

ASSEMBLY, No. 1979

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED JANUARY 26, 2004

Sponsored by:

Assemblyman ROBERT J. SMITH

District 4 (Camden and Gloucester)

SYNOPSIS

The "New Jersey Prescribed Burning Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning prescribed burning and supplementing Title 13 of
2 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 "New Jersey
8 Prescribed Burning Act."

9

10 2. The Legislature finds and declares that prescribed burning is a
11 resource protection and land management tool which promotes public
12 safety and benefits forest and other natural resources, the environment,
13 and the economy of the State; that prescribed burning reduces
14 naturally occurring vegetative fuels within forested areas and other
15 types of ecosystems, and thereby lessens the risk and severity of major
16 wildfire and the resulting loss of life and property; that New Jersey's
17 changing population places urban and suburban development directly
18 adjacent to fire-prone lands, and that the use of prescribed fire to
19 manage fuels in those interface areas would substantially reduce the
20 threat of damaging wildfire in urban and suburban communities.

21 The Legislature further finds and declares that forested land,
22 agricultural land, grassland, coastal marshland and other open lands
23 constitute significant economic, biological, and aesthetic resources of
24 Statewide importance; that the ecology of the Pine Barrens region in
25 particular requires periodic fire for maintenance of ecological integrity;
26 that proper prescribed burning on such lands serves to reduce
27 hazardous accumulations of fuels, prepares sites for both natural and
28 artificial forest regeneration, improves wildlife habitat, controls insects
29 and disease, and perpetuates fire dependent ecosystems; and that
30 proper application of prescribed burning is essential to the
31 perpetuation, restoration, and management of many plant and animal
32 communities, and the resulting increase in vegetative growth and yield
33 benefits rare, threatened, and endangered species, songbirds, and other
34 game and nongame species.

35 The Legislature also finds and declares that as New Jersey's
36 population continues to grow, pressures from liability issues and
37 smoke nuisance complaints cause prescribed burn practitioners to limit
38 prescribed burn activity, thereby reducing the above described benefits
39 of these burns to the State; and that public misunderstanding of the
40 benefits of prescribed burning to the ecological and economic welfare
41 of the State inhibits full use of this valuable resource management tool.

42 The Legislature therefore determines that it is the purpose of this
43 act to authorize and promote the continued use of prescribed burning
44 for public safety, ecological, silvicultural, agricultural, wildfire control,
45 and wildlife management purposes; that it is appropriate and useful to
46 exempt prescribed burning, as authorized by this act, from other State

1 and local laws and regulations prohibiting open burning or the burning
2 of forests and other types of ecosystems; and that prescribed burning
3 is to be considered a property right of a landowner when naturally
4 occurring vegetative fuels are used.

5
6 3. As used in this act:

7 "Certified prescribed burn manager" means a person who has been
8 certified pursuant to section 4 of this act to conduct prescribed burns;

9 "Division of Parks and Forestry" means the Division of Parks and
10 Forestry in the Department of Environmental Protection;

11 "Prescribed burn" or "prescribed burning" means the controlled
12 application of fire to naturally occurring vegetative fuels for public
13 safety, ecological, silvicultural, agricultural, wildfire control, or
14 wildlife management purposes, under specified environmental
15 conditions and by following appropriate precautionary measures which
16 cause the fire to be confined to a predetermined area, so as to
17 accomplish planned land management objectives;

18 "Prescription" means a written plan for starting, controlling, and
19 extinguishing a prescribed burn to accomplish public safety,
20 ecological, silvicultural, agricultural, wildfire control, or wildlife
21 management objectives;

22 "State Forest Fire Service" means the forest fire service established
23 pursuant to R.S.13:9-1; and

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

26
27 4. a. The State Forester shall develop and administer a training
28 course and certification process for any person who desires to become
29 a certified prescribed burn manager. The training course shall include
30 the following subjects: the legal aspects of prescribed burning; fire
31 behavior; prescribed burning tactics; smoke management;
32 environmental effects; plan preparation; and safety. A final
33 examination on these subjects shall be given to all attendees. The
34 State Forester may charge a reasonable fee to cover the costs of the
35 course and the examination. Certification shall be effective for a
36 period of seven years from issuance.

