

By: Zaffirini, et al.

S.B. No. 155

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. 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

Sec. 90.001. DEFINITIONS. In this chapter:

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

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

(3) "Navigable river or stream" means a river or stream that retains an average width of 30 feet from the mouth up.

(4) "Protected freshwater area" means the bottom, bed, or bank of any navigable river or stream within the gradient boundaries. The term does not include that portion of a bed, bottom, or bank that lies below tidewater limits.

1 Sec. 90.002. STATEMENT OF POLICY. (a) The legislature
2 recognizes that navigable rivers and their beds are precious and
3 irreplaceable state resources that deserve protection. Public
4 access to these areas is a right and an important economic and
5 recreational interest of Texas and must be protected.

6 (b) The protection of public access under Subsection (a)
7 should not come at the cost of uncontrolled damage to these
8 resources or the infringement on private property rights.

9 Sec. 90.003. OPERATION OF MOTOR VEHICLE IN PROTECTED
10 FRESHWATER AREA PROHIBITED. On or after January 1, 2004, no person
11 may operate a motor vehicle in or on a protected freshwater area.

12 Sec. 90.004. EXEMPTIONS. (a) Section 90.003 does not
13 apply to:

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

15 (2) a private road crossing established before January
16 1, 2003; or

17 (3) operation of a motor vehicle by:

18 (A) a federal, state, or local government
19 employee if operation of a motor vehicle is necessary for
20 conducting official business;

21 (B) an owner of the adjacent uplands and the
22 owner's agents, employees, representatives, and lessees for
23 reasonable purposes related to usual and customary agricultural
24 purposes;

25 (C) An owner of the adjacent uplands on both
26 sides of a protected freshwater area and the owner's agents,
27 employees, representatives, and lessees only for the purpose of

1 accessing their property on the opposite side of the protected
2 freshwater area when no reasonable alternative is available;

3 (D) an owner of the adjacent uplands and the
4 owner's lessees and sublessees, and their respective agents,
5 employees, representatives, licensees, invitees, and guests for
6 reasonable purposes related to usual and customary camp operations
7 at camps regulated under Chapter 141, Health and Safety Code;

8 (E) an owner of the adjacent uplands and the
9 owner's lessees and sublessees, and their respective agents,
10 employees, representatives, licensees, invitees, and guests for
11 reasonable purposes related to usual and customary operation of
12 retreat facilities owned by a Texas nonprofit corporation chartered
13 under the laws of this state before January 1, 1970;

14 (F) a person if operation of a motor vehicle is
15 necessary to and is authorized by a mineral lease;

16 (G) a person if operation of a motor vehicle is
17 necessary to and is authorized by a crossing easement granted by the
18 General Land Office under the Natural Resources Code;

19 (H) a person if operation of a motor vehicle is
20 necessary to an activity authorized by Chapter 86;

21 (I) a person in response to an emergency; or

22 (J) a person if the operation of a motor vehicle
23 is necessary for the lawful transportation, construction,
24 operation, or maintenance of equipment or facilities used for:

25 (i) the production, transportation,
26 transmission, or distribution of electric power;

27 (ii) the provision of telecommunications

1 services;

2 (iii) the exploration, production, or
3 transportation of oil, natural gas, coal, other minerals, and the
4 products thereof; or

5 (iv) dredge material disposal placement.

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 (c) This chapter does not apply to any river with headwaters
14 in New Mexico or Colorado and a confluence in Oklahoma.

15 Sec. 90.005. LOCAL RIVER ACCESS PLANS. (a) A county,
16 municipality, or river authority may adopt a local plan that
17 applies to protected freshwater areas within its jurisdiction.

18 (b) A local plan adopted under this section may:

19 (1) notwithstanding the prohibition in Section
20 90.003, allow for limited motor vehicle use;

21 (2) provide for collection of a fee not to exceed the
22 cost of allowing the limited use of motorized vehicles in protected
23 freshwater areas within its jurisdiction; and

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

26 (c) A local plan adopted under this section is not effective
27 until approved in writing by the department.

1 (d) In determining whether to approve, disapprove, or
2 modify a local plan, the department shall consider whether the
3 plan:

4 (1) protects fish, wildlife, water quality, and other
5 natural resources;

6 (2) protects public safety;

7 (3) provides for adequate enforcement;

8 (4) coordinates with adjacent and overlapping
9 jurisdictions;

10 (5) provides for and publicizes adequate public access
11 opportunities;

12 (6) provides for adequate public services; and

13 (7) protects private property rights.

14 (e) The department by rule may adopt additional criteria or
15 procedures to govern approval of local plans. Lack of rules adopted
16 under this authority is not a basis for rejecting a local plan.

17 (f) The department shall revoke its approval of a local plan
18 if the department finds, as the result of a periodic review, that
19 the plan as implemented fails to meet any of the criteria for
20 approval established under this section.

21 Sec. 90.006. ASSISTANCE FROM THE DEPARTMENT. (a) The
22 department shall assist counties, municipalities, and river
23 authorities in developing local plans.

24 (b) The department may conduct studies as necessary to
25 implement its duties under this chapter.

26 (c) The department shall prioritize the use of grant funds
27 under Chapter 24 to achieve the objectives of this chapter.

1 (d) A jurisdiction operating under a local plan shall remit
2 to the department 20 percent of its gross receipts, if any, from the
3 fees charged under Section 90.005(b) to offset the department's
4 administrative costs associated with implementing this chapter.

5 (e) The department shall seek and use available federal and
6 other funds and shall work with governmental entities, landowners,
7 nonprofit groups, and other interested parties to identify and
8 facilitate development of sites for motor vehicle recreation other
9 than protected freshwater areas.

10 (f) The department shall provide a report to the legislature
11 regarding its activities under Subsection (e) not later than
12 September 1, 2004.

13 Sec. 90.007. 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 or by scouting of obstructions, or crossing 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. 90.008. PUBLIC ACCESS. Except as otherwise allowed by
21 law, no person may restrict, obstruct, interfere with, or limit
22 public recreational use of a protected freshwater area.

23 Sec. 90.009. ENFORCEMENT. All peace officers of this state
24 shall enforce the provisions of this chapter.

25 Sec. 90.010. PENALTY. (a) A person commits an offense if
26 the person violates Section 90.003 or 90.008.

27 (b) Except as provided by Subsection (c), an offense under

1 Subsection (a) is a Class C misdemeanor.

2 (c) If it is shown on the trial of an offense under this
3 section that the defendant was previously convicted two or more
4 times under Section 90.003 or 90.008, on conviction the defendant
5 shall be punished for a Class B misdemeanor.

6 (d) Each day of a violation under this section is a separate
7 offense.

8 SECTION 2. This Act takes effect September 1, 2003.