

By: Hilderbran

H.B. No. 7

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the allocation and use of the sporting goods sales tax
3 revenue to fund state and local parks, the transfer of a historic
4 site from the Parks and Wildlife Department to the Texas Historical
5 Commission, water safety issues, the fees for certain commercial
6 fishing licenses, and the general rulemaking authority of the Parks
7 and Wildlife Commission.

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

9 SECTION 1. Subchapter A, Chapter 11, Parks and Wildlife
10 Code, is amended by adding Section 11.0031 to read as follows:

11 Sec. 11.0031. RULES. (a) The commission shall adopt any
12 rules necessary to carry out its powers and duties under this code
13 and other laws of this state.

14 (b) The commission shall adopt procedural rules to be
15 followed in a commission hearing. The executive director may
16 recommend to the commission for its consideration any rules that
17 the executive director considers necessary.

18 (c) Rules shall be adopted in the manner provided by Chapter
19 2001, Government Code. The commission shall follow its own rules as
20 adopted until it changes them in accordance with that chapter.

21 (d) As a part of each rule the commission adopts or proposes
22 for adoption after September 1, 2009, the commission shall include
23 a citation to the statute that grants the specific regulatory
24 authority under which the rule is justified and a citation of the

1 specific regulatory authority that will be exercised. If a
2 specific statutory authority does not exist and the agency is
3 depending on this section for authority to adopt or propose
4 adoption of a rule, citation of this section is sufficient.

5 SECTION 2. Section 24.053, Parks and Wildlife Code, is
6 amended to read as follows:

7 Sec. 24.053. ACCOUNT REVENUE SOURCE; DEDICATION. The
8 department shall deposit to the credit of the large county and
9 municipality recreation and parks account:

10 (1) an amount of money equal to five [~~10~~] percent of
11 the credits made to the department under Section 151.801, Tax Code;
12 and

13 (2) money from any other source authorized by law.

14 SECTION 3. Chapter 24, Parks and Wildlife Code, is amended
15 by adding Subchapter C to read as follows:

16 SUBCHAPTER C. PARKS FOR SPECIAL NEEDS POPULATION

17 Sec. 24.101. In this subchapter:

18 (1) "Account" means the special needs parks account.

19 (2) "Cultural resource site or area" means a site or
20 area determined by the commission to have valuable and vulnerable
21 cultural or historical resources.

22 (3) "Federal rehabilitation and recovery grants"
23 means matching grants made by the United States to or for political
24 subdivisions for the purpose of rebuilding, remodeling, expanding,
25 or developing existing outdoor or indoor parks, recreational, or
26 open space areas and facilities, including improvements in park
27 landscapes, buildings, and support facilities.

1 (4) "Natural area" means a site having valuable or
2 vulnerable natural resources, ecological processes, or rare,
3 threatened, or endangered species of vegetation or wildlife.

4 (5) "Nonprofit corporation" means a nonpolitical
5 legal entity incorporated under the laws of this state that has been
6 granted an exemption from federal income tax under Section 501(c),
7 Internal Revenue Code of 1986, as amended.

8 (6) "Open space area" means a land or water area for
9 human use and enjoyment that is relatively free of man-made
10 structures.

11 (7) "Park" includes land and water parks owned or
12 operated by the state or a political subdivision.

13 (8) "Parks, recreational, and open space area plan"
14 means a comprehensive plan that includes information on and
15 analyses of parks, recreational, and open space area objectives,
16 needs, resources, environment, and uses, and that identifies the
17 amounts, locations, characteristics, and potentialities of areas
18 for adequate parks, recreational, and open space opportunities.

19 (9) "Political subdivision" means a county,
20 municipality, special district, river authority, or other
21 governmental entity created under the authority of the state or a
22 county or municipality.

23 (10) "Special needs population" means any group of
24 people that is composed primarily of physically or mentally
25 challenged youth.

26 Sec. 24.102. SPECIAL NEEDS PARKS ACCOUNT. The special
27 needs parks account is a separate account in the general revenue

1 fund. Money in the account may be used only as provided by this
2 subchapter.

3 Sec. 24.103. ACCOUNT REVENUE SOURCE; DEDICATION. The
4 department shall deposit to the credit of the account:

5 (1) an amount of money equal to five percent of the
6 credits made to the department under Section 151.801, Tax Code; and

7 (2) money from any other source authorized by law.

