

ASSEMBLY, No. 1275

STATE OF NEW JERSEY 216th LEGISLATURE

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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 (1) the person responsible for the
17 land upon which a prescribed burn is to be performed who (a) either
18 owns or leases the land, and (b) has full access and control of the
19 land at all times during the prescribed burn; or (2) an employee or
20 other representative of that person who, for the purposes of
21 complying with this act, (a) is authorized to act on the person's
22 behalf, and (b) has full access and control of the land at all times
23 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 "Person" means an individual, trust, partnership, limited
28 partnership, limited liability company, society, association, joint
29 stock company, corporation, public corporation or public authority,
30 estate, receiver, trustee, assignee, referee, fiduciary and any other
31 legal entity.

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

39 "Prescribed burn plan" or "plan" means a written plan prepared
40 in accordance with this act for starting, executing, and controlling a
41 prescribed burn.

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

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

46

47 4. a. The New Jersey Forest Fire Service shall develop and
48 administer a program for the certification of prescribed burn

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

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

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

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

30
31 5. a. A prescribed burn shall not be conducted on any land
32 unless:

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

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

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

46 (4) the fees which may be assessed by the State Firewarden for
47 the review and approval of the prescribed burn plan pursuant to
48 paragraph (1) of this subsection and for the issuance of the

1 authorization pursuant to paragraph (3) of this subsection have been
2 paid in full;

3 (5) the appropriate notice has been issued in accordance with
4 section 6 of this act and any rules or regulations adopted pursuant
5 thereto concerning prescribed burns performed by the New Jersey
6 Forest Fire Service; and

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

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

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

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

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

17 (4) provisions for notifying the public of the prescribed burn in
18 accordance with the requirements of section 6 of this act and any
19 rules or regulations adopted pursuant thereto concerning prescribed
20 burns performed by the New Jersey Forest Fire Service; and

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

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

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

31 e. The New Jersey Forest Fire Service may charge reasonable
32 fees to review a filed prescribed burn plan and to issue an
33 authorization to burn. All such fees collected shall be credited to a
34 special dedicated account in the General Fund and appropriated to
35 the New Jersey Forest Fire Service to help pay for the
36 administration and operation of its programs.

37

38 6. a. The New Jersey Forest Fire Service may perform a
39 prescribed burn or mechanically replicate a burn in any area of land
40 within the State which is determined by the State Firewarden, or the
41 State Firewarden's designee, to be in reasonable danger of wildfire,
42 provided that, for lands not owned or controlled by the State, the
43 New Jersey Forest Fire Service:

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

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

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

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

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

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

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

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

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

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

21 (3) 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, 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 performed by the New Jersey Forest Fire Service.
17

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

21 STATEMENT
22

23 Prescribed burning reduces naturally occurring vegetative fuels
24 within forested and other undeveloped areas, and thereby lessens
25 the risk and severity of major wildfire and the potential for resulting
26 loss of life and property. This bill would help authorize and
27 promote the continued use of prescribed burning for these purposes.

28 The bill would establish a certification program for prescribed
29 burn managers and procedures for conducting prescribed burns. It
30 would authorize the New Jersey Forest Fire Service (NJFFS), under
31 certain conditions, to conduct prescribed burns on any area of land
32 within the State which is determined by the State Firewarden or
33 designee thereof to be in reasonable danger of wildfire. Finally, the
34 bill would provide to landowners and lessees, certified prescribed
35 burn managers, their agents and employees, and State employees
36 and agents certain immunities against potential liability for damages
37 or injury possibly resulting from a prescribed burn.

38 Specifically, the bill would direct the NJFFS to develop and
39 administer a program for the certification of prescribed burn
40 managers. The program would 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. However, a
44 landowner or lessee who wishes to conduct a prescribed burn on
45 their own land is not required to become a prescribed burn manager
46 to conduct the burn. Under the bill's provisions, a prescribed burn
47 could not be conducted on any land unless the requirements under
48 section 5 of the bill are met.

1 Under the bill the State Firewarden is required to approve a
2 properly prepared and filed prescribed burn plan unless the plan
3 presents an unreasonable risk of uncontrolled wildfire or harm to
4 public health or safety.

5 Furthermore, the bill authorizes the NJFFS to perform a
6 prescribed burn or mechanically replicate a burn on any area of land
7 in the State determined by the State Firewarden to be in reasonable
8 danger of wildfire. For lands not owned or controlled by the State
9 within that area, the NJFFS is required to:

10 1) describe the areas that will be prescribe burned to the
11 affected local governmental entity;

12 2) publish a prescribed burn notice, which would include a
13 description of the area to be burned, in a conspicuous manner in at
14 least one newspaper of general circulation in the area of the burn;

15 3) provide 30-day prior written notice, by certified mail or
16 personal service, of the proposed prescribed burn to the landowner
17 and lessee, if known, of the land to be included in the area to be
18 prescribed burned, unless the State Firewarden makes a written
19 finding that an emergency exists;

20 4) provide prior written notice as soon as possible if a finding
21 of an emergency is made; and

22 5) consider any landowner or lessee objections to the
23 prescribed burning of the property.

24 The bill provides a process for addressing landowner or lessee
25 objections. The objecting landowner or lessee would be able to
26 apply to the State Firewarden for a review of alternative methods of
27 forest fuel reduction on the property. If the State Firewarden does
28 not resolve the objection, the State Forester must then convene a
29 panel composed of the local NJFFS manager, the fire chief of the
30 jurisdiction, and a local official designated by the municipality in
31 which the land is located. If the panel's recommendation is not
32 acceptable to the landowner or lessee, the landowner or lessee may
33 request further consideration by the Commissioner of
34 Environmental Protection, and would thereafter be entitled to an
35 administrative hearing pursuant to the "Administrative Procedure
36 Act." No fees or costs would be assessed to a landowner or lessee
37 for a prescribed burn conducted by the NJFFS in these situations.

38 The bill also provides for joint prescribed burns or mechanically
39 replicated burns through a written agreement between the State
40 Firewarden and the landowner, or a lessee with the landowner's
41 written permission. The bill authorizes the NJFFS to assess the
42 reasonable and normal costs of a burn requested by the landowner
43 or lessee, payable within 90 days after assessment. If the
44 landowner or lessee does not pay the assessed costs within 90 days,
45 the costs may be collected in a summary proceeding pursuant to the
46 "Penalty Enforcement Law of 1999."

A1275 DANCER, CONAWAY

10

1 All fees, costs, and penalties that are paid in accordance with the
2 requirements and provisions of the bill are to be credited to a
3 special dedicated account in the General Fund and appropriated to
4 the NJFFS to help pay for the administration and operation of its
5 programs.

6 The bill would provide to landowners, lessees, certified
7 prescribed burn managers, their agents and employees, and State
8 employees and agents certain immunities against potential liability
9 for damages or injury possibly resulting from a prescribed burn.
10 The bill would also declare that a properly conducted prescribed
11 burn would be deemed to be in the public interest, would not
12 constitute arson, trespass, or a public or private nuisance, and would
13 not be considered to be illegal air pollution.