37 b. To be certified as a prescribed burn manager, a person shall:

38 (1) successfully complete all components of the prescribed burn
39 training course developed by the State Forester pursuant to subsection
40 a. of this section, and pass the examination developed for the course;

41 (2) successfully complete a training course deemed by the State
42 Forester to be comparable to that developed by the State Forester
43 pursuant to subsection a. of this section, and pass the examination
44 developed for New Jersey's course; or

45 (3) demonstrate to the satisfaction of the State Forester relevant
46 past experience, and pass the examination developed for New Jersey's

1 course.

2 c. The State Forester shall develop a process for the continued
3 certification and recertification of certified prescribed burn managers
4 either through demonstration of managerial participation in at least
5 five prescribed burns during a five-year period, participation in a
6 sufficient number of hours of training related to prescribed burn
7 management every five years as determined by the State Forester, or
8 subsequent completion of the training course developed pursuant to
9 subsection a. of this section.

10 d. The State Forester may revoke a certification issued pursuant to
11 this section if the certified prescribed burn manager or the prescription
12 for the prescribed burn violates any provision of this act, the "Air
13 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) or
14 any other State air pollution control law, or any rule or regulation
15 adopted by the Department of Environmental Protection pursuant
16 thereto, or otherwise threatens the public health and safety.

17

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

19 (1) A prescription for the prescribed burn has been prepared by a
20 certified prescribed burn manager prior to the burn. The prescription
21 shall include: (a) the landowner's name, address, and telephone
22 number; (b) the telephone number of the certified prescribed burn
23 manager who prepared the plan; (c) a description and map of the area
24 to be burned, the objectives of the prescribed burn, and the desired
25 weather conditions or parameters; (d) a summary of the methods to be
26 used to start, control, and extinguish the prescribed burn; and (e) a
27 smoke management plan based upon guidelines presented therefor by
28 the United States Forest Service in its publication, "A Guide to
29 Prescribed Fire in Southern Forests," or such other guidelines as may
30 be developed or approved therefor by the State Forester for use in the
31 State;

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

34 (3) The prescribed burn is conducted under the direct supervision
35 of a certified prescribed burn manager, who shall ensure that the
36 prescribed burn is conducted in accordance with the prescription;

37 (4) An authorization to burn is obtained from the State Forester or
38 the State Forester's designee prior to initiating the burn, and the
39 certified prescribed burn manager ensures that sufficient personnel and
40 firefighting equipment for control of the fire are present throughout
41 the burn; and

42 (5) The nearest regional office of the Division of Parks and
43 Forestry, State Forest Service, or State Forest Fire Service, and the
44 nearest local fire station, have been notified of the prescribed burn 24
45 hours prior to initiation of the burn.

46 b. Within 10 days prior to conducting a prescribed burn, the owner

1 of the land to be burned shall notify in writing all landowners whose
2 lands adjoin the land to be burned. The owner shall include in the
3 written notice the proposed date and location of the burn and a
4 telephone number where the owner can be reached for information
5 regarding the prescribed burn. This notification shall be in
6 substantially the following form:

7

8

PRESCRIBED BURNING NOTIFICATION

9

10 Name:

11 Phone:

12 Address:

13 Location of area to be burned:

14 Approximate acres to be burned:

15 Projected time frame for burn:

16 Contact information:

17

18 c. The State Forester shall approve properly prepared and filed
19 burn prescriptions unless the prescription is reasonably determined by
20 the State Forester to present an unreasonable risk of uncontrolled
21 wildfire.

22

23 6. a. The State Forest Fire Service may prescribe burn any area of
24 land within the State which is reasonably determined by the State
25 Forester, or the State Forester's designee, to be in danger of wildfire,
26 provided that the State Forest Fire Service:

27 (1) Describes the areas that will be prescribe burned to the affected
28 local governmental entity;

29 (2) Publishes a prescribed burn notice, including a description of
30 the area to be burned, in a conspicuous manner in at least one
31 newspaper of general circulation in the area of the burn not less than
32 10 days before initiation of the burn;

33 (3) Prepares a notice to be sent to all landowners in each
34 municipality designated by the Division of Parks and Forestry as a
35 wildfire hazard area, which shall be included by the county tax
36 assessor with the annual property tax statements sent to landowners.
37 The notice shall describe the particular area to be burned and the
38 tentative date or dates of the burn, list the reasons for and the
39 expected benefits from prescribed burning, and provide an estimate of
40 the costs of the prescribed burn; and

