

[First Reprint]

SENATE, No. 368

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

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 reported by the Senate Environment and Energy Committee on June 7, 2012, with amendments.



1 AN ACT concerning prescribed burns 'on certain lands'¹, and
2 supplementing Title 13 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

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:

¹Senate SEN committee amendments adopted June 7, 2012.

1 ecological and economic welfare of the State inhibits full use of this
2 valuable resource management tool.

3 The Legislature therefore determines that it is the purpose of this
4 act to authorize and promote the continued use of prescribed
5 burning for public safety, wildfire control, ecological, silvicultural,
6 agricultural, and natural resource management purposes; ¹and¹ that
7 it is appropriate and useful to exempt prescribed burning, as
8 authorized by this act, from other State and local laws and
9 regulations prohibiting open burning or the burning of forests and
10 other types of ecosystems ¹]; and that prescribed burning of forest
11 fuels is to be considered a property right of a landowner¹.

12

13 3. As used in this act:

14 "Certified prescribed burn manager" means a person who has
15 been certified pursuant to section 4 of this act to conduct prescribed
16 burns.

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

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

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

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

34 "Prescribed burn plan" or "plan" means a written plan prepared
35 in accordance with this act for starting, executing, and controlling a
36 prescribed burn.

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

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

41

42 ¹4. The provisions of this act shall not apply to lands that
43 qualify for differential property tax assessment pursuant to the
44 "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et
45 seq.), or lands adjacent to, or a part of, a farm management unit as
46 defined pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3). ¹

1 ¹**[4.] 5.**¹ a. The New Jersey Forest Fire Service shall develop
2 and administer a program for the certification of prescribed burn
3 managers. The program shall include at least the following
4 subjects: safety; legal aspects of prescribed burning; fire behavior;
5 prescribed burning tactics; smoke management; environmental
6 effects; and preparation of prescribed burn plans. The New Jersey
7 Forest Fire Service shall establish the period for which a
8 certification issued pursuant to this section shall be valid and the
9 conditions and requirements for recertification under the program.

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

16 c. No person who desires to conduct a prescribed burn only on
17 land for which the person is the landowner or lessee shall be
18 required to become certified as a prescribed burn manager pursuant
19 to this section.

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

32

33 ¹**[5.] 6.**¹ a. ¹**[A]** Except as provided in section 4 of this act, a¹
34 prescribed burn shall not be conducted on any land unless:

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

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

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

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

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

9 (6) the nearest regional office of the New Jersey Forest Fire
10 Service, and the local fire dispatch center, have been notified of the
11 prescribed burn ¹**["at least"]** within¹ 24 hours prior to starting it.

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

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

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

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

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

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

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

28 d. The State Firewarden may issue an authorization to burn
29 pursuant to paragraph (3) of subsection a. of this section that is
30 valid for an entire season or for such other period ¹at any time of
31 year¹ as the State Firewarden deems appropriate.

32 e. ¹**["The New Jersey Forest Fire Service shall compare the**
33 **geographic location of a proposed prescribed burn to any list of**
34 **endangered species habitats maintained by the Department of**
35 **Environmental Protection.**

36 f. ¹**["** The New Jersey Forest Fire Service may charge reasonable
37 fees to review a filed prescribed burn plan and to issue an
38 authorization to burn. All such fees collected shall be credited to a
39 special dedicated account in the General Fund and appropriated to
40 the New Jersey Forest Fire Service to help pay for the
41 administration and operation of its programs.

42
43 ¹**["6.] 7.**¹ a. The New Jersey Forest Fire Service may prescribe
44 burn or mechanically replicate a burn in any area of land within the
45 State which is determined by the State Firewarden, or the State
46 Firewarden's designee, to be in reasonable danger of wildfire,
47 provided that, for lands not owned or controlled by the State, the

1 New Jersey Forest Fire Service:

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

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

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

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

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

32

33 ¹[7.] 8.¹ a. The State Firewarden may enter into a written
34 agreement with a landowner, or a lessee with the landowner's
35 written permission, to conduct a joint prescribed burn or
36 mechanically replicate a burn on the landowner's property. The
37 agreement shall include, but need not be limited to, a prescribed
38 burn plan for the property and a delineation of the respective roles
39 of the New Jersey Forest Fire Service personnel, the landowner, the
40 lessee, and the landowner's and lessee's agents and employees in
41 carrying out the prescribed burn.

42 b. If the prescribed burn is conducted by the New Jersey Forest
43 Fire Service at the request of a landowner or lessee as authorized
44 pursuant to subsection a. of this section, the New Jersey Forest Fire
45 Service may assess the reasonable and normal costs thereof against
46 the landowner or lessee, which shall be payable within 90 days after
47 assessment. If the landowner or lessee does not pay the assessed
48 costs within 90 days, the costs may be deemed to be a penalty

1 collectable in a summary proceeding pursuant to the "Penalty
2 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

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

7
8 ¹[8.] 9.¹ a. (1) A prescribed burn conducted in
9 accordance with the requirements of this act, an approved
10 prescribed burn plan, the "Air Pollution Control Act (1954),"
11 P.L.1954, c.212 (C.26:2C-1 et seq.) and any other applicable State
12 air pollution control law, and the rules and regulations adopted by
13 the Department of Environmental Protection pursuant thereto, shall
14 be deemed to be in the public interest and shall not constitute arson,
15 trespass, or a public or private nuisance. The provisions of this
16 paragraph shall also apply to smoke and ash caused by or arising
17 from a prescribed burn.

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

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

34 (4) A landowner, lessee, or certified prescribed burn manager
35 who allows a fire to escape from a prescribed burn and which fire
36 requires intervention by the New Jersey Forest Fire Service shall
37 reimburse the New Jersey Forest Fire Service for the reasonable and
38 normal costs associated therewith. Any reimbursement of costs
39 paid pursuant to this paragraph shall be credited to a special
40 dedicated account in the General Fund and appropriated to the New
41 Jersey Forest Fire Service to help pay for the administration and
42 operation of its programs.

43 b. Without affecting any other limitations on liability that may
44 be applicable, and notwithstanding the provisions of any other law,
45 neither the State Firewarden nor any designee, agent, or employee
46 thereof or of the New Jersey Forest Fire Service shall be personally
47 liable for any damages or injury arising from or related to any act or
48 omission of the State Firewarden or any designee, agent, or

1 employee thereof or of the New Jersey Forest Fire Service when
2 acting in an official capacity to carry out the provisions of this act.

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

17

18 ¹**[9.]** 10.¹ Within 180 days after the date of enactment of this
19 act, the Department of Environmental Protection and the New
20 Jersey Forest Fire Service, in consultation with the Department of
21 Agriculture, shall develop and adopt, pursuant to the
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
23 seq.), such rules and regulations as may be necessary to implement
24 this act, which shall include, but need not be limited to, rules and
25 regulations implementing the certification program for prescribed
26 burn managers set forth in section ¹**[4]** 5¹ of this act and
27 establishing any additional requirements concerning prescribed
28 burns, prescribed burn plans, and the issuance of appropriate notice
29 to the public of prescribed burns.

30

31 ¹**[10.]** 11.¹ This act shall take effect immediately.