

## **BILL ANALYSIS**

Senate Research Center  
82R15975 TRH-D

C.S.S.B. 646  
By: Nichols, Hegar  
Government Organization  
3/23/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The purpose of the bill is to enact the recommendations of the Sunset Advisory Commission on the Texas Forest Service (TFS). Created in 1915, as part of the Texas A&M University System, TFS assists landowners and communities with the management and protection of forests and trees. Originally focusing on the forests of East Texas, TFS has established a statewide presence over the last 20 years, especially in its wildfire prevention and suppression role. To accomplish its mission TFS carries out the following activities: provides personnel and grant funding to help volunteer firefighters suppress wildfires; responds to other incidents such as hurricanes and floods and trains teams of local emergency response staff; and helps landowners and communities with sustainable forestry practices to ensure the overall health of forests and trees.

TFS is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the legislature. The Sunset Advisory Commission found that there is a continuing need for TFS but that improvements can be made to the agency's wildfire planning, protection, and response roles.

TFS is governed by Chapter 88 (Agencies and Services of the Texas A&M University System), Subchapter B (The Texas Forest Service), Education Code, and its major grant program, the Rural Volunteer Fire Department Assistance Program, is governed by Chapter 614 (Peace Officers and Fire Fighters), Subchapter G (Rural Volunteer Fire Department Assistance Program), Government Code.

C.S.S.B. 646 authorizes TFS to take all necessary actions to respond to wildfires to help best protect communities; continues TFS for 12 years and authorizes TFS's current emergency management functions of training and maintaining incident response teams; authorizes TFS to involve the volunteer fire service in statewide fire response, and ensures these personnel have needed qualifications; requires TFS to develop a Texas Wildfire Protection Plan to be reported to the legislature; requires TFS to include criteria regarding wildfire risk and threat of loss to communities when awarding Volunteer Fire Department Assistance Program grants; authorizes TFS to allocate a portion of its Volunteer Fire Department Assistance Program funding to help volunteer fire departments meet cost-sharing requirements for federal grants; and requires TFS to adopt Volunteer Fire Department Assistance Program rules and hold public meetings when making program decisions.

The substitute clarifies that TFS can reimburse a volunteer fire department for use of its equipment in statewide wildfire response, but cannot reimburse an individual firefighter for use of the equipment.

The substitute further clarifies that the agency may provide compensation for a firefighter's labor and expenses either to the individual firefighter or to a department that would in turn compensate the firefighter. This change would give the agency more flexibility to compensate volunteers depending on the size of their fire department.

The substitute also removes language that allows TFS not take public testimony at a meeting in which TFS makes a decision regarding the award of individual Volunteer Fire Department Assistance grants.

C.S.S.B. 646 amends current law relating to the continuation and functions of the Texas Forest Service.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the director of the Texas Forest Service in SECTION 9 (Section 614.106, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 88.1015(2), Education Code, to redefine "wildfire."

SECTION 2. Amends Section 88.1016, Education Code, to provide that unless continued in existence as provided by Chapter 325 (Sunset Law), Government Code, the Texas Forest Service (TFS) is abolished September 1, 2023, rather than September 1, 2011.

SECTION 3. Amends Section 88.102, Education Code, as follows:

Sec. 88.102. GENERAL DUTIES. Requires the director of TFS (director), under the general supervision of the board of regents of The Texas A&M University System (board), to:

- (1) assume direction of all forest interests and all matters pertaining to forestry within the jurisdiction of this state;
- (2) subject to the approval and confirmation of the board, appoint the assistants and employees necessary in executing the director's duties and the purposes of the board, their compensation to be fixed by the board;
- (3) take any action deemed necessary by the board to prevent and extinguish wildfires, rather than forest fires;
- (4) enforce all laws pertaining to the protection of forests and woodlands and prosecute violations of those laws;
- (5) collect data relating to forest conditions; and
- (6) prepare for the board an annual report stating the progress and condition of state forestry work and recommending plans for improving the state system of forest protection, management, and replacement.

SECTION 4. Amends Sections 88.118(b) and (c), Education Code, as follows:

(b) Authorizes the statewide fire coordination center (center) to provide continuous dispatching services for wildfire control, rather than requiring the center to provide continuous dispatching services for wildland fire control in the six TFS dispatch areas in eastern Texas.

(c) Requires the center to provide a central location for statewide:

- (1) wildlife monitoring;
- (2) coordination of the response to each major or potentially major wildfire in the state, rather than coordination of the response to each major or potentially major wildland fire in the state, including fires in places where urban areas and rural areas meet, with the coordination function including a direct liaison with the state emergency operating center; and
- (3) assistance to fire-fighting forces in obtaining the transfer of needed and available resources.

SECTION 5. Amends Sections 88.119(a), (c), and (d), Education Code, as follows:

- (a) Requires the director to divide the state into six wildfire control regions to coordinate wildfire control, rather than to coordinate fire control in rural areas and in places where rural areas and urban areas meet.
- (c) Makes a conforming change.
- (d) Makes a conforming change.

SECTION 6. Amends Section 88.120, Education Code, as follows:

Sec. 88.120. WILDFIRE TRAINING. Provides that TFS is the lead agency of the state for providing and coordinating training in fighting wildfires, rather than wildland and forest fires.

