

SENATE, No. 2140

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED MARCH 5, 2018

Sponsored by:

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District 6 (Burlington and Camden)

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SYNOPSIS

Authorizes prescribed burning in certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/15/2018)

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 suburban development directly adjacent to fire-
20 prone lands; and that the use of prescribed burning to manage
21 wildland fire fuels in those interface areas would substantially
22 reduce the threat of damaging wildfire in suburban communities.

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

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

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

1 silvicultural, agricultural, and natural resource management
2 purposes; that it is appropriate and useful to allow prescribed
3 burning, as authorized by this act, under all other State laws and
4 regulations and exempt from all local laws and regulations
5 prohibiting open burning or the burning of forests and other types
6 of ecosystems; and that prescribed burning of wildland fire fuels is
7 to be considered an acceptable practice of a landowner.

8
9 3. As used in this act:

10 "Assistant Commissioner" means the Assistant Commissioner of
11 Natural and Historic Resources in the Department of Environmental
12 Protection.

13 "Certified" means having completed and received the
14 certification from a program of education, approved by the
15 department, about the design and implementation of prescribed
16 burns that, upon completion, results in issuance of a certification to
17 the participant. "Certified" shall not mean completion of the
18 training provided by the Forest Fire Service.

19 "Department" means the Department of Environmental
20 Protection."

21 "Forest Fire Service" means the Forest Fire Service in the
22 Department of Environmental Protection.

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

31 "Mechanically manage vegetation" means to mow or cut
32 vegetation to reduce wildland fire fuels contained in the forest or
33 other open lands.

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

39 "Prescribed burn" or "prescribed burning" means the deliberate
40 ignition and controlled open burning of wildland fire fuels, under
41 specified environmental conditions which allow the fire to be
42 confined to a predetermined area and produces the fireline intensity
43 and rate of spread required to attain planned resource management
44 objectives such as public safety, wildfire control, ecological,
45 silvicultural, agricultural, or other natural resource management
46 purposes.

47 "Prescribed burn plan" or "plan" means a written plan prepared
48 in accordance with this act and the rules and regulations adopted

1 pursuant to section 7 thereof, for starting, executing, and controlling
2 a prescribed burn.

3 “Wildland fire fuels” means fuels including herbaceous and other
4 plant life found in forests, fields, grasslands, coastal marshlands and
5 other open lands whether in their natural state or having been cut.

6
7 4. a. The Department of Environmental Protection shall
8 develop and administer a program for prescribed burning on public
9 and private lands under which the department may authorize a
10 person to conduct a prescribed burn pursuant to a prescribed burn
11 plan approved by the department.

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

17 c. A person who desires to conduct a prescribed burn only on
18 land for which the person is the landowner or lessee shall not be
19 required to become certified.

20

21 5. a. The department may conduct a prescribed burn or
22 mechanically manage vegetation in any area of land within the State
23 which is determined by the Forest Fire Service to be in reasonable
24 danger of wildfire due to the accumulation of wildland fire fuels.

25 b. For lands not owned or controlled by the State, which are
26 determined by the Forest Fire Service to be in reasonable danger of
27 wildfire due to the accumulation of wildland fire fuels, the Forest
28 Fire Service shall:

29 (1) provide written notice to each affected local governmental
30 entity within which the affected land is located that describes the
31 purpose of the prescribed burn and describes the areas to be burned
32 in the prescribed burn;

33 (2) publish a prescribed burn notice, which shall include an
34 explanation of the purpose of the prescribed burn and a description
35 of the area to be burned, in at least one newspaper of general
36 circulation in the area of the prescribed burn;

37 (3) provide prior written notice, by certified mail, return receipt
38 requested, or personal service, of the proposed prescribed burn to
39 each affected landowner and lessee, if known, of the purpose of the
40 prescribed burn and the description of any land that is included in
41 the area to be burned in the prescribed burn, which notice shall be
42 sent at least 30 days prior to the prescribed burn unless the
43 department makes a written finding that an emergency exists, in
44 which case the prior written notice shall be sent as soon as possible
45 after the finding is made; and

46 (4) consider any landowner or lessee objections to the
47 prescribed burning of the property pursuant to subsection c. of this
48 section.

1 c. An objecting landowner or lessee may apply to the Forest
2 Fire Service for a review of alternative methods of wildland fire
3 fuel reduction on the property. If the Forest Fire Service does not
4 resolve the objection, the Assistant Commissioner or designee
5 thereof shall convene a panel composed of the local Forest Fire
6 Service manager, the fire chief of the jurisdiction, and a local
7 official designated by the municipality in which the land is located,
8 or any of their designees. The panel shall review the prescribed
9 burning of the property, objections to the prescribed burn, and the
10 proposed alternative fuel reduction methods, and shall recommend a
11 course of action to reduce the wildland fire fuels that specifies the
12 minimum amount of land required for treatment. If the panel's
13 recommendation is not acceptable to the objecting landowner or
14 lessee, the landowner or lessee may request further consideration by
15 the Commissioner of Environmental Protection or the
16 commissioner's designee, and shall thereafter be entitled to an
17 administrative hearing as a contested case pursuant to the
18 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
19 seq.).

