

SENATE, No. 2000

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED APRIL 18, 2016

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

SYNOPSIS

Authorizes prescribed burning in certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning prescribed burns, and supplementing Title 13
2 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known, and may be cited, as the
8 "Prescribed Burn Act."

9
10 2. The Legislature finds and declares that prescribed burning is
11 a public safety tool the primary purpose of which is to reduce the
12 danger of uncontrolled wildfire; that it is also a resource protection
13 and land management technique which benefits forests and other
14 natural resources, the environment, and the economy of the State;
15 that prescribed burning reduces naturally occurring vegetative fuels
16 within forested areas and other types of ecosystems, and thereby
17 lessens the risk and severity of major wildfire and the possible
18 resulting loss of life and property; that New Jersey's changing
19 population places urban and suburban development directly
20 adjacent to fire-prone lands; and that the use of prescribed fire to
21 manage vegetative fuels in those interface areas would substantially
22 reduce the threat of damaging wildfire in urban and suburban
23 communities.

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

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

47 The Legislature therefore determines that it is the purpose of this
48 act to authorize and promote the continued use of prescribed
49 burning for public safety, wildfire control, ecological, silvicultural,

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1 agricultural, and natural resource management purposes; that it is
2 appropriate and useful to exempt prescribed burning, as authorized
3 by this act, from other State and local laws and regulations
4 prohibiting open burning or the burning of forests and other types
5 of ecosystems; and that prescribed burning of forest fuels is to be
6 considered a property right of a landowner.

7
8 3. As used in this act:

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

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

14 "Department" means the Department of Environmental
15 Protection."

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

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

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

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

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

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

44
45 4. a. The department shall develop and administer a program
46 for the certification of prescribed burn managers. The program
47 shall include at least the following subjects: safety; legal aspects of
48 prescribed burning; fire behavior; prescribed burning tactics; smoke
49 management; environmental effects; and preparation of prescribed

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1 burn plans. The department shall establish the period for which a
2 certification issued pursuant to this section shall be valid and the
3 conditions and requirements for recertification under the program.

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

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

13 d. The department, upon issuance of a written notice and after
14 affording the opportunity for a hearing, may revoke a certification
15 issued pursuant to this section if the certified prescribed burn
16 manager or the prescribed burn violates any provision of this act, an
17 approved prescribed burn plan, the "Air Pollution Control Act
18 (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) or any other State air
19 pollution control law, or any rule or regulation adopted by the
20 department pursuant thereto, or otherwise threatens the public
21 health or safety. The department, for any of those same causes,
22 may immediately suspend a certification until such time as a
23 revocation proceeding may be held and a decision rendered.

24

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

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

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

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

39 (4) the fees which may be assessed by the department for the
40 review and approval of the prescribed burn plan pursuant to
41 paragraph (1) of this subsection and for the issuance of the
42 authorization pursuant to paragraph (3) of this subsection have been
43 paid in full;

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

48 (6) the landowner or lessee of any land within 250 feet of the
49 area to be burned has been provided prior written notice by certified

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1 mail, return receipt requested, or by personal service, of the land to
2 be included in the proposed prescribed burn, the 90-day timeframe
3 in which the proposed prescribed burn will occur, and information
4 regarding how a copy of the approved prescribed burn plan may be
5 obtained, which notice shall be sent at least 30 days prior to the
6 burn; and

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

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

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

16 (2) the geographic location of the prescribed burn;

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

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

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

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

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

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

37

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

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

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

49 (3) provides prior written notice, by certified mail, return receipt

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1 requested, or personal service, of the proposed prescribed burn to
2 the landowner and lessee, if known, of any land that is included in
3 the area to be prescribed burned, which notice shall be sent at least
4 30 days prior to the burn unless the Bureau of Forest Fire
5 Management makes a written finding that an emergency exists, in
6 which case the prior written notice shall be sent as soon as possible
7 after the finding is made;

