

[Second Reprint]

**ASSEMBLY, No. 329**

**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

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)**

**Assemblywoman MARLENE CARIDE**

**District 36 (Bergen and Passaic)**

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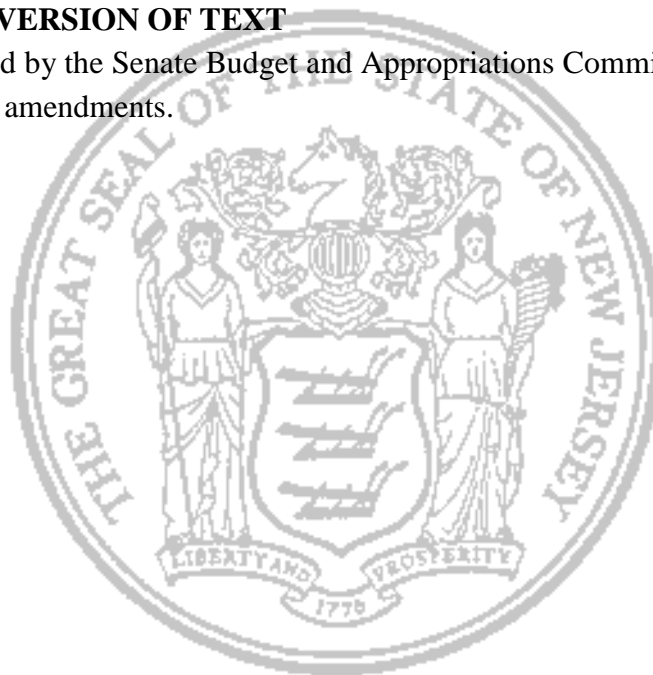
**Assemblyman Chivukula, Senators Beach and Singer**

**SYNOPSIS**

Authorizes prescribed burning in certain circumstances.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on January 6, 2014, with amendments.



**(Sponsorship Updated As Of: 1/14/2014)**

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

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAN committee amendments adopted December 10, 2012.

<sup>2</sup>Senate SBA committee amendments adopted January 6, 2014.

1 misunderstanding of the benefits of prescribed burning to the  
2 ecological and economic welfare of the State inhibits full use of this  
3 valuable resource management tool.

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

13

14 3. As used in this act:

15 <sup>2</sup>"Bureau of Forest Fire Management" means the Bureau of  
16 Forest Fire Management in the Department of Environmental  
17 Protection.<sup>2</sup>

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

21 <sup>2</sup>"Department" means the Department of Environmental  
22 Protection."<sup>2</sup>

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

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

34 <sup>2</sup>["New Jersey Forest Fire Service" means the New Jersey Forest  
35 Fire Service in the Department of Environmental Protection  
36 established pursuant to R.S.13:9-1.]<sup>2</sup>

37 <sup>1</sup>"Person" means an individual, trust, partnership, limited  
38 partnership, limited liability company, society, association, joint  
39 stock company, corporation, public corporation or public authority,  
40 estate, receiver, trustee, assignee, referee, fiduciary and any other  
41 legal entity.<sup>1</sup>

42 "Prescribed burn" or "prescribed burning" means the controlled  
43 application of fire to forest fuels for public safety, wildfire control,  
44 ecological, silvicultural, agricultural, or natural resource  
45 management purposes, under specified environmental conditions  
46 and by following appropriate precautionary measures which cause

1 the fire to be confined to a predetermined area, so as to accomplish  
2 planned land management objectives.

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

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

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

10

11 4. a. The <sup>2</sup>**[New Jersey Forest Fire Service]** department<sup>2</sup> shall  
12 develop and administer a program for the certification of prescribed  
13 burn managers. The program shall include at least the following  
14 subjects: safety; legal aspects of prescribed burning; fire behavior;  
15 prescribed burning tactics; smoke management; environmental  
16 effects; and preparation of prescribed burn plans. The <sup>2</sup>**[New**  
17 **Jersey Forest Fire Service]** department<sup>2</sup> shall establish the period  
18 for which a certification issued pursuant to this section shall be  
19 valid and the conditions and requirements for recertification under  
20 the program.

