

1 AN ACT

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

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

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

7 SUBCHAPTER M. PRESCRIBED BURNS

8 Sec. 11.351. DEFINITIONS. In this subchapter:

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

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

14 (A) an electric utility as "electric utility" is
15 defined by Section 31.002, Utilities Code;

16 (B) a telecommunications utility as
17 "telecommunications utility" is defined by Section 51.002,
18 Utilities Code;

19 (C) a gas utility as "gas utility" is defined by
20 Section 101.003 or 121.001, Utilities Code;

21 (D) an electric cooperative as "electric
22 cooperative" is defined by Section 11.003, Utilities Code; or

23 (E) a municipally owned utility as "municipally
24 owned utility" is defined by Section 11.003, Utilities Code.

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

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

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

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

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

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

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

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

27 (3) the names and contact numbers for:

- 1 (A) the prescribed burn manager;
2 (B) the nearest fire departments or emergency
3 service providers; and
4 (C) all landowners whose property neighbors the
5 designated burn area; and
6 (4) written documentation that applicable prescribed
7 burn notification and approval requirements of the Texas Commission
8 on Environmental Quality have been met.

9 Sec. 11.354. NOTICE REQUIREMENTS. (a) The department shall
10 provide adequate advance notice of the department's intent to
11 conduct a prescribed burn to each neighboring landowner and
12 appropriate local officials in the vicinity of the designated burn
13 area, including water utility officials with water facilities
14 within two miles of the prescribed burn.

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

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

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

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

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

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

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

4 Sec. 11.355. INSURANCE. The department shall purchase
5 liability insurance or establish a self-insurance fund as provided
6 by Subchapter B, Chapter 2259, Government Code, for liability
7 coverage for money damages in the amounts specified by Section
8 153.082, Natural Resources Code, to protect the department and the
9 department's employees against claims under this subchapter
10 resulting from:

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

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

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

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

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

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

26 (2) injury to or destruction of property, bodily
27 injury, or death so caused by the escape of fire from a prescribed

1 burn conducted by the department if the department would, were it a
2 private person, be liable to the claimant according to Texas law;
3 and

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

6 Sec. 11.357. LIMITATION ON AMOUNT OF LIABILITY. Liability
7 of the department under this subchapter is limited to money damages
8 in an amount not to exceed the amount paid by the insurance provider
9 described by Section 11.355 to the claimant.

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

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

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

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

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

25 SECTION 3. This Act applies only to a claim for damages
26 resulting from a prescribed burn conducted by the Parks and
27 Wildlife Department on or after the effective date of this Act. A

1 claim for damages resulting from a prescribed burn conducted by the
2 Parks and Wildlife Department before the effective date of this Act
3 is governed by the law in effect on the first day of the prescribed
4 burn, and that law is continued in effect for that purpose.

5 SECTION 4. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I certify that H.B. No. 801 was passed by the House on April 9, 2015, by the following vote: Yeas 142, Nays 1, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 801 on May 23, 2015, by the following vote: Yeas 129, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 801 was passed by the Senate, with amendments, on May 21, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor