

- SUBJECT:** Regulating prescribed burning on agricultural lands
- COMMITTEE:** Agriculture and Livestock — favorable, without amendment
- VOTE:** 8 ayes — Swinford, McReynolds, B. Brown, Christian, Green, Hardcastle, Hupp, C. Jones
- 0 nays
- 1 absent — Crownover
- WITNESSES:** For — Ron Hufford, Texas Forest Association; Bill Powers, Texas Farm Bureau; Herschel Brannen
- Against — None
- On — Susan Combs, Texas Department of Agriculture; Bobby Young, Texas Forest Service; Lexi Maxwell
- BACKGROUND:** Under current law, prescribed burning on agricultural land is not regulated. The landowner is liable for all damage caused, even if the landowner hires someone else to conduct the burn.
- DIGEST:** HB 2599 would add chapter 153 to the Natural Resources Code regulating prescribed burning. The bill would exempt an owner, lessee, or occupant of agricultural land from liability for property damage, injury, or death caused by prescribed burning on that land if the burn was conducted under the supervision of a burn manager certified by the new Prescribed Burning Board that the bill would establish.
- The bill would not limit landowners' rights to conduct burns on their own land, nor would it modify a landowner's liability for property damage, personal injury, or death resulting from a burn that was not conducted as provided by the bill.
- The bill would establish the Prescribed Burning Board within the Texas Department of Agriculture (TDA). Board members would include employees of the Texas Forest Service, Texas Parks and Wildlife Department, Texas

Natural Resource Conservation Commission (TNRCC), Texas Agriculture Extension Service, Texas Agriculture Experiment Station, Texas Tech University Range and Wildlife Department, TDA, and State Soil and Water Conservation Board appointed by their respective agencies. Each member would serve a two-year term, and the board would elect a presiding officer. The bill would establish grounds for removing board members, standards of conduct, and appointee qualifications. All appointees would have to complete training requirements covering board programs and functions, legal requirements, conflict-of-interest information, and ethics. Board members could be reimbursed for travel to attend training programs.

HB 2599 would set the sunset date for the Prescribed Burning Board at September 1, 2009.

The board's duties would include:

- ! establishing standards for prescribed burning;
- ! developing a training curriculum for prescribed burn managers;
- ! setting standards for burn managers' certification, recertification, and training;
- ! setting minimum education and professional requirements for training instructors; and
- ! setting minimum insurance requirements for certified burn managers.

Minimum standards for prescribed burning set by the board would have to ensure that the burn was controlled in accordance with a written plan designed to accomplish planned land-management objectives in conformance with the standards. The standards would have to require that at least one certified prescribed burn manager be present on site during the conduct of any burn and would have to establish appropriate guidelines for the size of burning crews. The standards would have to include standards for notifying adjacent landowners, TNRCC, and local fire authorities of any burn and minimum insurance requirements for certified burn managers.

The board would have to certify prescribed burn managers who completed the approved training curriculum and paid a certification fee determined by the board. The board also would have to maintain a register of certified burn managers and the dates when they completed initial and continuing training. The certification would last for five years.

The Prescribed Burning Board would have to establish an advisory board made up of public representatives of property owners, agriculture producers, and conservation, environmental, and insurance interests. The board would determine the number of members and the selection process.

HB 2599 would take effect September 1, 1999, and would apply only to a cause of action that accrued on or after that date.

**SUPPORTERS  
SAY:**

HB 2599 would not limit property owners' rights to conduct burns on their own land, but it would promote safer outdoor burning. Prescribed burning is critical in managing Texas' range and forest land. Fire is a natural way to control plants that deplete the underground water table and create fuel for wildfires.

Most other southern states have similar programs in place to certify those who perform prescribed burns. This bill would not require landowners to become certified as burn managers if they did not want to, but it would ensure that hired managers would have the training and regionally specific knowledge they need.

Currently, landowners are liable for damages even for burns that they have hired someone else to manage. HB 2599 would protect landowners from liability for burns conducted by a certified burn manager, giving them an incentive to use burn managers who are trained to manage burns safely.

**OPPONENTS  
SAY:**

Landowners at least should share the liability burden with prescribed burn managers whom they hire to perform burning on their land.

**OTHER  
OPPONENTS  
SAY:**

Prescribed burning can cause serious air-quality problems. Asthmatics and people who are allergic to smoke can experience irritation or other health-related side effects. In certain conditions, smoke can cause visibility problems for drivers. The law should require landowners who do their own burning to receive the proposed training and education for certification.