

## **BILL ANALYSIS**

Senate Research Center  
77R3831 SMH-F

S.B. 910  
By: Shapiro  
Natural Resources  
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### **DIGEST AND PURPOSE**

Current Texas law does not require a rock quarry to reclaim the land once it has completed its mining operations. The Railroad Commission does require a lignite coal or uranium mine to reclaim the land once mining operations are complete. The Railroad Commission's oversight of quarries only covers safety issues under the Pit and Safety Act. Quarries are required to meet several environmental standards on the front end of operation but are not required to meet any standard once mining operations are complete. Examples of permits required for operation include clean air, clean water, stormwater runoff, and other federal workplace standards. As proposed, S.B. 910 requires all new quarries to obtain a "certificate of registration" from the Railroad Commission prior to beginning a mining operation. S.B. 910 also requires a quarry operator, as a part of registration, to file a reclamation plan before mining can begin.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 1 (Sections 135.051 and 135.102 Natural Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amend Title 4, Natural Resources Code, by adding Chapter 135, as follows:

#### **CHAPTER 135. AGGREGATE QUARRYING AND RECLAMATION**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 135.001. **SHORT TITLE.** Provides that this chapter may be cited as the Texas Aggregate Quarrying and Reclamation Act.

Sec. 135.002. **DEFINITIONS.** Provides that "aggregates," "commission," "operator," "overburden," "owner," "pit," "quarrying," "quarry," "ridge," and "site" have the meanings assigned those terms in Section 133.003. Defines "certificate holder," "land affected," and "reclamation."

Sec. 135.003. **EXEMPTIONS.** (a) Provides that this chapter does not apply to land under the jurisdiction of the General Land Office; land from which aggregates are being produced on September 1, 2001; or a parcel of land less than five acres.

(b) Requires land covered by Subsection (a)(1) on which quarrying is conducted to be reclaimed in a manner consistent with this chapter and notwithstanding Subsection (a)(1).

(c) Sets forth conditions under which an operator is prohibited from expanding the surface acreage of a pit from which aggregates are being produced on September 1, 2001.

Reserves Section 135.004-135.050 for expansion.

#### SUBCHAPTER B. AUTHORITY OF COMMISSION

Sec. 135.051. GENERAL AUTHORITY OF COMMISSION. (a) Sets forth the authority of the Railroad Commission of Texas (commission) relating to this chapter.

(b) Provides that this chapter does not authorize the commission to adjudicate property title or property rights disputes.

Sec. 135.052. INSPECTIONS. (a) Authorizes the commission or an authorized representative of the commission, on reasonable notice and on presentation of appropriate credentials, to inspect a quarrying operation for the purpose of determining whether the operation is properly reclaiming the land affected by the operation.

(b) Authorizes an inspection to be conducted only during normal operating hours.

(c) Requires an inspector to provide a written statement of the reasons for the inspection.

(d) Requires an inspector to prepare an inspection report adequate to enforce the requirements of, and to implement, this chapter. Requires the inspector to provide a copy of the report to the operator or an authorized representative of the operator before departing the quarrying operation and requires an inspector to file the report with the commission. Requires the commission to provide a copy of the report to the operator and each owner of the site of the quarry who is not the operator.

(e) Requires the commission to establish a system of rotation of inspectors.

Reserves Sections 135.053-135.100 for expansion.

#### SUBCHAPTER C. CERTIFICATE OF REGISTRATION

Sec. 135.101. CERTIFICATE OF REGISTRATION REQUIRED. Prohibits a person from conducting a quarrying operation in this state unless the person holds a certificate of registration for that operation issued by the commission under this chapter.

Sec. 135.102. APPLICATION. (a) Requires a person to file an application for a certificate of registration with the commission on a concise form prescribed by the commission, accompanied by a fee of \$200 and the bond or alternative form of financial security required by Subchapter D, to obtain a certificate of registration.

(b) Requires the application to include certain information.

(c) Requires a separate application for each quarrying operation. Requires the commission by rule to specify criteria for determining whether a quarrying operation constitutes a separate operation for which a separate application is required.

Sec. 135.103. ISSUANCE OF CERTIFICATE. (a) Requires the commission to carry out certain duties not later than the 30th day after the date the commission receives a completed application, the application fee, and a bond or alternative form of financial security as required by Subchapter D.

(b) Prohibits the commission from giving public notice or holding a public hearing before issuing a certificate of registration.

Sec. 135.104. **TERM OF CERTIFICATE.** Provides that a certificate of registration expires on the first anniversary of the date of issuance.

Sec. 135.105. **RENEWAL OF CERTIFICATE.** Authorizes a person to renew an unexpired certificate of registration by paying a renewal fee of \$500 to the commission before the expiration date of the certificate.

