

**ASSEMBLY, No. 329**

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**STATE OF NEW JERSEY**

**215th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Assemblyman RONALD S. DANCER**

**District 12 (Burlington, Middlesex, Monmouth and Ocean)**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington)**

**SYNOPSIS**

Authorizes prescribed burning in certain circumstances.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



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

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

8  
9 3. As used in this act:

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

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

16 "Landowner or lessee" means the person responsible for the land  
17 upon which a prescribed burn is to be performed who (1) either  
18 owns or leases the land, and (2) has full access and control of the  
19 land at all times during the prescribed burn.

20 "New Jersey Forest Fire Service" means the New Jersey Forest  
21 Fire Service in the Department of Environmental Protection  
22 established pursuant to R.S.13:9-1.

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

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

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

35 "State Forester" means the State Forester designated as such  
36 pursuant to section 17 of P.L.1983, c.324 (C.13:1L-17).

37  
38 4. a. The New Jersey Forest Fire Service shall develop and  
39 administer a program for the certification of prescribed burn  
40 managers. The program shall include at least the following  
41 subjects: safety; legal aspects of prescribed burning; fire behavior;  
42 prescribed burning tactics; smoke management; environmental  
43 effects; and preparation of prescribed burn plans. The New Jersey  
44 Forest Fire Service shall establish the period for which a  
45 certification issued pursuant to this section shall be valid and the  
46 conditions and requirements for recertification under the program.

47 b. The New Jersey Forest Fire Service may charge a reasonable  
48 fee to cover the costs associated with the program. All such fees

1 collected shall be credited to a special dedicated account in the  
2 General Fund and appropriated to the New Jersey Forest Fire  
3 Service to help pay for the administration and operation of its  
4 programs.

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

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

21

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

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

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

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

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

42 (5) the appropriate public notice has been issued in accordance  
43 with this act and any rules or regulations adopted pursuant thereto;  
44 and

45 (6) the nearest regional office of the New Jersey Forest Fire  
46 Service, and the local fire dispatch center, have been notified of the  
47 prescribed burn within 24 hours prior to starting it.

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

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

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

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

7 (4) provisions for notifying the public of the prescribed burn in  
8 accordance with the requirements of this act and any rules or  
9 regulations adopted pursuant thereto; and

10 (5) such other provisions as the State Firewarden may deem  
11 necessary or appropriate.

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

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

20 e. The New Jersey Forest Fire Service may charge reasonable  
21 fees to review a filed prescribed burn plan and to issue an  
22 authorization to burn. All such fees collected shall be credited to a  
23 special dedicated account in the General Fund and appropriated to  
24 the New Jersey Forest Fire Service to help pay for the  
25 administration and operation of its programs.

26  
27 6. a. The New Jersey Forest Fire Service may prescribe burn  
28 or mechanically replicate a burn in any area of land within the State  
29 which is determined by the State Firewarden, or the State  
30 Firewarden's designee, to be in reasonable danger of wildfire,  
31 provided that, for lands not owned or controlled by the State, the  
32 New Jersey Forest Fire Service:

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

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

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

45 (4) considers any landowner or lessee objections to the  
46 prescribed burning of the property. An objecting landowner or  
47 lessee may apply to the State Firewarden for a review of alternative  
48 methods of forest fuel reduction on the property. If the State

1 Firewarden does not resolve the objection, the State Forester shall  
2 convene a panel composed of the local New Jersey Forest Fire  
3 Service manager, the fire chief of the jurisdiction, and a local  
4 official designated by the municipality in which the land is located,  
5 or any of their designees. If the panel's recommendation is not  
6 acceptable to the landowner or lessee, the landowner or lessee may  
7 request further consideration by the Commissioner of  
8 Environmental Protection or the commissioner's designee, and shall  
9 thereafter be entitled to an administrative hearing pursuant to the  
10 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
11 seq.).

12 b. No fees or costs shall be assessed to a landowner or lessee  
13 for a prescribed burn conducted by the New Jersey Forest Fire  
14 Service as authorized pursuant to this section.

