

BILL ANALYSIS

C.S.H.B. 2563
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill's author informed the committee that the Panhandle Wildfire highlighted the need for prescribed burning to properly manage both public and private lands in Texas. Prescribed burns can have positive effects on wildlife habitat, land management, agricultural production, and, most importantly, wildfire risk mitigation. According to a 2022 press release from the Texas A&M Forest Service, publicly held lands are currently burned at adequate levels. However, less than five percent of all land in Texas is public, and burning must occur more frequently on privately owned lands. The bill's author informed the committee that, for Texas to encourage more prescribed burning on private lands, the state needs more Certified Insured Prescribed Burn Managers (CIPBMs) and to increase the capacity of existing CIPBMs. One way to do this is to increase the availability of liability insurance to CIPBMs, which is currently insufficient. C.S.H.B. 2563 seeks to establish the Prescribed Burn Manager Self-Insurance Program, which is a temporary insurance pool administered by the Texas A&M Forest Service.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the director of the Texas A&M Forest Service in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 2563 amends the Insurance Code to require the Texas A&M Forest Service to administer a CIPBM self-insurance program that does the following:

- identifies and evaluates risks arising from prescribed burns conducted under applicable Natural Resources Code provisions;
- maintains a loss-prevention and loss-control program to reduce risks arising from prescribed burns;
- consolidates and administers prescribed burn risk management and self-insurance programs; and
- provides prescribed burn self-insurance coverage in accordance with the bill's provisions.

The bill defines "CIPBM" as a person who is a certified and insured prescribed burn manager under applicable Natural Resources Code provisions. The bill authorizes the forest service to employ staff to administer the program and authorizes the director of the forest service to adopt rules to implement and administer the program.

Self-Insurance Pool; Coverage

C.S.H.B. 2563 requires the program to administer a self-insurance pool to provide general liability coverage for CIPBMs who are residents of Texas. The bill provides the following with respect to such coverage:

- the coverage must indemnify a participating CIPBM for liability arising from a prescribed burn;
- the coverage limits provided must be the minimum amounts required for purposes of prescribed burning insurance under applicable Natural Resources Code provisions;
- the self-insurance pool may not provide coverage for a risk other than a prescribed burn conducted by a participating CIPBM;
- prohibited coverage includes workers' compensation, automobile liability, and errors and omissions or professional liability; and
- the coverage may be funded only from money available from the CIPBM self-insurance fund established by the bill.

The bill authorizes the director of the forest service to recommend requirements for participation in the pool coverage and equipment and safety standards for the prescribed burns to be covered.

Pool Participation

C.S.H.B. 2563 requires a CIPBM seeking to participate in the pool coverage to submit a written request to the program in the form and manner prescribed by the forest service. The bill requires the director of the forest service to approve the request for participation if the CIPBM to be covered is certified.

Training Requirements

C.S.H.B. 2563 requires a participating CIPBM, as a condition for continuing participation in the pool coverage, to complete a wildfire suppression course administered by the forest service that trains the CIPBM on the following:

- proper coordination with the state or local fire departments in the event that a prescribed burn escapes its predetermined boundaries; and
- proper assistance in the suppression of a naturally occurring wildfire.

The bill requires the forest service to develop the wildfire suppression course in compliance with the minimum standards for CIPBM certification and to maintain records of a participating CIPBM's completion of the course.

Temporary CIPBM Self-Insurance Fund

C.S.H.B. 2563 establishes that the CIPBM self-insurance fund is an account in a depository selected by the board of regents of The Texas A&M University System in the manner provided by Education Code provisions relating to depositories for funds subject to the control of public institutions of higher education. The CIPBM self-insurance fund is composed of the following amounts:

- an amount not to exceed \$25 million appropriated by the legislature;
- money collected from self-insurance fees and cost-sharing requirements under the bill's provisions; and
- interest accruing on money in the fund.

The bill limits the purposes for which money in the fund may be used to funding self-insurance under the program or administering the bill's provisions, including paying the salaries and expenses of staff for the program and the fund.

Limitation on State's Liability

C.S.H.B. 2563 establishes that the state's liability for all losses covered by self-insurance provided under the program is limited to the assets of the CIPBM self-insurance fund, and the

state is not otherwise liable for those losses.

