

By: Lucio III

H.B. No. 4625

A BILL TO BE ENTITLED

AN ACT

relating to county regulation of fireworks during drought conditions.

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

SECTION 1. Subchapter C, Chapter 352, Local Government Code, is amended to read as follows:

SUBCHAPTER C. FIREWORKS

Sec. 352.051. DEFINITIONS [~~REGULATION OF RESTRICTED FIREWORKS~~]. In this subchapter [~~(a) For the purposes of this section the following definitions shall apply~~]:

(1) "Flying [~~Restricted~~] fireworks" means only:

(A) those items classified under 49 C.F.R. Sec. 173.100(r)(2) (10-1-86 edition), as "skyrockets with sticks" and "missiles with fins"; and

(B) fireworks commonly described as missile-type rockets, stick-type rockets, helicopters, and aerial spinners.

(2) "Drought conditions" means the existence immediately preceding or during the fireworks season of a Keetch-Byram Drought Index of 630 [~~575~~] or greater.

Sec. 352.052. REGULATION OF RESTRICTED FIREWORKS. (a)

~~[(b)(1)]~~ The Texas Forest Service in the ordinary course of its activities shall determine whether drought conditions [~~as defined under Subsection (a)(2)~~] exist on average in any county requesting

such a determination. The Texas Forest Service shall make

1 available the measurement index guidelines used to determine
2 whether drought conditions exist in a particular area. Following
3 any determination that such drought conditions exist, the Texas
4 Forest Service shall notify said county or counties when such
5 drought conditions no longer exist. The Texas Forest Service shall
6 make its services available each day during the Cinco de Mayo,
7 Fourth of July, and December fireworks seasons to respond to the
8 request of any county for a determination whether drought
9 conditions exist on average in the county.

10 (b) [~~(2)~~] The Texas Forest Service shall be allowed to take
11 such donations of equipment or funds as necessary to aid in the
12 carrying out of this section.

13 (c) Upon a determination under this section that drought
14 conditions exist on average in a specified county:

15 (1) the commissioners court may hold a hearing as
16 provided by Section 352.053 to determine whether extreme drought
17 conditions that pose an exceptional fire danger exist; and

18 (2) after a hearing described by Subdivision (1), the
19 county judge may issue a proclamation declaring a disaster caused
20 by extreme drought conditions as provided by Section 352.053 [~~the~~
21 ~~commissioners court of the county by order may prohibit or restrict~~
22 ~~the sale or use of restricted fireworks in the unincorporated area~~
23 ~~of the county. In addition, during the December fireworks season,~~
24 ~~the commissioners court of a county by order may restrict or~~
25 ~~prohibit the sale or use of restricted fireworks in specified areas~~
26 ~~when conditions on rural acreage in the county not under~~
27 ~~cultivation for a period of at least 12 months are determined to be~~

1 ~~extremely hazardous for the danger of fire because of high grass or~~
2 ~~dry vegetation].~~

3 (d) To facilitate compliance with a proclamation issued [~~an~~
4 ~~order adopted~~] under Section 352.053 [~~Subsection (c)~~], the
5 proclamation [~~order~~] must be issued not later than the 30th day
6 [~~adopted~~] before:

7 (1) April 25 of each year for the Cinco de Mayo
8 fireworks season;

9 (2) June 15 of each year for the Fourth of July
10 fireworks season; and

11 (3) December 15 of each year for each December
12 fireworks season.

13 (e) [~~An order issued under this section shall expire upon~~
14 ~~determination as provided under Subsection (b) that such drought~~
15 ~~conditions no longer exist.~~

16 [~~(f)~~] When a county issues a proclamation under Section
17 352.053 [~~an order~~] restricting or prohibiting the sale or use of
18 [~~restricted~~] fireworks [~~under this section~~], the county may approve
19 a site provided by fireworks vendors [~~designate one or more areas~~]
20 of appropriate size and accessibility in the county as safe areas
21 where the use of [~~restricted~~] fireworks is not prohibited, and the
22 legislature encourages a county to approve [~~designate~~] such an area
23 for that purpose. [~~The safe area may be provided by the county, a~~
24 ~~municipality within the county, or an individual, business, or~~
25 ~~corporation.~~] A safe area may be approved [~~designated~~] in and
26 provided in the geographic area of the regulatory jurisdiction of a
27 municipality if the activity conducted in the safe area is

1 authorized by general law or a municipal regulation or ordinance.
2 An area is considered safe if adequate public safety and fire
3 protection services are provided to the area. A county,
4 municipality, individual, business, or corporation is not liable
5 for injuries or damages resulting from the approval [~~designation~~],
6 maintenance, or use of the safe area.

