

1-1 By: Zaffirini, Wentworth, Madla S.B. No. 155
1-2 (In the Senate - Filed December 19, 2002; January 30, 2003,
1-3 read first time and referred to Committee on Natural Resources;
1-4 March 24, 2003, reported adversely, with favorable Committee
1-5 Substitute; March 27, 2003, recommitted to Committee on Natural
1-6 Resources; April 7, 2003, reported adversely, with favorable
1-7 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-8 April 7, 2003, sent to printer.)

1-9 COMMITTEE SUBSTITUTE FOR S.B. No. 155 By: Estes

1-10 A BILL TO BE ENTITLED
1-11 AN ACT

1-12 relating to the protection and use of public freshwater areas;
1-13 providing a penalty.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Title 5, Parks and Wildlife Code, is amended by
1-16 adding Subtitle I to read as follows:

1-17 SUBTITLE I. PROTECTED FRESHWATER AREAS

1-18 CHAPTER 90. ACCESS TO PROTECTED FRESHWATER AREAS

1-19 Sec. 90.001. DEFINITIONS. In this chapter:

1-20 (1) "Emergency" means a condition or circumstance in
1-21 which a person reasonably believes that an individual has sustained
1-22 serious bodily injury or is in imminent danger of serious bodily
1-23 injury or that property has sustained significant damage or
1-24 destruction or is in imminent danger of significant damage or
1-25 destruction.

1-26 (2) "Motor vehicle" means any wheeled or tracked
1-27 vehicle, machine, tractor, trailer, or semitrailer propelled or
1-28 drawn by mechanical power and used to transport a person or things.

1-29 (3) "Protected freshwater area" means the bottom, bed,
1-30 or bank of any navigable river or stream within the gradient
1-31 boundaries. The term does not include that portion of a bed,
1-32 bottom, or bank that lies below tidewater limits.

1-33 Sec. 90.002. STATEMENT OF POLICY. (a) The legislature
1-34 recognizes that navigable rivers and their beds are precious and
1-35 irreplaceable state resources that deserve protection. Public
1-36 access to these areas is a right and an important economic and
1-37 recreational interest of Texas and must be protected.

1-38 (b) The protection of public access under Subsection (a)
1-39 should not come at the cost of uncontrolled damage to these
1-40 resources or the infringement on private property rights.

1-41 Sec. 90.003. OPERATION OF MOTOR VEHICLE IN PROTECTED
1-42 FRESHWATER AREA PROHIBITED. On or after January 1, 2004, no person
1-43 may operate a motor vehicle in or on a protected freshwater area.

1-44 Sec. 90.004. EXEMPTIONS. (a) Section 90.003 does not
1-45 apply to:

1-46 (1) a state, county, or municipal road right-of-way;

1-47 (2) a private road crossing established before January
1-48 1, 2003; or

1-49 (3) operation of a motor vehicle by:

1-50 (A) a federal, state, or local government
1-51 employee if operation of a motor vehicle is necessary for
1-52 conducting official business;

1-53 (B) an owner of the adjacent uplands and the
1-54 owner's agents, employees, representatives, and lessees for
1-55 reasonable purposes related to usual and customary agricultural
1-56 purposes;

1-57 (C) an owner of the adjacent uplands and the
1-58 owner's lessees and sublessees, and their respective agents,
1-59 employees, representatives, licensees, invitees, and guests for
1-60 reasonable purposes related to usual and customary camp operations
1-61 at camps regulated under Chapter 141, Health and Safety Code;

1-62 (D) an owner of the adjacent uplands and the
1-63 owner's lessees and sublessees, and their respective agents,

2-1 employees, representatives, licensees, invitees, and guests for
 2-2 reasonable purposes related to usual and customary operation of
 2-3 retreat facilities owned by a Texas nonprofit corporation chartered
 2-4 under the laws of this state before January 1, 1970;

2-5 (E) a person if operation of a motor vehicle is
 2-6 necessary to and is authorized by a mineral lease or crossing
 2-7 easement granted by the General Land Office under the Natural
 2-8 Resources Code;

2-9 (F) a person if operation of a motor vehicle is
 2-10 necessary to an activity authorized by Chapter 86;

2-11 (G) a person in response to an emergency; or

2-12 (H) a person if the operation of a motor vehicle
 2-13 is necessary for the lawful construction, operation, or maintenance
 2-14 of facilities used for:

2-15 (i) the production, transportation,
 2-16 transmission, or distribution of electric power;

2-17 (ii) the provision of telecommunications
 2-18 services;

2-19 (iii) the transportation of oil, natural
 2-20 gas, coal, and the products thereof; or

2-21 (iv) dredge material disposal placement.