21 b. The <sup>2</sup>**[New Jersey Forest Fire Service]** department<sup>2</sup> may  
22 charge a reasonable fee to cover the costs associated with the  
23 program. All such fees collected shall be credited to a special  
24 dedicated account in the General Fund and appropriated to the  
25 <sup>2</sup>**[New Jersey Forest Fire Service]** department<sup>2</sup> to help pay for the  
26 administration and operation of its <sup>2</sup>forest fire<sup>2</sup> programs.

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

31 d. The <sup>2</sup>**[State Firewarden]** department<sup>2</sup>, upon issuance of a  
32 written notice and after affording the opportunity for a hearing, may  
33 revoke a certification issued pursuant to this section if the certified  
34 prescribed burn manager or the prescribed burn violates any  
35 provision of this act, an approved prescribed burn plan, the "Air  
36 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.)  
37 or any other State air pollution control law, or any rule or regulation  
38 adopted by the <sup>2</sup>**[Department of Environmental Protection]**  
39 department<sup>2</sup> pursuant thereto, or otherwise threatens the public  
40 health or safety. The <sup>2</sup>**[State Firewarden]** department<sup>2</sup>, for any of  
41 those same causes, may immediately suspend a certification until  
42 such time as a revocation proceeding may be held and a decision  
43 rendered.

44

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

47 (1) a prescribed burn plan prepared in accordance with this act

1 by a certified prescribed burn manager or the landowner or lessee  
2 has been filed with and approved by the <sup>2</sup>【State Firewarden】  
3 department<sup>2</sup>, or the <sup>2</sup>【State Firewarden's】 department's<sup>2</sup> designee,  
4 prior to the burn;

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

7 (3) an authorization to burn is obtained from the <sup>2</sup>【State  
8 Firewarden】 department<sup>2</sup>, or the <sup>2</sup>【State Firewarden's】  
9 department's<sup>2</sup> designee, prior to starting the prescribed burn, and the  
10 certified prescribed burn manager or the landowner or lessee  
11 ensures that the burn is conducted in accordance with the prescribed  
12 burn plan and that sufficient personnel and fire control equipment  
13 are present throughout the period of the prescribed burn;

14 (4) the fees which may be assessed by the <sup>2</sup>【State Firewarden】  
15 department<sup>2</sup> for the review and approval of the prescribed burn plan  
16 pursuant to paragraph (1) of this subsection and for the issuance of  
17 the authorization pursuant to paragraph (3) of this subsection have  
18 been paid in full;

19 (5) the appropriate <sup>1</sup>【public】<sup>1</sup> notice has been issued in  
20 accordance with <sup>1</sup>section 6 of<sup>1</sup> this act and any rules or regulations  
21 adopted pursuant thereto <sup>1</sup>concerning prescribed burns performed  
22 by the <sup>2</sup>【New Jersey Forest Fire Service<sup>1</sup>】 Bureau of Forest Fire  
23 Management<sup>2</sup>; and

24 (6) the nearest regional office of the <sup>2</sup>【New Jersey Forest Fire  
25 Service】 Bureau of Forest Fire Management responsible for the  
26 burn site<sup>2</sup>, and the local fire dispatch center, have been notified of  
27 the prescribed burn within 24 hours prior to starting it.

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

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

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

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

35 (4) provisions for notifying the public of the prescribed burn in  
36 accordance with the requirements <sup>1</sup>of section 6<sup>1</sup> of this act and any  
37 rules or regulations adopted pursuant thereto <sup>1</sup>concerning prescribed  
38 burns performed by the <sup>2</sup>【New Jersey Forest Fire Service<sup>1</sup>】  
39 Bureau of Forest Fire Management<sup>2</sup> ; and

40 (5) such other provisions as the <sup>2</sup>【State Firewarden】  
41 department<sup>2</sup> may deem necessary or appropriate.

42 c. The <sup>2</sup>【State Firewarden】 department<sup>2</sup> shall approve a  
43 properly prepared and filed prescribed burn plan unless the <sup>2</sup>【State  
44 Firewarden】 department<sup>2</sup> determines that the plan presents an  
45 unreasonable risk of (1) uncontrolled wildfire, or (2) harm to public

1 health or safety.

