

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:

1                    SUBTITLE I. PROTECTED FRESHWATER AREAS

2                    CHAPTER 90. ACCESS TO PROTECTED FRESHWATER AREAS

3                    Sec. 90.001. DEFINITIONS. In this chapter:

4                    (1) "Emergency" means a condition or circumstance in  
5 which a person reasonably believes that an individual has sustained  
6 serious bodily injury or is in imminent danger of serious bodily  
7 injury or that property has sustained significant damage or  
8 destruction or is in imminent danger of significant damage or  
9 destruction.

10                   (2) "Motor vehicle" means any wheeled or tracked  
11 vehicle, machine, tractor, trailer, or semitrailer propelled or  
12 drawn by mechanical power and used to transport a person or thing.

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

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

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

25                   Sec. 90.003. EXEMPTIONS. (a) Section 90.002 does not  
26 apply to:

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

1           (2) a private road crossing established on or before  
2 December 31, 2003; or

3           (3) operation of a motor vehicle by:

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

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

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

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

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

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

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

21                   (i) the production, transportation,  
22 transmission, or distribution of electric power;

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

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

27                   (iv) the production, treatment, or

1 transportation of water or wastewater; or

2 (v) dredge material disposal placement;

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

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

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

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

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

22 (c) 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. LOCAL RIVER ACCESS PLAN. (a) A county,  
3 municipality, or river authority may adopt a written local plan to  
4 provide access to a protected freshwater area located within the  
5 county's geographical boundaries or the river authority's or  
6 municipality's jurisdiction.

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

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

10 (2) provide for the county, municipality, or river  
11 authority to collect a fee from a person accessing a protected  
12 freshwater area, the amount of which may not exceed the estimated  
13 cost that the county, municipality, or river authority incurs by  
14 allowing the limited use of motorized vehicles in protected  
15 freshwater areas within its jurisdiction; or

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

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

22 (d) The department may approve, disapprove, or modify a  
23 local plan filed under Subsection (c). In determining whether to  
24 approve, disapprove, or modify a local plan, the department shall  
25 consider whether the plan:

26 (1) protects fish, wildlife, water quality, and other  
27 natural resources;

1           (2) protects public safety;

2           (3) provides for adequate enforcement;

3           (4) coordinates with adjacent and overlapping  
4 jurisdictions;

5           (5) provides for and publicizes adequate public access  
6 to a protected freshwater area;

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

9           (7) protects private property rights.

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

14          (f) The department may conduct periodic reviews of a local  
15 plan filed under Subsection (c) to monitor the effectiveness of the  
16 plan.

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

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

25          (i) The department may adopt rules necessary to implement  
26 this section and Section 90.002, including rules relating to  
27 locations from which a person may launch or retrieve a vessel by

1 trailer from the banks of a protected freshwater area. For purposes  
2 of this subsection, "vessel" has the meaning assigned by Section  
3 12.101.

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

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

12 Sec. 90.006. STUDIES. The department may conduct studies  
13 necessary to implement this chapter.

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

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

21 Sec. 90.008. PUBLIC ACCESS. (a) Except as otherwise  
22 allowed by law, a person may not restrict, obstruct, interfere  
23 with, or limit public recreational use of a protected freshwater  
24 area.

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

1        Sec. 90.009. MOTOR VEHICLE RECREATION SITES. (a) The  
2 department shall establish a program to identify and to facilitate  
3 the development of motor vehicle recreation sites that are not  
4 located in or on a protected freshwater area. The department shall  
5 seek the cooperation of political subdivisions, landowners,  
6 nonprofit groups, and other interested persons in identifying and  
7 facilitating the development of motor vehicle recreation sites  
8 under this subsection.

9        (b) The department shall seek and use funding from the  
10 federal government and other sources outside the general revenue  
11 fund to identify and facilitate the development of motor vehicle  
12 recreation sites under Subsection (a).

13        Sec. 90.010. ENFORCEMENT. All peace officers of this state  
14 shall enforce the provisions of this chapter.

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

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

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

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

24        (e) Notwithstanding Section 12.403 of this code, Subchapter  
25 B, Chapter 12, Penal Code, applies to punishments under this  
26 section.

27        SECTION 3. The Parks and Wildlife Department shall submit

1 to the legislature a report regarding the department's  
2 identification and development of motor vehicle recreation sites  
3 under Section 90.009, Parks and Wildlife Code, as added by this Act,  
4 not later than September 1, 2004.

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

*David Schweiker*  
President of the Senate

*Jim Cusick*  
Speaker of the House

I hereby certify that S.B. No. 155 passed the Senate on April 24, 2003, by a viva-voce vote; and that the Senate concurred in House amendments on May 27, 2003, by a viva-voce vote. \_\_\_\_\_

*Ratey Law*  
Secretary of the Senate

I hereby certify that S.B. No. 155 passed the House, with amendments, on May 20, 2003, by a non-record vote. \_\_\_\_\_

*Robert Haney*  
Chief Clerk of the House

Approved:

20 JUN '03  
Date

*RICK PERRY*  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
9:30 PM O'CLOCK

*Joseph Shea*  
Secretary of State