

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 801
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Agriculture, Water & Rural Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas 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.

C.S.H.B. 801 amends current law relating to planning for the use of and liability resulting from prescribed burns by the Parks and Wildlife Department.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Parks and Wildlife Commission in SECTION 1 (Section 11.353, Parks and Wildlife Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 11, Parks and Wildlife Code, by adding Subchapter M, as follows:

SUBCHAPTER M. PRESCRIBED BURNS

Sec. 11.351. DEFINITIONS. Defines "landowner" and "utility infrastructure."

Sec. 11.352. APPLICABILITY. Provides that this subchapter applies only to prescribed burns conducted by the Texas Parks and Wildlife Department (TPWD) on state land managed by TPWD.

Sec. 11.353. GENERAL AND SPECIFIC PLAN REQUIREMENTS. (a) Requires the Texas Parks and Wildlife Commission (commission) by rule to adopt and require TPWD to implement a general plan for the use of beneficial prescribed burns in the management of TPWD land. Requires that the general plan include standards that meet or exceed the standards for a prescribed burn set out in Section 153.047 (Prescribed Burning Standards), Natural Resources Code.

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

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

(d) Prohibits TPWD from conducting a prescribed burn under this subchapter before the general plan has been adopted by the commission.

(e) Requires that a site-specific plan tailored to the designated area be completed and approved by a person designated by the director to review prescribed burn plans for a particular prescribed burn. Requires a site-specific plan, in addition to any site-specific information required under the general plan, to 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) 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.

(b) Requires that the landowner's notice 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 TPWD.

(c) 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.

Sec. 11.355. INSURANCE. Requires TPWD to purchase liability insurance or establish a self-insurance fund as provided by Subchapter B (Self-Insurance Fund), Chapter 2259, Government Code, for liability coverage for money damages in the amounts specified by Section 153.082 (Insurance), Natural Resources Code, to protect TPWD and TPWD'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. Provides that TPWD 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 TPWD; 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 TPWD if TPWD 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. Provides that liability of TPWD 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) Prohibits a claim asserted under this subchapter from also being asserted against TPWD under Subchapter B (Tort Liability of Governmental Units), Chapter 101, Civil Practice and Remedies Code, or against a TPWD employee.

(b) Provides that Subchapter D (Procedures), 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) Provides that sovereign immunity to suit is waived and abolished to the extent of liability created by this subchapter.

(b) Authorizes a person having a claim under this subchapter to sue TPWD for damages allowed by this subchapter.

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

SECTION 3. Makes application of this Act to a claim for damages prospective.

SECTION 4. Effective date: upon passage or September 1, 2015.