15  
16 7. a. The State Firewarden may enter into a written agreement  
17 with a landowner, or a lessee with the landowner's written  
18 permission, to conduct a joint prescribed burn or mechanically  
19 replicate a burn on the landowner's property. The agreement shall  
20 include, but need not be limited to, a prescribed burn plan for the  
21 property and a delineation of the respective roles of the New Jersey  
22 Forest Fire Service personnel, the landowner, the lessee, and the  
23 landowner's and lessee's agents and employees in carrying out the  
24 prescribed burn.

25 b. If the prescribed burn is conducted by the New Jersey Forest  
26 Fire Service at the request of a landowner or lessee as authorized  
27 pursuant to subsection a. of this section, the New Jersey Forest Fire  
28 Service may assess the reasonable and normal costs thereof against  
29 the landowner or lessee, which shall be payable within 90 days after  
30 assessment. If the landowner or lessee does not pay the assessed  
31 costs within 90 days, the costs may be deemed to be a penalty  
32 collectable in a summary proceeding pursuant to the "Penalty  
33 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

34 c. All costs and penalties paid pursuant to this section shall be  
35 credited to a special dedicated account in the General Fund and  
36 appropriated to the New Jersey Forest Fire Service to help pay for  
37 the administration and operation of its programs.

38  
39 8. a. (1) A prescribed burn conducted in accordance with the  
40 requirements of this act, an approved prescribed burn plan, the "Air  
41 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.)  
42 and any other applicable State air pollution control law, and the  
43 rules and regulations adopted by the Department of Environmental  
44 Protection pursuant thereto shall be deemed to be in the public  
45 interest and shall not constitute arson, trespass, or a public or  
46 private nuisance. The provisions of this paragraph shall also apply  
47 to smoke and ash caused by or arising from a prescribed burn.

48 (2) No landowner or lessee, certified prescribed burn manager,

1 or agent or employee thereof who conducts a prescribed burn in  
2 accordance with the requirements of this act, an approved  
3 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  
4 air pollution control law, and the rules and regulations adopted by  
5 the Department of Environmental Protection pursuant thereto shall  
6 be liable for any damages or injury caused by fire or resulting  
7 smoke or ash unless it is proven that such person or entity was  
8 grossly negligent in starting, executing, or controlling the  
9 prescribed burn.  
10

11 (3) A landowner, lessee, or certified prescribed burn manager  
12 who allows a fire to escape from a prescribed burn and which fire  
13 requires intervention by the New Jersey Forest Fire Service shall  
14 reimburse the New Jersey Forest Fire Service for the reasonable and  
15 normal costs associated therewith. Any reimbursement of costs  
16 paid pursuant to this paragraph shall be credited to a special  
17 dedicated account in the General Fund and appropriated to the New  
18 Jersey Forest Fire Service to help pay for the administration and  
19 operation of its programs.

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

28 c. Notwithstanding any State or local law, rule, regulation,  
29 ordinance, or resolution to the contrary, a prescribed burn  
30 conducted pursuant to this act, any rules and regulations adopted  
31 pursuant thereto, and an approved prescribed burn plan shall be  
32 deemed to not (1) be a source operation or source of an air  
33 contaminant, (2) be or tend to be injurious to human health or  
34 welfare, animal or plant life, or property, or (3) unreasonably  
35 interfere with the enjoyment of life or property, as those terms are  
36 used in the "Air Pollution Control Act (1954)," P.L.1954, c.212  
37 (C.26:2C-1 et seq.), and any rules or regulations adopted pursuant  
38 thereto, or any similar provision of any municipal or county  
39 ordinance, resolution, or regulation. The provisions of this  
40 subsection shall also apply to smoke and ash caused by or arising  
41 from a prescribed burn.  
42

43 9. Within 180 days after the date of enactment of this act, the  
44 Department of Environmental Protection and the New Jersey Forest  
45 Fire Service, in consultation with the Department of Agriculture,  
46 shall develop and adopt, pursuant to the "Administrative Procedure  
47 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and  
48 regulations as may be necessary to implement this act, which shall

1 include, but need not be limited to, rules and regulations  
2 implementing the certification program for prescribed burn  
3 managers set forth in section 4 of this act and establishing any  
4 additional requirements concerning prescribed burns, prescribed  
5 burn plans, and the issuance of appropriate notice to the public of  
6 prescribed burns.

