

SENATE AMENDMENTS

2nd Printing

By: Murr

H.B. No. 2053

A BILL TO BE ENTITLED

1 AN ACT
2 relating to individuals and organizations providing certain
3 services and liability in connection with prescribed burns.

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

5 SECTION 1. Section 352.081(f), Local Government Code, is
6 amended to read as follows:

7 (f) This section does not apply to outdoor burning
8 activities:

9 (1) related to public health and safety that are
10 authorized by the Texas Commission on Environmental Quality for:

11 (A) firefighter training;

12 (B) public utility, natural gas pipeline, or
13 mining operations; or

14 (C) planting or harvesting of agriculture crops;

15 or

16 (2) that are conducted by a certified and insured
17 prescribed burn manager certified under Section 153.048, Natural
18 Resources Code, and meet the standards of Section 153.047, Natural
19 Resources Code [~~, or~~

20 [~~(3) that are conducted by the members of a prescribed~~
21 ~~burning organization under the conditions provided by Section~~
22 ~~153.049, Natural Resources Code, and meet the standards of Section~~
23 ~~153.047, Natural Resources Code].~~

24 SECTION 2. Sections 153.004 and 153.047, Natural Resources

1 Code, are amended to read as follows:

2 Sec. 153.004. PRESCRIBED BURNING IN STATE OF EMERGENCY OR
3 DISASTER. A certified and insured prescribed burn manager [~~or the~~
4 ~~members of a prescribed burning organization~~] may conduct a burn in
5 a county in which a state of emergency or state of disaster has been
6 declared by the governor or the president of the United States,
7 unless the declaration expressly prohibits all outdoor burning.

8 Sec. 153.047. PRESCRIBED BURNING STANDARDS. Minimum
9 standards established by the board for prescribed burning must:

10 (1) ensure that prescribed burning is the controlled
11 application of fire to naturally occurring or naturalized
12 vegetative fuels under specified environmental conditions in
13 accordance with a written prescription plan:

14 (A) designed to confine the fire to a
15 predetermined area and to accomplish planned land management
16 objectives; and

17 (B) that conforms to the standards established
18 under this section;

19 (2) require that[+]

20 [~~(A)~~] at least one certified and insured
21 prescribed burn manager is present on site during the conduct of the
22 prescribed burn; [~~or~~

23 [~~(B) the burn be conducted by the members of a~~
24 ~~prescribed burning organization,~~]

25 (3) establish appropriate guidelines for size of
26 burning crews sufficient to:

27 (A) conduct the burn in accordance with the

1 prescription plan; and

2 (B) provide adequate protection for the safety of
3 persons and of adjacent property;

4 (4) include standards for notification to adjacent
5 land owners, the Texas Commission on Environmental Quality, and
6 local fire authorities; and

7 (5) include minimum insurance requirements for
8 certified and insured prescribed burn managers [~~and prescribed~~
9 ~~burning organizations~~].

10 SECTION 3. Section 153.081(a), Natural Resources Code, is
11 amended to read as follows:

12 (a) Subject to Section 153.082, an owner, lessee, or
13 occupant of agricultural or conservation land is not liable for
14 property damage or for injury or death to persons caused by or
15 resulting from prescribed burning conducted on the land owned by,
16 leased by, or occupied by the person if the prescribed burning is
17 conducted[+]

18 [~~(1)~~] under the supervision of a certified and insured
19 prescribed burn manager [~~+ or~~

20 [~~(2) by the members of a prescribed burning~~
21 ~~organization~~].

22 SECTION 4. Section 153.082, Natural Resources Code, is
23 amended to read as follows:

24 Sec. 153.082. INSURANCE. The limitation on liability under
25 Section 153.081 does not apply to an owner, lessee, or occupant of
26 agricultural or conservation land unless:

27 (1) the burn is conducted under the supervision of a

1 certified and insured prescribed burn manager who has liability
2 insurance coverage:

3 (A) of at least \$1 million for each single
4 occurrence of bodily injury or death, or injury to or destruction of
5 property; and

6 (B) with a policy period minimum aggregate limit
7 of at least \$2 million; or

8 (2) the owner, lessee, or occupant is a governmental
9 unit, as that term is defined by Section 2259.001, Government Code,
10 that has a self-insurance program that provides the amount of
11 coverage required by Subdivision (1) [~~or~~

12 ~~[(3) the burn is conducted by the members of a~~
13 ~~prescribed burning organization that has insurance coverage in an~~
14 ~~amount not less than the amount established by the board under~~
15 ~~Section 153.046].~~

16 SECTION 5. Subchapter C, Chapter 153, Natural Resources
17 Code, is amended by adding Section 153.083 to read as follows:

18 Sec. 153.083. LIABILITY REGARDING CERTAIN PRESCRIBED
19 BURNS. (a) In this section, "burn boss" means an individual
20 responsible for directing a prescribed burn under a written
21 prescription plan described by Section 153.047.