8 Sec. 24.104. ASSISTANCE GRANTS. (a) The department may
9 make grants of money from the account to a political subdivision for
10 use by the political subdivision as all or part of the political
11 subdivision's required share of funds for eligibility for receiving
12 a federal rehabilitation and recovery grant.

13 (b) In order to receive a grant under this section, the
14 political subdivision seeking the federal grant shall apply to the
15 department for the grant and present evidence that the political
16 subdivision qualifies for the federal grant.

17 (c) A grant under this section is conditioned on the
18 political subdivision qualifying for and receiving the federal
19 grant.

20 Sec. 24.105. DIRECT STATE MATCHING GRANTS. (a) The
21 department shall make grants of money from the account to a
22 political subdivision to provide one-half of the costs of the
23 planning, acquisition, or development of a park, recreational area,
24 or open space area to be owned and operated by the political
25 subdivision.

26 (b) In establishing the program of grants under this
27 section, the department shall adopt rules and regulations for grant

1 assistance. In adopting rules under this section, the commission
2 shall consult with the Department of Aging and Disability Services
3 or another qualified person for advice on meeting the needs of a
4 special needs population.

5 (c) Money granted to a political subdivision under this
6 section may be used for the operation and maintenance of parks,
7 recreational areas, cultural resource sites or areas, and open
8 space areas only:

9 (1) if the park, site, or area is owned or operated and
10 maintained by the department and is being transferred by the
11 commission for public use to the political subdivision for
12 operation and maintenance; and

13 (2) during the period the commission determines to be
14 necessary to effect the official transfer of the park, site, or
15 area.

16 (d) The department shall make grants of money from the
17 account to a political subdivision or to a nonprofit corporation
18 for use in a political subdivision for recreation, conservation, or
19 education programs for special needs populations to encourage and
20 implement increased access to and use of parks, recreational areas,
21 cultural resource sites or areas, and open space areas by special
22 needs populations.

23 (e) The department may provide from the account for direct
24 administrative costs of the programs described by this subchapter.

25 Sec. 24.106. FUNDS FOR GRANTS TO POLITICAL SUBDIVISIONS.
26 When revenue credited to the account exceeds \$14 million per year,
27 an amount not less than 15 percent shall be made available for

1 grants to political subdivisions for up to 50 percent of the cost of
2 acquisition or development of indoor public recreation facilities
3 for indoor recreation programs, sports activities, nature
4 programs, or exhibits.

5 Sec. 24.107. ACCOUNT USE TO BE CONSISTENT WITH PLANS. No
6 grant may be made under Section 24.105 nor may account money be used
7 under Section 24.106 unless:

8 (1) there is a present or future need for the
9 acquisition and development of the property for which the grant is
10 requested or the use is proposed; and

11 (2) a written statement is obtained from the regional
12 planning commission having jurisdiction of the area in which the
13 property is to be acquired and developed that the acquisition and
14 development is consistent with local needs.

15 Sec. 24.108. ACQUISITION OF PROPERTY. (a) No property may
16 be acquired with grant money made under this subchapter or by the
17 department under this subchapter if the purchase price exceeds the
18 fair market value of the property as determined by one independent
19 appraiser.

20 (b) Property may be acquired with provision for a life
21 tenancy if that provision facilitates the orderly and expedient
22 acquisition of the property.

23 (c) If land or water designated for park, recreational,
24 cultural resource, or open space use is included in the local and
25 regional park, recreational, cultural resource, and open space
26 plans for two or more political subdivisions, the two or more
27 political subdivisions may cooperate under state law to secure

1 assistance from the account to acquire or develop the property. In
2 those cases, the department may modify the standards for individual
3 applicants but must be assured that a cooperative management plan
4 for the land or water can be developed and effectuated and that one
5 of the political subdivisions possesses the necessary
6 qualifications to perform contractual responsibilities for
7 purposes of the grant.

8 (d) All land or water purchased with assistance from the
9 account shall be dedicated for park, recreational, cultural
10 resource, indoor recreation center, and open space purposes in
11 perpetuity and may not be used for any other purpose, except where
12 the use is compatible with park, recreational, cultural resource,
13 and open space objectives, and the use is approved in advance by the
14 department.

15 Sec. 24.109. PAYMENTS, RECORDS, AND ACCOUNTING. (a) On the
16 approval of a grant under this subchapter and on the written request
17 by the director, the comptroller shall issue a warrant drawn
18 against the account and payable to the political subdivision or
19 nonprofit corporation in the amount specified by the director.

