

House Bill 2053
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

- (f) This section does not apply to outdoor burning activities:
- (1) related to public health and safety that are authorized by the Texas Commission on Environmental Quality for:
 - (A) firefighter training;
 - (B) public utility, natural gas pipeline, or mining operations;
 - or
 - (C) planting or harvesting of agriculture crops; or
 - (2) that are conducted by a certified and insured prescribed burn manager certified under Section 153.048, Natural Resources Code, and meet the standards of Section 153.047, Natural Resources Code[~~;~~ ~~or~~
~~[(3) that are conducted by the members of a prescribed burning organization under the conditions provided by Section 153.049, Natural Resources Code, and meet the standards of Section 153.047, Natural Resources Code].~~

SECTION 2. Sections 153.004 and 153.047, Natural Resources Code, are amended to read as follows:
Sec. 153.004. PRESCRIBED BURNING IN STATE OF EMERGENCY OR DISASTER. A certified and insured prescribed burn manager [~~or the members of a prescribed burning organization~~] may conduct a burn in a county in which a state of emergency or state of disaster has been declared by the governor or the president of the United States, unless the declaration expressly prohibits all outdoor burning.

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SECTION 1. Same as House version.

SECTION 2. Sections 153.004, 153.046, and 153.047, Natural Resources Code, are amended to read as follows:
Sec. 153.004. PRESCRIBED BURNING IN STATE OF EMERGENCY OR DISASTER. A certified and insured prescribed burn manager [~~or the members of a prescribed burning organization~~] may conduct a burn in a county in which a state of emergency or state of disaster has been declared by the governor or the president of the United States, unless the declaration expressly prohibits all outdoor burning.
Sec. 153.046. DUTIES. The board shall:
(1) establish standards for prescribed burning;

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

- (1) ensure that prescribed burning is the controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental conditions in accordance with a written prescription plan:
 - (A) designed to confine the fire to a predetermined area and to accomplish planned land management objectives; and
 - (B) that conforms to the standards established under this section;
- (2) require that:
 - ~~[(A)]~~ at least one certified and insured prescribed burn manager is present on site during the conduct of the prescribed burn; ~~or~~
 - ~~[(B) the burn be conducted by the members of a prescribed burning organization;]~~
- (3) establish appropriate guidelines for size of burning crews sufficient to:

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- (2) develop a comprehensive training curriculum for certified and insured prescribed burn managers;
- (3) establish standards for certification, recertification, and training for certified and insured prescribed burn managers;
- (4) establish minimum education and professional requirements for instructors for the approved curriculum; and
- (5) establish insurance requirements for certified and insured prescribed burn managers in amounts not less than those required by Section 153.082 ~~;~~ and
- ~~[(6) establish minimum insurance requirements for prescribed burning organizations].~~

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

- (1) ensure that prescribed burning is the controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental conditions in accordance with a written prescription plan:
 - (A) designed to confine the fire to a predetermined area and to accomplish planned land management objectives; and
 - (B) that conforms to the standards established under this section;
- (2) require that:
 - ~~[(A)]~~ at least one certified and insured prescribed burn manager is present on site during the conduct of the prescribed burn; ~~or~~
 - ~~[(B) the burn be conducted by the members of a prescribed burning organization;]~~
- (3) establish appropriate guidelines for size of burning crews sufficient to:

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- (A) conduct the burn in accordance with the prescription plan; and
- (B) provide adequate protection for the safety of persons and of adjacent property;
- (4) include standards for notification to adjacent land owners, the Texas Commission on Environmental Quality, and local fire authorities; and
- (5) include minimum insurance requirements for certified and insured prescribed burn managers [~~and prescribed burning organizations~~].

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

- (a) Subject to Section 153.082, an owner, lessee, or occupant of agricultural or conservation land is not liable for property damage or for injury or death to persons caused by or resulting from prescribed burning conducted on the land owned by, leased by, or occupied by the person if the prescribed burning is conducted:
 - ~~[(1)]~~ under the supervision of a certified and insured prescribed burn manager~~;~~ ~~or~~
 - ~~[(2)]~~ by the members of a prescribed burning organization.

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

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

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- (A) conduct the burn in accordance with the prescription plan; and
- (B) provide adequate protection for the safety of persons and of adjacent property;
- (4) include standards for notification to adjacent land owners, the Texas Commission on Environmental Quality, and local fire authorities; and
- (5) include minimum insurance requirements for certified and insured prescribed burn managers [~~and prescribed burning organizations~~].

SECTION 3. Same as House version.

SECTION 4. Same as House version.

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

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

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

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

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

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

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

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

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(1) is the burn boss; and
(2) is otherwise liable under other law.
(c) Subject to Sections 153.081 and 153.082, a person other than the burn boss, including a person assisting or acting under the direction of the burn boss, may be held liable for property damage, personal injury, or death caused by or resulting from the burn only if the person:
(1) commits gross negligence or intentionally causes the property damage, personal injury, or death; and
(2) is otherwise liable under other law.
(d) For purposes of this section, if the burn boss is not the owner, lessee, or occupant of the land on which the burn is conducted, the written prescription plan must include:
(1) the signature of:
(A) the burn boss; or
(B) the owner, lessee, or occupant of the land on which the burn is conducted; and
(2) a contract acknowledging liability.
(e) Nothing in this section may be construed to create a cause of action or to create a standard of care, obligation, or duty that forms the basis of a cause of action.

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

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

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SECTION 6. Same as House version.

SECTION 7. Same as House version.

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of this Act, and that law is continued in effect for that purpose.

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

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SECTION 8. Same as House version.

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