

81R12259 SGA-D

By: Hilderbran

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A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

(d) As a part of each rule the commission adopts or proposes

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for adoption after September 1, 2009, the commission shall include a citation to the statute that grants the specific regulatory authority under which the rule is justified and a citation of the specific regulatory authority that will be exercised. If a specific statutory authority does not exist and the agency is depending on this section for authority to adopt or propose adoption of a rule, citation of this section is sufficient.

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

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

- (1) an amount of money equal to five [~~10~~] percent of the credits made to the department under Section 151.801, Tax Code; and
- (2) money from any other source authorized by law.

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

SUBCHAPTER C. PARKS FOR SPECIAL NEEDS POPULATION

Sec. 24.101. In this subchapter:

- (1) "Account" means the special needs parks account.
- (2) "Cultural resource site or area" means a site or area determined by the commission to have valuable and vulnerable cultural or historical resources.
- (3) "Federal rehabilitation and recovery grants" means matching grants made by the United States to or for political

subdivisions for the purpose of rebuilding, remodeling, expanding, or developing existing outdoor or indoor parks, recreational, or open space areas and facilities, including improvements in park landscapes, buildings, and support facilities.

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

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

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

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

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

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

county or municipality.

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

Sec. 24.102. SPECIAL NEEDS PARKS ACCOUNT. The special needs parks account is a separate account in the general revenue fund. Money in the account may be used only as provided by this subchapter.

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

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

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

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

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

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

Sec. 24.105. DIRECT STATE MATCHING GRANTS. (a) The

department shall make grants of money from the account to a political subdivision to provide one-half of the costs of the planning, acquisition, or development of a park, recreational area, or open space area to be owned and operated by the political subdivision.

(b) In establishing the program of grants under this section, the department shall adopt rules and regulations for grant assistance. In adopting rules under this section, the commission shall consult with the Department of Aging and Disability Services or another qualified person for advice on meeting the needs of a special needs population.

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

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

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

(d) The department shall make grants of money from the account to a political subdivision or to a nonprofit corporation

for use in a political subdivision for recreation, conservation, or education programs for special needs populations to encourage and implement increased access to and use of parks, recreational areas, cultural resource sites or areas, and open space areas by special needs populations.

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

Sec. 24.106. FUNDS FOR GRANTS TO POLITICAL SUBDIVISIONS. When revenue credited to the account exceeds \$14 million per year, an amount not less than 15 percent shall be made available for grants to political subdivisions for up to 50 percent of the cost of acquisition or development of indoor public recreation facilities for indoor recreation programs, sports activities, nature programs, or exhibits.

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

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

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

Sec. 24.108. ACQUISITION OF PROPERTY. (a) No property may

be acquired with grant money made under this subchapter or by the department under this subchapter if the purchase price exceeds the fair market value of the property as determined by one independent appraiser.

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

(c) If land or water designated for park, recreational, cultural resource, or open space use is included in the local and regional park, recreational, cultural resource, and open space plans for two or more political subdivisions, the two or more political subdivisions may cooperate under state law to secure assistance from the account to acquire or develop the property. In those cases, the department may modify the standards for individual applicants but must be assured that a cooperative management plan for the land or water can be developed and effectuated and that one of the political subdivisions possesses the necessary qualifications to perform contractual responsibilities for purposes of the grant.

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

the department.

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

(b) Each recipient of assistance under this subchapter shall keep records as required by the department, including records that fully disclose the amount and the disposition of the proceeds by the recipient, the total cost of the acquisition, a copy of the title and deed for the property acquired, the amount and nature of that portion of the cost of the acquisition supplied by other funds, and other records that facilitate effective audit. The director and the comptroller, or their authorized representatives, may examine any book, document, paper, and record of the recipient that are pertinent to assistance received under this subchapter.

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

Sec. 24.110. NONCOMPLIANCE WITH SUBCHAPTER. The attorney general shall file suit in a court of competent jurisdiction

against a political subdivision or nonprofit corporation that fails to comply with the requirements of this subchapter to recover the full amount of the grant plus interest on that amount of five percent a year accruing from the time of noncompliance or for injunctive relief to require compliance with this subchapter. If the court finds that the political subdivision or nonprofit corporation has not complied with the requirements of this subchapter, it is not eligible for further participation in the program for three years following the finding for noncompliance.

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

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

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

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

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

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch, unless such lanyard is attached

to the person, clothing, or personal flotation device of the operator as appropriate for the vessel involved;

(3) during the period between sunset and sunrise;

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

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

(A) is at least 13 years of age;

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

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

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

(6) if the personal watercraft is a motorboat, within any area prohibited for operation of a motorboat by state law or local rule or regulation;

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

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

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

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

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

~~(1) is accompanied by a person (18) years of age or older; or~~

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

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

(b) The fee for a commercial bay shrimp boat license is \$270 [~~\$170~~] or an amount set by the commission, whichever amount is more. [~~The executive director may set a fee lower than \$170 for licenses issued from December 16, 1993, through August 31, 1994, and which expire on August 31, 1994.~~]

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

(a) The following historic sites and parks formerly under the jurisdiction of the Parks and Wildlife Department are under the

commission's jurisdiction:

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

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

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

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

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

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

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

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

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

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

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

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

(c) A rule adopted by the Parks and Wildlife Commission that is in effect immediately before January 1, 2010, and that relates

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to the historic site is, on January 1, 2010, a rule of the Texas Historical Commission and remains in effect until amended or repealed by the Texas Historical Commission.

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

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

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

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

SECTION 11. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as

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provided by Section 39, Article III, Texas Constitution. If this
Act does not receive the vote necessary for immediate effect, this
Act takes effect September 1, 2009.