20 (b) Each recipient of assistance under this subchapter
21 shall keep records as required by the department, including records
22 that fully disclose the amount and the disposition of the proceeds
23 by the recipient, the total cost of the acquisition, a copy of the
24 title and deed for the property acquired, the amount and nature of
25 that portion of the cost of the acquisition supplied by other funds,
26 and other records that facilitate effective audit. The director and
27 the comptroller, or their authorized representatives, may examine

1 any book, document, paper, and record of the recipient that are
2 pertinent to assistance received under this subchapter.

3 (c) The recipient of funds under this subchapter shall, on
4 each anniversary date of the grant for five years after the grant is
5 made, furnish to the department a comprehensive report detailing
6 the present and anticipated use of the property, any contiguous
7 additions to the property, and any major changes in the character of
8 the property, including the extent of park development that may
9 have taken place.

10 Sec. 24.110. NONCOMPLIANCE WITH SUBCHAPTER. The attorney
11 general shall file suit in a court of competent jurisdiction
12 against a political subdivision or nonprofit corporation that fails
13 to comply with the requirements of this subchapter to recover the
14 full amount of the grant plus interest on that amount of five
15 percent a year accruing from the time of noncompliance or for
16 injunctive relief to require compliance with this subchapter. If
17 the court finds that the political subdivision or nonprofit
18 corporation has not complied with the requirements of this
19 subchapter, it is not eligible for further participation in the
20 program for three years following the finding for noncompliance.

21 Sec. 24.111. ACCOUNT NOT TO BE USED FOR PUBLICITY. No money
22 credited to the account may be used for publicity or related
23 purposes.

24 Sec. 24.112. AUTHORITY OF POLITICAL SUBDIVISION TO HAVE
25 PARKS. This subchapter does not authorize a political subdivision
26 to acquire, develop, maintain, or operate a park, recreational
27 area, open space area, or natural area.

1 SECTION 4. Section 31.106(a), Parks and Wildlife Code, is
2 amended to read as follows:

3 (a) No person shall operate a personal watercraft in the
4 following manner or under the following circumstances:

5 (1) unless each person riding on or towed behind the
6 vessel is wearing a U.S. Coast Guard approved Type I, II, III, or V
7 personal flotation device;

8 (2) if the vessel is equipped by the manufacturer with
9 a lanyard type engine cutoff switch, unless such lanyard is
10 attached to the person, clothing, or personal flotation device of
11 the operator as appropriate for the vessel involved;

12 (3) during the period between sunset and sunrise;

13 (4) within 50 feet of any other vessel, person,
14 stationary platform or other object, or shore, except at headway
15 speed;

16 (5) if the operator is under 16 years of age, unless
17 the operator:

18 (A) is at least 13 years of age;

19 (B) has successfully completed a boater
20 education course as required by Section 31.109; and

21 (C) is accompanied by a person at least 18 years
22 of age who has successfully completed a boater education course as
23 required by Section 31.109 [~~or~~

24 [~~(B) is at least 13 years of age and has~~
25 ~~successfully completed a boating safety course prescribed and~~
26 ~~approved by the department];~~

27 (6) if the personal watercraft is a motorboat, within

1 any area prohibited for operation of a motorboat by state law or
2 local rule or regulation;

3 (7) while towing water skis, an aquaplane, a
4 surfboard, a tube, or any other similar device, unless the towing
5 vessel is designed to carry on board a minimum of two persons;

6 (8) by jumping the wake of another vessel recklessly
7 or unnecessarily close to that vessel; or

8 (9) in a manner that requires the operator to swerve at
9 the last possible moment to avoid collision.

10 SECTION 5. Section 31.107, Parks and Wildlife Code, is
11 amended to read as follows:

12 Sec. 31.107. OPERATION OF MOTORBOAT. No person may operate
13 a motorboat of over 10 [~~15~~] horsepower on the public waters of this
14 state unless the person has successfully completed a boater
15 education course as required by Section 31.109 and is 16 years of
16 age or older [~~or:~~

17 [~~(1) is accompanied by a person (18) years of age or~~
18 ~~older, or~~

19 [~~(2) is at least 13 years of age and has successfully~~
20 ~~passed a boating safety course prescribed and approved by the~~
21 ~~department].~~

22 SECTION 6. Section 77.031(b), Parks and Wildlife Code, is
23 amended to read as follows:

24 (b) The fee for a commercial bay shrimp boat license is \$270
25 [~~\$170~~] or an amount set by the commission, whichever amount is more.

