Audit Privilege Act. The bill defines "aggregate production operation," "aggregates," "commission," "operator," "owner," and "responsible party."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 571, SECTION 1 contains a provision not in the original specifying that "aggregate production operation" does not include a site at which the materials that are being removed or extracted from the earth are used or processed for use in the construction, modification, or expansion of a solid waste facility at the site or another location.