Sec. 135.106. **RECLAMATION STANDARDS.** Requires a certificate of registration to require that the quarrying operations meet the applicable reclamation standards of this chapter and commission rules.

Sec. 135.107. **TRANSFER OF CERTIFICATE.** (a) Requires an operator to provide written notice to the commission at least 15 days before the date the operator transfers a certificate of registration and requires the notice to meet certain criteria.

(b) Authorizes an operator to transfer a certificate of registration on or after the 15th day after the date the operator provides notice under Subsection (a) unless the commission notifies the operator that the transfer is disapproved before that day. Sets forth procedures on the transfer of the certificate.

Sec. 135.108. **AMENDMENT OF CERTIFICATE.** (a) Authorizes the commission to amend a certificate of registration, on application, to cover additional land that is in the immediate vicinity of the quarry for which the certificate was issued, including land that is not contiguous to the quarry.

(b) Requires an application for an amended certificate of registration to describe the additional land to be covered by the certificate and the quarrying operations to be conducted on the land.

(c) Provides that the filing of an application to amend a certificate of registration does not affect the authority granted under the certificate of which amendment is sought.

Reserves Sections 135.109-135.150 for expansion.

#### SUBCHAPTER D. BOND OR ALTERNATIVE FORM OF FINANCIAL SECURITY

Sec. 135.151. **BOND REQUIRED.** (a) Requires an application for a certificate of registration to be accompanied by a bond on a form prescribed by the commission payable to the state and conditioned on the operator's compliance with the requirements of this chapter, any rule adopted or order issued by the commission under this chapter, and the reclamation plan for the quarry.

(b) Requires a bond to be signed by the operator as principal and by a good and sufficient surety licensed to do business in this state.

Sec. 135.152. **AMOUNT OF BOND.** Requires a bond to be in the amount of \$1,000 for each acre of land to be disturbed as provided by the reclamation plan for the proposed quarry.

Sec. 135.153. **TERM OF BOND.** (a) Requires a bond to remain in effect until the commission determines that the quarry has been reclaimed in accordance with this chapter, commission rules, and the reclamation plan for the quarry.

(b) Authorizes the commission, notwithstanding Subsection (a), to release a part of the amount of the bond if the commission determines that part of a quarry site has been reclaimed in accordance with this chapter.

Sec. 135.154. CANCELLATION OF BOND. Prohibits the surety on a bond from canceling the bond until the 91st day after the date the surety gives the commission written notice of intent to cancel the bond.

Sec. 135.155. SUBSTITUTION OF SURETY. (a) Requires the operator, after receiving notice from the commission, to substitute another good and sufficient surety licensed to do business in this state, if the surety on a bond ceases to do business in this state or the surety's license to do business is suspended or revoked.

(b) Authorizes the commission to suspend the operator's certificate of registration until the substitution is made, if an operator fails to substitute sureties as required by this section.

Sec. 135.156. ALTERNATIVE FORM OF FINANCIAL SECURITY. Sets forth alternative forms of financial security .

Reserves Sections 135.157-135.200 for expansion.

#### SUBCHAPTER E. CONDUCT OF QUARRYING OPERATIONS

Sec. 135.201. DISTANCE OF PIT PERIMETER FROM PROPERTY LINE. Sets forth the requirements for the location of a pit perimeter.

Reserves Sections 135.202-135.250 for expansion.

#### SUBCHAPTER F. RECLAMATION

Sec. 135.251. RECLAMATION PLAN. (a) Requires a reclamation plan submitted as part of an application for a certificate of registration to be developed in a manner consistent with certain conditions and technologies.

(b) Requires a reclamation plan to specify certain information.

(c) Authorizes an operator to amend a reclamation plan at any time, subject to commission approval.

Sec. 135.252. ACCESS TO LAND ABOVE BENCH OR HIGHWALL. Requires that, if a quarrying operation produces a bench or solid rock highwall, the operator provide at least one suitable access to land above the bench or highwall.

Sec. 135.253. RESTRICTION OF WATERWAY. Prohibits an operator from moving overburden in a manner that restricts a waterway unless a drainway can be constructed with the approval of each proper state agency.

Sec. 135.254. GRADING OF OVERBURDEN. (a) Requires an operator to perform certain duties relating to grading of overburden.

(b) Provides that this section does not apply to a quarrying operation conducted in the flood plain of a river or stream and subject to periodic flooding or in a wetland; or the pit of which is covered by a lake or settlement pond as provided by Section 135.255.

(c) Provides that notwithstanding Subsection (a), an operator is not required to backfill a pit and may leave boulders in a pit.

Sec. 135.255. CONSTRUCTION OF DAM. Authorizes an operator to construct a dam to form a lake or settlement pond in a pit resulting from a quarrying operation.