22 (b) Except as provided by Subsection (c), if a prescribed
23 burn is conducted in accordance with a written prescription plan
24 described by Subsection (d) and Section 153.047, a person may be
25 held liable for property damage, personal injury, or death caused
26 by or resulting from the burn only if the person:

27 (1) is the burn boss; and

1 (2) is otherwise liable under other law.

2 (c) Subject to Sections 153.081 and 153.082, a person other
3 than the burn boss, including a person assisting or acting under the
4 direction of the burn boss, may be held liable for property damage,
5 personal injury, or death caused by or resulting from the burn only
6 if the person:

7 (1) commits gross negligence or intentionally causes
8 the property damage, personal injury, or death; and

9 (2) is otherwise liable under other law.

10 (d) For purposes of this section, if the burn boss is not the
11 owner, lessee, or occupant of the land on which the burn is
12 conducted, the written prescription plan must include:

13 (1) the signature of:

14 (A) the burn boss; or

15 (B) the owner, lessee, or occupant of the land on
16 which the burn is conducted; and

17 (2) a contract acknowledging liability.

18 (e) Nothing in this section may be construed to create a
19 cause of action or to create a standard of care, obligation, or duty
20 that forms the basis of a cause of action.

21 SECTION 6. Sections 153.001(3) and 153.049, Natural
22 Resources Code, are repealed.

23 SECTION 7. The change in law made by this Act applies only
24 to a cause of action that accrues on or after the effective date of
25 this Act. A cause of action that accrues before the effective date
26 of this Act is governed by the law applicable to the cause of action
27 immediately before the effective date of this Act, and that law is

1 continued in effect for that purpose.

2 SECTION 8. This Act takes effect September 1, 2019.

ADOPTED

MAY 22 2019

Letty Spaul
Secretary of the Senate

By: Floras

H.B. No. 2053

Substitute the following for H.B. No. 2053:

By: Jose Rodriguez

C.S.H.B. No. 2053

A BILL TO BE ENTITLED

AN ACT

1
2 relating to individuals and organizations providing certain
3 services and liability in connection with prescribed burns.

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

5 SECTION 1. Section 352.081(f), Local Government Code, is
6 amended to read as follows:

7 (f) This section does not apply to outdoor burning
8 activities:

9 (1) related to public health and safety that are
10 authorized by the Texas Commission on Environmental Quality for:

- 11 (A) firefighter training;
- 12 (B) public utility, natural gas pipeline, or
- 13 mining operations; or
- 14 (C) planting or harvesting of agriculture crops;

15 or

16 (2) that are conducted by a certified and insured
17 prescribed burn manager certified under Section 153.048, Natural
18 Resources Code, and meet the standards of Section 153.047, Natural
19 Resources Code [~~+~~ ~~or~~

20 [~~(3) that are conducted by the members of a prescribed~~
21 ~~burning organization under the conditions provided by Section~~
22 ~~153.049, Natural Resources Code, and meet the standards of Section~~
23 ~~153.047, Natural Resources Code].~~

24 SECTION 2. Sections 153.004, 153.046, and 153.047, Natural

1 Resources Code, are amended to read as follows:

2 Sec. 153.004. PRESCRIBED BURNING IN STATE OF EMERGENCY OR
3 DISASTER. A certified and insured prescribed burn manager [~~or the~~
4 ~~members of a prescribed burning organization~~] may conduct a burn in
5 a county in which a state of emergency or state of disaster has been
6 declared by the governor or the president of the United States,
7 unless the declaration expressly prohibits all outdoor burning.

