ASSEMBLY, No. 1696

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS

Authorizes prescribed burning in certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning prescribed burns, and supplementing Title 13 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known, and may be cited, as the "Prescribed Burn Act."

2. The Legislature finds and declares that prescribed burning is a public safety tool the primary purpose of which is to reduce the danger of uncontrolled wildfire; that it is also a resource protection and land management technique which benefits forests and other natural resources, the environment, and the economy of the State; that prescribed burning reduces naturally occurring vegetative fuels within forested areas and other types of ecosystems, and thereby lessens the risk and severity of major wildfire and the possible resulting loss of life and property; that New Jersey's changing population places urban and suburban development directly adjacent to fire-prone lands; and that the use of prescribed fire to manage vegetative fuels in those interface areas would substantially reduce the threat of damaging wildfire in urban and suburban communities.

The Legislature further finds and declares that forested land, agricultural land, grassland, coastal marshland, and other open lands constitute significant economic, biological, and aesthetic resources of Statewide importance; that the ecology of the Pine Barrens region in particular requires periodic fire for maintenance of ecological integrity; that proper prescribed burning on those lands serves to reduce hazardous accumulations of vegetative fuels, prepares sites for both natural and artificial forest regeneration, improves wildlife habitat, controls insects and disease, and perpetuates fire dependent ecosystems; and that proper application of prescribed burning is essential to the existence, continuation, restoration, and management of many plant and animal communities, and the resulting increase in vegetative growth and yield benefits rare, threatened, and endangered species, songbirds, and other game and nongame species.

The Legislature also finds and declares that as New Jersey's population continues to grow, pressures from liability issues and smoke nuisance complaints cause prescribed burn practitioners to limit prescribed burn activity, thereby reducing the above described benefits of these burns to the State; and that public misunderstanding of the benefits of prescribed burning to the ecological and economic welfare of the State inhibits full use of this valuable resource management tool.

The Legislature therefore determines that it is the purpose of this act to authorize and promote the continued use of prescribed
burning for public safety, wildfire control, ecological, silvicultural, agricultural, and natural resource management purposes; that it is appropriate and useful to exempt prescribed burning, as authorized by this act, from other State and local laws and regulations prohibiting open burning or the burning of forests and other types of ecosystems; and that prescribed burning of forest fuels is to be considered a property right of a landowner.

3. As used in this act:

"Bureau of Forest Fire Management" means the Bureau of Forest Fire Management in the Department of Environmental Protection.

"Certified prescribed burn manager" means a person who has been certified pursuant to section 4 of this act to conduct prescribed burns.

"Department" means the Department of Environmental Protection.

"Forest fuel" means naturally occurring vegetative material found in forests, fields, grasslands, coastal marshlands, and other open lands.

"Landowner or lessee" means (1) the person responsible for the land upon which a prescribed burn is to be performed who (a) either owns or leases the land, and (b) has full access and control of the land at all times during the prescribed burn; or (2) an employee or other representative of that person who, for the purposes of complying with this act, (a) is authorized to act on the person’s behalf, and (b) has full access and control of the land at all times during the prescribed burn.

"Person" means an individual, trust, partnership, limited partnership, limited liability company, society, association, joint stock company, corporation, public corporation or public authority, estate, receiver, trustee, assignee, referee, fiduciary and any other legal entity.

"Prescribed burn" or "prescribed burning" means the controlled application of fire to forest fuels for public safety, wildfire control, ecological, silvicultural, agricultural, or natural resource management purposes, under specified environmental conditions and by following appropriate precautionary measures which cause the fire to be confined to a predetermined area, so as to accomplish planned land management objectives.

"Prescribed burn plan" or "plan" means a written plan prepared in accordance with this act for starting, executing, and controlling a prescribed burn.

"State Firewarden" means the State Firewarden designated as such pursuant to R.S.13:9-7.

4. a. The department shall develop and administer a program for the certification of prescribed burn managers. The program shall 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. The department shall establish the period for which a
certification issued pursuant to this section shall be valid and the
conditions and requirements for recertification under the program.

b. The department may charge a reasonable fee to cover the
costs associated with the program. All such fees collected shall be
credited to a special dedicated account in the General Fund and
appropriated to the department to help pay for the administration
and operation of its forest fire programs.

c. No person who desires to conduct a prescribed burn only on
land for which the person is the landowner or lessee shall be
required to become certified as a prescribed burn manager pursuant
to this section.

d. The department, upon issuance of a written notice and after
affording the opportunity for a hearing, may revoke a certification
issued pursuant to this section if the certified prescribed burn
manager or the prescribed burn violates any provision of this act, an
approved prescribed burn plan, the "Air Pollution Control Act
(1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), or any other State air
pollution control law, or any rule or regulation adopted by the
department pursuant thereto, or otherwise threatens the public
health or safety. The department, for any of those same causes,
may immediately suspend a certification until such time as a
revocation proceeding may be held and a decision rendered.

