

SUBJECT: Modifying the regulation of fireworks and fireworks displays

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 7 ayes — W. Smith, Naishtat, Bolton, Harless, Heflin, Leibowitz,
T. Smith

0 nays

2 absent — Coleman, Farabee

WITNESSES: For — Shan A. English, SMACK - English Investments/Brazos Fireworks; Lisa Haynes and Kent Herzog, Texas Pyrotechnic Association; Vicki Howell, TNT Fireworks/Humble Christian School; Johnny Pate, JJP; Terri Presley, Jack Willhite - Jack's Fireworks; Randy Sims, County Judges and Commissioners Association of Texas; Martin Yawn, TPA Fireworks Co; Richard Fallin, Gary Turley. (*Registered, but did not testify:* Joshua Davis, TNT Fireworks; Eric Glenn, Texas Pyrotechnic Association; Harold Oliver, Alamo Fireworks; Demp Connen, Johnny Johnson, William Jones; Sandra Daughtry)

Against — Mark Riley, Parker County (*Registered, but did not testify:* Evelyn Njuguna, Texas Municipal League)

On — Donald Lee, Texas Conference of Urban Counties. (*Registered, but did not testify:* Mark Redlitz, State Fire Marshal's Office)

(*On Committee Substitute*)

For — Mike Bradford, Midland County; Joe Daughtry, Texas Fireworks Association; Mike Montgomery, Harris County Fire Marshal's Association; Tad Trout, TNT Fireworks - Texas Pyrotechnic Association. (*Registered, but did not testify:* Shanna Igo, Texas Municipal League; Russell Marm, Midland County, John Paul Urban)

On — Jim Allison, County Judges and Commissioners Association of Texas; Geoff Barr, Comal County Commissioners Court

BACKGROUND: Occupations Code, ch. 2154 provides for the regulation of fireworks and firework displays and defines permissible and prohibited types of

fireworks. The chapter provides for the appointment of an advisory council composed of five representatives from the fireworks industry to assist in implementing the provisions set forth in the chapter.

Local Government Code, sec. 352.051 instructs the Texas Forest Service to determine whether drought conditions exist in all or part of any county requesting such a determination. Upon receiving notice that a determination that drought conditions do exist within all or part of a subject county, a commissioners court may prohibit or restrict the sale or use of restricted fireworks in all or a portion of the unincorporated area of the county where drought conditions have been ascertained.

Drought conditions are defined as the existence of a long-term deficit of moisture creating atypically severe conditions with increased wildfire occurrence as defined through the use of the Keetch-Byram Drought Index when possible, and otherwise through a comparable measurement which takes into consideration the burning index, spread component, or ignition component for that particular area.

The Keetch-Byram Drought Index is a measurement specifically designed for fire potential assessment and produces a number representing the net effect of evapotranspiration and precipitation in producing cumulative moisture deficiency in upper soil layers. The Index offers a continuous means of measuring the flammability of organic material in the ground, ranging from zero, or saturation, to 800, or maximum drought.

Fires resulting from human causes, including fireworks, have been a growing concern in the context of prevailing drought conditions and the massive costs of extinguishing large fires. Statutory provisions governing how a drought should be determined state that it is preferable, but not required, to use the Keetch-Byram Drought Index to make a determination. Certain aspects of the state's authority to regulate fireworks have not been updated for several years.

DIGEST: HB 539 would define drought conditions as the existence before or during a fireworks season of a Keetch-Byram Drought Index of 575 or greater. The Forest Service would determine whether drought conditions exist on average in a subject county and would make available guidelines used in arriving at this determination. The Forest Services also would make its services available each day during a fireworks season to respond to any county request for drought determination. Any civil action against a

county on the basis of its actions concerning fireworks would be brought in the appropriate county court.

The bill would raise the minimum age to buy fireworks from 12 or 16 and would prohibit employing any person under that age to be paid for work involving fireworks. To work at a fireworks retail location, a person would have to be at least 18 or accompanied by another of that age. Exceptions would be available for immediate family working at a retail location. Violations of these provisions would be a class C misdemeanor (maximum fine of \$500).

HB 539 would add pop rockets with a propellant casing exceeding certain dimensions and wire sparklers that have a combustible pyrotechnic compound fused to a wire to the list of prohibited fireworks. The advisory council that assists in the implementation of fireworks policy would be modified to include four industry representatives and one member who is a representative of a county fire marshal's office.

The bill's prohibitions on fireworks would take effect January 2, 2008. The other provisions of the bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

NOTES:

The committee substitute removed a provision in the original bill that would have provided that if a municipal or county ordinance, order, or rule prohibiting or further regulating fireworks resulted in discontinuance of otherwise permitted or licensed manufacture, sale, storage, possession, or transport of fireworks, the municipality or county enacting the ordinance or order would have to provide to the person just and adequate compensation for the damages caused by the discontinuance. The filed bill also would have contained provisions regarding the discharge of fireworks with intent to harm another.

The committee substitute struck sections of the bill permitting a municipality to regulate or prohibit fireworks and fireworks displays outside its corporate limits only if the municipality regulated or prohibited fireworks in that area prior to January 2, 2007. The substitute also added provisions regarding the determination of a drought and the availability of the Texas Forest Service to make drought determinations during a fireworks season.