8 Sec. 153.046. DUTIES. The board shall:

9 (1) establish standards for prescribed burning;

10 (2) develop a comprehensive training curriculum for
11 certified and insured prescribed burn managers;

12 (3) establish standards for certification,
13 recertification, and training for certified and insured prescribed
14 burn managers;

15 (4) establish minimum education and professional
16 requirements for instructors for the approved curriculum; and

17 (5) establish insurance requirements for certified
18 and insured prescribed burn managers in amounts not less than those
19 required by Section 153.082 [~~, and~~

20 ~~(6) establish minimum insurance requirements for~~
21 ~~prescribed burning organizations~~].

22 Sec. 153.047. PRESCRIBED BURNING STANDARDS. Minimum
23 standards established by the board for prescribed burning must:

24 (1) ensure that prescribed burning is the controlled
25 application of fire to naturally occurring or naturalized
26 vegetative fuels under specified environmental conditions in
27 accordance with a written prescription plan:

1 (A) designed to confine the fire to a
2 predetermined area and to accomplish planned land management
3 objectives; and

4 (B) that conforms to the standards established
5 under this section;

6 (2) require that[+]

7 [~~(A)~~] at least one certified and insured
8 prescribed burn manager is present on site during the conduct of the
9 prescribed burn; [~~or~~

10 [~~(B) the burn be conducted by the members of a~~
11 ~~prescribed burning organization,~~]

12 (3) establish appropriate guidelines for size of
13 burning crews sufficient to:

14 (A) conduct the burn in accordance with the
15 prescription plan; and

16 (B) provide adequate protection for the safety of
17 persons and of adjacent property;

18 (4) include standards for notification to adjacent
19 land owners, the Texas Commission on Environmental Quality, and
20 local fire authorities; and

21 (5) include minimum insurance requirements for
22 certified and insured prescribed burn managers [~~and prescribed~~
23 ~~burning organizations~~].

24 SECTION 3. Section 153.081(a), Natural Resources Code, is
25 amended to read as follows:

26 (a) Subject to Section 153.082, an owner, lessee, or
27 occupant of agricultural or conservation land is not liable for

1 property damage or for injury or death to persons caused by or
2 resulting from prescribed burning conducted on the land owned by,
3 leased by, or occupied by the person if the prescribed burning is
4 conducted[+

5 [~~(1)~~] under the supervision of a certified and insured
6 prescribed burn manager [~~+ or~~

7 [~~(2) by the members of a prescribed burning~~
8 ~~organization]~~.

9 SECTION 4. Section 153.082, Natural Resources Code, is
10 amended to read as follows:

11 Sec. 153.082. INSURANCE. The limitation on liability under
12 Section 153.081 does not apply to an owner, lessee, or occupant of
13 agricultural or conservation land unless:

14 (1) the burn is conducted under the supervision of a
15 certified and insured prescribed burn manager who has liability
16 insurance coverage:

17 (A) of at least \$1 million for each single
18 occurrence of bodily injury or death, or injury to or destruction of
19 property; and

20 (B) with a policy period minimum aggregate limit
21 of at least \$2 million; or

22 (2) the owner, lessee, or occupant is a governmental
23 unit, as that term is defined by Section 2259.001, Government Code,
24 that has a self-insurance program that provides the amount of
25 coverage required by Subdivision (1) [~~+ or~~

26 [~~(3) the burn is conducted by the members of a~~
27 ~~prescribed burning organization that has insurance coverage in an~~

1 ~~amount not less than the amount established by the board under~~
2 ~~Section 153.046].~~

3 SECTION 5. Subchapter C, Chapter 153, Natural Resources
4 Code, is amended by adding Section 153.083 to read as follows:

5 Sec. 153.083. LIABILITY REGARDING CERTAIN PRESCRIBED
6 BURNS. (a) In this section, "burn boss" means an individual
7 responsible for directing a prescribed burn under a written
8 prescription plan described by Section 153.047.

9 (b) Except as provided by Subsection (c), if a prescribed
10 burn is conducted in accordance with a written prescription plan
11 described by Subsection (d) and Section 153.047, a person may be
12 held liable for property damage, personal injury, or death caused
13 by or resulting from the burn only if the person:

- 14 (1) is the burn boss; and
15 (2) is otherwise liable under other law.