SECTION 7. Amends Subchapter B, Chapter 88, Education Code, by adding Sections 88.122, 88.123, 88.124, and 88.125, as follows:

Sec. 88.122. INCIDENT MANAGEMENT TEAMS. (a) Authorizes TFS to support the state's all-hazard response operations by:

- (1) providing incident management training to Texas Forest Service personnel and other state, local, and volunteer responders to develop and enhance the all-hazard response capability of this state; and
- (2) maintaining incident management teams to respond to all-hazard events, including natural, man-made, and planned events.

(b) Authorizes an incident management team maintained under this section to consist of TFS employees and other state, local, and volunteer responders.

(c) Authorizes TFS to mobilize an incident management team for a wildfire response operation.

(d) Authorizes TFS, under the direction of the Texas Division of Emergency Management, to mobilize an incident management team to provide incident support for state, disaster district, or local jurisdiction operations.

Sec. 88.123. VOLUNTEER FIRE DEPARTMENT ASSISTANCE. (a) Defines "partially paid fire department," "volunteer fire department," and "volunteer firefighter" in this section.

(b) Authorizes the director to establish guidelines within which local volunteer fire departments may assist TFS in responding to a wildfire after other local firefighting resources have been exhausted.

(c) Authorizes TFS, to the extent that resources are available, to:

- (1) compensate a volunteer firefighter or a volunteer fire department for labor and expenses related to the assistance provided by the firefighter or department under Subsection (b); and
- (2) reimburse a volunteer fire department for equipment provided by the department under Subsection (b).

(d) Requires the director to determine:

- (1) the rate at which a volunteer firefighter or a volunteer fire department may be compensated or reimbursed under this section;
- (2) the types of labor and expenses for which a volunteer firefighter or a volunteer fire department may be compensated under this section;
- (3) the types of equipment for which a volunteer fire department may be reimbursed under this section; and
- (4) the minimum qualifications a volunteer firefighter must meet in order to be compensated under this section, which may include certification under a program administered by the State Firemen's and Fire Marshals' Association of Texas, or TFS according to the standards determined by the National Wildfire Coordinating Group.

(e) Provides that a volunteer firefighter who receives compensation under this section is not subject to the certification requirements of Subchapter B (Regulating and Assisting Fire Fighters and Fire Departments), Chapter 419 (Texas Commission on Fire Protection), Government Code.

(f) Authorizes TFS to request reimbursement from the legislature for a payment made to a volunteer firefighter or a volunteer fire department under this section.

(g) Authorizes TFS to issue National Wildfire Coordinating Group certification to a volunteer firefighter under terms determined by the director.

Sec. 88.124. WILDFIRE PROTECTION PLAN. (a) Requires TFS to hold public meetings to develop and regularly update a wildfire protection plan. Requires that the plan, at a minimum:

- (1) define TFS's role in managing wildfires and supporting local fire department responses, and the manner in which a community may engage TFS on issues related to wildfires;
- (2) describe in detail the role of volunteer fire departments in wildfire response, including any role relating to guidelines established by the director under Section 88.123;
- (3) describe the expected revenue, expenditures, staffing, and future funding necessary to implement and sustain the plan;
- (4) estimate the expected savings resulting from the plan's implementation;
- (5) provide performance measures by which the plan's success may be evaluated;
- (6) describe TFS's role in conducting prescribed burns and assess statewide efforts to conduct those burns;
- (7) identify, analyze, and make recommendations regarding wildfire trends and issues; and
- (8) address any other matter determined to be relevant by the director.

(b) Requires TFS to submit its most recent wildfire protection plan together with TFS's legislative appropriations request to the lieutenant governor, the speaker of the house of representatives, and the appropriate standing legislative committees having jurisdiction over wildfire issues.

Sec. 88.125. COST-EFFECTIVE USE OF RESOURCES. Requires TFS, in determining the appropriate wildfire response, to use the most cost-effective combination of volunteer firefighters, temporary employees of TFS, and out-of-state personnel and equipment available.

SECTION 8. Amends Section 614.102, Government Code, by amending Subsection (c) and adding Subsections (c-1) and (c-2), as follows:

(c) Requires the director to determine reasonable criteria and qualifications for the distribution of money from the volunteer fire department assistance fund, including the frequency, size, and severity of past wildfires in a volunteer fire department's jurisdiction, and the potential for loss or damage to property resulting from future wildfires in the department's jurisdiction, and establish a procedure for reporting and processing requests for money from the fund.

(c-1) Requires the director, in determining criteria and qualifications for the distribution of money under Subsection (c), to consider the state's most recent Southern Wildfire Risk Assessment issued by the Southern Group of State Foresters and other applicable information.

(c-2) Authorizes TFS to designate a portion of the fund to be used to assist volunteer fire departments in meeting cost share requirements for federal grants for which the departments qualify. Requires the director to determine a set of needs-based criteria for determining a department's eligibility to apply for a grant under this subsection. Requires that the criteria include the size of the department, the department's annual budget and source of revenue, and the amount by which the department would benefit from the grant.

SECTION 9. Amends Subchapter G, Chapter 614, Government Code, by adding Section 614.106, as follows:

Sec. 614.106. RULES; APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT. Requires the director to adopt rules for the administration of the program authorized by this chapter in accordance with Chapter 2001 (Administrative Procedure). Requires that the rules ensure public participation, transparency, and accountability in administration of the program.

SECTION 10. Requires the director, as soon as practicable after the effective date of this Act, to adopt rules as necessary to implement this Act.

SECTION 11. Effective date: September 1, 2011.