2-22 (b) A person exempt under this section who operates a motor
 2-23 vehicle in or on a protected freshwater area shall do so in a manner
 2-24 that avoids, to the extent reasonably possible, harming or
 2-25 disturbing vegetation, wildlife, or wildlife habitat within the
 2-26 protected freshwater area. A person exempt under this section who
 2-27 is crossing a protected freshwater area shall cross by the most
 2-28 direct feasible route.

2-29 (c) This chapter does not apply to any river with headwaters
 2-30 in New Mexico or Colorado and a confluence in Oklahoma.

2-31 Sec. 90.005. LOCAL RIVER ACCESS PLANS. (a) A county,
 2-32 municipality, or river authority may adopt a local plan that
 2-33 applies to protected freshwater areas within its jurisdiction.

2-34 (b) A local plan adopted under this section may:

2-35 (1) notwithstanding the prohibition in Section
 2-36 90.003, allow for limited motor vehicle use;

2-37 (2) provide for collection of a fee based on the
 2-38 limited use of motorized vehicles in protected freshwater areas
 2-39 within its jurisdiction or access and services provided under the
 2-40 local plan; and

2-41 (3) establish other measures consistent with the
 2-42 policy and purposes of this chapter.

2-43 (c) A local plan adopted under this section is not effective
 2-44 until approved in writing by the department.

2-45 (d) In determining whether to approve, disapprove, or
 2-46 modify a local plan, the department shall consider whether the
 2-47 plan:

2-48 (1) protects fish, wildlife, water quality, and other
 2-49 natural resources;

2-50 (2) protects public safety;

2-51 (3) provides for adequate enforcement;

2-52 (4) coordinates with adjacent and overlapping
 2-53 jurisdictions;

2-54 (5) provides for and publicizes adequate public access
 2-55 opportunities;

2-56 (6) provides for adequate public services; and

2-57 (7) protects private property rights.

2-58 (e) The department by rule may adopt additional criteria or
 2-59 procedures to govern approval of local plans. Lack of rules adopted
 2-60 under this authority is not a basis for rejecting a local plan.

2-61 (f) The department shall revoke its approval of a local plan
 2-62 if the department finds, as the result of a periodic review, that
 2-63 the plan as implemented fails to meet any of the criteria for
 2-64 approval established under this section.

2-65 Sec. 90.006. ASSISTANCE FROM THE DEPARTMENT. (a) The
 2-66 department shall assist counties, municipalities, and river
 2-67 authorities in developing local plans.

2-68 (b) The department may conduct studies as necessary to
 2-69 implement its duties under this chapter.

3-1 (c) The department shall prioritize the use of grant funds
3-2 under Chapter 24 to achieve the objectives of this chapter.

3-3 (d) A jurisdiction operating under a local plan shall remit
3-4 to the department 20 percent of its gross receipts, if any, from the
3-5 fees charged under Section 90.005(b) to offset the department's
3-6 administrative costs associated with implementing this chapter.

3-7 (e) The department shall seek and use available federal and
3-8 other funds and shall work with governmental entitites, landowners,
3-9 nonprofit groups, and other interested parties to identify and
3-10 facilitate development of sites for motor vehicle recreation other
3-11 than protected freshwater areas.

3-12 (f) The department shall provide a report to the legislature
3-13 regarding its activities under Subsection (e) not later than
3-14 September 1, 2004.

3-15 Sec. 90.007. LANDOWNER RIGHTS. (a) A prescriptive
3-16 easement over private property cannot be created by recreational
3-17 use of a protected freshwater area, including by portage over or
3-18 around barriers or by scouting of obstructions, or crossing private
3-19 property to or from a protected freshwater area.

3-20 (b) Nothing in this section shall limit the right of a
3-21 person to navigate in, on, or around a protected freshwater area.

3-22 Sec. 90.008. PUBLIC ACCESS. Except as otherwise allowed by
3-23 law, no person may restrict, obstruct, interfere with, or limit
3-24 public recreational use of a protected freshwater area.

3-25 Sec. 90.009. ENFORCEMENT. All peace officers of this state
3-26 shall enforce the provisions of this chapter.

3-27 Sec. 90.010. PENALTY. (a) A person commits an offense if
3-28 the person violates Section 90.003 or 90.008.

3-29 (b) Except as provided by Subsection (c), an offense under
3-30 Subsection (a) is a Class C misdemeanor.

3-31 (c) If it is shown on the trial of an offense under this
3-32 section that the defendant was previously convicted two or more
3-33 times under Section 90.003 or 90.008, on conviction the defendant
3-34 shall be punished for a Class B misdemeanor.

3-35 (d) Each day of a violation under this section is a separate
3-36 offense.

3-37 SECTION 2. This Act takes effect September 1, 2003.

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