41 (4) Considers any landowner objections to the prescribed burning
42 of the property. An objecting landowner may apply to the Director of
43 the Division of Parks and Forestry or the director's designee for a
44 review of alternative methods of fuel reduction on the property. If the
45 director or the director's designee does not resolve the objection, the
46 director or the director's designee shall convene a panel made up of the

1 local forestry unit manager, the fire chief of the jurisdiction, and a
2 local official designated by the municipality, or any of their designees.
3 If the panel's recommendation is not acceptable to the landowner, the
4 landowner may request further consideration by the Commissioner of
5 Environmental Protection or the commissioner's designee, and shall
6 thereafter be entitled to an administrative hearing pursuant to the
7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
8 seq.).

9 b. If a wildfire hazard reduction prescribed burn is conducted by
10 the State Forest Fire Service as authorized pursuant to this section, the
11 State Forest Fire Service shall assess the reasonable and normal costs
12 thereof against the landowner, which shall be payable within 90 days
13 after assessment. If the landowner does not pay the assessed costs
14 within 90 days, they may be collected in a summary proceeding
15 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
16 (C.2A:58-10 et seq.).

17
18 7. a. (1) Any prescribed burn conducted in compliance with the
19 requirements of this act, an approved burn prescription, the "Air
20 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.)
21 and any other applicable State air pollution control law, and the rules
22 and regulations adopted by the Department of Environmental
23 Protection pursuant thereto shall be deemed to be in the public interest
24 and shall not constitute a nuisance, public or private.

25 (2) No landowner, certified prescribed burn manager, or agent
26 thereof who conducts a prescribed burn in compliance with the
27 requirements of this act, an approved burn prescription, the "Air
28 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.)
29 and any other applicable State air pollution control law, and the rules
30 and regulations adopted by the Department of Environmental
31 Protection pursuant thereto shall be liable for any damages or injury
32 caused by fire or resulting smoke unless it is proven that there was
33 gross negligence in starting, controlling, or extinguishing the burn.

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

40 c. Notwithstanding any State or local law, rule, regulation,
41 ordinance, or resolution to the contrary, prescribed burns conducted
42 pursuant to this act and any rules and regulations adopted pursuant
43 thereto shall be deemed not to (1) be a source or source operation, (2)
44 be or tend to be injurious to health or welfare, animal or plant life or
45 property, or (3) unreasonably interfere with the enjoyment of life or
46 property, as those terms are used in the "Air Pollution Control Act

1 (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), and any rules or
2 regulations adopted pursuant thereto, or any similar provision of any
3 municipal or county ordinance, resolution, or regulation.

4
5 8. The Department of Environmental Protections shall adopt,
6 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
7 (C.52:14B-1 et seq.), such rules and regulations as may be necessary
8 to implement this act.

9
10 9. This act shall take effect on the 180th day after the date of
11 enactment, but the Commissioner of Environmental Protection and the
12 State Forester may take such anticipatory administrative action in
13 advance thereof as shall be necessary to implement this act.

14
15
16 STATEMENT

17
18 This bill would establish a process for certifying individuals to
19 conduct prescribed burns of forested and other undeveloped lands in
20 order to prevent uncontrolled and damaging wildfires and to
21 accomplish various land management objectives. The bill also would
22 establish the procedures to be followed in conducting such burns. In
23 addition, the bill would authorize the State Forest Fire Service under
24 certain conditions to conduct prescribed burns on any area of land
25 within the State which is reasonably determined by the State Forester
26 to be in danger of wildfire. Finally, the bill would provide to
27 landowners, certified prescribed burn managers, their agents, and the
28 State Forester immunity against potential liability for damages or
29 injury possibly resulting from a prescribed burn.

30 Specifically, the bill directs the State Forester to develop and
31 administer a training course and certification process for any person
32 who desires to become a certified prescribed burn manager. The
33 training course would include the following subjects: the legal aspects
34 of prescribed burning; fire behavior; prescribed burning tactics; smoke
35 management; environmental effects; plan preparation; and safety. The
36 State Forester would be authorized to charge a reasonable fee to cover
37 the costs of the course and the examination. A certification would be
38 effective for a period of seven years from issuance.

