

- SUBJECT:** Requiring minimum distance between quarries and adjacent properties
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 8 ayes — Mowery, J. Jones, Goolsby, Guillen, Haggerty, Hochberg, Howard, Noriega
- 0 nays
- 1 absent — Pickett
- WITNESSES:** For — Wesley Castania; Ellen Staples; (*Registered, but did not testify:*) Shelly Castania; Donald Lee, Texas Conference of Urban Counties; Linda Sickels, Trinity Industries, Inc.; Stanley Staples; Freddy Warner, Texas Aggregates and Concrete Association
- Against — None
- On — William Chovanec, Texas Railroad Commission; Robert C. Lanham, AGC of Texas
- BACKGROUND:** The Aggregate Quarry and Pit Safety Act (Natural Resources Code, Ch. 133) regulates quarries and pits to protect public welfare. Sec. 133.901 requires a party responsible for digging a quarry or pit to locate it at least 50 feet from neighboring property when the pit:
- extends at least five feet deep;
  - lacks lateral support;
  - is used for extracting construction material; and
  - is located in a county with a population between 400,000 and 475,000 (Denton County)
- Sec. 133.044 prohibits an operator from locating a pit used for the extraction of construction materials within 25 feet of a public road. The statute prohibits pits in “hazardous proximity” to public roads without the filing of a quarry safety plan. Sec. 133.045 requires pit operators to obtain a safety certificate for a pit located in hazardous proximity to a public road or in an

“unacceptable unsafe location,” i.e., within 200 feet of the nearest public road. The statute requires construction of barriers between pits and public roads under certain circumstances.

Sec. 133.011 extends discretionary authority to the Railroad Commission to adopt rules and perform other functions to implement and enforce the Aggregate Quarry and Pit Safety Act.

**DIGEST:**

CSHB 547 would eliminate the population bracket in Natural Resources Code sec. 133.901 to make its provisions apply across Texas. It would exempt from the requirements of this section an excavation constructed by government to drain or retain water.

The bill would take effect September 1, 2003, and would apply only to a pit active on or after the effective date. Current law would govern a pit that was inactive on the effective date and that remained inactive thereafter.

**SUPPORTERS  
SAY:**

Land users and owners in all counties need the protection afforded by a 50-foot buffer between commercial pits and adjacent property. By allowing irresponsible operators to dig deep pits and form sheer cliffs next to the property of others, current law allows pit operators to risk the lives of people — especially visitors and children — present on the adjacent property.

The bill also would protect land and land values adjacent to quarries and pits. Commercial pit operations located too close to property lines have caused adjacent surfaces and subsoils to erode away. Homeowners have lost substantial value in their homes due to unreasonably close encroachment by pits. CSHB 547 properly would balance the economic interests of pit operators and adjacent property owners by requiring the 50-foot buffer.

The Aggregate Quarry and Pit Safety Act already regulates pits statewide. It and the existing prohibition of pits in Denton County within 50 feet of another’s property provide legal and policy precedent for this bill. The actual and potential problems created by pits necessitate legislation, not individualized determinations by overburdened courts.

CSHB 547 would reduce the dangers posed by quarries and pits without depriving pit owners of the economic use of their land, thus defeating any

assertion that it would authorize an unconstitutional taking. For nearly two years the statute has applied successfully to Denton County. As written and applied, the bill would satisfy a test of its constitutionality.

The Railroad Commission and its experts would exercise discretion in implementing and enforcing the bill. These experts can determine the meaning of lateral support should the question arise. Current commission funding would cover its limited responsibility under the bill.

**OPPONENTS  
SAY:**

CSHB 947 would cause an unconstitutional taking of property belonging to certain pit owners. Courts have interpreted the “takings” provision of the Texas Constitution to require government to compensate a person when a law has severe enough economic impact and interferes with investment-backed expectations of the person. By limiting the volume of material a current pit owner could quarry — 50 feet by the depth of the pit — CSHB 947 would take economic value without providing compensation. The bill also could compel pit owners to restore excavated pits to satisfy the 50-foot set-off requirement of the statute.

This bill would have unintended negative consequences, such as increasing the number of unsightly pits and price of construction materials. It would restrict the amount of construction material a pit operator could extract without regard to whether the pit even affected neighboring property, which often is unoccupied and rarely visited. As a result, operators prematurely would open additional pits to satisfy the market demand for material, thus spreading the risk associated with pits to a greater number of locations. Furthermore, the cost of acquiring additional land as a buffer and relocating production prematurely would increase the market price of construction materials, thus slowing economic growth.

Pit operators already have clear legal obligations to neighboring property owners, which owners can enforce through existing remedies, including the pursuit of nuisance or trespass claims against irresponsible pit operators. Landowners also can secure covenants to prohibit pits on neighboring properties. CSHB 947 would create too strict a rule prohibiting quarrying rather than allowing existing legal mechanisms to work.

The bill also would strain the limited resources of the Railroad Commission by burdening it with new responsibilities. Because the 50-foot set-off requirement currently applies only to Denton County, the commission has not adopted rules to implement it. This bill, however, would require the commission to write and adopt rules for sec. 133.901 and begin enforcing them statewide. Personnel are not available to perform these functions.

**OTHER  
OPPONENTS  
SAY:**

CSHB 947 should provide a workable definition for “lateral support.” The ambiguity of this important term otherwise would give rise to litigation.

**NOTES:**

The committee substitute added a provision to the original bill that would exempt any excavation constructed by government to drain or retain water from the 50-foot set-off requirement.