

**ASSEMBLY, No. 1979**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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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.

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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.