39 Under the bill, a prescribed burn would not be conducted on any
40 land unless:

41 (1) A prescription for the prescribed burn has been prepared by a
42 certified prescribed burn manager prior to the burn. The prescription
43 would include: (a) the landowner's name, address, and telephone
44 number; (b) the telephone number of the certified prescribed burn
45 manager who prepared the plan; (c) a description and map of the area
46 to be burned, the objectives of the prescribed burn, and the desired

1 weather conditions or parameters; (d) a summary of the methods to be
2 used to start, control, and extinguish the prescribed burn; and (e) a
3 smoke management plan based upon guidelines presented therefor by
4 the United States Forest Service;

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

7 (3) The prescribed burn is conducted under the direct supervision
8 of a certified prescribed burn manager, who must ensure that the
9 prescribed burn is conducted in accordance with the prescription;

10 (4) An authorization to burn is obtained from the State Forester
11 prior to initiating the burn, and the certified prescribed burn manager
12 ensures that sufficient personnel and firefighting equipment for control
13 of the fire are present throughout the burn; and

14 (5) The nearest regional office of the Division of Parks and
15 Forestry, State Forest Service, or State Forest Fire Service, and the
16 nearest local fire station, have been notified of the prescribed burn 24
17 hours prior to initiation of the burn.

18 The bill also provides that within 10 days prior to conducting a
19 prescribed burn, the owner of the land to be burned must notify in
20 writing all landowners whose lands adjoin the land to be burned. The
21 owner must include in the written notice the proposed date and
22 location of the burn and a telephone number where the owner can be
23 reached for information regarding the prescribed burn.

24 Under the bill, the State Forester is directed to approve properly
25 prepared and filed burn prescriptions unless the prescription is
26 reasonably determined by the State Forester to present an
27 unreasonable risk of uncontrolled wildfire.

28 The bill also authorizes the State Forest Fire Service to prescribe
29 burn any area of land within the State which is reasonably determined
30 by the State Forester to be in danger of wildfire, provided that the
31 State Forest Fire Service:

32 (1) Describes the areas that will be prescribe burned to the affected
33 local governmental entity;

34 (2) Publishes a prescribed burn notice, including a description of
35 the area to be burned, in a conspicuous manner in at least one
36 newspaper of general circulation in the area of the burn not less than
37 10 days before initiation of the burn;

38 (3) Prepares a notice to be sent to all landowners in each
39 municipality designated by the Division of Parks and Forestry as a
40 wildfire hazard area, which shall be included by the county tax
41 assessor with the annual property tax statements sent to landowners.
42 The notice would describe the particular area to be burned and the
43 tentative date or dates of the burn, list the reasons for and the
44 expected benefits from prescribed burning, and provide an estimate of
45 the costs of the prescribed burn; and

46 (4) Considers any landowner objections to the prescribed burning

1 of the property.

2 Any such objecting landowner would be able to apply to the
3 Director of the Division of Parks and Forestry for a review of
4 alternative methods of fuel reduction on the property. If the director
5 does not resolve the objection, the director must then convene a panel
6 made up of the local forestry unit manager, the fire chief of the
7 jurisdiction, and a local official designated by the municipality. If the
8 panel's recommendation is not acceptable to the landowner, the
9 landowner may request further consideration by the Commissioner of
10 Environmental Protection, and would thereafter be entitled to an
11 administrative hearing pursuant to the "Administrative Procedure Act."

12 The bill provides that if a wildfire hazard reduction prescribed burn
13 is conducted by the State Forest Fire Service, it shall assess the
14 reasonable and normal costs thereof against the landowner, which shall
15 be payable within 90 days after assessment. If the landowner does not
16 pay the assessed costs within 90 days, they may be collected in a
17 summary proceeding pursuant to the "Penalty Enforcement Law of
18 1999."

19 Finally, the bill provides to landowners, certified prescribed burn
20 managers, their agents, and the State Forester immunity against
21 potential liability for damages or injury possibly resulting from a
22 prescribed burn. The bill also declares that a properly conducted
23 prescribed burn shall be deemed to be in the public interest and shall
24 not constitute a public or private nuisance.

25 Prescribed burning is a resource protection and land management
26 tool which promotes public safety and benefits the environment and
27 the economy of the State. Prescribed burning reduces naturally
28 occurring vegetative fuels within forested and other undeveloped
29 areas, and thereby lessens the risk and severity of major wildfire and
30 the resulting loss of life and property. This bill would help authorize
31 and promote the continued use of prescribed burning for these
32 important purposes.