5. a. A prescribed burn shall not be conducted on any land
unless:

(1) a prescribed burn plan prepared in accordance with this act
by a certified prescribed burn manager or the landowner or lessee
has been filed with and approved by the department, or the
department's designee, prior to the burn;

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

(3) an authorization to burn is obtained from the department, or
the department'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 prescribed
burn 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 department for the
review and approval of the prescribed burn plan pursuant to
paragraph (1) of this subsection and for the issuance of the
authorization pursuant to paragraph (3) of this subsection have been
paid in full;

(5) the appropriate notice has been issued in accordance with
section 6 of this act and any rules or regulations adopted pursuant
thereto concerning prescribed burns performed by the Bureau of
Forest Fire Management;

(6) the landowner or lessee of any land within 250 feet of the area to be burned has been provided prior written notice by certified mail, return receipt requested, or by personal service, of the land to be included in the proposed prescribed burn, the 90-day timeframe in which the proposed prescribed burn will occur, and information regarding how a copy of the approved prescribed burn plan may be obtained, which notice shall be sent at least 30 days prior to the burn; and

(7) the nearest regional office of the Bureau of Forest Fire Management responsible for the burn site, and the local fire dispatch center, have been notified of the prescribed burn within 24 hours prior to starting it.

b. A prescribed burn plan shall include at least the following:

(1) the landowner's or lessee's name, address, and telephone number and any other appropriate contact information, including the name, address, and telephone number of the certified prescribed burn manager if applicable;

(2) the geographic location of the prescribed burn;

(3) the approximate number of acres to be burned;

(4) provisions for notifying the public of the prescribed burn in accordance with the requirements of section 6 of this act and any rules or regulations adopted pursuant thereto concerning prescribed burns performed by the Bureau of Forest Fire Management; and

(5) such other provisions as the department may deem necessary or appropriate.

c. The department shall approve a properly prepared and filed prescribed burn plan unless the department determines that the plan presents an unreasonable risk of (1) uncontrolled wildfire, or (2) harm to public health or safety.

d. The department may issue an authorization to burn pursuant to paragraph (3) of subsection a. of this section that is valid for an entire season or for such other period as the department deems appropriate.

e. The department may charge reasonable fees to review a filed prescribed burn plan and to issue an authorization to burn. All such fees collected shall be credited to a special dedicated account in the General Fund and appropriated to the department to help pay for the administration and operation of its forest fire programs.

6. a. The Bureau of Forest Fire Management may perform a prescribed burn or mechanically replicate a burn in any area of land within the State which is determined by the Bureau of Forest Fire Management, or the bureau's designee, to be in reasonable danger of wildfire, provided that, for lands not owned or controlled by the State, the Bureau of Forest Fire Management:

(1) describes the areas that will be burned to the affected local governmental entity;
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(2) publishes a prescribed burn notice, which shall 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, return receipt
requested, or personal service, of the proposed prescribed burn to
the landowner and lessee, if known, of any land that is included in
the area to be burned, which notice shall be sent at least 30 days
prior to the burn unless the Bureau of Forest Fire Management
makes a written finding that an emergency exists, in which case the
prior written notice shall be sent as soon as possible after the
finding is made;

(4) provides prior written notice by certified mail, return receipt
requested, or by personal service, to the landowner or lessee of any
land within 250 feet of the area to be burned, of the land to be
included in the proposed prescribed burn, the 90-day timeframe in
which the proposed prescribed burn will occur, and information
regarding how a copy of the approved prescribed burn plan may be
obtained, which notice shall be sent at least 30 days prior to the
burn; and

(5) considers any landowner or lessee objections to the
prescribed burning of the property. An objecting landowner or
lessee may apply to the Bureau of Forest Fire Management for a
review of alternative methods of forest fuel reduction on the
property. If the Bureau of Forest Fire Management does not resolve
the objection, the bureau shall convene a panel composed of the
local Bureau of Forest Fire Management manager, the fire chief of
the jurisdiction, and a local official designated by the municipality
in which the land is located, or any of their designees. 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 or the commissioner's
desighee, and shall thereafter be entitled to an administrative
hearing pursuant to the "Administrative Procedure Act," P.L.1968,
c.410 (C.52:14B-1 et seq.).

b. No fees or costs shall be assessed to a landowner or lessee
for a prescribed burn conducted by the Bureau of Forest Fire
Management as authorized pursuant to this section.

7. a. The Bureau of Forest Fire Management 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. The
agreement shall include, but need not be limited to, a prescribed
burn plan for the property and a delineation of the respective roles
of the Bureau of Forest Fire Management personnel, the landowner,
the lessee, and the landowner's and lessee's agents and employees in
carrying out the prescribed burn.

b. If the prescribed burn is conducted by the Bureau of Forest
Fire Management at the request of a landowner or lessee as authorized pursuant to subsection a. of this section, the Bureau of Forest Fire Management may assess the reasonable and normal costs thereof against the landowner or lessee, which shall 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," P.L.1999, c.274 (C.2A:58-10 et seq.).

c. All costs and penalties paid pursuant to this section shall be credited to a special dedicated account in the General Fund and appropriated to the department to help pay for the administration and operation of its forest fire programs.

