

SENATE AMENDMENTS

2nd Printing

By: King of Hemphill

H.B. No. 801

A BILL TO BE ENTITLED

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; or

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

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

21 Sec. 11.353. GENERAL AND SPECIFIC PLAN REQUIREMENTS. (a)
22 The commission by rule shall adopt and shall require the department
23 to implement a general plan for the use of beneficial prescribed
24 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.

ADOPTED

MAY 21 2015

Atty. Gen. Law
Secretary of the Senate

By: Altife

H.B. No. 801

Substitute the following for H.B. No. 801:

By: Bob Hall

C.S. H.B. No. 801

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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.

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10 11

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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)
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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
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7 burn notification and approval requirements of the Texas Commission
8 on Environmental Quality have been met.

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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
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16 burn;

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18 to ensure the safety of the landowner's property before, during,
19 and after the burn;

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

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

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

27 (c) The department shall publish advance notice of a planned

1 prescribed burn in a newspaper of general circulation in the county
2 or counties in which the burn will be conducted.

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

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11 burn; or

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13 from a prescribed burn.

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

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

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

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

25 (2) injury to or destruction of property, bodily
26 injury, or death so caused by the escape of fire from a prescribed
27 burn conducted by the department if the department would, were it a

1 private person, be liable to the claimant according to Texas law;
2 and

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

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6 of the department under this subchapter is limited to money damages
7 in an amount not to exceed the amount of insurance coverage required
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11 department under Subchapter B, Chapter 101, Civil Practice and
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14 Code, applies to a suit brought under this subchapter.

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16 SUE. (a) Sovereign immunity to suit is waived and abolished to the
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19 the department for damages allowed by this subchapter.

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

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

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

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

ADOPTED

MAY 19 2015

Lotay Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: 

1 Amend C.S.H.B. No. 801 in SECTION 1 of the bill, in added
2 Section 11.357, Parks and Wildlife Code (senate committee report,
3 page 2, line 69, through page 3, line 1), by striking "of insurance
4 coverage required by Section 11.355" and substituting "paid by the
5 insurance provider described by Section 11.355 to the claimant".

ADOPTED

MAY 19 2015

Leta Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: *Eric Mendez*

1 Amend C.S.H.B. No. 801 (senate committee printing) in
2 SECTION 1 of the bill, in added Section 11.354(a), Parks and
3 Wildlife Code (page 2, line 21), by striking "area" and
4 substituting "area, including water utility officials with water
5 facilities within two miles of the prescribed burn".

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB801 by King, Ken (Relating to planning for the use of and liability resulting from prescribed burns by the Parks and Wildlife Department.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend portions of the Parks and Wildlife Code relating to prescribed burns on state land managed by the Parks and Wildlife Department (TPWD). The bill would require TPWD to develop a general plan for prescribed burns and specific plans for each burn site. Additionally, TPWD would be required to provide advanced notice of a planned burn to neighboring landowners and publish advanced notice in a newspaper in the county or counties in which the burn would be conducted.

The bill would require TPWD to purchase liability insurance or establish a self-insurance fund. The bill would limit TPWD's liability to pay money damages in a claim to the required amount of insurance coverage.

This analysis assumes the costs for purchasing liability insurance could be absorbed within existing appropriations from the Game, Fish, and Water Safety Account No. 9 and the State Parks Account No. 64.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality, 802 Parks and Wildlife Department

LBB Staff: UP, SZ, MWI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 12, 2015

TO: Honorable Charles Perry, Chair, Senate Committee on Agriculture, Water & Rural Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB801 by King, Ken (relating to planning for the use of and liability resulting from prescribed burns by the Parks and Wildlife Department.), **Committee Report 2nd House, Substituted**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend portions of the Parks and Wildlife Code relating to prescribed burns on state land managed by the Parks and Wildlife Department (TPWD). The bill would require TPWD to develop a general plan for prescribed burns and specific plans for each burn site. Additionally, TPWD would be required to provide advanced notice of a planned burn to neighboring landowners and publish advanced notice in a newspaper in the county or counties in which the burn would be conducted.

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Source Agencies: 582 Commission on Environmental Quality, 802 Parks and Wildlife Department

LBB Staff: UP, SZ, MWI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 8, 2015

TO: Honorable Charles Perry, Chair, Senate Committee on Agriculture, Water & Rural Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB801 by King, Ken (Relating to planning for the use of and liability resulting from prescribed burns by the Parks and Wildlife Department.), **As Engrossed**

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Source Agencies: 582 Commission on Environmental Quality, 802 Parks and Wildlife Department

LBB Staff: UP, SZ, MWI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 25, 2015

TO: Honorable Ryan Guillen, Chair, House Committee on Culture, Recreation & Tourism

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB801 by King, Ken (relating to planning for the use of and liability resulting from prescribed burns by the Parks and Wildlife Department.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

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Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality, 802 Parks and Wildlife Department

LBB Staff: UP, SZ, MWI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 9, 2015

TO: Honorable Ryan Guillen, Chair, House Committee on Culture, Recreation & Tourism

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB801 by King, Ken (Relating to planning for the use of and liability resulting from prescribed burns by the Parks and Wildlife Department.), **As Introduced**

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This analysis assumes the costs for purchasing liability insurance could be absorbed within existing appropriations from the Game, Fish, and Water Safety Account No. 9 and the State Parks Account No. 64.

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LBB Staff: UP, SZ, MWI, TL