

BILL ANALYSIS

Senate Research Center
86R20545 SCL-F

H.B. 2053
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Water & Rural Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Within Texas, there are organizations that participate in certain prescribed burn activities. In common practice, prescribed burns are executed by a person who is named as "burn boss" on the written burn plan. It has been suggested that clarity is needed regarding the role and scope of liability for those who participate in prescribed burn activities. H.B. 2053 seeks to address this issue by setting out provisions on matters relating to prescribed burns, including the matter of liability.

H.B. 2053 amends current law relating to individuals and organizations providing certain services and liability in connection with 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 Section 352.081(f), Local Government Code, to delete existing text providing that this section (Regulation of Outdoor Burning) does not apply to outdoor burning activities that are conducted by the members of a prescribed burning organization under the conditions provided by Section 153.049 (Prescribed Burning Organizations), Natural Resources Code, and meet the standards of Section 153.047 (Prescribed Burning Standards), Natural Resources Code.

SECTION 2. Amends Sections 153.004 and 153.047, Natural Resources Code, as follows:

Sec. 153.004. PRESCRIBED BURNING IN STATE OF EMERGENCY OR DISASTER. Authorizes a certified and insured prescribed burn manager, rather than a certified and insured prescribed burn manager or the members of a prescribed burning organization, to 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. 153.047. PRESCRIBED BURNING STANDARDS. Deletes existing Paragraphs (2)(A) and (B). Requires minimum standards established by the board for prescribed burning to:

- (1) makes no changes to this subdivision;
- (2) require that at least one certified and insured prescribed burn manager is present on site during the conduct of the prescribed burn, rather than at least one certified and insured prescribed burn manager is present on site during the conduct of the prescribed burn or that the burn be conducted by the members of a prescribed burning organization;
- (3)–(4) makes no changes to these subdivisions;

(5) include minimum insurance requirements for certified and insured prescribed burn managers, rather than include minimum insurance requirements for certified and insured prescribed burn managers and prescribed burning organizations.

SECTION 3. Amends Section 153.081(a), Natural Resources Code, as follows:

(a) Deletes existing Subdivision (2) and the designation of Subdivision (1). Provides that, subject to Section 153.082 (Insurance), 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 under the supervision of a certified and insured prescribed burn manager, rather than under the supervision of a certified and insured prescribed burn manager or by the members of a prescribed burning organization.

SECTION 4. Amends Section 153.082, Natural Resources Code, as follows:

Sec. 153.082. INSURANCE. Deletes existing Subdivision (3). Deletes existing text providing that 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 (Duties) and makes nonsubstantive changes.

SECTION 5. Amends Subchapter C, Chapter 153, Natural Resources Code, by adding Section 153.083, as follows:

Sec. 153.083. LIABILITY REGARDING CERTAIN PRESCRIBED BURNS. (a) Defines "burn boss" for purposes of this section.

(b) Authorizes a person, 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 (Prescribed Burning Standards), to be held liable for property damage, personal injury, or death caused by or resulting from the burn only if the person:

(1) is the burn boss; and

(2) is otherwise liable under other law.

(c) Authorizes a person other than the burn boss, including a person assisting or acting under the direction of the burn boss, subject to Sections 153.081 (Limitation of Owner Liability) and 153.082 (Insurance), to 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) Requires the written prescription plan, 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, to 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) Prohibits nothing in this section from being 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. Repealer: Section 153.001(3) (relating to the definition of "prescribed burning organization"), Natural Resources Code.

Repealer: Section 153.049 (Prescribed Burning Organizations), Natural Resources Code.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2019.