

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 368

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 7, 2012

The Senate Environment and Energy Committee favorably reports Senate Bill No. 368 with committee amendments.

This bill, as amended, would establish a process for certifying individuals, and for allowing landowners and lessees, to conduct prescribed burns of forested and other undeveloped lands in order to prevent uncontrolled and damaging wildfires and to accomplish various land management objectives. The committee amendments would exempt lands that qualify for differential property tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), or lands adjacent to, or a part of, a "farm management unit" from the provisions of the bill.

The bill would establish the procedures to be followed in conducting prescribed burns on lands not exempted from its provisions, and would authorize the New Jersey Forest Fire Service (NJFFS), under certain conditions, to conduct prescribed burns on any area of land within the State which is determined by the State Firewarden or designee thereof to be in reasonable danger of wildfire. Finally, the bill would provide to landowners and lessees, certified prescribed burn managers, their agents and employees, and State employees and agents certain immunities against potential liability for damages or injury possibly resulting from a prescribed burn.

Specifically, the bill would direct the NJFFS to develop and administer a program for the certification of prescribed burn managers. The program would include at least the following subjects: safety; legal aspects of prescribed burning; fire behavior; prescribed burning tactics; smoke management; environmental effects; and preparation of prescribed burn plans. A landowner or lessee who wishes to conduct a prescribed burn on their own land would not have to become certified as a prescribed burn manager. Under the bill's provisions, except for lands that are under farmland assessment or lands that are adjacent to, or a part of, a farm management unit, a prescribed burn would not be conducted on any land unless:

(1) a prescribed burn plan prepared by a certified prescribed burn manager or the landowner or lessee has been filed with and approved

by the State Firewarden, or the State Firewarden's designee, prior to the burn;

(2) a copy of the plan is retained at the site throughout the period of the prescribed burn;

(3) an authorization to burn is obtained from the State Firewarden, or the State Firewarden's designee, prior to starting the prescribed burn, and the certified prescribed burn manager or the landowner or lessee ensures that the burn is conducted in accordance with the plan and that sufficient personnel and fire control equipment are present throughout the period of the prescribed burn;

(4) the fees which may be assessed by the State Firewarden for the review and approval of the prescribed burn plan and for the issuance of the authorization to burn have been paid in full;

(5) the appropriate public notice has been issued; and

(6) the nearest regional office of the NJFFS, and the local fire dispatch center, have been notified of the prescribed burn within 24 hours prior to starting it.

Under the bill, the State Firewarden would be directed to approve a properly prepared and filed prescribed burn plan unless the State Firewarden determines that the plan presents an unreasonable risk of (1) uncontrolled wildfire, or (2) harm to public health or safety. The bill would also authorize the NJFFS to prescribe burn or mechanically replicate a burn on any area of land within the State which is determined by the State Firewarden, or the State Firewarden's designee, to be in reasonable danger of wildfire, provided that, for lands not owned or controlled by the State, the NJFFS:

(1) describes the areas that will be prescribe burned to the affected local governmental entity;

(2) publishes a prescribed burn notice, which would include a description of the area to be burned, in a conspicuous manner in at least one newspaper of general circulation in the area of the burn;

(3) provides prior written notice, by certified mail or personal service, of the proposed prescribe burn to the landowner and lessee, if known, of any land that is included in the area to be prescribed burned, which notice would be sent at least 30 days prior to the burn unless the State Firewarden makes a written finding that an emergency exists, in which case the prior written notice must be sent as soon as possible after the finding is made; and

(4) considers any landowner or lessee objections to the prescribed burning of the property.

Any such objecting landowner or lessee would be able to apply to the State Firewarden for a review of alternative methods of forest fuel reduction on the property. If the State Firewarden does not resolve the objection, the State Forester must then convene a panel composed of the local NJFFS manager, the fire chief of the jurisdiction, and a local official designated by the municipality in which the land is located. If the panel's recommendation is not acceptable to the landowner or

lessee, the landowner or lessee may request further consideration by the Commissioner of Environmental Protection, and would thereafter be entitled to an administrative hearing pursuant to the "Administrative Procedure Act." No fees or costs would be assessed to a landowner or lessee for a prescribed burn conducted by the NJFFS in these situations.

The bill would also provide that the State Firewarden may enter into a written agreement with a landowner, or a lessee with the landowner's written permission, to conduct a joint prescribed burn or mechanically replicate a burn on the landowner's property. If the prescribed burn is conducted by the NJFFS at the request of a landowner or lessee, the NJFFS may assess the reasonable and normal costs thereof against the landowner or lessee, which would be payable within 90 days after assessment. If the landowner or lessee does not pay the assessed costs within 90 days, the costs may be deemed to be a penalty collectable in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999."

All fees, costs, and penalties that are paid in accordance with the requirements and provisions of the bill would be credited to a special dedicated account in the General Fund and appropriated to the NJFFS to help pay for the administration and operation of its programs.

Finally, the bill would provide to landowners, lessees, certified prescribed burn managers, their agents and employees, and State employees and agents certain immunities against potential liability for damages or injury possibly resulting from a prescribed burn. The bill provides that in a private civil action arising from the conduct of a prescribed burn and any damages or injury caused by fire or resulting smoke or ash, proof of compliance with the requirements of this bill and the standards established thereto would be admissible evidence that the standard of care has been met. The bill would also declare that a properly conducted prescribed burn would be deemed to be in the public interest, would not constitute arson, trespass, or a public or private nuisance, and would not be considered to be illegal air pollution.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

The committee amendments would:

(1) exempt lands that qualify for differential property tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.) or that are adjacent to, or a part of, a "farm management unit" from the provisions of the bill;

(2) delete language from the findings and declarations section concerning landowner property rights;

(3) delete the requirement that the New Jersey Forest Fire Service compare the location of a proposed prescribed burn to lists of endangered species habitat;

(4) change the timing of the notice of the prescribed burn to the New Jersey Forest Fire Service and the local fire dispatch center required under the bill from at least 24 hours prior to its start to within 24 hours prior to its start; and

(5) clarify that a prescribed burn may be permitted at any time during the year as determined by the State Firewarden.