

BILL ANALYSIS

Senate Research Center

S.B. 155
By: Zaffirini
Natural Resources
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Enrolled

DIGEST 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. 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

Rulemaking authority is expressly granted to the Texas Department of Parks and Wildlife in SECTION 2 (Section 90.004, Parks and Wildlife Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth legislative findings regarding protection of and public access to beds, bottoms, and banks of navigable rivers and navigable streams.

SECTION 2. Amends Title 5, Parks and Wildlife Code, by adding Subtitle I, as follows:

SUBTITLE I. PROTECTED FRESHWATER AREAS CHAPTER 90. ACCESS TO PROTECTED FRESHWATER AREAS

Sec. 90.001. DEFINITIONS. Defines “emergency,” “motor vehicle,” “navigable river or stream,” and “protected freshwater area.”

Sec. 90.002. OPERATION OF MOTOR VEHICLE IN PROTECTED FRESHWATER AREA PROHIBITED. Prohibits a person, except as provided by Section 90.003 or 90.004, from operating a motor vehicle in or on protected freshwater area on or after January 1, 2004.

Sec. 90.003. EXEMPTIONS. (a) Provides that Section 90.002 does not apply under certain conditions and to certain individuals.

(b) Provides that this chapter does not apply to any river with headwaters in a state other than Texas and a mouth in a state other than Texas.

(c) Requires a person exempt under this section who operates a motor vehicle in or on a protected freshwater area to proceed in a manner that avoids, to the extent reasonably possible, harming or disturbing vegetation, wildlife, or wildlife habitat within the protected freshwater area. Requires a person exempt under this section who is crossing a protected freshwater to cross by the most direct feasible route.

Sec. 90.004. LOCAL RIVER ACCESS PLANS. (a) Authorizes a county, municipality, or river authority to adopt a written local plan to provide access to a protected freshwater area located within the county’s geographical boundaries or the river authority’s or municipality’s jurisdiction.

(b) Authorizes a local plan adopted under this Subsection (a) to contain certain elements.

(c) Requires a county, municipality, or river authority to file the plan with the Texas Parks and Wildlife Department (TPWD), before a local plan adopted under Subsection (a) may take effect. Provides that a local plan does not take effect until the plan is approved in writing by the TPWD.

(d) Authorizes TPWD to approve, disapprove, or modify a local plan filed under Subsection (c). Requires TPWD, in determining whether to approve, disapprove, or modify a local plan, to consider whether the plan meets certain requirements.

(e) Authorizes TPWD by rule to adopt additional criteria or procedures to govern approval of local plans. Provides that a lack of rules adopted under this authority is not a basis for rejecting a local plan.

(f) Authorizes TPWD to conduct periodic reviews of a local plan filed under Subsection (c) to monitor the effectiveness of the plan.

(g) Authorizes a person who has reason to believe that a local plan filed under Subsection (c) does not comply with this section to file a petition for revocation of the plan with TPWD.

(h) Requires TPWD to revoke approval of a local plan if TPWD finds, as a result of a periodic review conducted under Subsection (f) or a petition for revocation filed under

Subsection (g), that the plan as implemented fails to meet any of the criteria for approval established by Subsection (d).

(i) Requires TPWD to adopt rules necessary to implement this section and Section 90.002, including rules relating to locations from which a person may launch or retrieve a vessel by trailer from the banks of protected freshwater area. Defines “vessel.”

Sec. 90.005. ASSISTANCE FROM THE DEPARTMENT. (a) Requires TPWD to assist a requesting county, municipality, or river authority in developing local plans.

(b) Requires a county, municipality, or river authority implementing a local plan to remit to TPWD 20 percent of the county’s, municipality’s, or river authority’s gross receipts from fees charged under Section 90.004(b)(2) to offset TPWD’s administrative costs associated with implementing this chapter.

Sec. 90.006. Authorizes TPWD to conduct studies necessary to implement its duties under this chapter.

Sec. 90.007. LANDOWNER RIGHTS. (a) Provides that a prescriptive easement over private property cannot be created by recreational use of a protected freshwater area, including by portage over or around barriers, scouting of obstructions, or crossing of a private property to or from a protected freshwater area.

(b) Requires nothing in this section to limit the right of a person to navigate in, on, or around a protected freshwater area.

Sec. 90.008. PUBLIC ACCESS. (a) Prohibits a person from restricting, obstructing, interfering with, or limiting public recreational use of a protected freshwater area, except as otherwise allowed by law.

(b) Provides that this section does not allow the public to use private property to gain access to a protected freshwater area without permission of the landowner.

Sec. 90.009. MOTOR VEHICLE RECREATION SITES. (a) Requires TPWD to establish a program to identify and to facilitate the development of motor vehicle recreation sites that are not located in or on a protected freshwater area. Requires TPWD to seek the cooperation of political subdivisions, landowners, nonprofit groups, and other interested persons in identifying and facilitating the development of motor vehicle recreation sites under this subsection.

(b) Requires TPWD to seek and use funding from the federal government and other sources outside the general revenue fund to identify and facilitate the development of motor vehicle recreation sites under Subsection (a).

Sec. 90.010. ENFORCEMENT. Requires all peace officers of this state to enforce the provisions of this chapter.

Sec. 90.011. PENALTY. (a) Provides that a person commits an offense if the person violates Section 90.002 or 90.008.

(b) Provides that an offense under Subsection (a) is a Class C misdemeanor, except as provided by Subsection (c).

(c) Requires the defendant to be punished for a Class B misdemeanor, if it is shown on the trial of an offense under this section that the defendant was previously convicted

two or more times under Section 90.002 or 90.008.

(d) Provides that each violation under this section is a separate offense.

(e) Establishes that, notwithstanding Section 12.403 of this code, Subchapter B, Chapter 12 (Ordinary Misdemeanor Punishments), Penal Code, applies to punishments under this section.

SECTION 3. Requires TPWD, by September 1, 2004, to submit to the legislature a report regarding TPWD's identification and development of motor vehicle recreation sites under Section 90.009, Parks and Wildlife Code, as added by this Act.

SECTION 4. Effective date: September 1, 2003.