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

16 (5) considers any landowner or lessee objections to the
17 prescribed burning of the property. An objecting landowner or
18 lessee may apply to the Bureau of Forest Fire Management for a
19 review of alternative methods of forest fuel reduction on the
20 property. If the Bureau of Forest Fire Management does not resolve
21 the objection, the bureau shall convene a panel composed of the
22 local New Jersey Bureau of Forest Fire Management Service
23 manager, the fire chief of the jurisdiction, and a local official
24 designated by the municipality in which the land is located, or any
25 of their designees. If the panel's recommendation is not acceptable
26 to the landowner or lessee, the landowner or lessee may request
27 further consideration by the Commissioner of Environmental
28 Protection or the commissioner's designee, and shall thereafter be
29 entitled to an administrative hearing pursuant to the "Administrative
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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

34

35 7. a. The Bureau of Forest Fire Management may enter into a
36 written agreement with a landowner, or a lessee with the
37 landowner's written permission, to conduct a joint prescribed burn
38 or mechanically replicate a burn on the landowner's property. The
39 agreement shall include, but need not be limited to, a prescribed
40 burn plan for the property and a delineation of the respective roles
41 of the New Jersey Bureau of Forest Fire Management personnel, the
42 landowner, the lessee, and the landowner's and lessee's agents and
43 employees in carrying out the prescribed burn.

44 b. If the prescribed burn is conducted by the New Jersey
45 Bureau of Forest Fire Management at the request of a landowner or
46 lessee as authorized pursuant to subsection a. of this section, the
47 New Jersey Bureau of Forest Fire Management may assess the
48 reasonable and normal costs thereof against the landowner or
49 lessee, which shall be payable within 90 days after assessment. If

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1 the landowner or lessee does not pay the assessed costs within 90
2 days, the costs may be deemed to be a penalty collectable in a
3 summary proceeding pursuant to the "Penalty Enforcement Law of
4 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

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

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

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

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

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

47 c. Notwithstanding any State or local law, rule, regulation,
48 ordinance, or resolution to the contrary, a prescribed burn
49 conducted pursuant to this act, any rules and regulations adopted

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

12

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

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26 10. This act shall take effect immediately.

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STATEMENT

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

42 The bill specifically directs the DEP to develop and administer a
43 program for the certification of prescribed burn managers. The
44 program would include at least the following subjects: safety, legal
45 aspects of prescribed burning, fire behavior, prescribed burning tactics,
46 smoke management, environmental effects, and preparation of
47 prescribed burn plans. A landowner or lessee who wishes to conduct a
48 prescribed burn on their own land would not have to become certified

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1 as a prescribed burn manager. The bill allows the DEP to charge a
2 reasonable fee to cover the costs associated with the program.

3 Under the bill, the DEP is directed to approve a properly prepared
4 and filed prescribed burn plan prepared by a certified prescribed burn
5 manager or the landowner or lessee prior to the burn unless the DEP
6 determines that the plan presents an unreasonable risk of uncontrolled
7 wildfire or harm to public health or safety. The DEP also may charge
8 reasonable fees to review a filed prescribed burn plan and to issue an
9 authorization to burn. The bill would require that at least 30 days
10 prior to a prescribed burn, a landowner or lessee of any land within
11 250 feet of the area to be burned must be provided written notice by
12 certified mail, return receipt requested, or by personal service, of
13 (1) the land to be included in the prescribed burn, (2) the 90-day
14 timeframe in which the proposed prescribed burn will occur, and (3)
15 information regarding how a copy of the approved prescribed burn
16 plan may be obtained.

17 The bill authorizes the Bureau of Forest Fire Management to enter
18 into a written agreement with a landowner, or a lessee with the
19 landowner's written permission, to conduct a joint prescribed burn or
20 mechanically replicate a burn on the landowner's property. If the
21 prescribed burn is conducted by the bureau at the request of a
22 landowner or lessee, the bureau may assess the reasonable and normal
23 costs against the landowner or lessee, which would be payable within
24 90 days after assessment. If the landowner or lessee does not pay the
25 assessed costs within 90 days, the costs may be deemed to be a penalty
26 collectable in a summary proceeding pursuant to the "Penalty
27 Enforcement Law of 1999." However, the bill provides that no fees or
28 costs would be assessed to a landowner or lessee for a prescribed burn
29 conducted by the bureau which is determined by the DEP to be in
30 reasonable danger of wildfire.

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