

## **BILL ANALYSIS**

C.S.S.B. 155

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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.S.B. 155 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 (Section 90.004, Parks and Wildlife Code) of this bill.

### **ANALYSIS**

C.S.S.B. 155 sets forth a statement of policy 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; transportation, transmission, or distribution of electric power; telecommunications services or other services delivered through a cable system; transportation of aggregates, oil, natural gas, coal, or any product of oil, natural gas, or coal; the production, treatment, or transportation of water or wastewater; dredge material disposal; landowner that owns both sides of the protected freshwater area; any river with headwaters in a state other than Texas and a mouth or confluence in a state other than Texas.

C.S.S.B. 155 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.S.B. 155 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.S.B. 155 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.S.B. 155 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 September 1, 2003.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute changes the definition of "navigable river or stream" to a river or stream that retains an average width of 30 or more feet from the mouth or confluence up.

In the exemption subsection for a private road crossing, the substitute allows crossings established on or before December 31, 2003, rather than January 1, 2003, as provided in the original bill, to be exempt.

The substitute 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.

Under the utilities exemption in the substitute, the transportation, construction, operation, or maintenance of equipment is added along with facilities and structures. The substitute provides for a water and wastewater exemption. The substitute also provides an exemption for the transportation of aggregates and for the production and transportation of oil, natural gas, or coal.

The substitute exempts rivers whose headwaters and mouth are each in states other than Texas.

The substitute adds new section that authorizes TPWD to conduct studies necessary to implement this chapter.

The substitute 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.

The substitute provides that each violation under the Act is a separate offense, rather than each day of a violation as provided in the original bill. The substitute also provides that notwithstanding Section 12.403 of the Parks and Wildlife Code, Subchapter B, Chapter 12, Penal Code applies to punishments under this Act.

The substitute provides that 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.