

By: Puente, Jones of Bexar

H.B. No. 305

Substitute the following for H.B. No. 305:

By: Hilderbran

C.S.H.B. No. 305

A BILL TO BE ENTITLED

AN ACT

relating to the protection of public freshwater areas; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) The legislature recognizes that the beds, bottoms, and banks of navigable rivers and navigable streams are precious and irreplaceable state resources that deserve protection.

(b) The legislature also recognizes that public access to navigable rivers, navigable streams, and the beds, bottoms, and banks of navigable rivers and streams is:

(1) a right granted to individuals under the Texas Constitution; and

(2) an important economic and recreational resource for the people of this state.

(c) The protection of public access to the beds, bottoms, and banks of navigable rivers and navigable streams, therefore, should not come at the cost of uncontrolled damage to the beds, bottoms, and banks of navigable rivers and streams or at the cost of infringing on private property rights.

SECTION 2. Title 5, Parks and Wildlife Code, is amended by adding Subtitle I to read as follows:

SUBTITLE I. PROTECTED FRESHWATER AREAS

CHAPTER 90. ACCESS TO PROTECTED FRESHWATER AREAS

1 Sec. 90.001. DEFINITIONS. In this chapter:

2 (1) "Emergency" means a condition or circumstance in
3 which a person reasonably believes that an individual has sustained
4 serious bodily injury or is in imminent danger of serious bodily
5 injury or that property has sustained significant damage or
6 destruction or is in imminent danger of significant damage or
7 destruction.

8 (2) "Motor vehicle" means any wheeled or tracked
9 vehicle, machine, tractor, trailer, or semitrailer propelled or
10 drawn by mechanical power and used to transport a person or thing.

11 (3) "Protected freshwater area" means that portion of
12 the bed, bottom, or bank of any navigable river or navigable stream
13 that lies at or below the gradient boundary of the river or stream.
14 The term does not include that portion of a bed, bottom, or bank
15 that lies below tidewater limits.

16 Sec. 90.002. OPERATION OF MOTOR VEHICLE IN PROTECTED
17 FRESHWATER AREA PROHIBITED. Except as provided by Section 90.003
18 or 90.004, a person may not operate a motor vehicle in or on a
19 protected freshwater area.

20 Sec. 90.003. EXEMPTIONS. (a) Section 90.002 does not apply
21 to:

22 (1) a state, county, or municipal road right-of-way;

23 (2) a private road crossing; or

24 (3) operation of a motor vehicle by:

25 (A) a federal, state, or local government
26 employee if operation of a motor vehicle is necessary for
27 conducting official business;

1 (B) a person if operation of a motor vehicle is
2 necessary for reasonable purposes related to usual and customary
3 agricultural activities;

4 (C) a person if operation of a motor vehicle is
5 necessary to and is authorized by a mineral lease or crossing
6 easement granted by the General Land Office under the Natural
7 Resources Code;

8 (D) a person if operation of a motor vehicle is
9 necessary to an activity authorized by Chapter 86;

10 (E) a person in response to an emergency;

11 (F) a person if operation of a motor vehicle is
12 necessary for the lawful construction, operation, or maintenance of
13 a facility or structure used for:

14 (i) the production, transportation,
15 transmission, or distribution of electric power;

16 (ii) the provision of telecommunications
17 services or other services delivered through a cable system;

18 (iii) the transportation of aggregates,
19 oil, natural gas, coal, or any product of oil, natural gas, or coal;

20 (iv) the transportation of water or
21 wastewater; or

22 (v) dredge material disposal placement; or

23 (G) an owner of the uplands adjacent to a
24 protected freshwater area, the owner's agent, lessee, sublessee,
25 or the lessee or sublessee's agent, representative, licensee,
26 invitee, or guest for reasonable purposes related to usual and
27 customary operation of:

1 (i) a camp regulated under Chapter 141,
2 Health and Safety Code; or

3 (ii) a retreat facility owned and operated
4 by a nonprofit corporation chartered under the laws of this state
5 before January 1, 1970.

6 (b) A person exempt under this section who operates a motor
7 vehicle in or on a protected freshwater area shall do so in a manner
8 that avoids, to the extent reasonably possible, harming or
9 disturbing vegetation, wildlife, or wildlife habitat within the
10 protected freshwater area. A person exempt under this section who
11 is crossing a protected freshwater area shall cross by the most
12 direct feasible route.

13 Sec. 90.004. LOCAL RIVER ACCESS PLAN. (a) A county or
14 river authority may adopt a written local plan to provide access to
15 a protected freshwater area located within the county's
16 geographical boundaries or the river authority's jurisdiction.

