

- SUBJECT:** Exempting small privately-owned reservoirs from permit requirement
- COMMITTEE:** State Recreational Resources — favorable, without amendment
- VOTE:** 9 ayes — Kuempel, Cook, Alexander, Callegari, Crownover, Ellis, Homer, E. Jones, Kolkhorst
0 nays
- WITNESSES:** For — Gary Joiner, Texas Farm Bureau; David K. Langford, Texas Wildlife Association; *Registered but did not testify:* Matt Strange
Against — None
On — Andrew Sansom, L. David Sinclair, Texas Parks and Wildlife Department; Todd Chenoweth, Texas Natural Resource Conservation Commission
- BACKGROUND:** SB 1 by Brown, enacted in 1997, amended the Water Code to allow a person to build a dam or reservoir on his own property without a permit as long as the water was for domestic and livestock use and the reservoir normally did not store more than 200 acre-feet of water. An acre-foot is the amount of water required to cover one acre with one foot of water, or about 326,000 gallons. Maintaining an unpermitted reservoir can be subject to a fine of up to \$5,000 a day by the Texas Natural Resource Conservation Commission (TNRCC).
- DIGEST:** HB 247 would allow property owners to build reservoirs or dams on their property with capacity of less than 200 acre-feet without obtaining a permit if the reservoir or dam was built for commercial or noncommercial wildlife management, including fishing.
The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS
SAY:

HB 247 would end a situation in which almost all stock tanks on Texas farms and ranches could be subject to fines by TNRCC. A rancher near Boerne who operates a ranch tourism business on his property recently was repairing the dams on seven tanks damaged by flooding in 1998. His repair work, along with brochures showing tourists near the tanks, led TNRCC to rule that he needed permits since his farm did not qualify for the exemption under current law. The rancher wound up paying \$5,000 in fines to settle with TNRCC, which had threatened to assess \$35,000 per day in fines for the seven unpermitted impoundments. HB 247 would clarify the law and prevent this situation from arising again.

The bill would permit reasonable use of small bodies of water on personal property, including fishing, nature tourism, picnics, duck hunting, and other outdoor activities. It enjoys the support of agricultural, environmental, private property, and sportsmen's groups, as well as of river authorities and water districts.

HB 247 would end a contradiction in state agricultural policy. The 76th Legislature in 1999 expanded the Texas Agricultural Finance Authority's ability to grant microenterprise loans to farmers and ranchers seeking to diversify their operations by operating ecotourism businesses. However, current law does not allow the use of the stock tanks as part of these tours without a TNRCC permit.

The bill would not change the reasonable 200-acre-foot limit in current law. Small reservoirs do not hoard water nor deny water to neighbors or to rivers. An impoundment of this size does not lend itself to a profitable commercial fish farm. Commercial fish farming requires circulation of the water to prevent it from becoming stagnant. A separate flow permit is required for fish farming, and HB 247 would not create an exemption from that permit requirement.

OPPONENTS
SAY:

HB 247 would create a loophole allowing an unpermitted commercial fish farm to use one or more of these small impoundments. The bill could exempt from permit requirements a 10-foot-deep containment area covering 20 acres. Several of these bodies of water could support a commercial fish farm.

Allowing more unpermitted impoundments could affect water rights or interfere unreasonably with downstream neighbors.

NOTES:

Two floor amendments are expected to be offered to HB 247. The first would retain fishing in the specification of allowable uses of the reservoir or dam but specifically would exclude “fish farming.” The second amendment would require that the property qualify for agricultural appraisal under Tax Code, chapter 23, subchapter C.