

[First Reprint]

SENATE, No. 2169

STATE OF NEW JERSEY
214th LEGISLATURE

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Sponsored by:

Senator JAMES BEACH

District 6 (Camden)

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District 30 (Burlington, Mercer, Monmouth and Ocean)

SYNOPSIS

Authorizes prescribed burning in certain circumstances.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on June 20, 2011, with amendments.



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

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 20, 2011.

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; that it is
7 appropriate and useful to exempt prescribed burning, as authorized
8 by this act, from other State and local laws and regulations
9 prohibiting open burning or the burning of forests and other types
10 of ecosystems; and that prescribed burning of forest fuels is to be
11 considered a property right of a landowner.

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 4. a. The New Jersey Forest Fire Service shall develop and
43 administer a program for the certification of prescribed burn
44 managers. The program shall include at least the following
45 subjects: safety; legal aspects of prescribed burning; fire behavior;
46 prescribed burning tactics; smoke management; environmental
47 effects; and preparation of prescribed burn plans. The New Jersey
48 Forest Fire Service shall establish the period for which a

1 certification issued pursuant to this section shall be valid and the
2 conditions and requirements for recertification under the program.

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

9 c. No person who desires to conduct a prescribed burn only on
10 land for which the person is the landowner or lessee shall be
11 required to become certified as a prescribed burn manager pursuant
12 to this section.

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

25

26 5. a. A prescribed burn shall not be conducted on any land
27 unless:

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

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

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

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

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

1 (6) the nearest regional office of the New Jersey Forest Fire
2 Service, and the local fire dispatch center, have been notified of the
3 prescribed burn ¹~~【within】~~ at least¹ 24 hours prior to starting it.

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

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

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

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

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

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

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

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

24 e. ¹The New Jersey Forest Fire Service shall compare the
25 geographic location of a proposed prescribed burn to any list of
26 endangered species habitats maintained by the Department of
27 Environmental Protection.

28 f.¹ The New Jersey Forest Fire Service may charge reasonable
29 fees to review a filed prescribed burn plan and to issue an
30 authorization to burn. All such fees collected shall be credited to a
31 special dedicated account in the General Fund and appropriated to
32 the New Jersey Forest Fire Service to help pay for the
33 administration and operation of its programs.
34

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

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

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

46 (3) provides prior written notice, by certified mail or personal
47 service, of the proposed prescribed burn to the landowner and
48 lessee, if known, of any land that is included in the area to be

1 prescribed burned, which notice shall be sent at least 30 days prior
2 to the burn unless the State Firewarden makes a written finding that
3 an emergency exists, in which case the prior written notice shall be
4 sent as soon as possible after the finding is made; and

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

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

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

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

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

46
47 8. a. (1) A prescribed burn conducted in accordance with the
48 requirements of this act, an approved prescribed burn plan, the "Air

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

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

19 (3) ¹In a private civil action arising from the conduct of a
20 prescribed burn and any damages or injury caused by fire or
21 resulting smoke or ash, proof of compliance with the requirements
22 of this act and the standards established pursuant thereto shall be
23 admissible evidence that the duty of care for such activity has been
24 met.

25 (4)¹ A landowner, lessee, or certified prescribed burn manager
26 who allows a fire to escape from a prescribed burn and which fire
27 requires intervention by the New Jersey Forest Fire Service shall
28 reimburse the New Jersey Forest Fire Service for the reasonable and
29 normal costs associated therewith. Any reimbursement of costs
30 paid pursuant to this paragraph shall be credited to a special
31 dedicated account in the General Fund and appropriated to the New
32 Jersey Forest Fire Service to help pay for the administration and
33 operation of its programs.

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

42 c. Notwithstanding any State or local law, rule, regulation,
43 ordinance, or resolution to the contrary, a prescribed burn
44 conducted pursuant to this act, any rules and regulations adopted
45 pursuant thereto, and an approved prescribed burn plan shall be
46 deemed to not (1) be a source operation or source of an air
47 contaminant, (2) be or tend to be injurious to human health or
48 welfare, animal or plant life, or property, or (3) unreasonably

1 interfere with the enjoyment of life or property, as those terms are
2 used in the "Air Pollution Control Act (1954)," P.L.1954, c.212
3 (C.26:2C-1 et seq.), and any rules or regulations adopted pursuant
4 thereto, or any similar provision of any municipal or county
5 ordinance, resolution, 'rule' or regulation. The provisions of this
6 subsection shall also apply to smoke and ash caused by or arising
7 from a prescribed burn.

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

21
22 10. This act shall take effect immediately.