

**SUBJECT:** County regulation of outdoor burning during drought

**COMMITTEE:** County Affairs — committee substitute recommended

**VOTE:** 5 ayes — Ramsay, B. Brown, Farabee, Salinas, Swinford  
0 nays  
4 absent — G. Lewis, Chisum, Hilderbran, Krusee

**WITNESSES:** For — Jim Allison, County Judges and Commissioners Association of Texas  
Against — None

**BACKGROUND:** Some counties have imposed bans or restrictions on outdoor burning during declarations of disaster due to drought, invoking broad authorities for emergency management granted by the Government Code, chapter 418. However, no specific statutory authority exists for counties to ban or restrict outdoor burning.

**DIGEST:** CSHB 2620 would amend the Local Government Code to require the Texas Forest Service (TFS), upon request of a county commissioners court, to determine whether drought conditions existed in part of all of the county. The bill would define drought conditions as the existence of a long-term deficit of moisture creating atypically severe conditions with increased wildfire occurrence, as defined through use of the Keetch-Byram Drought Index or a comparable measurement. TFS would have to make available the guidelines it used for determining drought conditions.

Following a determination that drought conditions existed, TFS would have to notify the county when those conditions no longer existed. TFS could accept donations of equipment or funds to help carry out these duties.

CSHB 2620 would allow the commissioners court to prohibit or restrict any or all outdoor burning if TFS determined that drought conditions existed or if the commissioners court found that outdoor burning would exacerbate an existing public health hazard. Such an order would have to specify the period for which outdoor burning would be prohibited or restricted, and this period

could not last for more than 90 days. However, the commissioners court could order another ban or restriction following the expiration of the previous order. Any order prohibiting or restricting outdoor burning would expire when TFS determined that drought conditions no longer existed or when the commissioners found that the public health hazard no longer existed.

These provisions would not apply to outdoor burning activities authorized by the Texas Natural Resource Conservation Commission for firefighter training or for public utility, natural gas pipeline, or mining operations.

CSHB 2620 would allow any person to seek injunctive relief to prevent a violation or threatened violation of an order banning or restricting outdoor burning. A person who knowingly violated such a prohibition or restriction would commit a Class C misdemeanor, punishable by a maximum fine of \$500.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS  
SAY:**

CSHB 2620 would grant county commissioners the statutory authority to prohibit or restrict outdoor burning in times of drought and would provide them with the empirical evidence they need to support decisions to limit outdoor burning. The regulation of outdoor burning during drought is essential to protect public safety. Introducing fire into an area that has experienced an abnormal lack of precipitation can cause severe and out-of-control wildfires, damaging property and threatening life.

County commissioners have acted to limit outdoor burning in cases of local disaster, but the law does not provide a penalty for violating an order prohibiting or restricting burning. CSHB 2620 would make such an offense a Class C misdemeanor. It would protect against repeat offenses by authorizing the court to provide injunctive relief to prevent a violation or threatened violation of an order. If the violator continued to ignore the court order, the penalty could be more severe than a Class C misdemeanor.

Linking prohibitions or restrictions on burning with a declaration of disaster leaves to the judgment of county commissioners the determination of whether the drought is severe enough to qualify as a disaster. In some cases, the commissioners may receive conflicting reports about the severity of the

drought or the potential for wildfires. CSHB 2620 would allow a measure of objective scientific information to shape local decisions on banning or restricting outdoor burning. TFS is an impartial body and would make such determinations using the facts available and would not be swayed by local political pressures.

TFS has the technical knowledge and means to implement the provisions of this bill. The Keetch-Byram Drought Index is a widely accepted method for measuring lack of moisture in the soil. Fire departments nationwide use this index to determine fire risks caused by dry conditions. Allowing TFS to accept donations of equipment to implement this section would help the service establish more monitoring stations.

**OPPONENTS  
SAY:**

No apparent opposition.

**NOTES:**

The committee substitute added the exemptions for firefighter training and for public utility, natural gas pipeline, or mining operations.

The provisions of CSHB 2620 are very similar to those of HB 2049 by Hightower, enacted by the 75th Legislature in 1997, which authorized counties to regulate fireworks during drought conditions.