

1-1 By: King of Hemphill (Senate Sponsor - Eltife) H.B. No. 801  
 1-2 (In the Senate - Received from the House April 13, 2015;  
 1-3 April 30, 2015, read first time and referred to Committee on  
 1-4 Agriculture, Water, and Rural Affairs; May 13, 2015, reported  
 1-5 adversely, with favorable Committee Substitute by the following  
 1-6 vote: Yeas 6, Nays 0; May 13, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR H.B. No. 801 By: Hall

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to planning for the use of and liability resulting from  
 1-20 prescribed burns by the Parks and Wildlife Department.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Chapter 11, Parks and Wildlife Code, is amended  
 1-23 by adding Subchapter M to read as follows:

1-24 SUBCHAPTER M. PRESCRIBED BURNS

1-25 Sec. 11.351. DEFINITIONS. In this subchapter:

1-26 (1) "Landowner" includes any person who owns, has a  
 1-27 property interest in, or leases a parcel of privately owned land or  
 1-28 improvements on the land.

1-29 (2) "Utility infrastructure" means any facility owned  
 1-30 by:

1-31 (A) an electric utility as "electric utility" is  
 1-32 defined by Section 31.002, Utilities Code;

1-33 (B) a telecommunications utility as  
 1-34 "telecommunications utility" is defined by Section 51.002,  
 1-35 Utilities Code;

1-36 (C) a gas utility as "gas utility" is defined by  
 1-37 Section 101.003 or 121.001, Utilities Code;

1-38 (D) an electric cooperative as "electric  
 1-39 cooperative" is defined by Section 11.003, Utilities Code; or

1-40 (E) a municipally owned utility as "municipally  
 1-41 owned utility" is defined by Section 11.003, Utilities Code.

1-42 Sec. 11.352. APPLICABILITY. This subchapter applies only  
 1-43 to prescribed burns conducted by the department on state land  
 1-44 managed by the department.

1-45 Sec. 11.353. GENERAL AND SPECIFIC PLAN REQUIREMENTS. (a)  
 1-46 The commission by rule shall adopt and shall require the department  
 1-47 to implement a general plan for the use of beneficial prescribed  
 1-48 burns in the management of department land. The general plan must  
 1-49 include standards that meet or exceed the standards for a  
 1-50 prescribed burn set out in Section 153.047, Natural Resources Code.

1-51 (b) The general plan must include variations as needed for  
 1-52 different areas of the state.

1-53 (c) The general plan must be reviewed by the Prescribed  
 1-54 Burning Board within the Department of Agriculture.

1-55 (d) The department may not conduct a prescribed burn under  
 1-56 this subchapter before the general plan has been adopted by the  
 1-57 commission.

1-58 (e) For a particular prescribed burn, a site-specific plan  
 1-59 tailored to the designated area must be completed and approved by a  
 1-60 person designated by the director to review prescribed burn plans.

