

SENATE, No. 368

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

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 at least 24 hours prior to starting it.

- 1 b. A prescribed burn plan shall include at least the following:
- 2 (1) the landowner's or lessee's name, address, and telephone
- 3 number and any other appropriate contact information, including
- 4 the name, address, and telephone number of the certified prescribed
- 5 burn manager if applicable;
- 6 (2) the geographic location of the prescribed burn;
- 7 (3) the approximate number of acres to be burned;
- 8 (4) provisions for notifying the public of the prescribed burn in
- 9 accordance with the requirements of this act and any rules or
- 10 regulations adopted pursuant thereto; and
- 11 (5) such other provisions as the State Firewarden may deem
- 12 necessary or appropriate.
- 13 c. The State Firewarden shall approve a properly prepared and
- 14 filed prescribed burn plan unless the State Firewarden determines
- 15 that the plan presents an unreasonable risk of (1) uncontrolled
- 16 wildfire, or (2) harm to public health or safety.
- 17 d. The State Firewarden may issue an authorization to burn
- 18 pursuant to paragraph (3) of subsection a. of this section that is
- 19 valid for an entire season or for such other period as the State
- 20 Firewarden deems appropriate.
- 21 e. The New Jersey Forest Fire Service shall compare the
- 22 geographic location of a proposed prescribed burn to any list of
- 23 endangered species habitats maintained by the Department of
- 24 Environmental Protection.
- 25 f. The New Jersey Forest Fire Service may charge reasonable
- 26 fees to review a filed prescribed burn plan and to issue an
- 27 authorization to burn. All such fees collected shall be credited to a
- 28 special dedicated account in the General Fund and appropriated to
- 29 the New Jersey Forest Fire Service to help pay for the
- 30 administration and operation of its programs.
- 31
- 32 6. a. The New Jersey Forest Fire Service may prescribe burn
- 33 or mechanically replicate a burn in any area of land within the State
- 34 which is determined by the State Firewarden, or the State
- 35 Firewarden's designee, to be in reasonable danger of wildfire,
- 36 provided that, for lands not owned or controlled by the State, the
- 37 New Jersey Forest Fire Service:
- 38 (1) describes the areas that will be prescribe burned to the
- 39 affected local governmental entity;
- 40 (2) publishes a prescribed burn notice, which shall include a
- 41 description of the area to be burned, in a conspicuous manner in at
- 42 least one newspaper of general circulation in the area of the burn;
- 43 (3) provides prior written notice, by certified mail or personal
- 44 service, of the proposed prescribed burn to the landowner and
- 45 lessee, if known, of any land that is included in the area to be
- 46 prescribed burned, which notice shall be sent at least 30 days prior
- 47 to the burn unless the State Firewarden makes a written finding that
- 48 an emergency exists, in which case the prior written notice shall be

1 sent as soon as possible after the finding is made; and
2 (4) considers any landowner or lessee objections to the
3 prescribed burning of the property. An objecting landowner or
4 lessee may apply to the State Firewarden for a review of alternative
5 methods of forest fuel reduction on the property. If the State
6 Firewarden does not resolve the objection, the State Forester shall
7 convene a panel composed of the local New Jersey Forest Fire
8 Service manager, the fire chief of the jurisdiction, and a local
9 official designated by the municipality in which the land is located,
10 or any of their designees. If the panel's recommendation is not
11 acceptable to the landowner or lessee, the landowner or lessee may
12 request further consideration by the Commissioner of
13 Environmental Protection or the commissioner's designee, and shall
14 thereafter be entitled to an administrative hearing pursuant to the
15 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
16 seq.).

17 b. No fees or costs shall be assessed to a landowner or lessee
18 for a prescribed burn conducted by the New Jersey Forest Fire
19 Service as authorized pursuant to this section.
20

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

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

39 c. All costs and penalties paid pursuant to this section shall be
40 credited to a special dedicated account in the General Fund and
41 appropriated to the New Jersey Forest Fire Service to help pay for
42 the administration and operation of its programs.
43

44 8. a. (1) A prescribed burn conducted in accordance with the
45 requirements of this act, an approved prescribed burn plan, the "Air
46 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.)
47 and any other applicable State air pollution control law, and the
48 rules and regulations adopted by the Department of Environmental

1 Protection pursuant thereto, shall be deemed to be in the public
2 interest and shall not constitute arson, trespass, or a public or
3 private nuisance. The provisions of this paragraph shall also apply
4 to smoke and ash caused by or arising from a prescribed burn.

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

15 (3) In a private civil action arising from the conduct of a
16 prescribed burn and any damages or injury caused by fire or
17 resulting smoke or ash, proof of compliance with the requirements
18 of this act and the standards established pursuant thereto shall be
19 admissible evidence that the duty of care for such activity has been
20 met.