2 d. The <sup>2</sup>**[State Firewarden]** department<sup>2</sup> may issue an  
3 authorization to burn pursuant to paragraph (3) of subsection a. of  
4 this section that is valid for an entire season or for such other period  
5 as the <sup>2</sup>**[State Firewarden]** department<sup>2</sup> deems appropriate.

6 e. The <sup>2</sup>**[State Firewarden]** department<sup>2</sup> may charge reasonable  
7 fees to review a filed prescribed burn plan and to issue an  
8 authorization to burn. All such fees collected shall be credited to a  
9 special dedicated account in the General Fund and appropriated to  
10 the <sup>2</sup>**[New Jersey Forest Fire Service]** department<sup>2</sup> to help pay for  
11 the administration and operation of its forest fire<sup>2</sup> programs.

12  
13 6. a. The <sup>2</sup>**[New Jersey Forest Fire Service]** Bureau of Forest  
14 Fire Management<sup>2</sup> may <sup>1</sup>**[prescribe]** perform a prescribed<sup>1</sup> burn or  
15 mechanically replicate a burn in any area of land within the State  
16 which is determined by the <sup>2</sup>**[State Firewarden]** Bureau of Forest  
17 Fire Management<sup>2</sup>, or the <sup>2</sup>**[State Firewarden's]** bureau's<sup>2</sup> designee,  
18 to be in reasonable danger of wildfire, provided that, for lands not  
19 owned or controlled by the State, the <sup>2</sup>**[New Jersey Forest Fire**  
20 **Service]** Bureau of Forest Fire Management<sup>2</sup>:

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

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

26 (3) provides prior written notice, by certified mail or personal  
27 service, of the proposed prescribed burn to the landowner and  
28 lessee, if known, of any land that is included in the area to be  
29 prescribed burned, which notice shall be sent at least 30 days prior  
30 to the burn unless the <sup>2</sup>**[State Firewarden]** Bureau of Forest Fire  
31 Management<sup>2</sup> makes a written finding that an emergency exists, in  
32 which case the prior written notice shall be sent as soon as possible  
33 after the finding is made; and

34 (4) considers any landowner or lessee objections to the  
35 prescribed burning of the property. An objecting landowner or  
36 lessee may apply to the <sup>2</sup>**[State Firewarden]** Bureau of Forest Fire  
37 Management<sup>2</sup> for a review of alternative methods of forest fuel  
38 reduction on the property. If the <sup>2</sup>**[State Firewarden]** Bureau of  
39 Forest Fire Management<sup>2</sup> does not resolve the objection, the <sup>2</sup>**[State**  
40 **Forester]** bureau<sup>2</sup> shall convene a panel composed of the local New  
41 Jersey <sup>2</sup>**Bureau of** Forest Fire <sup>2</sup>**Management** Service manager, the  
42 fire chief of the jurisdiction, and a local official designated by the  
43 municipality in which the land is located, or any of their designees.  
44 If the panel's recommendation is not acceptable to the landowner or  
45 lessee, the landowner or lessee may request further consideration by  
46 the Commissioner of Environmental Protection or the

1 commissioner's designee, and shall thereafter be entitled to an  
2 administrative hearing pursuant to the "Administrative Procedure  
3 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

4 b. No fees or costs shall be assessed to a landowner or lessee  
5 for a prescribed burn conducted by the <sup>2</sup>**[New Jersey Forest Fire  
6 Service]** Bureau of Forest Fire Management<sup>2</sup> as authorized  
7 pursuant to this section.

8  
9 7. a. The <sup>2</sup>**[State Firewarden]** Bureau of Forest Fire  
10 Management<sup>2</sup> may enter into a written agreement with a landowner,  
11 or a lessee with the landowner's written permission, to conduct a  
12 joint prescribed burn or mechanically replicate a burn on the  
13 landowner's property. The agreement shall include, but need not be  
14 limited to, a prescribed burn plan for the property and a delineation  
15 of the respective roles of the New Jersey <sup>2</sup>**[Forest Fire Service]**  
16 Bureau of Forest Fire Management<sup>2</sup> personnel, the landowner, the  
17 lessee, and the landowner's and lessee's agents and employees in  
18 carrying out the prescribed burn.

