

BILL ANALYSIS

C.S.H.B. 305

By: Puente

State Cultural and Recreational Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the number of recreational motor vehicles entering Texas rivers has reached a critical mass. According to the Texas Parks and Wildlife Department, the frequently traveled areas of Texas rivers have shown signs of erosion and decreased fish and vegetation. C.S.H.B. 305 prohibits the operation of a motor vehicle in or on the beds or banks of Texas rivers, with certain exceptions, and provides penalties.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Parks and Wildlife Department (the department) in SECTION 2 (Sec. 90.004, Parks and Wildlife Code) of this bill.

ANALYSIS

C.S.H.B. 305 sets forth certain legislative findings relating to the use of the state's rivers and streams and provides that, with certain exceptions, a person may not operate a motor vehicle in or on a protected freshwater area.

The prohibition does not apply to: a state, county, or municipal road right-of-way; a private road crossing; operation of a vehicle by a government employee; operation of a vehicle for agricultural activities; activities related to mineral leases or easements granted by the General Land Office; operation of a vehicle for activities related to permits for sand and gravel pursuant to Chapter 86, Parks and Wildlife Code; emergencies; certain utility operations; and operations by certain camps and retreat facilities.

C.S.H.B. 305 provides that a county or river authority may adopt a written local plan to provide access to a protected freshwater area within the county's or authority's jurisdiction. The local plan may allow limited vehicular access in a freshwater area and provide for the county or authority to collect a fee for such vehicular access. A proposed local plan must be approved by the department.

In considering whether to approve a plan, the department must consider whether the plan protects natural resources, public safety, and private property rights, provides for adequate enforcement, coordinates with adjacent and overlapping jurisdictions, and provides for and publicizes adequate public access and public services.

The department may adopt rules governing approval of local plans and may revoke approved plans if not implemented pursuant to the above criteria.

A county or river authority implementing a local plan must remit to the department 20 percent of the county's or river authority's gross receipts from fees charged under an approved local access plan to offset the department's administrative costs.

C.S.H.B. 305 provides that a prescriptive easement over private property cannot be created by recreational use of a protected freshwater area. A person, however, may not restrict or obstruct public recreational use of a freshwater area.

C.S.H.B. 305 provides that the department shall establish a program and seek funding to identify and to facilitate the development of motor vehicle recreation sites that are not located in a freshwater area.

C.S.H.B. 305 also provides that all peace officers of this state shall enforce the provisions of the Act and provides that each violation constitutes a class C misdemeanor unless it is shown at trial that a defendant was convicted two or more times, upon which a violation constitutes a Class B misdemeanor.

The department shall submit to the legislature a report regarding the department's identification and development of alternative vehicle recreation sites not later than September 1, 2004.

EFFECTIVE DATE

This Act takes effect January 1, 2004.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The intent of HB / C.S.H.B. 305 remains the same and that is to prohibit the operation of a motor vehicle in or on the beds or banks of Texas rivers, with certain exceptions, and provides penalties.

C.S.H.B. 305 provides exceptions for the following, not included in the original bill: Certain utility operations and operations by certain nonprofit camps and retreat facilities. The substitute also exempts any operation of a motor vehicle for agricultural activities, while the original bill exempted only an adjacent landowner's operation of a motor vehicle for agricultural activities.

C.S.H.B. 305 adds the provision that a county or river authority may adopt a written local plan to provide access to a protected freshwater area within the county's or authority's jurisdiction. The local plan may allow limited vehicular access in a freshwater area and provide for the county or authority to collect a fee for such vehicular access. A proposed local plan must be approved by the department, pursuant to certain criteria.

A county or river authority implementing a local plan must remit to the department 20 percent of the county's or river authority's gross receipts from fees charged under an approved local access plan to offset the department's administrative costs.

C.S.H.B. 305 adds the provision that the department shall establish a program and seeking funding to identify and to facilitate the development of motor vehicle recreation sites that are not located in a freshwater area.

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