

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. DEFINITION. In this subchapter, "landowner" includes any person who owns or leases a parcel of privately owned land or improvements on the land.

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

1 the general plan has been adopted by the commission.

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

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

9 (2) a map of the designated burn area;

10 (3) the names and contact numbers for:

11 (A) the prescribed burn manager;

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

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

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

18 Sec. 11.354. LANDOWNER AND LOCAL OFFICIAL NOTICE. (a) The  
19 department shall provide adequate advance notice of the  
20 department's intent to conduct a prescribed burn to each  
21 neighboring landowner and appropriate local officials in the  
22 vicinity of the designated burn area.

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

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

26 (2) any safety precautions the landowner should take  
27 to ensure the safety of the landowner's property before, during,

1 and after the burn;

2 (3) a map of the prescribed burn area;

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

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

7 Sec. 11.355. INSURANCE. The department shall purchase  
8 liability insurance or establish a self-insurance fund as provided  
9 by Subchapter B, Chapter 2259, Government Code, for liability  
10 coverage for money damages in the amounts specified by Section  
11 153.082, Natural Resources Code, to protect the department and the  
12 department's employees against claims under this subchapter  
13 resulting from:

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

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

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

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

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

27 (B) the employee would be personally liable to

1 the claimant according to Texas law; and

2 (2) injury to or destruction of property, bodily  
3 injury, or death so caused by the escape of fire from a prescribed  
4 burn conducted by the department if the department would, were it a  
5 private person, be liable to the claimant according to Texas law.

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

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

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

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

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

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

27 SECTION 4. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as  
2 provided by Section 39, Article III, Texas Constitution. If this  
3 Act does not receive the vote necessary for immediate effect, this  
4 Act takes effect September 1, 2015.