20 d. The department may assess against a landowner or lessee
21 reasonable fees and costs for a prescribed burn conducted by the
22 Forest Fire Service for any wildland fuel hazard that poses an
23 extraordinary threat to life, property, or a natural resource as
24 authorized pursuant to this section.

25

26 6. a. A prescribed burn, including the smoke and ash and
27 other air pollution deriving therefrom, conducted in accordance
28 with the requirements of this act and an approved prescribed burn
29 plan, shall be deemed to be in the public interest and shall not
30 constitute arson, trespass, or a public or private nuisance.

31 b. A landowner or lessee who conducts or authorizes a
32 prescribed burn in accordance with an approved prescribed burn
33 plan, the requirements of this act, and the rules and regulations
34 adopted pursuant thereto shall not be liable in a civil action for any
35 damages or injury to persons or property from fire or the resulting
36 smoke or ash caused by the prescribed burn, unless it is proven that
37 the landowner or lessee was negligent in starting, executing, or
38 controlling the prescribed burn.

39 c. Any person who conducts or authorizes a prescribed burn in
40 accordance with an approved prescribed burn plan, the
41 requirements of this act, and the rules and regulations adopted
42 pursuant thereto shall not be liable for any penalties for violations
43 of the "Air Pollution Control Act (1954)," P.L.1954, c.212
44 (C.26:2C-1 et seq.).

45 d. In a private civil action arising from the conducting of a
46 prescribed burn and any damages or injury caused by the fire or the
47 resulting smoke or ash, proof of compliance with the requirements
48 and standards established pursuant to this act shall be admissible

1 evidence that the duty of care for conducting of a prescribed burn
2 has been met.

3 e. No provision of this act shall be construed to relieve a
4 landowner or lessee of the obligation to reimburse the department
5 for the reasonable and normal costs associated with a prescribed
6 burn, regardless of whether fire escapes from the prescribed burn
7 conducted or authorized to be conducted by the landowner or lessee
8 and the fire requires intervention by the Forest Fire Service. If the
9 fire escapes due to the negligence of the landowner or lessee, the
10 landowner or lessee shall also be subject to penalties established by
11 the department by rule or regulation for such negligence. Any
12 reimbursement of costs paid pursuant to this subsection shall be
13 credited to a special dedicated account in the General Fund and
14 appropriated to the Forest Fire Service to pay for the administration
15 and operation of its forest fire programs.

16 f. Without affecting any other limitations on liability that may
17 be applicable, and notwithstanding the provisions of any other law,
18 the department and any designee, agent, or employee thereof shall
19 be immune from liability for any damages or injury arising from or
20 related to any act or omission taken in the good faith performance
21 of the department and any designee, agent, or employee thereof in
22 carrying out the provisions of this act.

23

24 7. The department, in consultation with the Department of
25 Agriculture, shall develop and adopt, pursuant to the
26 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
27 seq.), rules and regulations necessary to implement this act, which
28 shall include, but need not be limited to, the issuance of appropriate
29 notice to the public of prescribed burns conducted by the Forest
30 Fire Service and the design, approval, and implementation of
31 prescribed burn plans.

32

33 8. This act shall take effect immediately.

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35

36

STATEMENT

37

38 This bill authorizes and promotes the continued use of prescribed
39 burning for public safety, wildfire control, and ecological,
40 silvicultural, agricultural, and natural resource management
41 purposes.

42 The bill directs the Department of Environmental Protection
43 (DEP) to develop and administer a program for prescribed burning
44 on public and private lands pursuant to a prescribed burn plan
45 approved by the department. "Prescribed burn" or "prescribed
46 burning" is defined in the bill as the deliberate ignition and
47 controlled open burning of wildland fire fuels, under specified
48 environmental conditions which allow the fire to be confined to a

1 predetermined area and produces the fireline intensity and rate of
2 spread required to attain planned resource management objectives
3 such as public safety, wildfire control, ecological, silvicultural,
4 agricultural, or other natural resource management purposes.
5 “Wildland fire fuels” means fuels including herbaceous and other
6 plant life found in forests, fields, grasslands, coastal marshlands and
7 other open lands whether in their natural state or having been cut.

8 The bill authorizes the DEP to charge a reasonable fee to cover
9 the costs associated with the program. All such fees collected
10 would be deposited into a special dedicated account in the General
11 Fund and appropriated to the Forest Fire Service to help pay for the
12 administration and operation of its forest fire programs. The bill, as
13 amended, also provides that a person who desires to conduct a
14 prescribed burn only on land for which the person is the landowner
15 or lessee would not be required to complete and receive
16 certification from a program of education approved by the DEP.

