

BILL ANALYSIS

Senate Research Center
87R10042 SCL-D

H.B. 2004
By: Ashby et al. (Nichols)
Water, Agriculture & Rural Affairs
4/22/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties note that certified and insured prescribed burn managers, who are licensed and insured by at least \$1 million or more in coverage, play a large role in managing land and resources throughout Texas. This is especially true in population growth areas, which are at highest risk for wildfires and therefore have the greatest need for prescribed burning. To that end, due to Texas's rapid growth in recent decades, it is nearly impossible to perform even the best managed burns without someone downwind seeing or smelling smoke.

Two main issues have arisen in regards to the smoke from prescribed burns:

- First, in the litigious society in which we find ourselves, the appearance of smoke can lead to unfounded lawsuits and insurance claims. As there is already a limited number of insurance carriers willing to insure prescribed burners, these frivolous lawsuits give them strong cause to exit the marketplace.
- Additionally, frivolous claims of nuisance smoke are made by landowners or homeowners that are tens of miles away from the prescribed fire. Although the complainant might only smell the smoke, and is not otherwise impacted by it, they have the right to protest with the Texas Commission on Environmental Quality (TCEQ). This weaponizes the complaint process and creates a great barrier to the service that certified and insured prescribed burn managers offer.

H.B. 2004 would reduce the financial liability, only for certified and insured prescribed burn managers, when smoke of a prescribed fire drifts well down range from the burn and is out of their control. Further, and again only for certified and insured prescribed burn managers, H.B. 2004 would ensure that TCEQ is not taking disciplinary action against a certified and insured prescribed burn manager based on a complaint that a prescribed fire is a nuisance. A certified and insured prescribed burn manager would still bear liability for escaped fires, or for smoke issues on immediately adjacent roadways or sensitive receptors, as it is already in statute that they cannot cause negative effects to those critical areas within 300 feet of the burn.

H.B. 2004 amends current law relating to a limitation on liability and sanctions in connection with certain prescribed burns.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 153, Natural Resources Code, by adding Section 153.084, as follows:

Sec. 153.084. LIMITATION OF BURN BOSS LIABILITY. (a) Defines "burn boss."

(b) Provides that, except as provided by Subsection (c), if a burn boss is a certified and insured prescribed burn manager under Section 153.048 (Certified

and Insured Prescribed Burn Managers), the burn boss is not liable for property damage, personal injury, or death caused by or resulting from smoke that occurs more than 300 feet from the burn.

(c) Provides that this section does not apply to a burn boss who commits gross negligence or intentionally causes property damage, personal injury, or death.

SECTION 2. Amends Subchapter D, Chapter 153, Natural Resources Code, by adding Section 153.1025, as follows:

Sec. 153.1025. **CERTAIN DISCIPLINARY ACTION PROHIBITED.** Prohibits the Texas Department of Agriculture or another state agency, notwithstanding Section 153.102 (Disciplinary Action; Schedule of Sanctions) or any other law, from taking disciplinary action against a certified and insured prescribed burn manager in relation to a prescribed burn conducted in accordance with Chapter 153 (Prescribed Burning) on the basis that the burn resulted in emissions or is a nuisance.

SECTION 3. Makes application of Section 153.084, Natural Resources Code, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2021.