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

30 c. All costs and penalties paid pursuant to this section shall be  
31 credited to a special dedicated account in the General Fund and  
32 appropriated to the <sup>2</sup>**[New Jersey Forest Fire Service]** department<sup>2</sup>  
33 to help pay for the administration and operation of its <sup>2</sup>forest fire<sup>2</sup>  
34 programs.

35  
36 8. a. (1) A prescribed burn conducted in accordance with the  
37 requirements of this act, an approved prescribed burn plan, the "Air  
38 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.)  
39 and any other applicable State air pollution control law, and the  
40 rules and regulations adopted by the Department of Environmental  
41 Protection pursuant thereto shall be deemed to be in the public  
42 interest and shall not constitute arson, trespass, or a public or  
43 private nuisance. The provisions of this paragraph shall also apply  
44 to smoke and ash caused by or arising from a prescribed burn.

45 (2) No landowner or lessee, certified prescribed burn manager,  
46 or agent or employee thereof who conducts a prescribed burn in  
47 accordance with the requirements of this act, an approved

1 prescribed burn plan, the "Air Pollution Control Act (1954),"  
2 P.L.1954, c.212 (C.26:2C-1 et seq.) and any other applicable State  
3 air pollution control law, and the rules and regulations adopted by  
4 the Department of Environmental Protection pursuant thereto shall  
5 be liable for any damages or injury caused by fire or resulting  
6 smoke or ash unless it is proven that such person or entity was  
7 <sup>2</sup>**[grossly]**<sup>2</sup> negligent in starting, executing, or controlling the  
8 prescribed burn.

9 (3) A landowner, lessee, or certified prescribed burn manager  
10 who allows a fire to escape from a prescribed burn and which fire  
11 requires intervention by the New Jersey <sup>2</sup>**[Forest Fire Service]**  
12 Bureau of Forest Fire Management<sup>2</sup> shall reimburse the <sup>2</sup>**[New**  
13 **Jersey Forest Fire Service]** bureau<sup>2</sup> for the reasonable and normal  
14 costs associated therewith. Any reimbursement of costs paid  
15 pursuant to this paragraph shall be credited to a special dedicated  
16 account in the General Fund and appropriated to the <sup>2</sup>**[New Jersey**  
17 **Forest Fire Service]** department<sup>2</sup> to help pay for the administration  
18 and operation of its <sup>2</sup>forest fire<sup>2</sup> programs.

19 b. Without affecting any other limitations on liability that may  
20 be applicable, and notwithstanding the provisions of any other law,  
21 neither the State Firewarden nor any designee, agent, or employee  
22 thereof or of the <sup>2</sup>**[New Jersey Forest Fire Service]** Bureau of  
23 Forest Fire Management<sup>2</sup> shall be personally liable for any  
24 damages or injury arising from or related to any act or omission of  
25 the State Firewarden or any designee, agent, or employee thereof or  
26 of the the <sup>2</sup>**[New Jersey Forest Fire Service]** Bureau of Forest Fire  
27 Management<sup>2</sup> when acting in an official capacity to carry out the  
28 provisions of this act.

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

43  
44 9. Within 180 days after the date of enactment of this act, the  
45 Department of Environmental Protection <sup>2</sup>**[and the New Jersey**  
46 **Forest Fire Service]**<sup>2</sup>, in consultation with the Department of



1 Agriculture, shall develop and adopt, pursuant to the  
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
3 seq.), such rules and regulations as may be necessary to implement  
4 this act, which shall include, but need not be limited to, rules and  
5 regulations implementing the certification program for prescribed  
6 burn managers set forth in section 4 of this act and establishing any  
7 additional requirements concerning prescribed burns, prescribed  
8 burn plans, and the issuance of appropriate notice to the public of  
9 prescribed burns <sup>1</sup>performed by the            <sup>2</sup>【New Jersey Forest Fire  
10 Service<sup>1</sup>】 Bureau of Forest Fire Management<sup>2</sup>.

11

12       10. This act shall take effect immediately.