

House Bill 801
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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(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;

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

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

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

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

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(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 Department of Agriculture.

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

(e) For a particular prescribed burn, a site-specific plan tailored to the designated area must be completed and approved by a person designated by the director to review prescribed burn plans. In addition to any site-specific information required under the general plan, a site-specific plan must 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) The department shall provide adequate advance notice of the department's intent to conduct a prescribed burn to each neighboring landowner and appropriate local officials in the vicinity of the designated burn area.

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(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 Department of Agriculture.

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

(e) For a particular prescribed burn, a site-specific plan tailored to the designated area must be completed and approved by a person designated by the director to review prescribed burn plans. In addition to any site-specific information required under the general plan, a site-specific plan must 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) The department shall provide adequate advance notice of the department's intent to conduct a prescribed burn to each neighboring landowner and appropriate local officials in the vicinity of the designated burn area, including water utility

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(b) The landowner's notice must 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 the department.

(c) The department shall 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. The department shall purchase liability insurance or establish a self-insurance fund as provided by Subchapter B, Chapter 2259, Government Code, for liability coverage for money damages in the amounts specified by Section 153.082, Natural Resources Code, to protect the department and the department'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. The department is liable for actual damages for:

- (1) injury to or destruction of property, bodily injury, or death

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officials with water facilities within two miles of the prescribed burn. [FA2]

(b) The landowner's notice must 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 the department.

(c) The department shall 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. The department shall purchase liability insurance or establish a self-insurance fund as provided by Subchapter B, Chapter 2259, Government Code, for liability coverage for money damages in the amounts specified by Section 153.082, Natural Resources Code, to protect the department and the department's employees against claims under this subchapter resulting from:

- (1) bodily injury or death resulting from a prescribed burn; or
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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 the department; 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 the department if the department 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. Liability of the department 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) A claim asserted under this subchapter may not also be asserted against the department under Subchapter B, Chapter 101, Civil Practice and Remedies Code, or against a department employee.

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

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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 the department; 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 the department if the department 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. Liability of the department under this subchapter is limited to money damages in an amount not to exceed the amount paid by the insurance provider described by Section 11.355 to the claimant. [FA1]

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

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

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Sec. 11.359. WAIVER OF GOVERNMENTAL IMMUNITY; PERMISSION TO SUE. (a) Sovereign immunity to suit is waived and abolished to the extent of liability created by this subchapter. (b) A person having a claim under this subchapter may sue the department for damages allowed by this subchapter.

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

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

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

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SECTION 2. Same as House version.

SECTION 3. Same as House version.

SECTION 4. Same as House version.

CONFERENCE