

- SUBJECT:** Prohibiting operation of motorized vehicles in protected freshwater areas
- COMMITTEE:** State Cultural and Recreational Resources — committee substitute recommended
- VOTE:** 6 ayes — Hilderbran, Geren, Dukes, B. Cook, Kuempel, Phillips
0 nays
1 absent — Bailey
- WITNESSES:** For — Alan Bloxsom, Fort Apache Energy; Kirby Brown, Texas Wildlife Association; Jeannie Dulling and Reagan Houston, Stewards of the Nueces; Charlie Faupel, Coleta Creek Conservation Association; Deliana Garcia, Linda M. de la Fuente Hunt; Tom Goynes, Texas Rivers Protection Association; Myron J. Hess, National Wildlife Federation; Sage Kaweck, Texas Hill Country River Region; Sky Lewey, Nueces River Authority; Susan Lynch, Friends of the Frio; Gail Reaser; Vernon Reaser; John Robinson; Stephen Salmon, Riverside and Landowners Protection Coalition and Texas Sheep and Goat Raisers Association; Brian Sybert, Sierra Club Lone Star Chapter; Tom Taylor

Against — George Garner; Russel Wernli

On — Susan Combs, Texas Department of Agriculture; Dennis Kneese, City of Kerrville; Dwight Lacy and John Worden, H. E. Butt Foundation; Jerry Patterson, General Land Office; Bob Sweeney, Texas Parks and Wildlife Department
- BACKGROUND:** The state owns the beds and waters of navigable streams, and the public has a right to use and travel on them. Banks and uplands next to state-owned streams usually are owned privately. The gradient boundary delineates the border between public and private property.
- DIGEST:** CSHB 304 would prohibit operation of a motorized vehicle in a protected freshwater area. A protected freshwater area would mean the portion of the bed, bottom, or bank lying below the gradient boundary of any navigable river

or stream. It would not include the portion of a bed, bank, or stream below tidewater limits.

Exemptions. The prohibition would not apply to a state, county, or municipal road right-of-way, a private road crossing, or to operation of a vehicle by:

- a federal, state, or local government employee on official business;
- a person using the vehicle for reasonable agricultural purposes;
- a person authorized by a mineral lease or the General Land Office;
- a person mining sand or gravel;
- a person responding to an emergency;
- a person building, operating, or maintaining utilities; or
- an owner of the uplands adjacent to the freshwater protected area for purposes related to a youth camp or retreat.

Anyone exempted from the prohibition would have to avoid, to the extent possible, harming vegetation, wildlife, or habitat and, if crossing a protected freshwater area, would have to cross by the most direct and feasible route.

Local river-access plan. A county or river authority could adopt a local plan for providing access to a freshwater protected area. The plan could allow limited vehicle use, provide for collection of a fee, or establish other measures. Before a plan could take effect, the county or river authority would have to file the plan with the Texas Parks and Wildlife Department (TPWD). TPWD could approve, disapprove, or modify a plan and would have to consider whether the plan:

- protected fish, wildlife, water quality, or other natural resources;
- protected public safety;
- provided adequate enforcement;
- coordinated with adjacent or overlapping jurisdictions;
- provided and publicized adequate public access;
- provided adequate public services; and
- protected private property rights.

TPWD could adopt additional criteria to govern approval of plans. Lack of rules adopted would not be a sufficient basis for rejecting a plan. TPWD could conduct periodic reviews of an implemented plan. If a person had

reason to believe that a plan did not comply with the bill's requirements, the person could file a petition for revocation of the plan. TPWD would have to revoke approval if it found that the implemented plan failed to meet the criteria.

TPWD would have to assist a county or river authority in developing a plan. A county or river authority would have to remit 20 percent of the fees collected under the plan to offset the agency's administrative costs.

Property rights and public access. A prescriptive easement over private property could not be created by recreational use of a protected freshwater area, including portaging around barriers, scouting obstructions, or crossing private property on the way to or from a protected freshwater area. The bill would not limit a person's right to navigate in, on, or around a protected freshwater area.

Except as otherwise allowed by law, a person could not restrict, obstruct, interfere with, or limit public recreational use of a protected freshwater area. The bill would not allow the public to use private property without permission to obtain access to a protected freshwater area.

Vehicle recreation sites. TPWD would have to establish a program to identify and facilitate the development of vehicle recreation sites not located in a protected freshwater area. The agency would seek cooperation of political subdivisions, landowners, nonprofit groups, and other interested parties. The agency also would have to seek funding from the federal government and other sources outside state general revenue. TPWD would have to report to the Legislature on the agency's identification and development of vehicle recreation sites by September 1, 2004.