16 (c) Subject to Sections 153.081 and 153.082, a person other
17 than the burn boss, including a person assisting or acting under the
18 direction of the burn boss, may be held liable for property damage,
19 personal injury, or death caused by or resulting from the burn only
20 if the person:

- 21 (1) commits gross negligence or intentionally causes
22 the property damage, personal injury, or death; and
23 (2) is otherwise liable under other law.

24 (d) For purposes of this section, if the burn boss is not the
25 owner, lessee, or occupant of the land on which the burn is
26 conducted, the written prescription plan must include:

- 27 (1) the signature of:

1 (A) the burn boss; or
2 (B) the owner, lessee, or occupant of the land on
3 which the burn is conducted; and
4 (2) a contract acknowledging liability.

5 (e) Nothing in this section may be construed to create a
6 cause of action or to create a standard of care, obligation, or duty
7 that forms the basis of a cause of action.

8 SECTION 6. Sections 153.001(3) and 153.049, Natural
9 Resources Code, are repealed.

10 SECTION 7. The change in law made by this Act applies only
11 to a cause of action that accrues on or after the effective date of
12 this Act. A cause of action that accrues before the effective date
13 of this Act is governed by the law applicable to the cause of action
14 immediately before the effective date of this Act, and that law is
15 continued in effect for that purpose.

16 SECTION 8. This Act takes effect September 1, 2019.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 23, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB2053** by Murr (Relating to individuals and organizations providing certain services and liability in connection with prescribed burns.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Natural Resources Code to repeal provisions related to liability for damages resulting from prescribed burns and prescribed burning organizations. The bill would describe under what conditions and who may be liable for a prescribed burn. Based on the analysis of the Texas Department of Agriculture and the Office of Court Administration, the provisions of the bill could be implemented with existing resources.

Local Government Impact

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

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 551
Department of Agriculture, 582 Commission on Environmental Quality

LBB Staff: WP, SD, SZ, MW, PBO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 17, 2019

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

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2053 by Murr (Relating to individuals and organizations providing certain services and liability in connection with prescribed burns.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Natural Resources Code to repeal provisions related to liability for damages resulting from prescribed burns and prescribed burning organizations. The bill would describe under what conditions and who may be liable for a prescribed burn. Based on the analysis of the Texas Department of Agriculture and the Office of Court Administration, the provisions of the bill could be implemented with existing resources.

Local Government Impact

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

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 551
 Department of Agriculture, 582 Commission on Environmental Quality

LBB Staff: WP, SZ, MW, PBO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 29, 2019

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

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2053 by Murr (Relating to individuals and organizations providing certain services and liability in connection with prescribed burns.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Natural Resources Code to repeal provisions related to liability for damages resulting from prescribed burns and prescribed burning organizations. The bill would describe under what conditions and who may be liable for a prescribed burn. Based on the analysis of the Texas Department of Agriculture and the Office of Court Administration, the provisions of the bill could be implemented with existing resources.

Local Government Impact

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

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 551
 Department of Agriculture, 582 Commission on Environmental Quality

LBB Staff: WP, SZ, MW, PBO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

March 26, 2019

TO: Honorable Drew Springer, Chair, House Committee on Agriculture & Livestock

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2053 by Murr (Relating to individuals and organizations providing certain services and liability in connection with prescribed burns.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Natural Resources Code to repeal provisions related to liability for damages resulting from prescribed burns and prescribed burning organizations. The bill would describe under what conditions and who may be liable for a prescribed burn. Based on the analysis of the Texas Department of Agriculture and the Office of Court Administration, the provisions of the bill could be implemented with existing resources.

Local Government Impact

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

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 551
 Department of Agriculture, 582 Commission on Environmental Quality

LBB Staff: WP, SZ, MW, PBO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

March 17, 2019

TO: Honorable Drew Springer, Chair, House Committee on Agriculture & Livestock

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2053 by Murr (Relating to organizations providing certain services and liability in connection with prescribed burns.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Natural Resources Code to repeal provisions related to liability for damages resulting from prescribed burns and prescribed burning organizations. The bill would describe under what conditions and who may be liable for a prescribed burn. Based on the analysis of the Texas Department of Agriculture and the Office of Court Administration, the provisions of the bill could be implemented with existing resources.

Local Government Impact

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

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 551
 Department of Agriculture, 582 Commission on Environmental Quality

LBB Staff: WP, SZ, MW, PBO