

BILL ANALYSIS

C.S.H.B. 801
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Culture, Recreation & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Parks and Wildlife Department (TPWD) manages vegetative fuels by executing prescribed burns that are intended to be beneficial. However, interested parties contend that there are inadequate regulations regarding the creation of a plan for a prescribed burn, the notice of the prescribed burn to neighboring landowners, and the liability for resulting damages to private property. The parties note that prescribed burns sometimes cause private property damage for which owners often are not fully reimbursed, such as the replacement of a fence or the repair of a building or land. The resulting costs are borne by the owner who may have been unaware of the burn to begin with. The goal of C.S.H.B. 801 is to remedy this problem with prescribed burns by TPWD.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Parks and Wildlife Commission in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 801 amends the Parks and Wildlife Code to require the Parks and Wildlife Commission by rule to adopt a general plan for the use of beneficial prescribed burns in the management of Parks and Wildlife Department (TPWD) land and the bill requires the commission to require TPWD to implement the general plan. The bill applies only to prescribed burns conducted by TPWD on state land managed by TPWD and requires the commission to adopt the general plan not later than January 1, 2016.

C.S.H.B. 801 requires the general plan to include standards that meet or exceed certain statutory standards for a prescribed burn, to include variations as needed for different areas of Texas, and to be reviewed by the Prescribed Burning Board within the Department of Agriculture. The bill prohibits TPWD from conducting a prescribed burn under the bill's provisions before the general plan has been adopted by the commission. The bill requires, for a particular prescribed burn, that a site-specific plan tailored to the designated area be completed and approved by a person designated by the executive director of TPWD to review prescribed burn plans. The bill sets out the information a site-specific plan is required to include in addition to any site-specific information required under the general plan. The bill requires TPWD to provide adequate advance notice of TPWD's intent to conduct a prescribed burn to each neighboring landowner and appropriate local officials in the vicinity of the designated burn area and sets out the information the landowner's notice is required to include. The bill requires TPWD to publish advance notice of a planned prescribed burn in a newspaper of general circulation in the county

or counties in which the burn will be conducted.

C.S.H.B. 801 requires TPWD to establish a self-insurance fund, as provided by applicable Government Code provisions, or purchase liability insurance for liability coverage for money damages, in the amounts specified by Natural Resources Code provisions relating to insurance requirements for prescribed burning, to protect TPWD and TPWD's employees against claims resulting from bodily injury or death resulting from a prescribed burn or from injury to or destruction of property resulting from a prescribed burn. The bill makes TPWD liable for actual damages for injury to or destruction of property, bodily injury, or death proximately caused by the wrongful act or omission or the negligence of an employee acting within the scope of employment if the injury to or destruction of property, bodily injury, or death arises from the escape of fire from a prescribed burn conducted by TPWD and if the employee would be personally liable to the claimant according to state law. The bill makes TPWD liable for actual damages for injury to or destruction of property, bodily injury, or death so caused by the escape of fire from a prescribed burn conducted by TPWD if TPWD would, were it a private person, be liable to the claimant according to state law. The bill makes TPWD liable for actual damages for injury to or destruction of utility infrastructure caused by a prescribed burn and provides for the meaning of "utility infrastructure." The bill limits the liability of TPWD under the bill's provisions to money damages in an amount not to exceed the required amount of insurance coverage.

C.S.H.B. 801 prohibits a claim asserted under the bill's provisions from also being asserted against TPWD under provisions of the Texas Tort Claims Act relating to the tort liability of governmental units and prohibits a claim asserted under the bill's provisions from also being asserted against a TPWD employee. The bill applies certain procedures for a suit under the Texas Tort Claims Act to a suit brought under the bill's provisions. The bill waives and abolishes sovereign immunity to suit to the extent of liability created by the bill's provisions and authorizes a person having a claim under such provisions to sue TPWD for the allowed damages.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 801 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

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

SUBCHAPTER M. PRESCRIBED BURNS

Sec. 11.351. DEFINITION. In this subchapter,

"landowner" includes any person who owns or leases a parcel of privately owned land or improvements on the land.

