

By: Lucio

S.B. No. 1643

A BILL TO BE ENTITLED

AN ACT

relating to the artificial reef program; creating offenses and providing criminal and civil penalties.

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

SECTION 1. Section 89.001, Parks and Wildlife Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Permit" means a permit issued by the United States secretary of the army to the department, or person other than the department as provided by Section 89.004, for siting, constructing, monitoring, maintaining, and managing an artificial reef in accordance with the criteria and standards established under the National Fishing Enhancement Act.

SECTION 2. Section 89.002(b), Parks and Wildlife Code, is amended to read as follows:

(b) In carrying out the duties under Subsection (a) [~~of this section~~], the department shall:

(1) plan and review permit applications for artificial reefs;

(2) coordinate with relevant state and federal agencies;

(3) hold public hearings on proposed artificial reefs;

(4) oversee maintenance and placement requirements of artificial reefs; and

(5) develop rules and guidelines for [~~in conjunction~~

1 ~~with the advisory committee, in]~~ the collection of fees, grants,  
2 and donations to the artificial reef account.

3 SECTION 3. Section 89.006, Parks and Wildlife Code, is  
4 amended to read as follows:

5 Sec. 89.006. REEF CONSTRUCTION BY OTHERS. (a) The  
6 department may authorize a person to place a donation of reef  
7 materials in a permitted zone in accordance with this chapter and  
8 commission rules and guidelines.

9 (b) The commission by rule may establish and provide for the  
10 collection of a fee to cover costs associated with issuing an  
11 authorization under Subsection (a).

12 SECTION 4. Section 89.041(b), Parks and Wildlife Code, is  
13 amended to read as follows:

14 (b) The account is composed of:

15 (1) all funds received under Sections 89.006,  
16 [Section] 89.043, 89.044, and 89.083 [of this code], including  
17 interest and earnings;

18 (2) revenue collected under Section 11.027(c) that is  
19 associated with artificial reefs; and

20 (3) money from any other source provided by law.

21 SECTION 5. Section 89.042, Parks and Wildlife Code, is  
22 amended to read as follows:

23 Sec. 89.042. USE OF ARTIFICIAL REEF ACCOUNT ~~[DEDICATION]~~.

24 Money in the artificial reef account may be used only for carrying  
25 out the purposes of this chapter ~~[The funds received under Section~~

26 ~~89.043 of this code are dedicated to the department for the purpose~~  
27 ~~of carrying out this chapter, including siting, designing,~~

1 ~~constructing, monitoring, and otherwise managing an artificial~~  
2 ~~reef or artificial reef system].~~

3 SECTION 6. Subchapter C, Chapter 89, Parks and Wildlife  
4 Code, is amended by adding Section 89.044 to read as follows:

5 Sec. 89.044. CONCESSIONS. The department may operate or  
6 grant contracts to operate concessions in connection with the  
7 artificial reef program under this chapter.

8 SECTION 7. Chapter 89, Parks and Wildlife Code, is amended  
9 by adding Subchapter E to read as follows:

10 SUBCHAPTER E. ENFORCEMENT PROVISIONS

11 Sec. 89.081. PENALTY. A person who violates this chapter, a  
12 rule adopted under this chapter, or an authorization issued under  
13 Section 89.006 commits an offense that is a Class C Parks and  
14 Wildlife misdemeanor.

15 Sec. 89.082. CIVIL PENALTY. A person who violates this  
16 chapter, a rule adopted under this chapter, or an authorization  
17 issued under Section 89.006 is subject to a civil penalty of not  
18 less than \$100 or more than \$10,000 for each act of violation and  
19 for each day of violation, to be recovered as provided by this  
20 subchapter.

21 Sec. 89.083. ENFORCEMENT. (a) If a person has violated,  
22 is violating, or is threatening to violate this chapter, a rule  
23 adopted under this chapter, or an authorization issued under  
24 Section 89.006, the director may bring suit:

25 (1) to restrain the person from continuing the  
26 violation or threat of violation;

27 (2) to recover the civil penalty under Section 89.082;

1           (3) to recover the amount spent to remediate the  
2 damage caused by the violation; or

3           (4) for any appropriate combination of the remedies  
4 described by this subsection.

5           (b) On application for injunctive relief and a finding that  
6 a person is violating or threatening to violate a provision of this  
7 chapter, a rule adopted under this chapter, or an authorization  
8 issued under Section 89.006, a court shall grant the injunctive  
9 relief the facts may warrant, without requirement for bond.

10           (c) At the request of the director, the attorney general or  
11 the county attorney of the county in which the violation or threat  
12 of violation occurred shall bring suit for injunctive relief, to  
13 recover a civil penalty, to recover the amount spent to remediate  
14 the damage caused by the violation, or for any appropriate  
15 combination of those remedies.

16           (d) Except as provided by Subsection (e), amounts recovered  
17 under this section shall be credited to the artificial reef  
18 account.

19           (e) The actual cost of investigation, reasonable attorney's  
20 fees, and reasonable expert witness fees may be recovered, and  
21 those recovered amounts shall be credited to the same operating  
22 funds from which expenditures occurred.

23           Sec. 89.084. MORE THAN ONE DEFENDANT. If more than one  
24 defendant is named in an action under this chapter, each defendant  
25 against whom judgment is rendered is jointly and severally liable  
26 for recovery provided by this chapter.

27           Sec. 89.085. CIVIL SUIT AND CRIMINAL PROSECUTION

1 PERMISSIBLE. The pendency or determination of a civil action  
2 brought under this chapter or a criminal prosecution for the same  
3 violation does not bar the other action.

4 SECTION 8. Section 89.041(c), Parks and Wildlife Code, is  
5 repealed.

6 SECTION 9. (a) The change in law made by this Act applies  
7 only to an offense committed on or after the effective date of this  
8 Act. For purposes of this section, an offense is committed before  
9 the effective date of this Act if any element of the offense occurs  
10 before the effective date.

11 (b) An offense committed before the effective date of this  
12 Act is covered by the law in effect when the offense was committed,  
13 and the former law is continued in effect for that purpose.

14 SECTION 10. This Act takes effect September 1, 2009.