17 The bill authorizes the DEP to conduct a prescribed burn or
18 mechanically manage vegetation in any area of land within the State
19 which is determined by the Forest Fire Service to be in reasonable
20 danger of wildfire due to the accumulation of wildland fire fuels.
21 For lands not owned or controlled by the State, which are
22 determined by the Forest Fire Service to be in reasonable danger of
23 wildfire due to the accumulation of wildland fire fuels, the Forest
24 Fire Service would:

25 1) provide written notice to each affected local governmental
26 entity within which the affected land is located that describes the
27 purpose of the prescribed burn and describes the areas to be burned
28 in the prescribed burn;

29 2) publish a prescribed burn notice, which would include an
30 explanation of the purpose of the prescribed burn and a description
31 of the area to be burned, in at least one newspaper of general
32 circulation in the area of the prescribed burn;

33 3) provide prior written notice, by certified mail, return receipt
34 requested, or personal service, of the proposed prescribed burn to
35 each affected landowner and lessee, if known, of the purpose of the
36 prescribed burn and the description of any land that is included in
37 the area to be burned in the prescribed burn, which notice would be
38 sent at least 30 days prior to the prescribed burn unless the
39 department makes a written finding that an emergency exists, in
40 which case the prior written notice would be sent as soon as
41 possible after the finding is made; and

42 4) consider any landowner’s or lessee’s objections to the
43 prescribed burning of the property.

44 The bill provides that an objecting landowner or lessee may
45 apply to the Forest Fire Service for a review of alternative methods
46 of wildland fire fuel reduction on the property. If the Forest Fire
47 Service does not resolve the objection, the Assistant Commissioner
48 of Natural and Historic Resources in the DEP or a designee thereof

1 would convene a panel composed of the local Forest Fire Service
2 manager, the fire chief of the jurisdiction, and a local official
3 designated by the municipality in which the land is located, or any
4 of their designees. The panel would review the prescribed burning
5 of the property, objections to the prescribed burn, and the proposed
6 alternative fuel reduction methods, and would recommend a course
7 of action to reduce the wildland fire fuels. If the panel's
8 recommendation is not acceptable to the objecting landowner or
9 lessee, the bill authorizes the landowner or lessee to request further
10 consideration by the Commissioner of Environmental Protection or
11 the commissioner's designee, and would be entitled to an
12 administrative hearing as a contested case pursuant to the
13 "Administrative Procedure Act."

14 The bill, also authorizes the DEP to assess against a landowner
15 or lessee reasonable fees and costs for a prescribed burn conducted
16 by the Forest Fire Service for any wildland fuel hazard that poses an
17 extraordinary threat to life, property or a natural resource.

18 The bill addresses certain liability issues in connection with
19 prescribed burns. The bill provides that a prescribed burn,
20 including the smoke and ash and other air pollution deriving from
21 the prescribed burn, would be deemed to be in the public interest
22 and would not constitute arson, trespass, or a public or private
23 nuisance if the prescribed burn is conducted in accordance with the
24 requirements of the bill and a DEP approved prescribed burn plan.
25 A landowner or lessee who conducts a prescribed burn in
26 accordance with an approved prescribed burn plan, the requirements
27 of the bill, and any rules and regulations adopted pursuant thereto
28 would not be liable for any damages or injury caused by fire or the
29 resulting smoke or ash, unless it is proven that the landowner or
30 lessee was negligent in starting, executing, or controlling the
31 prescribed burn. Also, any person who conducts a prescribed burn
32 in accordance with an approved prescribed burn plan, the
33 requirements of the bill, and any rules and regulations adopted
34 pursuant thereto would not be liable for any penalties for violations
35 pursuant to the provisions of the "Air Pollution Control Act
36 (1954)."

37 In a private civil action arising from the conducting of a
38 prescribed burn, any damages or injury caused by the fire or the
39 resulting smoke or ash, proof of compliance with the requirements
40 and standards established pursuant to this bill would be admissible
41 evidence that the duty of care for conducting a prescribed burn has
42 been met. Nevertheless, a landowner or lessee would still be
43 obligated to reimburse the DEP for the reasonable and normal costs
44 associated with the prescribed burn. If the fire escapes due to the
45 negligence of the landowner or lessee, the landowner or lessee
46 would also be subject to penalties established by the DEP for such
47 negligence. Any reimbursement of costs would be credited to a
48 special dedicated account in the General Fund and appropriated to

1 the Forest Fire Service to pay for the administration and operation
2 of its forest fire programs. The bill provides that, without affecting
3 any other limitations on liability that may be applicable, the DEP
4 and any designee, agent, or employee thereof would be immune
5 from liability for any damages or injury arising from or related to
6 any act or omission taken in the good faith performance of the DEP
7 and any designee, agent, or employee thereof.

8 Finally, the bill, directs the DEP, in consultation with the
9 Department of Agriculture, to adopt regulations necessary to
10 implement the bill.