HOUSE COMMITTEE SUBSTITUTE

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

SUBCHAPTER M. PRESCRIBED BURNS

Sec. 11.351. DEFINITIONS. In this subchapter:

(1) "Landowner" includes any person who owns, has a property interest in, or leases a parcel of privately owned land or improvements on the land.

(2) "Utility infrastructure" means any facility owned by:

(A) an electric utility as "electric utility" is

Sec. 11.352. APPLICABILITY. This subchapter applies only to prescribed burns conducted by the department on state land managed by the department.

Sec. 11.353. GENERAL AND SPECIFIC PLAN REQUIREMENTS. (a) The commission by rule shall adopt and shall require the department to implement a general plan for the use of beneficial prescribed burns in the management of department land. The general plan must include standards that meet or exceed the standards for a prescribed burn set out in Section 153.047, Natural Resources Code.

(b) The general plan must include variations as needed for different areas of the state.

(c) The general plan must be reviewed by the Prescribed Burning Board within the Texas Department of Agriculture.

(d) The department may not conduct a prescribed burn before the general plan has been adopted by the commission.

(e) For a particular prescribed burn, a site-specific plan tailored to the designated area must be completed and approved by a person designated by the director to review prescribed burn plans. In addition to any site-specific information required under the general plan, a site-specific plan must include:

(1) the planned start and end dates of the prescribed burn;

(2) a map of the designated burn area;

(3) the names and contact numbers for:

(A) the prescribed burn manager;

(B) the nearest fire departments or emergency service providers; and

(C) all landowners whose property neighbors the designated burn area; and

(4) dated proof of approval from the appropriate regional office of the Texas Commission on Environmental Quality.

Sec. 11.354. LANDOWNER AND LOCAL OFFICIAL NOTICE. (a) The department

defined by Section 31.002, Utilities Code;
or

(B) a gas utility as "gas utility" is defined by Section 101.003 or 121.001, Utilities Code.

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Sec. 11.353. GENERAL AND SPECIFIC PLAN REQUIREMENTS. (a) The commission by rule shall adopt and shall require the department to implement a general plan for the use of beneficial prescribed burns in the management of department land. The general plan must include standards that meet or exceed the standards for a prescribed burn set out in Section 153.047, Natural Resources Code.

(b) The general plan must include variations as needed for different areas of the state.

(c) The general plan must be reviewed by the Prescribed Burning Board within the Department of Agriculture.

(d) The department may not conduct a prescribed burn under this subchapter before the general plan has been adopted by the commission.

(e) For a particular prescribed burn, a site-specific plan tailored to the designated area must be completed and approved by a person designated by the director to review prescribed burn plans. In addition to any site-specific information required under the general plan, a site-specific plan must include:

(1) the planned start and end dates of the prescribed burn;

(2) a map of the designated burn area, including the location of any utility infrastructure within the designated burn area;

(3) the names and contact numbers for:

(A) the prescribed burn manager;

(B) the nearest fire departments or emergency service providers; and

(C) all landowners whose property neighbors the designated burn area; and

(4) written documentation that applicable prescribed burn notification and approval requirements of the Texas Commission on Environmental Quality have been met.

Sec. 11.354. NOTICE REQUIREMENTS. (a) The department shall provide adequate

shall provide adequate advance notice of the department's intent to conduct a prescribed burn to each neighboring landowner and appropriate local officials in the vicinity of the designated burn area.

(b) The landowner's notice must include:

(1) the planned start and end dates of the prescribed burn;

(2) any safety precautions the landowner should take to ensure the safety of the landowner's property before, during, and after the burn;

(3) a map of the prescribed burn area;

(4) the methods proposed for use in conducting the burn; and

(5) contact information for the prescribed burn manager and the department.

Sec. 11.355. INSURANCE. The department shall purchase liability insurance or establish a self-insurance fund as provided by Subchapter B, Chapter 2259, Government Code, for liability coverage for money damages in the amounts specified by Section 153.082, Natural Resources Code, to protect the department and the department's employees against claims under this subchapter resulting from:

(1) bodily injury or death resulting from a prescribed burn; or

(2) injury to or destruction of property resulting from a prescribed burn.