Self-Insurance Fee and Cost-Sharing Requirements

C.S.H.B. 2563 authorizes the forest service to assess and collect a reasonable fee from participating CIPBMs to provide self-insurance coverage under the program and requires the forest service to also establish reasonable cost-sharing requirements, including appropriate deductibles. The bill requires the forest service, in establishing the amount of the fee and cost-sharing requirements, to consider the amount that could be charged to the CIPBM for similar insurance coverage provided to that CIPBM in accordance with the Insurance Code and ensure that a deductible is sufficiently high to do the following:

- deter the use of the self-insurance coverage for minor losses; and
- ensure the self-insurance coverage is used only for significant losses.

The bill requires the forest service to adjust the amount of a premium for the self-insurance coverage by using the prescribed burn data collected under the bill's provisions. The bill requires money collected from these fees and cost-sharing requirements to be deposited to the credit of the CIPBM self-insurance fund.

Prescribed Burn Data Collection

C.S.H.B. 2563 requires a participating CIPBM to report in the form and manner prescribed by the forest service the following information for each prescribed burn the CIPBM conducts:

- the amount of land burned in acres by county;
- the date of the burn; and
- whether the burn resulted in a financial loss or wildfire response.

Excessive Claims

C.S.H.B. 2563 authorizes the forest service, if it determines that a participating CIPBM has made excessive claims under self-insurance coverage provided through the program, to terminate the CIPBM's participation in the self-insurance pool or refer the CIPBM to the Prescribed Burning Board for disciplinary action under Natural Resources Code provisions relating to prescribed burning as if the CIPBM violated those provisions.

Legal Representation

C.S.H.B. 2563 authorizes the forest service to employ an attorney to represent a CIPBM in a liability action for which insurance coverage is provided under the program. The bill prohibits the attorney general from providing such representation.

Expiration

C.S.H.B. 2563 establishes that the program and the bill's provisions expire September 1, 2040. On expiration of the program, the remaining balance in the CIPBM self-insurance fund that is not needed to pay claims is transferred to the statewide fire contingency account.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2563 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute replaces references to a "prescribed burn manager," defined as a person who is a certified and insured prescribed burn manager under applicable Natural Resources Code provisions, as in the introduced, with references to a "CIPBM" defined as such.

Whereas the introduced required the self-insurance program to administer a self-insurance pool to provide general liability coverage for prescribed burns a prescribed burn manager conducts, the substitute requires the program to administer a self-insurance pool to provide general liability coverage for CIPBMs who are residents of Texas.

Whereas the introduced authorized the required coverage to indemnify a participating prescribed burn manager for liability arising from a prescribed burn conducted by the manager, the substitute requires the coverage to indemnify a participating CIPBM for liability arising from a prescribed burn.

The substitute omits a provision included in the introduced which established as an alternative to the requirement for the coverage limits to be the minimum amounts required for purposes of Natural Resources Code provisions relating to limitation of liability for prescribed burning a requirement for those coverage limits to be a lesser amount determined necessary based on the liquidity of the self-insurance fund after deducting the cost of administering the bill's provisions.

The substitute replaces the authorization for the forest service director to establish requirements for participation in the pool coverage and equipment and safety standards for the prescribed burns, as in the introduced, with an authorization to recommend such requirements and standards. The substitute removes the specification included in the introduced that the requirements for participation are eligibility requirements.

The substitute replaces the requirement that the forest service director approve the request for participation in the pool coverage if each proposed prescribed burn to be covered meets the eligibility requirements and equipment and safety standards established under the bill's provisions, as in the introduced, with a requirement that the director approve the request for participation if the CIPBM to be covered is certified under applicable Natural Resources Code provisions.

The substitute replaces the requirement that a participating CIPBM complete a wildfire suppression course administered by the forest service with a requirement that the CIPBM complete such a course that is offered or sanctioned by the forest service. The substitute replaces the requirement that the forest service develop a required course as a condition for continuing participation in pool coverage in compliance with National Wildfire Coordinating Group standards, as in the introduced, with a requirement that the service develop such a course in compliance with applicable Natural Resources Code provisions.

Whereas the introduced required a participating CIPBM to report the amount of land burned in acres for each prescribed burn the CIPBM conducts, the substitute adds the requirement that the amount be reported by county.

While the introduced authorized the forest service to terminate a manager's participation in the self-insurance pool and refer the manager to the Prescribed Burning Board for disciplinary action, the substitute authorizes the service to terminate or refer.