

## BILL ANALYSIS

Senate Research Center  
82R7099 JTS-F

H.B. 1174  
By: Workman (Wentworth)  
Administration  
4/28/2011  
Engrossed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Subchapter D (Outdoor Burning), Chapter 352 (County Fire Protection), Local Government Code, addresses a county's authority to regulate outdoor burning. It gives the commissioners court of a county the power to institute burn bans in all or part of the unincorporated areas of the county if certain conditions exist. A burn ban may not last longer than 90 days unless renewed by the commissioners court.

Section 352.081(e)(2) provides that a burn ban instituted by a commissioners court can be lifted only by a subsection action by the court. This is impractical in some situations. In some counties, commissioners courts meet only once or twice a month. If a rainfall occurs that removes the need for the burn ban shortly after it is instituted, it may be one or more weeks before the ban can be lifted.

Some commissioners courts would like to delegate the authority to lift a burn ban to another person designated by the court, e.g., the county judge or the county fire marshal. The relevant case law, however, favors the notion that, "[w]here a statute entrusts specified functions to a designated public officer or body, the legislature presumably intends that only that officer or body shall exercise the assigned functions." *Lipsey v. Texas Dept. of Health*, 727 S.W.2d 61 (Tex.App.--Austin 1987, writ ref'd n.r.e).

H.B. 1174 would permit a county commissioners court, at its discretion, to delegate to either the county judge or, in counties that have one, the county fire marshal the authority to lift a burn ban.

H.B. 1174 amends current law relating to the expiration of a county burn ban.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 352.081(e), Local Government Code, as follows:

(e) Provides that an order adopted under this section expires, as applicable, on the date:

(1) Makes no changes to this subdivision; or

(2) a determination is made by the commissioners court, or the county judge or fire marshal if designated for that purpose by the commissioners court, that the circumstances identified under Subsection (c)(2) (relating to circumstances present in all or part of the unincorporated area create a public safety hazard that would be exacerbated by outdoor burning) no longer exist.

SECTION 2. Effective date: upon passage or September 1, 2011.