Enforcement and penalties. All state peace officers would have to enforce the bill's requirements. Violating the prohibition against driving a vehicle in a protected freshwater area, limiting public recreational use of a protected freshwater area, or using private property without permission to access a protected freshwater area would be a Class C misdemeanor (punishable by a maximum fine of \$500). If it was shown at trial that the defendant had been convicted previously at least twice of offenses established by the bill and the defendant was convicted, the punishment would be a Class B misdemeanor

(up to 180 days in jail and/or a maximum fine of \$2,000). Each violation would be a separate offense.

The bill would take effect January 1, 2004.

**SUPPORTERS
SAY:**

CSHB 305 would prohibit operation of motorized vehicles in Texas rivers or streambeds. However, it would provide exemptions for legitimate activities in which vehicle access to a riverbed was necessary, such as for agriculture or utility maintenance. Also, it would allow counties or river authorities to adopt local river-access plans to provide limited vehicular access, such as for a family to reach a favorite swimming hole or to transport handicapped or elderly people down the river. It also would require TPWD to pursue development of alternative sites for vehicle recreation. Development of authorized off-road vehicle parks or similar sites would provide vehicle enthusiasts with a place where they could recreate without causing environmental harm to Texas rivers or streams.

Under current law, some rivers in Texas suffer under a nearly year-round crush of off-road vehicle groups and individual drivers. The vehicles leak engine fluids into the rivers, loosen chunks of granite while “crawling” over rock obstacles, contribute to erosion along river banks, and destroy fish and wildlife habitat. Motorized vehicles also harm water quality in rivers, many of which provide drinking water for downstream communities. Along the Nueces River, for example, this has resulted in a steady decline of vegetation, tire tracks and ruts running through fish-spawning beds, and signs of oil spills and other discharges.

Preliminary investigations and other studies clearly show the destructiveness of motorized vehicles in streambeds. A comparison of two sites along the Nueces River, conducted for the Nueces River Authority, found far fewer environmentally-sensitive species present at a popular spot for motorized vehicles than at a similar site with no vehicular activity. A preliminary investigation by TPWD found that motorized-vehicle traffic had destroyed vegetation along the banks of the Nueces, contributing to soil erosion and destabilization.

In addition, owners of property next to state-owned streambeds have observed criminal activities associated with use of motorized vehicles. Many vehicle

operators have trespassed on private property. Illegal activities such as drug use, discharge of firearms, and public sex acts have been especially troublesome along the Llano River.

**OPPONENTS
SAY:**

The public has a right to enjoy Texas' rivers, whether traveling by foot, canoe, kayak, or in a motorized vehicle. Because about 97 percent of Texas land is owned privately, state-owned riverbeds are among the few areas where those who cannot afford to buy their own property may drive their vehicles freely away from roads, traffic, and stop lights. Many local residents along Texas rivers have traveled by motorized vehicles to their families' favorite swimming holes or fishing spots for decades. In some cases, motorized vehicles may be the only feasible way for disabled or elderly citizens to reach the wild and scenic parts of a river.

CSHB 305 would overreact to violations by a few "bad apples" by banning this form of recreation for the many other conscientious operators. Most users of motorized vehicles are responsible operators. Organized groups of users minimize their impact on the environment by adhering to guidelines that recommend slow crossing of streams only at low-water points and that prohibit unnecessary spinning of a vehicle's wheels. Most users prefer to drive along gravel floodplains adjacent to the water.

Little conclusive evidence exists to support the claim that motorized-vehicle activity in streambeds necessarily harms river ecology. No in-depth, Texas-specific scientific investigations of this issue have been conducted. Some studies have shown that severe weather events have a greater impact on water quality than does even concentrated motorized-vehicle activity. The periodic floods common to many Texas rivers wipe out traces of vehicle activity in riverbeds.

**OTHER
OPPONENTS
SAY:**

Although allowing counties or river authorities to create local river-access plans would be a step in the right direction, the bill should specify that these plans could allow limited and responsible vehicle use for recreational purposes. Vehicles can have an impact on streambeds, especially if driven imprudently; however, responsible operation largely mitigates any potential harm. Local access plans need to allow some limited vehicular recreational use in areas that would like to benefit from the economic activity associated with vehicle enthusiasts.

NOTES:

The committee substitute would modify HB 305 as introduced by adding exemptions, providing for creation of a local river-access plan, and requiring TPWD to pursue development of alternative vehicle recreation sites.

The companion bill, SB 155 by Zaffirini, passed the Senate by voice vote on April 24 (Jackson recorded nay) and has been referred to the House State and Cultural Resources Committee. Provisions in the Senate engrossed version of SB 155 that differ from those in CSHB 305 include:

- an exemption for an owner of adjacent uplands on both sides of a protected freshwater area;
- an exception for a river with headwaters in New Mexico or Colorado and a confluence in Oklahoma; and
- a directive that TPWD prioritize the use of certain grant funds to achieve the bill's objectives.