7 (f) [~~(g)~~] A person selling any type of fireworks, including
8 flying [~~restricted~~] fireworks, in a county that has issued a
9 proclamation [~~adopted an order~~] under Section 352.053 [~~Subsection~~
10 ~~(e)~~] shall, at every location at which the person sells fireworks in
11 the county, provide reasonable notice of the proclamation [~~order~~]
12 and reasonable notice of any location designated under Subsection
13 (e) [~~(f)~~] as a safe area.

14 (g) [~~(h)~~] An affected party is entitled to injunctive
15 relief to prevent the violation or threatened violation of a
16 requirement or prohibition established by a proclamation issued [~~an~~
17 ~~order adopted~~] under Section 352.053 [~~this section~~].

18 (h) [~~(i)~~] A person commits an offense if the person
19 knowingly or intentionally violates a prohibition established by a
20 proclamation [~~an order~~] issued under Section 352.053 [~~this~~
21 ~~section~~]. An offense under this subsection is a Class C
22 misdemeanor.

23 (i) [~~(j)~~] A civil action against a county based on the
24 county's actions under this subchapter [~~section~~] must be brought in
25 the appropriate court in that county.

26 Sec. 352.053. PROCLAMATION. (a) The commissioners court
27 of a county may hold a hearing to determine whether extreme drought

1 conditions that pose an exceptional fire danger exist in the
2 county. The commissioners court shall make findings at a hearing
3 under this subsection. In making the findings, the commissioners
4 court shall consider current drought indices published by the
5 National Weather Service and other relevant information provided by
6 the Texas Forest Service. The commissioners court may not make a
7 finding that extreme drought conditions that pose an exceptional
8 fire danger exist in the county unless drought conditions exist.

9 (b) After a hearing under Subsection (a), the county judge
10 may issue a proclamation declaring a disaster caused by extreme
11 drought conditions if the commissioners court makes a finding that
12 extreme drought conditions that pose an exceptional fire danger
13 exist in the county.

14 (c) The commissioners court, by proclamation, in the
15 unincorporated area of the county may:

16 (1) prohibit the sale or use of flying fireworks;

17 (2) restrict the use of fireworks other than flying
18 fireworks to areas:

19 (A) that are paved or barren;

20 (B) that have a readily accessible source of
21 water for use by the landowner or the public; or

22 (C) described by Section 352.052(e);

23 (3) prohibit the use of all fireworks on undeveloped
24 property with significant vegetation, after consultation with the
25 Texas Forest Service; and

26 (4) prohibit or restrict the sale or use of display
27 fireworks.

1 (d) The proclamation must provide an explanation of any
2 restriction on the sale or use of fireworks.

3 (e) A proclamation under this section expires on the 60th
4 day after the date the proclamation is issued. The county judge may
5 issue succeeding proclamations under the procedures provided by
6 this section.

7 (f) A proclamation may be modified or rescinded during the
8 60-day period described by Subsection (e) if the commissioners
9 court holds a hearing and makes a finding that drought conditions
10 have improved.

11 SECTION 2. Section 418.108(i), Government Code, is amended
12 to read as follows:

13 (i) A declaration under this section may include a
14 restriction that exceeds a restriction authorized by Subchapter C,
15 Chapter 352 [Section 352.051], Local Government Code. [A
16 ~~restriction that exceeds a restriction authorized by Section~~
17 ~~352.051, Local Government Code, is effective only:~~

18 ~~[(1) for 60 hours unless extended by the governor, and~~
19 ~~[(2) if the county judge requests the governor to~~
20 ~~grant an extension of the restriction.]~~

21 SECTION 3. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2009.