17 (b) A local plan adopted under Subsection (a) may:

18 (1) allow limited motor vehicle use in a protected
19 freshwater area;

20 (2) provide for the county or river authority to
21 collect a fee from a person accessing a protected freshwater area;
22 or

23 (3) establish other measures consistent with the
24 policy and purposes of this chapter.

25 (c) Before a local plan adopted under Subsection (a) may
26 take effect, a county or river authority must file the plan with the
27 department. A local plan does not take effect until the plan is

1 approved in writing by the department.

2 (d) The department may approve, disapprove, or modify a
3 local plan filed under Subsection (c). In determining whether to
4 approve, disapprove, or modify a local plan, the department shall
5 consider whether the plan:

6 (1) protects fish, wildlife, water quality, and other
7 natural resources;

8 (2) protects public safety;

9 (3) provides for adequate enforcement;

10 (4) coordinates with adjacent and overlapping
11 jurisdictions;

12 (5) provides for and publicizes adequate public access
13 to a protected freshwater area;

14 (6) provides for adequate public services relating to
15 access to a protected freshwater area; and

16 (7) protects private property rights.

17 (e) The department by rule may adopt additional criteria or
18 procedures to govern approval of local plans. Lack of rules adopted
19 under this section alone is not a sufficient basis for rejecting a
20 local plan.

21 (f) The department may conduct periodic reviews of a local
22 plan filed under Subsection (c) to monitor the effectiveness of the
23 plan.

24 (g) A person who has reason to believe that a local plan
25 filed under Subsection (c) does not comply with this section may
26 file a petition for revocation of the plan with the department.

27 (h) The department shall revoke approval of a local plan if

1 the department finds, as a result of a periodic review conducted
2 under Subsection (f) or a petition for revocation filed under
3 Subsection (g), that the plan as implemented fails to meet any of
4 the criteria for approval established by Subsection (d).

5 Sec. 90.005. ASSISTANCE FROM DEPARTMENT. (a) The
6 department shall assist a requesting county or river authority in
7 developing a local plan.

8 (b) A county or river authority implementing a local plan
9 shall remit to the department 20 percent of the county's or river
10 authority's gross receipts from fees charged under Section
11 90.004(b)(2) to offset the department's administrative costs
12 associated with implementing this chapter.

13 Sec. 90.006. LANDOWNER RIGHTS. (a) A prescriptive
14 easement over private property cannot be created by recreational
15 use of a protected freshwater area, including by portage over or
16 around barriers, scouting of obstructions, or crossing of private
17 property to or from a protected freshwater area.

18 (b) Nothing in this section shall limit the right of a
19 person to navigate in, on, or around a protected freshwater area.

20 Sec. 90.007. PUBLIC ACCESS. (a) Except as otherwise
21 allowed by law, a person may not restrict, obstruct, interfere
22 with, or limit public recreational use of a protected freshwater
23 area.

24 (b) This section does not allow the public to use private
25 property to gain access to a protected freshwater area without
26 permission of the landowner.

27 Sec. 90.008. MOTOR VEHICLE RECREATION SITES. (a) The

1 department shall establish a program to identify and to facilitate
2 the development of motor vehicle recreation sites that are not
3 located in or on a protected freshwater area. The department shall
4 seek the cooperation of political subdivisions, landowners,
5 nonprofit groups, and other interested persons in identifying and
6 facilitating the development of motor vehicle recreation sites
7 under this subsection.

8 (b) The department shall seek and use funding from the
9 federal government and other sources outside the general revenue
10 fund to identify and facilitate the development of motor vehicle
11 recreation sites under Subsection (a).

12 Sec. 90.009. ENFORCEMENT. All peace officers of this state
13 shall enforce the provisions of this chapter.

14 Sec. 90.010. PENALTY. (a) A person commits an offense if
15 the person violates Section 90.002 or 90.007.

16 (b) Except as provided by Subsection (c), an offense under
17 Subsection (a) is a Class C misdemeanor.

18 (c) If it is shown on the trial of an offense under this
19 section that the defendant was previously convicted two or more
20 times under Section 90.002 or 90.007, on conviction the defendant
21 shall be punished for a Class B misdemeanor.

22 (d) Each violation under this section is a separate offense.

23 (e) Notwithstanding Section 12.403 of this code, Subchapter
24 B, Chapter 12, Penal Code, applies to punishments under this
25 section.

26 SECTION 3. The Parks and Wildlife Department shall submit
27 to the legislature a report regarding the department's

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1 identification and development of motor vehicle recreation sites
2 under Section 90.008, Parks and Wildlife Code, as added by this Act,
3 not later than September 1, 2004.

4 SECTION 4. This Act takes effect January 1, 2004.