7  
8 10. This act shall take effect immediately.

9  
10  
11 STATEMENT

12  
13 This bill would establish a process for certifying individuals, and  
14 for allowing landowners and lessees, to conduct prescribed burns of  
15 forested and other undeveloped lands in order to prevent  
16 uncontrolled and damaging wildfires and to accomplish various  
17 land management objectives. The bill would establish the  
18 procedures to be followed in conducting such burns, and it would  
19 authorize the New Jersey Forest Fire Service (NJFFS), under certain  
20 conditions, to conduct prescribed burns on any area of land within  
21 the State which is determined by the State Firewarden or designee  
22 thereof to be in reasonable danger of wildfire. Finally, the bill  
23 would provide to landowners and lessees, certified prescribed burn  
24 managers, their agents and employees, and State employees and  
25 agents certain immunities against potential liability for damages or  
26 injury possibly resulting from a prescribed burn.

27 Specifically, the bill would direct the New Jersey Forest Fire  
28 Service (NJFFS) to develop and administer a program for the  
29 certification of prescribed burn managers. The program would  
30 include at least the following subjects: safety; legal aspects of  
31 prescribed burning; fire behavior; prescribed burning tactics; smoke  
32 management; environmental effects; and preparation of prescribed  
33 burn plans. A landowner or lessee who wishes to conduct a  
34 prescribed burn on their own land would not have to become  
35 certified as a prescribed burn manager. Under the bill's provisions,  
36 a prescribed burn would not be conducted on any land unless:

37 (1) a prescribed burn plan prepared by a certified prescribed  
38 burn manager or the landowner or lessee has been filed with and  
39 approved by the State Firewarden, or the State Firewarden's  
40 designee, prior to the burn;

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

43 (3) an authorization to burn is obtained from the State  
44 Firewarden, or the State Firewarden's designee, prior to starting the  
45 prescribed burn, and the certified prescribed burn manager or the  
46 landowner or lessee ensures that the burn is conducted in  
47 accordance with the plan and that sufficient personnel and fire



1 control equipment are present throughout the period of the  
2 prescribed burn;

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

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

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

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

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

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

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

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

34 Any such objecting landowner or lessee would be able to apply  
35 to the State Firewarden for a review of alternative methods of forest  
36 fuel reduction on the property. If the State Firewarden does not  
37 resolve the objection, the State Forester must then convene a panel  
38 composed of the local NJFFS manager, the fire chief of the  
39 jurisdiction, and a local official designated by the municipality in  
40 which the land is located. If the panel's recommendation is not  
41 acceptable to the landowner or lessee, the landowner or lessee may  
42 request further consideration by the Commissioner of  
43 Environmental Protection, and would thereafter be entitled to an  
44 administrative hearing pursuant to the "Administrative Procedure  
45 Act." No fees or costs would be assessed to a landowner or lessee  
46 for a prescribed burn conducted by the NJFFS in these situations.

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

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

17      Finally, the bill would provide to landowners, lessees, certified  
18      prescribed burn managers, their agents and employees, and State  
19      employees and agents certain immunities against potential liability  
20      for damages or injury possibly resulting from a prescribed burn.  
21      The bill would also declare that a properly conducted prescribed  
22      burn would be deemed to be in the public interest, would not  
23      constitute arson, trespass, or a public or private nuisance, and would  
24      not be considered to be illegal air pollution.

25      Prescribed burning is a resource protection and land management  
26      tool which promotes public safety and benefits the environment and  
27      the economy of the State. Prescribed burning reduces naturally  
28      occurring vegetative fuels within forested and other undeveloped  
29      areas, and thereby lessens the risk and severity of major wildfire  
30      and the potential for resulting loss of life and property. This bill  
31      would help authorize and promote the continued use of prescribed  
32      burning for these important purposes.