Sec. 11.356. LIABILITY. The department is liable for actual damages for:

(1) injury to or destruction of property, bodily injury, or death proximately caused by the wrongful act or omission or the negligence of an employee acting within the scope of employment if:

(A) the injury to or destruction of property, bodily injury, or death arises from the escape of fire from a prescribed burn conducted by the department; and

(B) the employee would be personally liable to the claimant according to Texas law; and

(2) injury to or destruction of property, bodily injury, or death so caused by the

advance notice of the department's intent to conduct a prescribed burn to each neighboring landowner and appropriate local officials in the vicinity of the designated burn area.

(b) The landowner's notice must include:

(1) the planned start and end dates of the prescribed burn;

(2) any safety precautions the landowner should take to ensure the safety of the landowner's property before, during, and after the burn;

(3) a map of the prescribed burn area, including the location of any utility infrastructure within the designated burn area;

(4) the methods proposed for use in conducting the burn; and

(5) contact information for the prescribed burn manager and the department.

(c) The department shall publish advance notice of a planned prescribed burn in a newspaper of general circulation in the county or counties in which the burn will be conducted.

Sec. 11.355. INSURANCE. The department shall purchase liability insurance or establish a self-insurance fund as provided by Subchapter B, Chapter 2259, Government Code, for liability coverage for money damages in the amounts specified by Section 153.082, Natural Resources Code, to protect the department and the department's employees against claims under this subchapter resulting from:

(1) bodily injury or death resulting from a prescribed burn; or

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(1) injury to or destruction of property, bodily injury, or death proximately caused by the wrongful act or omission or the negligence of an employee acting within the scope of employment if:

(A) the injury to or destruction of property, bodily injury, or death arises from the escape of fire from a prescribed burn conducted by the department; and

(B) the employee would be personally liable to the claimant according to Texas law;

(2) injury to or destruction of property, bodily injury, or death so caused by the

escape of fire from a prescribed burn conducted by the department if the department would, were it a private person, be liable to the claimant according to Texas law.

Sec. 11.357. APPLICATION OF TORT CLAIMS ACT. (a) A claim asserted under this subchapter may not also be asserted under Subchapter B, Chapter 101, Civil Practice and Remedies Code.

(b) Subchapter D, Chapter 101, Civil Practice and Remedies Code, applies to a suit brought under this subchapter.

Sec. 11.358. WAIVER OF GOVERNMENTAL IMMUNITY; PERMISSION TO SUE. (a) Sovereign immunity to suit is waived and abolished to the extent of liability created by this subchapter.

(b) A person having a claim under this subchapter may sue the department for damages allowed by this subchapter.

SECTION 2. The Parks and Wildlife Commission shall adopt a general plan for prescribed burns on land managed by the Parks and Wildlife Department as provided by Section 11.353, Parks and Wildlife Code, as added by this Act, not later than January 1, 2016.

SECTION 3. This Act applies only to a claim for damages resulting from a prescribed burn conducted by the Parks and Wildlife Department on or after the effective date of this Act. A claim for damages resulting from a prescribed burn conducted by the Parks and Wildlife Department before the effective date of this Act is governed by the law in effect on the first day of the prescribed burn, and that law is continued in effect for that purpose.

escape of fire from a prescribed burn conducted by the department if the department would, were it a private person, be liable to the claimant according to Texas law; and

(3) injury to or destruction of utility infrastructure caused by a prescribed burn.
Sec. 11.357. LIMITATION ON AMOUNT OF LIABILITY. Liability of the department under this subchapter is limited to money damages in an amount not to exceed the amount of insurance coverage required by Section 11.355.

Sec. 11.358. APPLICATION OF TORT CLAIMS ACT. (a) A claim asserted under this subchapter may not also be asserted against the department under Subchapter B, Chapter 101, Civil Practice and Remedies Code, or against a department employee.

(b) Subchapter D, Chapter 101, Civil Practice and Remedies Code, applies to a suit brought under this subchapter.

Sec. 11.359. WAIVER OF GOVERNMENTAL IMMUNITY; PERMISSION TO SUE. (a) Sovereign immunity to suit is waived and abolished to the extent of liability created by this subchapter.

(b) A person having a claim under this subchapter may sue the department for damages allowed by this subchapter.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as 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, 2015.

SECTION 4. Same as introduced version.