

By: Zaffirini

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. 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 persons or things.

(3) "Protected freshwater area" means that portion of the bottom, bed, or bank of any navigable river or stream. The term does not include that portion of a bed, bottom, or bank that lies below tidewater limits or is privately owned.

Sec. 90.002. OPERATION OF MOTOR VEHICLE IN PROTECTED FRESHWATER AREA PROHIBITED. No person may operate a motor vehicle

1 in or on a protected freshwater area.

2 Sec. 90.003. EXEMPTIONS. (a) Section 90.002 does not  
3 apply to:

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

5 (2) a private road crossing established before January  
6 1, 2003; or

7 (3) operation of a motor vehicle by:

8 (A) a federal, state, or local government  
9 employee if operation of a motor vehicle is necessary for  
10 conducting official business;

11 (B) an owner of the adjacent uplands and the  
12 owner's agents, employees, representatives, and lessees for  
13 reasonable purposes related to usual and customary agricultural  
14 purposes;

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

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

21 (E) a person in response to an emergency.

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

1 direct feasible route.

2 Sec. 90.004. LANDOWNER RIGHTS. (a) A prescriptive  
3 easement over private property cannot be created by recreational  
4 use of a protected freshwater area, including by portage over or  
5 around barriers, scouting of obstructions, or crossing of private  
6 property to or from a protected freshwater area.

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

9 Sec. 90.005. PUBLIC ACCESS. (a) Except as otherwise  
10 allowed by law, no person may restrict, obstruct, interfere with,  
11 or limit public recreational use of a protected freshwater area.

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

15 Sec. 90.006. ENFORCEMENT. All peace officers of this state  
16 shall enforce the provisions of this Act.

17 Sec. 90.007. PENALTY. (a) A person commits an offense if  
18 the person violates Section 90.002 or 90.005.

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

21 (c) If it is shown on the trial of an offense under this  
22 section that the defendant was previously convicted two or more  
23 times under Section 90.002 or 90.005, or Sections 90.002 and  
24 90.005, on conviction the defendant shall be punished for a Class B  
25 misdemeanor.

26 (d) Each day of a violation under this section is a separate  
27 offense.

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