

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 910
By: Shapiro
Natural Resources
4/18/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, Texas is one of thirteen states that does not require reclamation of sand, gravel, aggregate, clay, or stone quarries upon completion of mining activity. In addition, no viable data base is available for the state to determine the number of active quarries or pits presently operating in Texas. C.S.S.B. 910 requires active quarries and pits to apply for and receive certificates of registration from the Railroad Commission of Texas (commission), in an attempt to determine the actual number of these types of facilities. The bill also provides for a property line setback from adjacent landowners and establishes penalties for facilities found to be in violation of this Act.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 1 (Sections 135.004 and 135.052, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends 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 "commission," "operator," "owner," "pit," "quarrying," "quarry," and "site" have the meanings assigned those terms in Section 133.003. Defines "certificate holder," and "land affected."

Sec. 135.003. EXEMPTIONS. (a) Provides that this chapter does not apply to land under the jurisdiction of the General Land Office or a parcel of land less than five acres.

Sec. 135.004. RULES AND ORDERS. Authorizes the commission to adopt rules and issue orders as necessary to implement and enforce this chapter.

Reserves Sections 135.005-135.050 for expansion.

SUBCHAPTER B. CERTIFICATE OF REGISTRATION

Sec. 135.051. CERTIFICATE OF REGISTRATION REQUIRED. Prohibits a person from conducting a quarrying operating in this state unless the person holds a certificate of registration for that operation issued by the commission under this chapter.

Sec. 135.052. 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 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. 135.053. 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 and the application fee.

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

Sec. 135.054. TERM OF CERTIFICATE. Provides that a certificate of registration is valid for the life of the quarry for which it is issued.

Sec. 135.055. 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.

Sec. 135.056. 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 135.057-135.100 for expansion.

SUBCHAPTER C. CONDUCT OF QUARRYING OPERATIONS

Sec. 135.101. DISTANCE OF PIT PERIMETER FROM PROPERTY LINE. Sets forth the requirements for the location of a pit perimeter.

Reserves Sections 135.102-135.150 for expansion.

SUBCHAPTER D. ADMINISTRATIVE PENALTY.

Sec. 135.151. 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. 135.152. AMOUNT OF PENALTY. (a) Provides that the amount of the penalty is \$500, except that the penalty for a violation of Section 135.101 is determined by the commission in an amount of not less than \$500 and not more than \$5,000.

(b) Requires the amount of the penalty for a violation of Section 135.101 to be based on certain criteria.

Sec. 135.153. 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. 135.154. 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. 135.155. 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. 135.156. 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. 135.157. 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. 135.158. STAY OF ENFORCEMENT OF PENALTY. (a) Authorizes a person who files a petition for judicial review within the 30-day period prescribed by Section 135.157 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. 135.159. 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.

Sec. 135.160. 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. 135.161. 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. 135.162. 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. 135.163. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001 (Administrative Procedure), Government Code.

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. 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 as soon as practicable after the commission adopts rules. Authorizes an operator who files an application to continue conducting the operation under this subsection until the commission approves or disapproves the application.

SUMMARY OF COMMITTEE CHANGES

Differs from original as follows:

SECTION 1. In proposed Section 135.002, Natural Resources Code, it eliminates the definitions of "aggregates," "overburden," "ridge," and "reclamation."

In proposed Section 135.003 it eliminates Subsections (b) and (c).

It adds a new Section 135.004, relating to rules and orders.

It eliminates original proposed Subchapter B and redesignates original proposed Subchapter C as Subchapter B.

It redesignates original proposed Sections 135.101-135.104 as Sections 135.051-135.054.

Amends proposed Section 135.052(a) of the substitute and eliminates Subdivision (b)(7).

Amends proposed Section 135.054 of the substitute.

Eliminates original proposed Sections 135.105 and 135.106.

Redesignates original proposed Sections 135.107 and 135.108 as Sections 135.055 and 135.056 and amends.

Eliminates original proposed Subchapter D relating to bonds or alternative forms of financial security and redesignates original proposed Subchapter E as Subchapter C of the substitute.

Redesignates original proposed Section 135.201 as Section 135.101.

Eliminates original proposed Subchapter F relating to reclamation and redesignates original proposed Subchapter G as Subchapter D of the substitute.

Redesignates original proposed Sections 135.301-135.313 as Sections 135.151-135.163.

Amends proposed Section 135.152 by adding new language to Subsection (a) and adding a new Subsection (b).

Amends proposed Section 135.158 to make a conforming change.

Amends proposed Section 135.159 to eliminate Subsection (c).

Eliminates original proposed Subchapter H relating to a reclamation account.

SECTION 2. Changes the language in Subsection (c).