

By: King of Hemphill

H.B. No. 801

A BILL TO BE ENTITLED

AN ACT

relating to planning for the use of and liability resulting from prescribed burns by the Parks and Wildlife Department.

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

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 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.

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

1 include standards that meet or exceed the standards for a
2 prescribed burn set out in Section 153.047, Natural Resources Code.

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

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

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

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

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

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

20 (3) the names and contact numbers for:

21 (A) the prescribed burn manager;

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

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

26 (4) written documentation that applicable prescribed
27 burn notification and approval requirements of the Texas Commission

1 on Environmental Quality have been met.

2 Sec. 11.354. NOTICE REQUIREMENTS. (a) The department shall
3 provide adequate advance notice of the department's intent to
4 conduct a prescribed burn to each neighboring landowner and
5 appropriate local officials in the vicinity of the designated burn
6 area.

7 (b) The landowner's notice must include:

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

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

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

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

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

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

23 Sec. 11.355. INSURANCE. The department shall purchase
24 liability insurance or establish a self-insurance fund as provided
25 by Subchapter B, Chapter 2259, Government Code, for liability
26 coverage for money damages in the amounts specified by Section
27 153.082, Natural Resources Code, to protect the department and the

1 department's employees against claims under this subchapter
2 resulting from:

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

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

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

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

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

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

18 (2) injury to or destruction of property, bodily
19 injury, or death so caused by the escape of fire from a prescribed
20 burn conducted by the department if the department would, were it a
21 private person, be liable to the claimant according to Texas law;
22 and

23 (3) injury to or destruction of utility infrastructure
24 caused by a prescribed burn.

25 Sec. 11.357. LIMITATION ON AMOUNT OF LIABILITY. Liability
26 of the department under this subchapter is limited to money damages
27 in an amount not to exceed the amount of insurance coverage required

1 by Section 11.355.

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

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

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

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

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

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

24 SECTION 4. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

C.S.H.B. No. 801

1 Act takes effect September 1, 2015.