21 (4) A landowner, lessee, or certified prescribed burn manager
22 who allows a fire to escape from a prescribed burn and which fire
23 requires intervention by the New Jersey Forest Fire Service shall
24 reimburse the New Jersey Forest Fire Service for the reasonable and
25 normal costs associated therewith. Any reimbursement of costs
26 paid pursuant to this paragraph shall be credited to a special
27 dedicated account in the General Fund and appropriated to the New
28 Jersey Forest Fire Service to help pay for the administration and
29 operation of its programs.

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

38 c. Notwithstanding any State or local law, rule, regulation,
39 ordinance, or resolution to the contrary, a prescribed burn
40 conducted pursuant to this act, any rules and regulations adopted
41 pursuant thereto, and an approved prescribed burn plan shall be
42 deemed to not (1) be a source operation or source of an air
43 contaminant, (2) be or tend to be injurious to human health or
44 welfare, animal or plant life, or property, or (3) unreasonably
45 interfere with the enjoyment of life or property, as those terms are
46 used in the "Air Pollution Control Act (1954)," P.L.1954, c.212
47 (C.26:2C-1 et seq.), and any rules or regulations adopted pursuant
48 thereto, or any similar provision of any municipal or county

1 ordinance, resolution, rule or regulation. The provisions of this
2 subsection shall also apply to smoke and ash caused by or arising
3 from a prescribed burn.
4

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

18 10. This act shall take effect immediately.
19
20

21 STATEMENT
22

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

37 Specifically, the bill would direct the NJFFS to develop and
38 administer a program for the certification of prescribed burn
39 managers. The program would include at least the following
40 subjects: safety; legal aspects of prescribed burning; fire behavior;
41 prescribed burning tactics; smoke management; environmental
42 effects; and preparation of prescribed burn plans. A landowner or
43 lessee who wishes to conduct a prescribed burn on their own land
44 would not have to become certified as a prescribed burn manager.
45 Under the bill's provisions, a prescribed burn would not be
46 conducted on any land unless:

47 (1) a prescribed burn plan prepared by a certified prescribed
48 burn manager or the landowner or lessee has been filed with and

1 approved by the State Firewarden, or the State Firewarden's
2 designee, prior to the burn;

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

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

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

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

16 (6) the nearest regional office of the NJFFS, and the local fire
17 dispatch center, have been notified of the prescribed burn at least 24
18 hours prior to starting it.

19 Under the bill, the State Firewarden would be directed to
20 approve a properly prepared and filed prescribed burn plan unless
21 the State Firewarden determines that the plan presents an
22 unreasonable risk of (1) uncontrolled wildfire, or (2) harm to public
23 health or safety. The bill would also authorize the NJFFS to
24 prescribe burn or mechanically replicate a burn on any area of land
25 within the State which is determined by the State Firewarden, or the
26 State Firewarden's designee, to be in reasonable danger of wildfire,
27 provided that, for lands not owned or controlled by the State, the
28 NJFFS:

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

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

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

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

43 Any such objecting landowner or lessee would be able to apply
44 to the State Firewarden for a review of alternative methods of forest
45 fuel reduction on the property. If the State Firewarden does not
46 resolve the objection, the State Forester must then convene a panel
47 composed of the local NJFFS manager, the fire chief of the

1 jurisdiction, and a local official designated by the municipality in
2 which the land is located. If the panel's recommendation is not
3 acceptable to the landowner or lessee, the landowner or lessee may
4 request further consideration by the Commissioner of
5 Environmental Protection, and would thereafter be entitled to an
6 administrative hearing pursuant to the "Administrative Procedure
7 Act." No fees or costs would be assessed to a landowner or lessee
8 for a prescribed burn conducted by the NJFFS in these situations.

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

20 All fees, costs, and penalties that are paid in accordance with the
21 requirements and provisions of the bill would be credited to a
22 special dedicated account in the General Fund and appropriated to
23 the NJFFS to help pay for the administration and operation of its
24 programs.

25 Finally, the bill would provide to landowners, lessees, certified
26 prescribed burn managers, their agents and employees, and State
27 employees and agents certain immunities against potential liability
28 for damages or injury possibly resulting from a prescribed burn.
29 The bill provides that in a private civil action arising from the
30 conduct of a prescribed burn and any damages or injury caused by
31 fire or resulting smoke or ash, proof of compliance with the
32 requirements of this bill and the standards established thereto would
33 be admissible evidence that the standard of care has been met. The
34 bill would also declare that a properly conducted prescribed burn
35 would be deemed to be in the public interest, would not constitute
36 arson, trespass, or a public or private nuisance, and would not be
37 considered to be illegal air pollution.