8. a. (1) A prescribed burn conducted in accordance with the requirements of this act, an approved prescribed burn plan, the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), and any other applicable State air pollution control law, and the rules and regulations adopted by the Department of Environmental Protection pursuant thereto shall be deemed to be in the public interest and shall not constitute arson, trespass, or a public or private nuisance. The provisions of this paragraph shall also apply to smoke and ash caused by or arising from a prescribed burn.

(2) No landowner or lessee, certified prescribed burn manager, or agent or employee thereof who conducts a prescribed burn in accordance with the requirements of this act, an approved prescribed burn plan, the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), and any other applicable State air pollution control law, and the rules and regulations adopted by the Department of Environmental Protection pursuant thereto shall be liable for any damages or injury caused by fire or resulting smoke or ash unless it is proven that such person or entity was negligent in starting, executing, or controlling the prescribed burn.

(3) A landowner, lessee, or certified prescribed burn manager who allows a fire to escape from a prescribed burn and which fire requires intervention by the Bureau of Forest Fire Management shall reimburse the bureau for the reasonable and normal costs associated therewith. Any reimbursement of costs paid pursuant to this paragraph shall be credited to a special dedicated account in the General Fund and appropriated to the department to help pay for the administration and operation of its forest fire programs.

b. Without affecting any other limitations on liability that may be applicable, and notwithstanding the provisions of any other law, neither the State Firewarden nor any designee, agent, or employee thereof or of the Bureau of Forest Fire Management shall be personally liable for any damages or injury arising from or related to any act or omission of the State Firewarden or any designee, agent, or employee thereof or of the Bureau of Forest Fire
Management when acting in an official capacity to carry out the provisions of this act.

c. Notwithstanding any State or local law, rule, regulation, ordinance, or resolution to the contrary, a prescribed burn conducted pursuant to this act, any rules and regulations adopted pursuant thereto, and an approved prescribed burn plan shall be deemed to not (1) be a source operation or source of an air contaminant, (2) be or tend to be injurious to human health or welfare, animal or plant life, or property, or (3) unreasonably interfere with the enjoyment of life or property, as those terms are used in the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), and any rules or regulations adopted pursuant thereto, or any similar provision of any municipal or county ordinance, resolution, or regulation. The provisions of this subsection shall also apply to smoke and ash caused by or arising from a prescribed burn.

9. Within 180 days after the date of enactment of this act, the Department of Environmental Protection, in consultation with the Department of Agriculture, shall develop and adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement this act, which shall include, but need not be limited to, rules and regulations implementing the certification program for prescribed burn managers set forth in section 4 of this act and establishing any additional requirements concerning prescribed burns, prescribed burn plans, and the issuance of appropriate notice to the public of prescribed burns performed by the Bureau of Forest Fire Management.

10. This act shall take effect immediately.

STATEMENT

This bill establishes a process for certifying individuals, and for allowing landowners and lessees, to conduct prescribed burns of forested and other undeveloped lands, to prevent uncontrolled and damaging wildfires, and to accomplish various land management objectives. The bill establishes the procedures to be followed in conducting prescribed burns on lands, and authorizes the New Jersey Bureau of Forest Fire Management in the Department of Environmental Protection (DEP), under certain conditions, to conduct prescribed burns on any area of land within the State which is determined by the bureau, or the bureau’s designee, to be in reasonable danger of wildfire.

The bill specifically directs the DEP 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. The bill allows the DEP to charge a reasonable fee to cover the costs associated with the program.

Under the bill, the DEP is directed to approve a properly prepared and filed prescribed burn plan prepared by a certified prescribed burn manager or the landowner or lessee prior to the burn unless the DEP determines that the plan presents an unreasonable risk of uncontrolled wildfire or harm to public health or safety. The DEP also may charge reasonable fees to review a filed prescribed burn plan and to issue an authorization to burn.

At least 30 days prior to a prescribed burn, a landowner or lessee of any land within 250 feet of the area to be burned must be provided written notice by certified mail, return receipt requested, or by personal service, of (1) the land to be included in the prescribed burn, (2) the 90-day timeframe in which the proposed prescribed burn will occur, and (3) information regarding how a copy of the approved prescribed burn plan may be obtained.

The bill authorizes the Bureau of Forest Fire Management to 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 bureau at the request of a landowner or lessee, the bureau may assess the reasonable and normal costs 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.” However, the bill provides that no fees or costs would be assessed to a landowner or lessee for a prescribed burn conducted by the bureau on land which is determined by the DEP to be in reasonable danger of wildfire.

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 DEP to help pay for the administration and operation of its forest fire programs.