

BILL ANALYSIS

Senate Research Center
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S.B. 1592
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Intergovernmental Relations
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Subchapter D (Outdoor Burning), Chapter 352 (County Fire Protection), Local Government Code, addresses a county's authority to regulate outdoor burning. It gives the commissioners court of a county the power to institute burn bans in all or part of the unincorporated areas of the county if certain conditions exist. A burn ban may not last longer than 90 days unless renewed by the commissioners court.

Section 352.081(e)(2), Local Government Code, provides that a burn ban instituted by a commissioners court can be lifted only by subsequent action by the court. This is impractical in some situations. In some counties, commissioners courts meet only once or twice per month. If a rainfall occurs that removes the need for the burn ban shortly after it is instituted, it may be one or more weeks before the ban can be lifted.

Some commissioners courts would like to delegate the authority to lift a burn ban to another person designated by the court, such as the county judge or the county fire marshal. The relevant case law, however, favors the notion that "[w]here a statute entrusts specified functions to a designation public officer or body, the legislature presumably intends that only that officer or body shall exercise the assigned functions." *Lipsey v. Texas Dept. of Health*, 727 S.W.2d 61 (Tex.App – Austin 1987, writ ref'd n.r.e.).

S.B. 1592 would permit a county commissioners court, at its discretion to delegate to either the county judge or, in counties that have one, the county fire marshal the authority to lift a burn ban.

As proposed, S.B. 1592 amends current law relating to the expiration of a county burn ban.

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 Section 352.081(e), Local Government Code, to provide that an order adopted under this section expires, as applicable, on the date a determination is made under Subsection (b) (relating to a determination of drought conditions by the Texas Forest Service) that drought conditions no longer exist, or a determination is made by the commissioners court, or the county judge or fire marshal if designated for that purpose by the commissioners court, that the circumstances identified under Subsection (c)(2) (relating to a public safety hazard exacerbated by outdoor burning) no longer exist.

SECTION 2. Effective date: upon passage or September 1, 2011.