

By: Zaffirini, et al.

S.B. No. 155

Substitute the following for S.B. No. 155:

By: Hilderbran

C.S.S.B. No. 155

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) "Navigable river or stream" means a river or
12 stream that retains an average width of 30 or more feet from the
13 mouth or confluence up.

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

19 Sec. 90.002. OPERATION OF MOTOR VEHICLE IN PROTECTED
20 FRESHWATER AREA PROHIBITED. Except as provided by Section 90.003
21 or 90.004, a person may not operate a motor vehicle in or on a
22 protected freshwater area on or after January 1, 2004.

23 Sec. 90.003. EXEMPTIONS. (a) Section 90.002 does not apply
24 to:

- 25 (1) a state, county, or municipal road right-of-way;
26 (2) a private road crossing established on or before
27 December 31, 2003; or

1 (3) operation of a motor vehicle by:

2 (A) a federal, state, or local government
3 employee if operation of a motor vehicle is necessary for
4 conducting official business;

5 (B) a person if operation of a motor vehicle is
6 necessary for reasonable purposes related to usual and customary
7 agricultural activities;

8 (C) a person if operation of a motor vehicle is
9 necessary to and is authorized by a mineral lease;

10 (D) a person if operation of a motor vehicle is
11 necessary to and authorized by a crossing easement granted by the
12 General Land Office under the Natural Resources Code;

13 (E) a person if operation of a motor vehicle is
14 necessary to an activity authorized by Chapter 86;

15 (F) a person in response to an emergency;

16 (G) a person if operation of a motor vehicle is
17 necessary for the lawful construction, operation, or maintenance of
18 equipment, facilities, or structures used for:

19 (i) the production, transportation,
20 transmission, or distribution of electric power;

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

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

25 (iv) the production, treatment, or
26 transportation of water or wastewater; or

27 (v) dredge material disposal placement;

1 (H) an owner of the uplands adjacent to a
2 protected freshwater area, the owner's agent, lessee, sublessee,
3 or the lessee or sublessee's agent, representative, licensee,
4 invitee, or guest for reasonable purposes related to usual and
5 customary operation of:

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

8 (ii) a retreat facility owned and operated
9 by a nonprofit corporation chartered under the laws of this state
10 before January 1, 1970; or

11 (I) an owner of the adjacent uplands on both
12 sides of a protected freshwater area and the owner's agents,
13 employees, representatives, and lessees only for the purpose of
14 accessing the owner's property on the opposite side of the
15 protected freshwater area when no reasonable alternate access is
16 available.

17 (b) This chapter does not apply to any river with headwaters
18 in a state other than Texas and a mouth or confluence in a state
19 other than Texas.

20 (c) A person exempt under this section who operates a motor
21 vehicle in or on a protected freshwater area shall do so in a manner
22 that avoids, to the extent reasonably possible, harming or
23 disturbing vegetation, wildlife, or wildlife habitat within the
24 protected freshwater area. A person exempt under this section who
25 is crossing a protected freshwater area shall cross by the most
26 direct feasible route.

27 Sec. 90.004. LOCAL RIVER ACCESS PLAN. (a) A county,

1 municipality, or river authority may adopt a written local plan to
2 provide access to a protected freshwater area located within the
3 county's geographical boundaries or the river authority's or
4 municipality's jurisdiction.

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

6 (1) notwithstanding Section 90.002, allow limited
7 motor vehicle use in a protected freshwater area;

8 (2) provide for the county, municipality, or river
9 authority to collect a fee from a person accessing a protected
10 freshwater area; or

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

13 (c) Before a local plan adopted under Subsection (a) may
14 take effect, a county, municipality, or river authority must file
15 the plan with the department. A local plan does not take effect
16 until the plan is approved in writing by the department.

17 (d) The department may approve, disapprove, or modify a
18 local plan filed under Subsection (c). In determining whether to
19 approve, disapprove, or modify a local plan, the department shall
20 consider whether the plan:

21 (1) protects fish, wildlife, water quality, and other
22 natural resources;

23 (2) protects public safety;

24 (3) provides for adequate enforcement;

25 (4) coordinates with adjacent and overlapping
26 jurisdictions;

27 (5) provides for and publicizes adequate public access

1 to a protected freshwater area;

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

4 (7) protects private property rights.

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

9 (f) The department may conduct periodic reviews of a local
10 plan filed under Subsection (c) to monitor the effectiveness of the
11 plan.

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

15 (h) The department shall revoke approval of a local plan if
16 the department finds, as a result of a periodic review conducted
17 under Subsection (f) or a petition for revocation filed under
18 Subsection (g), that the plan as implemented fails to meet any of
19 the criteria for approval established by Subsection (d).

20 Sec. 90.005. ASSISTANCE FROM DEPARTMENT. (a) The
21 department shall assist a requesting county, municipality, or river
22 authority in developing a local plan.

23 (b) A county, municipality, or river authority implementing
24 a local plan shall remit to the department 20 percent of the
25 county's, municipality's, or river authority's gross receipts from
26 fees charged under Section 90.004(b)(2) to offset the department's
27 administrative costs associated with implementing this chapter.

1 Sec. 90.006. STUDIES. The department may conduct studies
2 necessary to implement this chapter.

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

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

10 Sec. 90.008. PUBLIC ACCESS. (a) Except as otherwise
11 allowed by law, a person may not restrict, obstruct, interfere
12 with, or limit public recreational use of a protected freshwater
13 area.

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

17 Sec. 90.009. MOTOR VEHICLE RECREATION SITES. (a) The
18 department shall establish a program to identify and to facilitate
19 the development of motor vehicle recreation sites that are not
20 located in or on a protected freshwater area. The department shall
21 seek the cooperation of political subdivisions, landowners,
22 nonprofit groups, and other interested persons in identifying and
23 facilitating the development of motor vehicle recreation sites
24 under this subsection.

25 (b) The department shall seek and use funding from the
26 federal government and other sources outside the general revenue
27 fund to identify and facilitate the development of motor vehicle

1 recreation sites under Subsection (a).

2 Sec. 90.010. ENFORCEMENT. All peace officers of this state
3 shall enforce the provisions of this chapter.

4 Sec. 90.011. PENALTY. (a) A person commits an offense if
5 the person violates Section 90.002 or 90.008.

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

8 (c) If it is shown on the trial of an offense under this
9 section that the defendant was previously convicted two or more
10 times under Section 90.002 or 90.008, on conviction the defendant
11 shall be punished for a Class B misdemeanor.

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

13 (e) Notwithstanding Section 12.403 of this code, Subchapter
14 B, Chapter 12, Penal Code, applies to punishments under this
15 section.

16 SECTION 3. The Parks and Wildlife Department shall submit
17 to the legislature a report regarding the department's
18 identification and development of motor vehicle recreation sites
19 under Section 90.009, Parks and Wildlife Code, as added by this Act,
20 not later than September 1, 2004.

21 SECTION 4. This Act takes effect September 1, 2003.