2-1 In addition to any site-specific information required under the  
2-2 general plan, a site-specific plan must include:  
2-3 (1) the planned start and end dates of the prescribed  
2-4 burn;  
2-5 (2) a map of the designated burn area, including the  
2-6 location of any utility infrastructure within the designated burn  
2-7 area;  
2-8 (3) the names and contact numbers for:  
2-9 (A) the prescribed burn manager;  
2-10 (B) the nearest fire departments or emergency  
2-11 service providers; and  
2-12 (C) all landowners whose property neighbors the  
2-13 designated burn area; and  
2-14 (4) written documentation that applicable prescribed  
2-15 burn notification and approval requirements of the Texas Commission  
2-16 on Environmental Quality have been met.  
2-17 Sec. 11.354. NOTICE REQUIREMENTS. (a) The department shall  
2-18 provide adequate advance notice of the department's intent to  
2-19 conduct a prescribed burn to each neighboring landowner and  
2-20 appropriate local officials in the vicinity of the designated burn  
2-21 area.  
2-22 (b) The landowner's notice must include:  
2-23 (1) the planned start and end dates of the prescribed  
2-24 burn;  
2-25 (2) any safety precautions the landowner should take  
2-26 to ensure the safety of the landowner's property before, during,  
2-27 and after the burn;  
2-28 (3) a map of the prescribed burn area, including the  
2-29 location of any utility infrastructure within the designated burn  
2-30 area;  
2-31 (4) the methods proposed for use in conducting the  
2-32 burn; and  
2-33 (5) contact information for the prescribed burn  
2-34 manager and the department.  
2-35 (c) The department shall publish advance notice of a planned  
2-36 prescribed burn in a newspaper of general circulation in the county  
2-37 or counties in which the burn will be conducted.  
2-38 Sec. 11.355. INSURANCE. The department shall purchase  
2-39 liability insurance or establish a self-insurance fund as provided  
2-40 by Subchapter B, Chapter 2259, Government Code, for liability  
2-41 coverage for money damages in the amounts specified by Section  
2-42 153.082, Natural Resources Code, to protect the department and the  
2-43 department's employees against claims under this subchapter  
2-44 resulting from:  
2-45 (1) bodily injury or death resulting from a prescribed  
2-46 burn; or  
2-47 (2) injury to or destruction of property resulting  
2-48 from a prescribed burn.  
2-49 Sec. 11.356. LIABILITY. The department is liable for  
2-50 actual damages for:  
2-51 (1) injury to or destruction of property, bodily  
2-52 injury, or death proximately caused by the wrongful act or omission  
2-53 or the negligence of an employee acting within the scope of  
2-54 employment if:  
2-55 (A) the injury to or destruction of property,  
2-56 bodily injury, or death arises from the escape of fire from a  
2-57 prescribed burn conducted by the department; and  
2-58 (B) the employee would be personally liable to  
2-59 the claimant according to Texas law;  
2-60 (2) injury to or destruction of property, bodily  
2-61 injury, or death so caused by the escape of fire from a prescribed  
2-62 burn conducted by the department if the department would, were it a  
2-63 private person, be liable to the claimant according to Texas law;  
2-64 and  
2-65 (3) injury to or destruction of utility infrastructure  
2-66 caused by a prescribed burn.  
2-67 Sec. 11.357. LIMITATION ON AMOUNT OF LIABILITY. Liability  
2-68 of the department under this subchapter is limited to money damages  
2-69 in an amount not to exceed the amount of insurance coverage required

3-1 by Section 11.355.  
3-2 Sec. 11.358. APPLICATION OF TORT CLAIMS ACT. (a) A claim  
3-3 asserted under this subchapter may not also be asserted against the  
3-4 department under Subchapter B, Chapter 101, Civil Practice and  
3-5 Remedies Code, or against a department employee.  
3-6 (b) Subchapter D, Chapter 101, Civil Practice and Remedies  
3-7 Code, applies to a suit brought under this subchapter.  
3-8 Sec. 11.359. WAIVER OF GOVERNMENTAL IMMUNITY; PERMISSION TO  
3-9 SUE. (a) Sovereign immunity to suit is waived and abolished to the  
3-10 extent of liability created by this subchapter.  
3-11 (b) A person having a claim under this subchapter may sue  
3-12 the department for damages allowed by this subchapter.  
3-13 SECTION 2. The Parks and Wildlife Commission shall adopt a  
3-14 general plan for prescribed burns on land managed by the Parks and  
3-15 Wildlife Department as provided by Section 11.353, Parks and  
3-16 Wildlife Code, as added by this Act, not later than January 1, 2016.  
3-17 SECTION 3. This Act applies only to a claim for damages  
3-18 resulting from a prescribed burn conducted by the Parks and  
3-19 Wildlife Department on or after the effective date of this Act. A  
3-20 claim for damages resulting from a prescribed burn conducted by the  
3-21 Parks and Wildlife Department before the effective date of this Act  
3-22 is governed by the law in effect on the first day of the prescribed  
3-23 burn, and that law is continued in effect for that purpose.  
3-24 SECTION 4. This Act takes effect immediately if it receives  
3-25 a vote of two-thirds of all the members elected to each house, as  
3-26 provided by Section 39, Article III, Texas Constitution. If this  
3-27 Act does not receive the vote necessary for immediate effect, this  
3-28 Act takes effect September 1, 2015.

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