Sec. 135.256. REVEGETATION. Provides that revegetation of land affected by a quarrying operation is not required if the chemical or physical characteristics of the soil seriously inhibit plant growth or the land is to be covered by a permanent lake or pond.

Reserves Sections 135.257-135.300 for expansion.

#### SUBCHAPTER G. ADMINISTRATIVE PENALTY.

Sec. 135.301. IMPOSITION OF PENALTY. Requires the commission to impose an administrative penalty on an owner or operator of a quarrying operation who violates this chapter or a rule adopted or order issued under this chapter.

Sec. 135.302. AMOUNT OF PENALTY. Provides that the amount of the penalty is \$5,000, and each day that a violation continues or occurs is a separate violation for purposes of imposing a penalty.

Sec. 135.303. NOTICE OF VIOLATION AND PENALTY. (a) Requires the commission to give written notice of a violation to the person alleged to have committed the violation if, after investigation of a possible violation and the facts surrounding that possible violation, the commission determines that a violation has occurred.

(b) Requires the notice to include certain information.

Sec. 135.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person receiving the notice, not later than the 20th day after the date the person receives the notice, in writing to accept the determination and the proposed administrative penalty or make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) Requires the commission by order to approve the determination and impose the proposed penalty if the person accepts the determination and proposed penalty.

Sec. 135.305. HEARING. (a) Requires the commission to set a hearing and give written notice of the hearing to the person if the person requests a hearing or fails to respond in a timely manner to the notice. Authorizes the commission to employ a hearings officer to hold the hearing.

(b) Requires the hearings officer to make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Sec. 135.306. DECISION BY COMMISSION. (a) Authorizes the commission by order, based on findings of fact, conclusions of law, and proposal for a decision, to find that a violation occurred and impose a penalty or find that a violation did not occur.

(b) Requires the notice of the commissioner's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 135.307. OPTIONS FOLLOWING DECISION; PAY OR APPEAL. Requires the person, not later than the 30th day after the date the commission's order becomes final, to pay

the penalty or file a petition for a judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 135.308. STAY OF ENFORCEMENT OF PENALTY. (a) Authorizes a person who files a petition for judicial review within the 30-day period prescribed by Section 135.307 to stay enforcement of the penalty or request the court to stay the enforcement of the penalty by following certain procedures.

(b) Sets forth procedures regarding an affidavit filed under Subsection (a)(2).

Sec. 135.309. COLLECTION OF PENALTY. (a) Authorizes the penalty to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed.

(b) Authorizes the attorney general to sue to collect the penalty.

(c) Requires a penalty collected under this subchapter to be deposited in the state treasury to the credit of the Texas aggregate quarry reclamation account.

Sec. 135.310. DECISION BY COURT. (a) Authorizes the court, if the court sustains the finding that a violation occurred, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) Requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 135.311. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person, if the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court.

(b) Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 135.312. RELEASE OF BOND. (a) Requires the court to order, when the court's judgment becomes final, the release of the bond if the person gave a supersedeas bond and the penalty is not upheld in court.

(b) Requires the court to order the release of the bond after the person pays the reduced amount if the person gave a supersedeas bond and the amount of the penalty is reduced.

Sec. 135.313. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001 (Administrative Procedure), Government Code.

Reserves Sections 135.314-135.350 for expansion.

#### SUBCHAPTER H. RECLAMATION ACCOUNT

Sec. 135.351. TEXAS AGGREGATE QUARRY RECLAMATION ACCOUNT. (a) Requires the commission to deposit the amount recovered on a bond or alternative form of financial security as required by Subchapter D or an administrative penalty collected under

Subchapter G to the credit to the Texas aggregate quarry reclamation account (account).

(b) Provides the account is an account in the general revenue fund that may be appropriated only for the purpose of undertaking corrective or enforcement action under this chapter.

SECTION 2. (a) Effective date: September 1, 2001.

(b) Requires the Railroad Commission of Texas to adopt rules as necessary to implement this Act not later than March 1, 2002.

(c) Authorizes an operator to begin conducting a quarrying operation in this state on or after the effective date of this Act and before the commission adopts rules as provided by Subsection (b) of this section without obtaining a certificate of registration for that operation from the commission under Chapter 135, Natural Resources Code, as added by this Act, and notwithstanding Section 135.101, Natural Resources Code, as added by this Act. Requires an operator described by this subsection to file an application for a certificate of registration under Section 135.102, Natural Resources Code, as added by this Act, accompanied by a reclamation plan under Section 135.251, Natural Resources Code, as added by this Act, as soon as practicable after the commission adopts rules. Authorizes an operator who files an application accompanied by a reclamation plan to continue conducting the operation under this subsection until the commission approves or disapproves the application and reclamation plan.