26 [~~The executive director may set a fee lower than \$170 for licenses~~
27 ~~issued from December 16, 1993, through August 31, 1994, and which~~

1 ~~expire on August 31, 1994.]~~

2 SECTION 7. Section 442.072(a), Government Code, is amended
3 to read as follows:

4 (a) The following historic sites and parks formerly under
5 the jurisdiction of the Parks and Wildlife Department are under the
6 commission's jurisdiction:

- 7 (1) Acton State Historic Site;
- 8 (2) Caddoan Mounds State Historic Site;
- 9 (3) Casa Navarro State Historic Site;
- 10 (4) Confederate Reunion Grounds State Historic Site;
- 11 (5) Eisenhower Birthplace State Historic Site;
- 12 (6) Fannin Battleground State Historic Site;
- 13 (7) Fort Griffin State Historic Site;
- 14 (8) Fort Lancaster State Historic Site;
- 15 (9) Fort McKavett State Historic Site;
- 16 (10) Fulton Mansion State Historic Site;
- 17 (11) Landmark Inn State Historic Site;
- 18 (12) Levi Jordan State Historic Site;
- 19 (12-a) Lipantitlan State Historic Site;
- 20 (13) Magoffin Home State Historic Site;
- 21 (14) Sabine Pass Battleground State Historic Site;
- 22 (15) Sam Bell Maxey House State Historic Site;
- 23 (16) San Felipe State Historic Site;
- 24 (17) Starr Family Home State Historic Site;
- 25 (18) Varner-Hogg Plantation State Historic Site.

26 SECTION 8. Section 151.801(c), Tax Code, is amended to read
27 as follows:

1 (c) The [~~Subject to Subsection (c-1), the~~] proceeds from the
2 collection of the taxes imposed by this chapter on the sale,
3 storage, or use of sporting goods shall be deposited as follows:

4 (1) an amount equal to 94 percent of the proceeds shall
5 be credited to the Parks and Wildlife Department and deposited as
6 specified in the Parks and Wildlife Code; and

7 (2) an amount equal to six percent of the proceeds
8 shall be credited to the Texas Historical Commission and deposited
9 as specified in Section 442.073, Government Code.

10 SECTION 9. Section 151.801(c-1), Tax Code, is repealed.

11 SECTION 10. (a) In this section, "historic site" means the
12 Lipantitlan State Historic Site listed under Section 442.072,
13 Government Code, as amended by this Act.

14 (b) On January 1, 2010, the following are transferred to the
15 Texas Historical Commission:

16 (1) the Lipantitlan State Historic Site and all
17 obligations and liabilities of the Parks and Wildlife Department
18 relating to the site;

19 (2) all unobligated and unexpended funds appropriated
20 to the Parks and Wildlife Department designated for the
21 administration of that site;

22 (3) all equipment and property of the Parks and
23 Wildlife Department used for the administration of or related to
24 that site; and

25 (4) all files and other records of the Parks and
26 Wildlife Department kept by the department regarding that site.

27 (c) A rule adopted by the Parks and Wildlife Commission that

1 is in effect immediately before January 1, 2010, and that relates to
2 the historic site is, on January 1, 2010, a rule of the Texas
3 Historical Commission and remains in effect until amended or
4 repealed by the Texas Historical Commission.

5 (d) The transfer under this Act does not diminish or impair
6 the rights of a holder of an outstanding bond or other obligation
7 issued by the Parks and Wildlife Department in relation to the
8 support of the historic site.

9 (e) On January 1, 2010, a reference in the Parks and
10 Wildlife Code or other law to a power, duty, obligation, or
11 liability of the Parks and Wildlife Department or the Parks and
12 Wildlife Commission that relates to the historic site is a
13 reference to the Texas Historical Commission. The Texas Historical
14 Commission is the successor agency to the Parks and Wildlife
15 Department and the Parks and Wildlife Commission for that site.

16 (f) Before January 1, 2010, the Parks and Wildlife
17 Department may agree with the Texas Historical Commission to
18 transfer any property of the Parks and Wildlife Department to the
19 Texas Historical Commission to implement the transfer required by
20 this Act.

21 (g) Until the historic site is transferred to the Texas
22 Historical Commission in accordance with this Act, the Parks and
23 Wildlife Department shall continue to operate and maintain the site
24 under applicable law as it existed on January 1, 2009.

25 SECTION 11. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

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1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect September 1, 2009.